

IN THE MATTER OF
METAL WINDOW INSTITUTE, 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 2978. Complaint, Nov. 11, 1936—Decision, Nov. 30, 1937

Where some eighteen corporations, comprising substantially all of the manufacturers and distributors of steel window products in the United States, engaged in sale of their said products to wholesalers, dealers and consumers located at various points throughout the United States, for use, principally, in construction of industrial, commercial, and municipal buildings, and sold generally through the submission of bids on a given project to the builders thereof by the sellers of such products, and with a substantial portion of their sales during the last several years to the United States and the several States and to municipalities or political subdivisions or agencies thereof, for use in construction of public buildings, and prior to and but for below-described practices in active substantial competition with one another, in making and seeking to make sales of their products in the several States and in the District of Columbia; acting through the trade association of which they were members, the executive secretary or "commissioner" of said association and the president thereof and four other members of its executive committee, in control of its practices, policies and activities, and of the association activities of aforesaid corporate manufacturer members, and in pursuance of understandings and agreements entered into by them, the result of which was to restrict, restrain, monopolize, and eliminate competition in sale of metal window products in trade and commerce among the several States and in the District of Columbia—

- (a) Agreed to use and did use gross or basic price book theretofore compiled by certain of said corporate manufacturers, and affording means of determining price or price formula for substantially all of the products of the industry in question through application of discounts shown therein or of formula therein given, and agreed to file and did file with aforesaid association schedule of each corporate manufacturer's discounts from prices established therein and at which it would sell and did sell its products, and not to deviate from prices thus established without first notifying, at specified period in advance of effective date of change, such other manufacturers, and that their said association could convey to all other members information contained in schedule of discounts thus filed;
- (b) Agreed to maintain and adhere to schedule of uniform discounts to be applied to prices determined from use of said gross or discount price book, and thereby established fixed, uniform minimum prices of products of said industry and agreed to and did fix uniform terms and conditions that were a part of all sales made, including, among others, mandatory erection, time for delivery and allowance for freight;
- (c) Agreed not to, and did not, sell products of industry for less than uniform minimum prices established through use of said uniform discounts without giving one another prior notice of such a sale, and to submit, and did

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submit, all estimates of bids on project in given geographic area to one of clearing bureaus theretofore established by them through said association and its predecessor, and designated by such association as bureau to clear bids or prices for trade area in question, in order to secure identical gross or, in some instances, net price estimates, and agreed to, and did, use such estimates in submitting bids on projects; and

Where said association—

- (d) Conveyed to all other members information contained in schedule of discounts filed with it by the respective members; and
- (e) Advised and required its members to adhere to prices established by said agreements and was agency for and actively policed industry in question, and by threats, penalties and persuasion induced many corporate price-cutter members to adhere to prices established as aforesaid; and

Where said corporate manufacturers, their association and above specified individuals—

- (f) Agreed to declare bidding on certain projects to be "open" in order to prevent competitors not parties to aforesaid understandings and agreements from being successful bidders on projects where such "non-cooperating" bidders were bidding and to force such competitors to become members of their association and a party to said understandings and agreements; and

Where said corporate manufacturers, following such above-described action—

- (g) Concertedly underbid and undersold such "non-cooperating" bidders with result that latter, by reason of such underselling and because of threats and exhortation, became members of said association and parties to such understandings and agreements; and

Where such corporate manufacturers, their association and aforesaid individuals—

- (h) Secured withdrawal and cancellation of bids submitted on projects where such bids offered said products at less than prices established by them, with result that said agreements and understandings and acts and things done thereunder and pursuant thereto and in furtherance thereof, and in concert with one another, had effect of unduly and unlawfully restraining trade and commerce in metal window products among the several States and in the District of Columbia, of substantially enhancing prices to purchasing public and maintaining same at artificial levels, and otherwise depriving public of benefit that would flow from normal competition among and between said corporate manufacturers in the sale and distribution of metal window products and of eliminating competition in the sale thereof, and with tendency and capacity to create monopoly in the sale thereof in said commerce, in themselves:

Held, That such acts and practices of said corporate manufacturers, aforesaid individuals and association in entering into and carrying out such agreements, understandings, combinations, and conspiracies, and in doing acts and things done thereunder pursuant thereto, and in furtherance thereof, were to the prejudice of the public and competitors and constituted unfair methods of competition in commerce.

Mr. Edw. W. Thomerson for the Commission.

Mr. Abram F. Myers, of Washington, D. C., for all respondents, excepting Campbell Metal Window Corp.

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Mr. Gilbert H. Montague, of New York City, for Campbell Metal Window Corp.

