

Syllabus

IN THE MATTER OF
FOOD DISH ASSOCIATES OF AMERICA ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Pocket 3397. Complaint, May 3, 1938—Decision, Dec. 9, 1938*

Where a voluntary unincorporated trade association, members of which (1) were engaged in manufacturing and in selling and distributing, among the various States and in the District of Columbia, paper, pulp, and wooden dishes or trays ordinarily used by grocery and delicatessen stores and butcher shops as containers of lard, butter, meats, and other food products sold by them, and which, (2) organized in 1933 and formed, with intent of serving as a clearing house for its said members in cooperation therewith, actually engaged in attempts, acts, and practices, in consequence thereof, to stabilize and supervise the production and distribution of the food dish industry, promote standardization and improvements thereof, collect from and disseminate among its members, trade statistics and information, including the prices at which said products were being sold, control production, limit output, and fix prices with respect to the sales of said products, and otherwise promote the common business interests of its respective members for their mutual profit and advantage; the secretary and treasurer of such association, as active up to about July 1936, and of such association as reorganized and thus active until about May 1, 1937, when activities thereof, as thus reorganized, terminated; 16 corporations and 1 individual, members thereof as aforesaid, and at one time or another participants in practices as below set forth; and corporate sales agent of one of said members, and participant therein—

(a) Entered into understandings, combinations, conspiracies, and agreements, at various times between 1933 and 1937, as aforesaid, for the purpose of fixing prices or uniform minimum sales price, discounts to be made from the sale of their said products, arranging territory of the United States into a system of zones, and basing prices thus fixed on the respective zones, exchanging price lists, and periodically submitting invoices and other information, for the purpose and with the result of maintaining prices or uniform fixed price in respective zones, at which said products were to be sold, and a uniform fixed discount to be allowed thereon; and in pursuance of said understandings, combinations, and agreements, and in furtherance and execution thereof—

(1) Exchanged, through the medium of said association and its successor, price lists, in order to establish the price at which their respective products were to be sold thereafter, and arranged for the exchange of various information necessary to be used in connection with price fixing and price and discounts at which their products were to be sold;

(2) Fixed uniform prices at which their products were to be sold and at times the discounts thereon, and established a system of zones throughout the United States to aid in the establishment of and the fixing and maintaining of prices;

(3) Adhered to the arrangements for the fixing of prices from time to time or conformed to uniform price and discount system, either through a direct price or price and discount, and agreed to give prior notice of fact that sale was to be made at other than prices agreed upon, and listed as aforesaid; and

(4) Generally conformed and adhered to the arrangements, agreements, combinations, and conspiracies aforesaid, to the end that prices so established and the other arrangements between them were carried out, even though not adhered to in every instance at all times; and

Where 11 companies, 10 of which were included among manufacturer members hereinbefore referred to, and output of which paper dish manufacturers represented about 45 percent of the total volume of food trays of all kinds sold in the United States—

(b) Retained, by agreement entered into on or about March 24, 1937, certain concern for counselling work and as a clearing house and intermediary for them, and to maintain contact with other members of the industry not parties to the agreement, and to continue a running survey and study of general marketing conditions and practices, including terms, marketing procedure, discounts, extra datings, dealers, and competitive practices;

(c) Filled with said counselling concern copies of their respective price lists showing current prices for their products, with understanding that such price lists actually represented prices at which each such manufacturer, at time of filing, would quote until new price list was filed by him with it, and, after completion of each transaction, copies of invoice covering same and price at which it was made; and

Where aforesaid counselling concern, which also collected from said employing companies data on sales volume and prices and compiled statistics which it distributed generally to said members, showing, amongst other things, unit sales, dollar sales, and average selling price per thousand of said products—

(d) Distributed copies of such prices to those manufacturers who retained its services, and made additional copies thereof available to other food trade manufacturers and to jobbers generally; and

(e) Impressed said members, in connection with its agreement in concert with them, with advantages to be obtained by abiding by fixed prices and disadvantages of taking action that might result in retaliation and price cutting, and, on at least one occasion, and in furtherance of said agreement, understanding, confederation, or conspiracy, persuaded one of manufacturers, who had retained its services and was about to violate current price list, to refuse to sell order of goods; and

Where said employing manufacturers—

(f) Actually carried into effect prices contained in price lists, and, practically, uniform, as filed by them and in accordance with their agreement aforesaid, and actually sold and delivered products in accordance therewith;

With result that through such price fixing in connection with sale of competitive trays aforesaid, price competition was substantially lessened and at times virtually destroyed, and said acts and practices, carried on and engaged in not only during code period but also thereafter at one time or another, had a dangerous tendency to, and actually did, hinder and prevent price competition between and among said companies and concern aforesaid in sale of food dish trays in commerce, and placed in them power to control

and enhance prices, and tended to create in them monopoly in sale of afore-said dishes or trays in interstate commerce, and restricted commerce therein:

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

Mr. George W. Williams for the Commission.

