

IN THE MATTER OF

LAING, HARRAR & CHAMBERLIN, INC., A. J. SANBORN
SONS, INC., HARRY FAIN AND ALFRED PICERNOCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3725. Complaint, Feb. 28, 1939—Decision, Nov. 2, 1939*

Where a corporation engaged in sale and distribution of shoe findings, leather, and supplies for shoe manufacturers, shoe stores, and shoe repair shops, to wholesale dealers, including corporation and two individuals engaged, in competition with one another and others prior to acts below set forth, in distribution and sale at wholesale of such products in trade area in and around the city of Providence—

- (a) Entered into an understanding and agreement whereby said distributor corporation undertook not to sell and distribute its products to third individual, likewise engaged as wholesaler of such articles in said city, lacking consent of corporate and individual wholesalers first referred to; and

Where said corporate and individual wholesalers first referred to—

- (b) Undertook, as part of understanding and agreement aforesaid, not to purchase any of the articles sold and distributed by corporate distributor first referred to in event of its violating its agreement and selling to said third individual contrary to the wishes of said corporate wholesaler and other two wholesaler individuals;

With result that said agreeing corporation discontinued sale of its articles to individual in question, competitor of said corporate wholesaler and wholesaler individuals, and purchaser, prior thereto, from such discontinuing corporation of substantial quantities of its articles:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of competitors and the public, and had a dangerous tendency to and did hinder and prevent competition in sale of shoe findings, leather, and supplies for shoe stores and shoe repair shops, and unreasonably restrained commerce therein and constituted unfair methods of competition.

Mr. Daniel J. Murphy for the Commission.

Mr. Walter W. Hess, of Philadelphia, Pa., for Laing, Harrar & Chamberlin, Inc.

Remington, Thomas & Levy, of Providence, R. I., for A. J. Sanborn Sons, Inc., Harry Fain and Alfred Picerno.

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 Laing, Harrar &

Chamberlin, Inc., A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno, hereinafter referred to as respondents, have violated the provisions of the 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 Laing, Harrar & Chamberlin, Inc., is a corporation organized under the laws of the State of Delaware and having its office and principal place of business at 43 North Third Street in the city of Philadelphia, Commonwealth of Pennsylvania.

Respondent A. J. Sanborn Sons, Inc., is a corporation organized under the laws of the State of Rhode Island and having its office and principal place of business at 20 Exchange Place in the city of Providence, State of Rhode Island.

Respondent Harry Fain is an individual doing business under the name and style of Fain Leather Co., and having an office and principal place of business at 36 Broad Street in the city of Providence, State of Rhode Island.

Respondent Alfred Picerno is an individual doing business under the name and style of Cipolla & Picerno, and having an office and principal place of business at 7 Vinton Street in the city of Providence, State of Rhode Island.

PAR. 2. Respondent Laing, Harrar & Chamberlin, Inc., is now and has been for more than 2 years last past engaged in the business of selling and distributing shoe findings, leather, and supplies for shoe manufacturers, shoe stores, and shoe repair shops, to wholesale dealers thereof.

Respondents, A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno are, and have been for more than 2 years last past, engaged in the business of distributing and selling, as wholesale dealers, shoe findings, leather, and supplies for shoe stores and shoe repair shops, in the trade area in and around Providence, R. I.

PAR. 3. In the course and conduct of their respective businesses, respondents, A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno purchased, and are still purchasing, shoe findings, leather, and other supplies for shoe stores and shoe repair shops, from respondent Laing, Harrar & Chamberlin, Inc., and when said purchases are made, and as a part thereof, said respondent Laing, Harrar & Chamberlin, Inc. has shipped or caused to be shipped, and does ship or causes to be shipped, said articles from its place of business located in the State of Pennsylvania to the places of business of respondents, A. J. Sanborn Sons, Inc., Harry Fain, and Alfred

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Picerno located in the State of Rhode Island. All of the respondents in the aforementioned manner maintained, and still do maintain, a course of trade in said articles in commerce between and among the several States of the United States.

