

IN THE MATTER OF
CALIFORNIA RICE INDUSTRY, ET AL.

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

Docket 3090, Complaint, Mar. 26, 1937—Decision, Mar. 26, 1938

- Where an unincorporated trade association, which included individuals and concerns and corporate cooperative organization of some 300 rice growers of northern California, engaged in said State in purchasing, processing, milling, and selling and distributing, in aforesaid and other States and as below set forth, the "California-Japan type," produced, substantially, only in said State and shipped, largely, to Hawaii and Puerto Rico; association officers, including individual who, as chairman of its marketing board and member of its crop board, was dominant factor in its organization and directing executive of its practices and those of (1) its said marketing board, membership of which, excepting said chairman (neither miller nor grower), constituted all the rice millers in said State, and of (2) its said crop board, which had come to be dominated, likewise, by millers, rather than, in accordance with original plan and fact, the independent growers; and association members; acting under and in pursuance of the "Intrastate Marketing Agreement" to which they became signatories shortly preceding termination by Secretary of Agriculture of the theretofore effective "Interstate Marketing Agreement," and under which intrastate agreement said association, and its said marketing and crop boards, were set up—
- (a) Fixed prices, terms of sales, quantity discounts, and brokerage fees for sale of processed rice in interstate commerce through actions of its marketing board from time to time in (1) fixing at weekly meetings, with concurrence of crop board, industry price for extra-fancy clean rice, through which, by formula adopted by former, base price, producer's price and trade prices for all grades of processed rice were computed, and in (2) fixing, through former alone, prices for screenings and brewers;
 - (b) Listed, published, and distributed, through said association and marketing board members, said prices, and uniformly observed and maintained same, both in purchase of paddy from growers, and on all sales of processed rice, whether sold in aforesaid State or sold and shipped to customers in Hawaii or other points, and charged trade, with rare exception, prices which, for given time and grade, were uniform;
 - (c) Acting in agreement with Hawaiian Rice Importers Association, organized by aforesaid interstate agreement's marketing board, and composed of islands' largest rice importers, to monopolize rice markets thereof for benefit of its own miller members, and membership of which importers' association board determined and classified, fixed discount to purchasers on so large a minimum, that no single buyer was able to take advantage thereof, made available to and enjoyed by said importers' association through pooling member requirements and placing pooled orders with miller members, and submitted to audit, in behalf of said importers' association, to guarantee such discounts, and deducted from sales to importer members, as dues to and for benefit of said importers' association, charge

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of cent a bag; with result that said importer members, as sole recipients through such membership, obtained monopoly, practically, of rice industry in said islands, and nonmembers were unable to purchase said preferred "California-Japan type" rice from said miller members at competitive price, and only negligible sales were made to them;

- (d) Fixed percentages, under aforesaid Intrastate Marketing Agreement, of total annual rice crop which each miller member of marketing board might process, and determined, through said board, monthly processing quota for each miller, and required payments of miller members on each 100-pound bag processed, with additional 10 cents for each bag processed in excess of allotted quota for preceding month, for said board's expenditures and for distribution thereafter among the membership, and provided for imposition of a penalty against any miller member for violating board's provisions; and
- (e) Employed, through said board, certified public accountants to check records and invoices of members, and to ascertain compliance with board's prices, terms of sale, quantity discounts, and brokerage rates, and made monthly reports of said accountants, following audits, and test checks of all records of invoices of members, irrespective of where rice was shipped, subject of discussion at board's meetings, and thus checked observance of said prices, etc., and payments of discounts on sales to Hawaii, and calculation of aforesaid dues payable to said Importers' Association in behalf of its members, and proper remission thereof;

With result that competition in sale of rice and rice products was restricted and suppressed, and said association and members, etc., acquired a monopoly in sale of said "California-Japan type" rice, as above set forth:
Held, That such purposes, practices and policies constituted an unlawful agreement to fix and maintain prices of rice and rice products in commerce, and constituted unfair methods of competition.

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

Mr. Daniel J. Murphy for the Commission.

Mr. Harry M. Creech, of San Francisco, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the association, the individuals, and the corporations hereinafter described and named as respondents have been and are now 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. California Rice Industry hereinafter referred to as the association, is a voluntary unincorporated trade association, with its offices in the Balfour Building in the city of San Francisco, State

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of California, and is composed of the firms hereinafter named and described and its acts, practices and policies are controlled and directed by the individuals hereinafter named, and the acts, practices, and methods hereinafter alleged to have been used by the respondents herein were initiated through and made effective by the association.

