

IN THE MATTER OF
GOLF BALL MANUFACTURERS' ASSOCIATION, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUBSECS. 2 (a), 2 (d), AND 2 (f) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3161. Complaint, Aug. 18, 1937¹—Decision, Feb. 25, 1938

Where (1) an unincorporated trade association, membership of which consisted of manufacturers and wholesalers of golf balls, in competition with one another and with nonmembers likewise thus competitively engaged, but for the matters and things below set forth, (2) the officers of said association, and (3) member manufacturers thereof, who owned and controlled practically all of the factories engaged in the production of golf balls in the United States and produced most of the golf balls sold and distributed in this country; and (1) an unincorporated association, members of which consisted of approximately 1,500, out of some estimated 2,500, professional golfers engaged in retail sale of golf balls and golf equipment throughout the country and, as thus engaged, in competition with one another and with nonmember retailers likewise thus competitively engaged, but for the matters and things hereinbelow set forth, (2) the officers thereof, and (3) the members thereof, constituting a group so large and influential in the trade as to be able, by themselves and in cooperation with aforesaid members of said manufacturers' association, to control and influence the flow of trade and channels of distribution in golf balls throughout the country, as well as the prices at which, and the terms and conditions under which, nonmember retailers of such articles buy and resell the same;

In pursuance, concertedly, of a common course of action and undertaking, in which they had combined and united and which was directed to enforcing, fixing and maintaining, throughout the United States, certain monopolistic prices, policies, sales methods, and trade practices, and, generally, a policy and practice designed to and tending to monopolize the sale and distribution of golf balls in themselves, and in the accomplishment of which, to the substantial or potential injury of some of such manufacturers, wholesalers, and retail dealers and of ultimate purchasers and consumers of such products, they held official and unofficial meetings of their associations and members, discussed policies and practices as aforesaid, adopted, agreed upon, and issued bulletins, circulars, letters, price lists, etc., announcing such policies, etc., and the imposition thereof upon all affected thereby, obtained promises and assurances of cooperation from one another, exchanged information, and acted concertedly to control resale markets and to require, coercively, recalcitrant manufacturers, wholesalers, and retailers to conform to practices and methods in question—

- (a) Entered into and carried out contracts and agreements directed to the maintenance of uniform wholesale prices to be exacted by manufacturers of golf balls, as between members of said professional association and other nonmember dealer purchasers, with respect to balls of equal grade and

¹ Amended and supplemental.

quality, and made it a policy and practice to require that all manufacturers and wholesalers, as aforesaid, observe such provisions; and

- (b) Fixed, as a policy and practice, prices for resale of such products by non-member retailers, and persuaded, coerced, and compelled such dealers to refrain, abstain, and desist from selling golf balls at less than designated price, and supervised and investigated practices and policies of retail dealers in golf balls, and acted concertedly to maintain resale prices agreed upon; and

Where said association of professional golfers, its officers, members, etc.—

- (c) Required, coerced, or persuaded said member manufacturers and wholesalers to enter into contracts with said professional association for the payment of monies to it for the privilege of causing the letters "PGA" to be imprinted on golf balls sold it; and
- (d) Required, as a policy and practice, all manufacturers and wholesalers, selling their products to its members to refrain and abstain from giving, allowing, or granting, in any way or manner, any rebate, discount, royalty, or refund, in any manner or form, to nonmember retailer purchasers, and acted concertedly and coercively to require conformance of recalcitrant manufacturers and wholesalers; and

Where such manufacturers' association, its officers, members, etc.—

- (e) Granted unlawful discriminations in price through payment of monies to aforesaid golfers' association for privilege of causing letters "PGA" to be printed on golf balls sold to said last organization, and for partial redistribution to members thereof, or through discounts, commensurate with designated percentage of such payments and in lieu thereof, direct to members on their purchases, and not allowed, in any manner or form, to nonmember retail dealer purchasers; and
- (f) Made payments as aforesaid, to said professional association, not made available on proportionally equal terms to all other customers competing with members of said professional association in distribution of balls of like grade and quality, for use, in part, in advertising, promoting, and creating a preference on the part of the purchasing public for golf balls having letters "PGA" imprinted thereon, and for the promotion of the interests and welfare of the members, to the disadvantage of the non-member retail golf ball dealers;

With capacity and tendency to, and effect of—

- (1) Monopolizing, in members of said manufacturers' association, business of manufacturing and selling golf balls to retailers of the United States, and monopolizing, in members of said professional association, retail sale of such products to consumers therein;
- (2) Fixing and maintaining prices at, and conditions under, which golf balls are sold by manufacturers and wholesalers thereof and by retailers thereof to consumers;
- (3) Bringing about an unlawful discrimination in prices at which such articles of same grade and quality are sold by manufacturers and wholesalers to retailers therein, and of substantially increasing cost to such retailer purchasers of said articles;
- (4) Unreasonably lessening, eliminating, restraining, stifling, hampering, and suppressing competition in the golf ball trade and industry, and depriving the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and

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industry, and of otherwise operating as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry;

- (5) Suppressing, eliminating, and discriminating against small business enterprises which are or have been engaged, or desire to engage, in manufacturing, selling, or distributing golf balls, and of obstructing and preventing the establishment of new distributors of golf balls; and
- (6) Suppressing and eliminating all price competition among manufacturers and wholesalers in sale of such articles, and among retail dealers engaged in resale thereof, and of hampering and interfering with the natural flow of trade in commerce of golf balls to and through the various States, and of injuring competitors by unfairly diverting business and trade from them, depriving them thereof and otherwise driving or freezing them out of business, and of prejudicing and injuring manufacturers, wholesalers, and retailers and others who do not conform to their program or methods, or who do not desire to conform to them, but are compelled to do so by their concerted action as herein set forth; and

With dangerous tendency unduly to hinder competition in the golf ball trade throughout the United States, and to create monopoly thereof in the hands of aforesaid associations, officers, and members; and

Where said professional association, its officers, etc.—

- (g) Induced and received such unlawful discrimination in price or allowance in connection with purchase of golf balls in interstate commerce, through concerted action as aforesaid, and through the formulation, adoption, and administration of policy and practice requiring payment of monies, or discount direct, as above set forth, for the privilege of imprinting letters "PGA" on golf balls sold to members;
- (h) Induced and received payments contracted for as aforesaid, and not made available on proportionally equal terms to all other customer competitors of such manufacturer members, to be used by such professional association for the purpose of promoting and creating a preference on the part of the purchasing public for golf balls having letters "PGA" imprinted thereon over balls of equal grade, quality and value offered and sold by retail competitors; and
- (i) Knowingly induced and received such discriminations in price, as aforesaid set forth, on purchases of golf balls made by them;

