

IN THE MATTER OF
QUALITY BAKERS OF AMERICA ET AL.

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF PARA. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3218. Complaint, Aug. 28, 1937—Decision, Nov. 15, 1939

Where a corporation, stock of which was held exclusively by some 70 non-competitive wholesale baking concerns located in various sections of the United States, constituting membership of said bakers' unincorporated association, designed and used to facilitate and further the objectives, operations, policies, and business of said corporation and the stockholders of said corporation, which (1) was engaged in purchasing commodities as purchasing agent for its stockholders and members, as aforesaid, of said association, (2) constituted the operative agency acting in behalf of said association and members thereof, (3) conducted numerous activities for said association members, including services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance, (4) in executing orders placed with it by its said stockholders and association members, transmitted such orders and purchased commodities from one or more of a group of over 200 manufacturers, processors, producers or distributors located in many different States, and (5) was compensated or reimbursed for the cost of such various services under definite arrangements and agreements, entered into between it and the association on the one hand and the members thereof on the other, by which it was agreed that one-half of the brokerage paid on each member's orders should be applied to the credit of the particular member's dues and remaining half applied by the board of directors, as it shall determine, for service purposes for the benefit of the members of the association in question, and (6) supplied to stockholders, whose credits for brokerage fees exceeded the amounts charged against them for dues, benefit of special services not included in the services rendered to all stockholders—

- (a) Accepted and received, as above set forth, brokerage fees from sellers on purchases of commodities made by its stockholders, while acting as the agent, representative, and intermediary of such stockholders and in their behalf, and while owned and controlled by them, and rendering no service to the sellers of commodities to it, and who paid such brokerage fees, but services to its stockholders in connection with the purchase of commodities by them or with the operation of their respective businesses, and not selling services to any sellers of commodities or services in connection with the sale of a commodity to it or to its stockholders; and

Where wholesale baking concerns, stockholders of said corporation, and members of said association, engaged in purchasing commodities, including flour and many other food materials, and a great variety of supplies and equipment, including machines used in business in question, from sellers in various States, and in transmitting orders for the purchase of merchandise to said corporation or service company—

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(b) Accepted and received, as aforesaid, brokerage or commissions from said corporation and service company in money, credits, benefits, and services paid for and furnished from and by such brokerage fees, which were paid by the sellers of commodities in question to such service company:

Held, That such plan of operation and practices and policies of said service company and association, and members and stockholders thereof, resulted in transmission of brokerage fees and commissions from sellers to buyers on transactions involving purchase and sale of commodities in interstate commerce, and that aforesaid acts, practices and policies were violative of the provisions of paragraph (c) of Section 2 of the Clayton Act, as amended.

Before *Mr. John W. Addison*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Davis, Wagner, Heater & Hallett, of New York City for respondents, excepting respondent flour manufacturers.

Kingman, Cross, Morley, Cant & Taylor, of Minneapolis, Minn., for Washburn Crosby Co., Inc., and Red Star Milling Co.

Mr. Bradshaw Mintener, of Minneapolis, Minn., for Pillsbury Flour Mills Co.

Foulston, Siefkin, Foulston & Morris, of Wichita, Kans., for Kansas Milling Co.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, as amended by an act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," commonly known as the Robinson-Patman Act, the Federal Trade Commission, having reason to believe that the respondents named above in the caption hereof and hereinafter more particularly designated and described, have violated, and are now violating, the provisions of subsection (c) of section 2 of said act as amended, hereby issues its complaint against the said respondents, stating its charges in that respect as follows:

PARAGRAPH 1. (a) Respondent, Quality Bakers of America, is a voluntary unincorporated association, formed in 1922, having its principal place of business at 120 West Forty-second Street, New York City. It is hereinafter referred to as the "Association" and its members are wholesale baking concerns located in various sections of the United States.

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(b) Respondent members of said Association are about 70 in number and are located in various sections of the United States. Said members are corporations, partnerships, and individuals engaged in the wholesale bakery business. All of the members of said Association are not known to the Commission. Those of its officers, executive committee, and representative members who are known, and who can be conveniently reached are specifically named as respondents herein. All the other members of said Association are hereby made respondents without being individually named because they constitute a class or group too numerous to be brought before the Commission in this proceeding without manifest inconvenience and delay. The following named representative members of the Association are made respondents hereto both individually and in their said representative capacity: Respondents, Fitch Baking Co., Inc., a Pennsylvania corporation having its principal place of business at Erie, Pa.; Dreikorn Bakery, Inc., a Massachusetts corporation having its principal place of business at 322 Park Street, Holyoke, Mass.; The Jacob Laub Baking Co., an Ohio corporation having its principal place of business at 4909 Lorain Avenue, Cleveland, Ohio; Liberty Baking Co., a Pennsylvania corporation having its principal place of business at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Stroehmann Brothers Co., a Pennsylvania corporation having its principal place of business at Curtin and Seventh Streets, Harrisburg, Pa.; and Vermont Baking Co., a Vermont corporation having its principal place of business at White River Junction, Vt. Respondent members of the Association, both named and unnamed, are hereinafter collectively referred to as "members." Said members are, among themselves, mutually noncompetitive. Membership is lost whenever a member's trade becomes competitive with the trade of another member or members. Such membership is obtained solely through invitation and election.