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 the association, the individuals, and the corporations, hereinafter described and named as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Metal Window Institute is a voluntary unincorporated trade association, with its office at 1427 Eye Street, N. W., in the city of Washington, D. C., and is composed of the firms hereinafter named, who are engaged in the manufacture, sale, distribution, and erection of all or a number of the following products, made principally from solid or formed sections of steel, iron, bronze, aluminum, or other metal or alloy: pivoted windows, projected windows, continuous windows, basement windows, utility windows, detention windows, industrial doors, double-hung windows, counter-balanced windows, casement windows, metal frames, mechanical operators, stools, and screens. The business of the members composing the Metal Window Institute is commonly referred to as the metal window business. The Metal Window Institute will be hereinafter referred to as the respondent association, and the business of the members of the Metal Window Institute will be hereinafter referred to as the metal window business.

PAR. 2. The William Bayley Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its offices and principal place of business in the city of Springfield, Ohio;

Bliss Steel Products Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 617 West Manlius Street, in the city of East Syracuse, N. Y.;

The Bougert and Carlough Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 28 Peach Street, in the city of Paterson, N. J.;

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Campbell Metal Window Corporation is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business at Bush and Hamburg Streets, in the city of Baltimore, Md.;

Concrete Engineering Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, with its office and principal place of business at 1141 North 11th Street, in the city of Omaha, Nebr.;

Crittall Manufacturing Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business at 1224 24th Street, N. W., in the city of Washington, D. C.;

Detroit Steel Products Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 2250 East Grand Boulevard, in the city of Detroit, Mich.;

Druwhit Metal Products Company is a corporation organized and existing under and by virtue of the laws of the State of Nevada, with its office and principal place of business in the city of Los Angeles, Calif.;

Federal Steel Sash Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business in the city of Waukesha, Wis.;

Michael Flynn Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at Allegheny Avenue and Tulip Street, in the city of Philadelphia, Pa.;

Hope's Windows, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 84 Hopkins Avenue, in the city of Jamestown, N. Y.;

Kewanee Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Kewanee, Ill.;

Mesker Brothers Iron Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 424 South 7th Street, in the city of St. Louis, Mo.;

Michel & Pfeffer Iron Works, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business at 1415 Harrison Street, in the city of San Francisco, Calif.;

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S. H. Pomeroy Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 282 East 134th Street, in the city of New York, N. Y.;

Soule Steel Company is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business at 1750 Army Street, in the city of San Francisco, Calif.;

J. S. Thorn Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at 20th Street and Allegheny Avenue, in the city of Philadelphia, Pa.;

Truscon Steel Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business in the city of Youngstown, Ohio;

Vento Steel Sash Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business at Sherman Boulevard, in the city of Muskegon Heights, Mich.;

The respondents named in this paragraph will hereinafter be referred to as the corporate respondents. The corporate respondents named in this paragraph are now, or have been, members of the respondent association, and all of them were members of the respondent association during the times hereinafter mentioned.

PAR. 3. Ralph H. Sartor, 1427 Eye Street, N. W., Washington, D. C., is the commissioner of the Metal Window Institute;

Carl Raquet of Detroit Steel Products Company, 2250 East Grand Boulevard, Detroit, Mich., is president and a member of the executive committee of the Metal Window Institute;

Grover J. Meyer of the Truscon Steel Company, Youngstown, Ohio, is chairman and a member of the executive committee of the Metal Window Institute; and

James Allinson of the J. S. Thorn Company, 20th Street and Allegheny Avenue, Philadelphia, Pa.; Guy D. Bayley of the William Bayley Company, Springfield, Ohio; Frank Garratt of Hope's Windows, Inc., 84 Hopkins Avenue, Jamestown, N. Y., and C. J. McIntosh of the Federal Steel Sash Company, Inc., Waukesha, Wis., are members of the executive committee of the Metal Window Institute.

Each of the above named individuals, with the exception of Ralph H. Sartor, is an officer of, or employed by, the corporate respondent indicated and is an officer of the respondent association in the capacity indicated, and all of said individuals control and direct

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the practices, policies, and activities of said respondent association under the supervision of Ralph H. Sartor, who is an employee of said respondent association. These individuals will hereinafter be referred to as the individual respondents.

PAR. 4. All of said corporate respondents are, and at all of the times hereinafter mentioned have been, engaged in the manufacture and sale of metal window products, including all or a part of the products hereinbefore described, to wholesalers of, dealers in, and consumers of, said products, located throughout the United States, and pursuant to such sales, and as a part thereof, regularly have shipped and do ship such products to their said consumers at their respective places of business located at various points in the several States of the United States other than in the States of the origin of such shipments. Prior to the adoption of the practices herein-after alleged, these corporate respondents were in active and substantial competition with each other, and with other members of the industry, some of whom have been members of the association respondent and others of whom have not been members of the association respondent, in making and seeking to make sales of their said products in such commerce, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time, and the said corporate respondents would now be in active and substantial competition with each other and with members of the industry not presently members of the corporate association.

