

Syllabus

IN THE MATTER OF

CALIFORNIA LUMBERMEN'S COUNCIL, COAST COUNTIES
LUMBERMEN'S CLUB, CENTRAL VALLEY LUMBER-
MEN'S CLUB, NORTHERN COUNTIES LUMBERMEN'S
CLUB, PENINSULA LUMBERMEN'S CLUB, SAN JOAQUIN
LUMBERMEN'S CLUB 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 2898. Complaint, Aug. 14, 1936—Decision, July 23, 1938*

Where an association, composed of affiliated organizations, whose membership of retail dealers in, and vendors of, lumber and building materials constituted the membership of said association; the five affiliated organizations, two members from each of which made up the board of councilmen, which, together with said association's executive officers, including a president, vice president, secretary, and manager, administered its affairs; said retail member dealers and vendors, engaged in the purchase, sale, and distribution of lumber and building materials to contractors, builders, dealers, consumers, and other purchasers, and constituting a large and important part of the dealers in lumber and building materials in the State in question, and a group so influential in the trade that it was able to, and did, substantially influence and affect the flow of trade in commerce in lumber and building materials within and to the various trade areas in the respective territories in which said members operated and sold; and the officers, councilmen, directors, and members of said organizations; with intent and effect of enhancing and promoting the volume of trade and profits of such members—

Combined and conspired, by common and concerted action, to control and confine (1) as their primary objective, the retail distribution of lumber and building materials exclusively through their own members, and to prevent the direct sale of such products by manufacturers, producers, or wholesalers to all others, namely, nonmember dealers, vendors, contractors, consumers, and other purchasers, including State and political subdivisions; and, further, (2) to limit the sale and distribution of such products by the dealer members to those districts in which said members had their places of business; and (3) to prevent other dealers from selling such products in the trading area where a dealer member was located; and, in the case of two of the member organizations at least, the fixing and preparation of price lists to be observed by their members in their respective territories; and, in the case of one of such members, the fixing and determining of the quota of sales which a manufacturer, producer, or wholesaler could make monthly in its territory, and also the quota of business which a dealer member of its organization could do; and, in pursuance of the accomplishment of the aforesaid objectives—

- (a) Prepared and published quarterly rosters, or lists, containing the names of their dealer members, and distributed the same to a large number of manufacturers, producers, and wholesalers of lumber and building materials, who

served the markets within the territorial jurisdiction of the organizations, and a large number of whom owned and operated or represented mills located in other States, from which shipments were made to the State in question; and

- (b) Informed such manufacturers, etc., that the sale of such products and distribution thereof in the territories of the various organizations herein concerned should be confined to their members, as listed on the rosters, and made serious threats that if such manufacturers, etc., did not thus restrict their sales the members would not purchase their requirements from them, and in conformance with such policy boycotted such manufacturers, etc., as sold to nonmembers, and took measures through said association to be advised as to nonmember dealers in the respective districts, together with a list of all wholesale concerns from whom they purchased their requirements, and engaged in espionage upon the business of manufacturers, producers, and wholesalers, members and nonmembers, and brought up and discussed at their meetings complaints against manufacturers, etc., for selling to nonmembers, and cooperated with one another and with the secretary of the association at the various meetings of the organizations in disseminating information among the members relative to such nonmember sellers, and also relative to names of manufacturers, etc., cooperating with them, and at times demanded cash penalties or commissions from manufacturers, producers, and wholesalers who sold to nonmembers;
- (c) Required its members, in the case of one of said organizations, to file monthly reports with such organization's secretary, showing their purchases and the names of manufacturers and wholesalers from whom made, and attempted, through the officers of said organizations, to equalize the sales among friendly manufacturers and wholesalers, and notified members to buy from such manufacturers, etc., who were selling below their quota as fixed by such organization during a particular month, and to refrain from buying from certain manufacturers, etc., who were exceeding their said quotas, and at times examined books of the dealer members to determine compliance with such policies, and imposed a penalty amounting to 10 percent of the total amount of sales made by members outside of their territories in restricting, or attempting thus to restrict sales of its members to certain territories, and issued a so-called "Standard Trade Practice Agreement," which called for the obedience by all members to all rules and practices of the organization, and imposed a fine of \$50 on any member disclosing anything regarding the activities, etc. of the organization;
- (d) Undertook, in the case of one of said organizations, to prevent the retail dealer members of another from selling in the territory of the members of the former, and requested that such offending members pay a 10 percent commission to the local members on all sales made by the offending members of the other in their territory, and undertook to interfere with sources of supply located in an outside State of at least one such offending dealer member; and
- (e) Issued price lists, in the case of two of said member organizations, to which respective dealer members were required to adhere in the respective territories of the two organizations;

With result that interstate commerce in the sale and distribution of lumber and building materials was restrained by the elimination, or attempted

elimination therefrom of nonmember dealers and other purchasers or prospective purchasers whose names did not appear on the rosters of such members, etc., and manufacturers, producers, and wholesalers who sold to such nonmember dealers or other purchasers, and by attempting to restrict said commerce to such manufacturers, etc., and to dealer members, and to otherwise restrain and obstruct the natural flow thereof in the channels of interstate trade; competitors of the dealer members were prevented from obtaining interstate shipments of their requirements; competition was substantially lessened, hindered, and suppressed in the territories of the various combining organizations here involved; manufacturers, producers, and wholesalers who owned and operated, or represented, mills in the aforesaid outside States, and sold and distributed lumber and building materials in the markets where such organization members had their places of business, at various times and in many instances, confined their sales and distribution to such members; such members withdrew and withheld their patronage from manufacturers and wholesalers who refused to discontinue sales, when requested as above, to those whose names did not appear on the aforesaid rosters; manufacturers, etc., were injured by restriction of demand for their products and freedom to sell the same direct by pressure and concerted action of such conspiring organizations, etc., to have sales confined as above set forth, in many instances paid penalties or commissions on direct sales to those whose names did not appear, and, in response to such demands as above indicated, costs to the consuming public were increased in certain territories by issuance of price lists and aforesaid policy of exclusive dealer member distribution, through denying the consuming public the advantage in price which it otherwise would have obtained in the natural flow of commerce under conditions of free competition:

Held, that such acts, policies, and practices, as above set forth and under the circumstances in question, constituted an unfair method of competition in commerce and a combination and conspiracy to engage in and further such unfair method of competition.

Before *Mr. Charles F. Diggs* and *Mr. Charles P. Vicini*, trial examiners.

