

Syllabus

IN THE MATTER OF
THE SPONGE INSTITUTE, ITS OFFICERS AND MEMBERS,
AND FLORIDA SPONGE PACKERS ASSOCIATION, ITS
OFFICERS AND MEMBERS

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

Docket 3025. Complaint, Dec. 29, 1936—Decision, Feb. 24, 1939

Where two trade organizations and the respective officers and members thereof, variously engaged in sale and distribution of sponges, namely—

I. An "institute" of wholesale sponge distributors; officers of said Institute; and members thereof, who—

(1) Were engaged in selling at wholesale and retail, to wholesale and retail dealers, sponges which they purchased in substantial amount from packers located mostly in Florida, and including packer members of the packer association below set forth;

(2) Were, but for matters and things below set out, in competition with one another in price and otherwise in the course and conduct of their respective businesses, and were in competition with others likewise engaged in purchase of sponges from packers thereof and in resale of such products in territory served by such Institute members; and

(3) With, their Institute, defined as the only legitimate and legal channel of distribution from packer to wholesale distributor, to wholesaler, to retailer, and designated as bona fide sponge houses business concerns who constituted legitimate packers and wholesalers in such channels, and, as irregular and illegitimate, other channels of trade, and as illegitimate any dealer acquiring sponges through such so-called illegitimate channels; and

II. An association of sponge packers, with principal places of business at Tarpon Springs, Fla., and through which, or sponge exchange there located, 72 percent in quantity and 60 percent in value of the total United States catch of sponges was sold in 1 year, with course of trade in such Florida sponges, under normal conditions, from producer or fisherman through said exchange to packer, to wholesale distributor, to wholesalers and retailers; certain officers of said association; and members thereof, who—

(1) But for the matters and things below set out, were in competition with each other in price and otherwise in sale and distribution of sponges to wholesale dealers and distributors in territory served by such packer members, and were in such competition with others engaged in such sale and distribution; and

(2) Solicited and sold, along with other packers, and prior to certain time, sponges to wholesale distributors, and direct to wholesalers and retailers throughout the United States, including such sales by such members of sponges direct to such wholesalers and retailers as also purchased such products from wholesale distributors—

Syllabus

28 F. T. C.

Entered into an agreement, combination, and conspiracy with intent to hinder and suppress competition in interstate sale and distribution of sponges, and designed and intended to create monopoly in themselves in sale thereof to wholesalers and retailers throughout the United States; initiated by and originally based on conversations between respective presidents and letter by president of such Institute suggesting the coming to some understanding between the two groups as to commerce in sponges, and advice by president of said Association to packers that, if they would not solicit trade from northern houses, members of such Institute would divide their purchases with member packers and absorb most of packer output and thus enable packers to raise their price to trade to the enhancement of their profits; and on many letters and bulletins written and sent out by president of said Institute, and by such Institute, after said period, in furtherance of design expressed in above conversation and directed to the establishment and carrying out of such a business arrangement or division as above indicated; and

Where packer members aforesaid, in pursuance and furtherance of such intent and design on the part of all—

- (a) Entered into written agreement in accordance with which they were not to circularize any trade outside of the bona fide sponge houses regularly established as such, and to confine their sales to such sponge, and sponge and chamois, houses, and not to sell otherwise except to northern buyers personally calling upon such packers in Florida or in event of unsolicited orders being mailed, in which event their prices were to be at least 20 percent higher than those to sponge houses aforesaid, and expressed their willingness to discuss further any propositions, suggestions, or ideas for the furthering of such understanding and cooperation; and

Where said Institute and the wholesale distributor members thereof, as the case might be, in pursuance of such agreement, letters, and bulletins—

- (b) Furnished to said packer members aforesaid, list of "Bona fide Sponge Houses" to whom they should confine their sales, and furnished such list to such members as revised from time to time;
- (c) Furnished the wholesale distributor members with list of packers who were cooperating in plan to restrict sales as aforesaid, and caused such members to confine their purchases to cooperating packers;
- (d) Concertedly confined their purchases to cooperating packers as aforesaid, and removed from their list name of any packer discovered as making sale contrary to such agreement and understanding, and blacklisted same and refused thereafter, concertedly, to make any further purchases therefrom; and

Where packer members aforesaid, in pursuance of said agreement, letters and bulletins—

