

Syllabus

IN THE MATTER OF

COVERED BUTTON AND BUCKLE CREATORS, INC., 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 3186. Complaint, July 24, 1937—Decision, Sept. 4, 1937

Where a membership non-profit corporation, members of which were engaged in manufacture of covered buttons, buckles, and novelties for use in manufacture of wearing apparel, and in sale thereof to dress manufacturers and those engaged in kindred industries, making and selling approximately ninety percent of all such products made in the United States, and, prior to acts and things hereinbelow set forth, in competition as to price with one another in sale of said products between and among the various States and territories and the District of Columbia; and the officers, directors, and members of aforesaid corporation, for the purpose of eliminating price competition among themselves—

Entered into and carried out an agreement, combination, understanding and conspiracy among themselves to fix and maintain, and did fix and maintain thereby, uniform minimum prices for the sale of covered buttons, buckles, and novelties and maximum discounts to be allowed by said members to their purchasers of said products, and prices thereof entering into interstate commerce; and pursuant to and for the purpose of carrying out aforesaid agreement, combination, understandings, and conspiracy—

- (a) Fixed and maintained, by agreement among themselves, (1) uniform minimum prices for sale of said products sold by them and each of them, and (2) uniform maximum discounts for said products thus sold;
- (b) Inserted in a trade paper of wide circulation among those engaged in dress manufacturing and kindred industries a "notice" to such manufacturers and industries to the effect that, on and after date therein named, "a uniform policy of dealing with customers" would be adhered to "by manufacturers pursuant to the fair trade practice rules recently approved by the Federal Trade Commission for the covered button and buckle manufacturing industry," and that "rules" in said notice set forth would be "strictly enforced";
- (c) Sent to manufacturers and industries in question copy of said notice and advertisement; and
- (d) Falsely stated, represented, and implied, thereby and otherwise, that Commission had approved rules for industry in question (1) regulating prices for products in question or authorizing the fixing thereof, (2) prohibiting, without qualification, sale of said products below cost and approving or authorizing so-called basic cost formula, (3) prohibiting the granting or allowing of price differentials, rebates, etc., to evade so-called established basic cost prices, (4) approving the fixing or authorizing as set forth in said notice, of maximum uniform discount, and (5) forbidding the giving of free samples or free duplicates, and that uniform policy set forth in said notice was initiated and carried out

Complaint

25 F. T. C.

through said rules approved by the Commission and with its knowledge, sanction or authorization; and

- (e) Advised nonmember manufacturers, through said notice setting forth rules, as above indicated, would be "strictly enforced," that they would be held strictly accountable for any violation of said rules, as assertedly promulgated by Commission, and subject to legal action therefor, and dress manufacturers and others dealing with members that action against those receiving discrimination was contemplated under the Robinson-Patman Act, and that any member found selling merchandise at actual cost would be presumed to be engaged in unfair competition;

Facts being trade practice rules in question, as approved by Commission, did not permit or authorize acts and practices stated, represented, expressed and implied as hereinabove indicated and noted, said combination, understanding, agreement and conspiracy were not entered into with sanction, authorization, permission, or knowledge of the Commission, and aforesaid letter to dress manufacturers and others enclosing said notice was false and misleading for reasons above set forth, in that purported rights as claimed in notice in question were not protected by trade practice rules approved by Commission;

With result that said acts and practices had a dangerous tendency to, and actually did, hinder and prevent price competition in sale by them, and among various States and Territories and District of Columbia, of covered buttons, buckles, and novelties, increased prices of such products paid by dress manufacturers and those engaged in kindred industries, prices of dresses and similar commodities and prices paid by purchasing public therefor increased, created in aforesaid members a monopoly in the sale in interstate commerce of said various products, and unreasonably restrained interstate commerce in such various products, dresses and other articles of wear:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Edward L. Smith for the Commission.

Mr. M. D. Mosessohn and *Mr. A. Furman Greene*, of New York City, for respondents, with whom also appeared *Mr. Maxwell M. Flamm*, of Brooklyn, N. Y., for Samuel Brown.

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 Covered Button and Buckle Creators, Inc., its officers, Max Pearlstein, president, Abraham Avin, vice president, Isidore Feldman, treasurer, Irving Schwartz, secretary; its directors, Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, Isidore Spier; and its following members, indi-

vidually and as representative members of the Covered Button and Buckle Creators, Inc.; Regal Trimming & Button Co., Inc., Rapid Button Co., Inc., Unity Button Works, Inc., N. B. Button Works, Inc., International Button Co., Inc., Max Goldfeder, doing business under the trade name, Grand Button Works; Ben Block, Louis Rosenfeld, and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name, Brown Button Works; Isidore Spier, and Harry Gardner, copartners trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz, and Ida Schwartz, copartners trading as Cosmopolitan Button Co., all hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act; and it appearing to the 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 Covered Button and Buckle Creators, Inc., is a New York membership, non-profit corporation, organized in 1934. Its officers are now and since its organization have been the following respondents:

Max Pearlstein, president,
Abraham Avin, vice president,
Isidore Feldman, treasurer,
Irving Schwartz, secretary.