The said corporate respondents now constitute, and have during all of the times mentioned herein constituted, substantially all of the manufacturers of said metal window products in the United States. The products of the industry are used principally in the construction of industrial, commercial, and monumental buildings and are sold principally to the builder through the submission of bids on a given project. For the past several years a substantial portion of the sales made have been to the United States Government, or some agency thereof, to the several States of the United States, or some agency thereof, and to municipalities located in the United States or some agency thereof.

PAR. 5. Prior to January 1934, certain of the corporate respondents organized a voluntary trade association, under the name Solid Section Steel Window Industry, for the promotion of the interests of the members of said association. On or about January 10, 1934, the name of said association was changed to, and it was succeeded by, the Metal Window Institute, the respondent association.

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Acting by and through the respondent association and its predecessor, the corporate respondents have compiled a comprehensive and detailed gross or basic price book, which gives the price, or the formula by which such price may be determined, for each and every product of the industry. This price book is revised or supplemented from time to time to meet changing conditions in the trade or to include new products, and is distributed generally throughout the industry for use in determining the gross or basic sale price of said products. The prices stated in said price book, or the prices arrived at by the application of the formulas stated, are uniform as to any given product in each price book so used for the determination of the gross or basic sale prices. The actual sale prices of products are determined by the application of discounts to the gross or basic prices determined by the use of said price book.

Acting by and through the respondent association and its predecessor, the corporate respondents have established and do maintain so-called checking bureaus at convenient and strategic points throughout the United States. These checking bureaus are established ostensibly for the purpose of assisting the members of the respondent association in checking estimates made for the products of the industry from plans and specifications under which bids are to be received and in checking the application of the industry price book prices to such estimates.

PAR. 6. Said corporate respondents, through said respondent association and said individual respondents, for the several years last past, and more particularly since the month of May 1935, have, from time to time, entered into and thereafter carried out understandings, agreements, combinations, and conspiracies for the purpose of restricting, restraining, and monopolizing, and eliminating competition in, the sale of metal window products in trade and commerce between and among the several States of the United States and in the District of Columbia. From time to time members of the industry, other than those herein named as respondents, became parties to, and carried out, said understandings, agreements, combinations, and conspiracies.

PAR. 7. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, the said respondents have done and performed, and still do and perform, the following acts and things:

1. Said corporate respondents agreed to and did use said gross or basic price book in pricing the products of the industry.

2. Each of said corporate respondents (a) agreed to and did file with the respondent association a schedule of the discounts from the

prices established by the gross or basic price book at which it would and did sell its products; (b) agreed that it would not change, or deviate from, the prices established by such discounts without first notifying the other corporate respondents of such a change at a specified period of time prior to the effective date of the change in prices; and (c) agreed that the respondent association could and it did convey to all other members the information contained in said schedule of discounts so filed.

3. Said corporate respondents agreed to, and they did, establish, maintain, and adhere to a schedule of uniform discounts to be applied to the prices determined from the use of said gross or basic price book, the effect of which is to establish fixed uniform minimum prices for the products of the industry.

4. Said corporate respondents agreed to and did fix uniform terms and conditions that were a part of all sales made, including, but without limitation, mandatory erection, time for delivery, and allowance for freight.

5. Said corporate respondents agreed that they would not and they did not sell the products of the industry for less than the fixed uniform minimum prices established through the use of said uniform discounts without giving prior notice to each other of the fact that a sale was to be made at less than the minimum price agreed upon.

6. Said corporate respondents (a) agreed to and did submit all estimates of bids to be submitted on a project in a given geographical area to one of said clearing bureaus, theretofore designated by the respondent association as the bureau to clear bids or prices for that particular area, for the purpose of securing identical gross, or, in many instances, net price estimates, which they (b) agreed to and did use in submitting bids on said project.

7. Said respondent association advises and requires its members to adhere to the prices fixed by said agreements and is the agency for, and has been and is actively policing the industry; and by threats of penalties to those who sell below said fixed prices and by persuasion, it induces many of the corporate respondents to adhere to the prices fixed by the aforesaid agreements, when, but for said threats and persuasion, they would not adhere to the prices fixed by said agreements.

8. Said respondents, to prevent competitors who were not parties to the aforesaid understandings, agreements, combinations, and conspiracies, from being the successful bidders on projects where such "non-cooperating" competitors were bidding, and thereby to force such non-cooperative competitors to become members of said respondent association and a party to said understandings, agreements, com-

binations, and conspiracies, agreed to and did declare the bidding on certain projects to be "open," whereupon the corporate respondents agreed to and did concertedly underbid and undersell such "non-cooperating" competitors; and by such means, and through threats and exhortations, many "non-cooperating" competitors of said corporate respondents did become members of said respondent association and parties to said understandings, agreements, combinations, and conspiracies.

