

IN THE MATTER OF
ROWE MANUFACTURING COMPANY 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 3544. Complaint, Aug. 17, 1938—Decision, Dec. 15, 1938

Where five corporations, a partnership, and an individual, engaged, in certain Midwestern States, in manufacture and sale of combination wood and wire portable corn cribs and silos, and constituting principal producers thereof, and representing, through their aggregate output, large portion of total production of industry in question, and a group so large and influential in corn crib industry that they were able to influence and control flow of aforesaid products in commerce among the various States, and, prior to, and but for, the practices below set forth, in active and substantial competition with one another in making and seeking to make sales of such products in commerce among the various States and in the District of Columbia—

Entered into and carried out understandings, agreements, combinations, and conspiracies with intent and effect of restraining, monopolizing, suppressing, and eliminating competition in sale of portable corn cribs and silos in trade and commerce in ten Midwestern States, comprising substantial trade area therein, and in pursuance of said understanding, etc., and in furtherance thereof, agreed to and did, for 3 years preceding, fix and maintain uniform delivered prices for products in question to customers in aforementioned States of Illinois, Iowa, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin; and, in order better to effectuate such agreement to fix and maintain uniform prices therein, and in pursuance of agreements so to do—

1. Defrayed, without additional cost to consumers, carriage charges, either for carload or less than carload lots of said products;
2. Allowed one of their number, and one of largest crib manufacturers in Middle West, to act as clearing house for exchange of views as to prices to be charged by all;
3. Initiated uniform prices by all for State of Iowa during one of said years, and applied Iowa price program to other States as closely as possible thereafter;
4. Granted uniform discounts to all customers and designated common basing points;
5. Exchanged with each other delivered price lists, discounts and terms of sale, and made effective simultaneously all delivered price changes, and caused revised price lists of each to be filed with all others soon after any revision thereof; and
6. Exchanged information regarding price cutting by crib producers, and requested and urged distributors and dealers to report instances of price cutting in distribution and sale of cribs and silos, and negotiated with producers charged with price cutting in attempt to eliminate further price concessions; and

7. Made use of other unlawful methods and means to restrict, restrain, suppress, prevent, and eliminate competition in distribution and sale of portable corn cribs and silos in aforementioned area of the United States;

With dangerous tendency to hinder and prevent, and with result of actually hindering and preventing price competition between and among themselves in sale of said products in commerce among said States, and of placing in themselves power to control and enhance prices of such products to purchasers and users therein, and with tendency to create in themselves monopoly in said products, and with effect of unreasonably restricting and restraining trade therein in area aforesaid; all to the prejudice of the public:

Held, That such acts and practices constituted unfair methods of competition in commerce.

Mr. Merle P. Lyon for the Commission.

Mr. Clarence T. Spier, of Omaha, Nebr., for Rowe Manufacturing Co., Nebraska Bridge Supply & Lumber Co., and Illinois Wire & Manufacturing Co.

Fox, Rothschild, O'Brien & Frankel, of Philadelphia, Pa., for Mattson Wire & Manufacturing Co.

Mr. A. C. Hatt, of Sioux City, Iowa, for E. S. Gaynor Lumber Co.

Mr. Frank S. Lovrien and *Mr. Philip C. Lovrien*, of Humboldt, Iowa, for Humboldt Fence & Supply Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Rowe Manufacturing Co., a corporation; Nebraska Bridge Supply & Lumber Co., a corporation; Mattson Wire & Manufacturing Co., a corporation; E. S. Gaynor Lumber Co., a corporation; Humboldt Fence & Supply Co., a corporation; Joseph M. Denning and J. Wayne Denning, copartners doing business under the name and style of Illinois Wire & Manufacturing Co.; Alexander G. Sutherland, an individual trading under the name and style of Kansas City Wire & Iron Works, hereinafter designated as respondents, have violated the provisions of 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. (a) Respondent Rowe Manufacturing Co. is an Illinois corporation, having its principal office and place of business at 614 West Third Street, Galesburg, Ill.