Its directors are now and since its organization have been the following respondents: Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, and Isidore Spier. Among its members are now and since its organization have been the following respondents: Regal Trimming & Button Co., Inc., a New York corporation; Rapid Button Co., Inc., a New York corporation; Unity Button Works, Inc., a New York corporation; N. B. Button Works, Inc., a New York corporation; International Button Co., Inc., a New York corporation; Max Goldfeder, doing business under the trade name Grand Button Works; Ben Block, Louis Rosenfeld, and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name, Brown Button Works; Isidore Spier and Harry Gardner, copartners trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz, and Ida Schwartz, copartners trading as Cosmopolitan Button Co. The above named

Complaint

25 F. T. C.

respondent members of respondent Covered Button and Buckle Creators, Inc., do not constitute the entire membership of respondent Covered Button and Buckle Creators, Inc., but are representative members thereof. There are approximately 150 members of respondent Covered Button and Buckle Creators, Inc., and they constitute a class so numerous as to make it impractical to name them all as parties respondent herein. All members of respondent Covered Button and Buckle Creators, Inc., are made parties respondent herein as a class, of which those specifically named are representative of the whole.

PAR. 2. The respondent members of respondent Covered Button and Buckle Creators, Inc., are engaged at their respective places of business chiefly in the city of New York, State of New York, in the manufacture of covered buttons, buckles, and novelties for use in the manufacture of wearing apparel, and in the sale thereof to dress manufacturers and to those engaged in kindred industries. In the course and conduct of their businesses, respondent members of respondent Covered Button and Buckle Creators, Inc., cause such articles when sold by them to be transported from their respective places of business to the purchasers thereof, some located in the city of New York, State of New York, and others located in various other States of the United States, the territories thereof, and the District of Columbia, and there is now and has been for more than two years last past, a constant current of trade and commerce by respondent members of respondent association in such covered buttons, buckles, and novelties, between and among the various States of the United States, the Territories thereof, and the District of Columbia.

The amount of covered buttons, buckles, and novelties for use by dress manufacturers and manufacturers of kindred lines, manufactured and sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., constitutes, and for more than two years last past has constituted, approximately 90% of all of the covered buttons, buckles, and novelties manufactured in the United States.

The said respondent members of respondent Covered Button and Buckle Creators, Inc., were prior to April 1937, or thereabouts, in competition, as to price, with one another in the sale of covered buttons, buckles, and novelties, 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 April 1937, or thereabouts, and would now be in such competition with one another.

PAR. 3. In April 1937 or thereabouts, respondent Covered Button and Buckle Creators, Inc., its respondent officers, directors, and its respondent members, for the purpose of eliminating price competition among the members of respondent Covered Button and Buckle Creators, Inc., entered into and 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 minimum prices in the sale of covered buttons, buckles, and novelties, and to fix and maintain and by which they have fixed and maintained uniform maximum discounts to be allowed by the respondent members of respondent Covered Button and Buckle Creators, Inc., to their purchasers of covered buttons, buckles, and novelties, and thus to fix the prices of covered buttons, buckles, and novelties entering into interstate commerce. Pursuant to and for the purpose of carrying out the said agreement, combination, understanding, and conspiracy, the said respondents have done, among other things, the following:

(a) By agreement among themselves have fixed and maintained and still fix and maintain uniform minimum prices for the sale of covered buttons, buckles and novelties sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., and by each of them;

(b) By agreement among themselves have fixed and maintained and still fix and maintain uniform maximum discounts for covered buttons, buckles and novelties sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., and by each of them;

(c) Caused to be inserted in the May 26, 1937, issue of Women's Wear, a trade paper of wide circulation among those engaged in dress manufacturing and kindred industries, notice of which the following is a copy:

NOTICE

TO DRESS MANUFACTURERS

and Kindred Industries

ON AND AFTER JUNE 1, 1937, PRICES FOR COVERED BUTTONS AND BUCKLES WILL BE REGULATED AND A UNIFORM POLICY OF DEALING WITH CUSTOMERS WILL BE ADHERED TO BY MANUFACTURERS PURSUANT TO THE FAIR TRADE PRACTICE RULES RECENTLY APPROVED BY THE FEDERAL TRADE COMMISSION FOR THE COVERED BUTTON AND BUCKLE MANUFACTURING INDUSTRY.

THE FOLLOWING RULES WILL BE STRICTLY ENFORCED:

1—THE SALE OF GOODS BELOW COST IS PROHIBITED. A basic cost formula for the industry has been established by taking into consideration all

Complaint

25 F. T. C.

elements recognized by good accounting practice as proper elements of such cost.

2—Granting or allowing secretly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances for the purpose of evading the established basic cost prices is absolutely prohibited.

3—A UNIFORM DISCOUNT OF 2% will be allowed to customers, and no more.

4—NO FREE SAMPLES AND NO FREE DUPLICATES will be given; samples and duplicates will be furnished at cost.

5—No commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, will be allowed to a customer or to anyone in the employ or under the control of the customer.

Attention is called to the fact that the Fair Trade Practice Rules above mentioned have been incorporated into the By-Laws of the Covered Button & Buckle Creators, Inc., as rules which will hereafter govern the business conduct of its members. An ADMINISTRATIVE BOARD has been set up to hear complaints, to enforce compliance and to impose penalties for violations. Members of this Association have pledged their united support and their full cooperation in this movement, the purpose of which is to stabilize the industry, to prevent destructive competition and therefore to insure its members a fair return from their business.

Manufacturers of covered buttons and buckles *who are not members* of the undersigned Association are hereby notified that they will be held strictly accountable for any violation of the rules as promulgated by the Federal Trade Commission and will be subject to legal action for any such violations.

Dress Manufacturers and others dealing with members of the industry are reminded of the provisions of the *Robinson-Patman Act* which make it unlawful to *receive* a price discrimination or other rebate as well as to *grant it*. It is therefore the purpose of the Association to invoke the laws against those who receive unlawful favors as well as those who grant them.

While the fair trade practice rules prohibit the sale of merchandise below cost, members of the industry are advised that *it is unethical to sell merchandise at mere cost and that they are legally entitled to fair profits upon their sales*. Therefore, any member who is found to be selling merchandise at actual cost will be presumed to be engaged in unfair competition.