9. Said respondents secured the withdrawal and cancellation of bids submitted on projects where such bids offered said products at less than the prices fixed by the respondents as aforesaid.

10. Said respondents used other methods and means designed to suppress and prevent competition and restrict and restrain the sale of said products in said commerce.

11. Said respondents agreed to and did establish said checking bureaus and compile and circulate said price book as aforesaid.

PAR. 8. Each of said respondents acted in concert and cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 9. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining trade and commerce in said products between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between said corporate respondents; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said products in said commerce. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, as above alleged, constitute unfair methods of competition within the intent and meaning 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 are to the prejudice of the public.

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 November 11, 1936, issued, and subsequently

served, its complaint in this proceeding upon the respondents, Metal Window Institute, Ralph H. Sartor, Carl R. Raquet, Grover J. Meyer, James Allinson, Guy D. Bayley, Frank Garratt, The William Bayley Company, Bliss Steel Products Corporation, The Bougert and Carlough Company, Campbell Metal Window Corporation, Concrete Engineering Company, Crittall Manufacturing Company, Inc., Detroit Steel Products Company, Druwhit Metal Products Company, Federal Steel Sash Company, Inc., Michael Flynn Manufacturing Company, Hope's Windows, Inc., Kewanee Manufacturing Company, Mesker Brothers Iron Company, Michel & Pfeffer Iron Works, Inc., S. H. Pomeroy Company, Inc., Soule Steel Company, J. S. Thorn Company, Truscon Steel Company, and Vento Steel Sash Company, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answers and to substitute therefor answers stating that the respondents were without knowledge of the allegations contained in the complaint insofar as said allegations may refer to any violation of any law of the United States, that they desired to avoid the trouble and expense incident to further continuance of this proceeding, and to waive hearings on the charges set forth in the complaint and would not contest the proceedings, and stating further that, for the purpose of disposing of this proceeding, all the material facts alleged in the complaint (except that the respondents Campbell Metal Window Corporation and Vento Steel Products Company, formerly Vento Steel Sash Company, Inc., are presently members of respondent Metal Window Institute, said Campbell Metal Window Corporation having withdrawn its membership therein on April 3, 1936, and said Vento Steel Products Company having withdrawn its membership on June 20, 1936) may be deemed to be admitted within the intent and meaning of Section 5 of the Federal Trade Commission Act, but not within the intent and meaning of any other law of the United States, and stating that said answers did not constitute an admission of any conclusion of law or of fact or admission of fact for any other purpose, and are not to be used against them in any other proceeding, suit or action, and stating that without any other intervening procedure the Commission may make and enter its findings as to the facts and issue and serve upon the respondents an order to cease and desist from any method of competition alleged in the complaint which constitutes a violation of Section 5 of the Federal Trade Com-

mission Act; which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answers, no briefs having been filed and no requests having been made for oral argument, 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 The William Bayley Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio and has its office and principal place of business in the city of Springfield, Ohio.

Respondent Bliss Steel Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its office and principal place of business at 617 West Manlius Street, in the city of East Syracuse, N. Y.

Respondent The Bougert and Carlough Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey and has its office and principal place of business at 28 Peach Street, in the city of Paterson, N. J.

Respondent Campbell Metal Window Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland and has its office and principal place of business at Bush and Hamburg Streets, in the city of Baltimore, Md.

Respondent Concrete Engineering Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nebraska and has its office and principal place of business at 1141 North 11th Street, in the city of Omaha, Nebr. Respondent Concrete Engineering Company has, since the issuance of the complaint herein, changed its name to Ceco Steel Products Corporation.

Respondent Crittall Manufacturing Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and has its office and principal place of business at 1224 24th Street, N. W., in the city of Washington, D. C.

Respondent Detroit Steel Products Company is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Michigan and has its office and principal place of business at 2250 East Grand Boulevard, in the city of Detroit, Mich.

Respondent Druwhit Metal Products Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada and has its office and principal place of business in the city of Los Angeles, Calif.

Respondent Federal Steel Sash Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin and has its office and principal place of business in the city of Waukesha, Wis.

Respondent Michael Flynn Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania and has its office and principal place of business at Allegheny Avenue and Tulip Street, in the city of Philadelphia, Pa.

Respondent Hope's Windows, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its office and principal place of business at 84 Hopkins Avenue, in the city of Jamestown, N. Y.

Respondent Kewanee Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and has its office and principal place of business in the city of Kewanee, Ill.

Respondent Mesker Brothers Iron Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri and has its office and principal place of business at 424 South 7th Street, in the city of St. Louis, Mo.

Respondent Michel & Pfeffer Iron Works, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California and has its office and principal place of business at 1415 Harrison Street, in the city of San Francisco, Calif.