Mr. Daniel J. Murphy and *Mr. Allen C. Phelps* for the Commission.

Mr. Morgan J. Doyle, 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 California Lumbermen's Council, Coast Counties Lumbermen's Club, Central Valley Lumbermen's Club, Northern Counties Lumbermen's Club, Peninsula Lumberman's Club, San Joaquin Lumbermen's Club, and the officers, councilmen, and members of said organizations, and asso-

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ciations, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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. Respondent, California Lumbermen's Council, hereinafter for convenience referred to as the "Council," is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, under articles of organization in the year 1934. Said respondent, Council, is an association composed of affiliated organizations whose membership of retail dealers in, and vendors of, lumber and building materials constitutes the membership of respondent Council. Said dealers and vendors, members of said Council and of said affiliated organizations, are persons, partnerships, and corporations, who, as such dealers and vendors, are engaged in the business of buying, selling, and distributing to contractors, builders, dealers, consumers, and other purchasers, lumber and building materials. The affairs of said respondent, Council, are, and have been, managed and executed by executive officers, including a president, vice president, treasurer, secretary and manager, and by a board of councilmen, which is composed of 10 members, 2 from each of the affiliated organizations. The principal office and headquarters of said respondent, Council, are, and have been, maintained at 465 California Street, San Francisco, Calif. The following are, and have been, the officers and members of the board of councilmen of said respondent, Council:

Officers:

George N. Ley, President.
Charles G. Bird, Vice President.
George C. Burnett, Treasurer.
I. L. Walker, Secretary and Manager.

Board of Councilmen:

George N. Ley, Santa Cruz, Calif.
Charles G. Bird, Stockton, Calif.
George C. Burnett, Tulare, Calif.
J. H. Kirk, San Luis Obispo, Calif.
Warren Tillson, Modesto, Calif.
S. P. Ross, Hanford, Calif.
I. E. Horton, South San Francisco, Calif.
A. S. Hatch, Half Moon Bay, Calif.
E. S. McBride, Davis, Calif.
James Tulley, North Sacramento, Calif.

The above-named officers and councilmen do not constitute the entire membership of said respondent, Council, but are representative members thereof, respectively.

PAR. 2. Respondent Coast Counties Lumbermen's Club, is an association of members organized and existing as a corporation under the laws of the State of California, under articles of organization in the year 1934, and having its headquarters and executive offices in the Porter Building, Watsonville, Calif. The said members are certain persons, partnerships, and corporations doing a retail business in lumber and building materials with places of business in Santa Cruz, Monterey, Santa Clara, San Benito, and San Luis Obispo Counties, in the State of California. Said corporation was organized without shares of capital or capital stock as an instrument for promoting the business interests of its members. The business of said members is the purchase, sale, and distribution of lumber and building materials. Said respondent, Coast Counties Lumbermen's Club, constitutes an affiliate, branch or subdivision of respondent, California Lumbermen's Council, and said Council and said Coast Counties Lumbermen's Club and their members actively cooperate with each other in carrying out the program, purposes, policies, and aims of respondent organizations and associations. The members of said Coast Counties Lumbermen's Club are also members of said California Lumbermen's Council and are represented on the board of councilmen of said respondent, Council, by two councilmen. The following are the officers of respondent, Coast Counties Lumbermen's Club:

Wiley Masengill, President.

W. H. Enlow, Vice President.

J. H. Kirk, Treasurer.

C. S. Tripler, Secretary and Manager.

PAR. 3. Respondent, Central Valley Lumbermen's Club, is an association of members organized and existing as a corporation under the laws of the State of California, under articles of organization in the year 1934, and having its headquarters and executive offices in the Wilhoit Building, Stockton, Calif. The said members are certain persons, partnerships, and corporations doing a retail business in the purchase, sale, and distribution of lumber and building materials with places of business in Alpine, Amador, Calaveras, Contra Costa, Merced, Mono, San Joaquin, Stanislaus, and Tuolumne Counties, in the State of California. Said correspondent, Central Valley Lumbermen's Club, constitutes an affiliate, branch or subdivision of respondent, California Lumbermen's Council, and said Council and said Central Valley Lumbermen's Club and their members actively cooperate with each other in carrying out the program, purposes, policies, and aims of respondent organizations and associations. The members of said Central Valley Lumbermen's

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Club are also members of said California Lumbermen's Council and are represented on the board of councilmen of said respondent, Council, by two councilmen. The following are the officers of said Central Valley Lumbermen's Club:

C. C. Moorehead, President.

W. O. Mashek, Vice President.

Charles G. Bird, Treasurer.

Thomas L. Gardner, Secretary and Manager.

PAR. 4. Respondent, Northern Counties Lumbermen's Club, is an association of members organized and existing as a corporation under the laws of the State of California, under articles of organization in the year 1934, and having its headquarters and executive offices in the Native Sons Building, Sacramento, Calif. The said members are certain persons, partnerships, and corporations doing a retail business in the purchase, sale, and distribution of lumber and building materials with places of business in northern California. Said respondent, Northern Counties Lumbermen's Club, constitutes an affiliate, branch, or subdivision of respondent, California Lumbermen's Council, and said Council and said Northern Counties Lumbermen's Club and their members actively cooperate with each other in carrying out the program, purposes, policies, and aims of respondent organizations and associations. The members of said Northern Counties Lumbermen's Club are also members of said California Lumbermen's Council and are represented on the board of councilmen of said respondent, Council, by two councilmen. The following are the officers of said Northern Counties Lumbermen's Club:

George K. Adams, President.

E. S. McBride, Vice President.

C. D. LeMaster, Secretary and Manager.

PAR. 5. Respondent, Peninsula Lumbermen's Club, is a voluntary unincorporated trade association or organization of certain persons, partnerships, and corporations engaged in the retail business as dealers in, or vendors of, lumber and building materials with places of business in San Mateo and Santa Clara Counties, in the State of California. The headquarters and principal office of said Peninsula Lumbermen's Club are located at 2194 Broadway, Redwood City, Calif. Said Peninsula Lumbermen's Club is affiliated with and is one of the subdivisions of said respondent, California Lumbermen's Council, and is, and has been, actively engaged in carrying out the program, purposes, policies, and aims of said California Lumbermen's Council. The members of said Peninsula Lumbermen's Club are also members of said California Lumbermen's Council, and are represented on the

board of councilmen of said California Lumbermen's Council by two councilmen.

