

IN THE MATTER OF

OLIVER BROTHERS, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3088. Complaint, Mar. 26, 1937—Decision, Dec. 31, 1937

Where manufacturers, processors, and producers engaged in—

(1) Selling commodities, in course of interstate commerce, to distributing buyer concerns purchasing commodities in course of such commerce, through orders placed by such distributing buyer concerns as subscribers to corporation engaged in (a) selling market information and purchasing services to 300 distributing concerns scattered over the United States and, chiefly, wholesalers of automobile, electrical, radio, mill, machine, plumbing, steam, and hardware supplies, and in (b) purchasing, under its subscriber contracts and as called upon so to do, from several hundred similarly scattered individual manufacturers, processors, importers or producers; and in—

(2) Shipping merchandise to buyers in question as a result of orders thus placed by latter with aforesaid corporate service and under contract with it, pursuant to which, and in accordance with practice followed, said corporate service transmitted and paid over to buyers regular brokerage fees paid to it by purchasers on transactions in question, and in which fees it claimed no right, title or interest, and in which various transactions said corporate service acted solely as the agent and representative of the buyer and donated service, if any, to seller, and in connection with which various transactions buyers rendered no service either to said corporate concern or to sellers involved in connection with their purchase of commodities through said corporate concern, with result that buyers, through such service, obtained, by reason of payment over of such brokerage fees to them, a lower price on commodities thus purchased than other buyers and non-members of said corporate service organization obtained, on similar goods in like quantity bought direct from such sellers;

In pursuance of a general plan or scheme whereby fees and commissions paid by sellers might be and were made available to and transmitted to buyers through said corporate service and buyers be enabled to secure discounts in price from sellers under guise of brokerage payments—

(a) Paid fees or commissions in connection with offer, sale and distribution of commodities as brokerage to aforesaid corporate service, with knowledge and intent that such fees or commissions would be and were paid over by said service to purchasers thereof as aforesaid; and

Where aforesaid distributing buyer concerns, engaged as aforesaid and as subscriber purchasers of said corporate service—

(b) Accepted and received from said service fees or commissions paid or granted to it as brokerage or allowance by sellers of commodities on sales made by such sellers to aforesaid buyers; and

Where such corporate service, engaged as aforesaid—

- (c) Received and accepted such fees and commissions as brokerage from aforesaid sellers and for payment over to purchasers of commodities as above set forth, or for their use and benefit; and
- (d) Paid or granted to purchasers of commodities as above described, fees or commissions received or accepted by it as brokerage, or allowance in lieu thereof, from sellers thereof as aforesaid:

Held, That such acts and practices constituted a violation of Subsec. (c) of Sec. 2 of an act of Congress approved Oct. 15, 1914 (as amended).

Before *Mr. John J. Keenan*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Mr. Felix H. Levy, of Levy & Molloy, of New York City, for respondents, excepting Charles F. Baker & Co., Inc., for whom appeared *Mr. Grosvenor Calkins*, of Boston, Mass.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes," the Federal Trade Commission, having reason to believe that the respondents named above in the caption hereof, and hereinafter more particularly designated and described, have violated, and are now violating, the provisions of Subsection (c) of Section 2 of said Act as amended, hereby issues its complaint against the said respondents, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Oliver Brothers, 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 located at 417-421 Canal Street, in the city and State of New York.

PAR. 2. Respondent, W. D. Allen Mfg. Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 566 West Lake Street in the city of Chicago, State of Illinois. Respondent, Black Hardware Co., is a corporation organized and existing under and by virtue of the laws of the State of Texas, with an office and principal place of business located at 2217 Avenue B in the city of Galveston, State of Texas. Respondent, Jacobi Hardware

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Co., is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 12 South Front Street in the city of Wilmington, State of North Carolina. Respondent, Matthews & Boucher, is a copartnership composed of William G. Fisher and William S. Johnson, with an office and principal place of business located at 26 Exchange Street, in the city of Rochester, State of New York. Respondent, Charlotte Supply Co., is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 500 South Mint Street, in the city of Charlotte, State of North Carolina. Respondent, Virginia-Carolina Hardware Company, is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with an office and principal place of business located at 1316 East Main Street, in the city of Richmond, State of Virginia.