PAR. 2. Respondent Harry M. Creech is an individual and is the chairman of the marketing board and a member of the crop board of the respondent association, and is the executive controlling, directing, and dominating the association and its members in planning and carrying on the practices and methods as hereinafter alleged.

Respondents George W. Brewer, William Crawford, Florence M. Douglas, Charles S. Morse, J. S. Ritterband, W. T. Welisch, I. Yamakawa, O. F. Zebal, are members of the marketing board of the respondent association; respondent R. A. Renaud is chairman, and respondents Hugh Baber, Leon Brink, N. F. Dougherty, Ernest Grell, Lewis Manor, and A. E. Scarlett are members of the crop board of the respondent association. Said respondents and their predecessors and successors in office through said marketing and crop boards formulate, dominate, control, and direct the policies and practices of the respondent association and its members, and did so during all of the times hereinafter mentioned and in doing the acts and things hereinafter alleged to have been done and performed and in planning and carrying out the practices and methods hereinafter described. The individuals named in this paragraph are hereinafter referred to as the individual respondents.

PAR. 3. Respondents Charles S. Morse, Allen A. Morse, Nelson B. Morse, Clarence G. Morse, and Gertrude Morse are individuals trading as the Capital Rice Mills and own and operate a rice mill in the city of West Sacramento in the State of California and have their principal offices and place of business at 310 California Street in the city of San Francisco, State of California.

Respondents Ellen S. Grosjean and Eileen Callaghan are individuals trading as C. E. Grosjean Rice Milling Company and own and operate a rice mill, and have their offices and principal place of business, at 3230 20th Street in the city of San Francisco, State of California.

Respondent William Crawford is an individual trading as Woodland Rice Milling Company and owns and operates a rice mill, and has his office and principal place of business, in the city of Woodland in the State of California.

Respondent Growers Rice Milling Company is a corporation organized and existing under the laws of the State of California and owns and operates a rice mill in the city of South San Francisco,

State of California and has its office and principal place of business at 503 Market Street in the city of San Francisco, Calif.

Respondent Pacific Trading Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California and owns and operates a rice mill in the city of Sacramento, State of California, and has its office and principal place of business at 460 Battery Street in the city of San Francisco, State of California.

Respondent Phillips Milling Company is a corporation organized and existing under and by virtue of the laws of the State of California and owns and formerly operated a rice mill in the city of Sacramento, State of California and has its office and principal place of business at 38 Drumm Street, in the city of San Francisco, State of California.

Respondent Rice Growers Association of California is a corporation organized and existing under and by virtue of the laws of the State of California and owns and operates a rice mill, and has its office and principal place of business, in the city of West Sacramento, State of California.

Respondent Rosenberg Brothers and Company is a corporation organized and existing under and by virtue of the laws of the State of California and owns and operates rice mills in the cities of Biggs, San Francisco, and South San Francisco in the State of California, and has its office and principal place of business at 334 California Street, San Francisco, State of California. The respondents named in this paragraph are hereinafter referred to as the member respondents.

PAR. 4. All of the said member respondents are, and, at all times mentioned herein, were, engaged in the milling or processing of rice and rice products as more fully hereinafter described, and in the sale and distribution of said products to customers located in the several States other than the State of California and in the respective Territories of the United States and in the District of Columbia, and in foreign nations, and cause said products when milled, processed, and sold to be transported from the place of milling, or processing, to the purchasers thereof located as aforesaid, and there now is, and has been at all times herein mentioned, a constant and recurring current of trade and commerce in said products beginning at the places of milling, or processing, in the State of California and flowing through and into the several States and Territories of the United States and the District of Columbia, and foreign nations.

Prior to the adoption and use of the acts, practices, and methods hereinafter alleged, these member respondents were in active and sub-

stantial competition with each other in making and seeking to make sales of their said products in said commerce, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time and said member respondents would now be in active and substantial competition with each other.