Respondent S. H. Pomeroy Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its office and principal place of business at 282 East 134th Street, in the city of New York, N. Y.

Respondent Soule Steel Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California and has its office and principal place of business at 1750 Army Street, in the city of San Francisco, Calif.

Respondent J. S. Thorn Company is a corporation organized, existing, and doing business under and by virtue of the laws of the

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State of Pennsylvania and has its office and principal place of business at 20th Street and Allegheny Avenue, in the city of Philadelphia, Pa.

Respondent Truscon Steel Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan and has its office and principal place of business in the city of Youngstown, Ohio.

Respondent Vento Steel Sash Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan and has its office and principal place of business at Sherman Boulevard, in the city of Muskegon Heights, Mich. Respondent Vento Steel Sash Company has, since the issuance of the complaint herein, changed its name to Vento Steel Products Company.

The respondents named in this paragraph will hereafter be referred to as corporate respondents.

PAR. 2. All of the above named corporate respondents are now, and have been since prior to the month of May 1935, engaged in the manufacture, sale and distribution of one or more of the following products, made principally from solid or formed sections of steel, iron, bronze, aluminum or other metal or alloy; pivoted windows, projected windows, continuous windows, basement windows, utility windows, detention windows, industrial doors, double-hung windows, counter-balanced windows, casement windows, metal frames, mechanical operators, stools, and screens. The business of these corporate respondents is commonly referred to, and generally known as, the metal window business. All of said corporate respondents sell their said products to wholesalers, dealers and consumers located at various points throughout the United States, and, when sales are made and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States, other than in the States of the origin of such shipments. Said corporate respondents maintain a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia. These corporate respondents are substantially all of the manufacturers and distributors of steel window products in the United States.

Prior to the adoption of certain practices hereinafter described, these corporate respondents were in active and substantial competition with each other in making and seeking to make sales of their products in trade and commerce between and among the several

States and in the District of Columbia, and, but for practices herein-after described, such active and substantial competition would have continued until the present and such corporate respondents would now be in active and substantial competition with each other.

The products manufactured and distributed by the corporate respondents are used principally in the construction of industrial, commercial and monumental buildings and are sold generally through the submission of bids on a given project to the builder thereof by sellers of such products. A substantial portion of the sales made by the corporate respondents during the last several years has been to the United States, the several States and to municipalities or to some political subdivision or agency thereof, for use in the construction of public buildings.

PAR. 3. The respondent Metal Window Institute is a voluntary unincorporated trade association, the membership of which is made up of firms engaged in the sale and distribution of one or more of the metal window-products above described. This respondent will hereinafter be referred to as the respondent association.

All of the corporate respondents were members of the respondent association from prior to the month of May 1935 until April 3, 1936, when the corporate respondent Campbell Metal Window Corporation resigned. The corporate respondent Vento Steel Sash Company, Inc., resigned its membership in the respondent association on June 20, 1936. All of the other corporate respondents were members of the respondent association at the time of the issuance of the complaint herein.

The respondent association was the means by and through which the understandings and agreements hereinafter mentioned were entered into, and through which many of the acts and things done and performed in carrying out said understandings and agreements were effected.

PAR. 4. Respondent Ralph H. Sartor is now, and has been since prior to the month of May 1935, an employee of respondent association, designated and described as "commissioner" and in such capacity is the executive secretary, and controls and directs the execution of plans and policies adopted by said respondent association.

Respondent Carl R. Raquet is an employee of respondent Detroit Steel Products Company, and is president of the respondent association.

Respondent Grover J. Meyer is an employee of respondent Truscon Steel Company and he represents said respondent on, and is a member of, the executive committee of the respondent association.

Respondent James Allinson is an employee of respondent J. S. Thorn Company, and he represents said respondent on and is a member of the executive committee of the respondent association.

Respondent Guy D. Bayley is an employee of respondent The William Bayley Company and he represents said respondent on and is a member of the executive committee of the respondent association.

Respondent Frank Garratt is an employee of respondent Hope's Windows, Inc., and he represents said respondent on and is a member of the executive committee of the respondent association.

These respondents will hereinafter be referred to as individual respondents.

Said individual respondents, as members of said executive committee of the respondent association, have controlled and directed since prior to the month of May 1935, and now control and direct, the practices, policies and activities of the respondent association and the corporate respondents insofar as their association activities are concerned in doing the acts and things hereinafter mentioned.

PAR. 5. Prior to the year 1934 certain of the corporate respondents organized a voluntary unincorporated trade association, under the name Solid Section Steel Window Industry, for the promotion of the interests of the members of said association. This association was, on or about January 10, 1934, succeeded by the respondent association.

