

Syllabus

IN THE MATTER OF
THE JOSEPH DIXON CRUCIBLE 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 3643. Complaint, Nov. 1, 1938—Decision, Aug. 28, 1939*

Where some 13 corporations, which were and had been for some time past engaged in manufacture and sale of wood-cased lead pencils, and made and sold approximately 75 percent of such pencils produced in the United States, and were actively and substantially engaged in competition with one another in making and seeking to make sales of such pencils in commerce among the several States and in the District of Columbia, except insofar as said competition had been hindered, lessened, restricted, or restrained and potential competition among them forestalled by understandings and agreements among them and acts and things done in pursuance thereto, as below set forth; acting directly through and by means of their association and its secretary, or among themselves—

(a) Entered into and carried out understandings and agreements with intent and effect of unlawfully restricting, restraining, suppressing, and eliminating competition in sale of comparable wood-cased lead pencils in trade and commerce as aforesaid; and in pursuance of said agreements and understandings, and in furtherance thereof—

1. Agreed to and did fix and maintain uniform prices, terms, and conditions for sale of said products.

2. Agreed to and did change, simultaneously, prices at which they were to sell such products;

3. Agreed to and did adopt, fix, and determine uniform schedules of quantity or annual cumulative discounts thereof;

4. Agreed to and did fix and determine prices of "blanks," or wood-cased lead pencils upon which neither name nor any brand of manufacturer appears; and

5. Agreed to and did offer uniform bids on comparable wood-cased lead pencils to prospective purchasers thereof; and

Where said various member corporations, acting through their said association and in a manner calculated to effect said agreements and understandings to fix and maintain prices on such products as aforesaid, and with capacity and tendency to accomplish the same—

(b) Agreed to and did investigate and consult with each other with reference to standardization program having as its objective limitation of styles, grades, and qualities of wood-cased lead pencils made and offered by such members;

(c) Agreed to and did report, through and by means of such association in the above manner and with the above capacity and tendency, monthly statistics of each member, showing new orders, production for shipment, unfilled orders, and inventory of finished stock, and caused said association to report to each member industry totals and each member's own individual percentage thereof;

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- (d) Agreed to and did classify, through said association, members thereof with respect to amount of business done by each member annually, in determining respective dues to be paid to association and representation to which each member would be entitled on said association's committees; and
- (e) Agreed to and did supervise, through said association and its said secretary, aforesaid activities of such various members, performed by means of and through said association:

Held, That such acts and practices, as above set forth, were all to the prejudice of the public, and had dangerous tendency to and did actually hinder and prevent price competition, during period involved, between and among the members in the sale of comparable wood-cased lead pencils in commerce, and placed in the hands of such members, association and secretary power to control and enhance prices and unreasonably restrain commerce aforesaid, and constituted unfair methods of competition.

Mr. Fletcher G. Cohn for the Commission.

Mr. Harrison F. McConnell, of New York City, for respondents generally, of whom others were also represented as follows, to wit:

Wall, Haight, Carey & Hartpence, of Jersey City, N. J., and *Mr. Gilbert H. Montague*, of New York City, for The Joseph Dixon Crucible Co.

Edwards & Smith, of New York City, for The Eberhard Faber Pencil Co.

Riegelman, Hess, Strasser & Hirsch, of New York City, for The American Lead Pencil Co.

Guggenheimer & Untermeyer, of New York City, for Eagle Pencil Co., Inc.

Guggenheimer & Untermeyer & Goodrich, of Washington, D. C., for Blaisdell Pencil Co., and

Mr. Gilbert H. Montague, of New York City, for Richard Best Pencil Co., General Pencil Co., Hassenfeld Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., Wallace Pencil Co. and The Lead Pencil Association, Inc., and, along with *Wall, Haight, Carey & Hartpence*, of Jersey City, N. J., for The Joseph Dixon Crucible 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 the corporations, associations, firms, and individuals hereinafter named, described, and referred to 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. Respondent, Joseph Dixon Crucible Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located in Jersey City, N. J.

Respondent, The Eberhard Faber Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located in Brooklyn, N. Y.

Respondent, The American Lead Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located in Hoboken, N. J.

Respondent, Eagle Pencil Co., Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office and place of business located in New York, N. Y.