PAR. 6. Respondent, San Joaquin Lumbermen's Club, is an association of members organized and existing as a corporation under the laws of the State of California under articles of organization in the year 1935, and having its office and principal place of business in the Rowell Building, Fresno, Calif. The said members are certain persons, partnerships, and corporations engaged in the retail business of buying, selling, and distributing lumber and building materials with places of business in Merced, Fresno, Madera, Tulare, and Kings Counties, in the State of California. Said respondent, San Joaquin Lumbermen's Club, constitutes a member or subdivision of respondent, California Lumbermen's Council, and their members actively cooperate with each other in carrying out the program, purposes, policies, and aims of respondent organizations and associations. The members of said San Joaquin Lumbermen's Club are also members of said California Lumbermen's Council and are represented on the board of councilmen of said respondent Council by two councilmen. The following are the officers of said San Joaquin Lumbermen's Club:

George C. Burnett, President.

F. Dean Prescott, Vice President.

Ralph P. Duncan, Treasurer.

Bernard B. Barber, Secretary and Manager.

PAR. 7. Those hereinabove specifically named as officers, councilmen, and members of said respondent organizations and associations do not embrace the entire list or number of such officers, councilmen, or members but are representative thereof. All members of said respondent organizations and associations are also made party respondents herein as a class to which those specifically named are representative of the whole.

PAR. 8. The said members of said respondent organizations and associations, in the course and conduct of their business, purchase their lumber and building materials from manufacturers, producers, and distributors in various States and cause such lumber and building materials to be shipped and transported to warehouses and places of business and to customers of such purchasing members from points in States other than the States in which such respective points of destination are located. In the course of the sale and distribution of their merchandise, the said members of said organizations and associations cause lumber and building materials, when sold, to be shipped and transported pursuant to purchase orders from their

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warehouses, places of business, or direct from their suppliers to their customers at points in States other than the State in which such respective shipments originate. In the course and conduct of the business of said members of said organizations and associations, as hereinabove described, respondents are, and have been engaged in commerce among the several States and in trade, business and commerce having a direct effect upon interstate commerce in lumber and building materials. The said members of said organizations and associations are, and have been, engaged in the course of such business in actual and potential competition with each other and with non-members and other dealers and manufacturers who market, or desire to market, lumber and building materials.

PAR. 9. The said members of said organizations and associations constitute a large and important part of the dealers in lumber and building materials in the State of California; and such members constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in lumber and building materials within, to, and from the State of California. The organizations and associations are enabled thereby to more effectively exercise control and influence over such trade and commerce for the promotion and enhancement of their own volume of trade and profits.

PAR. 10. Respondents are banded and allied together in aforesaid organizations and associations to carry into effect the program and practices hereinbelow described and to enhance and promote the volume of trade, business, and profits of said respondent members. And the respondents, namely said organizations and associations, their members, officers, and councilmen, parties respondent herein, during and in the period of more than 3 years last past have agreed, 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, and maintain the program, to wit:

1. To establish the respondent members of said organizations and associations as a class of so-called legitimate or regular dealers in lumber and building materials in the State of California; and to confine and require the sale and distribution of such lumber and building materials by manufacturers and producers thereof to or through the medium of such respondent members exclusively.

2. To induce, require, or compel manufacturers and producers of lumber and building materials to refrain and to cease and desist from selling or distributing such lumber or building materials to so-called illegitimate or irregular competitors of respondent members who are

not members of said respondent organizations and associations; and to prevent such so-called illegitimate or irregular competitors from purchasing or securing such lumber or building materials direct from manufacturers or producers; and to compel them to purchase their requirements of such lumber or building materials from or through the medium of said members of said respondent organizations and associations exclusively, and upon terms or conditions of sale which accord a commission, profit or allowance to such members of said respondent organizations and associations.

3. To induce, require, or compel manufacturers and producers of lumber and building materials to refrain and desist from selling or distributing lumber and building materials to so-called illegitimate or irregular dealers who are not members of said respondent organizations and associations; and to limit such sales and distribution of lumber and building materials exclusively to members of said respondent organizations and associations.

4. To interfere with the business and trade in lumber and building materials of dealers who are not members of said respondent organizations and associations for the purpose of enabling or assisting said members of said organizations and associations to appropriate and acquire the patronage or trade and obstruct the competition of such nonmember dealers.

5. To exclusively warehouse, promote, advertise, and advance the sale and use of lumber and building materials of the respective manufacturers and producers who (a) confine and limit the marketing and distribution of their products to or through the medium of respondent members of said organizations and associations, and (b) refrain or desist from selling or distributing their products direct to nonmember competitors of said respondent members of said organizations and associations.

6. To eliminate, lessen, restrain, and control actual and potential competition among or with said members of respondent organizations and associations by (a) denying membership in respondent organizations and associations to persons, partnerships, and corporations who are engaged, or desire to engage, in the business of dealing in, selling or vending lumber and building materials in competition with said members of respondent organizations and associations, or who desire to do business in communities served by said members of respondent organizations and associations; (b) hindering, obstructing, hampering, and restraining such persons, partnerships, and corporations in the conduct of their business; (c) driving or attempting to drive such concerns out of business; (d) denying membership in respondent organizations and associations to any dealer, vendor, or

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other seller of lumber and building materials who fails or refuses to support, agree to, and abide by, the said program, conspiracy, and undertaking of respondents as herein described, and (e) other united, cooperative, or concerted action on the part of respondents.

7. To acquire and maintain a monopoly in the State of California in said members of respondent organizations and associations of the trade and business of dealing in or distributing lumber and building materials.

8. To fix and establish, by agreement, schedules of uniform prices for the sale of lumber and building materials. The prices thus established were enhanced beyond the price which would prevail under natural and normal competition, in the absence of said price agreements and the other agreements herein alleged.

PAR. 11. The parties respondent herein have agreed, combined, confederated, and conspired together for the purpose and with the intent of carrying out the aforesaid program; and they have been, and are now, engaged in carrying into effect and maintaining said program and the said agreement, combination, confederation, conspiracy, and undertaking, as set forth in paragraph 10 hereof. Pursuant to and for the purpose of effecting and carrying out the said program and said agreement, combination, confederation, conspiracy, and undertaking, respondents have, among other things, done the following:

(a) Exacted and procured promises and agreements from each member of respondent organizations and associations, and from manufacturers and producers of lumber and building materials, to the effect that such dealers, members, manufacturers, and producers will support, adhere to, and enforce the foregoing program of respondents set forth in paragraph 10 hereof.