(b) Respondent Nebraska Bridge Supply & Lumber Co. is a Nebraska corporation, having its principal office and place of business in the Union State Bank Building, Omaha, Nebr.

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(c) Respondent Mattson Wire & Manufacturing Co. is an Illinois corporation, having its principal office and place of business at Market and Lucas Streets, Joliet, Ill.

(d) Respondent E. S. Gaynor Lumber Co. is an Iowa corporation having its principal office and place of business at 1819 East Third Street, Sioux City, Iowa.

(e) Respondent Humboldt Fence & Supply Co. is an Iowa corporation, having its principal office and place of business at Humboldt, Iowa.

(f) Respondents Joseph M. Denning and J. Wayne Denning are copartners doing business under the name and style of Illinois Wire & Manufacturing Co., having their principal office and place of business at 410 McDonough Street, Joliet, Ill.

(g) Respondent Alexander G. Sutherland is an individual trading under the name and style of Kansas City Wire & Iron Works, having his principal office and place of business at 1428-30 Oak Street, Kansas City, Mo.

PAR. 2. The respondents are engaged in the manufacture and sale, among other products, of combination wood and wire portable corn cribs and silos. They are the principal producers of such cribs and silos and their combined production comprises the major portion of the total production of the industry. They constitute a group so large and influential in the corn-crib industry that they are able to influence and control the flow of trade of such products, in commerce among and between the various States of the United States.

Portable corn cribs and silos are made from pine picket lathing measuring 4 feet by $1\frac{1}{2}$ inches by $\frac{1}{2}$ inch, and spaced 2 inches apart, pointed at one end, woven together with galvanized wire, and painted with red mineral preservative, and are practically identical with snow fencing, differing only as to use. They are largely used in the corn-producing States of the Middle West, especially in the State of Iowa, for the storage and preservation of corn, ensilage, and other corn products.

PAR. 3. In the course and conduct of their businesses, respondents have made, and are making, or causing to be made, shipments of said products from the States where same are manufactured to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said portable corn cribs and silos sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 4. Before the adoption of the understandings, agreements, combinations, conspiracies, and practices hereinafter alleged, respondents were in active and substantial competition with each other in making, and seeking to make, sales of portable corn cribs and silos in commerce between and among the various States of the United States, including the 10 specific States hereinafter mentioned, and in the District of Columbia and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time.

PAR. 5. Respondents have entered into, and carried out, and are now carrying out, understandings, agreements, combinations, and conspiracies for the purpose, and with the effect, of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the sale of portable corn cribs and silos in trade and commerce between and among the 10 States of Illinois, Iowa, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin, comprising a substantial trade area in the Middle West.

PAR. 6. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, the respondents have done and performed, and still do and perform, among other acts and things, the following:

1. Agreed to fix and maintain, and have for at least the last 3 years up to the present time fixed and maintained, uniform delivered prices for said products to customers in the aforementioned 10 States;

2. In order to better effectuate the said agreement to fix and maintain uniform prices in said area, have also agreed:

- (a) To defray, without additional cost to customers, carriage charges either for carload or less-than-carload lots of said products;

- (b) To allow Rowe Manufacturing Co., one of the largest crib manufacturers in the Middle West, to act as a clearing house for an exchange of views as to prices to be charged by all of the respondents;

- (c) To initiate uniform prices by all the respondents for the State of Iowa during the year 1936, and to apply the Iowa price program to the other States as closely as possible thereafter;

- (d) To grant uniform discounts to all customers of respondents;

- (e) To designate common basing points;

- (f) To exchange with each other delivered price lists, discounts, and terms of sale;

- (g) To make effective simultaneously all delivered price changes;

- (h) To cause the revised price lists of each respondent to be filed with all the other respondents soon after any revision of same;

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(i) To exchange information regarding price cutting by crib producers;

(j) To request and urge distributors and dealers to report instances of price cutting in the distribution and sale of corn cribs and silos;

(k) To negotiate with producers charged with price cutting in an attempt to eliminate further price concessions.