With the result that the general effect of the policies and practices requiring systematic discriminations in price for golf balls of like grade and quality between customers in the same class, as hereinabove set forth, had been, or might be, substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and distribution thereof, and to injure, destroy, and prevent competition between and among manufacturers, wholesalers, and retailers of golf balls, and deprive purchasing public of advantages in price, service, and other considerations which might be received and enjoyed under conditions of normal and unobstructed or free and fair competition in said trade and industry, and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry:

Held, That such acts and practices had a dangerous tendency unduly to hinder competition in the golf ball trade throughout the United States, and to create monopoly thereof in the hands of said associations, their officers and members, and constituted unfair methods of competition in commerce in

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violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, and that their said acts and practices in granting unlawful discriminations or paying, or contracting to make, payments for the promotion of said "PGA" balls and interests as hereinabove set forth, or in inducing or receiving any such discriminations or payments, as aforesaid constituted a violation of the provisions of Sections 2 (a), 2 (d) and 2 (f) of an Act of Congress approved October 15, 1914, as amended by an act approved June 19, 1936.

Before *Mr. William C. Reeves*, trial examiner.

Mr. John Darsey for the Commission.

Wright, Gordon, Zachry & Parlin, of New York City, for Golf Ball Manufacturers' Association and its officers, with whom appeared *Arthur, Dry & Dole*, of New York City for Mr. Edward C. Conlin, vice president of said association, and *Lewis & Kelsey*, of New York City, for Mr. William T. Brown, secretary and treasurer thereof.

Lewis & Kelsey, of New York City, for A. G. Spalding and Brothers.

Reeves, Todd, Ely & Beaty, of New York City, for John Wanamaker, Inc.

Cook, Smith, Jacobs & Beake, of Detroit, Mich., for L. A. Young Golf Company.

Mr. Frank M. Slough, of Cleveland, O., for Worthington Ball Company.

Mr. Thomas Freeman, Jr., and *Mr. W. R. Brown*, of Chicago, Ill., for Wilson Sporting Goods Company.

Arthur, Dry & Dole, of New York City, for U. S. Rubber Products Company.

Kenefick, Cooke, Mitchell, Bass & Letchworth, of Buffalo, N. Y., for Dunlop Tire & Rubber Company.

Mr. Alan N. Mann, of New York City, for Acushnet Process Company.

Mr. Arthur J. W. Hilly, of New York City, for Professional Golfers Association of America and its officers and members.

AMENDED AND SUPPLEMENTAL 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 Act), and 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" (The Clayton Act), as amended by "An Act to amend Section 2 of the act entitled "An Act to supplement

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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 Robinson-Patman Act), the Federal Trade Commission having reason to believe that the respondents hereinabove designated have been and are using unfair methods of competition in commerce as "commerce" is defined in said Federal Trade Commission Act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest; and the Federal Trade Commission having reason to believe that the said respondents have violated and are now violating the provisions of Subsection "a", Subsection "d" and Subsection "f" of Section 2 of said Clayton Act as amended, hereby issues its amended and supplemental complaint against said respondents, stating its charges as follows:

Count 1

PARAGRAPH 1. The respondent, Golf Ball Manufacturers' Association, hereinafter for convenience referred to as "Manufacturers' Association," is an unincorporated trade association, with an office at 105 Nassau Street, in the city of New York, N. Y. Its officers are, or were in 1936, respondents Lawrence B. Icely, Edward C. Conlin, and William T. Brown, president, vice-president, and secretary-treasurer, respectively. Its membership consists of manufacturers and wholesalers of golf balls. The "Manufacturers' Association" is a nonprofit organization created for the purpose of promoting the welfare and interests of its membership.

PAR. 2. Respondent A. G. Spalding and Brothers, is a corporation organized and existing by virtue of the laws of the State of New Jersey, with its main office and principal place of business located at 105 Nassau Street, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent John Wanamaker, Inc., is a corporation organized and existing by virtue of the laws of the State of Pennsylvania with its main office and principal place of business located at Chestnut Street, in the city of Philadelphia, Pa. It is, and for several years last past has been, engaged in the manufacture, purchase, and sale of golf balls.

Respondent L. A. Young Golf Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan, having an office and place of business located at 6545 St. Antoine Street, in the city of Detroit, Mich. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Worthington Ball Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio with an office and place of business located at Elyria, Ohio. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Wilson Sporting Goods Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located at 3037 Powell Avenue, in the city of Chicago, Ill. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent U. S. Rubber Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located at 1790 Broadway, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Dunlop Tire and Rubber Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office located at 500 5th Avenue, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Acushnet Process Company, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with an office and place of business located in the city of New Bedford, Mass. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

The above named respondents do not constitute the entire membership of the respondent "Manufacturers' Association" but are representative members thereof. All members of the respondent "Manufacturers' Association" are made parties respondent herein as a class of which those specifically named are representative of the whole. For convenience the above named respondents will hereinafter be referred to as members of the "Manufacturers' Association."

PAR. 3. The respondent members of the "Manufacturers' Association" cause their golf balls when sold to be transported to purchasers thereof located in the various States of the United States. They are in competition among themselves, except in so far as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by their practices and methods hereinafter particularly described and set forth. There are other manufacturers and wholesalers of golf balls, who sell and distribute their said products in the various States of the United States, and who, in the ordinary course of their business, seek the same cus-

tomers that are sought by the respondent members of the "Manufacturers' Association." These nonmember manufacturers and wholesalers also cause their golf balls to be shipped and transported from the various points of manufacture and sale in certain States through and into other States of the United States. They are also in competition among themselves and with respondent members of the "Manufacturers' Association" except in so far as their said competition has been hindered, lessened, restricted, or restrained or potential competition forestalled as a result of the use of the practices and methods by the parties respondent hereinafter described. The respondent "Manufacturers' Association" and its officers are not engaged in commerce, but are engaged in unfair methods, hereafter described, which directly affect competition among respondent members of the "Manufacturers' Association" and nonmember manufacturers and wholesalers of golf balls, and also directly affect the competition in the sale of golf balls, between and among retail dealers located in the various States of the United States engaged in the retail sale of said products.