The above rules are now actually in force but in order to enable manufacturers to adjust themselves to the new price regulation, which will result from the adoption of the code, a short period of grace has been established, but **THE NEW PRICES WILL ABSOLUTELY GO INTO EFFECT ON AND AFTER JUNE 1, 1937.**

Members of the Covered Button and Buckle Industry are urged to report violations promptly to the undersigned Association or to its attorneys.

Dated, New York City, May 26, 1937.

COVERED BUTTON & BUCKLE CREATORS, INC.
MAX PEARLSTEIN, *President*.

M. D. MOSESSEHN,
A. FURMAN GREENE,
Counsel.

570 Seventh Avenue, New York City.

(d) Caused to be sent, on May 26, 1937, or thereabouts, to dress manufacturers and kindred industries, a false and misleading letter,

enclosing a copy of the notice described in subparagraph (c) of this paragraph, a copy of which said letter is as follows:

Tel. Lackawanna 4-5727

COVERED BUTTON & BUCKLE CREATORS, INC.

570 SEVENTH AVENUE,

New York City, May 26, 1937.

To Dress Manufacturers and Kindred Industries:

We are enclosing herewith copy of page advertisement which appeared in the *Women's Wear* May 26, 1937, announcing new prices for covered buttons and buckles and new regulations for the industry.

Please notify your department which deals with the manufacturers of this industry to cooperate fully as the producers in this industry are protected in their rights both by the Fair Trade Practice Rules approved by the Federal Trade Commission and the Robinson-Patman Act.

It is the purpose of this organization to prosecute all infractions to the limit. We trust that we may have your constructive cooperation.

Very truly yours,

COVERED BUTTON & BUCKLE CREATORS, INC.

(Sgd) MAX PEARLSTEIN.

By MAX PEARLSTEIN, *President*.

M. D. MOSESSEHN,

A. FURMAN GREENE,

Counsel.

(e) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means, that the Federal Trade Commission has approved Fair Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry regulating prices for covered buttons, buckles and novelties or authorizing the fixing of such prices.

(f) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means that Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry, approved by the Federal Trade Commission, prohibit, without qualification or limitation, the sale of covered buttons, buckles and novelties below cost, and that in and by Trade Practice Rules for the said industry, approved by the Federal Trade Commission, a basic cost formula is provided therein or authorized thereby.

(g) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph, and by other means that the Federal Trade Commission has approved Fair Trade Practice Rules for the said industry, prohibiting the granting or allowing, secretly, directly, or indirectly, any price differentials, rebates, refunds, discounts, credits or other allowances for the purpose of evading what the said respondents, in and by the said notice, term "established basic cost prices."

(*h*) Falsely stated, represented and implied, in and by the notice described in subparagraph (*e*) of this paragraph and by other means that the Federal Trade Commission has approved Fair Trade Practice Rules for this industry, fixing a maximum uniform discount of 2% or authorizing the fixing of a maximum uniform discount.

(*i*) Falsely stated, represented and implied, in and by the notice described in subparagraph (*e*) of this paragraph and by other means, that the Federal Trade Commission has approved Fair Trade Practice Rules for the said industry, forbidding the giving of free samples or free duplicates.

(*j*) Falsely stated, represented and implied, in and by the notice described in subparagraph (*e*) of this paragraph, and by other means, that the uniform policy described in said notice was initiated and carried out by and through the means of Trade Practice Rules for the said industry, approved by the Federal Trade Commission.

(*k*) Falsely stated, represented and implied, in and by the notice described in subparagraph (*e*) of this paragraph, and by other means, that the aforesaid uniform policy described in said notice was initiated and carried out with the knowledge, sanction, approval or authorization of the Federal Trade Commission. .

PAR. 4. In truth and in fact, the Trade Practice Rules for the said industry, approved by this Commission, a copy of which said rules is annexed hereto and made a part hereof as Appendix One,¹ do not permit or authorize the acts and practices stated, represented, expressed and implied by the respondents as stated in subparagraphs (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), and (*k*) of paragraph 3 of this complaint; and in truth and in fact, the combination, understanding, agreement, and conspiracy described in paragraph 3 hereof, was not enter into with the sanction, authorization, permission, or knowledge of the Federal Trade Commission.

PAR. 5. The letter described in subparagraph (*d*) of paragraph 3 of this complaint is false and misleading in that—

1. The enclosure with the said letter, being the notice described in subparagraph (*e*) of paragraph 3 of this complaint, is false and misleading for the reasons set out in paragraph 4 of this complaint.

2. The purported rights of Covered Button and Buckle Creators, Inc., as claimed by the respondents in the notice described in subparagraph (*e*) of paragraph 3 of this complaint, are not protected by Fair Trade Practice Rules approved by the Federal Trade Commission.

¹ See *infra*, p. 1003.

