

Syllabus

IN THE MATTER OF
VISCOSE 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 2161. Complaint, Feb. 1, 1934—Decision, July 3, 1937

Where ten corporations engaged in the manufacture of substantially all the viscose rayon yarn made in the United States, and in the sale and distribution thereof to rayon cloth knitters for manufacture into cloth, and subsequent sale, distribution, and use for making of articles of wear therefrom, and constituting sole source of supply of such rayon yarn for knitters, users of approximately forty-five percent of all such yarn used by all classes or kinds of purchasers, and also sole source of supply for other users of such yarn, and, prior to the acts below set forth, in competition as to price with one another in the sale thereof between and among States, Territories, and District of Columbia—

For the purpose of eliminating price competition among themselves, entered into an agreement, combination, understanding, and conspiracy among themselves to fix and maintain uniform prices to be exacted by them from their purchasers of rayon yarn, and thus to fix the price of said product entering into interstate commerce, and did, during a period, thus fix and maintain such uniform prices;

With effect of actually hindering and preventing price competition in the sale, among the various States, the Territories, and the District of Columbia, of such yarn, increasing prices therefor paid by users thereof, prices of cloth made therefrom, and prices of rayon articles of wear, and with dangerous tendency so to hinder and prevent such price competition:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Edward L. Smith and *Mr. Harry A. Babcock* for the Commission.

Mr. John G. Jackson and *Mr. Stephen P. Nash*, of Jackson, Fuller, Nash & Brophy, and *Mr. John W. Davis*, of Davis, Polk, Wardwell, Gardiner & Reed, of New York City, for Viscose Co.

Mr. J. Harry Covington, *Mr. Dean G. Acheson* and *Mr. H. Thomas Austern*, of Covington, Burling Rublee, Acheson & Shorb, of Washington, D. C., and *Mr. William S. Gregg*, of Wilmington, Del., for DuPont Rayon Co., Inc.

Mr. F. Sims McGrath and *Mr. Arthur L. Fisk*, of Cadwalader, Wickersham & Taft, of New York City, for Tubize Chatillon Corp. and American Enka Corp.

Mr. Leslie Nichols of Tolles, Hogsett & Ginn, of Cleveland, Ohio, for Industrial Rayon Corp.

Complaint

25 F. T. C.

Mr. Eustace Seligman and Mr. Inzer B. Wyatt, of Sullivan & Cromwell, of New York City, and *Mr. William S. Culbertson* of Culbertson & LeRoy, of Washington, D. C. for North American Rayon Corp.

Mr. Earle J. Machold and Mr. Chauncey P. Williams, Jr. of LeBoeuf, Winston, Machold & Lamb, of New York City, for Skenandoa Rayon Corp.

Mr. Louis M. Denit and Mr. Thomas Searing Jackson of Brandenburg & Brandenburg, of Washington, D. C., for Delaware Rayon Co. *Klein & Diehm*, of Cleveland, Ohio, for Acme Rayon Corp.

Mr. John C. Parsons, of Robinson, Robinson & Cole, of Hartford, Conn., for The Belamose Corp.

Mr. G. W. Haight, of Cravath, DeGersdorff, Swaine & Wood, of Washington, D. C., for Price, Waterhouse and Co.

COMPLAINT

Pursuant to the provisions of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the Viscose Company, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, Industrial Rayon Corporation, American Glanzstoff Corporation, American Enka Corporation, Skenandoa Rayon Corporation, Delaware Rayon Company, Acme Rayon Corporation, The Belamose Corporation and George Oliver May, William B. Campbell, Joseph Edmund Sterrett, Robert O. Berger, John H. Bowman, Charles P. Carruthers, David L. Grey, John C. Scobie, Frank C. Belser, John Medlock, William D. Bonthron, Ismay G. Pattinson, Thomas Jackson, Donald Arthur, Geoffrey G. Rowbotham, Francis B. Byerly, Percival F. Brundage, W. W. Law, J. P. Dawson, A. L. Brockway, E. Christensen and R. F. Starkey, copartners, trading as Price, Waterhouse and Company have been and are using unfair methods of competition in commerce as "commerce" is defined in said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, the Viscose 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 at New York City, and with branch offices in Providence, R. I., Charlotte, N. C., Chicago, Ill., and Philadelphia, Pa., and with factories located in Pennsylvania, Virginia, and West Virginia.