(c) Respondents, C. F. Stroehmann, located at Curtin and Seventh Streets, Harrisburg, Pennsylvania; J. P. Duchaine, located at 229 Coffin Avenue, New Bedford, Mass.; Grover C. Patton, located at 434 North Morgan Street, Decatur, Ill.; and W. S. Allison, located at 120 West Forty-second Street, New York, N. Y.; are respectively president, vice-president, treasurer, and secretary and general manager of the Association, and each of them are members of the Executive Committee thereof. Respondents, E. J. Derst, located at 408 East Oglethorp Avenue, Savannah, Ga.; W. M. Clemens, located at 19 South Main Street, Dubuque, Iowa; Onil O. Cote, located at 87 Elm Street, Manchester, N. H.; S. S. Watters, located at 6018 Houston Street, East Liberty, Pittsburgh, Pa.;

Herbert J. Laub, located at 4909 Lorain Avenue, Cleveland, Ohio; James H. Swan, located at 1801 East Magnolia Avenue, Knoxville, Tenn.; George C. West, located at White River Junction, Vt.; and James B. Dwyer, located at 1902 Cranberry Street, Erie, Pa.; are the other members of the said Executive Committee. The said respondent officers and executive committeemen are made parties respondent hereto in their official capacities and as representatives of the aforesaid class or group of unnamed respondents.

(d) Respondent, Quality Bakers of America, Inc., is a Delaware corporation, having its principal place of business at 120 West Forty-second Street, New York City. It is the operative agency, acts on behalf of the Association, and will be designated and referred to hereinafter as the Service Company. As such, said respondent corporation conducts numerous activities for the members of the Association, including services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance. The stock of the Service Company is held exclusively by members of the Association, no stockholder being entitled to hold more than 10 or less than 5 shares thereof.

PAR. 2. The Association, and its members as aforesaid, in the usual course and conduct of their respective businesses, are engaged in interstate commerce, transporting and causing to be transported their wholesale bakery products from the respective States of their production to their respective customers located in other States. The Service Company, in the regular course and conduct of its business, acting for and on behalf of the Association and its members, in its merchandising activities, heretofore in paragraph 1 mentioned and hereafter in paragraph 3 described, is engaged in purchasing materials, supplies, and equipment and in causing the same to be transported from the respective States where located at the time of sale to and into and through other States of the United States wherein the Service Company and the various respondent members are located.

PAR. 3. Among the services rendered to members of the Service Company is that of negotiation for the purchase and the purchase and distribution of merchandise. The lines of merchandise so purchased include flour and many other food materials, required by said members in the production of their products, and a great variety of supplies and equipment, including machinery, used for the manufacture, packaging, storage, and distribution of wholesale bakery products. Some of the said described merchandise is purchased outright by the said Service Company, payment being made by it to the vendors. In other cases said company does not pay the pur-

chase price nor take title to the merchandise, but purchases same for and on behalf of respondent members of the Association. In said purchasing service the Service Company sometimes receives the merchandise and reships to the members of the Association, and on other occasions it directs the vendor to ship direct to the members as consignees. The said Service Company and the Association and its members, through the said Service Company as intermediary, caused to be transported the various lines of merchandise so purchased including flour, food materials, supplies, and equipment from the State of location where sold to, into and through the various other States of the United States in which the respective members of said Association are located, and into the State of New York where the Service Company is located. In its said purchasing service the said company is obligated to obtain and actually obtains from vendors the best prices, quality and service that it can on behalf of members and therein acts as intermediary between said vendors and said members.

PAR. 4. In the regular course and conduct of its purchasing service, in interstate commerce as hereinabove alleged, respondent Service Company, for more than 5 years last past has received and accepted from several hundred concerns, or their agents, selling practically all materials, supplies, and equipment purchased by said company, valuable price concessions, as brokerages, commissions, or other compensation, and allowances or discounts in lieu of brokerage; and the said Service Company now receives and accepts the same from many such concerns, including those corporate respondents hereinafter referred to as "respondent sellers." Each year of its said operations the said Service Company has thus received and accepted substantial sums, and in 1936 received and accepted in the aggregate \$181,528.20, as brokerages, commissions, or other compensation. The receipts of said company as brokerages and commissions or other compensation all inure to the benefit of the members. One-half thereof is retained by the Service Company for the purpose of operating the various above-mentioned services maintained and made available to the entire membership by the said company. The remaining one-half thereof is distributed as patronage dividends, proportionally to the individual members, whose purchases are deemed to have earned the so-called brokerages or commissions or other compensation, in the form of credits against dues charged respectively, by the said company, to said members for such of the services, available at cost, as may be individually subscribed to by them.

Under the circumstances as hereinabove set out—namely, that all of the stock in the Service Company receiving such brokerage fees, compensations, and allowances and allowances or discounts in lieu

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of brokerage, is owned and held by the member buyers of the Association—no services connected with the transactions of sale and purchase of the aforesaid materials, supplies and equipment on which such brokerage fees, compensations and other allowances were and are being paid and made, have either been or are being rendered to the said sellers by the Service Company or the Association or its members.