PAR. 3. Respondent, Globe Crayon Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 383 Third Avenue, in the city of Brooklyn, State of New York. Respondent, E. V. Crandall Oil & Putty Mfg. Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 1105 Metropolitan Avenue, in the city of Brooklyn, State of New York. Respondent, Chas. F. Baker & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with an office and principal place of business located at 113 State Street, in the city of Boston, State of Massachusetts. Respondent, Keystone Emery Mills, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with an office and principal place of business located at 4329 Paul Street, Frankford, in the city of Philadelphia, State of Pennsylvania. Respondent, Jas. Corner & Sons, is a sole proprietorship, owned by James A. Reilly, sole proprietor, with an office and principal place of business located at 438 North Front Street, in the city of Baltimore, State of Maryland.

PAR. 4. Said respondent, Oliver Brothers, Inc., is engaged in the business of providing market information services and purchasing services for numerous and divers wholesalers, jobbers, merchants, and dealers, located in the several States of the United States, certain of whom are named in paragraph 2 above, and joined as respondents herein, and being hereinafter more particularly described and referred to for convenience as respondent buyers. Said respondent, Oliver Brothers, Inc., in the course and conduct of its business as aforesaid,

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pursues a policy and practice of purchasing commodities, particularly hardware, for the wholesalers, jobbers, merchants, and dealers above referred to, from numerous and divers manufacturers, processors and producers located in the several States of the United States, certain of whom are named in paragraph 3 above, and joined as respondents herein, and being hereinafter more particularly described and referred to for convenience as respondent sellers. In the course and conduct of its business as aforesaid, said respondent, Oliver Brothers, Inc., represents and acts for or on behalf of said respondent buyers and other buyers above mentioned generally and as a group or class engaged in common practices, and specifically for each and every named respondent buyer, in the purchase of commodities which are transported between and among the several States, whenever specifically requested so to do, and in the manner and form specified, directed and ordered by said respondent buyers, and such other buyers, acting individually.

PAR. 5. Said respondent buyers named in paragraph 2 above are each engaged in the business of buying commodities usually from sellers located in States other than the state in which such buyers are located and of reselling such commodities to their customers.

Said respondent buyers are fairly typical and representative members of a large group or class of wholesalers, jobbers, merchants, and dealers, all of whom have by contract subscribed to the market information services and purchasing services furnished by said respondent, Oliver Brothers, Inc. Said group or class embraces approximately 300 of such dealers and is so numerous as to make it impracticable to specifically name each and every one of them as respondents herein or to bring them before the Commission in this proceeding. All of said buyers are or have been engaged in similar practices to those hereinafter charged against the respondent buyers.

PAR. 6. Said respondent sellers named in paragraph 3 above are each engaged in the business of selling commodities usually to buyers located in States other than the State in which said sellers are respectively located. Said respondent sellers are fairly typical and representative members of a large group or class of manufacturers, processors and producers, engaged in the common practice of selling to said respondent buyers and to other buyers of the above-mentioned class or group who use the purchasing services of said respondent, Oliver Brothers, Inc., some of their commodities in interstate commerce, in fulfillment of orders placed by said respondent, Oliver Brothers, Inc., at the instance and upon the request of said buyers, acting individually. Said group or class of said sellers comprises a large number of such manufacturers, processors, and producers, and are too numerous to be individually named herein as respondents.