The member respondents constitute all of the rice millers located in the State of California, and mill, sell, and distribute substantially all of the rice produced in that State. The rice produced in the State of California is of the short plump grain variety, commonly known as the Japan type or, on occasions, as the California-Japan type, and is often referred to as the round grain rice as distinguished from the long or medium grain rice produced in other sections of the United States. Substantially all of the round grain or Japan type rice produced in the United States is produced in the State of California and is milled, sold, and distributed by the member respondents. Consumers of rice located in the Territory of Hawaii, Puerto Rico, Japan, and in other territories, insular possessions and foreign nations, and in various parts of the United States prefer round grain or Japan type rice of the type produced in California and sold and distributed by the member respondents to the long grain rice produced in other parts of the United States. Because of this preference for round grain or Japan type rice there is practically no competition as to price between sellers of the two types of rice in those sections where said preference exists. The member respondents occupy such a position in the milling, selling, and distributing of the round grain or Japan type rice produced in the United States that they control, direct, and dominate the industry in the United States and control, direct, and dominate purchasers of such rice for resale throughout the world.

PAR. 5. Prior to August 28, 1935, the member respondents and the individual respondents caused the organization of the association respondent for the promotion and protection of the interests of the said member respondents. On or about August 28, 1935, said member respondents entered into and thereafter carried out an understanding, agreement, combination, and conspiracy, hereafter, at times, referred to as an undertaking, for the purpose and with the effect of restricting, restraining, and monopolizing, and suppressing and eliminating competition in, the sale of milled rice, of both the round and long grain type, and in the sale of milled rice products in trade and commerce between, among, in and with the several States of the United States, the District of Columbia, foreign nations, and Territories of the United States.

PAR. 6. Pursuant to said understanding, agreement, combination, and conspiracy, and in the furtherance thereof said respondents have

done and performed, and still do and perform, the following acts and things:

1. Said member respondents agreed to fix and have fixed and maintained uniform prices in the sale of all grades of rice milled, sold, and distributed by them.

2. Said member respondents agreed to fix and have fixed and maintained uniform terms and conditions, including, but without limitation, discounts, brokerage fees, freight, and other allowances, which were to apply and have applied to all grades of rice.

3. Said member respondents agreed to allocate and have allocated among the member respondents the percentage of the total annual rice crop which each of said members could process or mill and have processed or milled monthly annually.

4. Said member respondents agreed to curtail and have curtailed the production of processed or milled rice and rice products.

5. Said member respondents agreed to refuse and have refused to make sales of rice and rice products to others than the parties to said undertaking except at prices substantially in excess of those which they agreed would apply and which have applied to sales between the parties to said undertaking.

6. Said member respondents agreed that the respondent association could and it does assess and collect penalties from said member respondents for violating the terms and conditions of agreements made in furtherance of said undertaking.

7. Said member respondents agreed that respondent association could and it did through agencies therein set up, select, appoint, and employ accountants to check, and they have checked, the books and records of the member respondents to determine whether the member respondents were complying with the terms and conditions of agreements made in furtherance of said undertakings and with rules and regulations adopted and announced by the said marketing and crop boards.

8. Said member respondents agreed to pay and have paid a sum certain in money for each bag of rice processed by them into a fund deposited with the respondent association, and agreed that penalties assessed against members for violations of the terms and conditions of the agreements made in furtherance of said undertaking could be deducted from the respective sums so deposited by said members and distributed among the other members, and penalties have been so deducted and distributed.

9. Said respondents, through said respondent association, entered into and carried out an agreement with the Hawaiian Rice Importers Association, an association of rice importers in the Territory of

Hawaii, whereby they agreed that they would not and they did not sell to importers located in Hawaii who were not members of said association.

10. Said respondents organized within the respondent association the marketing board and the crop board mentioned in paragraph 2 hereof, for the administration of the affairs of the member respondents in carrying out said undertaking. Among others said boards have done and performed and still do and perform the following acts and things:

(a) The marketing board and the crop board meet from time to time and jointly fix the prices to be observed and maintained, and which are observed and maintained by the member respondents in the sale of rice and rice products, as aforesaid.

(b) Said marketing board meets from time to time to determine, and has determined, the business policies, terms of sale, brokerage fees, discounts and freight and other allowances to be observed and maintained by said member respondents in the sale of rice and rice products, as aforesaid.

(c) Said marketing board, acting by and through its said chairman, individual respondent Harry M. Creech, promulgates the said marketing board's rules and regulations concerning the policies and terms of sale mentioned in sub-paragraph "b" of this paragraph, among the member respondents through and by the circulation of its so-called "Policy Memoranda," and through and by this means regulates the business and sales policies of the said respondent members in the sale of rice and rice products, as aforesaid.