PAR. 4. The respondent, Professional Golfers' Association of America, hereinafter for convenience referred to as "PGA," is an unincorporated trade association, with an office at 14 East Jackson Boulevard, in the City of Chicago, Ill. The officers of said respondent "PGA" are, or were in 1936, respondents George R. Jacobus, president; Jack B. Mackie, treasurer; and Tom Walsh, secretary. Respondent "PGA" is a nonprofit association organized and created for the purpose of promoting the game of golf and the general welfare and interests of its members who are engaged in the sale of golf balls and golf equipment.

Its membership consists of approximately 1,500 of an estimated total of 2,500 professional golfers who are engaged in the retail sale of golf balls and golf equipment throughout the country. Among the members of said respondent "PGA" are respondents C. M. Irwin, Tom Kerrigan, Joe Bradley, Jim Dante, Jack Fox, Jack Hagen, John Inglis, R. C. MacDonald, Alex Main, and Jack Forrester, all individuals, engaged in the retail sale of golf balls and golf equipment. The above named members of said respondent "PGA" do not constitute the entire membership thereof but are representative members thereof. All members of respondent "PGA" are also made respondents herein, as a class, of which those specifically named are representative of the whole. Said respondent members are hereinafter for convenience collectively referred to as respondent members of "PGA."

The respondent members of "PGA" are in competition with one another in the retail sale of golf balls to consumers in the various localities in which they respectively operate, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by the practices and methods of the parties respondent hereinafter specifically described and set forth. There are numerous other retailers of golf balls who are nonmembers of respondent "PGA" who are engaged in the sale of such products to consumers in the various localities and trade areas in the United States in competition with one another and with one or more of respondent members of "PGA," except insofar as such competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by the use of the practices and methods of the parties respondent hereinafter described. All or nearly all of respondent members of "PGA" and their competitors above mentioned are engaged in purchasing golf balls from manufacturers or wholesalers thereof which are transported from one State to and through other States to them as a result of such purchases and in reselling the same to customers located in the various trade areas in which they respectively operate. All of said respondent members of "PGA" are engaged in unfair methods, as hereinafter set forth, which directly and substantially affect competition among themselves, and between themselves and other retail dealers, and among the manufacturers and wholesalers of said products.

PAR. 5. The respondent members of the "Manufacturers' Association" own and control practically all of the factories engaged in the production of golf balls in the United States and produce most of the golf balls sold and distributed in this country. They are able to and do determine and control the prices and terms at which and conditions under which golf balls are sold and distributed by manufacturers and wholesalers throughout the United States. The respondent members of "PGA" constitute a group of retailers of golf balls so large and influential in the trade as to be able by themselves and in cooperation with respondent members of the "Manufacturers' Association" to control and influence the flow of trade and channels of distribution in golf balls throughout the country, as well as the prices at which, and the terms and conditions under which non-member retailers of golf balls buy and resell such products.

PAR. 6. The parties respondent named herein have within the past several years agreed and conspired, combined and confederated together and with others, and have united in and pursued a common

and concerted course of action and undertaking, among themselves and with others, to adopt, follow, carry out, enforce, fix, and maintain throughout the United States, certain monopolistic prices, policies, sales methods, and trade practices, hereinafter described, which the said parties respondent have agreed to and adhered to themselves and which they have attempted to and have, by coercion and compulsion imposed upon manufacturers, wholesalers, and retail dealers who were not permitted to be or did not desire to be members of either of the respondent associations, and others, to the substantial or potential injury of some of such manufacturers, wholesalers and retail dealers and of ultimate purchasers and consumers of golf balls.

PAR. 7. The said monopolistic prices, sales methods, policies, and trade practices referred to in the preceding paragraph and which were so adopted, fixed, and put into effect are as follows:

1. A policy and practice of requiring that all manufacturers and wholesalers of golf balls who sell their said products to the members of respondent "PGA" enter into a purported license agreement with respondents, A. G. Spalding and Brothers, and U. S. Rubber Products Company permitting them to manufacture golf balls in accordance with a process on which the said respondents profess to have obtained a patent.

2. A policy and practice of requiring that all golf balls manufactured under the aforesaid purported license agreements be sold in accordance with uniform price lists attached thereto and made a part thereof.

3. A policy and practice of requiring as a condition precedent to the sale of golf balls to respondent members of "PGA" that manufacturers and wholesalers of golf balls enter into purported license agreements or contracts with the respondent "PGA" providing for the payment of a royalty to the respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on the golf balls so sold.

4. A policy and practice of causing, permitting, and allowing the respondent "PGA" to remit and pass along to its members a designated percentage of the royalties paid by manufacturers and wholesalers to respondent "PGA" under the aforesaid purported license agreements.

5. A policy and practice of causing, permitting, and allowing the respondent "PGA" to use the funds derived from the payment of royalties under the aforesaid purported license agreements for the purpose of promoting and creating a preference on the part of the purchasing public for golf balls having the letters "PGA" imprinted thereon to golf balls of equal quality and value offered for sale and sold by retail competitors of the respondent members of "PGA."

6. A policy and practice of requiring that manufacturers and wholesalers of golf balls bearing the letters, "PGA" refrain and abstain from selling the same to any persons or parties other than members of respondent "PGA."

7. A policy and practice of requiring that all manufacturers and wholesalers of golf balls who manufacture and sell balls under the aforesaid purported license agreements maintain uniform prices with those quoted in the price lists attached to and made a part of the aforesaid license agreements in the sale of their golf balls of equal grade and quality to those bearing the letters "PGA" to retail purchasers who are nonmembers of respondent "PGA."

8. A policy or practice of granting, giving, or allowing members of the respondent "PGA" a discount on purchases of golf balls commensurate with the designated percentage of the aforesaid royalties to be received by them in lieu of said designated percentage.

9. A policy and practice of requiring that all manufacturers and wholesalers of golf balls who sell their products to members of respondent "PGA" refrain and abstain from giving, allowing, or granting, in any way or manner any rebate, discount, royalty, or refund in any manner or form to retail purchasers who are not members of respondent "PGA."

10. A policy and practice of persuading, coercing, and compelling retail dealers in golf balls who are not members of respondent "PGA" to refrain, abstain, and desist from selling golf balls at a price less than that designated by the parties respondent herein.

11. Generally, a policy and practice designed to and tending to monopolize the manufacture, sale, and distribution of golf balls in the parties respondent herein.