(b) Used and continued to use, in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against manufacturers, dealers, and others to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of respondents.

(c) Held meetings of respondent organizations and associations, their members, officers, and councilmen, to devise means of exerting influence, pressure, coercion, or other means of inducing, coercing, and requiring manufacturers, producers, distributors, and others engaged in said lumber and building-materials trade and industry to abide by, and adhere to, said program.

(d) For the purpose and with the effect of inducing or compelling manufacturers and producers to conform to said program, informed

and advised such manufacturers and producers of the names of said members of respondent organizations and associations and of respondent's purpose and determination to insist upon and require such manufacturers and producers to distribute their products through the medium of said respondent members exclusively and in conformity with the aforesaid program of respondent organizations and associations.

(e) Denied and revoked membership in respondent organizations and associations of dealers who failed to support, abide by or carry out, said program of respondents, and otherwise disciplined such members and dealers.

(f) Used and engaged in other acts, cooperative and concerted action and coercive methods and practices in promoting, establishing, and carrying out the aforesaid program and agreement, combination, conspiracy, confederation, and undertaking set forth in paragraph 10 hereof.

PAR. 12. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices of respondents, as set forth in paragraphs 10 and 11 hereof, are, and have been :

(a) To monopolize, in said members of respondent organizations and associations in the State of California, the business of dealing in and distributing lumber and building materials.

(b) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said lumber and building-materials 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.

(c) To substantially increase the cost to purchasers of such lumber and building materials and, consequently to increase the cost of construction, repair, maintenance, and remodeling of homes, dwellings, buildings, highways, and all kinds of construction and building works.

(d) To oppress, eliminate, and discriminate against business enterprises which are not members of said respondent organizations and associations, and which are, or have been, engaged in selling, distributing or using lumber and building materials.

(e) To restrain or restrict employment in the construction and building industry and trade, and to reduce the purchasing power

or capacity of purchasers and users of such lumber and building materials.

(f) To obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in lumber and building materials in, to, and from the State of California and to injure competitors of the members of said respondent organizations and associations in unfairly diverting business and trade from them, depriving them thereof, and otherwise oppressing or driving them out of business.

(g) To prejudice and injure the public and manufacturers, producers, dealers, distributors, and others who do not conform to the program of said respondent organizations and associations and its members, or who do not desire but are compelled to conform to said program.

PAR. 13. The above-alleged acts and things done by respondents as set forth in paragraphs 10, 11, and 12 thereof, are monopolistic practices and are methods of competition which are unfair, and they constitute unfair methods of competition in commerce within the intent and meaning, and in violation, of Section 5 of said Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 14, 1936, issued and served its complaint in this proceeding upon respondents California Lumbermen's Council, 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 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; respondents did not introduce any testimony in opposition to the allegations of the complaint; 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, and briefs in support of the complaint and in opposition thereto; because of the waiver by counsel for the respondents, no oral arguments were made in behalf of the Commission or the respondents; and the Commission having duly considered the same and being now fully advised in the premises, finds that this

proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, California Lumbermen's Council, hereinafter for convenience referred to as the "Council," was formerly a voluntary unincorporated association, but since 1934 the said Council has been a corporation organized and existing under and by virtue of the laws of the State of California. The principal office and headquarters of said Council were formerly maintained at 465 California Street, San Francisco, in the said State of California, but since about May 1936, the principal offices and headquarters of said Council have been maintained at 34 Rowell Building, Fresno, in the said State of California. Said Council is an association composed of affiliated organizations whose membership of retail dealers in, and vendors of, lumber and building materials constitute the membership of said Council. The members of said Council before and after incorporation remained practically the same. The said dealers and vendors, members of said Council, and of said affiliated organizations are persons, partnerships, and corporations who, as such dealers and vendors, are engaged in the business of buying, selling, and distributing lumber and building materials to contractors, builders, dealers, consumers, and other purchasers. The affairs of said Council are administered by executive officers including a president, vice president, secretary and manager, and by a Board of Councilmen which is composed of 10 members, two from each of the affiliated organizations. The following were the officers and members of the Board of Councilmen of said Council for the year 1936:

Councilmen:

George Burnett.
E. S. McBride.
I. L. Horton.
George N. Ley.
Charles G. Bird.
J. H. Kirk.
J. U. Gartin.
S. P. Ross.
A. S. Hatch.
James Tully.

Officers:

Geo. Burnett, Pres.
E. S. McBride, Vice Pres.
I. L. Horton, Treas.
B. B. Barber, Secy-Mgr.

PAR. 2. Respondent, Coast Counties Lumbermen's Club, is an association of members formerly existing as a voluntary unincorporated association, but since 1934 the said respondent, Coast Counties Lumbermen's Club, has been a corporation organized and existing under and by virtue of the laws of the State of California.

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The principal office and headquarters of said respondent organization are maintained in the Porter Building, Watsonville, in the said State of California. The members of said respondent organization are certain persons, partnerships, and corporations doing a retail business in lumber and building materials, with places of business in Santa Cruz, Monterey, Santa Clara, San Benito, and San Luis Obispo Counties in the State of California. Said respondent was organized without shares of capital stock as an instrument for promoting the business interests of its members. The business of said members is the purchase, sale, and distribution of lumber and building materials. Said respondent organization constitutes an affiliate or subdivision of respondent Council; said Council and said respondent organization, the officers and members actively cooperate with each other in carrying out the program and policies of respondent organizations. The members of the said Coast Counties Lumbermen's Club are also members of the said Council and are represented on the Board of Councilmen of said Council by two councilmen. The following were the officers and directors of said respondent, Coast Counties Lumbermen's Club, for the year 1936 or part thereof:

Directors:

Frank Sparling.
George Ley.
W. H. Enlow.
Chas. Colburn.
H. B. Chadbourne.
J. H. Kirk.
W. T. Masengill.

Officers:

Wiley Masengill, Pres.
W. H. Enlow, Vice Pres.
J. H. Kirk, Treasurer.
C. S. Tripler, Secy. & Treas.

The following concerns are representative members of said Coast Counties Lumbermen's Club, but do not constitute the entire membership of said respondent organization:

Homer T. Hayward Lumber Co.
Gilroy Lumber Co.
Tynan Lumber Co.
Sterling Lumber Co.
Southern Pacific Milling Co.
Union Supply Co.
Work Lumber Co.
Hammond Lumber Co.
Pacific Coast Coal Co.
Norton-Phelps Lumber Co.