- (e) Did not circularize any trade outside of bona fide sponge houses regularly established as such, as declared by said Institute, and did confine sale of sponges to such so-called bona fide houses, and make price difference, as aforesaid, to other houses not thus designated by Institute, and did not sell to such others, even at 20 per cent increase, excepting only when order was sent to packer members unsolicited or placed by personal call;

With the result that the capacity, tendency and effect of such agreement, combination, conspiracy, and undertaking, and acts and practices performed thereunder, was—

Complaint

(1) To monopolize in said members of such Institute and so-called bona fide sponge houses, distributors, business of dealing in and distributing sponges produced in Florida, and to tend to monopolize in such packer members business of dealing in and distributing such sponges;

(2) To unreasonably lessen, restrain, stifle, hamper, and suppress competition in such sponges and deprive wholesale dealers, distributors, and retailers, and purchasing public generally, of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unrestricted or free and fair competition in trade in sponge industry, and otherwise operate as a restraint upon and detriment to freedom of fair and legitimate competition; and

(3) Prejudice and injure public and producers of sponges, dealers, distributors, and others who do not conform to or cooperate in their aforesaid program:

Held, That such acts and practices, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Robert S. Hall* and *Mr. John L. Hornor*, trial examiners. *Mr. Astor Hogg*, *Mr. Karl Stecher*, and *Mr. Earl J. Kolb* for the Commission.

Hill & Treadway, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that The Sponge Institute, its officers, and members as hereinafter set out, and Florida Sponge Packers Association, a corporation and its officers and members, as hereinafter set out, 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, The Sponge Institute (hereinafter referred to as the Institute), is a voluntary, unincorporated association of individuals, partnerships, and corporations, with its principal place of business located at Washington, D. C. Its members are engaged in selling, at wholesale and retail, sponges to wholesale and retail dealers located at points in various States of the United States, said members being banded together in said Institute for the purpose of promoting and protecting their common interests and business affairs.

The respondents, Theodore Schroeder, of 500 North Commercial Street, St. Louis, Mo.; Dan Malloy, of 253 North Fourth Street, Philadelphia, Pa.; David Block, of 36 Walker Street, New York

Complaint

28 F. T. C.

City; and Dr. Lewis Radcliffe, 5600 Thirty-second Street NW., Washington, D. C., are respectively president, vice-president, treasurer, and secretary of said Institute, and are in charge of, and conduct, its activities and affairs.

The members of The Sponge Institute, all of whom are named as respondents, are engaged in selling sponges, and are as follows:

Schroeder & Tremayne, Inc., a Missouri corporation, with its principal place of business located at 500 North Commercial Street, St. Louis, Mo.

S. M. Arnold Co., Inc., a Missouri corporation, with its principal place of business located at 2900 Olive Street, St. Louis, Mo.

H. L. Ettman Sponge Co., a Missouri corporation, with its principal place of business located at 1908 Olive Street, St. Louis, Mo.

Addison Sponge Co., Inc., an Ohio corporation, with its principal place of business located at 341 West Fourth Street, Cincinnati, Ohio.

S. Vollman Co., an Illinois corporation, with its principal place of business located at 424 South Dearborn Street, Chicago, Ill.

Hugo Rosenfelt, doing business under the trade name of Nassau Sponge Co., with his principal place of business located at 124 West Kinzie Street, Chicago, Ill.

Greek-American Sponge Co., an Illinois corporation, with its principal place of business located at 158 North Franklin Street, Chicago, Ill.

American Sponge & Chamois Co., Inc., a New York corporation, with its principal place of business located at 47 Ann Street, New York City.

Albert Bloch & Sons, Inc., a New York corporation, with its principal place of business located at 36 Walker Street, in the city of New York.

Robert L. Senenberg and Perry Senenberg partners, trading under the firm name and style of Florida Sponge & Chamois Co., with its principal place of business located at 42 Cliff Street, in the city of New York.

Gulf & West Indies Co., Inc., a New York corporation, with its principal place of business located at 23 Murray Street, New York City.

King & Malcolm Co., a New York corporation, with its principal place of business located at 242 Water Street, New York City.

Dan Malloy, an individual trading as Dan Malloy Co., with his principal place of business located at 253 Fourth Street, Philadelphia, Pa.

Frank M. Miglis, trading under the firm name and style of Frank M. Miglis Co., with his principal place of business located at 320 Pearl Street, New York City.