Prior to the formation of these associations, certain of the corporate respondents compiled, and acting through these associations the corporate respondents have from time to time revised, a comprehensive and detailed gross or basic price book which gives the price, or the formula by which such price may be determined, for substantially all of the products of the metal window industry. This price book is revised or supplemented from time to time to meet changing conditions in the trade, and to include new products, and is distributed generally throughout the industry and is used in determining the gross or basic prices of said products. The prices stated in said book, or the prices arrived at by the application of the formulas stated, are uniform as to any given product in each price book so used for the determination of gross or basic prices. The actual sale price of a given product is determined by the corporate respondents, and other members of the industry, through the application of discounts to the gross or basic price shown in said price book, or determined by the application of the formula therein given.

Acting through the respondent association and its predecessors, the corporate respondents have established and maintained so-called

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clearing bureaus, at given points throughout the United States. These clearing bureaus were established primarily for the purpose of assisting the members of the respondent association in checking estimates made for metal window products from plans and specifications under which bids were to be submitted, and, in some instances, to check the application of the gross or basic prices shown by the price book to such estimates.

PAR. 6. The corporate respondents, acting through the said respondent association and said individual respondents, have since the month of May 1935, from time to time, entered into and carried out understandings and agreements, which resulted in restricting, restraining, and monopolizing, and eliminating competition in, the sale of metal window products in trade and commerce between and among the several States of the United States and in the District of Columbia.

Pursuant to said understandings and agreements, and in furtherance thereof, the respondents have done and performed the following acts and things:

1. Said corporate respondents agreed to use, and they have used, said gross or basic price book in pricing the products of the industry.
2. Each of said corporate respondents (a) agreed to file, and they have filed, with the respondent association a schedule of the discounts from the prices established by the gross or basic price book at which it would sell, and has sold, its products; (b) agreed that it would not change, or deviate from, the prices established by such discounts without first notifying the other corporate respondents of such a change at a specified period of time prior to the effective date of the change in prices; and (c) agreed that the respondent association could convey, and it has conveyed, to all other members the information contained in said schedule of discounts so filed.
3. Said corporate respondents agreed to maintain and adhere to, and they have maintained and adhered to a schedule of uniform discounts to be applied to the prices determined from the use of said gross or basic price book, the effect of which has been to establish fixed uniform minimum prices for the products of the industry.
4. Said corporate respondents agreed to fix, and they have fixed uniform terms and conditions that were a part of all sales made, including, among other things, mandatory erection, time for delivery, and allowance for freight.
5. Said corporate respondents agreed that they would not sell, and they have not sold, the products of the industry for less than the uniform minimum prices established through the use of said uniform

discounts without giving prior notice to each other of the fact that a sale was to be made at less than the minimum price agreed upon.

6. Said corporate respondents (a) agreed to submit and they have submitted, all estimates of bids to be made on a project in a given geographical area to one of said clearing bureaus, theretofore designated by the respondent association as the bureau to clear bids or prices for that particular area, for the purpose of securing identical gross, or, in some instances, net price estimates, which they (b) agreed to use, and they have used, in submitting bids on projects.

7. Said respondent association advised and required its members to adhere to the prices established by said agreements and was the agency for and it has been actively policing the industry; and, by threats of penalties to those who sold below said established prices and by persuasion, it induced many of the corporate respondents to adhere to the prices established by the aforesaid agreements, when, but for said threats and persuasion, they would not have adhered to the prices established by said agreements.

8. Said respondents, to prevent competitors who were not parties to the aforesaid understanding and agreements from being successful bidders on projects where such "non-cooperating" competitors were bidding, and to force such "non-cooperating" competitors to become members of said respondent association and a party to said understandings and agreements, agreed to declare and they have declared, the bidding on certain projects to be "open", whereupon the corporate respondents concertedly underbid and undersold such "non-cooperating" competitors; and because of such underselling and because of threats and exhortations, "non-cooperating" competitors of said corporate respondents did become members of said respondent association and parties to said understandings and agreements.

9. Said respondents secured the withdrawal and cancellation of bids submitted on projects where such bids offered said products at less than the prices established by the respondents.

In carrying out said understandings and agreements, and in doing the acts and things done and performed in furtherance thereof, each of said respondents acted in concert with one or more of the other respondents.

PAR. 7. The agreements and understandings, and the acts and things done thereunder, pursuant thereto, and in furtherance thereof, as hereinabove set forth, have had, and do have, the effect of unduly and unlawfully restricting and restraining trade and commerce in metal window products, between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the purchasing public, and maintaining

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prices at artificial levels, and otherwise depriving the public of the benefit that would flow from normal competition among and between said corporate respondents in the sale and distribution of metal window products; of eliminating competition in the sale of said products; with the tendency and capacity of creating a monopoly in the sale of said products in said commerce in the corporate respondents.