Respondent, Richard Best Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located in New York, N. Y.

Respondent, Blaisdell Pencil Co., is a wholly owned subsidiary of respondent, Eagle Pencil Co., Inc., and has its principal office and place of business located in Philadelphia, Pa.

Respondent, General Pencil Co., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New Jersey, with its principal office and place of business located in Jersey City, N. J.

Respondent, Hassenfeld Brothers, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Rhode Island, with its principal office and place of business located in Providence, R. I.

Respondent, National Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Shelbyville, Tenn.

Respondent, Reliance Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located in Mount Vernon, N. Y.

Respondent, Universal Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of California, with its principal office and place of business located in San Leandro, Calif.

Respondent, Red Cedar Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Lewisburg, Tenn.

Respondent, Wallace Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Missouri, with its principal office and place of business located in St. Louis, Mo.

Respondent, The Lead Pencil Association, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office and place of business located at 21 East Fortieth Street, New York City.

Respondent, William A. McDermid, is the president and commissioner of The Lead Pencil Association, Inc., and has his principal office and place of business at 21 East Fortieth Street, New York City.

PAR. 2. All of the respondents herein named, with the exception of the respondents, The Lead Pencil Association, Inc., and William A. McDermid, are engaged in the manufacture and sale of wood-cased lead pencils, and have been engaged in such business for the past several years.

In the course and conduct of their respective businesses, all of the respondents, with the two exceptions heretofore named, have made, and are making or causing to be made, numerous shipments of wood-cased lead pencils from the States in which their respective places of business are located to purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said wood-encased lead pencils, sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Prior to 1926, there were in the wood-cased lead pencil industry, in addition to respondents, The Joseph Dixon Crucible Co., the Eberhard Faber Pencil Co., The American Lead Pencil Co., and the Eagle Pencil Co., Inc., which four respondents are commonly called the "Big Four," only two or three small independent concerns. In 1926, because of the rapid exhaustion of satisfactory pencil wood in the red cedar district around Shelbyville, Tenn., the aforementioned four respondents established their own pencil wood mills (slat factories) in California. The Tennessee cedar mills then went into the business of manufacturing lead pencils, and there are now engaged in such business in the vicinity of Shelbyville, Tenn., the two respondents, The National Pencil Co. and Red Cedar Pencil Co., and another, the Empire Pencil Co. of Shelbyville, Tenn.

For many years, the respondents hereinbefore referred to as the "Big Four," together with all other wood-cased lead pencil manufacturers, became members of the Lead Pencil Institute, Inc. During the year 1935, price war developed and lasted through 1936. Toward the end of 1936, the industry began seeking means whereby prices could be restored. Dissatisfaction occurred over the Lead Pencil Institute, Inc., and respondent, William A. McDermid, a so-called business specialist, was approached by a representative of respondent, The Eagle Pencil Co., with a view toward forming a new organization to be known as The Lead Pencil Association, Inc. On January 27, 1937, a meeting of the budget committee of the Lead Pencil Institute, Inc., was held, and it was voted to engage McDermid for the purpose of directing the selling policies of the industry. The constitution and bylaws of the Lead Pencil Institute, Inc., were changed by an amendment to the original charter, made effective on March 5, 1937, and on that date respondent, The Lead Pencil Association, Inc., came into existence with respondent, William A. McDermid acting as its president and commissioner.

PAR. 4. Respondent, The Lead Pencil Association, Inc., hereinafter referred to as the "Association," is composed of respondents, The Joseph Dixon Crucible Co., The Eberhard Faber Pencil Co., The American Lead Pencil Co., Eagle Pencil Co., Inc., Richard Best Pencil Co., Blaisdell Pencil Co., General Pencil Co., Hassenfeld Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., and Wallace Pencil Co., hereinafter referred to as respondent "members." Said respondent members constitute all of the manufacturers of wood-cased lead pencils in the United States, except the Mohican Pencil Co. of Philadelphia, Pa., and the Empire Pencil Co. of Shelbyville, Tenn. Together, said respondent members manufacture and sell in excess of 90 percent of all wood-cased lead pencils manufactured and sold in the United States.