PAR. 6. The alleged acts and practices of respondents are all to the prejudice of the public and to the prejudice of the competitors of the respondent members of respondent Covered Button and Buckle Creators, Inc.; have a dangerous tendency to and have actually hindered and prevented price competition in the sale between and among the various States and Territories of the United States, and in the District of Columbia, of covered buttons, buckles, and novelties; have increased the prices of covered buttons, buckles, and novelties paid by dress manufacturers and those engaged in kindred industries; have increased the prices of dresses and similar commodities; have increased the prices paid by the purchasing public for dresses and other articles of wear; have created in the respondent members of respondent Covered Button and Buckle Creators, Inc., a monopoly in the sale in interstate commerce of covered buttons, buckles, and novelties; have unreasonably restrained interstate commerce in covered buttons, buckles, and novelties, dresses and other 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 July 24, 1937, issued and served its complaint in this proceeding upon respondents Covered Button and Buckle Creators, Inc., its officers, Max Pearlstein, president; Abraham Avin, vice-president; Isidore Feldman, treasurer; Irvin Schwartz, secretary; its directors, Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, Isidore Spier; and its following members, individually and as representative members of the whole membership of the respondent Covered Button and Buckle Creators, Inc., to wit: Regal Trimming & Button Co., Inc., Rapid Button Co., Inc., Unity Button Works, Inc., N. B. Button Works, Inc., International Button Co., Inc., Max Goldfeder, doing business under the trade name Grand Button Works; Ben Block, Louis Rosenfeld, and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name Brown Button Works; Isidore Spier and Harry Gardner, copartners,

Findings

25 F. T. C.

trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz, and Ida Schwartz, copartners, trading as Cosmopolitan Button Co., charging them and each of them with the use of unfair methods of competition, in violation of the provisions of said act.

On August 25, 1937, the said respondents filed their substituted answer, in which said substituted answer they stated that they desired to and thereby waived hearing on the charges set forth in the complaint insofar as the same referred to alleged 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," commonly called the Federal Trade Commission Act; that they, and each of them, for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding, refrained from contesting the proceeding; that they and each of them consented that all of the material facts alleged in said complaint might be deemed to be admitted but not within the intent and meaning of any law of the United States other than the Federal Trade Commission Act, such answer not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action; and that they and each of them consented that the Commission might, without trial, without further evidence, and without any intervening procedure, make and enter its findings as to the facts, and issue and serve upon them and each of them an order to cease and desist from any methods of competition alleged in the said complaint which constitute violations of Section 5 of the Federal Trade Commission Act.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the said substituted answer thereto, and the Commission having duly considered the same 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. Respondent Covered Button and Buckle Creators, Inc., is a New York membership, non-profit corporation, organized in 1934. Its officers are now and since its organization have been the following respondents:

Max Pearlstein, president,
Abraham Avin, vice president,

Isidore Feldman, treasurer,

Irving Schwartz, secretary.

Its directors are now and since its organization have been the following respondents: Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, and Isidore Spier. Among its members are now, and since its organization have been, the following respondents: Regal Trimming & Button Co., Inc., a New York corporation; Rapid Button Co., Inc., a New York corporation; Unity Button Works, Inc., a New York corporation; N. B. Button Works, Inc., a New York corporation; International Button Co., Inc., a New York corporation; Max Goldfeder, doing business under the trade name Brand Button Works; Ben Block, Louis Rosenfeld, and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name Brown Button Works; Isidore Spier and Harry Gardner, copartners, trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz, and Ida Schwartz, copartners, trading as Cosmopolitan Button Co. The above named respondent members of respondent Covered Button and Buckle Creators, Inc., do not constitute the entire membership of respondent Covered Button and Buckle Creators, Inc., but are representative members thereof. There are approximately 150 members of respondent Covered Button and Buckle Creators, Inc. All members of respondent Covered Button and Buckle Creators, Inc., are parties respondent herein as a class, of which those specifically hereinabove named are representative of the whole.

PAR. 2. The respondent members of respondent Covered Button and Buckle Creators, Inc., are engaged at their respective places of business chiefly in the city of New York, State of New York, in the manufacture of covered buttons, buckles and novelties for use in the manufacture of wearing apparel, and in the sale thereof to dress manufacturers and to those engaged in kindred industries. In the course and conduct of their businesses, respondent members of respondent Covered Button and Buckle Creators, Inc., cause such articles when sold by them to be transported from their respective places of business to the purchasers thereof, some located in the city of New York, State of New York, and others located in various other States of the United States, the Territories thereof, and the District of Columbia, and there is now, and has been for more than two years last past, a constant current of trade and commerce by respondent members of respondent association in such covered buttons,

Findings

25 F. T. C.

buckles and novelties, between and among the various States of the United States, the Territories thereof, and the District of Columbia.

The amount of covered buttons, buckles, and novelties for use by dress manufacturers and manufacturers of kindred lines, manufactured and sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., constitutes, and for more than two years last past has constituted, approximately 90% of all of the covered buttons, buckles, and novelties manufactured in the United States.

The said respondent members of respondent Covered Button and Buckle Creators, Inc., were, prior to April 1937, or thereabouts, in competition, as to price, with one another in the sale of covered buttons, buckles, and novelties, 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 April 1937, or thereabouts, and would now be in such competition with one another.

PAR. 3. In April 1937, or thereabouts, respondent Covered Button and Buckle Creators, Inc., its respondent officers, directors and its respondent members, for the purpose of eliminating price competition among the members of respondent Covered Button and Buckle Creators, Inc., entered into and 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 minimum prices in the sale of covered buttons, buckles, and novelties, and to fix and maintain and by which they have fixed and maintained uniform maximum discounts to be allowed by the respondent members of respondent Covered Button and Buckle Creators, Inc., to their purchasers of covered buttons, buckles, and novelties, and thus to fix the prices of covered buttons, buckles, and novelties entering into interstate commerce. Pursuant to and for the purpose of carrying out the said agreement, combination, understanding, and conspiracy, the said respondents have done, among other things, the following:

(a) By agreement among themselves have fixed and maintained, and still fix and maintain, uniform minimum prices for the sale of covered buttons, buckles and novelties sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., and by each of them;

(b) By agreement among themselves have fixed and maintained, and still fix and maintain, uniform maximum discounts for covered buttons, buckles and novelties sold by the respondent members of

respondent Covered Button and Buckle Creators, Inc., and by each of them;

