

IN THE MATTER OF
MILTON S. KRONHEIM & SON, INC., 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 3400. Complaint, May 5, 1938—Decision, Feb. 9, 1940

Where five concerns engaged in sale and shipment of alcoholic beverages at wholesale in commerce in the District of Columbia to licensed retail package stores located throughout said District, for resale to ultimate consumers, and in purchasing such beverages from various distillers, sellers, and selling agencies located without such District, and in causing products thus purchased to be shipped into the District from the various States in which said distillers, etc., were located, and, as thus engaged, in substantial competition with others likewise engaged in the wholesaling of alcoholic beverages in commerce in the District aforesaid;

In carrying out and making effective a system or policy of merchandising, which they adopted, established, and maintained, of setting up specified standard and uniform minimum resale prices, discounts and markups at which their said products should be sold at retail, and in the maintenance of which they solicited and secured active support and cooperation of District Retail Liquor Dealers Association, some 175 members of said Association, and secretary thereof, who was its chief administrative officer—

- (a) Entered into unlawful contracts, agreements, and understandings with retail dealers, directly and through instrumentality of their said retail association, and through said wholesalers' own association, with intent of binding such retailers and wholesalers and their said associations to maintenance of said uniform minimum resale prices, discounts, or markups, and in pursuance of aforesaid contracts, etc., and with purpose and effect of obtaining and maintaining fixed uniform minimum resale prices of such beverages sold to and by various retail liquor dealers in such District, unlawfully combined, confederated, and agreed, among themselves and with retail liquor dealer members of said retail association and other retailers, and with retail association itself, to accept, cooperate in, maintain, and enforce the said fixed uniform minimum resale price maintenance system and policy of their said wholesale association and its members; and

Where said wholesale association and wholesalers, and each of them, pursuant to said policy——

- (b) Entered into agreements and understanding with each other and with their respective retail dealer vendees, and with aforesaid retail association, with intent and effect of maintaining specified standard or uniform minimum resale price, discount, and markup at which such alcoholic beverages were to be sold by said wholesalers and resold by retail dealer members of said retail association and others; and

Where said wholesalers, acting directly and through agency of such wholesale association, in attempting to enforce and enforcing resale of such alcoholic beverages at specified standard or uniform minimum resale prices, etc.,

as above described, and through combining and agreeing directly and indirectly with various retailers and with said retail association and its members, to do and cause to be done, as case might be, acts and things below described—

- (c) Reinstated as their customers price-cutting retailers whom they had theretofore refused to sell, upon agreement or understanding therewith and with said retail association that suggested minimum resale prices, etc., would thereafter be maintained, and circulated and threatened to circulate among retailers, wholesalers, and distributors of such products reports or lists of those retailers who had cut prices thereon and reports of those wholesalers who had continued to sell such beverages to price-cutting retailers; and
- (d) Secured and endeavored to secure, through contract, agreement, or understanding, active support and cooperation of each one of their own number and of other liquor wholesalers in such District, and of retail dealer members of said retail association and other retailers in such District, and of retail association itself and its said secretary, in carrying out such minimum resale price policy; and

Where said wholesale association, in furtherance of its objectives—

- (e) Sought and secured active support and cooperation of such retail association, retailer members thereof, and its secretary, whereby, under agreements entered into, said retailers were obligated not to sell products purchased from such wholesalers at prices below those given to them by such wholesalers, and to conform to standards and regulations agreed to by both associations, and wholesalers were obligated not to sell to any members of retail association or other retailers who violated provisions of agreement by cutting prices or otherwise, until retailer member had been restored to good standing by such retail association and nonmembers had complied with both associations' requirements to discontinue price cutting; and

Where such wholesalers and their association—

- (f) Engaged in activities directed to securing support and cooperation of distillers in enforcing and carrying out policies and objectives of both associations respecting price maintenance, and under which representatives of their own and distiller missionary representatives and distiller salesmen shopped and policed retailers and reported to wholesalers and retail association results of such activities, and such distillers' representatives participated in meetings of both associations and actively cooperated in aims and objectives thereof and of their members in enforcing price maintenance policy hereinabove described; and

Where said retail association—

- (g) Took steps against several distilling companies which had lowered their prices without notifying such association or members thereof, with result that situations involved were corrected in practically every such instance, and concerned itself also with activities of dealers outside of District and in nearby Virginia, where well-known brands were being sold below prices obtained by dealer members of local association, with intent to bring about markup price by Virginia seller; and

