

IN THE MATTER OF
NEW YORK STATE SHEET METAL ROOFING AND AIR-
CONDITIONING CONTRACTORS' ASSOCIATION, 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 2931. Complaint, Sept. 28, 1936—Decision, Oct. 4, 1937

Where a corporate trade association or organization, membership of which consisted of plumbing contractors and dealers in sheet metal roofing supplies and hot air furnaces, with respective places of business at various points in New York State, and in competition with one another and other plumbing contractors and dealers in such products located in other States and members therein of similar trade associations; and corporate manufacturer of hot air furnaces engaged in sale and distribution of its products in interstate commerce to customers located in States other than that of said manufacturer, and in substantial competition with others likewise engaged in business of making, selling, and distributing such furnaces in interstate commerce, and, but for the matters and things below set forth, naturally and normally in competition with other manufacturers who normally also sell not only to contractors and dealers comprising membership of various trade organizations above described, but to certain large mail order houses—

Entered into and engaged in carrying out an agreement and understanding among themselves to list those manufacturers who were thus selling their hot air furnaces to mail order houses aforesaid, and to urge members of their above association, and also the other various trade associations and their respective members, to purchase only from manufacturers recommended by them, and in the accomplishment of their aforesaid purposes—

- (a) Held meetings to devise ways of exerting influence or pressure or other means of inducing members of the respective trade associations not to purchase the products of manufacturers named by them as being concerns dealing with mail order houses;
- (b) Printed and published "White Lists" containing names of manufacturers approved by them who were not selling to such houses;
- (c) Used, in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats thereof, and other united action against manufacturers who were selling to such houses; and
- (d) Caused to be published, and distributed, many thousands of pamphlets and bulletins to the various trade associations in the several States and to their respective members, urging latter to discontinue buying products of manufacturers named therein, and said associations to induce their membership to discontinue trading with such manufacturers;

With effect of monopolizing in themselves business of dealing in and distributing such products, unreasonably lessening, eliminating, restraining, stifling, hampering, and suppressing competition in industry concerned, and depriving purchasing and consuming public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry, and otherwise operating as a restraint upon and a

detriment to the freedom of fair and legitimate competition therein, and obstructing natural flow of trade in channels of interstate commerce, and with capacity and tendency so to monopolize, etc.:

Held, That such acts and practices of said corporate association and manufacturer and their respective officers were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. William L. Pencke for the Commission.

Griffith, Wager & Brackett, of Utica, N. Y., for New York State Sheet Metal Roofing and Air-Conditioning Contractors' Ass'n, and its officers.

Mr. Gilbert H. Montague, of New York City, for Fox Furnace Co., and its officers.

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 each and all of the parties named in paragraphs 1 and 2 hereof, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce, as "commerce" is defined in said act and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, New York State Sheet Metal, Roofing and Air-Conditioning Contractors' Association, Inc., is a corporation organized in the month of September 1935, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 916-918 Columbia Street in the city of Utica in said State. Its officers are the respondents, H. W. Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph Hesse, secretary, and Edward Klick, treasurer. Said corporation is the successor to an unincorporated association known as New York State Sheet Metal and Roofing Contractors' Association, which had its place of business and office at the same place as the present corporation. Its officers were as follows: William J. Schmitt, president, H. W. Noregon, first vice-president, Adolph Hesse, secretary and Edward Klick, treasurer. Both said corporation and its predecessor will hereinafter be referred to as the New York Association.

PAR. 2. Respondent, Fox Furnace Company, is a corporation, organized and existing under the laws of the State of Ohio, with its office and principal place of business in the city of Elyria in said

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State. Its officers are respondents, Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer. It will hereinafter be referred to as the Fox Company.