PAR. 5. Respondent Washburn Crosby Co., Inc., is a corporation with an office and principal place of business at 80 Broad Street in the city of New York, State of New York. Respondent Pillsbury Flour Mills Co. is a corporation with office and principal place of business at 21 West Street in the city of New York, State of New York. Respondent Red Star Milling Co. is a corporation with an office and principal place of business in the city of Wichita, State of Kansas. Respondent Consolidated Flour Mills Co. is a corporation with an office and principal place of business in the city of Wichita, State of Kansas. Respondent Kansas Milling Co. is a corporation with an office and principal place of business in the city of Wichita, State of Kansas. These last named respondents will hereinafter be designated and referred to as "respondent sellers." Said respondents and each of them in this paragraph named are and for more than 1 year last past have been engaged in the business of manufacturing and selling flour to numerous and divers wholesalers, jobbers, merchants, and dealers, including the aforesaid Service Company, respondent, and respondent members of the aforesaid Association, and in the course of such business cause the said flour when sold to be shipped and transported from the State of its location at the time of said sale to, into and through the various other States of the United States in which the said purchasers are located.

Said respondent sellers are fairly typical and representative members of a large group or class of manufacturers, processors, importers, and producers engaged in the common practice of selling a substantial portion of their commodities, merchandise, flour, food stuffs, equipment, supplies, and machinery in interstate commerce to the aforesaid Service Company, respondent, and to the members of the aforesaid Association for and on behalf of whom the said Service Company, respondent, acts as intermediary, in the manner and form hereinabove described. Said group or class of sellers comprises a large number of corporations, partnerships, and individuals and are too numerous to be individually named herein as respondents or to be brought before the Commission in this proceeding without manifest inconvenience and delay.

In the course of such commerce said respondent sellers and each of them have paid or granted and are paying or granting to the said Service Company and to the respondent members through that company as intermediary acting in fact for the respondent members of the aforesaid Association, commissions, brokerage fees, and other compensation and allowances or discounts in lieu thereof upon purchases of said commodities made by respondent buyers from said respondent sellers through said Service Company.

PAR 6. The payment or granting of such commissions, brokerage fees, and other compensations and allowances or discounts in lieu thereof by said respondent sellers to the Service Company, and the receipt and acceptance thereof by the Service Company acting as intermediary for and on behalf of the Association, and for and on behalf of each of the aforesaid member respondents, and the participation in and direction or conduct of such activities by the individual respondents acting as officers and members of the executive committee of the aforesaid respondent Association, all in the manner and form aforesaid, are in violation of the provisions of subsection (c) of section 2 of the act described in the preamble hereof.

MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" approved October 15, 1914, (the Clayton Act), as amended by section 1 of an act of Congress entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13) and for other purposes" approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on August 28, 1937, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with violating the provisions of paragraph (c) of section 2 of said act, as amended. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence were introduced by Allen C. Phelps, attorney for the Commission, before John W. Addison, an examiner for the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Davis, Wagner, Heater & Hallett, attorneys for all of the above-named respondents except Washburn Crosby Co., Inc., Pillsbury Flour Mills Co., Red Star Milling Co., Consolidated Flour Mills Co., and Kansas Milling Co.; and by Frank J. Morley, A Lyman Beardsley, and John

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deLaittre, attorneys for respondents Washburn Crosby Co., Inc., and the Red Star Milling Co.; and by Bradshaw Mintener, attorney for respondent Pillsbury Flour Mills Co., and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission upon the said complaint, answers, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of the said Allen C. Phelps for the Commission and Gug C. Heater of said firm of Davis, Wagner, Heater & Hallett, attorneys for the parties respondent represented by them, and by Bradshaw Mintener, attorney for respondent Pillsbury Flour Mills Co., 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.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Quality Bakers of America is a voluntary unincorporated association formed in 1922, having its headquarters at 120 West Forty-second Street, New York City. The membership of said association comprises about 70 wholesale baking concerns located in various sections of the United States. Among the members of said association are the following respondents, fairly representative of all of said members, to wit: Firsch Baking Co., Inc., a Pennsylvania corporation having its principal place of business at Erie, Pa.; Dreikorn Bakery, Inc., a Massachusetts corporation having its principal place of business at 322 Park Street, Holyoke, Mass.; The Jacob Laub Baking Co., an Ohio corporation having its principal place of business at 4909 Lorain Avenue, Cleveland, Ohio; Liberty Baking Co., a Pennsylvania corporation having its principal place of business at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Stroehmann Brothers Co., a Pennsylvania corporation having its principal place of business at Curtin and Seventh Streets, Harrisburg, Pa.; and Vermont Baking Co., a Vermont corporation having its principal place of business at White River Junction, Vt.

The officers of respondent Quality Bakers of America (hereinafter referred to as the Association) are respondent C. F. Stroehmann, located at Curtin and Seventh Streets, Harrisburg, Pa., president; respondent J. P. Duchaine, located at 229 Coffin Avenue, New Bedford, Mass., vice-president; respondent Grover C. Patton, located at 434 North Morgan Street, Decatur, Ill., treasurer; and respondent W. S. Allison, located at 120 West Forty-second Street, New York, N. Y., secretary. The executive committee of the Association

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is composed of the above officers and of respondents E. J. Derst, located at 408 East Oglethorp Avenue, Savannah, Ga.; W. M. Clemens, located at 19 South Main Street, Dubuque, Iowa; Onil O. Cote, located at 87 Elm Street, Manchester, N. H.; S. S. Watters, located at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Herbert J. Laub, located at 4909 Lorain Avenue, Cleveland, Ohio; James H. Swan, located at 1801 East Magnolia Avenue, Knoxville, Tenn.; George C. West, located at White River Junction, Vt.; and James B. Dwyer, located at 1902 Cranberry Street, Erie, Pa.