Complaint

Respondent, DuPont Rayon Company, Inc., 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 located at New York City, N. Y., and with manufacturing plants located at Buffalo, N. Y., Old Hickory, Tenn., and Ampthill, Va.

Respondent, Tubize Chatillon Corporation, 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 New York City, and with manufacturing plants located at Hopewell, Va., and Rome, Ga.

Respondent, Industrial Rayon Corporation, 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 located in New York City, and with a manufacturing plant located in Cleveland, Ohio.

Respondent, American Glanzstoff Corporation, 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 located in New York City, N. Y., where its manufacturing plant is also located.

Respondent, American Enka Corporation, 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 located in New York City, N. Y., and with a manufacturing plant located at Enka, N. C.

Respondent, Skenandoa Rayon Corporation, 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, place of business and manufacturing plant located in Utica, in said State of New York.

Respondent, Delaware Rayon Company, 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 and manufacturing plant located at New Castle, in the said State of Delaware.

Respondent, Acme Rayon Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business and manufacturing plant located in the city of Cleveland, in said State of Ohio.

Respondent, The Belamose Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the

Complaint

25 F. T. C.

State of Connecticut, with its principal office and place of business and manufacturing plant located at Rocky Hill, in the State of Connecticut.

PAR. 2. Respondents, George Oliver May, William B. Campbell, Joseph Edmund Sterrett, Robert O. Berger, John H. Bowman, Charles P. Carruthers, David L. Grey, John C. Scobie, Frank C. Belser, John Medlock, William D. Bonthron, Ismay G. Pattinson, Thomas Jackson, Donald Arthur, Geoffrey G. Rowbotham, Francis B. Byerly, Percival F. Brundage, W. W. Law, J. P. Dawson, A. L. Brockway, E. Christensen, and R. F. Starkey, are and have been since January 1931, a copartnership doing business as Price, Waterhouse and Company, with their office and principal place of business in the city of New York, State of New York, and with branch offices located in various other cities of the United States. As such copartnership they are, and since their organization (which was prior to 1931) have been, engaged in the practice of public accounting and of auditing the books and accounts of various individuals, partnerships, and corporations in various cities of the United States.

PAR. 3. The respondents named in paragraph 1 hereof are now, and since their organizations, have been engaged in the manufacture at their respective manufacturing plants, of Viscose rayon yarn and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia. In the course and conduct of their businesses all of the said respondents named in paragraph 1 hereof, for more than five years last past, have caused, and still cause, such Viscose rayon yarn when sold by them, to be transported in interstate commerce from their respective places of business to, into and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom such Viscose rayon yarn is and has been sold. Such viscose rayon yarn is knitted by the purchasers thereof located in various States of the United States into rayon cloth, which is sold by such purchasers to manufacturers of garments and of other articles of wear, located in various cities in the United States, and such purchasers cause such rayon cloth, when sold by them, to be transported in interstate commerce from their respective places of business to, into, and through States of the United States other than the States in which they respectively have their factories and places of business to the purchasers thereof in such other States to whom such rayon cloth is sold. Manufacturers of such rayon garments and of other rayon articles of wear made from cloth sold to them, by purchasers of viscose rayon yarn made by the respondents named in

paragraph 1 hereof, cause such rayon garments and other rayon articles of wear when sold, to be transported, in interstate commerce, from their respective places of business into and through States of the United States other than the States in which such manufacturers of rayon garments and of such other rayon articles of wear have their factories and places of business, to their purchasers in such other States to whom such rayon garments and other rayon articles of wear are and have been sold. And the sale by respondents of viscose rayon yarn in interstate commerce, is thus followed by interstate commerce in rayon cloth knitted from such yarn and subsequent thereto by interstate commerce in rayon garments and other articles of wear made from such cloth.