(d) Said marketing board, through its said chairman, said individual respondent Creech, regularly and periodically collects from and disseminates among said member respondents information regarding the acts, practices and policies of said member respondents in carrying out said undertaking, to determine whether or not said member respondents have violated or are violating the terms and conditions of agreements made in furtherance of said undertaking; and from time to time fixes and collects penalties, as more particularly described in paragraph 6 herein, from said member respondents for violating the terms and conditions of the agreements made in the furtherance of said undertaking.

11. Said respondents have used and are now using other methods and means designed to suppress and prevent competition and restrict and restrain the sale of rice and rice products in said commerce.

PAR. 7. Each of the said respondents acted in concert and cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understanding, agreement, combination and conspiracy.

PAR. 8. Said understanding, agreement, combination, and conspiracy and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining the sale of said rice and rice products in trade and commerce between, among, in and with the several States of the United States, the District of Columbia, foreign nations, and Territories of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said rice and rice products in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents in said commerce; of eliminating competition, with tendency and capacity of creating a monopoly, in the sale of said rice and rice products in said commerce. Said understanding, agreement, combination, and conspiracy and the things done thereunder and pursuant thereto and in furtherance thereof, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and are to the prejudice of the public.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on March 26, 1937, issued and served its complaint in this proceeding upon the respondents California Rice Industry, et al., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Daniel J. Murphy, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Harry M. Creech, attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the

same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent California Rice Industry is a voluntary unincorporated trade association with its offices in the Balfour Building in the city of San Francisco, State of California. The said association does not have officers or directors, neither does it have articles of organization, constitution, or by-laws, except the Intrastate Marketing Agreement which created it.

PAR. 2. Organized within the association and controlling and administering its policies and activities are the marketing board and the crop board. Respondent Harry M. Creech, the chairman of the marketing board and a member of the crop board, was the dominant factor in the organization of the association and is the directing executive of the practices of said association and its marketing and crop boards.

PAR. 3. The respondent members of the marketing board, with the exception of its chairman who is neither a rice grower nor a miller, constituting all the rice millers located in the State of California, are as follows:

Charles S. Morse, Allen A. Morse, Nelson B. Morse, Clarence G. Morse, and Gertrude Morse are individuals trading as the Capital Rice Mills and own and operate a rice mill in the city of West Sacramento in the State of California, and have their principal offices and place of business in the city of San Francisco, State of California.

Ellen S. Grosjean and Eileen Callaghan are individuals trading as C. E. Grosjean Rice Milling Company and own and operate a rice mill, and have their offices and principal place of business in the city of San Francisco, State of California.

William Crawford is an individual trading as Woodland Rice Milling Company and owns and operates a rice mill, and has his office and principal place of business in the city of Woodland, State of California.

The Growers Rice Milling Company is a corporation organized under the laws of the State of California and owns a rice mill in the city of South San Francisco, State of California. Said corporation has not processed any rice since 1933 and its mill is leased to respondent Rosenberg Brothers & Company, which now operates the said mill.

Pacific Trading Company, Inc., is a corporation organized under the laws of the State of California and owns and operates a rice mill in the city of Sacramento, State of California, and has its office and princi-

pal place of business in the city of San Francisco in the said State of California.

Phillips Milling Company is a corporation organized under the laws of the State of California and owns a rice mill in the city of Sacramento, State of California. The said corporation since 1933 has not milled or processed any rice except rice flour. Said corporation has no vote in the meetings of the marketing board because on October 1, 1935, it leased its mill to the marketing board. The marketing board has never operated said mill.

Rice Growers Association of California is a corporation organized under the laws of the State of California and owns and operates a rice mill, with its principal place of business at West Sacramento in the State of California. It is a cooperative organization comprised of approximately 300 rice growers of northern California, and the said corporation mills and processes the rice of its members. The said Association also buys paddy rice from nonmembers thereof and mills and sells said rice at a profit.

Rosenberg Brothers & Company is a corporation organized under the laws of the State of California and owns and operates rice mills in Biggs and San Francisco in the State of California, and also operates a rice mill in the city of South San Francisco, State of California, which is leased from the respondent Growers Rice Milling Company.