Mr. John Keating, of New York City, for Food Dish Associates of America, Allan P. Durgin, Champion No-Leak Paper Dish Co., Southern Champion Tray Co., Steele-Wallace Corp., Crescent Paper Dish Co., Inc., Paper Specialty Corp., St. Joe-Mullen Container Corp., Sanitary Container Corp., American Paper Specialty Manufacturing Co., Lincoln Box Co., F. M. Longnicker, Gooch & Co., Inc. and Newark Paper Co., and in conjunction with other counsel as below set forth.

Cook, Hutchinson, Pierce & Connell, of Portland, Maine, for Keyes Fiber Co. and John M. Hart Co.

Feldman & Kittelle, of Washington, D. C., and *Mr. John Keating*, of New York City, for Berst-Forster-Dixfield Co., and Stevens & Thompson Paper Co., with whom also appeared for said first named company *Mr. I. W. Digges*, of New York City; and as below set forth.

Kaufman & Weitzner, of New York City, for Oval Wood Dish Corp.

Scott, Langhorne & McGavick, of Tacoma, Wash., and *Feldman & Kittelle* for Standard Carton Co.

Townley, Campbell, Clark & Miller, of Chicago, Ill., and *Mr. John Keating* for Paper Plate & Tray, Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that the association, the individuals, and the corporations, hereinafter described and named as respondents, have been, as hereinafter set forth, using unfair methods of competition in commerce, as "commerce" is defined in the said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Food Dish Associates of America, hereinafter designated as "Associates," was a voluntary unincorporated trade association, organized in 1933, under the laws of the State of New York, with its last principal office at 285 Madison Avenue, in the city of New York in said State. Its membership consisted of the corporations, partnerships, firms, and individuals herein named in paragraphs 2 and 3 as respondents, all of whom were, and some of whom still are, engaged in manufacturing and in the sale and distribution

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in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia, of paper, pulp, and wooden dishes or trays ordinarily used by grocery and delicatessen stores and butcher shops as containers of lard, butter, meats, and other food products sold by such stores and shops. Pursuant to such sales, as a part thereof, said respondents regularly have shipped, and do ship, such products to their customers, at their respective places of business located at various points in the several States of the United States other than the States of the origin of such shipments.

Said association was formed with the purpose and effect of serving as a clearing house with the joint cooperation of its members, who through such association engaged in attempts to stabilize and supervise the production and distribution of the food dish industry; to promote standardization and improvements thereof; to collect from and disseminate among its members, trade statistics and information, including the prices at which said products were being sold; to control production; to limit output; and to fix prices with respect to the sales of said products, and otherwise to promote the common business interests and joint welfare of its respective members for their mutual profit and advantage.

The membership of said association was changed from time to time since 1933 as hereinafter described, and at the times hereinafter specified has included the various correspondent corporations, partnerships, and individuals named herein.

Respondent Allan P. Durgin, whose address is 285 Madison Avenue, New York, N. Y., was secretary and treasurer of said association, from the time of its organization until about July 1936, at which time the association as then constituted, became inactive; no further association meetings were held; all the other members except eight hereinafter named dropped out; and said association was reorganized by the remaining eight members thereof, with respondent Allan P. Durgin again as secretary and treasurer, in which capacity he served until about May 1, 1937, at which time the activities of the reorganized association, as such, terminated. Respondent Allan P. Durgin, individually, and as secretary, actively participated in each act and practice herein alleged against said association, and its members.

PAR. 2. The following named respondents constituted the membership of said Associates from August 23, 1933, until the aforesaid reorganization of the association:

1. The Champion No-Leak Paper Dish Co., a corporation organized, existing, and doing business under and by virtue of the laws

of the State of Delaware, with its office and principal place of business at 931 Brown Avenue in the city of Toledo, Ohio.

2. Southern Champion Tray Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business at Chattanooga, Tenn.

3. Keyes Fiber Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business in Waterville, Maine.

4. Steele-Wallace Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its office and principal place of business at 2000 Hanley Road, in the city of St. Louis, Mo. (Maplewood P. O.).

5. Berst-Forster-Dixfield Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business at 1602 Graybar Building in the city of New York, N. Y.