3. Used, and are now using, other unlawful methods and means to restrict, restrain, suppress, prevent, and eliminate competition in the distribution and sale of portable corn cribs and silos in the aforementioned area of the United States.

PAR. 7. Each of said respondents acted, and acts, in concert and cooperation with one or more of the other respondents in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 8. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, price competition between and among the respondents in the sale of portable corn cribs and silos in commerce between and among the States of Illinois, Iowa, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices in the aforementioned area; have increased the prices of portable corn cribs and silos to the purchasers and users thereof in said area; have tended to create in the respondents a monopoly in the said products; have unreasonably restricted and restrained trade in said products in said area; 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 August 17, 1938, issued and served its complaint in this proceeding upon the respondents, Rowe Manufacturing Co., a corporation; Nebraska Bridge Supply & Lumber Co., a corporation; Mattson Wire & Manufacturing Co., a corporation; E. S. Gaynor Lumber Co., a corporation; Humboldt Fence & Supply Co., a corporation; Joseph M. Denning and J. Wayne Denning, co-partners doing business under the name and style of Illinois Wire & Manufacturing Co.; Alexander G. Sutherland, an individual, trading under the name and style of Kansas City Wire & Iron Works,

charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On October 6, 1938, the respondents, Rowe Manufacturing Co., a corporation, Nebraska Bridge Supply & Lumber Co., a corporation, and Joseph M. Denning and J. Wayne Denning, copartners doing business under the name and style of Illinois Wire & Manufacturing Co., by Clarence T. Spier, their attorney, filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. On October 7, 1938, the respondent, E. S. Gaynor Lumber Co., a corporation, by A. C. Hatt, its attorney, filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. On October 11, 1938, the respondent, Mattson Wire & Manufacturing Co., a corporation, by Fox, Rothschild, O'Brien, and Frankel, its attorneys, filed its answer, in which answer, it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. On September 6, 1938, the respondent Humboldt Fence & Supply Co., a corporation, by Frank S. Lovrien and Philip C. Lovrien, its attorneys, filed its answer, and subsequently, on to wit, October 17, 1938, the Commission, by order entered herein, granted said respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. On September 6, 1938, the respondent Alexander G. Sutherland, an individual, trading under the name and style of Kansas City Wire & Iron Works, filed his answer pro se, and subsequently, on to wit, October 11, 1938, the Commission, by order entered herein, granted said respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said answers and substitute answers, and the Commission, having duly considered the matter 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.

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Rowe Manufacturing Co. is an Illinois corporation, having its principal office and place of business at 614 West Third Street, Galesburg, Ill.

Respondent Nebraska Bridge Supply & Lumber Co. is a Nebraska corporation, having its principal office and place of business in the Union State Bank Building, Omaha, Nebr.

Respondent Mattson Wire & Manufacturing Co. is an Illinois corporation, having its principal office and place of business at Market and Lucas Streets, Joliet, Ill.

Respondent E. S. Gaynor Lumber Co. is an Iowa corporation, having its principal office and place of business at 1819 East Third Street, Sioux City, Iowa.

Respondent Humboldt Fence & Supply Co. is an Iowa corporation, having its principal office and place of business at Humboldt, Iowa.

Respondents Joseph M. Denning and J. Wayne Denning are co-partners doing business under the name and style of Illinois Wire & Manufacturing Co., having their principal office and place of business at 410 McDonough Street, Joliet, Ill.

Respondent Alexander G. Sutherland is an individual trading under the name and style of Kansas City Wire & Iron Works, having his principal office and place of business at 1428-30 Oak Street, Kansas City, Mo.

PAR. 2. The respondents are engaged in the manufacture and sale, among other products, of combination wood and wire portable corn cribs and silos. They are the principal producers of such cribs and silos and their combined production comprises the major portion of the total production of the industry. They constitute a group so large and influential in the corn crib industry that they are able to influence and control the flow of trade of such products, in commerce among and between the various States of the United States.