The members of the Association, engaged respectively in the wholesale bakery business, are, among themselves, mutually noncompetitive. Membership in the Association is obtained solely through invitation and election.

The objects of the Association as set forth in its constitution are the following:

a. To increase the efficiency of each member in every department of his business.

b. To enable each member to make better bakery products and to market them more efficiently.

c. To assist each member to gain the recognition of the fact that bakery products of the highest quality are indispensable to the life and health of the community.

d. To stimulate the desire of each member to be of service to his fellow-members and the public with respect to the foregoing.

PAR. 2. Respondent Quality Bakers of America, Inc., (hereinafter referred to as the Service Company), is a Delaware corporation having its principal place of business at 120 West Forty-second Street, New York City. The officers of this respondent are the same respondents who are the officers of the Association, as described in paragraph 1 above. The board of directors of this respondent is made up of the said officers and respondents Herbert J. Laub and James B. Dwyer, described in said paragraph 1.

Respondent Quality Bakers of America, Inc. is engaged in the business of purchasing commodities, as a purchasing agent, for the members of the Association, who are likewise holders of the stock of the Service Company, as hereinafter stated. It is the operative agency and acts on behalf of the Association and its members. As such, said respondent corporation, in addition to its purchasing operations, conducts numerous activities for the members of the Association, including services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance. The stock of the Service Company is held exclusively by members of the Association, as hereinafter stated.

PAR. 3. All the outstanding stock of respondent Quality Bakers of America, Inc. (the Service Company) is owned by the members of the Quality Bakers of America (the Association). By a resolution of the Service Company dated April 5, 1937, the minimum amount of stock for each stockholder was set at $7\frac{1}{2}$ shares and the maximum at 15 shares, of a subscription value of \$100 per share. The stockholders of Quality Bakers of America, Inc., as of November 6, 1937, and the number of shares owned by each, were as follows:

Name and address:	No. shares
Aikman Port Huron Bread Co., Port Huron, Mich-----	15
Anchor Baking Co., Sacramento, Calif-----	10
The Baker Bread Co., Zanesville, Ohio-----	10
The Frank Baker Bread Co., Lima, Ohio-----	10
Berdan Bread Co., Bay City, Mich-----	10
A. Bowman & Son, Roanoke, Va-----	$7\frac{1}{2}$
L. Bromm Baking Co., Inc., Richmond, Va-----	10
Cole Baking Co., Bluefield, W. Va-----	15
Cote Brothers, Inc., Manchester, N. H-----	15
Davidson Baking Co., Portland, Oreg-----	10
Ed. DeLorge Baking Co., Inc., Biddeford, Maine-----	15
Derst Baking Co., Savannah, Ga-----	15
Dreikorn's Bakery, Inc., Holyoke, Mass-----	15
Eastern Shore Baking Co., Salisbury, Md-----	15
M. Erickson Bakery Co., LaCrosse, Wis-----	5
Exwin Erickson, LaCrosse, Wis-----	10
Firch Baking Co., Inc., Erie, Pa-----	15
Geneva Baking Co., Geneva, N. Y-----	15
Gorman's Bakery, Inc., Central Falls, R. I-----	15
Gravem-Inglis Baking Co., Stockton, Calif-----	5
Hecht's Bakery, Bristol, Tenn-----	10
Herman Hecht, Bristol, Tenn-----	5
Keller Baking Co., Inc., Troy, N. Y-----	15
The Jacob Laub Baking Co., Cleveland, Ohio-----	15
George E. LeSturgeon, Bridgeton, N. J-----	15
Liberty Baking Co., Pittsburgh, Pa-----	15
Maier's Bakery, Reading, Pa-----	15
Miller-Patton Baking Co., Rockford, Ill-----	15
My Bread Baking Co., New Bedford, Mass-----	15
Nolte Baking Co., Wheeling, W. Va-----	$7\frac{1}{2}$
Polk County Baking Co., Lakeland, Fla-----	$7\frac{1}{2}$
Purity Baking Co., Decatur, Ill-----	15
Remar Baking Co., Oakland, Calif-----	10
The Raymond Baking Co., Waterbury, Conn-----	15
Sanitary Baking Co., Clarksburg, W. Va-----	15
Saylor's Bakery, Inc., Tamaqua, Pa-----	15
Schaefers, Inc., Springfield, Ohio-----	15
Sta-Kleen Baking, Inc., Lynchburg, Va-----	15
Staudt's Bakery, Inc., Raleigh, N. C-----	5
Frederick W. Staudt, Raleigh, N. C-----	$2\frac{1}{2}$