Where said retail association, acting directly and through agency of its retailer members and said secretary thereof, in concert with association and its members—

Complaint

30 F. T. C.

- (h) Unlawfully combined, conspired, confederated and agreed with each other to fix minimum resale prices and markups at which such liquors were to be sold at retail in said District, and combined, conspired, etc., with said wholesale association and its members to accept, cooperate in and enforce such fixed uniform minimum resale price maintenance system or policy as above described; and

Where such retail association and secretary thereof—

- (i) Agreed with each other and with various retail dealer members that (1) retailers' profits should be increased through fixing and maintaining uniform prices for alcoholic beverages, (2) fixed prices on various brands should be maintained between retailer members, (3) products of those wholesalers who permitted their liquors to be sold to price-cutting retailers should be boycotted and threatened therewith, and that (4) only such wholesale dealers in said District as conformed to resale price maintenance policy, formulated and agreed upon as above, should be supplied with alcoholic beverages by distillers, and that through resolutions and joint action of committees distiller sellers and their distributors should be so informed and requested to conform under penalty of concerted boycotts and threats thereof by retailer members, and that (5) wholesalers in District should be notified not to supply any price-cutting retailers under threatened penalty of forfeiture and boycott; and

Where said wholesalers, their association, and such retail association and members thereof and its secretary, pursuant to and in execution of such unlawful combinations, etc., and with intent and effect of making same effective—

- (f) Performed acts and things by each agreed to be done, and appointed committees and joint committees to confer with respective associations and held joint meetings with each other and, through exertion of improper and unlawful pressure, influence, coercion, boycott, and threats thereof, demanded and received from such distiller sellers and distributors outside District, and from each other, adoption, establishment and maintenance of aforesaid and similar systems or policies of merchandising under which standard uniform minimum resale prices, discounts, and markups were fixed at which alcoholic beverages of various distillers should be and were resold by wholesalers and retailers in commerce in such District; and

Where said retail association's secretary, in furtherance and execution of such combinations, etc.—

- (k) Spied upon retailers and reported price cutting, and demanded of distiller sellers and wholesalers herein that they blacklist price cutters, and, as such secretary and individually, sought to and did enforce such demands with boycott and threats thereof upon wholesalers aforesaid, who refused to cooperate fully in maintaining uniform minimum resale prices; and

Where both associations and their members—

- (l) Directed efforts to stop retail price cutting and to prevent wholesalers from making such price cuts possible through deals, discounts and other schemes, permitting offer by retailers of advertised brands below prices obtained by majority of association members, and participated in one another's meetings and exchanged ideas and appointed committees and joint committees directed to bringing about price maintenance policy advocated by both, with result that definite agreement and understanding was reached between the two and their members whereby retail association and members undertook to continue active surveillance, shopping and policing of retail business and

to act promptly to correct price cutting by citing offending members to show cause why they should not be expelled, and wholesale association and members agreed that, upon notification from other of citation or expulsion of any retail dealer, they would refuse him further merchandise pending promise of future conformance and reinstatement as member, or promise of conformance if non-member, and with further result that various retailers branded as price-cutters were thereafter refused supplies by said wholesalers; and

Where said retail association and its members—

- (m) Instituted boycott against wholesaler of whom they had theretofore purchased, for sale to cut price liquor store and thereafter refused to purchase from said offender, with result that wholesaler incurred loss of thousands of dollars and valuable special franchise for sale and distribution of all products made and sold by certain company in said District, and considered as best in trade; and

Where two of said wholesalers—

- (n) Advised all retailers in such District by circular letter that they were, in effect, establishing practice under which they would enter into sub-franchise agreements for sale of their products only with those retailers agreeing to respect minimum suggested resale prices named by them therefor, and secured thereby signatures of some 400 retailers to such agreements, and refused further sales to retailers declining thus to obligate themselves, with result that such refusing retailers were not supplied and, in case of one of their number, was unable, by reason of activities aforesaid, to purchase same even from dealer in other city; and

Where members of such wholesale association, following meetings by committees of both and members thereof—

- (o) Deposited with their secretary, and to be held by him, checks for \$1,000 each to bind respective members to their agreement and understanding that knowing sale by wholesale dealer member to price-cutting retailer subjected him to forfeiture of said amount or portion thereof; and