PAR. 8. For the purpose of making such sales practices, policies, and pricing methods effective, and of requiring compliance therewith and observance thereof by all manufacturers, wholesalers, and retail dealers in golf balls throughout the United States, the parties respondent herein, acting through their officers, directors, committees, and individually, in furtherance of and in pursuance of the general plan, undertaking, conspiracy, and policy, have collectively as groups or individually done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies, practices, and methods described in the preceding paragraph.

2. Held official and unofficial meetings of said respondent associations and their members at which the policies and practices hereinabove described were discussed, adopted, and agreed to, and issued bulletins, circulars, letters, price lists, and other printed matter, and

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distributed the same among the members of said respondent associations and others, announcing the adoption of the policies, practices, and requirements referred to and the imposition of the same upon all affected thereby.

3. Caused practically all members of the respondent "Manufacturers' Association" to enter into purported license agreements with respondents, A. G. Spalding and Brothers, and U. S. Rubber Products Company to manufacture their golf balls in accordance with a patented process professed to be owned by said respondents and to cause the golf balls so manufactured to be sold in accordance with uniform price lists attached to and made a part of said purported license agreements.

4. Caused all manufacturers and wholesalers of golf balls who sell their products to members of respondent "PGA" to enter into purported license agreements or contracts with respondent "PGA" providing for the payment of royalties to respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on their golf balls.

5. Caused, permitted, and allowed the respondent "PGA" to remit and pass along to its members a designated percentage of the royalties paid by the manufacturers and wholesalers to the respondent "PGA" under the aforesaid purported license agreements.

6. Caused, permitted, and allowed the respondent "PGA" to use the funds derived from the payment of royalties under the aforesaid purported license agreements for the purpose of promoting the interests and welfare of its members to the disadvantage of retail dealers in golf balls who are not members of said respondent "PGA."

7. Respondent members of the "Manufacturers' Association" have and do refuse to sell golf balls manufactured under the aforesaid purported license agreements to parties and persons who are not members of the respondent "PGA."

8. Respondent members of the "Manufacturers' Association" maintain uniform prices with those quoted in the price lists attached to and made a part of the aforesaid license agreements in the sale of their golf balls of equal grade and quality to those manufactured and sold under said purported license agreements.

9. Respondent members of the "Manufacturers' Association" grant, give, and allow members of respondent "PGA" a discount on purchases of golf balls commensurate with the designated percentage of the aforesaid royalties to be received by them in lieu of said percentage of royalties.

10. Respondent members of the "Manufacturers' Association" refuse and refrain from giving, allowing, or granting in any way or

manner any rebate, discount, royalty, or refund in any manner or form to retail purchasers who are not members of respondent "PGA."

11. The parties respondent herein have persuaded, coerced, and compelled retail dealers in golf balls who are not members of the respondent "PGA" to refrain, abstain, and desist from selling golf balls at a price less than that designated by them.

12. Respondents generally have sought and have obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies, and pricing methods hereinabove described.

13. The parties respondent generally have exchanged information with reference to their respective businesses and activities to be used in furtherance of the policies and methods referred to.

14. The parties respondent generally have supervised and investigated the practices and policies of retail dealers in golf balls, and have acted concertedly to maintain certain resale prices agreed upon, to control resale markets and to coercively require recalcitrant manufacturers, wholesalers, and retail dealers to conform to such practices and methods.

PAR. 9. The capacity, tendency, and effect of said plan, agreement, combination, conspiracy, undertaking, policies, and methods, and the said acts and practices of said respondents in pursuance thereof, are and have been:

1 To monopolize in the respondent members of the "Manufacturers' Association" the business of manufacturing and of selling golf balls to retail dealers in the United States.

2. To monopolize in the respondent members of "PGA" the retail sale of golf balls to consumers in the United States.

3. To fix and maintain the prices at and conditions under which golf balls are sold by manufacturers and wholesalers thereof.

4. To fix and maintain the prices at and conditions under which golf balls are sold by retail dealers to consumers.

5. To bring about an unlawful discrimination in the prices at which golf balls of the same grade and quality are sold by manufacturers and wholesalers to retail dealers therein.

6. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the golf-ball trade and industry and to deprive the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

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7. To substantially increase the cost to retail purchasers of golf balls.

8. To suppress, eliminate, and discriminate against small business enterprises which are or have been engaged or desire to engage in manufacturing, selling, or distributing golf balls.

9. To obstruct and prevent the establishment of new distributors of golf balls.

10. To suppress and eliminate all price competition among manufacturers and wholesalers in the sale of golf balls and among retail dealers engaged in the resale thereof.

11. To hamper and interfere with the natural flow of trade in commerce of golf balls to and through the various States of the United States; and to injure the competitors of individual respondents by unfairly diverting business and trade from them, depriving them thereof and otherwise driving or freezing them out of business.

12. To prejudice and injure manufacturers, wholesalers, and retailers and others who do not conform to respondents' program or methods or who do not desire to conform to them, but are compelled to do so by the concerted action of respondents herein alleged.

PAR. 10. The above alleged acts and things done by the parties respondent have a dangerous tendency unduly to hinder competition in the golf-ball trade throughout the United States, and to create a monopoly thereof in the hands of respondents and constitute unfair methods of competition in commerce, within the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Count 2

PARAGRAPH 1. Paragraphs 1 to 9 inclusive of count 1 hereof are hereby adopted and made a part of this charge as fully as if set out herein verbatim.

PAR. 2. The parties respondent herein named have conspired and confederated together to bring about and have brought about and made effective a policy and system whereby respondent members of the Manufacturers' Association discriminate and have discriminated in price between different purchasers of golf balls of like grade and quality, in violation of Section 2a of 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 aforesaid discriminations in price between different purchasers of golf balls of like grade and quality were and are effected through the concerted action of the parties respondent herein through the formulation, adoption, and administration of a policy and practice of requiring the payment of purported royalties to respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on golf balls which are sold to members of the respondent "PGA," a percentage of which purported royalties to be passed along to the member purchaser with the knowledge and consent of the respondent members of the "Manufacturers' Association"; or a policy or practice of requiring that the respondent members of the "Manufacturers' Association" give members of respondent "PGA" a discount or rebate on the purchase prices quoted to the retail trade on golf balls of like grade and quality; or a policy or practice requiring that the respondent members of the "Manufacturers' Association" quote and sell members of respondent "PGA" golf balls of like grade and quality to those offered and sold the nonmember retail dealers at a price less than that at which they are sold to nonmember retail purchasers.