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Name and address—Continued.	No. shares
Storck Baking Co., Parkersburg, W. Va.....	15
Stroehmann Brothers Co., Altoona, Pa.....	7½
Stroehmann Brothers Co., Harrisburg, Pa.....	15
Stroehmann Brothers Co., Norristown, Pa.....	15
Stroehmann Brothers Co., Olean, N. Y.....	7½
Stroehmann Brothers Co., Williamsport, Pa.....	15
Sutorius Bread Co., Newton, Kans.....	15
Swan Brothers, Inc., Knoxville, Tenn.....	15
Swander Baking Co., Rapid City, S. D.....	5
Sweaney's Bakery, Canton, Ohio.....	10
Trausch Baking Co., Dubuque, Iowa.....	15
The Uffelmann Baking Co., Cincinnati, Ohio.....	7½
Vermont Baking Co., White River Jet., Vt.....	15
Waldensian Baking Co., Valdese, N. C.....	15
Winter's Bakery, San Diego, Calif.....	10
Wm. Wolf Bakery, Inc., Baton Rouge, La.....	15
Wool-Scott Bakery, Inc., Ithaca, N. Y.....	5

PAR. 4. Respondents Washburn-Crosby Co., Inc., and Red Star Milling Co., were legally dissolved June 1, 1937, prior to the issuance and service of the complaint herein. Respondent Pillsbury Flour Mills Co. is a Delaware corporation with its general office located in Minneapolis, Minn. Respondent Consolidated Flour Mills Co. is a corporation with its office and principal place of business in the city of Wichita, State of Kansas. Respondent Kansas Milling Co. is a corporation with its principal office and place of business located in the city of Wichita, State of Kansas.

Respondents Pillsbury Flour Mills Co., Consolidated Flour Mills Co., and Kansas Milling Co. are engaged in the milling and sale of flour. Prior to about May 1, 1937, which was prior to the issuance and service of the complaint herein, they formerly paid brokerage fees of 10 cents per barrel to respondent Quality Bakers of America, Inc., the usual and customary brokerage fees paid by them to brokers being 15 cents per barrel, but on or about said date said respondents ceased making such brokerage payments to respondent Quality Bakers of America, Inc., and have not resumed this practice.

PAR. 5. Among the services rendered by the Service Company to its said stockholders is that of the negotiation for the purchase and the purchase and distribution of merchandise and equipment. The lines of merchandise so purchased include flour and many other food materials, required by said stockholders in the production of their products, and a great variety of supplies and equipment, including machinery, used for the manufacture, packaging, storage, and distribution of wholesale bakery products. Some of the said described merchandise is purchased outright by the said Service Com-

pany, payment being made by it to the vendors and said commodities being resold by the Service Company to its stockholders. In other cases said company does not pay the purchase price nor take title to the merchandise, but purchases same on the order of and on behalf of its stockholders on a brokerage basis, brokerage fees being paid by the vendors to the Service Company. In said purchasing operations the Service Company usually directs the vendor to ship direct to the stockholders as consignees.

Respondent stockholders of respondent Quality Bakers of America, Inc., and the other stockholders, all of whom are named in paragraph 3 hereof, are severally engaged in purchasing commodities from sellers located in States other than the State in which such Service Company and said stockholders individually maintain their respective principal places of business. Said stockholders, or some of them, daily transmit orders for the purchase of merchandise to respondent Service Company and such orders in nearly every case are transmitted by mail or other means of communication across State lines. In executing said orders and in purchasing the commodities specified therein, respondent Quality Bakers of America, Inc., transmits such orders and purchases commodities from 1 or more of a group of over 200 manufacturers, processors, producers, or distributors, located in many different States, and who in a large majority of cases are located in a State other than the State of New York, where the Service Company has its principal office and place of business. As a result of such purchase and sale transactions, respondent Quality Bakers of America, Inc., and each of its said stockholders transport or cause to be transported baker's supplies and commodities from the sellers thereof, located in many different States, to, through, and into States other than the State of origin or shipment of such commodities. Said stockholders habitually transmit money or the equivalent thereof in payment of the purchase price for such commodities by United States mail and other means, from their individual places of business, usually across State lines, to the sellers of such merchandise and products, and the Service Company daily receives brokerage fees on purchases made by its stockholders through it, which are transmitted to it by such sellers located in States other than the State of New York, through the medium of the United States mails and otherwise, most of such remittances crossing State lines between the offices of such sellers and the offices of the Service Company. Such purchases by the Service Company's stockholders through the Service Company, and the collection of such brokerage fees by said Service Company, in the manner stated, cannot be accomplished or brought about and is not effectuated except by the use of interstate channels of

communication, nor are such commodities so purchased obtained, nor can they be obtained in most cases except by the transportation of the same, at the instance and request of the Service Company and its stockholders, from one State to, into, or through other States of the United States. In using such methods of ordering, purchasing, and making payment for commodities so purchased and in obtaining and collecting such brokerage fees, respondent Service Co. and its stockholders operate in the channels of interstate commerce and are engaged in such commerce. Respondent Service Company is an indispensable interrelated instrumentality in the course of such commerce, and its operations cannot be conducted except by means of the use of facilities available in the channels of interstate trade, communication, and commerce. Out of the brokerage fees so collected, respondent Service Co. transmits money or its equivalent and services and benefits paid for by such fees from its office in New York to its stockholders in other States. Said Service Company habitually sends its representatives from New York to its stockholders on their request to provide them with advice, expert knowledge, work, and labor, reports, recommendations, advertising matter, and other valuable things, both tangible and intangible. Many of the suggestions and recommendations of such representatives and the advertising matter are prepared and reduced to writing in the offices of the Service Company and transmitted by mail and other means to the stockholders in States other than the State of New York. The operations of respondent Service Company are centered in its offices in New York, but extend into every State in which one or more of its stockholders and the sellers of commodities with whom it negotiates purchases of commodities are located. The plan of operation of the Service Company and its stockholders, above described, is an integral whole which cannot be separated into constituent parts without destroying the whole. Said plan of operation contemplates the use of and uses the facilities and instrumentalities of interstate commerce and is effectuated almost entirely through the means and channels of traffic and commerce among and between the several States. Some of said stockholders sell the bakery products which they manufacture in States other than the State in which such products are processed and manufactured, and transport or cause the said products to be transported from their respective places of business to such other States.