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PAR. 7. Respondent, Oliver Brothers, Inc., in the course and conduct of its said business, receives orders to purchase commodities, particularly hardware, from members of said group of buyers, including respondent buyers, located in the various States of the United States, and transmits such orders to and executes the same with individual members of said group of sellers, including respondent sellers, who, in most cases, are located in States of the United States other than the State in which such buyer or buyers are located. As a result of the transmission of such orders by said buyers to respondent, Oliver Brothers, Inc., the execution of the same by said respondent, Oliver Brothers, Inc., at the instance and upon the request of said buyer or buyers, and the acceptance of said orders by said sellers or one or more of them, goods, wares, and merchandise, particularly hardware, are, in the case of each order and in a continuous succession of such orders, sold and delivered by one or more of the said sellers to one or more of said buyers, by such means and in the manner stated, all of the respondents cause to be transported from one State to another, goods and commodities to be resold to said buyers' customers or to consumers. In the operations and activities referred to, each and every one of the respondents is engaged in interstate commerce, in practices which contemplate and result in the transportation of commodities in interstate commerce and in making sales and purchases which directly affect and bring about such commerce.

PAR. 8. In the course of the buying and selling transactions hereinabove referred to, resulting in the delivery of commodities from one or more of the said sellers to one or more of said buyers, by means of the purchasing services of said respondent, Oliver Brothers, Inc., as agent for said buyers, said sellers have transmitted and paid, or allowed and credited and do transmit and pay, or allow and credit, to said respondent, Oliver Brothers, Inc., as agent or representative, for or in behalf of, or subject to the direct or indirect control of said buyers, a so-called brokerage fee or commission, the amount of which varies but which is usually between 1% and 10% of the quoted sale price agreed upon by buyer and seller. Said respondent, Oliver Brothers, Inc., while acting as agent or representative, for or in behalf of, or subject to the direct or indirect control of said buyers, has and does accept and receive such so-called brokerage fees or commissions and has transmitted and paid over, or allowed and credited, and does transmit and pay over, or allow and credit, said so-called brokerage fees or commissions to said buyers, in the amount and to the extent to which such so-called brokerage fees or commissions are received by said respondent, Oliver Brothers, Inc., such payments to

the individual buyer being the amount paid by the individual seller in the given transaction to which such buyer is a party.

PAR. 9. In all of said transactions respondent, Oliver Brothers, Inc., is the agent and representative of said buyers, acting for them and in their behalf, and under their direct or indirect control. In fact, such so-called brokerage fees or commissions are not paid and transmitted by said sellers to said respondent, Oliver Brothers, Inc., nor are the same received, held, or retained by said Oliver Brothers, Inc., as payment for any services rendered to said sellers by said Oliver Brothers, Inc., while acting as agent or representative for or in behalf of or subject to the direct or indirect control of said buyers. No services connected with such payments or grants, receipts or acceptances, denominated as commissions or brokerages are or have been rendered to an aforesaid seller by an aforesaid buyer or by said agent in connection with said transactions of sale or purchase of goods, wares or merchandise. The payment of said so-called brokerage fees or commissions by said sellers to said buyers through the intermediary, said respondent, Oliver Brothers, Inc., while acting as agent or representative, for or in behalf of, or subject to the direct or indirect control of an aforesaid buyer, and the receipt and acceptance of such so-called brokerage fees and commissions by an aforesaid buyer from an aforesaid seller, through said intermediary, in the manner and under the circumstances hereinabove set forth, is in violation of the provisions of subsection (c) of Section 2 of the Act described in the preamble hereof. The acceptance and receipt of said so-called brokerage fees and commissions by said respondent, Oliver Brothers, Inc., while acting as agent or representative for or in behalf of or subject to the direct or indirect control of an aforesaid buyer, from an aforesaid seller, and the acceptance and receipt thereof for the use and benefit of an aforesaid buyer, is in violation of the terms of said statute.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes" the Federal Trade Commission on March 26, 1937, issued and served its complaint in this