PAR. 5. Before the adoption of the understandings, agreements, combinations, conspiracies, and practices hereinafter alleged, respondent members were in active and substantial competition with each other in the making, and seeking to make, sales of wood-cased lead pencils in commerce between and among the several States of the United States 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. 6. Beginning with the formation of respondent association in January 1937, respondent members, all acting directly and through and by means of respondent association, and by other means and

methods, entered into, and thereafter carried out, understandings, agreements, combinations, and conspiracies, for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, and suppressing, and eliminating competition in the sale of wood-cased lead pencils in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 7. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent members have done and performed, and still do and perform, among other acts and things, the following:

1. Agreed to fix and maintain, and have fixed and maintained uniform prices, terms, and conditions for the sale of wood-cased lead pencils in the United States.

2. Agreed to maintain, and have maintained, identical price lists on comparable pencils.

3. Agreed to change, and have changed, simultaneously the prices at which comparable pencils are to be sold in the United States.

4. Agreed to establish, and have established, uniform agency contracts for local distributors whereby, when said distributors offer bids to public agencies, the distributor's commission is limited to 10 percent, and by which contracts respondent members are given the absolute right to fix the prices at which pencils are offered by the distributors.

5. Agreed to adopt, fix and determine, and have adopted, fixed and determined, uniform schedules of discount to be allowed on quantity shipments, and on annual cumulative purchases.

6. Agreed to fix and determine, and have fixed and determined, discounts and methods of sale for so-called "imprint" pencils (pencils upon which no name appears so that the purchasers thereof may imprint their own names thereon) for the purpose, and with the effect, of having uniform net prices at which said "imprint" pencils are sold by respondent members.

7. In order to better effectuate the aforementioned agreements, respondent members have agreed to

- (a) Investigate and consult with each other, and they have investigated and consulted, with respect to a standardization program having as its objective a limitation of the number, style, grade, and quality of wood-cased lead pencils manufactured and offered for sale.

- (b) Interchange through the Association, and they have so interchanged, monthly statistics from members showing new orders, production for shipments, unfilled orders, and inventory of finished stock.

(c) Classify, and they have so classified, the members of the Association into different classes according to the amount of business done by each member annually.

(d) Supervise by means of respondent Association and respondent McDermid, and they have so supervised, the activities of respondent members, for the purpose and intent, and with the result, of securing adherence by respondent members to such agreed prices and terms and conditions of sale, and more particularly to prevent and prohibit the quotation of lower competitive prices by respondent members not comprising the "Big Four."

(e) Offer, and they have offered, uniform bids, either directly or through their distributor agents to prospective purchasers.

8. Used, and are now using, other unlawful means and methods in restricting, restraining, suppressing, preventing, and eliminating competition in the sale of wood-cased lead pencils in the United States.

PAR. 8. Each of said respondent members has acted and now acts in concert and in cooperation with one or more of the other respondent members, by means of and through respondent association, its officers, representatives, and agents, and by means of and through the respondent McDermid, and by and through other means and methods, in doing and performing the acts and practices hereinabove alleged in furtherance of said understandings, agreements, combination, and conspiracies.

PAR. 9. The acts and practices of the respondents 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 respondent members in the sale of wood-cased lead pencils 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 unreasonably restrained such commerce in wood-cased lead pencils, and constitute unfair methods in 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 the 1st day of November 1938, issued and served its complaint in this proceeding upon respondents, The Joseph Dixon Crucible Co., The Eberhard Faber Pencil Co., The American Lead Pencil Co., Eagle Pencil Co., Inc., Richard Best Pencil Co., Blaisdell Pencil Co., General Pencil Co., Hassenfeld

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Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., Wallace Pencil Co., The Lead Pencil Association, Inc., and William A. McDermid, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequently all of the respondents filed their answers in this proceeding. Thereafter, stipulation was entered into whereby it was stipulated and agreed that a certain statement of facts, signed and executed by the respondents 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 and in opposition thereto, and that said 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 proceeding. The filing of briefs was waived and oral argument before the Commission was not requested. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulation, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Joseph Dixon Crucible Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New Jersey, with its principal office and place of business located in Jersey City, N. J.

Respondent, The Eberhard Faber Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located in Brooklyn, N. Y.

Respondent, The American Lead Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located in Hoboken, N. J.

Respondent, Eagle Pencil Co., Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office and place of business located in New York, N. Y.