PAR. 4. Respondents George W. Brewer, William Crawford, Florence M. Douglas, Charles S. Morse, J. S. Ritterband, and O. F. Zebal are representatives on the marketing board of the several miller respondents.

Respondent I. Yamakawa formerly was the representative of the respondent Pacific Trading Company, but has not represented said company on said marketing board since October 6, 1936. Since December 8, 1936, said company has been represented on said marketing board by J. S. Ritterband.

Respondent W. T. Welisch up to about July 1, 1936, was a representative of the respondent Phillips Milling Company on said marketing board but since that date has not been identified or affiliated with the respondent California Rice Industry or its marketing board.

PAR. 5. The respondent members of the crop board are N. F. Dougherty, its secretary; R. A. Renaud, Hugh Baber, Ernest Grell, A. E. Scarlett, Leon Brink, and Louis Manor.

PAR. 6. The original intention was that the representatives of the independent rice growers should constitute the membership of the crop board and dominate its affairs in order to safeguard and pro-

tect the interests of the growers. This plan was carried out until about a year and a half ago; since then four of the eight members of the crop board became and are now identified with the respondent Rice Growers Association of California, which is a miller organization and a member of the marketing board. The miller respondents, therefore, dominate the activities of both the marketing and the crop boards.

PAR. 7. Substantially all of the rice produced in the State of California is a short, plump grained variety, commonly known as the "Japan type" or as the "California-Japan type," and is often referred to as the "round grain rice" as distinguished from the long or medium grain rice produced in other sections of the United States. Substantially all of the round grain or the "Japan type" rice produced in the United States is produced in California, and is milled, sold, and distributed in interstate commerce by the miller respondents, members of the Marketing Board of the California Rice Industry.

PAR. 8. The average annual crop of Japan type rice grown in California is about 3 million 100-pound bags of paddy rice, which is equivalent to a million and one-half bags of clean rice. Of this latter, approximately 50 percent is shipped to Hawaii, where there is a preference for the Japan type rice; approximately 25 percent of the remainder is shipped to Puerto Rico, and the balance is sold in California and in various other States of the United States.

PAR. 9. On September 28, 1933, all the respondents entered into what has been termed an "Interstate Marketing Agreement." This agreement or program was in force until terminated by the Secretary of Agriculture on September 14, 1935.

PAR. 10. On August 28, 1935, all the respondents became signatories to what is termed an "Intrastate Marketing Agreement," which agreement became effective on said date; the marketing board, however, did not begin to function till October 1, 1935, the beginning of the crop year; said agreement has been since continually administered.

PAR. 11. Since October 1, 1935, the respondents, under the Intrastate Marketing Agreement, fixed prices, terms of sales, quantity discounts, and brokerage fees in the sales of processed rice in interstate commerce. At meetings held on Tuesday of each week the marketing board from time to time, and with the concurrence of the crop board, fixes an industry price for extra-fancy clean rice, and from this price, by use of a formula adopted by said marketing board, the base price, producer's price, and trade prices for all grades of processed rice are computed. The marketing board alone fixes the prices for screenings and brewers. Lists of said prices, from

time to time, were published and distributed by the California Rice Industry and the members of the marketing board. The miller respondents, members of the marketing board, uniformly observe and maintain the prices so fixed by the marketing board, not only for the purchases of paddy from the growers but also on all sales of processed rice, whether the rice is sold in the State of California or sold and shipped to customers in Hawaii or various other points. With rare exceptions, the trade prices charged by the miller respondents are uniform at any given time for the same grade of rice.

PAR. 12. Prior to 1933 the respondents were engaged in open competition in the purchase of paddy and in the sale of processed rice; since September 1933 there has been practically no competition, as the prices paid for paddy to the growers and the prices charged by the millers for processed rice have been uniform and fixed by agreement.

PAR. 13. The marketing board of the Interstate Marketing Agreement organized the Hawaiian Rice Importers Association in the Territory of Hawaii, which association is composed of the largest importers of rice in the Hawaiian Islands. The marketing board determined the membership and classified the members of said association as island importers. The purpose of the organization of said association was to monopolize the rice markets in the Hawaiian Islands for the benefit of the respondent millers.