PAR. 3. The respondent members of the "Manufacturers' Association" have contracted for the payment of, and have made payments of money to the respondent "PGA" to be used by said respondent "PGA" for the purpose of promoting the welfare and interest of their customers who are members of said respondent "PGA" in violation of Section 2d of said 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 aforesaid payments of money are effected through the payment of purported royalties to the respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on golf balls which are sold to members of the respondent "PGA," and the said payments consist of that percentage of said purported royalties which is not passed along to the respondent member purchasers of golf balls but is retained by the respondent "PGA" and used by it for the benefit and promotion of the welfare of its respondent members. The said payments of money are not available, and are not made to any customers of the respondent members of the "Manufacturers' Association" who are not members of the respondent "PGA."

PAR. 4. The respondent members of the respondent "PGA" have knowingly induced said respondent members of the "Manufacturers' Association" to discriminate in price as charged in paragraph 2 of

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count 2 of this complaint, and have knowingly received such discriminations in price on purchases of golf balls made by them, in violation of Section 2f of the said act 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."

PAR. 5. The general effect of the policies and practices requiring the systematic discriminations in price for golf balls of like grade and quality between customers in the same class as set forth in paragraphs 2 and 4 hereof has been or may be substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and distribution of golf balls, and to injure, destroy, and prevent competition between and among manufacturers, wholesalers, and retailers of golf balls and to deprive the purchasing public of advantages in price, service, and other considerations which might be received and enjoyed under conditions of normal and unobstructed or free and fair competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

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 Act), and 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" (the Clayton Act), as amended by "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 Robinson-Patman Act), the Federal Trade Commission, on August 18, 1937, issued, and subsequently served, its amended complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Federal Trade Commission Act, and with acts and practices in violation of Subsections 2 (a), 2 (d), and 2 (f) of Section 2 of said Clayton Act as amended.

After the issuance and service of said amended complaint, respondents filed their answers thereto, making general denial of the substantial allegations of the complaint. Subsequently all the respondents

petitioned the Federal Trade Commission for permission to withdraw said answers and to file in lieu thereof substitute answers to the complaint, in which substitute answers respondents admitted, for the purposes of this proceeding only, all the material allegations of said complaint except the facts alleged in paragraph 7, Subsections 1 and 2, and paragraph 8, Subsection 3, of count 1, and the same allegations as adopted and made a part of paragraph 1 of count 2 of the amended complaint—all of which allegations were severally denied. Pursuant to permission granted by the Commission, said original answers were withdrawn by said respondents and said substitute answers were filed in lieu thereof. Said respondents also consented therein that the Commission might proceed to make its findings of fact without further proceedings and that an order might issue and be served upon the respondents requiring them to cease and desist from the unfair methods of competition alleged in the complaint. The said Commission having duly considered the above and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Golf Ball Manufacturers' Association, hereinafter for convenience referred to as "Manufacturers' Association," is an unincorporated trade association, with an office at 105 Nassau Street, in the city of New York, N. Y. Its officers are respondents Lawrence B. Icely, Edward C. Conlin, and William T. Brown, president, vice-president, and secretary-treasurer, respectively. Its membership consists of manufacturers and wholesalers of golf balls. The "Manufacturers' Association" is a nonprofit organization created for the purpose of promoting the welfare and interests of its membership.

PAR. 2. Respondent A. G. Spalding and Bros., is a corporation organized and existing by virtue of the laws of the State of New Jersey, with its main office and principal place of business located at 105 Nassau Street, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent John Wanamaker, Inc., is a corporation organized and existing by virtue of the laws of the State of Pennsylvania with its main office and principal place of business located at Chestnut Street, in the city of Philadelphia, Pa. It is, and for several years last past has been, engaged in the manufacture, purchase, and sale of golf balls.

Respondent L. A. Young Golf Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan,

having an office and place of business located at 6545 St. Antoine Street, in the city of Detroit, Mich. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Worthington Ball Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio with an office and place of business located at Elyria, Ohio. It is, and for several years last past has been engaged in the manufacture and sale of golf balls.

Respondent Wilson Sporting Goods Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located at 2037 Powell Avenue, in the city of Chicago, Ill. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent U. S. Rubber Products Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located at 1790 Broadway, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Dunlop Tire and Rubber Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office located at 500 5th Avenue, in the city of New York, N. Y. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

Respondent Acushnet Process Company, is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with an office and place of business located in the city of New Bedford, Mass. It is, and for several years last past has been, engaged in the manufacture and sale of golf balls.

The above-named respondents do not constitute the entire membership of the respondent "Manufacturers' Association" but are representative members thereof. All members of the respondent "Manufacturers' Association" were made parties respondent herein as a class of which those specifically named are representative of the whole. For convenience the above-named respondents will hereinafter be referred to as members of the "Manufacturers' Association."

PAR. 3. The respondent members of the "Manufacturers' Association" cause their golf balls when sold to be transported to purchasers thereof located in the various States of the United States. They are in competition among themselves, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by their practices and methods hereinafter particularly described and set forth. There are other manufacturers and wholesalers of golf balls, who sell and

distribute their said products in the various States of the United States, and who, in the ordinary course of their business, seek the same customers that are sought by the respondent members of the "Manufacturers' Association." These nonmember manufacturers and wholesalers also cause their golf balls to be shipped and transported from the various points of manufacture and sale in certain States through and into other States of the United States. They are also in competition among themselves and with respondent members of the "Manufacturers' Association" except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition forestalled as a result of the use of the practices and methods by the parties respondent hereinafter described. The respondent "Manufacturers' Association" and its officers are not engaged in commerce, but are engaged in unfair methods, hereafter described, which directly affect competition among respondent members of the "Manufacturers' Association" and nonmember manufacturers and wholesalers of golf balls, and also directly affect the competition in the sale of golf balls, between and among retail dealers located in the various States of the United States engaged in the retail sale of said products.

PAR. 4. The respondent, Professional Golfers' Association of America, hereinafter for convenience referred to as "PGA," is an unincorporated trade association, with an office at 14 East Jackson Boulevard, in the city of Chicago, Ill. The officers of said respondent "PGA" are respondents George R. Jacobus, president; Jack B. Mackie, treasurer; and Tom Walsh, secretary. Respondent "PGA" is a nonprofit association organized and created for the purpose of promoting the game of golf and the general welfare and interests of its members who are engaged in the sale of golf balls and golf equipment.