Where said retail association and its secretary, as further means of forcing adherence to agreements and understandings between retailers and wholesalers and their associations—

- (p) Employed well-known detective agency to spy upon certain dealers to ascertain whether wholesalers were shipping to cut price retailers, or those alleged to have been cutting prices, in quantities above those agreed upon by the two associations and members thereof, and at prices other than those agreed upon; and

Where such wholesalers, pursuant to their agreements and understandings with retailers and their association and wholesale association—

- (q) Adopted price and discount schedule aimed and intended further to prevent price cutting, and under which provision was made for 1 percent discount on purchase of one case of advertised standard brand whiskies, 2 percent on three-case purchases, and 3 percent on five-case purchases, with latter, limit to be sold to retailer, and which replaced theretofore discounts ranging from 2 to 15 percent on purchases; and
- (r) Furnished to retailers at all times price lists covering products concerned and disclosing suggested resale price per bottle at which retailers, under contracts, etc., entered into by them and their association with wholesalers and their association, were to resell to consumers; and

Where retail and wholesale associations, members of which, but for matters and things herein set out, would be naturally and normally in competition with each other in price and otherwise, and were in competition with others in sale and distribution of such beverages to retailers or consumers, as case might be, in said District—

- (e) Had many meetings and conferences through their respective attorneys with counsel for Distilled Spirits Institute, comprising all distillers in United States, to secure aid in joint endeavor of such associations and members to fix standard minimum resale prices for such products in such District;

With result that capacity, tendency and effect of said agreements, combinations, conspiracies and undertakings, and acts and things performed thereunder, as above set forth, were—

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

(b) To prejudice and injure the public, producers of alcoholic beverages, retail dealers, distributors, wholesalers, and others who do not conform to, or cooperate in, the program of said various wholesale and retail concerns, associations and individual, as above set forth:

Held, That such acts and practices of said various wholesale and retail concerns, associations and individual, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Floyd O. Collins and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Alvin L. Newmyer, *Mr. David G. Bress* and *Mr. F. Joseph Donohue*, of Washington, D. C., for *Milton S. Kronheim & Son, Inc.*

Mr. William E. Furey, of Washington, D. C., for *Marvin & Snead Sales Corporation*.

Siegel & Siegel, of Baltimore, Md., for *Phillip Horwitz* and *Leon Samet*.

Mr. Norman J. Morrison of *Cooke & Beneman*, of Washington, D. C., for *International Distributing Co.*

Mr. John R. Fitzpatrick, of Washington, D. C., for *Washington Wholesale Liquor Corporation*.

Mr. Hyman M. Goldstein, of Washington, D. C., for *Globe Distributing Co., Inc.*

Mr. Manuel J. Davis, *Mr. F. Joseph Donohue* and *King & Nordlinger*, of Washington, D. C., for *Manuel J. Davis* and *D. C. Exclusive Retail Liquor Dealers Association*.

Mr. Milford F. Schwartz, of Washington, D. C., for *Wholesale Liquor Dealers of Washington*.

Complaint

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 each and all of the parties named in the caption hereof, 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. Respondents Milton S. Kronheim & Son, Inc., 3301 K Street, NW.; Marvin & Snead Sales Corporation, 219 G Street, NW.; International Distributing Corporation, 917 E Street, NW.; Washington Wholesale Liquor Corporation, 1119 Twenty-first Street, NW.; and Globe Distributing Co., Inc., 2410 Eighth Place, NE., are corporations separately organized, existing and doing business under and by virtue of the Code of the District of Columbia, with principal office and place of business at the street addresses respectively stated, in the city of Washington, in said District.

Respondent Philip Horwitz and Leon Samet are partners trading under the name and style Roma Wine & Liquor Co., having their place of business at 1006 Fifth Street, NW., in the city of Washington, in the District of Columbia.

Each of the respondents named in paragraph 1 is now, and for more than 1 year last past, has been engaged in selling in commerce in the District of Columbia, beverages at wholesale to licensed retail package stores located throughout the said District, for resale to the ultimate consumer thereof. Said respondents are hereinafter referred to as "respondent wholesalers." Said respondent wholesalers purchase such alcoholic beverages from various distiller sellers and selling agencies located outside of the District of Columbia and upon such purchases being made, cause the same to be shipped into the District of Columbia from the various States of the United States in which said distiller sellers and selling agencies are located. In the course and conduct of their respective businesses as aforesaid, each of the respondent wholesalers is in substantial competition with other corporations, individuals, and partnerships likewise engaged in the wholesaling of alcoholic beverages in commerce in the District of Columbia.