PAR. 4. Prior to 1937, respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno were in active and substantial competition with each other and with other wholesale dealers in shoe findings, leather, and other supplies for shoe stores and shoe repair shops in the city of Providence, R. I., in reselling, and seeking to resell, the articles which were purchased from respondent Laing, Harrar & Chamberlin, Inc., in the manner aforementioned, to the shoe stores and shoe repair shops in the trade area in and around Providence, R. I.; and, but for the respondents entering into and carrying out the understanding, agreement, combination, and conspiracy hereinafter set out, said active and substantial competition would have continued to the present.

PAR. 5. During 1937 respondents entered into, and thereafter carried out, an understanding, agreement, combination, and conspiracy for the purpose, and with the effect, of unlawfully restricting, restraining, monopolizing, repressing, and eliminating competition in resale between wholesale dealers in Providence, R. I., of shoe findings, leather, and other supplies for shoe stores and shoe repair shops, to shoe stores and shoe repair shops in the trade area in and around Providence, R. I.

PAR. 6. Pursuant to the understanding, agreement, combination, and conspiracy entered into by, between, and among respondents, and in furtherance thereof, said respondents have done and performed, and still do and perform the following acts and things:

1. Agreed that Laing, Harrar & Chamberlin, Inc. should refuse to sell, and it has refused to sell, its articles to any wholesale dealer in shoe findings, leather, and other supplies for shoe stores and shoe repair shops, in Providence, R. I., unless and until respondents, A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno consented that such sales could be made.

2. Agreed that respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno should designate, and they have so designated, other wholesale dealers in the articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc., located in Providence, R. I., to whom respondent Laing, Harrar & Chamberlin, Inc. should not sell its said articles.

3. In order to abet and effectuate the agreement by respondent Laing, Harrar & Chamberlin, Inc. that it would refuse to sell its articles to those wholesale dealers in shoe findings, leather, and other

supplies for shoe stores and shoe repair shops in Providence, R. I., thus designated by respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno, said respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno have agreed not to purchase any of the articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc. if it violated its said agreement not to sell these designated wholesale dealers.

PAR. 7. Each of said respondents at the time mentioned herein, acted in concert with one or more of the other respondents, in doing and performing the acts and things herein alleged in furtherance of the understanding, agreement, combination, and conspiracy hereinbefore set out.

PAR. 8. The understanding, agreement, combination, and conspiracy hereinbefore set out, and the acts and things done thereunder and pursuant thereto, have had, and do have, the effect of unlawfully restricting and restraining their movement in commerce between and among the several States of the United States of the articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc.; of unlawfully restricting and restraining the resale to shoe stores and shoe repair shops in the trade area in and around Providence, R. I., by wholesale dealers in shoe findings, leather and other supplies for shoe stores and shoe repair shops, of such articles purchased by said wholesale dealers from respondent Laing, Harrar & Chamberlin, Inc., in commerce between and among the several States of the United States; of preventing certain designated wholesale dealers in Providence, R. I., from securing the articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc. in commerce, in the manner aforementioned, to be resold by said dealers to the shoe stores and shoe repair shops in the trade area in and around Providence, R. I., thereby depriving such designated dealers of the means of competing with respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno in the resale of such articles to the shoe stores and shoe repair shops in said area; of substantially enhancing prices to the consuming public of certain articles which the public purchases from the shoe stores and shoe repair shops to which respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno resell the articles which they purchase from respondent Laing, Harrar & Chamberlin, Inc. in commerce between and among the several States of the United States, of maintaining such prices to the consuming public at artificial levels, and otherwise depriving the public of the benefits which would flow from normal competition between and among respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno and these designated wholesale dealers in

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Providence, R. I., in their resale to shoe stores and shoe repair shops of articles sold and distributed by respondent Laing, Harrar & Chamberlin, Inc., in commerce, in the manner as described, with the tendency and capacity of creating for respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno a monopoly in said trade.

Said understanding, agreement, combination, and conspiracy, and the things done thereunder, and in pursuance thereof, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 28th day of February 1939, issued and served its complaint in this proceeding upon respondents, Laing, Harrar & Chamberlin, Inc., A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act. On April 28, 1939, the respondents filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents and their counsel, Walter W. Hess and Arthur J. Levy, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the 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 without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulation, said stipulation having been approved, accepted, and filed, 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 Laing, Harrar & Chamberlin, Inc., is a corporation organized under the laws of the State of Delaware and having its office and principal place of business at 43 North Third Street in the city of Philadelphia, Commonwealth of Pennsylvania.