PAR. 3. Respondent, New York Association, is a trade organization whose membership consists of plumbing contractors, and dealers in sheet metal, roofing supplies, and hot air furnaces, with their respective places of business located at various points in the State of New York. Said members are in competition with each other, and with other plumbing contractors and dealers in sheet metal, roofing supplies, and hot air furnaces, located in States other than the State of New York, and who are likewise members of similar trade associations in their respective States.

PAR. 4. Respondent, Fox Furnace Company, is now, and for more than three years last past has been, engaged in the manufacture, sale, and distribution of hot air furnaces. Respondent sells and distributes its products in commerce between and among the various States of the United States and in the District of Columbia, causing said products when sold to be shipped from its place of business in the State of Ohio to purchasers thereof located in a State or States of the United States other than the State of Ohio. In the course and conduct of its business aforesaid, respondent, Fox Furnace Company, is now, and for more than three years last past has been, in substantial competition with other corporations, firms, partnerships, and individuals engaged in the business of manufacturing, selling, and distributing hot air furnaces in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The members of said New York Association and other trade associations described in paragraph 3 hereof purchase hot air furnaces from said Fox Company in Ohio and from other manufacturers located in various other States of the United States. Said manufacturers ship their said products when purchased by the aforesaid members of the aforesaid associations from their respective places of business to the aforesaid members of the said associations located in the various States of the United States. There are certain manufacturers of hot air furnaces who not only sell to the contractors and dealers comprising the membership of the various trade organizations hereinabove described, but who have been and are selling hot air furnaces to certain large mail order houses. In the course and conduct of their aforesaid respective businesses, the said last mentioned manufacturers, but for the matters and things hereinafter set out, would be and would have been naturally and

normally in competition with the other manufacturers of hot air furnaces, among which manufacturers is the Fox Company.

PAR. 6. On or about September 1934, the said New York Association and the said Fox Company entered into, have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves, to blacklist those manufacturers who were and are selling hot air furnaces to the mail order houses aforesaid; to prejudice the members of the New York Association and the various other trade associations and their respective members against said manufacturers; to urge the members of said trade associations to purchase only from manufacturers recommended by said respondents.

To carry out the aforesaid purposes, the said respondents have done among others, the following acts and things:

(a) Held meetings to devise means of exerting influence, pressure, or other means of inducing or requiring members of the respective trade associations not to purchase the products of manufacturers named by them as being manufacturers dealing with mail order houses;

(b) Printed and published lists (so-called "White-Lists") containing the names of manufacturers approved by them who are not selling to mail order houses;

(c) Used in concert and agreement among themselves and with others coercive and concerted action, boycott, threats of boycott and other united action against manufacturers selling to mail order houses;

(d) Caused publication and distribution of many thousands of pamphlets and bulletins to the various trade associations in the several states of the United States and to the respective members thereof, urging and requiring said members to discontinue purchasing the products of manufacturers named in said pamphlets and bulletins, and urging and requiring the said trade associations to induce their membership to discontinue trading with said manufacturers.

PAR. 7. The capacity, tendency, and effect of said agreements, combinations, understandings and conspiracies, and the said acts and practices of the said respondents set forth in paragraph 6 hereof, are and have been to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said hot air furnace industry throughout the several States of the United States; to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade; to prejudice and injure the public and manufacturers, dealers and others who did

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not conform to respondents' program, and to spread into States other than New York and Ohio the same methods of boycott and "white-listing" employed by respondents.

PAR. 8. The above acts and things done or caused to be done by the respondents were and are each and all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 the 28th day of September 1936, issued and served its complaint in this proceeding upon the parties named in the above caption, charging them with the use of unfair methods of competition in violation of the provisions of said act. Subsequently, all of said respondents filed their answers to said complaint, consenting therein that for the purposes of this proceeding all the material allegations of said complaint might be deemed to be admitted.

The said Commission having duly considered the above and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes these its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, New York State Sheet Metal Roofing and Air-Conditioning Contractors' Association, was incorporated under the laws of the State of New York in the month of September 1935. It is the successor to an unincorporated association known as New York State Sheet Metal and Roofing Contractors' Association. The principal office and place of business of said respondent is in the city of Utica, State of New York. Its officers are the respondents, H. W. Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph Hesse, secretary, and Edward Klick, treasurer.