PAR. 2. Respondent D. C. Exclusive Retail Liquor Dealers Association is an incorporated trade association of retail liquor dealers, located and doing business in the District of Columbia, said corporation having been organized, existing, and doing business under and by virtue of

Complaint

30 F. T. C.

the Code of the District of Columbia, having its office and principal place of business at Room 829, Woodward Building, in the city of Washington, in said District. Said Association has about 150 members, who operate licensed retail stores selling packaged liquors. It is now, and for more than 1 year last has been engaged in attempting to procure national legislation and local regulations by it deemed to be beneficial to its members; in enforcing observance by its members and others of the price maintenance policies as hereinafter described; with respect to the sales of all alcoholic beverages; and in otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage. This respondent is hereinafter referred to as the "Retail Association."

Respondent Manuel Davis is now, and for more than 1 year last past, has been secretary of D. C. Exclusive Retail Liquor Dealers Association, and is the chief administrative officer of such Association, Manuel Davis, individually, and in his said executive capacity, actively participated in each act and practice hereinafter alleged against the said Retail Association.

PAR. 3. Respondent Wholesale Liquor Dealers of Washington, Inc., is a corporation organized, existing and doing business under and by virtue of the Code of the District of Columbia, having its office and principal place of business in the Investment Building, at Fifteenth and K Streets, NW., in the city of Washington, in said District. It was organized in 1935 and has a membership of 14 wholesale liquor dealers, including the respondent wholesalers. It is now, and for more than 1 year last past, has been engaged in attempting to procure national legislation and local regulations by it deemed to be beneficial to its members; in enforcing observance by its members and others of the price maintenance policies as hereinafter described, with respect to the sales of all alcoholic beverages; and in otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage. This respondent is hereinafter referred to as the "Wholesale Association."

PAR. 4. Respondent wholesalers, in the course and conduct of their respective businesses, in order to stabilize and make uniform the resale prices of the products by them and each of them sold, as aforesaid, adopted, established and have maintained a system or policy of merchandising whereby they and each of them fix specified, standard, and uniform resale prices, discounts and "mark-ups" at which said products should be resold at retail, and have solicited and secured the active support and cooperation of retail dealers and of respondent retail association and Manuel Davis, individually and collectively, in the

maintenance of said resale prices, discounts and "mark-ups." In order to carry out and make effective said system or policy, said respondent wholesalers have entered into unlawful agreements and understandings with retail dealers directly and through the instrumentality of both the respondent retail association and the respondent wholesale association, purporting to bind said retail dealers and said respondent wholesalers and said respondent associations to the maintenance of said resale prices, discounts and "mark-ups."

Pursuant to such contracts, understandings and agreements, the respondent wholesalers and each of them, acting separately and through the instrumentality of respondent wholesale association, with the purpose and effect of obtaining and maintaining a fixed, uniform, minimum resale price of alcoholic beverages, sold to and by the various retail dealers in the District of Columbia, have unlawfully combined, confederated and agreed among themselves and with said retail liquor dealers, and with respondent retail association, to accept, cooperate in, maintain and enforce the said fixed, uniform, minimum resale price maintenance system and policy of the said respondent wholesale association and its members, hereinafter fully described.

Pursuant to such policy, the respondent wholesalers and each of them have entered into agreements or understandings with each other and with their respective retail dealer vendees and with the respondent retail association, the purpose and effect of which is to maintain a specified, standard or uniform minimum resale price, discount and "mark-up" at which the said alcoholic beverages are to be sold by respondent wholesalers and at which the said alcoholic beverages are to be resold by the retail dealer members of the respondent retail association.

Further pursuant to such policy, acting directly and through the agency of the said respondent wholesale association, the respondent wholesalers herein named have attempted to enforce the resale of said alcoholic beverages at specified, standard or uniform minimum resale prices, discounts of "mark-ups" by, among others, the following methods or means:

1. By reinstating as their customers price-cutting retail dealers whom they have theretofore refused to sell, upon the agreement or understanding with such retail dealers that the suggested minimum resale prices, discounts or "mark-ups" will thereafter be maintained.
2. By circulating and threatening to circulate among retailers, wholesalers and other distributors of alcoholic beverages reports or lists of those retailers who have cut prices on said products, and reports of those wholesalers who have continued to sell alcoholic beverages to

Complaint

30 F. T. C.

retail dealers who have cut prices on said products to a figure below the minimum resale price so fixed.