The respondent, Florida Sponge Packers Association (hereinafter referred to as the Association) is a corporation, organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Tarpon Springs, Fla. It is a membership corporation, and was organized for the purpose of promoting and protecting the common interest and business affairs of its members. Respondents, John Diamandis, N. G. Arfaras, and D. A. Alissandratos, all of Tarpon Springs, Fla., are respectively, president, treasurer, and secretary of said corporation, and are in charge of, and conduct its activities and affairs.

The membership of the Association (hereinafter referred to as packer members) is as follows:

John Diamandis and Peter J. Cardulis, partners, trading as Diamandis & Cardulis, with their principal place of business located at Tarpon Springs, Fla.

D. A. Alissandratos and Nick Bessis, partners, trading as Commercial Sponge Co., with their principal place of business located at Tarpon Springs, Fla.

C. G. Andriotes, trading as C. G. Andriotes & Co., with his principal place of business located at Tarpon Springs, Fla.

George S. Smitzes, James Smitzes, Louis Smitzes, and Nick Drivas, partners, trading as Smitzes & Drivas, with their principal place of business located at Tarpon Springs, Fla.

Sponge Producers Corporation, a corporation organized, existing, and doing business under the laws of the State of Florida, with its office and principal place of business located at Tarpon Springs, Fla.

Diamandis Diamandis & Christos Psilakas, partners, trading as Florida Industrial Sponge Co., with their principal place of business located at Tarpon Springs, Fla.

Respondent George Mavros, trading as National Sponge Co., with his principal place of business located at Tarpon Springs, Fla., and respondent Sponge Fishing Company, Inc., a corporation organized and existing under the laws of the State of Florida, with its principal place of business located at Tarpon Springs, Fla., while not members of the Association, cooperated with the members thereof, and with the members of the Institute, as hereinafter set out.

PAR. 2. Said respondent members of the Institute purchase the sponges in which they deal directly and immediately from packers located, for the most part, in the State of Florida. The respondents, Commercial Sponge Co., Diamandis & Cardulis, C. G. Andriotes & Co., Smitzes & Drivas, Sponge Producers Corporation, Florida Industrial Sponge Co., National Sponge Co., and Sponge Fishing Co., are packer members from whom the respondent members of the Institute purchase sponges. Said respondent packer members, after making the

Complaint

28 F. T. C.

sales to the respondent members of the Institute, who are known to the trade as wholesale distributors, cause said products to be transported in commerce from their respective places of business in the State of Florida to the purchasers thereof, located at points in the various States of the United States other than the State of Florida, and in so doing there is a constant current of trade and commerce between the said respondent packer members and the respondent members of the Institute.

Upon reselling said sponges in the course of their aforesaid respective businesses, the respondent members of the Institute cause said products to be transported from their respective places of business to wholesale and retail dealers of sponges at their respective points of location in the various States of the United States, other than the State or States in which such shipments originate. In such business, there is a constant current of trade and commerce between said respondent members of the Institute and the wholesale and retail dealers throughout the various States of the United States.

In the course and conduct of their respective businesses, respondent packer members, as herein set-out, but for the matters and things hereinafter alleged and set-out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships, and corporations also engaged in the sale and distribution of sponges to wholesale dealers and distributors in the territory served by said respondent packer members.

In the course and conduct of their respective businesses, respondent members of the Institute, but for the matters and things hereinafter alleged and set-out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships, and corporations, also engaged in the purchase of sponges from the packers thereof, and the resale thereof, in the territory served by said respondent members of the Institute.

Respondent Institute and its respondent members define the only legitimate and regular channel of distribution to be the packer, then the wholesale distributor (among whom are said members of the Institute), then the wholesaler and the retailer; and from time to time designate the business concerns who constitute the legitimate packers and wholesale distributors in this channel as "bona fide sponge houses." Channels of distribution originating with the packer of sponges, and which do not flow through the distributor, but go direct to the consumer or to the wholesaler or retailer, are designated by them as irregular and illegitimate channels of trade,

and any dealers acquiring sponges through such so-called illegitimate channels are, by the respondent Institute and its respondent members, designated illegitimate dealers.

PAR. 3. The respondent members of the Institute constitute a large and important part of the wholesale distributors of sponges in the United States; and such members constitute a group so influential in the trade as to be able substantially to control and influence the flow of trade and commerce in sponges from the packers of sponges in the State of Florida to and throughout the several States of the United States.