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proceeding upon the respondents named in the caption hereof, charging them with violating the provisions of subsection C of section 2 of the said act as amended. After the issuance of said complaint and the filing of respondents' answers thereto, the taking of testimony and other evidence herein was waived by a stipulation entered into on November 5, 1937, between W. T. Kelley, Chief Counsel for the Commission and Grosvenor Calkins, attorney for Charles F. Baker & Co., Inc., F. L. Degener, Jr., attorney for Keystone Emery Mills, and Felix H. Levy, attorney for all the other above-named respondents, which stipulation was thereafter duly approved by the Commission and filed in the office of the Commission. Said stipulation was so executed in conformity with and as supplemental to a certain stipulation entered into between the said parties above named on April 27, 1937. By the terms of the stipulations above referred to and in the answers to the complaint filed herein respondents admitted certain facts alleged in said complaint and certain other facts then before the Commission in this and another proceeding (respondents reserved, however, the right to contest this proceeding upon any review before the U. S. Circuit Court of Appeals or the U. S. Supreme Court with respect to any conclusions of fact or conclusions of law drawn herein by the Commission), and by said stipulations respondents agreed that the Commission might proceed to dispose of this proceeding on the record. And a final hearing before the Commission on the said record, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel aforesaid, having been waived by the stipulations aforesaid, and the Commission having considered the record 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 OF THE FACTS

PARAGRAPH 1. Respondent Oliver Brothers, Inc., hereinafter at times referred to as Oliver, 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 located at 417-421 Canal Street, in the city and State of New York.

PAR. 2. Respondent W. D. Allen Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 566 West Lake Street in the city of Chicago, State of Illinois. Respondent Black Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of

Texas, with an office and principal place of business located at 2217 Avenue B in the city of Galveston, State of Texas. Respondent Jacobi Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 12 South Front Street in the city of Wilmington, State of North Carolina. Respondent Matthews & Boucher is a co-partnership composed of William G. Fisher and William S. Johnson, with an office and principal place of business located at 26 Exchange Street, in the city of Rochester, State of New York. Respondent Charlotte Supply Company is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, with an office and principal place of business located at 500 South Mint Street, in the city of Charlotte, State of North Carolina. Respondent Virginia-Carolina Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with an office and principal place of business located at 1316 East Main Street, in the city of Richmond, State of Virginia.

PAR. 3. Respondent Globe Crayon Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 383 Third Avenue, in the city of Brooklyn, State of New York. Respondent E. V. Crandall Oil & Putty Manufacturing Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 1105 Metropolitan Avenue, in the city of Brooklyn, State of New York. Respondent Charles F. Baker & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with an office and principal place of business located at 113 State Street, in the city of Boston, State of Massachusetts. Respondent Keystone Emery Mills is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with an office and principal place of business located at 4329 Paul Street, Frankford, in the city of Philadelphia, State of Pennsylvania. Respondent James Corner & Sons is a sole proprietorship, owned by James A. Reilly, sole proprietor, with an office and principal place of business located at 438 North Front Street, in the city of Baltimore, State of Maryland.

PAR. 4. Respondent Oliver Brothers, Inc., is engaged in the business of selling a market information service and also purchasing services to over 300 distributing concerns scattered over the United States, who are principally wholesalers of automobile, electrical, radio, mill, machine, plumbing, steam, and hardware supplies. These distribut-

ing concerns are located in many cities in forty-two States of the United States, and in the District of Columbia, Canada and Haiti. Respondents named in paragraph 2 hereof are among the distributing concerns purchasing the market information service and the purchasing services of respondent Oliver Brothers, Inc., and they are representative members of the entire group, insofar as the practices charged in the complaint are concerned. This group will hereafter be referred to as buyers. In making available and providing its purchasing services to the said buyers, the respondent Oliver Brothers, Inc., agrees to and does purchase merchandise for said buyers from several hundred individual manufacturers, processors, importers or producers who are scattered over the United States. Respondent manufacturers, processors and producers named in paragraph 3 hereof are representative of this entire group, all of whom in making sales to the buyers above mentioned through respondent Oliver Brothers, Inc., use the same methods as the named respondents. This group will hereafter be referred to as sellers.