Its membership consists of approximately 1,500 of an estimated total of 2,500 professional golfers who are engaged in the retail sale of golf balls and golf equipment throughout the country. Among the members of said respondent "PGA" are respondents C. M. Irwin, Tom Kerrigan, Joe Bradley, Jim Dante, Jack Fox, Jack Hagen, John Inglis, R. C. MacDonald, Alex Main, and Jack Forrester, all individuals, engaged in the retail sale of golf balls and golf equipment. The above-named members of said respondent "PGA" do not constitute the entire membership thereof but are representative members thereof. All members of respondent "PGA" were made respondents herein, as a class, of which those specifically named are representative of the whole. Said respondent members are hereinafter for convenience collectively referred to as respondent members of "PGA."

The respondent members of "PGA" are in competition with one another in the retail sale of golf balls to consumers in the various localities in which they respectively operate, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by the practices and methods of the parties respondent hereinafter specifically described and set forth. There are numerous other retailers of golf balls who are nonmembers of respondent "PGA" who are engaged in the sale of such products to consumers in the various localities and trade areas in the United States in competition with one another and with one or more of respondent members of "PGA," except insofar as such competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by the use of the practices and methods of the parties respondent hereinafter described. All or nearly all of respondent members of "PGA" and their competitors above mentioned are engaged in purchasing golf balls from manufacturers or wholesalers thereof which are transported from one State to and through other States to them as a result of such purchases and in reselling the same to customers located in the various trade areas in which they respectively operate. All of said respondent members of "PGA" are engaged in unfair methods, as hereinafter set forth, which directly and substantially affect competition among themselves, and between themselves and other retail dealers, and among the manufacturers and wholesalers of said products.

PAR. 5. The respondent members of the "Manufacturers' Association" own and control practically all of the factories engaged in the production of golf balls in the United States and produce most of the golf balls sold and distributed in this country. The respondent members of "PGA" constitute a group of retailers of golf balls so large and influential in the trade as to be able by themselves and in cooperation with respondent members of the "Manufacturers' Association" to control and influence the flow of trade and channels of distribution in golf balls throughout the country, as well as the prices at which, and the terms and conditions under which non-member retailers of golf balls buy and resell such products.

PAR. 6. The parties respondent named herein have within the past several years agreed, combined, and united in and pursued a common and concerted course of action and undertaking, among themselves and with others, to adopt, follow, carry out, enforce, fix, and maintain throughout the United States, certain monopolistic prices, policies, sales methods, and trade practices, hereinafter described, which the said parties respondent have agreed to and pursued to the sub-

stantial or potential injury of some of such manufacturers, wholesalers, and retail dealers and of ultimate purchasers and consumers of golf balls.

PAR. 7. The said monopolistic prices, sales methods, policies, and trade practices referred to in the preceding paragraph and which were so adopted, fixed, and put into effect are as follows:

1. A policy and practice of coercing, in connection with the sale of golf balls to respondent members of "PGA," manufacturers and wholesalers of golf balls to enter into contracts with the respondent "PGA" providing for the payment of monies to the respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on the golf balls so sold.

2. A policy and practice of causing, permitting and allowing the respondent "PGA" to remit and pass along to its members a designated percentage of the monies paid by manufacturers and wholesalers to respondent "PGA" under the aforesaid contracts.

3. A policy and practice of causing, permitting, and allowing the respondent "PGA" to use the funds derived from the payment of monies under the aforesaid contracts for the purpose of promoting and creating a preference on the part of the purchasing public for golf balls having the letters "PGA" imprinted thereon to golf balls of equal quality and value offered for sale and sold by retail competitors of the respondent members of "PGA."

4. The policy and practice of requiring that all manufacturers and wholesalers of golf balls who manufacture and sell balls under the aforesaid contracts observe the provisions of said contracts with respect to the maintenance of uniform prices as between members of the respondent "PGA" and other retail dealer purchasers who are nonmembers of respondent "PGA" in the sale of their golf balls of equal grade and quality.

5. A policy or practice of granting, giving, or allowing members of the respondent "PGA" a discount on purchases of golf balls commensurate with the designated percentage of the aforesaid payments to be received by them in lieu of said designated percentage.

6. A policy and practice of requiring that all manufacturers and wholesalers of golf balls who sell their products to members of respondent "PGA" refrain and abstain from giving, allowing, or granting in any way or manner any rebate, discount, royalty, or refund in any manner or form to retail purchasers who are not members of respondent "PGA."

7. A policy and practice of persuading, coercing, and compelling retail dealers in golf balls who are not members of respondent "PGA" to refrain, abstain, and desist from selling golf balls at a price less than that designated by the parties respondent herein.

8. Generally, a policy and practice designed to and tending to monopolize the sale and distribution of golf balls in the parties respondent herein.

PAR. 8. For the purpose of making such sales practices, policies, and pricing methods effective, and of requiring compliance therewith and observance thereof by all manufacturers, wholesalers, and retail dealers in golf balls throughout the United States, the parties respondent herein, acting through their officers, directors, committees, and individually, in furtherance of and in pursuance of the general plan, undertaking, and policy, have collectively as groups or individually done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies, practices, and methods described in the preceding paragraph.

2. Held official and unofficial meetings of said respondent associations and their members at which the policies and practices hereinabove described were discussed, adopted, and agreed to, and issued bulletins, circulars, letters, price lists, and other printed matter, and distributed the same among the members of said respondent associations and others, announcing the adoption of the policies, practices, and requirements referred to and the imposition of the same upon all affected thereby.

3. Caused manufacturers and wholesalers of golf balls who sell their products to members of respondent "PGA" to enter into contracts with respondent "PGA" providing for the payment of money to respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on their golf balls.

4. Caused, permitted, and allowed the respondent "PGA" to remit and pass along to its members a designated percentage of the monies paid by the manufacturers and wholesalers to the respondent "PGA" under the aforesaid contracts.

5. Caused, permitted, and allowed the respondent "PGA" to use the funds derived from the payment of monies under the aforesaid contracts for the purpose of promoting the interests and welfare of its members to the disadvantage of retail dealers in golf balls who are not members of said respondent "PGA."