PAR. 4. Prior to April 1, 1935, the respondent packer members and other packers solicited and sold sponges direct to wholesalers and retailers throughout the United States, as well as to distributors. It was a common thing for the respondent packer members to sell sponges direct to wholesalers and retailers, which wholesalers and retailers also purchased sponges from wholesale distributors. All of the said respondents hereinbefore named and described, and each of them, on or about September 1, 1935, entered into an agreement, combination, and conspiracy and intended to hinder and suppress competition in the interstate sale and distribution of sponges, and also to create a monopoly in themselves in the sale of sponges to wholesalers and retailers throughout the United States. Pursuant to said agreement, combination, and conspiracy, said respondents have, respectively and cooperatively performed, and are now performing the following acts and practices, to wit:

1. The respondent packer members entered into an agreement and understanding with the Institute and its members, that said respondent packer members would not circularize any trade outside of the bona fide sponge houses regularly established as such, as declared by the Institute, and that said packer members would confine their sales of sponges to such so-called "bona fide sponge houses," or would make a price difference of 20 percent to other houses not designated by the Institute as "bona fide sponge houses," and would sell to such others (even at the 20 percent increase) only if the order was sent to said packer members unsolicited, or placed by personal call.

2. Adopted and used other cooperative practices and means in furtherance of said plans.

Pursuant to the aforesaid agreement and understanding, the respondent members of the Institute furnished the respondent packer members who had entered into such agreement, as hereinabove set forth, with a list of "bona fide sponge houses," with the direction to the respondent packer members that such list contained the "bona fide sponge houses" to whom they should confine their sales. In

Complaint

28 F. T. C.

pursuance of said agreement, combination, and conspiracy, the respondent packer members cooperatively adhered to the plan, and by concert of action, failed and refused to sell sponges to any dealer unless such dealer was on the list furnished by the Institute as a "bona fide sponge house." Said list has been revised from time to time, and respondent packer members are furnished with each revised list of the so-called "bona fide sponge houses." Pursuant to the aforesaid combination, agreement, and understanding, the respondent Institute furnished its members with a list of the packers who were cooperating in the plan to restrict sales, and caused said respondent members of the Institute to, and said members did, by concert of action, confine their purchases to the said packers who were cooperating in said plan; and whenever the Institute discovered that any packer had made a sale contrary to the agreement and understanding, the name of such packer was taken off their list, and such packer violating the agreement was blacklisted, and thereafter the respondent members of the Institute, by concerted action failed and refused to make any further purchases from such packer.

PAR. 5. The capacity, tendency, and effect of said agreement, combination, conspiracy, and undertaking, and the acts and practices performed thereunder by said respondents, as hereinbefore set forth, has been, and now is:

(a) To monopolize in said respondent members of the Institute and so-called "bona fide sponge houses," distributors, the business of dealing in and distributing sponges produced in Florida, and to tend to monopolize in respondent packer members, the business of dealing in and distributing sponges produced in Florida.

(b) To unreasonably lessen, restrain, stifle, hamper, and suppress competition in said sponges, and to deprive wholesale dealers, distributors, and retail dealers, and the purchasing public generally, of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unrestricted or free and fair competition in trade in the sponge industry; and otherwise to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition.

(c) To prejudice and injure the public and producers of sponges, dealers, distributors, and others who do not conform to, or cooperate in, the program of respondents.

PAR. 6. The above-alleged acts and practices done by the respondents are to the prejudice of the public, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and served its complaint upon respondents, The Sponge Institute, and its officers and members as herein set out, and Florida Sponge Packers Association, a corporation, and its officers and members as herein set out, charging respondents with the use of unfair methods of competition in interstate commerce, as commerce is defined in said act. After the issuance of said complaint, and respondents' answers thereto made, testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg and Karl Stecher, attorneys for the Commission, before Robert S. Hall and John L. Hornor, examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint of William L. Hill for the respondents, and said testimony and other evidence has been duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, answers of respondents, the testimony, and other evidence and brief of counsel for the Commission in support of the complaint; 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, The Sponge Institute, is a voluntary, unincorporated association of individuals, partnerships, and corporations, with its principal place of business located at Washington, D. C. Its members are engaged in selling, at wholesale and retail, sponges to wholesale and retail dealers located at points in various States of the United States, said members being banded together in said Institute for the purpose of promoting and protecting their common interests and business affairs. The respondents, Theodore Schroeder, of 500 North Commercial Street, St. Louis, Mo.; Dan Malloy, of 253 North Fourth Street, Philadelphia, Pa.; David Block, of 36 Walker Street, New York City; and Dr. Lewis Radcliffe, 5600 Thirty-second Street NW., Washington, D. C., are respectively president, vice president, treasurer, and secretary of said Institute, and are in charge of, and conduct, its activities and affairs.