Respondent, Richard Best Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of

New Jersey, with its principal office and place of business located in Irvington, N. J.

Respondent, Blaisdell Pencil Co. (referred to in the complaint as Blaisdel), is a corporation organized, existing, and doing business by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in Philadelphia, Pa.

Respondent, General Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New Jersey, with its principal office and place of business located in Jersey City, N. J.

Respondent, Hassenfeld Brothers, Inc., is a corporation organized, existing, and doing business by virtue of the laws of the State of Rhode Island, with its principal office and place of business located in Providence, R. I.

Respondent, National Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Shelbyville, Tenn.

Respondent, Reliance Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of New York, with its principal office and place of business located in Mount Vernon, N. Y.

Respondent, Universal Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of California, with its principal office and place of business located in Oakland, Calif.

Respondent, Red Cedar Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Lewisburg, Tenn.

Respondent, Wallace Pencil Co., is a corporation organized, existing, and doing business by virtue of the laws of the State of Missouri, with its principal office and place of business located in St. Louis, Mo.

Respondent, The Lead Pencil Association, Inc. (hereinafter referred to as "Association"), is a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its principal office and place of business located at 21 East Fortieth Street, New York City.

Respondent, William A. McDermid, is the president and commissioner of The Lead Pencil Association, Inc., and has his principal office and place of business at 21 East Fortieth Street, New York City.

PAR. 2. All of the respondents herein named, with the exception of the respondents The Lead Pencil Association, Inc., and William

A. McDermid, are engaged in the manufacture and sale of wood-cased lead pencils, and have been engaged in such business for the past several years.

In the course and conduct of their respective businesses, all of the respondents, with the two exceptions heretofore named, have made, and are making or causing to be made, numerous shipments of wood-cased lead pencils from the States in which their respective places of business are located to purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said wood-cased lead pencils, sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The following companies or concerns that were founded on or about the dates hereinafter stated are now engaged in the wood-cased lead pencil industry in the United States and are the only concerns of any importance now so engaged that are known either to the Commission or to the respondents:

1. Respondent, The Joseph Dixon Crucible Co., Jersey City, N. J., founded 1827.

2. Respondent, The Eberhard Faber Pencil Co., Brooklyn, N. Y., founded 1849.

3. Respondent, Eagle Pencil Co., Inc., New York City, founded 1857.

4. Respondent, The American Lead Pencil Co., founded 1864.

5. Respondent, General Pencil Co., founded under the name of Pencil Exchange and incorporated 1890.

6. Respondent, Blaisdell Pencil Co., of Philadelphia, Pa., founded 1893.

7. Respondent, Richard Best Pencil Co., Irvington, N. J., founded 1891.

8. Mohican Pencil Co. of Philadelphia, Pa., founded 1910, at the time known as the United States Pencil Co.

9. Respondent, Wallace Pencil Co., of St. Louis, Mo., founded under the name of Standard Pencil Co., in 1915.

10. J. R. Musgrave Pencil Co., founded about 1925 and previously in the Southern cedar slat business under the name of Bedford Cedar Co.; J. R. Musgrave Pencil Co. was the trade name for the business owned and operated by Mr. James R. Musgrave who is now deceased; on September 16, 1938, the county court of Bedford County, Tenn., appointed as administrators of his estate the Third National Bank of Nashville, Tenn., and the Peoples National Bank of Shelbyville, Tenn.

11. Empire Pencil Co., Shelbyville, Tenn., founded in New York in 1923.

12. Respondent, National Pencil Co., Shelbyville, Tenn., founded about 1933.

13. Respondent, Red Cedar Pencil Co., Lewisburg, Tenn., founded about 1928, an outgrowth of Houston and Liggett, Inc., who were originally in the Southern cedar slat business.

14. Respondent, Universal Pencil Co., Oakland, Calif., organized in 1936.

15. Respondent, Reliance Pencil Co., Mount Vernon, N. Y., founded about 1935, an outgrowth of the Red Cedar Pencil Co.

16. Respondent Hassenfeld Brothers, Inc., Providence, R. I., began the manufacture of pencils, in addition to a paper box business, in 1934.