(c) Caused to be inserted in the May 26, 1937, issue of Women's Wear, a trade paper of wide circulation among those engaged in dress manufacturing and kindred industries, notice of which the following is a copy:

NOTICE

TO DRESS MANUFACTURERS

and Kindred Industries

ON AND AFTER JUNE 1, 1937, PRICES FOR COVERED BUTTONS AND BUCKLES WILL BE REGULATED AND A UNIFORM POLICY OF DEALING WITH CUSTOMERS WILL BE ADHERED TO BY MANUFACTURERS PURSUANT TO THE FAIR TRADE PRACTICE RULES RECENTLY APPROVED BY THE FEDERAL TRADE COMMISSION FOR THE COVERED BUTTON AND BUCKLE MANUFACTURING INDUSTRY.

THE FOLLOWING RULES WILL BE STRICTLY ENFORCED:

1. THE SALE OF GOODS BELOW COST IS PROHIBITED. A basic cost formula for the industry has been established by taking into consideration all elements recognized by good accounting practice as proper elements of such cost.
2. Granting or allowing secretly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances for the purpose of evading the established basic cost prices is absolutely prohibited.
3. A UNIFORM DISCOUNT OF 2% will be allowed to customers, and no more.
4. NO FREE SAMPLES AND NO FREE DUPLICATES will be given; samples and duplicates will be furnished at cost.
5. No commissions, brokerage, or other compensation, or any allowance or discount in lieu thereof, will be allowed to a customer or to any one in the employ or under the control of the customer.

Attention is called to the fact that the Fair Trade Practice Rules above mentioned have been incorporated into the By-laws of the Covered Button & Buckle Creators, Inc., as rules which will hereafter govern the business conduct of its members. An ADMINISTRATIVE BOARD has been set up to hear complaints, to enforce compliance and to impose penalties for violations. Members of this Association have pledged their united support and their full co-operation in this movement, the purpose of which is to stabilize the industry, to prevent destructive competition and therefore to insure its members a fair return from their business.

Manufacturers of covered buttons and buckles who are not members of the undersigned Association are hereby notified that they will be held strictly accountable for any violation of the rules as promulgated by the Federal Trade Commission and will be subject to legal action for any such violations.

Dress Manufacturers and others dealing with members of the industry are reminded of the provisions of the *Robinson-Patman Act* which makes it unlawful to receive a price discrimination or other rebate as well as to grant it. It is therefore the purpose of the Association to invoke the laws against those who receive unlawful favors as well as those who grant them.

Findings

25 F. T. C.

While the fair trade practice rules prohibit the sale of merchandise below cost, members of the industry are advised that *it is unethical to sell merchandise at mere cost and that they are legally entitled to fair profits upon their sales*. Therefore, any member who is found to be selling merchandise at actual cost will be presumed to be engaged in unfair competition.

The above rules are now actually in force but in order to enable manufacturers to adjust themselves to the new price regulation, which will result from the adoption of the code, a short period of grace has been established, but **THE NEW PRICES WILL ABSOLUTELY GO INTO EFFECT ON AND AFTER JUNE 1, 1937.**

Members of the Covered Button and Buckle Industry are urged to report violations promptly to the undersigned Association or to its attorneys.

Dated, New York City, May 26, 1937.

COVERED BUTTON & BUCKLE CREATORS, INC.
MAX PEARLSTEIN, *President*.

M. D. MOSESSOHN,
A. FURMAN GREENE,
Counsel.

570 Seventh Avenue, New York City.

(d) Caused to be sent, on May 26, 1937, or thereabouts, to dress manufacturers and kindred industries, a false and misleading letter, enclosing a copy of the notice described in subparagraph (c) of this paragraph, a copy of which said letter is as follows:

Tel. Lackawanna 4-5727

COVERED BUTTON & BUCKLE CREATORS, INC.
570 SEVENTH AVENUE,
New York City, May 26, 1937.

To Dress Manufacturers and Kindred Industries:

We are enclosing herewith copy of page advertisement which appeared in the Women's Wear May 26, 1937, announcing new prices for covered buttons and buckles and new regulations for the industry.

Please notify your department which deals with the manufacturers of this industry to co-operate fully as the producers in this industry are protected in their rights both by the Fair Trade Practice Rules approved by the Federal Trade Commission and the Robinson-Patman Act.

It is the purpose of this organization to prosecute all infractions to the limit. We trust that we may have your constructive co-operation.

Very truly yours,

COVERED BUTTON & BUCKLE CREATORS, INC.
(Sgd.) MAX PEARLSTEIN.
By MAX PEARLSTEIN, *President*.

M. D. MOSESSOHN,
A. FURMAN GREENE,
Counsel.

(e) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means, that the Federal Trade Commission has approved Fair Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry regulating prices for covered buttons, buckles and novelties, or authorizing the fixing of such prices.

(f) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means that Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry, approved by the Federal Trade Commission, prohibit, without qualification or limitation, the sale of covered buttons, buckles and novelties below cost, and that in and by Trade Practice Rules for the said industry, approved by the Federal Trade Commission, a basic cost formula is provided therein or authorized thereby.

(g) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph, and by other means that the Federal Trade Commission has approved Fair Trade Practice Rules for the said industry, prohibiting the granting or allowing, secretly, directly, or indirectly, any price differentials, rebates, refunds, discounts, credits or other allowances for the purpose of evading what the said respondents, in and by the said notice, term "established basic cost prices."

(h) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means that the Federal Trade Commission has approved Fair Trade Practice Rules for this industry, fixing a maximum uniform discount of 2%, or authorizing the fixing of a maximum uniform discount.