CONCLUSION

The aforesaid acts and practices of the corporate respondents, the individual respondents and the respondent association, in entering into and carrying out such agreements, understandings, combinations, and conspiracies, and in doing the acts and things done thereunder, pursuant thereto and in furtherance thereof, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint issued herein on November 11, 1936, and the answers filed herein by the respondents Metal Window Institute, Ralph H. Sartor, Carl R. Raquet, Grover J. Meyer, James Allinson, Guy D. Bayley, Frank Garratt, The William Bayley Company, Bliss Steel Products Corporation, The Bougert and Carlough Company, Campbell Metal Window Corporation, Ceco Steel Products Corporation, formerly Concrete Engineering Company, Crittall Manufacturing Company, Inc., Detroit Steel Products Company, Druwhit Metal Products Company, Federal Steel Sash Company, Inc., Michael Flynn Manufacturing Company, Hope's Windows, Inc., Kewanee Manufacturing Company, Mesker Brothers Iron Company, Michel & Pfeffer Iron Works, Inc., S. H. Pomeroy Company, Inc., Soule Steel Company, J. S. Thorn Company, Truscon Steel Company and Vento Steel Products Company, formerly Vento Steel Sash Company, Inc., in which the respondents agree that, for the purpose of disposing of this proceeding, all the material facts alleged in the complaint (except that respondents Campbell Metal Window Corporation and Vento Steel Products Company are presently members of the respondent Metal Window Institute) may be deemed to be admitted within the intent and meaning of Section 5 of the Federal Trade Commission Act, and that the respondents waive hearings, and all other

intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the corporate respondents The William Bayley Company, Bliss Steel Products Corporation, The Bougert and Carlough Company, Campbell Metal Window Corporation, Ceco Steel Products Corporation, formerly Concrete Engineering Company, Crittall Manufacturing Company, Inc., Detroit Steel Products Company, Druwhit Metal Products Company, Federal Steel Sash Company, Inc., Michael Flynn Manufacturing Company, Hope's Windows, Inc., Kewanee Manufacturing Company, Mesker Brothers Iron Company, Michel & Pfeffer Iron Works, Inc., S. H. Pomeroy Company, Inc., Soule Steel Company, J. S. Thorn Company, Truscon Steel Company and Vento Steel Products Company, formerly Vento Steel Sash Company, Inc., their officers, agents and employees cease and desist from entering into and carrying out any understanding, agreement, combination and conspiracy between and among any two or more of said respondents for the purpose or with the effect of restricting, restraining or monopolizing, or eliminating competition in, the sale in interstate commerce of any or all of the following products, made principally from solid or formed sections of steel, iron, bronze, aluminum, or other metal or alloy: pivoted windows, projected windows, continuous windows, basement windows, utility windows, detention windows, industrial doors, double-hung windows, counter-balanced windows, casement windows, mechanical operators, stools and screens for metal windows and doors, and other window products, and as a part of such understanding, agreement, combination or conspiracy from doing any of the following acts and things:

1. (a) Filing with the respondent association Metal Window Institute, or any other agency, schedules showing the discounts which will be allowed from the gross or basic prices shown in any gross or basic price book commonly in use in the metal window industry.

- (b) Maintaining the prices established by applying stated discounts to said gross or basic price book for a specified period of time and until after notice has been given competitors of a contemplated change in discounts allowed.

- (c) Circulating schedules of discounts from the gross or basic prices established by said gross or basic price book through the respondent association, Metal Window Institute, or otherwise, among competitors.

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2. Establishing, maintaining and adhering to schedules of uniform discounts to be applied to gross or basic prices as established from the use of any gross or basic price book commonly in use in the industry.

3. Establishing and maintaining minimum prices.

4. Establishing and maintaining uniform terms and conditions of sales, such as mandatory erection by the seller, time for delivery, and allowances for freight.

5. Declining to sell to purchasers for less than the prices established by stated discounts from the gross or basic price determined through the use of any gross or basic price book commonly in use in the industry without having first given notice to competitors that a sale is to be made at prices less than the prices established through the application of said discounts.

6. Submitting estimates to be used as the basis of bids on a project in a given geographical area to a clearing bureau of the respondent, Metal Window Institute, or any other agency designated as the agency to "clear" estimates for the particular area involved, for the purpose of eliminating price competition in bidding on such project or for any other purpose than that of detecting errors in the interpretation of specifications or in the preparation of the estimates; and in no case shall estimates or bids disclosing the discounts or net prices to be quoted be submitted to any such bureau.

7. Attempting by any form of concerted action, including underbidding and underselling in a given transaction, to induce, persuade or require any competitor to adopt, abide by, observe or maintain in any transaction, or series of transactions or for any stated period of time or generally, any schedule of discounts, net prices or terms and conditions of sale identical with or substantially similar to the schedules of discounts, net prices or terms or conditions of sale adopted or favored by the respondent making such attempt.