The members of The Sponge Institute are as follows:

Schroeder & Tremayne, Inc., a Missouri corporation, with its principal place of business located at 500 North Commercial Street, St. Louis, Mo.

Findings

28 F. T. C.

S. M. Arnold Co., Inc., a Missouri corporation, with its principal place of business located at 2900 Olive Street, St. Louis, Mo.

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Frank M. Miglis, trading under the firm name and style of Frank M. Miglis Co., with his principal place of business located at 320 Pearl Street, New York City.

The respondent, Florida Sponge Packers Association, is a corporation, organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Tarpon Springs, Fla. It is a membership corporation, and was organized for the purpose of promoting and protecting the common interest and business affairs of its members. Respondents, John Diamandis, N. G. Arfaras, and D. A. Alissandratos, all of

Tarpon Springs, Fla., are, respectively, president, treasurer, and secretary of said corporation, and are in charge of and conduct its activities and affairs.

The membership of the Association is as follows:

John Diamandis and Peter J. Cardulis, partners, trading as Diamandis & Cardulis, with their principal place of business located at Tarpon Springs, Fla.

D. A. Alissandratos and Nick Bessis, partners, trading as Commercial Sponge Co., with their principal place of business located at Tarpon Springs, Fla.

C. G. Andriotes, trading as C. G. Andriotes & Co., with his principal place of business located at Tarpon Springs, Fla.

George S. Smitzes, James Smitzes, Louis Smitzes, and Nick Drivas, partners, trading as Smitzes & Drivas, with their principal place of business located at Tarpon Springs, Fla.

Sponge Producers Corporation, a corporation organized, existing, and doing business under the laws of the State of Florida, with its office and principal place of business located at Tarpon Springs, Fla.

Diamandis Diamandis & Christos Psilakas, partners, trading as Florida Industrial Sponge Co., with their principal place of business located at Tarpon Springs, Fla.

Respondent George Mavros, trading as National Sponge Co., with his principal place of business located at Tarpon Springs, Fla., and respondent Sponge Fishing Co., Inc., a corporation, organized and existing under the laws of the State of Florida, while not members of the Association, cooperated with the members thereof, and with the members of the Institute, as hereinafter set-out.

PAR. 2. The respondent members of the Institute purchase a substantial amount of sponges in which they deal directly and immediately from packers located, for the most part, in the State of Florida. The respondents, Commercial Sponge Co., Diamandis & Cardulis, C. G. Andriotes & Co., Smitzes & Drivas, Sponge Producers Corporation, Florida Industrial Sponge Co., and National Sponge Co. are packer members from whom the respondent members of the Institute purchase sponges. Said respondent packer members, after making the sales to the respondent members of the Institute, who are known to the trade as wholesale distributors, cause said products to be transported in commerce from their respective places of business in the State of Florida to the purchasers thereof, located at points in the various States of the United States other than the State of Florida, and in so doing there is a constant current of trade and commerce between the said respondent packer members and the

respondent members of the Institute. Upon reselling said sponges in the course of their aforesaid respective businesses, the respondent members of the Institute cause said products to be transported from their respective places of business to wholesale and retail dealers of sponges at their respective points of location in the various States of the United States, other than the State or States in which such shipments originate. In such business, there is a constant current of trade and commerce between said respondent members of the Institute and the wholesale and retail dealers throughout the various States of the United States.

PAR. 3. In the course and conduct of their respective businesses, respondent packer members, as herein set-out, but for the matters and things hereinafter alleged and set-out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships, and corporations also engaged in the sale and distribution of sponges to wholesale dealers and distributors in the territory served by said respondent packer members. In the course and conduct of their respective businesses, respondent members of the Institute, but for the matters and things hereinafter alleged and set-out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships, and corporations, also engaged in the purchase of sponges from the packers thereof, and the resale thereof, in the territory served by said respondent members of the Institute. Respondent Institute and its respondent members define the only legitimate and regular channel of distribution to be the packer, then the wholesale distributor (among whom are said members of the Institute), then the wholesaler and the retailer; and from time to time designate the business concerns who constitute the legitimate packers and wholesale distributors in this channel as "bona fide sponge houses." Channels of distribution originating with the packer of sponges, and which do not flow through the distributor, but go direct to the consumer or to the wholesaler or retailer, are designated by them as irregular and illegitimate channels of trade, and any dealers acquiring sponges through such so-called illegitimate channels are, by the respondent Institute and its respondent members, designated illegitimate dealers.