PAR. 5. Respondent sellers are engaged in selling commodities in the course of interstate commerce. Respondent buyers are engaged in purchasing commodities in the course of interstate commerce. Respondent Oliver Brothers, Inc., transmits orders for merchandise from respondent buyers to respondent sellers, as a result of which commodities are shipped from sellers to buyers usually from one State to another. All of said respondents are engaged in interstate commerce in participating in the commercial transactions hereafter more specifically described.

PAR. 6. Respondent Oliver Brothers, Inc. was incorporated under the laws of the State of New York on July 19, 1905, and has a branch office in Chicago, Ill. It has a force of several salesmen who habitually travel throughout the United States to solicit distributing concerns to purchase the Oliver market information service and purchasing services. These men at times also contact manufacturers and processors. It also has a number of buyers and assistant buyers who place orders for Oliver subscribers and who contact manufacturers, processors and producers on behalf of Oliver clients. Respondent Oliver Brothers, Inc., often examines and tests the wares of such manufacturers and producers and get descriptions of goods and prices, which information is sent to the Oliver subscribers. Oliver also furnishes to said buyers a loose-leaf price book containing price lists on, and sources of supply from which can be obtained, the majority of the types of commodities purchased and resold by said buyers, which said loose-leaf price book Oliver keeps current by the issuance of revised sheets from time to time as market prices and

sources of supply change. It is in a favorable position to furnish accurate, constant, regular and reliable market information service. It handles, through its buying operations, the goods upon which it reports to its clients. Among its employees are specialists who have devoted many years to their respective lines of merchandise and who are in constant contact with the markets in performing their duties with said respondent.

PAR. 7. The Oliver Brothers, Inc., subscribers severally employ Oliver at a stipulated monthly sum ranging from \$25.00 upward. This employment is evidenced by a contract between Oliver and the subscriber which is in the following form:

OLIVER BROTHERS, INC.

(Established 1892)

200 Hudson Street,
New York, N. Y.

Resident Buyers For
Wholesalers of

Hardware, Iron, Steel, Metals,
Blacksmiths, Railway, Mill
Mining, Machinery, Engineers,
Automobile, Electrical, Radio,
Plumbers and Steamfitters
Supplies

Telephone 16 lines

Cable Address

Oliveleaf, New York

Codes Used

A. B. C. (5th Edition) Bentleys
Rudolf Mosse General Motors
Lieber's Standard-Lieber's
5 letter edition
Western Union Universal and 5
letter edition
United States Steel Corporation

Branch Offices

Chicago, Illinois

59 E. Van Buren Street

Pittsburgh, Pennsylvania

P. O. Box 6462 North Side Station

Please mark your reply

Dept. A. B. C.

SUBJECT: CONTRACT FOR -----

Dear Sirs:—We hereby agree to act as your New York, Chicago and Pittsburgh Resident Representatives in the capacity of Purchasing Agents.

We agree to furnish you our loose-leaf Price Book and send you our General Service covering lines as per the subject hereof; also to send you Oliver Brothers' Comment Letters, letters on Market Conditions, lists of special offerings, and submit to you other information in the way of prices and market information which we may consider to be of interest to you.

We will use our best efforts to secure the lowest possible prices on your inquiries or orders. We will forward to the manufacturers or parties with whom we have favorable arrangement such orders for merchandise as you may send to us.

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Orders which we may receive from you or letters which we may receive are to be regarded as authority to act as your Agents in connection with any transaction which may transpire between us. While we will use our best efforts in acting as your Agent it is understood that we will not be liable for the failure of any manufacturer or supplier to perform his agreements or promises in connection with quotations or shipments.

It is mutually agreed that all communications between us in the way of correspondence, Comment Letters, letters on Market Conditions or Confidential Price Sheets, shall be treated as strictly confidential and used solely in connection with your own business and shall not be divulged to other parties nor procured for the use of other parties.

All business transacted between us is to be subject to satisfactory credit arrangements. In some instances, we secure special prices by reason of having the merchandise charged to our own account.