6. Stevens & Thompson Paper Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at North Hoosick, N. Y.

7. Oval Wood Dish Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Tupper Lake, N. Y.

8. F. M. Longnecker, an individual, with his office and principal place of business at Delta, Ohio, trading under the name and style of Paper Food Trays Co.

PAR. 3. At various times since August 23, 1933, the following named respondents joined the association and participated in all of its activities, in concert with each other and with respondent Allan P. Durgin, up to the time when the association was reorganized as aforesaid:

1. Crescent Paper Dish Co., Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 505 Johnson Street, in the city of Brooklyn, N. Y.

2. The Standard Carton Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business at 2611 Pacific Avenue, in the city of Tacoma, Wash.

3. The Paper Specialty Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the

State of Oregon, with its office and principal place of business at Central Truck Terminal, Ninth and Irving Streets, Portland, Oreg.

4. St. Joe-Mullen Container Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at St. Joseph, Mich.

5. Paper Plate & Tray, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 222 W. Adams Street, Chicago, Ill.

6. Sanitary Container Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business at 38 South Cruse Street, Indianapolis, Ind.

7. American Paper Specialty Manufacturing Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business in Pittsburgh, Pa.

8. Lincoln Box Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business at Merrill, Wis.

PAR. 4. Between June 30, 1936 and May 1, 1937, all of the respondents, who had theretofore been members of the association, discontinued their active connection with it, except eight, namely; respondents F. M. Longnecker, trading under the name and style of Paper Food Trays Co.; Oval Wood Dish Corporation; Stevens & Thompson Paper Co.; Keyes Fiber Co.; Champion No-Leak Paper Dish Co.; Steele-Wallace Corporation; Lincoln Box Co., and Berst-Forster-Dixfield Co. These eight respondents associated and cooperated together, employing respondent Allan P. Durgin as secretary and treasurer, to maintain the former office of the Food Dish Associates of America at 285 Madison Avenue in the city and State of New York, and by virtue of such arrangement and reorganization, continued to engage in the acts and practices hereinbefore and hereinafter described, until early in the year 1937, at which time all joint activities of said respondents, through the cooperation and services of respondent Allan P. Durgin, were discontinued. The eight concerns in this paragraph named represented from 85 to 90 percent of the entire food dish industry.

PAR. 5. Respondent John M. Hart Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the Graybar Building, New York, N. Y. It is exclusive

sales agent of respondent Keyes Fiber Company. Respondent John M. Hart Company as agent of respondent Keyes Fiber Company actively participated in each act and practice herein alleged against the said respondent Keyes Fiber Company.

PAR. 6. Respondent Gooch & Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 369 Lexington Avenue, New York, N. Y.

Some time shortly prior to March 24, 1937, the following respondents, all of whom are above described, together with the respondent Newark Paper Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 139 Plymouth Street, in the Borough of Brooklyn, city of New York, State of New York, jointly and severally solicited and received the active cooperation and services of respondent Gooch & Co. (formerly Gooch & Jennings), in the furtherance of the same objects and purposes hereinabove described, as were done and attempted to be done through the Food Dish Associates of America, namely, respondents Steele-Wallace Corporation, St. Joe-Mullen Container Corporation, Sanitary Container Corporation, F. M. Longnecker, Champion No-Leak Paper Dish Co., Berst-Forster-Dixfield Co., Stevens & Thompson Paper Co., Southern Champion Tray Co., American Paper Specialty Manufacturing Co., and Crescent Paper Dish Co., Inc.

PAR. 7. The Food Dish Industry in the United States has had a dollar volume of approximately two and one-half to three million dollars per year, and a production volume of about $1\frac{1}{2}$ billion pieces annually. Several of the manufacturing respondents in this industry have been from time to time equipped to produce all the products for which there is demand and in the sale of this product price is, and always has been, a major factor. The price of the dishes in this industry is ordinarily based upon the one pound tray, irrespective of the type. Previous to May of 1935 this price was about \$2 per thousand in carload lots, less a discount of 5 percent. Shortly after May 1935, these prices dropped to \$1.40, less a 5 percent discount, which price lasted until about October 1935, at which time a better selling price was established and maintained for several months. Immediately thereafter, the price of one pound trays dropped from \$2 per thousand, less the 5 percent discount, to \$1.70 per thousand, less certain discounts. The prices at all of the times herein mentioned at which trays of comparable sizes were sold in the industry have been uniform. The fluctuations above described in the price of these trays was in large part controlled and brought on by the

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larger manufacturers in the industry for the purpose and with the effect of eliminating the competition of the smaller manufacturers and preventing potential competition, and also with the purpose and effect of dominating the industry.