PAR. 4. The respondent members of the Institute constitute a large and important part of the wholesale distributors of sponges in the United States; and such members constitute a group so influential in the trade as to be able substantially to control and influence the

flow of trade and commerce in sponges from the packers of sponges in the State of Florida to and throughout the several States of the United States.

PAR. 5. Tarpon Springs, Fla., is the center of the sponge fishing industry in the United States. Approximately 80 percent of the total catch is landed at Tarpon Springs—of the total United States catch during 6 years ending 1932, 72 percent in quantity and 60 percent in value was sold through the Tarpon Springs Sponge Exchange. The course of trade in Florida sponges under normal conditions is from the producer or fishermen through the Tarpon Springs Sponge Exchange to the packers, and from the packers to the wholesale distributors, who in turn sell them to wholesalers and retailers. In the negotiations between respondents, The Sponge Institute and members, and Florida Sponge Packers Association and members, these terms are used in describing certain members of the industry: "Wholesale Distributor," "Northern House," "Bona fide Sponge House," and "Legitimate Sponge House." All refer to dealers and houses which handle sponges exclusively and have large sponge departments—retailers and janitor supply houses without large sponge departments are not included in such terms.

PAR. 6. Prior to April 1, 1935, the respondent packer members and other packers solicited and sold sponges direct to wholesalers and retailers throughout the United States, as well as to distributors. It was a common thing for the respondent packer members to sell sponges direct to wholesalers and retailers, which wholesalers and retailers also purchased sponges from wholesale distributors. All of the said respondents hereinbefore named and described, and each of them, on or about September 1, 1935, entered into an agreement, combination, and conspiracy and intended to hinder and suppress competition in the interstate sale and distribution of sponges, and also designed and intended to create a monopoly in themselves in the sale of sponges to wholesalers and retailers throughout the United States. The origin of such conspiracy began by talks between Theodore Schroeder, president of respondent The Sponge Institute, and John Diamandis, president of respondent Florida Sponge Packers Association, and a letter of the president of the Institute dated April 10, 1935, suggesting the two groups of sponge dealers come to some understanding between themselves as to the commerce of sponges. The packers were advised by respondent Diamandis that if they would not solicit trade except from the northern houses, the respondent members of the Institute would divide their purchases with the respondent packers, and this division of purchases would absorb most of the output of the

Findings

28 F. T. C.

packers and thereby the packers would be able to raise the price of sponges to the trade and therefore greater profits would be realized by the packers. The respondent The Sponge Institute and its members caused the president, Theodore Schroeder, to write many letters and the respondent Institute issued many bulletins after April 10, 1935, in furtherance of the design expressed in the talks set-out herein. Examples of such communications are shown by excerpts from one as follows:

Co-operation—That's the remedy. Collective bargaining seems to be the order of the day. Let's try a little of this between ourselves. Supposing our group says to your group, stay away from our trade up here and we'll sell your output, all of it. You sell only to Sponge Institute members or others who may be real bona fide sponge houses and no one else. You in turn say to us, all right, but you must then really take our output and take reasonable care of us. That ought to be a fair enough basis for a deal, shouldn't it? Your group down there has its interests, that is, the production and packing of Florida Sponges, and of course, the selling of them. To enlist our combined efforts and really get behind Florida sponges we ask only that you work with us on a reasonable basis and above all cut out calling on our people, spoiling it all for us and just knocking out profits for everybody, especially yourselves down there. Sounds reasonable, does it not?

Can we begin negotiations? How about it? We have had 3 or 4 years of warfare, recriminations and arguments on these points back and forth. What do you say we try and settle all this? If this appeals to you I am sure that our officers up here will be glad to meet yours either down there, up here or half way between, wherever you say, and we can probably then really do something. This now is merely a plan of my own individually. I have not taken it up with our other officers but am sending them a copy of this letter. We up here have been elected to office presumably to do something for the industry up this way. I am sure you have the same ambitions down there. Can we get together? May I hear from you?