PAR. 14. The marketing board under the Intrastate Marketing Agreement, and in agreement with the Hawaiian Rice Importers Association, fixed a discount of 22 cents a bag to purchasers of a minimum of forty thousand 100-pound bags of rice a month. This was later changed to 25 cents a bag on a minimum of 50,000 bags per month. No single purchaser is able to take shipments sufficiently large to entitle him to this discount. The members of the Hawaiian Rice Importers Association pool their requirements and the said association places the pooled orders with the respondent millers and the rice is shipped and billed to the association, which thus becomes the sole recipient of the above described discount for the benefit of its members. Because of this advantage, nonmembers of the Hawaiian Rice Importers Association are unable to purchase rice from the respondent millers at a competitive price, and only negligible sales are made to them. The members of the said association have thus obtained practically a monopoly of the rice industry in the Hawaiian Islands.

PAR. 15. The marketing board fixes the price of rice for Hawaii at 15 cents per 100-pound bag over the domestic price, and this 15 cents per 100-pound bag became a deferred discount which was deducted from the price of rice sold to the Hawaiian Rice Importers Associa-

tion and deposited by the miller vendor respondents in the Wells-Fargo Bank and Union Trust Company in San Francisco, Calif., as a credit to the said association. This 15 cents thus deducted accounted for part of the 22 cents discount referred to above as allowed to the Hawaiian Rice Importers Association. The remainder of 7 cents was quantity discount which in some cases was deducted from the face of the invoice when presented for payment, and in other cases was deposited to the credit of the Hawaiian Rice Importers Association.

PAR. 16. The Hawaiian Rice Importers Association employed a firm of auditors, to wit, Logan & Logan of San Francisco, Calif., to examine the invoices of the miller members of the marketing board and to check the deposits at the banks in order to determine that the above described discounts were properly given and deposited in the banks to the credit of the said association.

PAR. 17. The respondent miller members of the marketing board made an additional charge of 1 cent per bag on all sales intended for the members of the Hawaiian Rice Importers Association. This 1 cent per bag, so deducted, was remitted by the miller respondents to the Hawaiian Rice Importers Association as the membership dues of its members.

PAR. 18. The Intrastate Marketing Agreement fixes the percentages of the total annual rice crop which each miller member of the marketing board may process, and the marketing board determines monthly the processing quota for each miller. The miller members are required to pay into the "Millers' Trust Fund" 10 cents for each 100-pound bag of rice processed during the preceding month, and an additional 10 cents for each bag of rice processed by them in excess of their quota for the preceding month. After the expenditures of the marketing board are paid from the said Millers' Trust Fund, the remainder of the said fund is distributed among the miller members. The intrastate agreement further provides that a penalty shall be imposed upon a miller member for any violation of its provisions, and the amount of the penalty to be deducted from his share of the trust fund.

PAR. 19. The marketing board employs a firm of certified public accountants, to wit, Hood & Strong of San Francisco, to check each month the records and invoices of the miller members in order to ascertain the compliance of said millers with the prices, terms of sale, quantity discounts, and brokerage rates as fixed by said marketing board. The accountants in their audits make test checks of all records and invoices of the miller members of the marketing board, regardless of whether the said records or said invoices refer to rice

shipped to Hawaii, Puerto Rico or any other destination. Monthly reports are submitted by the accountants to the marketing board, and said reports are discussed at its meetings. The monthly reports from November 1, 1935, to April 1, 1937, show, except for a very few instances which were later corrected, that the miller members maintained the said prices, terms of sale, discounts, and brokerage rates, as fixed by the marketing board, in the sale of processed rice in interstate commerce. The accountants check the sales invoices of the miller members not only to determine that the discounts on sales to Hawaii were properly maintained, but also to calculate the dues payable to the Hawaiian Rice Importers Association, in behalf of its members, and to verify the remission of same.

CONCLUSION

1. The purposes, practices, and policies of the respondents as set forth in the aforesaid findings of facts constitute an unlawful agreement to fix and maintain prices of rice and rice products in commerce as defined in Section 4 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."

2. As a result of the respondents entering into and making effective the agreement as above described, competition in the sale of rice and rice products in commerce as hereinabove referred to has been restricted and suppressed.

3. As a further result, respondents thereby have acquired a monopoly in the sale of California-Japan type rice in commerce as hereinabove referred to.

4. The acts and practices of the respondents, as set forth in the foregoing findings as to the facts, and the circumstances therein set forth, constitute a combination and conspiracy to engage in and to further unfair methods of competition in commerce as hereinabove referred to within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Daniel J.