Prior to the adoption of the practices herein alleged and described, respondents and each of them were in active and substantial price competition with each other and with other members of the industry, and but for the facts hereinafter related, would have continued to be in natural and normal competition with each other in commerce among and between the several States of the United States and the District of Columbia. Respondents have during all the times mentioned herein been dominating factors in this industry in the United States.

PAR. 8. Through and with the services and cooperation thus solicited and received from respondent Allan P. Durgin, individually and as secretary of the Food Dish Associates of America, until early in 1937, and thereafter through and with the services and cooperation solicited and received from respondent Gooch & Co., the respondents named in paragraphs 2, 3, and 5 being sellers of these food dishes and trays, by understandings, combinations, confederacies, and agreements, by and between each of them made with the Food Dish Associates of America, with Allan P. Durgin, and with Gooch & Co., fixed uniform, minimum sales prices, discounts and profits to be made from the sale of said products; arranged the territorial United States into a zone system, and based the prices thus fixed on the respective zones. They and each of them required the others to exchange price lists through the medium of the respondent Associates and Allan P. Durgin and Gooch & Co., and periodically to submit invoices and other information for the purpose and with the effect of maintaining a uniform fixed price in each respective zone, at which the said products were to be sold and a uniform, fixed discount to be allowed thereon. The respondents and each of them at the various times since August 1933, as herein set out, have entered into and carried out with respondent Associates, with respondent Durgin, and with respondent Gooch & Co., understandings, agreements, combinations, and conspiracies for the purpose of restricting and restraining and monopolizing trade and eliminating competition in the sale and delivery of food dishes and plates in trade and commerce between and among the various States of the United States and in the District of Columbia.

Pursuant to such understandings, combinations, and agreements, and in furtherance thereof, the said respondents mentioned in para-

graphs 2, 3, and 5 have done and performed, and still do and perform, the following acts and things:

1. Exchange, through the medium of said respondent Associates and its successors, price lists in order to establish the prices at which their respective products were to be sold.

2. Fix uniform prices at which their said products are sold, and, at times, the discounts thereon.

3. Arrange for the exchange of various information necessary to be used in connection with the fixing of prices, and prices and discounts, at which their products were to be sold, and establish a system of zones throughout the United States to aid in the establishment of and the fixing of prices.

4. Adhere to the arrangement for the fixing of prices from time to time, to conform to the uniform price and discounts system, either through a direct price or price and discount, and agree to give prior notice to each other of the fact that a sale was to be made at other than the prices agreed upon.

5. Collect and disseminate, through the agencies aforesaid, the orders entered, production, shipments, unfilled orders on hand, inventories, prices at which dishes have been sold, costs, and production capacity of equipment of the industry.

6. Generally conform and adhere to the arrangements, agreements, combinations, and conspiracies aforesaid, cooperate and assist in the discovery of violations, of said understandings and agreements, to the end that prices so established, and the other arrangements between them were and are strictly carried into execution and effect.

7. Require the wholesalers, jobbers, and other dealers in their commodities to sell to the ultimate consumer at uniform prices arranged for by members to said agencies.

8. Use other methods and means designed to suppress and prevent competition and restrict the sale of said products in said commerce, to the end that fixed prices would be obtained for their said products.

9. Each of said respondents at the times herein mentioned acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 9. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, as hereinabove alleged, have had, and have, the direct effect of unduly and unlawfully restricting and restraining trade and commerce in said products between and among the several States of the United States and in the District of Columbia; of substantially enhancing

prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between said respondents mentioned in paragraphs 2 and 3; of tending to eliminate and eliminating competition, and of tending to create a monopoly in the sale of said products in said commerce.