(i) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means, that the Federal Trade Commission has approved Fair Trade Practice Rules for the said industry, forbidding the giving of free samples of free duplicates.

(j) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means, that the uniform policy described in said notice was initiated and carried out by and through the means of Trade Practice Rules for the said industry, approved by the Federal Trade Commission.

(k) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph, and by other means, that the aforesaid uniform policy described in said notice was initiated and carried out with the knowledge, sanction, approval or authorization of the Federal Trade Commission.

PAR. 4. In truth and in fact, the Trade Practice Rules for the said industry, approved by this Commission, a copy of which said rules is annexed hereto and made a part hereof as Appendix One,¹

¹ See, *infra*, p. 1003.

Conclusion

25 F. T. C.

do not permit or authorize the acts and practices stated, represented, expressed and implied by the respondents as stated in subparagraphs (e), (f), (g), (h), (i), (j), and (k) of paragraph 3 hereof; and in truth and in fact, the combination, understanding, agreement and conspiracy described in paragraph 3 hereof, was not entered into with the sanction, authorization, permission or knowledge of the Federal Trade Commission.

PAR. 5. The letter described in subparagraph (d) of paragraph 3 hereof is false and misleading, in that—

1. The enclosure with the said letter, being the notice described in subparagraph (c) of paragraph 3 hereof, is false and misleading for the reasons set out in paragraph 4 hereof.

2. The purported rights of Covered Button and Buckle Creators, Inc., as claimed by the respondents in the notice described in subparagraph (c) of paragraph 3 hereof, are not protected by Fair Trade Trade Practice Rules approved by the Federal Trade Commission.

PAR. 6. The acts and practices of the respondents as herein and hereby found have a dangerous tendency to and have actually hindered and prevented price competition in the sale between and among the various States and Territories of the United States, and in the District of Columbia, of covered buttons, buckles, and novelties; have increased the prices of covered buttons, buckles, and novelties paid by dress manufacturers and those engaged in kindred industries; have increased the prices of dresses and similar commodities; have increased the prices paid by the purchasing public for dresses and other articles of wear; have created in the respondent members of respondent Covered Button and Buckle Creators, Inc., a monopoly in the sale in interstate commerce of covered buttons, buckles, and novelties; have unreasonably restrained interstate commerce in covered buttons, buckles, and novelties, dresses and other articles of wear.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice of the public, and to the prejudice of the competitors of the respondent members of respondent Covered Button and Buckle Creators, Inc., 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 substituted answer thereto filed herein by all of the respondents on August 25, 1937, in which said substituted answer they stated that they desired to and thereby waived hearing on the charges set forth in the said complaint insofar as the same referred to alleged unfair methods of competition in commerce within the intent and meaning of Section 5 of the 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, commonly called the Federal Trade Commission Act, that they and each of them for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding refrained from protesting the proceeding, and that they and each of them consented that all of the material facts alleged in said complaint might be deemed to be admitted, but not within the intent and meaning of any law of the United States other than the Federal Trade Commission Act, such answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action, and that they and each of them consented that the Commission might without trial and without further evidence and without any intervening proceeding, make and enter its findings as to the facts and issue and serve upon them and each of them an order to cease and desist from any methods of competition alleged in said complaint which constitute violations of Section 5 of the Federal Trade Commission Act; and the Commission having made its findings as to the facts and its conclusion that all of the 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 respondents, Covered Button and Buckle Creators, Inc., its agents, servants, and employees, its officers, to wit:

Max Pearlstein, president, Abraham Avin, vice president, Isidore Feldman, treasurer, Irving Schwartz, secretary, and Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, and Isidore Spier, directors, and their agents, servants, and employees, and its following members, to wit:

Regal Trimming & Button Co., Inc., Rapid Button Co., Inc., Unity Button Works, Inc., N. B. Button Works, Inc., International Button

Order

25 F. T. C.

Co., Inc., Max Goldfeder, doing business under the trade name Grand Button Works; Ben Block, Louis Rosenfeld and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name, Brown Button Works; Isidore Spier and Harry Gardner, copartners trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz and Ida Schwartz, copartners trading as Cosmopolitan Button Co., their officers, agents, representatives, and servants, in connection with the sale and offering for sale of covered buttons, buckles and novelties in interstate commerce, and in the District of Columbia, forthwith cease and desist from:

Carrying out and engaging in, and from entering into any further agreement, combination, understanding and conspiracy among themselves or between and among any of them, or with any other person, firm, corporation, or partnership, to fix and maintain uniform minimum prices or to fix and maintain uniform maximum discounts in the sale of covered buttons, buckles, and novelties, or to fix the prices of covered buttons, buckles, and novelties, and for the purpose of carrying out any such agreement, combination, understanding, and conspiracy, or for any other purpose, from doing any of the following, to wit:

(a) Fixing and maintaining uniform prices for the sale of covered buttons, buckles and novelties;

(b) Fixing and maintaining uniform discounts for the sale of covered buttons, buckles and novelties;

(c) Inserting or causing to be inserted in Women's Wear or any other trade paper or in any other publication the following notice or any other notice of similar import, tenor or substance:

NOTICE

TO DRESS MANUFACTURERS

and Kindred Industries

ON AND AFTER JUNE 1, 1937, PRICES FOR COVERED BUTTONS AND BUCKLES WILL BE REGULATED AND A UNIFORM POLICY OF DEALING WITH CUSTOMERS WILL BE ADHERED TO BY MANUFACTURERS PURSUANT TO THE FAIR TRADE PRACTICE RULES RECENTLY APPROVED BY THE *FEDERAL TRADE COMMISSION FOR THE COVERED BUTTON AND BUCKLE MANUFACTURING INDUSTRY*.