You agree to pay us for performing the services mentioned above the sum of \$ Dollars per month, to be paid in equal monthly installments. This agreement shall commence and shall continue from year to year thereafter without further notice but with the understanding that either of us may terminate this agreement at the end of any period of one year after date by giving to the other notice in writing of an intention to do so at least sixty days before the end of such yearly period.

It is agreed that upon the termination of this contract you will return our loose-leaf Price Book and Private Code.

ACCEPTED

OLIVER BROTHERS, INC.

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No subscriber has any exclusive right to the Oliver services, but they are sold to any wholesaler who wants them, subject only to the requirement that he has good credit rating. The Oliver services are quite often bought by several dealers in the same line in the same town. Oliver yearly buys for its subscribers from said sellers several million dollars worth of commodities for resale by the buyers and as a result of said purchases such merchandise is shipped and transported from the State in which the sale is located when the order is placed into and through other States of the United States, where they are delivered to purchasers who are Oliver subscribers. Oliver receives daily from its subscribers approximately one hundred orders. When a subscriber forwards an order to Oliver, usually at a specified price Oliver transmits the order to the seller. The seller ships the product direct to the buyer, in most cases billing the buyer at the price specified in the order. The buyer in most cases makes payment direct to the seller. The seller then sends a commission or brokerage on the transaction and Oliver pays this to the buyer or credits it to his account. If a buyer fails to name the purchase price, he expects to get the last price quoted by Oliver in its bulletin, or a lower price. If Oliver finds that the market has advanced he communicates with

the buyer and confirms the order at the new price before transmitting it to the seller. The buyer in some cases names the seller whose products are wanted, but in some cases he relies upon Oliver to transmit the order to some producer who will supply goods of the quality and standard required.

PAR. 8. All respondent sellers have made sales of commodities in interstate commerce through Oliver Brothers, Inc., to respondent buyers and other Oliver buyers and have paid brokerage fees on such transactions to respondent Oliver Brothers, Inc., which brokerage fees were later paid over or credited by respondent Oliver Brothers, Inc., to the particular respondent buyer or other buyer. Respondent Keystone Emery Mills, after the service of the complaint herein, discontinued the practice of paying Oliver Brothers, Inc., brokerage on sales made to the Oliver buyers through Oliver Brothers, Inc. All of the respondent sellers at the time of payment of brokerage fees to respondent Oliver Brothers, Inc., had knowledge of the fact that Oliver Brothers, Inc., paid such fees over to the buyer placing the order and to whom the goods were shipped.

PAR. 9. The sellers from whom respondent Oliver Brothers, Inc., buys for its clients pay to Oliver brokerage fees at the same rate that they pay other brokers who sell goods for them. This rate ranges from 1% to 10%, but being usually from 2½ to 5%, of the invoice price of the commodities sold. It is a matter of common knowledge in the trade that Oliver Brothers, Inc., receives these fees for the use of its subscribers and pays them over in their entirety to the buyers. Respondent Oliver Brothers, Inc., receives and accepts these brokerage fees for the use and benefit of its subscribers and does not claim any right, title or interest in such fees. The buyers receive and accept these brokerage fees from respondent Oliver Brothers, Inc., and know that they are to receive them at the time they place orders for merchandise for execution by Oliver. The Oliver buyers, by reason of the fact that they receive the brokerage fees paid to Oliver, get a lower price on commodities, purchased through Oliver from the sellers than other buyers who are not members of the Oliver organization get on similar goods in like quantity bought direct from said sellers.