17. Koh-I-Nor Pencil Co., owned by German interests, Bloomsburg, N. J., commenced operations about September 1938.

18. Linton Pencil Co., Shelbyville, Tenn., outgrowth of National Pencil Co., founded 1939.

All of the aforementioned concerns which are named as respondents in this cause are members of the respondent, The Lead Pencil Association, Inc., except that the respondent, The American Lead Pencil Co., did in June 1938, resign from membership in respondent, The Lead Pencil Association, Inc.

In addition to the foregoing concerns, there are four importing sales agencies for foreign manufacturers which sell and distribute in the United States wood-cased lead pencils manufactured outside of the United States.

PAR. 4. In May 1929, the Lead Pencil Institute was incorporated under the laws of the State of Delaware. Its members comprised practically all of the companies engaged in the wood-cased pencil industry at that time. During the year 1935 a price war developed which lasted during 1936. Toward the end of 1936 the industry began to seek means whereby such a price war could be eliminated. This resulted in the reorganization of the Lead Pencil Institute during the month of January 1937; the respondent, William A. McDermid was employed on February 15, 1937, and became the president and commissioner of said Lead Pencil Institute, and the corporate title of said Institute was changed to that of respondent, The Lead Pencil Association, Inc., shortly thereafter.

Respondent Association is composed of respondents The Joseph Dixon Crucible Co., The Eberhard Faber Pencil Co., The American Lead Pencil Co. (which withdrew from respondent Association in June 1938), Eagle Pencil Co., Inc., Richard Best Pencil Co., Blais-

dell Pencil Co., General Pencil Co., Hassenfeld Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., and Wallace Pencil Co., hereinafter referred to as respondent "Members."

Respondent members manufacture and sell approximately 75 percent of the wood-cased lead pencils produced in the United States.

PAR. 5. Respondent members are actively and substantially engaged in competition with one another in making, and seeking to make, sales of wood-cased lead pencils in commerce between and among the several States of the United States and the District of Columbia, except insofar as said competition has been hindered, lessened, restricted, or restrained, and potential competition among them forestalled by the understandings and agreements among them and the acts and things done in pursuance thereto, as hereinafter set forth.

PAR. 6. The following are the shipments and sales of wood-cased lead pencils by domestic manufacturers for the periods shown, under the conditions specified in the notes thereunto appended:

Shipments and sales of wood-cased lead pencils by domestic manufacturers

	Gross	Total sales	Average price per gross		Gross	Total sales	Average price per gross
1926-----	5, 732, 734	\$14, 467, 053	\$2. 52	1933 ¹ -----	3, 772, 829	\$7, 873, 569	\$2. 09
1927-----	6, 100, 349	14, 457, 827	2. 37	1934 ¹ -----	3, 638, 190	8, 457, 204	2. 32
1928-----	5, 870, 856	13, 994, 468	2. 38	1935 ¹ -----	4, 042, 987	9, 461, 696	1. 78
1929-----	5, 596, 424	13, 816, 552	2. 47	1936 ¹ -----	4, 336, 056	8, 172, 856	1. 88
1930-----	5, 346, 781	11, 763, 071	2. 18	1937 ² -----	5, 496, 998	9, 708, 612	1. 76½
1931-----	4, 650, 589	10, 068, 380	2. 16	1938 ³ -----	3, 908, 188	7, 421, 618	1. 90
1932-----	3, 926, 937	7, 690, 988	1. 96				

¹ 9 companies reporting.

² 13 companies reporting for January to October, 12 for November and December.

³ 12 companies reporting January and February, 13 March to September, 11 October and November, 10 December.

Figures from 1926 to 1932 inclusive from page 7 of report No. 91, Tariff Commission (12 companies reporting). Figures from 1933 to 1937 inclusive from Lead Pencil Institute and Lead Pencil Association, Inc.