Respondent A. J. Sanborn Sons, Inc., is a corporation organized under the laws of the State of Rhode Island and having its office and principal place of business at 20 Exchange Place in the city of Providence, State of Rhode Island.

Respondent Harry Fain is an individual doing business under the name and style of Fain Leather Co., and having an office and principal place of business at 36 Broad Street in the city of Providence, State of Rhode Island.

Respondent Alfred Picerno is an individual formerly doing business under the name and style of Cipolla & Picerno and formerly having an office and principal place of business at 7 Vinton Street in the city of Providence, State of Rhode Island, which business was discontinued on or about June 15, 1938.

PAR. 2. Respondent Laing, Harrar & Chamberlin, Inc., is now and has been for more than 2 years last past engaged in the business of selling and distributing shoe findings, leather, and supplies for shoe manufacturers, shoe stores, and shoe repair shops, to wholesale dealers thereof.

Respondents A. J. Sanborn Sons, Inc. and Harry Fain are and have been for more than 3 years last past and respondent Alfred Picerno was until about June 15, 1938, and for more than 2 years previous thereto, engaged in the business of distributing and selling, as wholesale dealers, shoe findings, leather, and supplies for shoe stores and shoe repair shops, in the trade area in and around Providence, R. I.

PAR. 3. In the course and conduct of their respective businesses, respondents A. J. Sanborn Sons, Inc. and Harry Fain purchased and are still purchasing and the respondent Alfred Picerno purchased and until about June 15, 1938, continued to purchase, shoe findings, leather, and other supplies for shoe stores and shoe repair shops, from respondent Laing, Harrar & Chamberlin, Inc., and when such purchases are or were made, and as a part thereof, said respondent Laing, Harrar & Chamberlin, Inc. has shipped or caused to be shipped, and does ship or causes to be shipped, said articles from its place of business located in the State of Pennsylvania to the places of business of the respondents A. J. Sanborn Sons, Inc. and Harry Fain, located in the State of Rhode Island and the respondent Alfred Picerno formerly located in the State of Rhode Island. All of the respondents in the aforementioned manner maintained, and except in the case of the respondent Alfred Picerno, still do maintain, a course of trade in said articles in commerce between and among the several States of the United States.

PAR. 4. Prior to 1937, respondents A. J. Sanborn Sons, Inc., Harry Fain, and Alfred Picerno were in active and substantial competition with each other and with other wholesale dealers in shoe findings, leather, and other supplies for shoe stores and shoe repair shops in the city of Providence, R. I., in reselling, and seeking to resell, the articles which were purchased from respondent Laing, Harrar & Chamberlin, Inc., in the manner aforementioned, to the shoe stores and shoe repair shops in the trade area in and around Providence, R. I.; and, but for the respondents entering into and carrying out the understanding and agreement, hereinafter set out, said active and substantial competition would have continued uninterruptedly to the present, except in the case of the respondent Alfred Picerno who discontinued business as aforesaid.

PAR. 5. During 1937, respondents entered into, and thereafter carried out, an understanding and agreement whereby:

1. Respondent Laing, Harrar & Chamberlin, Inc., agreed not to sell and distribute its articles to Irving Schretter, doing business under the firm and style name of Sadler Leather Co., a wholesale dealer in shoe findings, leather, and other supplies for shoe stores and shoe repair shops, in Providence, R. I., unless and until respondents A. J. Sanborn & Sons, Inc., Harry Fain, and Alfred Picerno consented that such sales could be made.

2. Respondents A. J. Sanborn & Sons, Inc., Harry Fain, and Alfred Picerno agreed not to purchase any of the articles sold and distributed by Laing, Harrar & Chamberlin, Inc., if said Laing, Harrar & Chamberlin, Inc., violated its agreement and sold to Irving Schretter, doing business under the firm and style name of Sadler Leather Co., contrary to the wishes of said respondents A. J. Sanborn & Sons, Inc., Harry Fain, and Alfred Picerno.