M. J. Murphy, Inc.
McKinnon's Lumber Yard.
G. A. Good.
Square Deal Lumber Co.
Salinas Lumber Co.
San Luis Milling and Lumber Co.
Santa Cruz Lumber Co.
Sunnyside Lumber Co.
Wood Bros. Lumber Co.
Freedom Lumber Co.

PAR. 3. Respondent, Central Valley Lumbermen's Club, is an association of members formerly existing as a voluntary unincorporated association, but since 1934 the said respondent, Central Valley Lumbermen's Club, has been a corporation organized and existing under

and by virtue of the laws of the State of California. The principal office and headquarters of said respondent organization are in the Wilhoit Building, Stockton, in the said State of California. The members of said respondent organization are certain persons, partnerships, and corporations doing a retail business in the purchase, sale, and distribution of lumber and building materials, with places of business in Alpine, Amador, Calaveras, Contra Costa, Merced, Mono, San Joaquin, Stanislaus, and Tuolumne Counties, in the said State of California. The said respondent, Central Valley Lumbermen's Club, is an affiliate or subdivision of the respondent Council, and the said Council and said Central Valley Lumbermen's Club, their officers and members, actively cooperate with each other in carrying out the program and policies of the respondent organizations. The members of said respondent, Central Valley Lumbermen's Club, are also members of the said Council, and are represented on the Board of Councilmen of said Council by two councilmen. The following were the officers and directors of said respondent, Central Valley Lumbermen's Club, for the year 1936.

Officers:

Chas. C. Moorehead, Pres.
 W. O. Mashek, Vice Pres.
 Charles G. Bird, Treasurer.
 Thomas L. Gardner, Secy. & Mgr.

Directors:

L. H. Elliott.
 D. H. Schroebl.
 C. G. Bird.
 C. C. Moorehead.
 W. S. Tillson.
 John Yancey.
 A. R. Martin.

The following concerns are representative members of said respondent, Central Valley Lumbermen's Club, but do not constitute the entire membership of said respondent organization:

Brentwood Lumber Co.
 Moorehead Lumber Co.
 Elliott Lumber Co.
 Martinez Lumber Co.
 Newman Lumber Co.
 Patterson Lumber Co.
 Hales & Symons.

Central Lumber Co.
 Fisher Bros. Lumber & Mill Co.
 San Joaquin Lumber Co.
 Star Lumber Co.
 Stockton Lumber Co.
 Tracy Lumber Co.
 Westley Lumber Co.

PAR. 4. Respondent, Northern Counties Lumbermen's Club, is an association of members formerly existing as a voluntary unincorporated association, but since 1934 the said respondent, Northern Counties Lumbermen's Club, has been a corporation organized and existing under and by virtue of the laws of the State of California. The principal office and headquarters of said respondent organization are maintained in the Native Sons Building, Sacramento, in

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the said State of California. The members of said respondent organization are certain persons, partnerships, and corporations doing a retail business in the purchase, sale, and distribution of lumber and building materials, with places of business in Northern California. The said respondent, Northern Counties Lumbermen's Club, is an affiliate or subdivision of respondent, Council, and the said Council and said Northern Counties Lumbermen's Club, their officers and members, actively cooperate with each other in carrying out the program and policies of respondent organizations. The members of said respondent, Northern Counties Lumbermen's Club, are also members of said Council, and are represented on the board of councilmen of said Council by two councilmen. The following were the officers and directors of the respondent, Northern Counties Lumbermen's Club, for the year 1936 or part thereof:

Officers:

George K. Adams, Pres.
E. S. McBride, Vice Pres.
C. D. LeMaster, Secy. & Mgr.

Directors:

Ralph Beede
Chas. Miller
E. S. McBride
Homer Derr
E. T. Robie
S. R. Scott
F. G. Duttie
Geo. K. Adams
Jim Tully.

The following concerns are representative members of said respondent, Northern Counties Lumbermen's Club, but do not constitute the entire membership of said respondent organization:

Antioch Lumber Co.
Auburn Lumber Co.
Sterling Lumber Co.
Noah Adams Lumber Co.
Loomis Lumber Co.
Concord Lumber Co.
Davis Lumber Co.
Dixon Lumber Co.
J. M. Derr Lumber Co.
General Supply Co.
Jackson Lumber Co.
C. V. Hooper
Lafayette Lumber Co.
C. G. Cello & Sons
Frank G. Noyes Co.

Napa Lumber Co.
Napa Builders Supply
Nevada County Lumber Co.
Newcastle Lumber Co.
Redwood Manufacturing Co.
Blair Bros.
Rio Linda Lumber Co.
Truckee Tahoe Lumber Co.
Perry Lumber Co.
Vallejo Lumber Co.
Long-Bell Lumber Co.
Glenn County Lumber Co.
Woodland Lumber Co.
Acme Building Material Co.

PAR. 5. Respondent, Peninsula Lumbermen's Club, is an association of members formerly existing as a voluntary unincorporated association, but since 1936 the said respondent, Peninsula Lumber-

men's Club, has been a corporation organized and existing under and by virtue of the laws of the said State of California. The principal office and headquarters of said respondent organization are maintained at 2194 Broadway, Redwood City, in the said State of California. The members of said respondent organization are certain persons, partnerships, and corporations engaged in the retail business as dealers in, or vendors of, lumber and building materials, with places of business in San Mateo and Santa Clara Counties, in the said State of California. Said respondent, Peninsula Lumbermen's Club, is affiliated with and is one of the subdivisions of respondent Council, and their officers and members actively cooperate with each other in carrying out the program and policies of said respondent organizations. The members of said respondent, Peninsula Lumbermen's Club, are also members of the said Council, and are represented on the board of councilmen of said Council by two councilmen. J. B. McKeon was the secretary and manager of said respondent, Peninsula Lumbermen's Club. The following concerns are representative members of said respondent, Peninsula Lumbermen's Club, but do not constitute the entire membership of said respondent organization:

Wisnom Lumber Co.
H. H. Smith Lumber Co.
A. L. Stockton Lumber Co.
A. S. Hatch Lumber Co.
George F. Cleese
Schopke & Burke Lumber Co.
Sterling Lumber Co.
Merner Lumber Co.
Palo Alto Lumber & Roofing Co.
Trimble Lumber Co.