THE FOLLOWING RULES WILL BE STRICTLY ENFORCED:

1—THE SALE OF GOODS BELOW COST IS PROHIBITED. A basic cost formula for the industry has been established by taking into consideration all elements recognized by good accounting practice as proper elements of such cost.

2—Granting or allowing secretly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances for the purpose of evading the established basic cost prices is absolutely prohibited.

3—A UNIFORM DISCOUNT OF 2% will be allowed to customers, and no more.

4—NO FREE SAMPLES AND NO FREE DUPLICATES will be given; samples and duplicates will be furnished at cost.

5—No commissions brokerage, or other compensation, or any allowance or discount in lieu thereof, will be allowed to a customer or to anyone in the employ or under the control of the customer.

Attention is called to the fact that the Fair Trade Practice Rules above mentioned have been incorporated into the By-Laws of the Covered Button & Buckle Creators, Inc., as rules which will hereafter govern the business conduct of its members. An ADMINISTRATIVE BOARD has been set up to hear complaints, to enforce compliance and to impose penalties for violations. Members of this Association have pledged their united support and their full cooperation in this movement, the purpose of which is to stabilize the industry, to prevent destructive competition and therefore to insure its members a fair return from their business.

Manufacturers of covered buttons and buckles *who are not members* of the undersigned Association are hereby notified that they will be held strictly accountable for any violation of the rules as promulgated by the Federal Trade Commission and will be subject to legal action for any such violations.

Dress Manufacturers and others dealing with members of the industry are reminded of the provisions of the *Robinson-Patman Act* which make it unlawful to *receive* a price discrimination or other rebate as well as to *grant* it. It is therefore the purpose of the Association to invoke the laws against those who receive unlawful favors as well as those who grant them.

While the fair trade practice rules prohibit the sale of merchandise below cost, members of the industry are advised that *it is unethical to sell merchandise at mere cost and that they are legally entitled to fair profits upon their sales*. Therefore, any member who is found to be selling merchandise at actual cost will be presumed to be engaged in unfair competition.

The above rules are now actually in force but in order to enable manufacturers to adjust themselves to the new price regulation, which will result from the adoption of the code, a short period of grace has been established, but **THE NEW PRICES WILL ABSOLUTELY GO INTO EFFECT ON AND AFTER JUNE 1, 1937.**

Members of the Covered Button and Buckle Industry are urged to report violations promptly to the undersigned Association or to its attorneys.

Dated, New York City, May 26, 1937.

COVERED BUTTON & BUCKLE CREATORS, INC.

MAX PEARLSTEIN, *President.*

M. D. MOSESSEHN,

A. FURMAN GREENE,

Counsel.

570 Seventh Avenue, New York City.

Order

25 F. T. C.

(d) Sending or causing to be sent to dress manufacturers and kindred industries, or to anyone else, the following letter, alone or with an enclosure described in "c" hereof, or any other letter of similar import, tenor or substance:

Tel. Lackawanna 4-5727.

COVERED BUTTON & BUCKLE CREATORS, INC.

570 SEVENTH AVENUE,

New York City, May 26, 1937.

To Dress Manufacturers and Kindred Industries:

We are enclosing herewith copy of page advertisement which appeared in the Women's Wear May 26, 1937, announcing new prices for covered buttons and buckles and new regulations for the industry.

Please notify your department which deals with the manufacturers of this industry to cooperate fully as the producers in this industry are protected in their rights both by the Fair Trade Practice Rules approved by the Federal Trade Commission and the Robinson-Patman Act.

It is the purpose of this organization to prosecute all infractions to the limit. We trust that we may have your constructive cooperation.

Very truly yours,

COVERED BUTTON & BUCKLE CREATORS, INC.
(Sgd.) MAX PEARLSTEIN.
By MAX PEARLSTEIN, *President.*

M. D. MOSES SOHN,
A. FURMAN GREENE,
Counsel.

(e) Stating, representing or implying by any other means whatsoever, that the Federal Trade Commission has approved Fair Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry regulating prices for covered buttons, buckles and novelties or authorizing the fixing of such prices;

(f) Stating, representing or implying by any other means whatsoever, that Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry, approved by the Federal Trade Commission, prohibit, without qualification or limitation, the sale of covered buttons, buckles and novelties below cost, or that in and by Trade Practice Rules for the said Industry, approved by the Federal Trade Commission, a basic cost formula is provided therein or authorized thereby.

(g) Stating, representing or implying by any other means whatsoever, that the Federal Trade Commission has approved Fair Trade Practice Rules for the said Industry, prohibiting the granting or allowing, secretly, directly, or indirectly, any price differentials, rebates, refunds, discounts, credits or other allowances for the purpose of evading what the said respondents, in and by the notice described in "c" hereof, termed "established basic cost prices."

(h) Stating, representing or implying by any other means whatsoever, that the Federal Trade Commission has approved Fair

Trade Practice Rules for the said Industry, fixing a maximum uniform discount of 2%, or any other discount or authorizing the fixing of a maximum uniform or other discount;

(i) Stating, representing or implying by any other means whatsoever, that the Federal Trade Commission has approved Fair Trade Practice Rules for the said Industry, forbidding the giving of free samples or free duplicates;

(j) Stating, representing or implying by any other means whatsoever, that any policy of price fixing has been initiated and carried out by and through the means of Trade Practice Rules for the said Industry, approved by the Federal Trade Commission;

(k) Stating, representing, or implying by any other means whatsoever, that any policy of price fixing has been initiated and carried out with the knowledge, sanction, approval or authorization of the Federal Trade Commission.