PAR. 4. The amount of viscose rayon yarn manufactured and sold by the respondents named in paragraph 1 hereof constitutes, and at all times since October 1931, has constituted, substantially all of the viscose rayon yarn manufactured in the United States. The amount of viscose rayon yarn used by rayon cloth knitters constitutes approximately 45% of all the viscose rayon yarn sold in the United States and is greater than the amount of viscose rayon yarn used by any other class or kind of purchasers of such viscose rayon yarn. As a consequence the price paid by knitters of viscose rayon yarn influences and controls the price of viscose rayon yarn purchased by users other than knitters. Knitters of viscose rayon yarn and other users of viscose rayon yarn have no source of supply and, since October 1931, have had no source of supply for viscose rayon yarn excepting from the said respondents. The said respondents were, prior to October 1931, in competition as to price with one another in the sale of viscose rayon yarn between and among the various States of the United States, the Territories thereof and the District of Columbia and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since October 1931, and would now be, in such competition with one another. Knitters and other users of viscose rayon yarn were, prior to October 1931, respectively in price competition with one another in the sale of rayon cloth and other articles made from viscose rayon yarn, between and among the various States of the United States, the Territories and the District of Columbia and but for the combination, agreement, understanding, and conspiracy hereinafter described, said knitters and other users would have been at all times since October 1931, and would still be, respectively in competition as to price with one another.

Complaint

25 F. T. C.

PAR. 5. In October 1931, or thereabouts, the respondents named in paragraph 1 hereof, for the purpose of eliminating price competition among themselves, entered into, have since carried out and are still carrying out, an agreement, combination, understanding, and conspiracy among themselves, to fix and maintain and by which they have fixed and maintained uniform prices to be exacted by them from their purchasers of viscose rayon yarn and thus to fix the price of viscose rayon yarn entering into interstate commerce. Pursuant to and for the purpose of carrying out the 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 prices for viscose rayon yarn sold by them and by each of them;

(b) Agreed to curtail and limit, and pursuant to such agreement, have curtailed and limited and still curtail and limit the amount of viscose rayon yarn produced and sold by them and thus by agreement they have limited and still limit the supply of viscose rayon yarn, of rayon cloth and of rayon garments and other articles of rayon wear entering into interstate commerce;

(c) In order to detect and find any variation by any of them from the prices of viscose rayon yarn so fixed by them, and in order to detect and find any violation by any of them of their said agreement to curtail and limit the sale and production by any of them of viscose rayon yarn, hired the services of the said respondents named in paragraph 2 hereof, who assisted and furthered and who still assist and further the said agreement, combination, understanding, and conspiracy by compiling and determining from the books and from the manufacturing plants of the respondents named in paragraph 1 hereof, among other things, the viscose rayon yarn production capacity of each of the said respondents named in paragraph 1 hereof, the unsold stock of viscose rayon yarn in the possession of each of the said respondents named in paragraph 1 hereof at certain intervals of time, the percentage of capacity at which each of the said respondents named in paragraph 1 hereof operated and operates over certain periods of time, the prices charged and received by each of the said respondents named in paragraph 1 hereof for viscose rayon yarn sold by them, the names and addresses of the purchasers of viscose rayon yarn manufactured and sold by each of the said respondents named in paragraph 1 hereof.

(d) Because the price of knitted rayon cloth influences the price of viscose rayon yarn and because a decrease in the price of knitted rayon cloth has a tendency to lower the price of viscose rayon yarn,

the said respondents named in paragraph 1 hereof have fixed and maintained and still fix and maintain uniform prices at which knitters of cloth manufactured from viscose rayon yarn purchased from the said respondents, should sell such cloth and thus have fixed the price of knitted rayon cloth entering into interstate commerce.

(e) Sought and secured agreements from knitters of rayon cloth manufactured from viscose rayon yarn purchased from the respondents named in paragraph 1 hereof, by which agreements said knitters obligated themselves not to sell such rayon cloth at prices less than those fixed by the said respondents named in paragraph 1 hereof.

(f) Have refused, and still refuse to continue to sell viscose rayon yarn to knitters of rayon cloth made from viscose rayon yarn purchased from respondents named in paragraph 1 hereof, who would not agree with them not to sell such cloth at prices less than those fixed by the said respondents named in paragraph 1 hereof.

(g) Have refused, and still refuse to continue to sell viscose rayon yarn to all knitters who sold or who would sell rayon cloth knitted from viscose rayon yarn purchased from the said respondents at prices for such rayon cloth less than those so fixed by the said respondents.