3. By combining and agreeing, directly and indirectly with various retailers and with the respondent D. C. Exclusive Retail Liquor Dealers Association, to do and to cause to be done the foregoing acts and things.

4. By securing and endeavoring to secure through contract, agreement and understanding, the active support and cooperation of each respondent wholesaler and of other wholesalers of liquor in the District of Columbia, of retail dealer members of the respondent retail association and of other retail dealers in the District of Columbia, individually and collectively, in carrying out the minimum resale price policy aforesaid.

PAR. 5. Pursuant to the policy and system of merchandising hereinbefore described, respondent Milton S. Kronheim & Son, Inc., circulated the retail trade in the District of Columbia, requesting and soliciting all of that respondent's retail customers to enter into signed agreements to maintain the suggested resale prices of respondent Milton S. Kronheim & Son, Inc., and of approximately 400 retailers located in the city of Washington, District of Columbia, as of February 18, 1938, secured the signatures of approximately 392 of such retailers to these agreements, and said respondent refuses to sell any retailer who will not sign such agreement, known and described by respondent as the "Kronheim Franchise Agreement." In soliciting such agreements, respondent stated in part:

Your signature will entitle you to buy our goods and receive our best cooperation. We will promise you not to sell to anyone else who does not agree to the same conditions under which you, and all others who sign, will operate.

We cannot control any other wholesaler's merchandise, but we will control our own to the limit of the law. Unfortunately, some of the laws designed to protect legitimate business are so constructed that they also permit undue freedom to unethical operators. Right now we operate under definite standards. Our franchises from our distillers impose certain obligations which we cannot maintain without the support of the retailers * * *

WE ARE CLOSING OUR OFFICE TOMORROW AND KEEPING IT CLOSED UNTIL OUR SALESMEN HAVE COVERED EVERY "A" LICENSEE IN WASHINGTON.

Upon the obtaining of the retail dealer vendee's signature to such agreement, respondent Milton S. Kronheim & Son, Inc. issued and delivered to such contracting party a lithographed certificate reading as follows:

An Agreement by which
MILTON S. KRONHEIM & SON, INC.
awards Sub-Franchise to

For Better Cooperation between Wholesaler and Retailer
in the Maintenance of
FAIR PRICES AND FAIR TRADE PRACTICES
In the District of Columbia
for the Benefit and Protection of the Public
and to Maintain the
High Standards of the Wine and Spirits Industry

(Proprietor of Licensee)

MILTON S. KRONHEIM. (S).
(MILTON S. KRONHEIM & SON, INC.)

1938

PAR. 6. Pursuant to the policy and system of merchandising hereinbefore described, respondent Globe Distributing Co., Inc., circularized the retail trade in the District of Columbia, requesting and soliciting all of that respondent's retail customers to enter into written agreements to maintain the suggested resale prices of Globe Distributing Company, Inc., and upon the obtaining of the retail dealer vendee's signature to such agreement, this respondent issued and delivered to such contracting party a lithographed certificate of "sub-franchise" identical (except as to the names of the contracting parties) with that issued by respondent Milton S. Kronheim & Son, Inc., described in paragraph 5 hereof.

PAR. 7. Respondent D. C. Exclusive Retail Liquor Dealers Association, acting directly and through the agency of its retail dealer members, and the respondent Manuel J. Davis, individually and as Secretary of said retail association, and each of them, in concert with said association and its said members have unlawfully combined, confederated and agreed with each other to fix uniform resale prices and "mark-ups" at which said liquors are to be sold at retail in the District of Columbia, and have unlawfully combined, confederated and agreed with respondent wholesale association, its members, and with respondent wholesalers to accept, cooperate in and enforce the same fixed uniform minimum resale price maintenance system and policy as fully described in paragraph 4 hereof. And on their part and the part of each of them, respondent retail association and respondent Manuel J. Davis have agreed with each other and with the various retail dealer members of said retail association in substance and effect as follows:

Complaint

30 F. T. C.

1. That the retail dealers' profits should be increased by fixing and maintaining a uniform price for alcoholic beverages.

2. That fixed prices on various brands should be maintained between the retail dealer members of the said respondent retail association.