PAR. 10. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of paper, pulp, and wooden dishes or trays in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have tended to create in the respondents a monopoly in the sale of paper, pulp, and wooden dishes or trays in interstate commerce; have unreasonably restrained interstate commerce in paper, pulp, and wooden dishes or trays, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 3, 1938, issued and served its complaint in this proceeding upon the respondents, Food Dish Associates of America, a voluntary unincorporated association, and Allan P. Durgin, individually, and as secretary, treasurer and manager thereof; Champion No-Leak Paper Dish Co., a corporation; Southern Champion Tray Co., a corporation; Keyes Fiber Co., a corporation; Steele-Wallace Corporation, a corporation; Berst-Forster-Dixfield Co., a corporation; Stevens & Thompson Paper Co., a corporation; Oval Wood Dish Corporation, a corporation; Crescent Paper Dish Co., Inc., a corporation; Standard Carton Co., a corporation; Paper Specialty Corporation, a corporation; St. Joe-Mullen Container Corporation, a corporation; Paper Plate & Tray, Inc., a corporation; Sanitary Container Corporation, a corporation; American Paper Specialty Manufacturing Co., a corporation; Lincoln Box Co., a corporation; F. M. Longnecker, an individual; John M. Hart Co., a corporation; Gooch & Co., Inc., a corporation; and Newark Paper Co., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Respondents, Oval Wood Dish Corporation, a corporation, Standard Carton Co., a corporation, Sanitary Container Corporation, a corporation, John M. Hart Co., a corporation, Paper Plate & Tray, Inc., a corporation, and Keyes Fiber Co., a corporation, filed their

answer, and they, together with the other respondents, namely, Food Dish Associates of America, a voluntary unincorporated association, and Allan P. Durgin, individually, and as secretary, treasurer and manager thereof, Champion No-Leak Paper Dish Co., a corporation, Southern Champion Tray Co., a corporation, Steele-Wallace Corporation, a corporation, Berst-Forster-Dixfield Co., a corporation, Stevens & Thompson Paper Co., a corporation, Crescent Paper Dish Co., Inc., a corporation, Paper Specialty Corporation, a corporation, St. Joe-Mullen Container Corporation, a corporation, American Paper Specialty Manufacturing Co., a corporation, Lincoln Box Co., a corporation, F. M. Longnecker, an individual, Gooch & Co., Inc., a corporation, and Newark Paper Co., a corporation, have executed two identical stipulations, the same intended to be in lieu of their respective answers. All of the respondents filing answers as aforesaid joined in one or the other of said stipulations so executed by all other respondents herein. In said stipulations, it was agreed that the statement of facts executed by said respondents through their respective counsel, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that they are to have and be given the same intent and effect as testimony regularly adduced, recorded and filed. Subsequent thereto said respondents, through their respective counsel, waived, in writing, their right to present argument and to file briefs, and agreed that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceedings without the presentation of arguments or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, stipulations, waivers and agreement, said answers, stipulations, waivers, and agreement having been approved, accepted, and filed, and the Commission having duly considered the same, and now being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Food Dish Associates of America, hereinafter designated as "Associates," was a voluntary unincorporated trade association, organized in 1933, under the laws of the State of New York, with its last principal office at 285 Madison Avenue, in the city of New York, in said State. Its membership consisted of the

following corporations, partnerships, firms and individuals herein named in paragraphs 2 and 3 and 5 as respondents, all of whom were, and most of whom still are, engaged in manufacturing and in the sale and distribution, in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia, of paper, pulp, and wooden dishes or trays ordinarily used by grocery and delicatessen stores and butcher shops as containers of lard, butter, meats, and other food products sold by such stores and shops. Pursuant to such sales, as a part thereof, said respondents regularly have shipped, and do ship, such products to their customers, at their respective places of business, located at various points in the several States of the United States, other than the States of the origin of such shipments.

Said association was formed with the purpose and intent of serving as a clearing house for its said members, and with the cooperation of its members actually engaged in attempts, acts, and practices, in consequence thereof, to stabilize and supervise the production and distribution of the food dish industry; to promote standardization and improvements thereof; to collect from and disseminate among its members, trade statistics and information, including the prices at which said products were being sold; to control production; to limit output; and to fix prices with respect to the sales of said products, and otherwise to promote the common business interests of its respective members for their mutual profit and advantage.

The membership of said association was changed from time to time since 1933, as hereinafter described, and at the times hereinafter specified has included the various respondent corporations, partnerships, and individuals named herein.

Respondent Allan P. Durgin, whose address is 285 Madison Avenue, New York, N. Y., was secretary and treasurer of said association, from the time of its organization until about July 1936, at which time the association, as then constituted, became inactive; no further association meetings were held; all the other members except eight hereinafter named dropped out; and said association was reorganized by the remaining eight members thereof, with respondent Allan P. Durgin acting as secretary and treasurer, in which capacity he served until about May 1, 1937, at which time the activities of the reorganized association, as such, terminated. Respondent Allan P. Durgin, individually, and as secretary, actively participated in each act and practice herein set forth against said association, and its members.

PAR. 2. The following named respondents constituted the membership of said Associates from August 23, 1933, until the aforesaid reorganization of the Association:

1. The Champion No-Leak Paper Dish Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 931 Brown Avenue in the city of Toledo, Ohio.