In furtherance of such intent and design on the part of all the respondents herein named, the respondent packers signed a written agreement in a meeting of such respondents assembled in Tarpon Springs, Fla., on August 8, 1935, and also at such time expressed "deep appreciation" of the designs expressed in the foregoing mentioned communication on the part of Institute respondents. The written agreement is as follows:

1. We will not circularize any trade outside of the bona fide sponge houses who are regularly established as such, and that we will confine our sales to such sponge and sponge and chamols houses.

2. The only exception to this is when northern buyers other than sponge houses visiting in Florida personally call on us and buy right here, or where unsolicited orders are mailed us. In such cases, we may sell them but at prices at least 20 percent higher than we will to the sponge houses.

3. We are ready and willing at any time to discuss further, any right proposition, suggestions, or idea for the furthering of this understanding and cooperation.

With the full belief that this, our movement will find the necessary reciprocity and action from the northern sponge houses, we remain

Commercial Sponge Co.
National Sponge Co.
Diamandis & Cardullias
C. G. Andriotos & Co.
Smitzes & Drivas Co.
Sponge Producers Corporation.
Industrial Florida Sponge Co.

PAR. 7. Pursuant to said agreement, letters, and bulletins, establishing combination and conspiracy, said respondents have, respectively and cooperatively, performed, and are now performing the following acts and practices, to wit:

The respondent members of the Institute furnished the respondent packer members who had entered into such agreement, as hereinabove set forth, with a list of "bona fide sponge houses" to whom they should confine their sales. In pursuance of said agreement, letters, and bulletins, establishing combination and conspiracy, the respondent packer members cooperatively adhered to the plan, and by concert of action, failed and refused to sell sponges to any dealer unless such dealer was on the list furnished by the Institute as a "bona fide sponge house." Said list has been revised from time to time, and respondent packer members are furnished with each revised list of the so-called "bona fide sponge houses." Pursuant to the aforesaid combination, agreement, and understanding, the respondent Institute furnished its members with a list of the packers who were cooperating in the plan to restrict sales, and caused said respondent members of the Institute to, and said members did, by concert of action, confine their purchases to the said packers who were cooperating in said plan; and whenever the Institute discovered that any packer had made a sale contrary to the agreement and understanding, the name of such packer was taken off their list, and such packer violating the agreement was blacklisted, and thereafter the respondent members of the Institute, by concerted action, failed and refused to make any further purchases from such packer.

The respondent packer members did not circularize any trade outside of the bona fide sponge houses regularly established as such, as declared by the Institute, respondent, and such packer members respondents did confine their sales of sponges to such so-called "bona fide houses" and did make a price difference of 20 percent to other houses not designated by the Institute respondent as "bona fide" houses,

and did not sell to such others (even at the 20 percent increase) only when the order was sent to said packer members unsolicited or so placed by personal call.

PAR. 8. The capacity, tendency, and effect of said agreement, combination, conspiracy, and undertaking, and the acts and practices performed thereunder by said respondents, as hereinbefore set forth, has been, and now is:

(a) To monopolize in said respondent members of the Institute and so-called "bona fide sponge houses," distributors, the business of dealing in and distributing sponges produced in Florida, and to tend to monopolize in and distributing sponges produced in Florida, and to tend to monopolize in respondent packer members, the business of dealing in and distributing sponges produced in Florida.

(b) To unreasonably lessen, restrain, stifle, hamper, and suppress competition in said sponges, and to deprive wholesale dealers, distributors, and retail dealers, and the purchasing public generally, of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unrestricted or free and fair competition in trade in the sponge industry; and otherwise to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition.

(c) To prejudice and injure the public and producers of sponges, dealers, distributors, and others who do not conform to, or cooperate in, the program of respondents.

CONCLUSION

The aforesaid acts and practices of respondents, corporations, and individuals named above, under the conditions and circumstances set forth in the foregoing findings of fact are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce and constitute violations of Section 5 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 the respondents, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief filed herein by counsel for the Commission, and the Commis-