3. That the products of those wholesalers, including the respondent wholesalers, who have permitted their liquors to be sold to retail dealers known to engage in price-cutting activities, shall be boycotted and threatened with boycott.

4. That only such wholesale liquor dealers in the District of Columbia as conform to the established resale price maintenance policy formulated and agreed upon as aforesaid should be supplied with alcoholic beverages by the distillers thereof and the distributing agencies of such distillers, and that through resolutions, and joint action of committees appointed for that purpose, the various distiller sellers and their distributors should be so informed and requested to conform to such policy, under penalty of concerted boycott and threats of such boycott by the retail dealer members of said retail association.

5. That wholesalers in the District of Columbia, including respondent wholesalers, should be notified not to supply any price-cutting retailers under threatened penalty of forfeiture and boycott.

PAR. 8. Pursuant to and in execution of the aforesaid unlawful combinations, confederacies, and agreements or understandings, and with the purpose and effect of making them effective, the respondent wholesalers, respondent wholesale associations, the respondent retail association, and Manuel J. Davis, and each of them, executed and performed the acts and things by each of them agreed to be done pursuant thereto; appointed committees and joint committees to confer with the respective respondent associations, and held joint meetings with each other, and by means of exerting improper and unlawful pressure, influence, coercion, boycotts, and threats of boycott, demanded and received from the aforesaid distiller-sellers and distributors outside of the District of Columbia, and from each other, the adoption, establishment and maintenance of the aforesaid and similar systems or policies of merchandising, fixing standard, uniform resale prices, discounts and "mark-ups" at which the said alcoholic beverages of the various distiller-suppliers should be and were resold by wholesalers and retail dealers in commerce in the District of Columbia.

The said Manuel J. Davis, in furtherance and execution of said conspiracies, combinations, confederacies and agreements, did spy upon retailers, report price-cutting and make demands upon distiller-sellers and respondent wholesalers that they "black-list" such

price-cutters, and acting individually and on behalf of the respondent D. C. Exclusive Retail Liquor Dealers Association, sought to and did enforce such demand with boycotts, and threats of boycott, both upon the said distiller-sellers and the respondent wholesalers, who refused to maintain the uniform, minimum resale prices agreed upon by the members of the said D. C. Exclusive Retail Liquor Dealers Association.

PAR. 9. Respondents, by the aforesaid agreements, combinations, conspiracies, and by the aforesaid acts and practices by them undertaken and done pursuant to such agreements, hindered, obstructed, and restrained commerce in the District of Columbia and the flow of commerce into the District of Columbia, and the direct effect thereof was to suppress competition among wholesalers and retail dealers in the distribution and sale of liquors in the District of Columbia, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs, and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which would otherwise obtain from a natural and unobstructed flow of commerce in said products, tending unduly to hinder and suppress competition in the resale of said products in commerce in the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondents and each of them as herein alleged, are all to the prejudice of the public and constitute an unfair method of competition and unfair and deceptive acts and practices 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 May 5, A. D., 1938, issued and served its complaint in this proceeding upon the respondents specifically named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance and service of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Floyd O. Collins, Esq., and D. T. Puckett, Esq., attorneys for the Commission, and in opposition to the allegations of the complaint by Milton W. King, Esq., Manuel J. Davis, Esq., Norman J. Morrison, Esq., John R. Fitzpatrick, Esq., F. Joseph Donohue, Esq., William E. Furey, Esq., Milford F. Schwartz, Esq., Henry M.

Findings

30 F. T. C.

Siegel, Esq., and Hyman M. Goldstein, Esq., all members of the bar of the District of Columbia, attorneys for the respondents, before John J. Keenan, a trial examiner of the Commission theretofore duly designated by it, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on or for final hearing before the Commission on said complaint, the answers thereto, the testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Milton S. Kronheim & Son, Inc., 3301 K Street, NW.; Marvin & Snead Sales Corporation, 219 G Street, NW.; International Distributing Corporation, 917 E Street, NW.; Washington Wholesale Liquor Corporation, 1119 Twenty-first Street, NW.; and Globe Distributing Company, Inc., 2410 Eighth Place, NE., are, with the exception of the Globe Distributing Company, Inc., all corporations separately organized, existing and doing business under and by virtue of the Code of the District of Columbia, with principal offices and places of business at the street addresses as stated above, in the city of Washington, in the District of Columbia. The Globe Distributing Company, Inc. (designated in the complaint as a District of Columbia corporation), was organized and exists under and by virtue of the laws of the State of Maryland.