And it is further ordered, That all the respondents hereinabove mentioned shall within 30 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.

APPENDIX ONE

TRADE PRACTICE RULES

COVERED BUTTON AND BUCKLE MANUFACTURING INDUSTRY

These rules promulgated by the Commission are designed to foster and promote fair competitive conditions in the interest of industry and the public. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

Group I

The unfair trade practices which are embraced in Group I rules are considered to be unfair methods of competition or other illegal practices within the statutes and the decisions of the Federal Trade Commission and the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use of such unlawful practices in or directly affecting interstate commerce.

Rule 1.—The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

Rule 2.—Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring or embarrassing competitors in their businesses, is an unfair trade practice.

Trade Practice Rules

25 F. T. C.

Rule 3.—the defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies or services with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 4.—The imitation of the trade-marks, trade names, brands, labels or other marks of identification of competitors, having the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 5.—(a) *Prohibited discriminatory Differentials, Rebates, Refunds, Discounts, Credits and other Allowances.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits or other allowances which effectuate a discrimination in price between different purchasers of goods of like grade and quality where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however,*

(1) That the goods involved in any such transaction are sold for use, consumption or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerages and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or

¹ See footnote page 1005.

contract for the payment of advertising or promotion allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products or commodities manufactured, sold or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress, approved June 19, 1936, (Public No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

Rule 6.—Wilfully inducing or attempting to induce, by any false or deceptive means whatsoever, the breach of any lawful contract or contracts existing between competitors, and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring or embarrassing competitors in their business, is an unfair trade practice.

Rule 7.—The making, or causing or permitting to be made or published, any false, untrue or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size or preparation of any product of the industry, or in any other material respect, with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 8.—The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

Rule 9.—Offering merchandise for sale at prices purported to be reduced from what are in fact fictitious prices, or offering merchandise for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

¹ As herein used, the word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States; *Provided*, That this shall not apply to the Philippine Islands.

Trade Practice Rules

25 F. T. C.

Rule 10.—The use of the word "free" where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 11.—The practice of shipping or delivering products which do not conform to the samples submitted or representations made prior to securing the orders, without the consent of the purchasers to such substitutions, and having the tendency, capacity or effect of deceiving or misleading purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 12.—Directly or indirectly to give or permit to be given or offer to give money or anything of value to agents, employees or representatives of customers or prospective customers, or to agents, employees or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors is an unfair trade practice.

Rule 13.—Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority, and the wrongful use thereof to unduly hinder or stifle the competition of such competitors, is an unfair trade practice.

Rule 14.—In connection with the sale or offering for sale of products of the industry, representing through advertising or otherwise that such products conform to any standards recognized in or applicable to the industry when such is not the fact, with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 15.—For any person, firm or corporation to hold himself or itself out to the public as a manufacturer or wholesaler when such is not the fact, or in any other manner to misrepresent the character, extent or type of his or its business, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 16.—The false or deceptive marking or branding of products of the industry for the purpose or with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture or distribution of such products, or in any other material respect, is an unfair trade practice.

Rule 17.—Withholding from or inserting in invoices or sales tickets any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices or sales tickets, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Syllabus

IN THE MATTER OF
PASCAL 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 2945. Complaint, Oct. 15, 1936—Decision, Sept. 8, 1937

Where a corporation engaged in manufacture of "Breatheasy," preparation, and atomizer or "nebulizer" for treatment of asthma, hay fever, and kindred diseases, and in the sale and distribution thereof through distributors and drug stores in the various States, in substantial competition with those engaged in interstate sale and distribution of other preparations recommended for, and useful in, treatment of such diseases, and of atomizers for use in connection therewith; in extensively advertising its said product through various newspapers of interstate circulation and through radio broadcasts having interstate transmission, and through booklets and circulars issued and distributed by it—

Represented that said preparation was a cure or remedy for asthma, hay fever, and kindred diseases, which could be used successfully without following any particular form of diet, and constituted a harmless remedy which would return the user to vigorous, buoyant health, had therapeutic value also in chronic bronchitis and numerous other specified ailments and conditions, including heart diseases and cardiac distress, various skin diseases, and inflammations of the nose and throat, etc., and in neuralgia and neuritis, and was the one sure relief available for treatment of asthma, and a new medicament for such treatment, through such statements, among others, as "For Asthma * * * the greatest discovery. Created by a physician to successfully cure his own asthma * * *," "only one Remedy for Asthma And that Remedy is Breatheasy," "* * * beneficial, according to authorities, in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, * * *," " * * * the one, sure asthmatic relief available today * * * gives a sense of well-being, a return to vigorous, buoyant health * * *," " * * * no diet is necessary. You may eat anything you may desire." "Introduces a new medicament of scientific formula which applies synthetic adrenal gland extract vaporized * * *," etc.;

Facts being asthma, as classified by medical profession, may result from many varying causes, no specific cure for asthma is recognized by said profession, and such preparation is not cure therefor nor for hay fever, and, while preparation in question, as well as many other remedies containing adrenalin, may in some cases temporarily relieve asthma, it does not constitute treatment therefor, and use thereof will not bring about or restore vigorous, buoyant health or give absolute and instant relief to sufferers therefrom, should not be taken at all in many cases in which diet is essential, and is no less dangerous to user because taken through "nebulizer" than if taken through hypodermic injection, and is not beneficial in treatment of chronic bronchitis, heart disease, and various other ailments and conditions specified, and, as equivalent, through epinephrin content, of synthetic adrenalin, is not new medicament;