As a result of said understanding and agreement being carried out in concert by and between said respondents, respondent Laing, Harrar & Chamberlin, Inc., did, on or about December 3, 1937, to about May 18, 1938, discontinue the sale of its articles to Irving Schretter, doing business under the firm and style name of Sadler Leather Co., a wholesaler in Providence, a competitor of respondents A. J. Sanborn & Sons, Inc., Harry Fain, and Alfred Picerno. The said Irving Schretter, prior to December 3, 1937, purchased substantial quantities of articles from respondent Laing, Harrar & Chamberlin, Inc., which were sold and distributed in commerce in the manner aforementioned.

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CONCLUSION

The acts and practices of the respondents as herein set forth are all to the prejudice of the competitors of respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of shoe findings, leather, and supplies for shoe stores and shoe repair shops in commerce, as commerce is defined in the Federal Trade Commission Act; have unreasonably restrained such commerce in shoe findings, leather, and supplies for shoe stores and shoe repair shops 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 the respondents, and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, A. J. Sanborn Sons, Inc., its officers, representatives, agents, and employees, Harry Fain and Alfred Picerno, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of shoe findings, leather, and supplies for shoe stores and shoe repair shops in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into or carrying out any agreement, understanding, combination, or conspiracy between and among any two or more of said respondents, or between any one of said respondents and a manufacturer of such products, for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in, the purchase or sale in said commerce of any of such products, and from doing any of the following acts and things pursuant thereto:

1. Boycotting, or threatening to boycott, or using any other coercive methods or means, to persuade, induce, or compel manufacturers or

distributors of such products to refrain from selling any of such products to any wholesale dealer in such products.

2. Interfering, in any manner, with any competitive wholesale dealer's source of supply of such products.

It is further ordered, That the respondent, Laing, Harrar & Chamberlin, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of shoe findings, leather, and supplies for shoe stores and shoe repair shops in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into any agreement, understanding, combination, or conspiracy for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in, the purchase or sale of such products in said commerce; or from aiding or abetting the carrying out of any such agreement, understanding, combination, or conspiracy by refusing to sell such products to wholesale dealers engaged in the sale and distribution of such products because of inducements offered, or coercive methods used, by competitors of such wholesalers.

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
CHRISTOPHER CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3394. Complaint, Apr. 29, 1938—Decision, Nov. 7, 1939*

Where a corporation engaged in manufacture of candy, and in sale and distribution of certain assortments thereof, which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consuming public, and included (1) number of candy bars of uniform size and shape, together with push card for use in sale and distribution of said bars to purchasing public under a plan in accordance with which customer received, for 5 cents paid, one, two, three, or four bars, depending upon name of fish concealed and displayed within discs of card, and disclosed by chance selection, and purchaser of last push was entitled to five bars of candy in question, and (2) number of boxes of candy and punchboard for use in sale of said candy to purchasers under a plan, and in accordance with legend displayed thereon, by which purchaser or customer received, for 5 cents paid, one of said boxes or nothing, dependent upon success or failure in securing by chance certain numbers concealed within holes of board, and (3) various other assortments of candy, so packed and assembled as to involve use of a lottery scheme in sale and distribution to purchasing public under methods similar to those above described and varying therefrom in detail only—

Sold such assortments, along with said punchboards or devices to retailer purchasers, by whom assortments in question were displayed and sold in accordance with aforesaid sales plans, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its candy in accordance with such plans, as above set forth, involving game of chance or sale of a chance to procure boxes and bars of candy at prices much less than prevailing price for like or similar candy in usual course of retail trade, contrary to the established public policy of the United States Government and in violation of the laws of several of the States, and in competition with many who are unwilling to offer or sell their candy by any sales plan or method which involves game of chance, gift enterprise, lottery scheme, or any method or sales plan contrary to public policy, and refrain therefrom;

With effect of inducing numerous customers to purchase candy manufactured and sold by it in preference to that sold by competitors who had not used and did not use like or similar sales plans or methods in sale or distribution of their products, and with result that substantial trade was diverted to it from its competitors aforesaid:

Held, That such acts and practices were all to the injury and 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.