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

It is ordered, That the respondents, California Rice Industry; Harry M. Creech, George W. Brewer, Florence M. Douglas, J. S. Ritterband, W. T. Welisch, I. Yamakawa, O. F. Zebal, R. A. Renaud, Hugh Baber, Leon Brink, N. F. Dougherty, Ernest Grell, Lewis Manor, and A. E. Scarlett; Charles S. Morse, Allen A. Morse, Nelson B. Morse, Clarence G. Morse, and Gertrude Morse, trading as Capital Rice Mills; Ellen S. Grosjean and Eileen Callaghan, trading as C. E. Grosjean Rice Milling Company; William Crawford, trading as Woodland Rice Milling Company; Growers Rice Milling Company, Pacific Trading Company, Inc., Phillips Milling Company, Rice Growers Association of California, and Rosenberg Brothers & Company; their successors, officers, agents, and employees, do forthwith cease and desist, in connection with offering for sale, sale, and distribution of rice and rice products in commerce as defined in Section 4 of the Federal Trade Commission Act, from doing and performing by agreement, combination, or conspiracy between or among any two or more of said respondents, or with others, the following acts and things:

1. Fixing and maintaining uniform prices.
2. Compiling, publishing, and distributing any joint or uniform list or compilation of prices.
3. Adopting any joint or uniform price list or other device which fixes prices.
4. Discussing through the medium of meetings of the California Rice Industry or its marketing and crop boards, or in any similar manner, uniform prices, terms, discounts, agreements upon prices, by resolution or otherwise, or employing any similar device which fixes or tends to fix prices, or which is designed to equalize or make uniform the selling prices, terms, discounts, or policies of respondent millers.
5. Fixing or determining the quotas or percentages of the rice crop that the miller respondents may mill or process which, thereby, unlawfully restricts or hinders the sale of rice or rice products in interstate commerce.

It is further ordered, That the respondents shall, within 60 days after the 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.

Syllabus

IN THE MATTER OF

ROCKY MOUNTAIN LABORATORIES, INC., AND JAMES
W. FITCHESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2953. Complaint, Oct. 20, 1936—Decision, Mar. 29, 1938*

Where a corporation and an individual, its president and general manager, engaged in manufacture, distribution and sale in commerce of a pharmaceutical preparation called "Biotone"; in advertising same in newspapers and periodicals of general circulation throughout the United States, and through advertising folders and literature printed and circulated through the various States to customers and prospective customers, and by radio broadcasts—

- (a) Represented that said preparation was natural solution for all health problems and that average individual was not getting the elements from his food supply to maintain normal chemical balance in the body, and that such elements were supplied by said "Biotone";
- (b) Represented that most common ailments have their origin in the digestive system and that "Biotone" had healing qualities that corrected serious disorders, and aided nature in its natural cleansing, building, and normalizing process of the body and helped to neutralize acids therein and combat and eliminate toxins, build sound healthy tissues, and promote vigorous normal body functions; and
- (c) Represented that said "Biotone" was a helpful remedy for malnutrition, loss of appetite, lack of energy, stomach ulcers, and various other ailments and conditions;

Facts being normal average American food supply furnishes enough chemical substances to keep body normal without supplementing diet by medicine, said preparation was not a helpful remedy in cases of malnutrition, high blood pressure, etc., generally caused by or directly associated with serious systemic or metabolic disorders, most common ailments do not have their origin in digestive system nor are great majority of common ailments of humanity traceable to unbalanced body chemistry resulting in acidity, toxemia, or mineral deficiency, natural cleansing, etc., processes of the body do not need aid of any medicine or chemical to take place and function properly, ingredients in said preparation were present in such small quantities as to be totally ineffective, and aforesaid representations as to functioning and values of said preparation in aiding nature, etc., and with respect to its curative and remedial qualities were grossly exaggerated, false, misleading, and untrue;

With tendency and capacity to mislead and deceive a large portion of purchasing public into erroneous belief that all said representations were true and that preparation possessed substantial therapeutic value, and with result that a number of said public, as direct consequence of such erroneous beliefs, bought substantial volume of said product and trade was unfairly diverted to them from individuals and concerns likewise engaged in sale of other preparations designed and intended for similar usage, and