PAR. 7. During the period extending from on or about January 1, 1937 to on or about November 1, 1937, hereinafter referred to as "said period," respondent members did from time to time, acting directly through and by means of respondent Association, or among themselves, enter into and thereafter carry out, understandings and agreements for the purpose and with the effect of unlawfully restricting, restraining, suppressing, and eliminating competition in the sale of comparable wood-cased lead pencils in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 8. Pursuant to said understanding and agreements and in furtherance thereof, said respondent members did, from time to time

during said period, agree to fix and maintain, and did fix and maintain uniform prices, terms and conditions for the sale of certain comparable wood-cased lead pencils; did agree to change simultaneously, and did change simultaneously, the prices at which they were to sell certain comparable wood-cased lead pencils; did agree to adopt, fix, and determine, and did adopt, fix and determine uniform schedules of quantity or annual cumulative discounts on said comparable wood-cased lead pencils; did agree to fix and determine, and did fix and determine, the prices of wood-cased lead pencils known in the trade as "blanks," which are pencils upon which neither the name nor any brand of the manufacturer appears (such "blanks" being what are referred to in the complaint as "imprints," although "imprints" are pencils on which appears the brand of someone other than the manufacturer); did agree to offer, and did offer, uniform bids on certain comparable wood-cased lead pencils to prospective purchasers thereof.

PAR. 9. Respondent members did also, through and by means of respondent association, from time to time, during said period, in a manner calculated to effectuate the aforementioned agreements and understandings to fix and maintain prices on certain comparable wood-cased lead pencils, and having the capacity and tendency to accomplish same, agree to investigate and consult with each other, and did so investigate and consult, with reference to a standardization program having as its objective a limitation of the styles, grades, and qualities of wood-cased lead pencils manufactured and offered for sale by said members. (An investigation and consultation had been made in conjunction with the National Bureau of Standards, prior and during the period when the National Recovery Act was in operation, in an effort to have said Bureau promulgate Simplified Practice Recommendation for Wood-Cased Lead Pencils which recommendation would have been promulgated by the Bureau if the producers, distributors, and consumers representing that industry had formally expressed their acceptance of the proposed Simplified Practice Recommendation, but the industry not having reached any final binding conclusion as to the acceptability of the proposed Simplified Practice Recommendation, it was not promulgated by the National Bureau of Standards.) Respondent members also agreed, through and by means of respondent association, from time to time, during said period, in the aforementioned manner and with the aforementioned capacity and tendency, to report to the association, and did so report, monthly statistics of each respondent member showing new orders, production for shipment, unfilled orders, and inventory

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of finished stock and did cause said Association to report to each member industry totals and its own individual percentage of such totals; further, respondent members, in the same manner and with the same capacity and tendency, did agree, through respondent association, from time to time, during the aforementioned period, to classify, and did classify respondent members of respondent association into different classes according to the amount of business done by each respondent member annually in determining respective dues to be paid to the association and the representation to which each member would be entitled on association committees. Still further, respondent members, acting through and by means of respondent association and respondent William A. McDermid, during said period, from time to time, in the same manner and with the same capacity and tendency, did agree to supervise, and did supervise, all of the aforesaid activities of said respondent members, performed by means of, and through, said respondent association.

PAR. 10. Each of said respondent members acted in concert and in cooperation with other respondent members, from time to time during said period, either by means of and through respondent association, its officers, representatives, and agents, or by means of, and through respondent McDermid, or among themselves, in doing and performing the acts and practices hereinabove found, in furtherance of said understandings and agreements.

CONCLUSION

The acts and practices of respondents, as hereinabove found, are all to the prejudice of the public, have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, price competition from time to time during said period, between and among respondent members in the sale of comparable wood-cased lead pencils 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 unreasonably restrained such commerce in wood-cased lead pencils 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 and a stipulation entered into by and between the respondents herein and W. T. Kelley, chief counsel for the Federal Trade Commission, whereby it was stipulated and agreed that a

statement of facts signed and executed by the respondents and W. T. Kelley, chief counsel for the Federal Trade Commission, might 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, which stipulation was approved by the Commission, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The Joseph Dixon Crucible Co., The Eberhard Faber Pencil Co., The American Lead Pencil Co., Eagle Pencil Co., Inc., Richard Best Pencil Co., Blaisdell Pencil Co., General Pencil Co., Hassenfeld Brothers, Inc., National Pencil Co., Reliance Pencil Co., Universal Pencil Co., Red Cedar Pencil Co., and Wallace Pencil Co., their representatives, successors, and assigns, officers, agents, and employees, directly or indirectly, or through or by means of respondent, The Lead Pencil Association, Inc., or any other association of lead pencil manufacturers, its officers, representatives and agents, or through or by means of respondent William A. McDermid, or any other party, or by any other means, that the respondents, The Lead Pencil Association, Inc., its successors or assigns, and William A. McDermid, shall all, in connection with the offering for sale, sale or distribution of wood-cased lead pencils in commerce between and among the various States of the United States and in the District of Columbia, forthwith cease and desist from doing, by agreement or combination, the following acts and things:

1. Fixing or maintaining uniform prices, terms or conditions for the sale of comparable wood-cased lead pencils.

2. Changing simultaneously the prices at which comparable wood-cased lead pencils are to be sold or are sold.

3. Adopting, fixing or determining uniform schedules of quantity or annual cumulative discounts on comparable wood-cased lead pencils.

4. Fixing or determining uniform prices of wood-cased lead pencils known in the trade as "blanks," which are pencils upon which neither the name nor any brand of the manufacturer appears.

5. Offering uniform bids on comparable wood-cased lead pencils to prospective purchasers thereof.

6. (a) Investigating or consulting with each other with respect to a standardization program having as its objective the limitation of the styles, grades or qualities of wood-cased lead pencils manufactured and offered for sale by any of the respondents, (b) reporting to The Lead Pencil Association, Inc., its successors or assigns, or any other association of lead pencil manufacturers, monthly statistics by each member of such an association, showing new orders, production

Order

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for shipment, unfilled orders, and inventory of finished stock, and causing said association to report to each member thereof industry totals with the individual percentage of any number of such totals, (c) classifying the members of The Lead Pencil Association, Inc., its successors or assigns, or any other association of lead pencil manufacturers, into different classes according to the amount of business done by each respondent member thereof annually, (d) having The Lead Pencil Association, Inc., its successors or assigns, or any other association of lead pencil manufacturers, or William A. McDermid, or any other party or parties connected with The Lead Pencil Association, Inc., its successors or assigns, or any other association of lead pencil manufacturers, supervise the activities of the members of such an association where any or all of the said acts or practices hereinbefore set out in subparagraphs (a), (b), (c), and (d) hereof are done for the purpose of effectuating any agreement or combination to fix or maintain uniform prices in the United States for the sale of comparable wood-cased lead pencils.

It is further ordered, That nothing herein shall be construed to prevent the respondents, or any of them, from investigating or consulting with one another, for the purpose of attempting to work out a simplification program for the pencil industry, whether said investigation or consultation is done in conjunction with the National Bureau of Standards, in accordance with the procedure of said Bureau or amongst any or all of respondents: *Provided, however*, That such investigation or consultation shall not be for the purpose of effectuating any agreement or combination among any or all of said respondents to fix or maintain uniform prices on comparable wood-cased lead pencils or to commit any of the other acts or things from which they are ordered herein to cease and desist.

It is still further ordered, That the respondents named in the above caption shall each 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.

Complaint

IN THE MATTER OF

E. A. HOFFMAN CANDY COMPANY

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

Docket 3443. Complaint, May 24, 1938—Decision, Sept. 2, 1939

Where a corporation engaged in manufacture of candy and in sale and distribution thereof to purchasers in various States—

Furnished to customers various devices and plans for selling its said merchandise which involved operation of games of chance, gift enterprises, or lotteries for distribution of such merchandise to ultimate consumers wholly by lot or chance, and which included pushcards for use in sale and distribution of said products, in accordance with (1) said card's explanatory legend and plan, by which purchaser selecting by chance for 5 cents paid, feminine name from list of 30 corresponding with that concealed under card's master seal, received package of candy retailing for \$1.50 and other patrons received nothing, or (2) in accordance with other similar plans differing only in minor detail from that above described; and

Placed thereby in the hands of others means of conducting games of chance or lotteries in the sale of its merchandise contrary to the established public policy of the United States Government and in violation of the criminal laws;

With result that many persons were attracted by element of chance involved in its said sales plan or method of distribution of its merchandise, and were thereby induced to buy and sell same in preference to that offered by its competitors, many of whom do not use the same or similar method of distribution as contrary to public policy, and trade was thereby unfairly diverted to it from competitors aforesaid:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. D. C. Daniel and *Mr. Reuben J. Martin* for the Commission.

Mr. Harry C. Bartosh, of Los Angeles, Calif., for respondent.

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 E. A. Hoffman Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be