Portable corn cribs and silos are made from pine picket lathing measuring 4 feet by 1½ inches by ½ inch, and spaced 2 inches apart, pointed at one end, woven together with galvanized wire, and painted with red mineral preservative, and are practically identical with snow fencing, differing only as to use. They are largely used in the corn-producing States of the Middle West, especially in the State of Iowa, for the storage and preservation of corn, ensilage, and other corn products.

PAR. 3. In the course and conduct of their businesses, respondents have made, and are making, or causing to be made, shipments of said products from the States where same are manufactured to pur-

chasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said portable corn cribs and silos sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Before the adoption of the understandings, agreements, combinations, conspiracies, and practices hereinafter found to have been adopted by the respondents, respondents were in active and substantial competition with each other in making, and seeking to make, sales of portable corn cribs and silos in commerce between and among the various States of the United States; including the 10 States hereinafter mentioned, and in the District of Columbia, and, but for the facts hereinafter set forth, such active and substantial competition would have continued to the present time.

PAR. 5. Respondents have entered into, and carried out, and are now carrying out, understandings, agreements, combinations, and conspiracies for the purpose, and with the effect, of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the sale of portable corn cribs and silos in trade and commerce between and among the 10 States of Illinois, Iowa, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin, comprising a substantial trade area in the Middle West.

PAR. 6. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, the respondents have done and performed, and still do and perform, among other acts and things, the following:

1. Agreed to fix and maintain, and have for the 3 years last past fixed and maintained, uniform delivered prices for said products to customers in the aforementioned States;

2. In order to better effectuate the said agreement to fix and maintain uniform prices in said area, have also agreed:

- (a) To defray, without additional cost to consumers, carriage charges either for carload or less-than-carload lots of said products;

- (b) To allow Rowe Manufacturing Co., one of the largest crib manufacturers in the Middle West, to act as a clearing house for an exchange of views as to prices to be charged by all of the respondents;

- (c) To initiate uniform prices by all the respondents for the State of Iowa during the year 1936, and to apply the Iowa price program to the other States as closely as possible thereafter;

- (d) To grant uniform discounts to all customers of respondents;

- (e) To designate common basing points;

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(f) To exchange with each other delivered price lists, discounts, and terms of sale;

(g) To make effective simultaneously all delivered price changes;

(h) To cause the revised price lists of each respondent to be filed with all the other respondents soon after any revision of same;

(i) To exchange information regarding price cutting by crib producers;

(j) To request and urge distributors and dealers to report instances of price cutting in the distribution and sale of corn cribs and silos;

(k) To negotiate with producers charged with price cutting in an attempt to eliminate further price concessions.

3. Used, and are now using, other unlawful methods and means to restrict, restrain, suppress, prevent, and eliminate competition in the distribution and sale of portable corn cribs and silos in the aforementioned area of the United States.

PAR. 7. Each of said respondents acted, and acts, in concert and cooperation with one or more of the other respondents in furtherance of said understandings, agreements, combinations, and conspiracies.

CONCLUSION

The acts and practices of the respondents, as hereinabove set out, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, price competition between and among the respondents in the sale of portable corn cribs and silos in commerce between and among the States of Illinois, Iowa, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices in the aforementioned area; have increased the prices of portable corn cribs and silos to the purchasers and users thereof in said area; have tended to create in the respondents a monopoly in the said products; have unreasonably restricted and restrained trade in said products in said area; 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 and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and

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

It is ordered, That the respondents, Rowe Manufacturing Co., a corporation; Nebraska Bridge Supply & Lumber Co., a corporation; Mattson Wire & Manufacturing Co., a corporation; E. S. Gaynor Lumber Co., a corporation; Humboldt Fence & Supply Co., a corporation; Joseph M. Denning and J. Wayne Denning, copartners doing business under the name and style of Illinois Wire & Manufacturing Co.; and Alexander G. Sutherland, an individual, trading under the name and style of Kansas City Wire & Iron Works, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of combination wood and wire portable corn cribs and silos in interstate commerce or in the District of Columbia, do forthwith cease and desist from entering into and carrying out any understanding, agreement, combination or conspiracy for the purpose, or with the effect, of restricting, restraining, suppressing or monopolizing, or eliminating competition in the sale of said products, and as a part of such understanding, agreement, combination, or conspiracy from doing any of the following acts and things:

1. Agreeing to fix and maintain, and from fixing and maintaining, uniform delivered prices for said products to their customers.