(h) Respondent, Industrial Rayon Corporation, a corporation of strong financial resources and of large production capacity of viscose rayon yarn, entered into the manufacture and sale of knitted rayon cloth, so that all of the said respondents named in paragraph 1 hereof, through the said respondent, Industrial Rayon Corporation, might punish price cutters of knitted rayon cloth by underselling them to take away their customers and thus to force such knitters of rayon cloth, if they would remain in business, to sell knitted rayon cloth at the prices so fixed by the said respondents named in paragraph 1 hereof.

PAR. 6. The respondents named in paragraph 2 hereof, in performing for the respondents named in paragraph 1 hereof the services described in sub-paragraph (c) of paragraph 5 hereof, had full knowledge of the agreement, combination, understanding, and conspiracy described in paragraph 5 hereof; by such services they assisted respondents named in paragraph 1 hereof to carry into effect the said agreement, understanding, combination, and conspiracy; thus became parties to the said conspiracy; and for these reasons are made parties respondents herein.

PAR. 7. The alleged acts and practices of the respondents are all to the prejudice of the public and to the prejudice of competitors of the respondents named in paragraph 1 hereof, have a dangerous

venuecy to and have actually hindered and prevented price competition in the sale between and among the various States of the United States, the territories thereof and the District of Columbia, of viscose rayon yarn and of knitted rayon cloth; have increased the prices of viscose rayon yarn paid by knitters and other users of viscose rayon yarn; have increased the prices of knitted rayon cloth paid by manufacturers of rayon garments and of other rayon articles of wear; have increased the prices paid by the purchasing public for rayon garments and for other rayon articles of wear; have created, in the respondents named in paragraph 1 hereof, a monopoly in the sale in interstate commerce of viscose rayon yarn; have unreasonably restrained interstate commerce in viscose rayon yarn, in knitted rayon cloth, and in rayon garments and other rayon articles of wear, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 February 1, 1934, issued and served its complaint in this proceeding upon respondents Viscose Company, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, Industrial Rayon Corporation, American Glanzstoff Corporation (which since the issuance of the complaint herein changed its corporate name to North American Rayon Corporation and which will hereinafter be referred to as North American Rayon Corporation), American Enka Corporation, Skenandoa Rayon Corporation, Delaware Rayon Company, Acme Rayon Corporation, The Belamose Corporation, and the individuals named in the caption hereof, copartners trading as Price, Waterhouse and Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edward L. Smith, Esq., and Harry A. Babcock, Esq., attorneys for the Commission, before John W. Addison, Esq., an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Messrs. Jackson, Fuller, Nash and Brophy (John

G. Jackson, Esq., and Stephen P. Nash, Esq., of counsel), and Messrs. Davis, Polk, Wardwell, Gardiner and Reed (John W. Davis, Esq., of counsel), attorneys for respondent Viscose Company; by Messrs. Covington, Burling, Rublee, Acheson and Shorb (J. Harry Covington, Esq., Dean G. Acheson, Esq., and H. Thomas Austern, Esq., of counsel), attorneys for respondent DuPont Rayon Company, Inc.; by Messrs. Cadwalader, Wickersham and Taft (F. Sims McGrath, Esq., and Arthur L. Fisk, Esq., of counsel), attorneys for respondents Tubize Chatillon Corporation and American Enka Corporation; by Messrs. Tolles, Hogsett and Ginn (Leslie Nichols, Esq., of counsel), attorneys for respondent Industrial Rayon Corporation; by Messrs. Sullivan and Cromwell (Eustace Seligman, Esq., and Inzer B. Wyatt, Esq., of counsel) and Messrs. Culbertson and LeRoy (William S. Culbertson, Esq., of counsel), attorneys for respondent North American Rayon Corporation; by Messrs. LeBocuf, Winston, Machold and Lamb (Earle J. Machold, Esq., and Chauncey P. Williams, Jr., Esq., of counsel), attorneys for respondent Skenandoa Rayon Corporation; by Messrs. Brandenburg and Brandenburg (Louis M. Denit, Esq., and Thomas Searing Jackson, Esq., of counsel), attorneys for respondent Delaware Rayon Company; by Messrs. Klein and Diehm, attorneys for respondent Acme Rayon Corporation; by Messrs. Robinson, Robinson and Cole (John C. Parsons, Esq., of counsel), attorneys for respondent The Belamose Corporation; and by Messrs. Cravath, DeGersdorff, Swaine and Wood (G. W. Haight, Esq., of counsel), attorneys for respondents Price, Waterhouse and Company; and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto filed by respondents Tubize Chatillon Corporation, American Enka Corporation, and Delaware Rayon Company (the other respondents not having filed briefs), and the oral arguments by Edward L. Smith, attorney for the Commission, by F. Sims McGrath of counsel for respondent Tubize Chatillon Corporation and American Enka Corporation, and by Thomas Searing Jackson, Esq., of counsel for respondent Delaware Rayon Company (no oral argument being made in behalf of the other respondents); and the Commission having duly considered the said complaint, answers, testimony and evidence, briefs and oral arguments, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Viscose Company, The Belamose Corporation, and Acme Rayon Corporation are corporations organized, existing, and doing business under and by virtue of the laws of the States of Pennsylvania, Connecticut, and Ohio, respectively. Respondents, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, American Enka Corporation, Industrial Rayon Corporation, North American Rayon Corporation, Skenandoa Rayon Corporation, and Delaware Rayon Company are Delaware corporations.