PAR. 10. In all of the purchasing transactions which the respondent Oliver Brothers, Inc., executes for its buyers, Oliver Brothers, Inc., is the agent and representative of the buyer, and acts in fact for such buyer and in his behalf, and is subject to his control, insofar as such purchasing transaction is concerned. Said respondent Oliver Brothers, Inc., in such purchasing transactions is neither the agent nor representative of the seller nor does it act for or in behalf

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or is it under the control of such seller. Such services as respondent Oliver Brothers, Inc., may render to the seller in selling his commodities are incidental to the particular purchase and sale transaction, and if any services are so rendered by Oliver in connection with the sale or purchase of such commodities, such services are donated by Oliver Brothers, Inc., to the seller. There is not, in fact, any payment of brokerage commissions made by any of respondent sellers to respondent Oliver Brothers, Inc., which is not intended for the buyer and which does not reach the buyer. Such brokerage commissions, being intended for the buyers, are not in fact paid in satisfaction of any contractual or other indebtedness due from the seller to respondent Oliver Brothers, Inc., for services rendered, or otherwise. These payments, in effect are actually made from the seller to the buyer and the buyer receives a discount in price equivalent to the brokerage fee paid to him. Respondent buyers render no service to respondent sellers in connection with the purchase of commodities through respondent Oliver Brothers, Inc. Respondent buyers render no service to respondent Oliver Brothers, Inc., in connection with the purchase of goods, wares and merchandise made for them by said respondent Oliver Brothers, Inc.

PAR. 11. The contract between respondent Oliver Brothers, Inc. and its subscribers is construed by the parties thereto as being a contract for the sale and purchase of the Oliver market information service with a privilege extended to the buyers of using the Oliver purchasing services at their option. The buyers pay the monthly fee stipulated in the contract for the market information service. The buyers exercise their option to use the purchasing services of Oliver Brothers, Inc. in order to secure a discount in price from the current market price and the buyers when purchasing commodities through Oliver compute the net price at which the purchase is made as being the quoted price less the fee or commission paid by the seller as brokerage to Oliver and by Oliver transmitted to them. The buyers, in their bookkeeping, do not treat the brokerage fees and commission received from respondent Oliver Brothers, Inc. as being an offset to the monthly fee paid by them to Oliver. The amount of the monthly fee paid by the buyers to Oliver is fixed at the time the contract is made, but the amount of the brokerage fees and commissions which may be received by a given buyer from the utilization of the Oliver purchasing services is unknown and incapable of ascertainment at the time the contract is entered into.

PAR. 12. All payments of brokerage fees made by respondents as hereinabove set forth are made as a part of a general plan or scheme which contemplates and results in payment of brokerage fees from

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the seller to the buyer through the respondent Oliver Brothers, Inc., and which enables the buyers to secure discounts in price from the sellers under the guise of brokerage payments.

CONCLUSION

The Commission concludes that the respondents Globe Crayon Company, Inc., E. V. Crandall Oil & Putty Manufacturing Company, Inc., Charles F. Baker & Company, Inc., Keystone Emery Mills and James Corner & Sons, have violated and are violating Subsection C, section 2 of the Clayton Act as amended, by paying fees and commissions as brokerage to respondent Oliver Brothers, Inc., in the sale of commodities to respondent buyers and other buyers, with knowledge of the fact that such fees and commissions were and are intended to be and were and are being paid over by said respondent Oliver Brothers, Inc. to said buyers.

The Commission further concludes that respondents W. D. Allen Manufacturing Company, Black Hardware Company, Jacobi Hardware Company, Matthews & Boucher, Charlotte Supply Company and Virginia-Carolina Hardware Company have violated and are violating the provisions of Subsection C, section 2 of the said statute, by receiving and accepting fees and commissions paid as brokerage by said respondent sellers and other sellers, in connection with the purchase of commodities by said buyers through respondent Oliver Brothers, Inc.

The Commission further concludes that respondent Oliver Brothers, Inc. has violated and is violating the provisions of subsection C, section 2 of said statute, by receiving such fees and commissions as brokerage from respondent sellers and transmitting and paying over the same to respondent buyers; further, that said respondent Oliver Brothers, Inc. is the instrumentality and means by which respondent sellers unlawfully are enabled to make payment of such fees and commissions as brokerage to respondent buyers, and by which respondent buyers are enabled to receive and accept the same.