PAR. 2. Respondent, Fox Furnace Company, is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business in the city of Elyria, in said

State. Its officers are respondents, Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer. It will hereinafter be referred to as the Fox Company.

PAR. 3. Respondent, New York Association, is a trade organization whose membership consists of plumbing contractors, and dealers in sheet metal roofing supplies and hot air furnaces, with their respective places of business located at various points in the State of New York. Said members are in competition with each other, and with other plumbing contractors and dealers in sheet metal roofing supplies and hot air furnaces located in States other than the State of New York, and who are likewise members of similar trade associations in their respective States.

PAR. 4. Respondent, Fox Furnace Company, is now and for many years has been engaged in the manufacture, sale, and distribution of hot air furnaces. It sells and distributes its products in interstate commerce, shipping said products to customers who are located in States other than the State of Ohio. The Fox Furnace Company is now, and for many years has been, in substantial competition with other corporations, firms, partnerships, and individuals who are also engaged in the business of manufacturing, selling and distributing hot air furnaces in interstate commerce.

PAR. 5. The members of said New York Association and other trade associations described in paragraph 3 hereof purchase hot air furnaces from said Fox Company in Ohio and from other manufacturers located in various other States of the United States. Said manufacturers ship their said products when purchased by the aforesaid members of the aforesaid associations from their respective places of business to the aforesaid members of the said associations located in the various States of the United States. There are certain manufacturers of hot air furnaces who not only sell to the contractors and dealers comprising the membership of the various trade organizations hereinabove described, but who have been and are selling hot air furnaces to certain large mail order houses. In the course and conduct of their aforesaid respective businesses, the said last mentioned manufacturers, but for the matters and things hereinafter set out, would be and would have been naturally and normally in competition with the other manufacturers of hot air furnaces, among which manufacturers is the Fox Company.

PAR. 6. On or about September 1934, the said New York Association and the said Fox Company entered into and carried out, and up to a date prior to the filing of the complaint were still carrying out, an agreement and understanding among themselves, to list those manufacturers who were and are selling hot-air furnaces to mail order

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houses aforesaid; and to urge the members of the New York Association and the various trade associations and their respective members to purchase only from manufacturers recommended by said respondents.

To carry out the aforesaid purposes, the said respondents have done, among others, the following acts and things:

(a) Held meetings to devise means of exerting influence, pressure, or other means of inducing members of the respective trade associations not to purchase the products of manufacturers named by them as being manufacturers dealing with mail-order houses;

(b) Printed and published lists (so-called "White Lists") containing the names of manufacturers approved by them who are not selling to mail-order houses;

(c) Used in concert and agreement among themselves and with other coercive and concerted action, boycott, threats of boycott and other united action against manufacturers selling to mail-order houses;

(d) Caused publication and distribution of many thousands of pamphlets and bulletins to the various trade associations in the several States of the United States and to the respective members thereof, urging said members to discontinue purchasing the products of manufacturers named in said pamphlets and bulletins, and urging the said trade associations to induce their membership to discontinue trading with said manufacturers.

PAR. 7. The capacity, tendency, and effect of said agreement and understanding and the said acts and practices of these respondents as set forth in paragraph 6 hereof, are, and have been to monopolize in said respondents the business of dealing in and distributing hot-air furnaces; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry, and to deprive the purchasing and consuming public of the advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and industry; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in said trade and industry and to obstruct the natural flow of trade in the channels of interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondents New York State Sheet Metal Roofing and Air-Conditioning Contractors' Association, a corporation, and H. W. Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph

Hesse, secretary and Edward Klick, treasurer, and Fox Furnace Company, a corporation, and Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer, are to the prejudice of the public and of said respondents' competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on September 28, 1936, and the answers of the respondents herein, New York State Sheet Metal Roofing and Air-Conditioning Contractors' Association, and H. W. Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph Hesse, secretary, and Edward Klick, treasurer, of said association, and Fox Furnace Company, and Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer, of said company, filed on November 13, 1936, in which they state that they desire to and have hereby 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," and that they and each of them, for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding, refrain from contesting the proceeding, and that they and each of them consent that all the material facts alleged in said complaint may 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, said respective 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 consent that the Commission may, 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 the said complaint which constitute violations of Section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, New York State Sheet Metal Roofing and Air-Conditioning Contractors' Association, and H. W.

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Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph Hesse, secretary, and Edward Klick, treasurer, of said association, and Fox Furnace Company, and Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer, of said company, and their successors, officers, agents, and employees cease and desist, in connection with the business of selling and offering for sale of hot-air furnaces, from doing and performing by agreement, or understanding between or among any two or more of said respondents, the following acts and things:

(a) Holding meetings to devise means of exerting influence, pressure, or other means of inducing members of the respective trade associations not to purchase the products of manufacturers named by them as being manufacturers dealing with mail order houses;

(b) Printing and publishing lists (so-called "White Lists") containing the names of manufacturers approved by them who are not selling to mail order houses;

(c) Using in concert and agreement among themselves and with others coercive and concerted action, boycott, threats of boycott and other united action against manufacturerers selling to mail order houses;

(d) Causing publication and distribution of pamphlets and bulletins to the various trade associations in the several States of the United States and to the respective members thereof, urging said members to discontinue purchasing the products of manufacturers named in said pamphlets and bulletins, and urging the said trade associations to induce their membership to discontinue trading with said manufacturers.

It is further ordered, That the above 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 and each of them have complied with this order.

Syllabus

IN THE MATTER OF

NACIONAL DESTILERIAS CORPORATION

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

Docket 2477. Complaint, June 28, 1935—Decision, Oct. 9, 1937

Where a corporation engaged as a wholesaler, in the purchase and importation from the Philippine Islands of rum, brandy, gins, and cordials, such as Creme de Menthe, Anisette, Creme de Cacao, and Vermouth, and in the storing of its goods, on importation, in various warehouses in certain cities in the United States, and in resale and reshipment thereof from such points to wholesale and retail purchasers thereof in other States, in substantial competition with (1) those engaged in manufacture by distillation of rums, brandies, gins, cordials, and other spirituous beverages, and in sale thereof in trade and commerce among the various States and in the District of Columbia, (2) those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and (3) those engaged in purchasing, and reselling such various beverages as aforesaid, and including among said competitors those who (1) manufacture and distill from mash, wort, or wash, through process of original and continuous distillation from raw materials, such as grain, mash, or wort, and truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names on the labels of the bottles in which they sell and ship such products as rums, brandies, cordials, gins, and other alcoholic beverages, (2) those who, engaged in purchasing, rectifying, blending, bottling, and selling such various beverages, do not use aforesaid word as above set forth, and (3) those who, engaged as wholesalers of rums, brandies, etc., and other such beverages, also do not use aforesaid words as above set forth—

Represented, through use of word "Destilerias" in its corporate name printed on its stationery and on the labels attached to the bottles in which it sold and shipped its said products, along with names "Destilerias Ayala" and "Destilerias La Tondena," Manila distilleries for which it was exclusive distributing agent in the United States, and in various other ways to its customers and furnished them with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller of cordials, gins, and other spirituous beverages, notwithstanding fact it did not own, operate, or control any place or places where any alcoholic beverages were by it made by process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and said public into belief that it was a distiller and of inducing such dealers and public, acting in such belief, to buy rums, brandies, cordials, gins, and other spirituous beverages labeled and sold by it, and of thereby diverting trade to it from those of its competitors who do not, by their corporate or trade names or in any