PAR. 6. In the course and conduct of its said business, respondent Service Company, since prior to June 19, 1936, has and does receive and accept from the numerous sellers of commodities above referred to, brokerage fees or commissions on purchases made by its stock-

holders through it, in the manner above stated. During the period from July 1, 1936 to July 1, 1937, the Service Company executed approximately 13,500 orders for the purchase of commodities on a brokerage fee basis for its stockholders, the purchase price of such commodities being estimated as having aggregated between \$5,500,000 and \$5,900,000 in amount. On such purchases the Service Company received brokerage fees from the sellers of such commodities totaling \$163,933.84 in amount. Since July 1, 1937 the Service Company has continued to purchase commodities on a brokerage fee basis for its stockholders in the same manner and using the same methods as those used in its operations before that date.

PAR. 7. Each member of the Association enters into a certain Membership and Service Agreement with the Association and the Service Company, jointly. Among the provisions of such agreement, is the following, which has been observed, complied with and effectuated, to wit:

That all brokerage, selling and commissions, selling discounts or other amounts allowed by suppliers of materials, manufactured advertising, machinery and equipment and collected by the Quality Bakers of America, Inc., shall be applied one-half to the credit of the Member's dues on whose business the brokerage or allowance originated, and the remaining half shall be applied by the Board of Directors in such manner as it shall determine, for service purposes for the benefit of the members of the Quality Bakers of America.

By another of the terms of said membership and service agreement, the members of the Association and the stockholders of the Service Company agree to pay dues to the Service Company. The amount of said dues for each member-stockholder is determined by the baking capacity of his plant, the minimum being set at the sum of \$25 per week or \$1,300 a year. Such dues are charged on the books of the Service Company against the individual member-stockholder and are offset by credits for one-half of the brokerage fees collected by the Service Company on purchases made by such member-stockholder through the Service Company. In 1936, the dues actually charged to stockholders ranged from nothing for suspended members to \$5,920, the latter figure being for a stockholder with 5 plants. In 1936, of 69 member-stockholders, 36 were credited with more from one-half of the brokerage fees collected by the Service Company on their purchases than the dues charged against them amounted to. In the cases of all but 10 of said stockholders, the total brokerage fees collected on purchases made by them through the Service Company exceeded the amount of dues charged against them. During the year

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1936 the total amount of brokerage fees collected by the Service Company amounted to \$181,528.20; of the amount, \$90,760.10 was credited by the Service Company to the respective accounts of its member-stockholders. Dues charged against all the stockholders during 1936 amounted to \$79,556.

PAR. 8. Each member of the Association (who are likewise stockholders in the Service Company) has the above described membership agreement and service contract with the Association and Service Company jointly. Among the provisions in said membership agreement and service contract which are and have been observed and effectuated are the following:

Quality Bakers of America, Inc. agrees, during the term of this agreement, to furnish the Member, in common with other members, various services or assistance in the management of its bakery, such services to be adjusted to meet the needs of the industry and the members. These services shall be rendered along the following broad lines:

I

EXECUTIVE SERVICE

- To advise on bakery management problems.
- To issue publications and bulletins to further the interchange of ideas.
- To conduct conferences.
- To further the development of various departmental activities to the end that all possible efficiencies and economies may be effected for members.

II

MANUFACTURING SERVICE

- To render architectural and construction service.
- To advise on equipment.
- To render general operating efficiency service.
- To render production service.
- To advise on ingredients.
- To maintain a bread inspection and scoring service.
- To effect savings through pooled purchases.

III

MERCHANDISING SERVICE

- To render sales promotion service.
- To issue sales bulletins and publications.
- To handle marketing research.
- To prepare an annual advertising campaign on a cost non-profit basis.
- To handle members' individual advertising requirements.
- To render service on designing packages, trade marks, wrappers, etc.
- To conduct sales and advertising training courses.

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ADVISORY SERVICES

To maintain special services in such fields as cost finding, comparisons and analysis; legal problems; trade mark protection; taxes; audits; insurance; general efficiency, etc.

THE MEMBER AGREES to cooperate in furthering the various policies, plans and activities of the organization, and to carry out the suggestions and recommendations made for the improvement of the Member's business, failure to abide by any of them being sufficient reason for the cancellation of this agreement:

That all information, ideas, records, forms, proceedings, or any parts of such, submitted to the Member by the Quality Bakers of America, or its operating unit, shall be held and treated as confidential, and used only for the benefit of members in good standing;

That the Member owns, controls or operates a plant or plants for the manufacture of bakery products in the following named city or cities, a detailed map showing actual trading area covered by all routes to be attached and made a part of this agreement.