Gray-Thorning Lumber Co.
Progress Lumber Co.
Sudden Lumber Co.
West Bay Lumber Co.
McNulty Lumber Co.
San Carlos Lumber Co.
San Mateo Planing Mill
Industrial City Lumber Co.
South City Lumber & Supply Co.

PAR. 6. Respondent, San Joaquin Lumbermen's Club, is an association of members formerly existing as a voluntary unincorporated association, but since 1935 has been a corporation organized and existing under and by virtue of the laws of the State of California. The principal office and headquarters of said respondent organization are maintained in the Rowell Building, Fresno, in the said State of California. The said members are certain persons, partnerships, and corporations engaged in the retail business of buying, selling, and distributing lumber and building materials, with places of business in Merced, Fresno, Madera, Tulare, Kern, and Kings Counties, in the said State of California. Said respondent, San Joaquin Lumbermen's Club, is an affiliate and subdivision of the respondent Council, and their officers and members actively cooperate

with each other in carrying out the program and policies of the respondent organizations. The members of the respondent, San Joaquin Lumbermen's Club, are also members of said Council, and are represented on the board of councilmen of said Council by two councilmen. The following were the officers of the said respondent, San Joaquin Lumbermen's Club, for the year 1936:

George C. Burnett, President.
 F. Dean Prescott, Vice president.
 Ralph P. Duncan, Treasurer.
 Bernard B. Barber, Secretary and manager.

The following concerns are representative members of said respondent, San Joaquin Lumbermen's Club, but do not constitute the entire membership of said respondent organization:

Merced Lumber Co.	Willard Lumber & Supply Co.
Cross Lumber Co.	Central Lumber Co.
C. S. Pierce Lumber Co.	W. B. March Lumber Co.
H. C. Kofoed Lumber Co.	Citizens Lumber Co.
Chowchilla Lumber Co.	Laton Lumber Co.
Clovis Lumber Co.	R. O. Deacon Lumber Co.
The King Lumber Co.	Burton-Doak Lumber Co.
Dinuba Lumber Co.	Hammond Lumber Co.
M. Kellner & Son Lumber Co.	Madera Lumber Co.
Lumber & Supply Co.	Wenrich Lumber Co.
Malm & Angle Lumber Co.	Orange Cove Lumber Co.
W. R. Spalding Lumber Co.	Parlier Lumber Co.
Fowler Lumber Co.	Brey-Wright Lumber Co.
Bengston-Holt Lumber Co.	Reedley Lumber Co.
Crescent Lumber Co.	Western Lumber Co.
Keliner Lumber Co.	Prescott Brick & Lumber Co.
Maisler Bros. Lumber Co.	Burnett Lumber Co.
Marion Nine Lumber Co.	The Cox Lumber Co.
Seeley Lumber Co.	Kelly Lumber Co.
Swastika Lumber Co.	Tulare County Lumber Co.
Valley Lumber Co.	

PAR. 7. The respondent officers, councillors, directors, and members of the respondent organizations herein specifically named do not constitute the entire list or number of such officers, councilmen, directors or members, but are representative thereof. The dealer members of the respondent organizations constitute a class, having a common or general interest, so numerous as to make it impracticable to name them all specifically as parties respondent, but those specifically named are representative of the whole.

PAR. 8. The respondent members of the said respondent organizations, in the course and conduct of their business, purchase lumber and building materials from manufacturers, producers, and distributors located in various states of the United States, particularly in

the States of Washington and Oregon, and cause such lumber and building material to be shipped and transported, by boat and by rail, from the various States in which they are manufactured and produced, particularly from the States of Washington and Oregon, to the respondent dealers' places of business and to respondent dealers' customers in the State of California. The activities of the respondent organizations, their officers and members thereof, have affected interstate commerce to the extent and the manner hereinafter set forth. The members of the respondent organizations in their respective businesses, but for the matter and things hereinafter set out, would be naturally and normally in competition with each other, and are in actual and potential competition with other individuals, partnerships, and corporations who are also engaged, or desire to engage, in the sale and distribution of lumber and building materials.

PAR. 9. The respondent members of the respondent organizations constitute a large and important part of the dealers in lumber and building materials in the State of California; said members constitute a group so influential in the trade as to be able to, and do, substantially influence and affect the flow of trade and commerce in lumber and building materials within and to the various trade areas in the respective territories wherein said respondent members of the respondent organizations operate and sell.

PAR. 10. The respondent organizations, their officers, councilmen, directors, and members, with the purpose and effect of enhancing and promoting the volume of trade and profits of said respondent members, have combined and conspired by common and concerted action, to adopt and enforce objectives and practices as hereinafter more fully described.

PAR. 11. The primary objective of the respondents, which they actively cooperated in maintaining, was to control and confine the retail distribution of lumber and building materials exclusively through the members of the respondent organizations and to prevent the direct sale of lumber and building materials by manufacturers, producers, or wholesalers to all others, namely, nonmember dealers, vendors, contractors, consumers, and other purchasers, including State and political subdivisions.

PAR. 12. Further objectives of the respondents were (a) to limit the sale and distribution of lumber and building materials by the dealer members to districts in which the said dealer members have their places of business; (b) to prevent other dealers from selling lumber and building materials in the trading area where a dealer member is located; (c) at least two of said respondent organizations,

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to wit, Coast Counties Lumbermen's Club and the Northern Counties Lumbermen's Club, through their officers or representatives, fixed and prepared price lists to be observed by their members in the respective territories of the said two respondent organizations.

PAR. 13. The respondent, Coast Counties Lumbermen's Club, fixed and determined the quota of sales which a manufacturer, producer, or wholesaler could make monthly in the territory of said respondent organization, and also fixed and determined the quota of business which a dealer member of said organization could do.

PAR. 14. For the accomplishment of the aforesaid objectives the respondent organizations, their officers, councillors, directors, and members have engaged in the following practices:

(a) Rosters, which listed the names of the officers and councilmen of the Council and the secretaries and members of all the respondent affiliates, were issued quarterly and distributed by the Council to a large number of manufacturers, producers and wholesalers, or their representatives, of lumber and building materials, who serviced the markets within the territorial jurisdiction of the respondent organizations. A large number of said manufacturers, producers and wholesalers owned and operated or represented mills located in the States of Oregon and Washington, from which places lumber and building materials were shipped, by boat and by rail, to the State of California.