2. Southern Champion Tray Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business at Chattanooga, Tenn.

3. Keyes Fiber Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business in Waterville, Maine.

4. Steele-Wallace Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its office and principal place of business at 2000 Hanley Road, in the city of St. Louis, Mo. (Maplewood P. O.).

5. Berst-Forster-Dixfield Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business at 1602 Graybar Building in the city of New York, N. Y.

6. Stevens & Thompson Paper Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at North Hoosick, N. Y.

7. Oval Wood Dish Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Tupper Lake, N. Y.

8. F. M. Longnecker, an individual, with his office and principal place of business at Delta, Ohio, trading under the name and style of Paper Food Trays Co.

PAR. 3. At various times since August 23, 1933, the following named respondents joined the association and participated in all of its activities, in concert, confederation, and agreement with each other and with respondent Allan P. Durgin, up to the time when the association was reorganized, as aforesaid:

1. Crescent Paper Dish Co., Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 505 Johnson Street, in the city of Brooklyn, N. Y.

2. The Standard Carton Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business at 2611 Pacific Avenue, in the city of Tacoma, Wash.

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3. The Paper Specialty Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business at Central Truck Terminal, 9th and Irving Streets, Portland, Oreg.

4. St. Joe-Mullen Container Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at St. Joseph, Mich.

5. Paper Plate & Tray, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 222 W. Adams Street, Chicago, Ill.

6. Sanitary Container Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business at 38 South Cruse Street, Indianapolis, Ind.

7. American Paper Specialty Manufacturing Co., a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business in Pittsburgh, Pa.

8. Lincoln Box Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business at Merrill, Wis.

PAR. 4. Between June 30, 1936 and March 1937, all of the respondents, who had theretofore been members of the association, discontinued their active connection with it, except eight, namely: respondents F. M. Longnecker, trading under the name and style of Paper Food Trays Co.; Oval Wood Dish Corporation; Stevens & Thompson Paper Co.; Keyes Fiber Co.; Champion No-Leak Paper Dish Co.; Steele-Wallace Corporation; Lincoln Box Co.; and Berst-Forster-Dixfield Co., all of which were paper tray manufacturers. These eight respondents associated and cooperated together, employing respondent Allan P. Durgin as secretary and treasurer, to maintain the former office of the Food Dish Associates of America at 285 Madison Avenue, in the city of New York and State of New York, and by virtue of such arrangement, confederation, agreement, and reorganization, continued to engage in the acts and practices hereinbefore and hereinafter described, until about May 1, 1937, at which time all joint activities of said respondents, through the cooperation and services of respondent Allan P. Durgin, were discontinued.

PAR. 5. Respondent John M. Hart Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the

Graybar Building, New York, N. Y. It was, at the times herein mentioned, the exclusive sales agent of respondent Keyes Fiber Co. Respondent John M. Hart Co., as agent of Keyes Fiber Co., actively participated in each act and practice herein set forth as having been engaged in by the said respondent Keyes Fiber Co.

PAR. 6. At various times between 1933 to about May 1, 1937, the respondents mentioned in paragraphs 1, 2, 3, and 5 entered into understandings, combinations, conspiracies, and agreements for the purpose of fixing prices or uniform minimum sales price, discounts to be made from the sale of their said products, namely, food dish trays; arranging the territory of the United States into a system of zones, and based the prices thus fixed on the respective zones; exchanging price lists; periodically to submit invoices and other information for the purpose and with the effect and result of maintaining prices or uniform fixed price in the respective zones, at which the said products were to be sold, and a uniform fixed discount to be allowed thereon.

Pursuant to said understandings, combinations and agreements, and in furtherance and execution thereof, the said respondents mentioned in paragraphs 1, 2, 3, and 5 have done and performed, within said period, the following acts and things:

1. Exchanged, through the medium of said respondents' associates and its successor, price lists, in order to establish the price at which their respective products were to be sold thereafter.

2. Fixed uniform prices at which their products were to be sold and at times the discounts thereon.

3. Arranged for the exchange of various information necessary to be used in connection with price fixing and price and discounts at which their products were to be sold.

4. Established a system of zones throughout the United States to aid in the establishment of and the fixing and maintaining of prices.

5. Adhered to the arrangements for the fixing of prices from time to time or to conform to uniform price and discount system either through a direct price or price and discount, and agreed to give prior notice of the fact that a sale was to be made at other than prices agreed upon, and listed as aforesaid.