6. Respondent members of the "Manufacturers' Association" have observed the provisions of the aforesaid contracts with respect to the maintenance of uniform prices as between members of the "PGA" and others than members of the "PGA" in the sale of golf balls of equal grade and quality to those sold to members of the "PGA" under the provisions of said contracts.

7. Respondent members of the "Manufacturers' Association" have given and allowed members of respondent "PGA" a discount on

purchases of golf balls commensurate with the designated percentage of the aforesaid payments of money to be received by them in lieu of said percentage thereof.

8. Respondent members of the "Manufacturers' Association" refuse and refrain from giving, allowing, or granting in any way or manner any rebate, discount, royalty, or refund in any manner or form to retail dealer purchasers who are not members of respondent "PGA."

9. The parties respondent herein have persuaded, coerced, and compelled retail dealers in golf balls who are not members of the respondent "PGA" to refrain, abstain, and desist from selling golf balls at a price less than that designated by them.

10. Respondents generally have sought and have obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies, and pricing methods hereinabove described.

11. The parties respondent generally have exchanged information with reference to their respective businesses and activities to be used in furtherance of the policies and methods referred to.

12. The parties respondent generally have supervised and investigated the practices and policies of retail dealers in golf balls, and have acted concertedly to maintain certain resale prices agreed upon; to control resale markets and to coercively require recalcitrant manufacturers, wholesalers, and retail dealers to conform to such practices and methods.

PAR. 9. The capacity, tendency, and effect of said plan, agreement, undertaking, policies, and methods, and the said acts and practices of said respondents in pursuance thereof, are and have been:

1. To monopolize in the respondent members of the "Manufacturers' Association" the business of manufacturing and of selling golf balls to retail dealers in the United States.

2. To monopolize in the respondent members of "PGA" the retail sale of golf balls to consumers in the United States.

3. To fix and maintain the prices at and conditions under which golf balls are sold by manufacturers and wholesalers thereof.

4. To fix and maintain the prices at and conditions under which golf balls are sold by retail dealers to consumers.

5. To bring about an unlawful discrimination in the prices at which golf balls of the same grade and quality are sold by manufacturers and wholesalers to retail dealers therein.

6. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the golf ball trade and industry and to deprive the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under con-

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ditions of normal and unobstructed or free and fair competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

7. To substantially increase the cost to retail dealer purchasers of golf balls.

8. To suppress, eliminate, and discriminate against small business enterprises which are or have been engaged or desire to engage in manufacturing, selling, or distributing golf balls.

9. To obstruct and prevent the establishment of new distributors of golf balls.

10. To suppress and eliminate all price competition among manufacturers and wholesalers in the sale of golf balls and among retail dealers engaged in the resale thereof.

11. To hamper and interfere with the natural flow of trade in commerce of golf balls to and through the various States of the United States; and to injure the competitors of individual respondents by unfairly diverting business and trade from them, depriving them thereof and otherwise driving or freezing them out of business.

12. To prejudice and injure manufacturers, wholesalers, and retailers and others who do not conform to respondents' program or methods or who do not desire to conform to them, but are compelled to do so by the concerted action of respondents herein alleged.

PAR. 10. The above alleged acts and things done by the parties respondent have a dangerous tendency unduly to hinder competition in the golf ball trade throughout the United States, and to create a monopoly thereof in the hands of respondents and constitute unfair methods of competition in commerce within the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

PAR. 11. The parties respondent herein named have brought about and made effective a policy and system whereby respondent members of the "Manufacturers' Association" discriminate and have discriminated in price between different purchasers of golf balls of like grade and quality, in violation of Section 2a of the Clayton Act 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 aforesaid discriminations in price between different purchasers of golf balls of like grade and quality were effected through the concerted action of the parties respondent herein through the formula-

tion, adoption, and administration of a policy and practice of requiring the payment of monies to respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on golf balls which are sold to members of the respondent "PGA," a percentage of which monies to be passed along to the member purchaser with the knowledge and consent of the respondent members of the "Manufacturers' Association"; or a policy or practice of requiring that the respondent members of the "Manufacturers' Association" give members of respondent "PGA" a discount or rebate on the purchase prices quoted to the retail trade on golf balls of like grade and quality; or a policy or practice requiring that the respondent members of the "Manufacturers' Association" quote and sell members of respondent "PGA" golf balls of like grade and quality to those offered and sold the non-member retail dealers at a price less than that at which they are sold to nonmember retail purchasers.

PAR. 12. The respondent members of the "Manufacturers' Association" have contracted for the payment of, and have made payments of money to the respondent "PGA" to be used by said respondent "PGA" for the purpose of promoting the welfare and interest of their customers who are members of said respondent "PGA" in violation of Section 2 (d) of the Clayton Act 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 aforesaid payments of money were effected through the payment of monies to the respondent "PGA" for the privilege of causing the letters "PGA" to be imprinted on golf balls which are sold to members of the respondent "PGA," and the said payments consist of that percentage of said monies which is not passed along to the respondent member purchasers of golf balls but is retained by the respondent "PGA" and used by it for the benefit, and promotion of the welfare of its respondent members. The said payments of money are not available, and are not made to any customers of the respondent members of the "Manufacturers' Association" who are not members of the respondent "PGA."

PAR. 13. The respondent members of the respondent "PGA" have knowingly induced said respondent members of the "Manufacturers' Association" to discriminate in price as aforesaid, and have knowingly received such discriminations in price on purchases of golf balls made by them, in violation of Section 2 (f) of the Clayton Act 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 supple-

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ment 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."

PAR. 14. The general effect of the policies and practices requiring the systematic discriminations in price for golf balls of like grade and quality between customers in the same class as set forth in paragraphs 11 and 13 hereof has been or may be substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and distribution of golf balls, and to injure, destroy, and prevent competition between and among manufacturers, wholesalers, and retailers of golf balls and to deprive the purchasing public of advantages in price, service, and other considerations which might be received and enjoyed under conditions of normal and unobstructed or free and fair competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

CONCLUSION

The aforesaid acts and practices of respondents have a dangerous tendency unduly to hinder competition in the golf ball trade throughout the United States, and to create a monopoly thereof in the hands of respondents and constitute unfair methods of competition in commerce within the meaning of Section 5 of Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and the acts and practices, set forth in paragraphs 11 to 14 inclusive, of the said respondents are in violation of Sections 2 (a), 2 (d) and 2 (f) of the Clayton Act 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answers filed by the parties respondent herein on February 7, 1938, admitting with certain exceptions all the material allegations of the complaint for the purpose of this proceeding only, and waiving the taking of further evidence and 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," and Sections 2a, 2d and 2f 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."