The following form letter was enclosed with the rosters:

TO ALL WHOLESALE DISTRIBUTORS OF LUMBER, MILLWORK &
BUILDING MATERIALS:

Inclosed herewith are four rosters of Dealers affiliated with the California Lumbermen's Council.

In order that your California representatives may have this information, we ask that you provide those who cover the towns listed in the roster with a copy of same. Additional copies may be obtained upon request.

Kindly sign and return the inclosed card at once.

Thanking you for cooperation in this matter, we remain,

Yours very truly,

CALIFORNIA LUMBERMEN'S COUNCIL.

(b) The secretaries of the Council and of the various affiliated respondent organizations informed manufacturers, producers, and wholesalers, or their representatives, that the sale of lumber and building materials and the distribution thereof in the territories of the respondent organizations should be confined to the members of the respondent organizations, as listed on the rosters. Several members, at various times, stated that the purpose of the rosters was to so limit the sale and distribution of lumber and building materials through the dealer members listed thereon. The officials and mem-

bers of the respondent organizations discussed the rosters, at times in guarded language, and at other times conveyed to the manufacturers, producers and wholesalers, or their representatives, implied threats that if the manufacturers, producers, and wholesalers did not restrict their sales to the respondent members, the respondent members would not purchase their requirements from them. In accordance with the policy of the respondent organizations, manufacturers, producers, and wholesalers who sold to nonmembers were boycotted by the members of said respondent organizations.

(c) At a Council meeting on June 28, 1935, a motion was passed instructing all Club secretaries to furnish the Council with a list of nonmember retail lumber dealers in their districts, together with as complete a list as possible of the wholesale concerns from whom these dealers purchased their requirements.

On July 2, 1935, the Council sent a memorandum to the secretaries of the affiliated respondent organizations, requesting the above information at their earliest convenience.

(d) The officials and members of the respondent organizations engaged in espionage upon the business of manufacturers, producers and wholesalers, members and nonmembers; complaints against manufacturers, producers, and wholesalers for selling to other than respondent members were brought to the attention of, and discussed by, members, at the various meetings of respondent organizations; the various secretaries of the respondent affiliated organizations cooperated with each other and with the secretary of the Council in disseminating information among the members relative to sales by manufacturers, producers, and wholesalers to nonmembers; members were also informed as to the names of the manufacturers, producers, and wholesalers who cooperated with the respondents.

(e) The respondents at times demanded cash penalties or commissions from manufacturers, producers, and wholesalers who sold to nonmembers.

(f) The secretary of the respondent Coast Counties Lumbermen's Club requested the sales manager of Smith Lumber Co., of San Francisco, Calif., a wholesaler who purchases about 70 percent of 40,000,000 feet of lumber a year from outside the State of California, particularly from the States of Washington and Oregon, to stop selling W. F. Sechrest, a nonmember dealer, or to charge the said Sechrest two or three dollars more on each thousand feet and to credit this increased amount to the Coast Counties Lumbermen's Club; because of the refusal of the Smith Lumber Co. to comply with this request, all the members of the said respondent Club, with the exception of one, stopped doing business with the Smith Lumber

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Co., and the respondents attempted to interfere, and did interfere, with various sources of supply of the Smith Lumber Co. in the States of Washington and Oregon.

(g) The respondent Coast Counties Lumbermen's Club required its members to file monthly reports, with the Club's secretary, showing their purchases and the names of manufacturers and wholesalers from whom said purchases were made. The officers of said respondent Club attempted to equalize the sales among friendly manufacturers and wholesalers, and the members were notified, orally and in writing, to buy from such friendly manufacturers and wholesalers who were selling below their quotas as fixed by the Club during a particular month, and to refrain from buying from certain manufacturers and wholesalers who were exceeding their quotas in a particular month. The secretary of the Club at times examined the books of the dealer members, to determine that these policies were complied with.

(h) The Coast Counties Lumbermen's Club, in restricting, or attempting to restrict, the sales of its members to certain dealer territories, imposed a penalty amounting to 10 percent of the total amount of sales made by said members outside of said dealer territories.

(i) The "Standard Trade Practice Agreement" issued by the respondent Coast Counties Lumbermen's Club called for the obedience by all members to all rules and practices of said respondent Club, and imposed a fine of \$50 to be paid by any member disclosing anything whatsoever regarding the activities, regulations, agreements, and understandings of said Club.

(j) The respondent Northern Counties Lumbermen's Club attempted to prevent the retail dealer members of the Sacramento Lumbermen's Club from selling in the territory of the members of the said respondent Northern Counties Lumbermen's Club, and requested that the members of said Sacramento Lumbermen's Club pay a 10 percent commission to the said respondent Northern Counties Lumbermen's Club on all sales made by the members of said Sacramento Lumbermen's Club in the territory of the members of the said respondent Northern Counties Lumbermen's Club. Respondents attempted to interfere with sources of supply, located in the States of Washington and Oregon, of at least one dealer member of the Sacramento Lumbermen's Club who sold in the said territory of the said Northern Counties Lumbermen's Club.

(k) The respondents Coast Counties Lumbermen's Club and Northern Counties Lumbermen's Club issued price lists to which

respective dealer members of both respondent organizations were required to adhere in the respective territories of both organizations.

PAR. 15. The aforesaid practices of the respondent organizations, their officers, directors, councilmen, and members, have tended to produce, and have produced, the following results:

(a) Interstate commerce in the sale and distribution of lumber and building materials has been restrained by eliminating, or attempting to eliminate, therefrom, nonmember dealers and other purchasers or prospective purchasers whose names do not appear on the respondent's rosters, and manufacturers, producers, and wholesalers who sell to such nonmember dealers, or such other purchasers, and by restricting, or attempting to restrict, said commerce to such manufacturers, producers, and wholesalers, and to such dealer members; and to otherwise restrain and obstruct the natural flow of commerce in channels in interstate trade.

(b) Competitors of respondent dealer members of the respondent organizations have been prevented from obtaining interstate shipments of their requirements, particularly from the States of Washington and Oregon, and competition has been substantially lessened, hindered, and suppressed in the territories of the respondent organizations.

(c) Manufacturers, producers, and wholesalers who own and operate, or represent, mills in the States of Washington and Oregon, and who sell and distribute lumber and building materials in the markets where the respondent members of the respondent organizations have their places of business, have at various times, and in many instances, confined such sales and distribution to the dealer members of the respondent organizations.