6. Generally conformed and adhered to the arrangements, agreements, combinations and conspiracies aforesaid, to the end that prices so established and the other arrangements between them were carried out, even though they were not adhered to in every instance at all times. They were, however, adhered to at least from time to time during said period.

PAR. 7. Each of said respondents, at some time during the period hereinbefore mentioned, acted in concert with one or more of the other

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respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations and conspiracies, and the parties to the above understandings, agreements, combinations and conspiracies composed practically the whole of the food dish tray industry.

PAR. 8. A number of respondent paper tray manufacturers, namely, Steele-Wallace Corporation, St. Joe-Mullen Container Corporation, Sanitary Container Corporation, F. M. Longnecker, Champion No-Leak Paper Dish Co., Berst-Forster-Dixfield Co., Stevens and Thompson Paper Co., Southern Champion Tray Co., American Paper Specialty Manufacturing Co., Crescent Paper Dish Co., Inc., all of which are described, together with respondent Newark Paper Co., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 139 Plymouth Street, the Borough of Brooklyn, city of New York, State of New York, on or about March 24, 1937, entered into an agreement, whereby they retained respondent Gooch & Co., Inc., formerly Gooch & Jennings for counselling work, and as a clearing house and intermediary for said respondents, and for the purpose of maintaining contact with the other members of the industry not parties to the agreement, and to continue a running survey and study of general marketing conditions and practices, including terms, marketing procedure, discounts, extra datings, dealers, and competitive practices; and during the said period from March 24, 1937, to the time of the filing of the complaint herein, practically all of said respondent manufacturers did, for a time, file with respondent Gooch & Co. copies of their respective price lists showing the current prices for their products. They also filed with respondent Gooch & Co., after each transaction had been completed, copies of the invoice covering such transaction and the price at which such transaction was made. Respondent, Gooch & Co., distributed copies of such prices to those respondent manufacturers who retained its services and made additional copies of such price lists available to other food tray manufacturers and to jobbers generally. Said price lists were filed with the understanding that they actually represented prices at which each such manufacturer at the time of filing would quote until a new price list should be filed by him with said respondent, Gooch & Co.

Respondent, Gooch & Co., in connection with its agreement and concert with said respondents, impressed said members with the advantages to be obtained by abiding by fixed prices and the disadvantages of taking action that might result in retaliation and price cutting. The prices contained in the price lists, as filed by respondent manufacturers who retained respondent Gooch & Co., and in accord-

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Conclusion

ance with an agreement by and between the members of said group with respondent Gooch & Co., were actually carried into effect by practically all of said respondents, and such prices were in practically all cases uniform. Products were actually sold and delivered in accordance with said agreement, understanding, confederation, or conspiracy.

On at least one occasion, and in furtherance of said agreement, understanding, confederation, or conspiracy, said respondent, Gooch & Co., persuaded one of the manufacturers who had retained its services, and who was about to violate the current price list, to refuse to sell an order of goods below said manufacturer's price list and another paper tray manufacturer (also among the group that had retained respondent Gooch & Co.) secured said business. The manufacturer so securing said business subsequently filed an invoice covering said transaction and said invoice showed that the sale had been made at the said manufacturer's filed list price.

Respondent, Gooch & Co., also collected from said respondent manufacturers data on sales volume and prices and compiled statistics which it distributed generally to said members, amongst other things, showing the unit sales, dollar sales, average selling price per thousand of said products.

PAR. 9. While the acts and practices hereinbefore described were carried on and engaged in during the code period, they were also carried on after that period, at one time or another, by all of the respondents excepting Newark Paper Co. and Gooch & Co., up to May 1, 1937. Respondent, Gooch & Co., and respondent, Newark Paper Co., joined in, cooperated, confederated, and conspired with the other respondents named in paragraph 8 hereof in the acts and practices set forth in paragraph 8 hereof from March 24, 1937, up to the time of the issuance of the complaint herein.

PAR. 10. Respondents with whom respondent Gooch & Co. had said agreement, and cooperated, confederated, and conspired with, as aforesaid, comprised approximately 45 percent of the total volume of food trays of all kinds sold in the United States. All of such respondents were paper dish manufacturers. Paper, pulp, and wooden dish trays are competitive in that they are equally acceptable to the trade, and by fixing prices for paper, pulp and wooden dish trays price competition, in connection with the sale and distribution thereof, was substantially lessened and at times virtually destroyed.