sion 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, The Sponge Institute, The Florida Sponge Packers Association, Theodore Schroeder, Dan Malloy, David Block, and Dr. Lewis Radcliffe, individually and as officers of The Sponge Institute, Schroeder & Tremayne, Inc., a Missouri corporation, S. M. Arnold Co., Inc., a Missouri corporation, H. L. Ettman Sponge Co., a Missouri corporation, Addison Sponge Co., Inc., an Ohio corporation, S. Vollman Co., an Illinois corporation, Hugo Rosenfelt, trading as Nassau Sponge Co., Greek-American Sponge Co., an Illinois corporation, American Sponge and Chamois Co., Inc., a corporation, Albert Bloch & Sons, Inc., a New York corporation, Robert L. Senenberg and Perry Senenberg, copartners, trading as Florida Sponge & Chamois Co., Gulf & West Indies Co., Inc., a corporation, King & Malcolm Co., a New York corporation, Dan Malloy, trading as Dan Malloy Co., Frank M. Miglis, trading as Frank M. Miglis Co., John Diamandis and Peter J. Cardulis, copartners, trading as Diamandis & Cardulis, D. A. Alissandratos and Nick Bessis, copartners, trading as Commercial Sponge Co., C. G. Andriotes, trading as C. G. Andriotes & Co., George S. Smitzes, James Smitzes, Louis Smitzes, and Nick Drivas, copartners, trading as Smitzes & Drivas, Sponge Producers Corporation, a corporation, Diamandis Diamandis and Christos Psilakas, copartners, trading as Florida Industrial Sponge Co., George Mavros, trading as National Sponge Co., N. G. Arfaras and Sponge Fishing Co., Inc., a Florida corporation, 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 sponges in commerce as defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing or carrying out any understanding, agreement, combination, or conspiracy, either individually or as members of an association, with the Florida Sponge Packers Association or The Sponge Institute, or any of their individual members, or with any other person, firm, or corporation, which is designed to or has a tendency

- (a) To fix prices so as to lower the price of sponges in favor of members of The Sponge Institute as against nonmembers, or to lower the price in favor of certain wholesale distributors as against other purchasers of sponges, or to fix the prices at which sponges are bought and sold.

Order

28 F. T. C.

(b) To limit sales of sponges to any select individuals or group of individuals or to members of The Sponge Institute or distributors approved by it or its members.

(c) To limit purchases of sponges to any select individuals or group of individuals or to members of the Florida Sponge Packers Association or sponge packers approved by it or its members.

(d) To monopolize in any select group of wholesale distributors, sponge packers, association members, or dealers the business of dealing in and distributing sponges produced in Florida.

2. From publishing or circulating lists of or exchanging information regarding

(a) Sponge packers who fail to deal exclusively with members of The Sponge Institute or wholesale distributors selected by it or its members.

(b) Wholesale distributors who have agreed to purchase only from members of the Florida Sponge Packers Association, or sponge packers approved by The Sponge Institute, or the Florida Sponge Packers Association or their members.

3. The use of any cooperative or concerted action by respondents acting individually or through and by means of associations, their members, representatives, officers, and agents, to promote, establish, or carry out any understanding, agreement, or combination for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the sale and distribution of sponges.

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

PHILIP H. KOOLISH, JR., INDIVIDUALLY AND TRADING
AS PACIFIC COAST SPECIALTY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3246. Complaint, Oct. 20, 1937—Decision, Feb. 24, 1939*

Where an individual engaged in sale and distribution of clocks, cameras, and electric shavers; in soliciting sale of and in selling and distributing his said merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was to be distributed to members of consuming public by lot or chance, and which involved distribution of descriptive literature, order blanks, and circular letters and instructions and push cards for distribution of said products under plan, in accordance with which customer paid for chance varying amount, dependent upon number pushed by chance, and received article being thus disposed of or nothing other than chance, in accordance with success or failure in selecting from list of feminine names, name, or names, as case might be, corresponding to name or names concealed under card's master seal or under card's two master seals, as case might be, and

Supplied thereby to and placed in the hands of others, means of conducting lotteries in sale of his merchandise in accordance with such plans under which said merchandise was distributed to the purchasing public, and amount which customer paid for chance was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure his said merchandise at prices much less than normal retail prices thereof, contrary to an established public policy of the United States Government and in violation of the laws of several States, and in competition with those engaged in the sale and distribution of like or similar articles of merchandise who do not sell the same by use of games of chance, gift enterprises, or lottery schemes;

With result that many purchasers of his said merchandise were attracted by element of chance involved in his said sales method and were thereby induced to purchase such products in preference to same or similar merchandise offered and sold by competitors who do not use such or similar methods, and public purchased, by reason of such preference, substantial volume of his said goods, and trade was unfairly diverted to him from his competitors aforesaid:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.