(d) Respondent dealer members of the respondent organizations have withdrawn and withheld their patronage from manufacturers and wholesalers who refused to comply with the requests of respondents' secretaries that sales be discontinued to purchasers and prospective purchasers whose names do not appear on respondents' rosters.

(e) Manufacturers, producers, and wholesalers were injured in their business by restriction of demand for their products and of freedom to sell same direct by the pressure and concerted action of the respondents to have sales confined to the respondent members of the respondent organizations. In many instances, manufacturers and wholesalers, in response to the demand of certain of the respondent organizations, paid penalties or commissions to respondents on direct sales made by said manufacturers and wholesalers to purchasers whose names did not appear on respondents' roster.

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(f) Costs to the consuming public were increased in certain territories by the issuance of price lists and by respondents' policy of exclusive dealer member distribution, because the consuming public was thereby denied the advantages in price which it otherwise would have obtained in the natural flow of commerce under conditions of free competition.

CONCLUSION

The acts, policies, and practices of the respondents, as set forth in the foregoing findings as to the facts, and the circumstances therein set forth, constitute an unfair method of competition in commerce and a combination and conspiracy to engage in, and to further, unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

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 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 briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, California Lumbermen's Council, its officers, councilmen, and respondent affiliated units, to wit: (1) Coast Counties Lumbermen's Club; (2) Central Valley Lumbermen's Club; (3) Northern Counties Lumbermen's Club; (4) Peninsula Lumbermen's Club; (5) San Joaquin Lumbermen's Club; their officers, directors, and members, and the agents, representatives, and employees of said members, in connection with the purchase and the offering for sale, sale, and distribution of lumber and building materials, in interstate commerce, do forthwith cease and desist from combining or conspiring among themselves, or with others, to engage in, directly or indirectly, any of the following acts, practices, and policies:

1. Preparing and publishing rosters or lists containing the names of respondent dealer members of respondent organizations and distributing the same among manufacturers, producers, and wholesalers, or their representatives, of lumber and building materials, for the purpose, or with the effect of, indicating that the specified persons or concerns are entitled to buy direct from said manufacturers, pro-

ducers, and wholesalers, or that other persons or concerns, not included therein, are not so entitled.

2. Soliciting, accepting, or acting upon, information as to sales, proposed sales, or contracts of sale, by manufacturers, producers, and wholesalers, of lumber and building materials to nondealer members of respondent organizations or other purchasers, for the purpose of preventing further dealing between such buyers and the said manufacturers, producers, and wholesalers.

3. Using boycott, threats of boycott, either with or without other coercive methods, to persuade, induce, or compel manufacturers, producers, and wholesalers to refrain from selling lumber and building materials to nonmember dealers of respondent organizations or other purchasers, or to refrain from so selling, except on unfair, discriminatory, or prohibitive terms and conditions fixed by respondents.

4. Representing, directly or indirectly, to manufacturers, producers, and wholesalers that the members of the respondent organizations would withhold or withdraw their patronage if said manufacturers, producers, and wholesalers sold to competing dealers in lumber and building materials, or to others whose names were not listed on the respondents' rosters.

5. Fixing or establishing uniform prices at which members of respondent organizations should sell lumber or building materials in particular trade areas.

6. Fixing or determining the quotas of business in the sale and distribution of lumber and building materials which manufacturers, producers, wholesalers, and dealer members may do in particular trade areas which, thereby, unlawfully restricts or hinders the sale and distribution of lumber and building materials in interstate commerce.

7. Demanding or exacting penalties or commissions from manufacturers, producers, and wholesalers on sales of lumber and building materials made by said manufacturers, producers, and wholesalers to purchasers other than the members of respondent organizations.

8. Demanding or exacting penalties or commissions from dealer members, or other dealers, on sales of lumber and building materials, made by said dealer members or other dealers, in trade areas where other dealer members have their places of business which, thereby, unlawfully restricts or hinders the sale of lumber and building materials in interstate commerce.

9. Holding meetings to devise means for making effective the aforesaid programs and policies, or similar programs and policies.

10. Employing other cooperative or coercive acts and methods in promoting and carrying out the aforesaid programs and policies, or similar programs and policies.

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It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

JOHN PETRIE, TRADING AS PURITY PRODUCTS COMPANY, B-X LABORATORIES, ETC.

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

Docket 3123. Complaint, May 5, 1937—Decision, July 25, 1938

Where an individual, engaged in the advertisement, sale, and distribution of medical preparations for internal use for ailments and conditions peculiar to women, including certain products variously known and described as "Menstrua" or "Minex," "B-X Monthly Relief Compound," "B-X Monthly Tablets," and "Hygeen Tablets," not made by him, but purchased in bulk as stock products from a manufacturing chemist, who made no representations as to the purpose or efficacy thereof other than to state their chemical formulae; in advertising literature such as booklets, pamphlets, and circulars, made use of by him, and purporting to be descriptive of the various products and of their effectiveness for the uses advertised—

- (a) Represented that said products "Menstrua," or "Minex," "B-X Monthly Relief Compound," or "B-X Monthly Tablets," formed safe, competent, or reliable remedies or treatments for delayed, painful, or suppressed menstruation, or for menstrual disorders generally, or that said products formed a general preventive for ill health, or that said products were effective to tone up the generative organs, or the whole system, or that said products were abortifacients, or that said products were harmless or produced no bad after effects;

Facts being that said various products, as case might be, could not be used with perfect safety at all times indicated, but contained ingredients which might be highly dangerous to some people, and should not be administered other than under the direction of a competent physician who could watch the effects thereof upon the patient, and they were not effective for the purposes for which offered or implied, and said statements and representations, and the implications thereof, were false and misleading; and

- (b) Represented that said product "Hygeen" was an effective, potent, or powerful germicide under the conditions of use for feminine hygiene, or that it was effective in the prevention of venereal diseases, or that it could be used safely or without fear of harmful results so far as the prevention of infection is concerned, or that it was a positive or dependable contraceptive under all conditions or in all cases, or that it was effective as a deodorant for use after menstruation, or that it was harmless;

Facts being that said tablets were not effective for the purposes thus implied or represented, and said various representations were false and misleading;

With capacity and tendency to confuse, mislead, and deceive members of the public as to the properties and therapeutic effects of said products in the various particulars set forth and suggested, and to induce and cause them to buy and use the same because of the erroneous beliefs engendered, including those by suggestion and innuendo as to their uses as abortifacients and contraceptives, respectively, with their added sales appeal, and with