8. Securing the withdrawal and cancellations of bids submitted on projects where prices stated in such bids are less than those established and maintained by respondents.

9. Comparing net discounts or selling prices or terms or conditions of sale quoted or to be quoted in bidding on any project, or engaging in any form of collusive bidding on any project whether in connection with the checking of estimates to detect errors or otherwise.

10. Conducting any investigation or joint discussion for the purpose of ascertaining and reporting for their joint benefit if, when, and to what extent any competitor has deviated from any schedule of discounts, net prices or terms or conditions of sale or any announced or quoted prices, or otherwise bringing pressure or per-

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suasion to bear upon competitors not to deviate from any such price list or price; provided that nothing herein contained shall prevent the gathering, compilation and distribution to the trade of statistics, including discounts, net prices, terms and conditions and other particulars of closed transactions when not done for the purpose or with the effect of policing the activities prohibited herein.

It is further ordered, That the respondent association Metal Window Institute, its officers, agents, and employees, and the individual respondents Ralph H. Sartor, Carl R. Raquet, Grover J. Meyer, James Allinson, Guy D. Bayley, and Frank Garratt forthwith cease and desist aiding, abetting and encouraging, or cooperating with, said corporate respondent in doing any of the acts or things prohibited by this order.

It having been made known to the Commission that the death of the individual respondent C. J. McIntosh occurred during the pendency of this proceeding;

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to the respondent C. J. McIntosh.

It is further ordered, That the 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 complied with this order.

ORDER OF DISMISSAL, OR CLOSING CASE, ETC.¹

ASSOCIATED RUBBER CORPORATION. Complaint, June 30, 1936. Order, June 8, 1937. (Docket 2868.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling and using misleading brand name as to quality and price value of product; in connection with the sale of automobile tires.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same and being now fully advised in the premises, and it appearing that the Associated Rubber Corporation, the sole respondent herein, has been dissolved;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

Mr. John Darsey for the Commission.

Mallory & Gilbert, of Springfield, Mass., for respondent.

M. J. LEVINSON, trading as J. LEWIS, FRANCINE LABORATORIES and SUPERIOR PRODUCTS Co. Complaint, May 10, 1937. Order, June 9, 1937. (Docket 3126.)

Charge: Misrepresenting agents' earnings and selling plan or "deposits", source or origin or nature of product, and business status; in connection with the sale of packaged drugs, chemical specialties, and feminine hygiene products.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that M. J. Levinson, respondent, has been convicted and sentenced for violation of the postal laws upon charges similar to the allegations of the complaint, and it further appearing that the respondent's place of business has been closed and that there is no likelihood that said business will be resumed by him, and the Commission having duly considered the same and being now fully advised in the premises;

¹In addition to the cases below enumerated, complaints were dismissed during the period covered by this volume in the cases of Kraft-Phenix Cheese Corp., Docket 2935, IIRD & Son., Inc., et al., Docket 2937, and Shefford Cheese Co., Inc., Docket 2936, respectively reported in full *supra* at pages 537, 548, and 1209.

It is ordered, That the case growing out of the complaint hereinbefore issued on the 10th day of May 1937, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. Wm. T. Chantland for the Commission.

MAGNECOIL Co., INC. Complaint, June 16, 1930. Original order, September 25, 1933. (Docket 1846.) 18 F. T. C. 60. Order vacating, etc., June 16, 1937.

The cease and desist order in this misrepresentation of so-called electro-therapeutic blankets case was ordered vacated and set aside by the following order:

This matter coming on for consideration on the record herein, and it appearing to the Commission that an order to cease and desist was entered and issued herein on September 25, 1933, based upon the consent of the respondent to cease and desist from the unfair methods of competition charged in the complaint, and the Commission being fully advised in the premises,

It is ordered, That the said order to cease and desist entered and issued herein on September 25, 1933, be, and the same hereby is, vacated and set aside, and that the taking of testimony on the charges of the complaint in this proceeding be, and the same hereby is, ordered to be begun upon reasonable notice to the respondent herein.

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

Mr. Eugene W. Burr for the Commission.

Ball, Musser & Mitchell, of Salt Lake City, Utah, for respondent.

J. V. LINEHAN and C. A. WELDT, trading as LION MANUFACTURING Co. Complaint, July 11, 1930. Order, June 16, 1937. (Docket 1856.)

Charge: Advertising falsely or misleadingly as to nature of product and using lottery scheme; in connection with the sale of blankets and various articles of merchandise.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondents discontinued the practices complained of during the year 1930, and that they are not now engaged in said practices and have not engaged in the same since about the year 1930, and it further appearing that the respondents have no intention to resume the sale of merchandise by the method complained of in the complaint herein, and the Commission having duly considered the same and being now fully advised in the premises;