2. Defraying, without additional cost to customers, carriage charges either for carload or less-than-carload lots of said products.

3. Allowing any one or more of said respondents to act as a clearing house for an exchange of views as to prices to be charged by any one or more of said respondents.

4. Initiating uniform prices by any one or more of said respondents for any one or more States, or applying any uniform price program to any one or more States.

5. Granting uniform discounts to any customers of respondents or any one or more of them.

6. Designating common basing points.

7. Exchanging with one or more of the other respondents delivered price lists, discounts, and terms of sale.

8. Making effective simultaneously any or all delivered price changes.

9. Causing the revised price lists of any respondent to be filed with any of the other respondents after any revision of same.

10. Exchanging information regarding price cutting by producers of portable corn cribs and silos.

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11. Requesting or urging distributors and dealers to report instances of price cutting in the distribution and sale of portable corn cribs and silos.

12. Negotiating with producers charged with price cutting in an attempt to eliminate further price concessions.

13. Using any other methods or means of restricting, restraining, suppressing, preventing, or eliminating competition in the distribution and sale of portable corn cribs and silos.

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

INTERNATIONAL ART COMPANY, AMERICAN DISCOUNT
COMPANY AND JOHN C. KUCKCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2767. Complaint, Apr. 15, 1936—Decision, Dec. 16, 1938*

Where (1) corporation engaged in producing, offering and selling tinted or colored enlargements of photographs and frames therefor, (2) corporation subsequently organized and used to collect any unpaid indebtedness due on pictures sold by former to its customers, and (3) individual who owned almost entire outstanding stock of each of aforesaid two corporations and directed and controlled the sales policy and general business methods pursued thereby, and had full control and management over district managers, salesmen and other representatives of corporation first referred to;

In selling, through said first corporation, by means of numerous crews of solicitors and salesmen who (1) traveled throughout the various States and worked under supervision of crew or district manager, and whom (2) it supplied with cards certifying the bearer to be its duly accredited representative, and with contracts and order blanks, and who customarily represented to customers solicited that customer was dealing directly with aforesaid corporation in purchasing pictures and frames therefrom, and were generally recognized by public as its agents, and whom it aided and abetted in their representations below set forth through supplying same with standardized sales talks containing such false and misleading statements; and, as aforesaid engaged in sale of such colored enlargements and frames to purchasers in other States, in substantial competition with others engaged in offer and sale among the various States and in the District of Columbia of photographs, pictures, and frames and other similar products, and including among such competitors those who do not employ and maintain practices below set out, but truthfully represent and honestly vend their products, and those who truthfully represent same as paintings—

- (a) Represented to prospects solicited in towns, villages, and rural communities that sample or supposed sample displayed of finished work had won first prize, and that corporation in question had arranged for its artist to paint the particular family size, to be limited to a few people in each locality, for exhibition purposes, and that, by reason of the advertising feature, the prospect would be given the picture for the actual cost of materials or materials and delivery, and referred to the pictures as "oil paintings," "paintings," "hand-painted," or "finely finished paintings," and advised prospect that such work usually sold for \$30 a picture, unframed, and, at times, for various higher named prices up to \$100, and that the picture would be like the attractively colored sample, enclosed in glass in hexagon frame, which prospect need not take, and, in some cases involving child or infant, that Chicago-Tribune was preparing to hold baby contest and arrangements had been made by said corporation to enter its pictures therein;

Facts being so-called pictures which it solicited were not paintings but merely colored enlargements of photographs secured from prospect and cost of