PAR. 2. The respondents named in paragraph 1 hereof are now, and since their organizations, have been engaged in the manufacture at their respective manufacturing plants, of viscose rayon yarn and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia. In the course and conduct of their businesses, all of the said respondents named in paragraph 1 hereof, for more than five years last past, have caused, and still cause, such viscose rayon yarn when sold by them, to be transported in interstate commerce from their respective places of business to, into and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom such viscose rayon yarn is and has been sold. Such viscose rayon yarn is manufactured by the purchasers thereof, located in various States of the United States, into rayon cloth, which is sold by such purchasers to manufacturers of rayon articles of wear, located in various cities in the United States, and such purchasers cause such rayon cloth, when sold by them, to be transported in interstate commerce from their respective places of business to, into and through States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers thereof in such other States to whom such rayon cloth is sold. Manufacturers of such rayon articles of wear made from cloth sold to them by purchasers of viscose rayon yarn made by the respondents named in paragraph 1 hereof, cause such rayon articles of wear when sold, to be transported, in interstate commerce, from their respective places of business into and through States of the United States other than the States in which such manufacturers of rayon articles of wear have their factories and places of business, to their purchasers in such other States, to whom such rayon articles of wear are and have been sold. And the sale by said respondents of viscose rayon yarn in interstate commerce, is thus followed by interstate commerce in rayon cloth

manufactured from such yarn and subsequent thereto by interstate commerce in rayon articles of wear made from such cloth.

PAR. 3. The amount of viscose rayon yarn manufactured and sold by the respondents named in paragraph 1 hereof constitutes and at all times since October 1931 has constituted substantially all of the viscose rayon yarn manufactured in the United States. The amount of viscose rayon yarn used by rayon cloth knitters constituted during the period from October 21, 1931, to May 23, 1932, approximately 45 percent of all the viscose rayon yarn used by all classes or kinds of purchasers of such viscose rayon yarn. As a consequence, the price paid by knitters of viscose rayon yarn influenced and controlled, during said period, the price of viscose rayon yarn purchased by users other than knitters. Knitters of viscose rayon yarn and other users of viscose rayon yarn have no source of supply and between October 21, 1931, and May 23, 1932, had no source of supply for viscose rayon yarn excepting from the said respondents. The said respondents were prior to October, 1931, in competition as to price with one another in the sale of viscose rayon yarn between and among the various States of the United States, the Territories thereof and the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times between October 21, 1931, and May 23, 1932, in such competition with one another.

PAR. 4. On October 21, 1931, or thereabouts, the respondents named in paragraph 1 hereof, for the purpose of eliminating price competition among themselves, entered into and until May 23, 1932, carried out an agreement, combination, understanding and conspiracy among themselves to fix and maintain, and by which, during said period, they fixed and maintained uniform prices to be exacted by them from their purchasers of viscose rayon yarn, and thus to fix the price of viscose rayon yarn entering into interstate commerce.

PAR. 5. During said period the said acts and practices of the respondents named in paragraph 1 hereof had a dangerous tendency to and actually hindered and prevented price competition in the sale between and among the various States of the United States, the Territories thereof and the District of Columbia, of viscose rayon yarn, increased the prices of viscose rayon yarn paid by the users thereof, the prices of cloth made from such yarn and the prices of rayon articles of wear.