* * * * *

That inasmuch as this is an organization of non-competitors, if the member shall in any manner become a competitor of any other member in the personal delivery field, the undersigned member consents that automatically he shall be dropped, and that this contract shall terminate, subject however to review by the Executive Committee.

PAR. 9. In the course and conduct of its said business, respondent, Quality Bakers of America, Inc., renders to all stockholders who purchase commodities through it, the service generally described in paragraph 8 above, under the headings "Executive service," "Manufacturing service" and "Merchandising service."

The expense of providing the above services to said buying stockholders is paid from the monies received by the Service Company from brokerage fees collected and profits on commodities bought and sold by it. Stockholders whose credits for brokerage fees exceed the amounts charged for dues, may and do request the benefit of such services not included in the above services rendered to all stockholders which are denominated Special Services and generally described under the heading "Advisory services" in paragraph 8 above. The cost of such special services is charged by the Service Company against the brokerage credits in excess of dues standing on the books of the Service Company in favor of the individual buying stockholder receiving such special services.

All said services above described are in fact services rendered to the stockholder by the Service Company, and are designed to be and are services in connection with the purchase of commodities by such stockholders or in connection with the operation of their re-

spective businesses. Such services are not selling services rendered to any seller of commodities, nor services rendered by either the Service Company or its stockholders in connection with the sale of a commodity by any seller to the Service Company or its stockholders. There is no evidence in the record that the Service Company has contracted with any seller to render him any service in connection with the sale of his commodities or to find buyers for him or to promote the sale of his merchandise.

PAR. 10. The Service Company is a Delaware corporation, organized under a general incorporation law governing the organization of corporations for profit. The stockholders elect a board of directors which elects the officers. The board of directors control the direct management, policies, and operations of the company, which are similar to those usually followed by corporations operating for profit, except that, exclusive of a nominal stock dividend, one-half of the profits accruing to the Service Company are distributed to the stockholder on a patronage basis in proportion to the profits realized by the company on brokerage fees or other money received by it on purchasing transactions completed for the individual stockholder.

The stock certificates issued to each stockholder contain the following provisions:

Extract from Article V of By-Laws of Quality Bakers of America, Inc.

Section 5. Transfer of Ownership of Stock, No sale, assignment or pledge of the shares of capital stock of this Corporation shall be made by the owner thereof without the written consent of this Corporation; and no stockholder of this Corporation shall have and possess any voting rights on said shares should he for any reason cease to be a member of Quality Bakers of America, an Unincorporated Association; and immediately upon ceasing to be such a member, he shall give and grant unto the Corporation the exclusive right, for a period of six months from the date thereof, to purchase, or nominate a purchaser, for the shares of stock then owned by the stockholder, at the price he shall have paid for the same upon his original subscription therefor; but failure on the part of the Corporation to act within such time, unless extended, shall render this restriction void.

All of the profits of said company inure to the benefit of the stockholders in the form of money and credits and valuable benefits and services.

PAR. 11. In all matters and transactions in which the Service Company negotiates or deals with sellers in connection with the purchase of commodities by its stockholders, such Service Company is the agent and representative of such stockholders, acts in fact for them, and in their behalf, and is subject to their direct control.

CONCLUSION

The Commission concludes from the facts:

That respondent, Quality Bakers of America, Inc., and its stockholders are engaged in interstate commerce in all material aspects of the practices involved herein.

That in the course of such commerce, respondent, Quality Bakers of America, Inc., is and has been accepting and receiving brokerage fees from sellers on purchases of commodities made by its stockholders through it, while acting as the agent, representative, and intermediary of such stockholders and for them in their behalf and while owned and controlled by such stockholders.

That respondent stockholders and other stockholders of the Service Company in practice receive such brokerage fees and commissions from respondent Quality Bakers of America, Inc., in money, credits, benefits, and services paid for and furnished from and by means of such brokerage fees.

That said brokerage fees are paid by the sellers of commodities to respondent Service Company, and neither such Service Company nor any stockholder thereof renders any service, in connection with the sale of commodities, to any seller so paying such fees.

That respondent Quality Bakers of America (The Association) is an organization designed and used to facilitate and further the objectives, operations, policies, and businesses of the Service Company and its stockholders.

That respondent, Quality Bakers of America, Inc., is not a cooperative association within the meaning of section 4 of the Robinson-Patman Act.

That the plan of operation and the practices and policies of respondents, Quality Bakers of America, Inc., Quality Bakers of America, and their members and stockholders result in the transmission of brokerage fees and commissions from sellers to buyers on transactions involving the purchase and sale of commodities in the course of interstate commerce.

That said acts, practices, and policies are violative of the provisions, paragraph C of section 2 of the Clayton Act, as amended.

The respondents Washburn-Crosby Co., Inc., and Red Star Milling Co. were legally dissolved prior to the issuance and service of the complaint herein, and these companies are no longer corporate entities authorized to engage in business. The respondents Pillsbury Flour Mills Co., Consolidated Flour Mills Co., and Kansas Milling Co., ceased paying brokerage fees to Quality Bakers of America, Inc.,

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prior to the issuance and service of the complaint herein, have not resumed making such payments, and the Commission has no reason to apprehend that these respondents or any of them contemplate resuming or that they will resume the practice of paying such brokerage fees so discontinued prior to the issuance and service of said complaint.