It is ordered, That the parties respondent herein, and their agents, representatives, servants, and employees in connection with the sale, offering for sale or purchase of golf balls in interstate commerce or in the District of Columbia, cease and desist from:

1. Entering into and carrying out any agreement or combination among themselves or among any of them, to fix and maintain uniform wholesale prices to be exacted by the manufacturers of golf balls, or their agents, servants, or representatives, from retail dealer purchasers thereof;

(It is not intended that the foregoing paragraphs shall abridge any lawful right of a licensor under a patent or a patent license agreement to apply to any lawful action taken under patents or license agreements relating thereto);

2. Fixing, enforcing, and maintaining, by agreement or combination among themselves, or among any of them, resale prices for golf balls;

(It is not intended that the provisions of the two preceding paragraphs shall abridge or preclude any lawful action with reference to prices which is permitted by the act commonly called the Miller-Tydings Act, namely, Title 8 of the Act of Congress approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes"; or any other then existing Federal Law.)

It is further ordered, That the respondent, Professional Golfers Association, its officers, members, agents, or representatives, cease and desist from:

1. Requiring, coercing, or persuading the respondent Golf Ball Manufacturers' Association, its officers, members, agents, or representatives, or any of them, or any other corporation, partnership, firm, or individual, to enter into any agreement or contract providing for or resulting in a difference in price in favor of members of the "PGA," through the payment of any monies, or any thing of value for the privilege of causing the letters "PGA" or any other

insignia or mark of like character to be imprinted on golf balls manufactured and sold by any of the respondent manufacturers or any other manufacturer, corporation, partnership, firm, or individual, directly or indirectly to the respondent "PGA" or any of its respondent members.

2. Entering into any combination, understanding or agreement among themselves, or among any of them, to hinder or prevent, by intimidation, coercion, withdrawal, or threatened withdrawal of patronage or custom, either expressed or implied, or promises or agreements to increase such patronage or custom, any person, firm, partnership, or corporation, or any agent or representative thereof, from selling or buying golf balls in interstate commerce, from or to whomsoever, or at whatsoever price or terms may be agreed upon between any seller or purchaser.

It is further ordered, That the respondent Golf Ball Manufacturers' Association, its officers, members, agents, or representatives, or any of them, in connection with the sale or offering for sale of golf balls in interstate commerce, cease and desist from:

1. Granting or giving the following unlawful discriminations in price, namely, the payment of anything of value to respondent Professional Golfers' Association, either as a royalty for the privilege of causing the letters "PGA" or any other insignia, brand or mark to be imprinted on golf balls sold to members of the respondent Professional Golfers Association or otherwise, which payment is, directly or indirectly, in whole or in part, passed along to or used for the benefit of the members of said Professional Golfers Association; or the making of any payment directly to such members in lieu of any such payment to the Professional Golfers Association.

2. Granting or giving any other price discrimination of substantially similar character to the respondent Professional Golfers Association or its members under substantially like circumstances and conditions in connection with the sale of golf balls of like grade and quality;

3. Paying or contracting to pay to the respondent Professional Golfers Association anything of value either as a royalty for the privilege of causing the letters "PGA" or any other insignia of like character to be imprinted on golf balls or otherwise, which payment is intended to be used or is in effect used, directly or indirectly, in whole or in part, for the purpose of advertising, promoting, or creating a preference on the part of the purchasing public for golf balls having the letters "PGA" or any other insignia, brand, or mark impressed thereon, unless such payments are made available on proportionally equal terms to all other customers competing with

the members of the Professional Golfers Association in the distribution of golf balls of like grade and quality;

4. Otherwise granting to the respondent Professional Golfers Association any advertising or promotion allowances of substantially similar character, unless such payments are made available on proportionally equal terms to all other customers competing with the members of the Professional Golfers Association in the distribution of golf balls of like grade and quality;

(It is not intended that the provisions of the foregoing paragraphs (1) to (4) inclusive shall preclude lawful contributions made to promote the general welfare of the game of golf).

It is further ordered, That the respondent, Professional Golfers Association, its officers, members, representatives, agents, and employees, cease and desist from:

1. Inducing or receiving any discrimination in price or allowance in connection with the purchase of golf balls in interstate commerce which the manufacturers of golf balls are prohibited from giving under the provisions of paragraphs (1) to (4) inclusive immediately preceding this paragraph of this order;

2. Inducing or receiving any similar discrimination in price or allowance in the purchase of golf balls in interstate commerce under substantially like circumstances and conditions.

It is further ordered, That the parties respondent herein, within 60 days of the date of the service upon them of this order, file with the Commission reports in writing stating the manner and form in which they shall have complied with this order.

IN THE MATTER OF
UNITED WOOLEN MILLS

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

Docket 3312. Complaint, Jan. 25, 1938—Decision, Mar. 2, 1938

Where a corporation engaged in sale of men's suits and clothing, to purchasers in other States, in competition with others likewise engaged in sale and distribution of such products in commerce as aforesaid, and including many who distribute and sell such suits and clothing, not manufactured by them, and who do not in any way represent themselves as manufacturers thereof—Adopted and used corporate and trade name including word "Mills," and represented, through such statements as "UNITED WOOLEN MILLS Tailors-to-Men", etc., displayed on letterheads, billheads, cards, invoices, labels, and newspaper advertising matter of interstate distribution, that it was the manufacturer of the garments sold in commerce by it, notwithstanding fact it did not manufacture said garments, as understood by trade and purchasing public generally, nor own and operate, or directly and absolutely control, any mill or mills making same;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such representation was true, and that it actually was the manufacturer of the garments sold by it, and with result, as direct consequence of mistaken and erroneous beliefs thus induced, that number of consuming public purchased substantial volume of its said suits and clothing as and from clothing manufacturer, for direct dealing with whom a substantial portion of wholesale and retail purchasers of such products has preference, as securing closer prices, superior quality, and other advantages not had through selling agency or middleman or anyone else, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of men's suits and clothing and who truthfully advertise and represent the nature and character of their business; to the substantial injury of competition in commerce:

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

Mr. Karl Stecher for the Commission.

Mr. A. Leo Oberdorfer, of Birmingham, Ala., for respondent.

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 United Woolen Mills, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the