CONCLUSION

The aforesaid acts and practices of said respondent rayon producers were to the prejudice of the public and of respondents' com-

petitors 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, the answers of respondents, testimony and other evidence taken before John W. Addison, Esq., an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by respondents Tubize Chatillon Corporation, American Enka Corporation and Delaware Rayon Company (the other respondents not having filed briefs), and oral arguments by Edward L. Smith, Esq., counsel for the Commission, by F. Sims. McGrath, Esq., counsel for respondents Tubize Chatillon Corporation and American Enka Corporation, and by Thomas Searing Jackson, Esq., counsel for respondent Delaware Rayon Company (no oral argument having been made in behalf of the other respondents), and the Commission having made its findings as to the facts and its conclusion that respondents Viscose Company, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, Industrial Rayon Corporation, North American Rayon Corporation, American Enka Corporation, Skenandoa Rayon Corporation, Delaware Rayon Company, Acme Rayon Corporation, and The Belamose Corporation 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, Viscose Company, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, American Enka Corporation, Industrial Rayon Corporation, North American Rayon Corporation, Skenandoa Rayon Corporation, Delaware Rayon Company, Acme Rayon Corporation, and The Belamose Corporation, and their agents, representatives, servants, and employees in connection with the sale or offering for sale of Viscose rayon yarn in interstate commerce or in the District of Columbia, do cease and desist from entering into and carrying out any agreement, combination, understanding, or conspiracy among themselves or with any other corporation, person, firm, or partnership, to fix and maintain uniform prices to be exacted by them from purchasers of Viscose rayon yarn.

421

Order

It is further ordered, That the said respondents 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.

It is further ordered, That the complaint in this proceeding as to George Oliver May, William B. Campbell, Joseph Edmund Sterrett, Robert O. Berger, John H. Bowman, Charles P. Carruthers, David L. Grey, John C. Scobie, Frank C. Belser, John Medlock, William D. Bonthron, Ismay G. Pattinson, Thomas Jackson, Donald Arthur, Geoffrey G. Rowbotham, Francis B. Byerly, Percival F. Brundage, W. W. Law, J. P. Dawson, A. L. Brookway, E. Christensen and R. F. Starkey, copartners, trading as Price, Waterhouse and Company, be, and the same is hereby, dismissed.

IN THE MATTER OF
CANTERBURY CANDY MAKERS, INC.

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

Docket 2800. Complaint, May 11, 1936—Decision, July 6, 1937

Where a corporation engaged in manufacture and sale of so-called "draw" or "deal" assortments of candy, sale and distribution of which type candy, by retailers by lot or chance, has capacity and tendency to and does decrease sale of candy sold without any sales plan or device involving lottery or game of chance, i. e., the "straight" goods, and sale of which type, providing, in connection with its sale to public, means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling, and is in violation of various municipal ordinances and regulations and State statutes and constitutions, and provides retail merchants with a means of violating the laws of the several States, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to wholesale and retail dealers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and one of which included, together with a punchboard, a number of boxes of assorted chocolates of varying size and of a value in excess of five cents, for sale and distribution to consuming public under a plan, and in accordance with said board's explanatory legend, under which persons punching by chance certain numbers received specified box of candy, and purchaser of last punch on board received specified box, and others received nothing other than privilege of making a punch for the five cents paid; so assembled and packed that such assortments might be and were displayed and sold to consuming public by retail dealer purchasers thereof by lot or chance, and with knowledge and intent that such assortments could and would thus be resold to public by retail dealers without alteration, addition, or rearrangement as above set forth, in competition with many who do not make and sell "draw" or "deal" assortments, but sell their "straight" goods in interstate commerce in competition with the others;

With result that competitors who refuse to, or do not, sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage in competing with it and with others employing methods similar to those described herein, trade was diverted to it and others using similar methods from those who do not use same, by reason of attraction to customers of so-called "draw" or "deal" assortments, there was diversion of trade to it from its said competitors, and a restraint upon and a detriment to the freedom of fair competition in trade concerned; to the prejudice and injury of the public and of competitors:

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