MODIFIED 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 parties respondent named in the caption hereof, testimony and other evidence, taken before John W. Addison, an examiner for the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed in support of said complaint and in opposition thereto and the oral arguments of Allen C. Phelps, counsel for the Commission and Guy C. Heater and Bradshaw Mintener, counsel for certain of the respondents, and the Commission having made its findings as to the facts and its conclusion that the said parties respondent have violated, and are now violating, the provisions of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" as amended by an act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes":

It is ordered, That respondents Quality Bakers of America, an unincorporated association, and Quality Bakers of America, Inc., a corporation, and their respective officers, representatives, agents, and employees, in connection with the purchase of commodities in interstate commerce by any member of said Quality Bakers of America or by any stockholder of said Quality Bakers of America, Inc., do forthwith cease and desist from receiving or accepting any brokerage fees or commissions or any allowances or discounts in lieu thereof, and do forthwith cease and desist from granting, paying, transmitting, or delivering any such fees, commissions, allowances, or discounts to said members or stockholders, either directly in the form of money or credits, or indirectly in the form of services, facilities, property or benefits provided or furnished through or by means of the expenditure or use of any such brokerage fees, commissions, allowances, or discounts.

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It is further ordered, That respondents Firch Baking Co., Inc., Dreikorn Bakery, Inc., The Jacob Laub Baking Co., Liberty Baking Co., Stroehmann Brothers Co. and Vermont Baking Co., and their officers, representatives, agents, and employees, in connection with the purchase of commodities by said respondents in interstate commerce, do forthwith cease and desist from receiving or accepting from the sellers of such commodities, directly or indirectly, any brokerage fees or commissions or any allowances or discounts in lieu thereof, and from receiving or accepting from respondents Quality Bakers of America or Quality Bakers of America, Inc., any brokerage fees or commissions or any allowances or discounts in lieu thereof, received or accepted by said last-named respondents from such sellers, either in the form of money or credits or in the form of services, facilities, property, or benefits provided or furnished by said Quality Bakers of America or Quality Bakers of America, Inc., through or by means of the expenditure or use of any such brokerage fees, commissions, allowances or discounts.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents Washburn Crosby Co., Inc., and Red Star Milling Co. for the reason that prior to the issuance and service of the complaint herein these respondents were legally dissolved.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents Pillsbury Flour Mills Co., Consolidated Flour Mills Co., and Kansas Milling Co., for the reason that prior to the issuance and service of the complaint herein, these respondents ceased paying brokerage fees to respondent Quality Bakers of America, Inc., and the Commission has no reason to apprehend that said respondents or any of them contemplate resuming or will resume the practice of paying such brokerage fees to said respondent.

It is further ordered, That the parties respondent shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
ROBERT H. BENSON AND EMMA BENSON, TRADING AS
BENSON SPECIALTY COMPANY

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

Docket 3795. Complaint, May 29, 1939. Decision, Nov. 15, 1939

Where two partners engaged in sale and distribution of specialty merchandise, including pens, jewelry, electric water heaters, and various other products, in commerce among the various States and in the District of Columbia; in representing, or purporting to represent, quality, material, construction, durability, and other characteristics of their various products, as promoted from time to time, and price at which sold, through advertising circulars and other printed matter and advertising insertions in newspapers, periodicals, and other publications distributed among prospective purchasers in the various States and in the District of Columbia—

- (a) Represented, as typical, that certain fountain pens thus described and offered were unbreakable, carried a lifetime guarantee, and never needed repairs, and that cross necklaces thus offered were set with "facsimile" diamonds and carried an unlimited guarantee against tarnishing, loss of brilliancy, or of stones, etc., and were made of 14 carat gold or silver, facts being articles in question were not guaranteed, pens were not unbreakable and would need repairs, necklaces and other jewelry were neither 14 carat gold nor silver, and jewelry was of very cheap grade and quality, would soon tarnish, and was not equipped, as represented through word "facsimile," with stones having general appearance, quality, and brilliance possessed by diamonds and quality and value greater than imitation diamonds, and purported stones did not have same general appearance, etc., as genuine diamonds and were of no better grade or quality than ordinary cheap imitations;
- (b) Represented, directly and indirectly, that certain pens, necklaces, and hot water discs had customary and usual retail prices greatly in excess of those at which they were offered and sold with certificates or coupons, and that said certificates or coupons had, in connection with purchase of such products, certain specified values, through such statements, among others, as "SPECIAL. This certificate and 59¢ entitles the bearer to one of our genuine indestructible \$3.00 vacuum filler sackless fountain pens. * * * will be \$3.00 after sale," etc., and " * * * This coupon and only 59¢ entitles bearer to one of our regular \$5.00 cross necklaces. * * * This offer made possible by the manufacturer. * * *," and " * * * This coupon and \$1.98 entitles the bearer to one of our regular \$5.00 Electro Heat Kwick hot water disc as above described. * * *" facts being prices represented as customary retail prices of such products were fictitious and greatly in excess of those at which they were customarily offered and sold in normal course of business, certificates or coupons in question did not have value of \$4.41, \$3.02, or \$2.41, as specified in such advertisements, but had no value whatever as prices charged in addition thereto were