CONCLUSION

The said acts and practices of respondents are all to the prejudice of the public and have a dangerous tendency to and have actually

hindered and prevented price competition between and among respondents in the sale of food dish trays in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have tended to create in the respondents a monopoly in the sale of paper, pulp and wood dishes or trays in interstate commerce; have unreasonably restricted commerce in paper, pulp, or wooden dishes and trays and constitute 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 answers of respondents, Oval Wood Dish Corporation, Standard Carton Co., Sanitary Container Corporation, John M. Hart Co., Paper Plate & Tray, Inc., and Keyes Fiber Co., and a stipulation as to the facts entered into between all of the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding; 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, Food Dish Associates of America, Allan P. Durgin, individually, and as secretary, treasurer and manager thereof; Champion No-Leak Paper Dish Co., Southern Champion Tray Co., Keyes Fiber Co., Steele-Wallace Corporation, Berst-Forster-Dixfield Co., Stevens & Thompson Paper Co., Oval Wood Dish Corporation, Crescent Paper Dish Co., Inc., Standard Carton Co., Paper Specialty Corporation, St. Joe-Mullen Container Corporation, Paper Plate & Tray, Inc., Sanitary Container Corporation, American Paper Specialty Manufacturing Co., Lincoln Box Co., F. M. Longnecker, an individual, John M. Hart Co., Gooch & Co., Inc., and Newark Paper Co., and the respective officers, representatives, agents, and employees of them and each of them, directly or indirectly by any corporate or other device, or in any other way acting in conjunction or in concert, in connection with the offering for sale, sale, and distribution of food dish trays in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Fixing or maintaining the prices, whether uniform or otherwise, at which said products are thereafter to be sold, and from

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Order

doing any act or thing whatsoever for the purpose of carrying out or executing any agreement, understanding, arrangement, or conspiracy to fix or maintain such prices, including the establishment of a price zoning system.

2. Receiving and exchanging price lists exhibiting the prices, whether uniform or otherwise, at which the said commodities are thereafter to be sold, and from collecting and disseminating among themselves either directly or indirectly or through any one of them any information whatsoever with the purpose and effect of fixing or maintaining prices on said products, whether uniform or otherwise, and whether through discounts, zones, or any other method.

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.

IN THE MATTER OF
AMERICAN FLANGE AND MANUFACTURING COMPANY,
INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF
SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3391. Complaint, Apr. 28, 1938—Decision, Dec. 12, 1938

Where a corporation engaged in (1) manufacture, offer, sale, and distribution, under trade-mark "Tri-Sure," of receptacle closure parts for metal containers, which included (a) closure-structures designed to close the holes through which such containers were filled and emptied, and consisting of a threaded metal flange or bushing affixed about hole punched in container, and threaded metal closing plug to fit into flange aforesaid, and (b) sealing caps for such closure-structures for protection of container against tampering and leakage, and in (2) licensing the use (a) by customer purchaser manufacturers, of applying dies, patents on which it held, for use by such customer purchasers in applying its aforesaid closure-structures to their metal containers, and (b) by customer purchasers of its "Tri-Sure" sealing caps, of sealing tools, patents on which it held, for applying to metal containers, after filling, said caps—

- (a) Included in the "License and Service Agreement" which it offered to, and solicited of, each of its purchasers of closure-structures engaged in manufacture of metal containers, and which, in substantially the same form, except as in paragraph (b) below noted, it made use of with purchasers of its sealing caps, provisions *inter alia* under which it obligated itself to replace without cost to purchaser-customer defective closures and, similarly, to repair or replace therefor applying dies, and to supply thereto engineering service, operating instructions and advice, and to service "Tri-Sure" sealing tools of such of customers of purchaser as used therewith its "Tri-Sure" parts and sealing tools, and to cooperate therewith and to protect and defend, as therein specified, purchaser from infringement suits, and purchaser-customer undertook to acknowledge validity of, or not contest or infringe, very large number of patents and patent applications set forth in said agreement, and including (1) patents under which it made and sold its closure structures, parts, and sealing caps, (2) patents on applying sealing devices, and (3) patents which it owned but did not use in the manufacture of any of such parts or devices, and (4) patents on combinations of closure parts which it made and sold, with metal drums which it did not;
- (b) Included in its said "License and Service Agreement," which it offered and solicited as hereinabove stated, provisions under which it allowed discount equal to 10 percent, in case of its manufacturer purchaser customers, of prices billed by it during any 6 months' period during which purchaser bought from it "Tri-Sure" closures for receptacles amounting to 80 percent or more of purchaser's total requirements for closures for receptacles of whatever kind or make for such period, in connection with agreements entered into with manufacturer-purchasers as aforesaid, and discount equal to 5 percent, in case of its sealing cap purchasers, and thereby, through