The Commission further concludes that the violations of said statute referred to are in pursuance of a general plan and scheme whereby fees and commissions paid by the sellers are made available to and transmitted to the buyers.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and the stipulations as to certain facts entered into by

counsel for the Commission and said respondents, in which stipulations and answers respondents admitted certain facts contained in the said complaint and certain other facts before the Commission in this and another proceeding and waived formal hearings herein and agreed that without further evidence or other intervening procedure the Commission might proceed to dispose of this proceeding. And the Commission having made its findings as to the facts and its conclusion that said respondents had violated and were violating the provisions of subsection C, section 2 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes."

It is ordered, That respondents Globe Crayon Company, Inc., E. V. Crandall Oil & Putty Manufacturing Company, Inc., Charles F. Baker & Company, Inc., Keystone Emery Mills and James Corner & Sons, and their officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from paying or granting to respondent Oliver Brothers, Inc. any fee or commission on sales of commodities, as brokerage or as an allowance in lieu thereof, which fee or commission is intended to be paid over or which is in fact subsequently to be paid over, in whole or in part, by said respondent Oliver Brothers, Inc. to any purchaser of such commodities.

It is further ordered, That respondents W. D. Allen Manufacturing Company, Black Hardware Company, Jacobi Hardware Company, Matthews & Boucher, Charlotte Supply Company and Virginia-Carolina Hardware Company, and their officers, representatives, agents and employees, in connection with the purchase of commodities in interstate commerce or in the District of Columbia, do forthwith, cease and desist from accepting or receiving from respondent Oliver Brothers, Inc., any fee or commission which has been paid or granted to said Oliver Brothers, Inc., as brokerage or as an allowance in lieu thereof, by a seller of commodities on sales made by such seller to said respondents.

It is further ordered, That respondent Oliver Brothers, Inc., its officers, representatives, agents, and employees, in connection with the purchase or sale of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Receiving or accepting any fee or commission, as brokerage or as an allowance in lieu thereof, from any seller of commodities, which fee or commission is intended to be paid over to the purchaser of such commodities, or which is to be applied for the use and benefit of such purchaser;

2. Paying or granting to any purchaser of commodities any fee or commission received or accepted by said Oliver Brothers, Inc., as brokerage or an allowance in lieu thereof, from the seller of such commodities.

It is further ordered, That the respondents and each of them shall within 90 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
WORTHMORE SALES PROMOTION SERVICE,
INCORPORATED

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

Docket 2946. Complaint, Oct. 15, 1936—Decision, Jan. 4, 1938

Where a corporation engaged in manufacture and printing of sales promotion or trade cards, arranged for recording or punching out thereon purchases of customers or consumers to whom distributed, and in sale and distribution thereof to retail merchants in the various States, in competition with concerns making and distributing trading stamps and other trade booster cards which did not involve lot or chance feature, and including 99¢ and other price concession cards and premium coupons—

Sold, distributed, and supplied cards, as aforesaid described, so designed and arranged as to confer upon the customer-holders of such used-up or punched-out cards amounts in trade ranging from 20¢ to \$5.00 or \$10.00, in accordance with concealed legend under card's secret panel and particular style of card employed, and furnished therewith, to retail merchant customers, various display posters and advertisements and card punch, for their use in distributing and making use of such cards, and thereby knowingly supplied to and placed in the hands of others means of operating lotteries, games of chance, and gift enterprises in the use, without alteration or rearrangement, of such cards, sales booster plans or schemes, in competition with those who are opposed to such methods and refrain therefrom;

With effect of inducing many of the consuming public to deal with or purchase merchandise from retailers using its aforesaid cards in preference to those using sales booster plans or schemes or devices which have connected therewith no element of lot or chance, and with result that many retailers were induced to buy its said cards in preference to those of competitors, such refraining competitors as aforesaid were thereby put to competitive disadvantage, sale of competing sales plans or sales promotion schemes or premium cards or coupons by competitors was injuriously affected, to the prejudice and injury of the public and competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.