Respondents Philip Hurwitz (named Phillip Horwitz in the complaint), and Leon Samet are copartners trading under the name and style Roma Wine & Liquor Co., having their place of business at 1006 Fifth Street, NW., in the city of Washington, in the District of Columbia.

Each of the above named respondents is now and for more than a year last past has been engaged in selling and shipping alcoholic beverages at wholesale in commerce in the District of Columbia to licensed retail package stores located throughout the said District for resale to the ultimate consumer thereof. Said respondent wholesalers purchased such alcoholic beverages from various distillers, sellers and selling agencies located outside of the District of Columbia and upon such purchases being made, caused the same to be shipped into the said District from the various States of the United

States in which said distillers, sellers and selling agencies are located, to said respondent wholesalers in the District of Columbia.

In the course and conduct of their business as aforesaid, each of the respondent wholesalers is in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the wholesaling of alcoholic beverages in commerce in the District of Columbia.

PAR. 2. Respondent D. C. Exclusive Retail Liquor Dealers Association, organized in 1935, is an incorporated trade association of retail liquor dealers, incorporated, existing, and doing business under and by virtue of the Code of the District of Columbia, having its office and principal place of business at Room 829 Woodward Building, in the city of Washington, in said District. Said Association has approximately 175 members who operate licensed retail liquor stores selling packaged liquors. It is now, and for more than 1 year last past has been, engaged in attempting to procure national legislation and other regulations by it deemed to be beneficial to its members; in enforcing observance by its members and others of the price maintenance policies as hereinafter described, with respect to the sale of alcoholic beverages; and in otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage. The officers for 1938, elected at a meeting held on February 3, 1938, at the Hay-Adams House were:

President, William Stein.

2d Vice President, I. Jacobson.

Secretary, Manuel J. Davis.

Sergeant at Arms, J. Abramson.

Each of the retail liquor dealer members of the D. C. Retail Liquor Dealers Association is now and for more than a year last past has been engaged in the sale of alcoholic beverages at retail in commerce in the District of Columbia to consumers of said liquor. The said retail dealer members purchase large quantities of alcoholic beverages from the respondent wholesalers and others in the District of Columbia, and in addition thereto purchase alcoholic beverages from various distillers, and selling agencies located outside the District of Columbia, upon permits secured from the Alcoholic Beverage Control Board of the said District, and upon such purchases being made, cause the same to be shipped into the District of Columbia from the various States of the United States in which said distillers, sellers, and selling agencies are located. In the course and conduct of their respective businesses as aforesaid, each of the retail dealer members of the D. C. Exclusive Retail Liquor Dealers Association, Inc., is in

Findings

30 F. T. C.

substantial competition with other firms, corporations, individuals, and partnerships likewise engaged in the sale of alcoholic beverages in commerce in the District of Columbia. This respondent is hereinafter referred to as "Retail Association."

PAR. 3. Respondent Manuel J. Davis, (named in the complaint as Manuel Davis) is now, and since its organization, has been secretary and attorney for the said Retail Association, and the chief administrative officer of same. Said Manuel J. Davis, individually and in his said executive capacity, actively participated in each and every act and practice hereinafter set forth.

PAR. 4. Respondent Wholesale Liquor Dealers of Washington (listed in complaint as "Wholesale Liquor Dealers of Washington, Inc."), is a voluntary mutual association organized, existing and doing business under and by virtue of the Code of the District of Columbia, having its office and principal place of business in the Investment Building, at Fifteenth and K Streets, NW., in the city of Washington, in said District. It was organized in 1935 and at the time of the issuance of the complaint herein had a membership of 14 wholesale liquor dealers, including respondent wholesalers. It is now, and since its organization has been, engaged in attempting to procure national legislation and local regulations by it deemed to be beneficial to its members; and in enforcing observance by its members and others of the price maintenance policies hereinafter described, with respect to the sale of all alcoholic beverages, and otherwise in promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage. It does not have any regularly elected officers, except a secretary, who, as in the Retail Association, is also attorney for the said Association. This respondent is hereinafter referred to as the "Wholesale Association."

PAR. 5. The respondent wholesale dealers, in the course and conduct of their respective businesses, in order to stabilize and make uniform the minimum resale prices of the products by them and each of them sold, as aforesaid, adopted, established, and have maintained a system or policy of merchandising whereby they and each of them set specified standard and uniform minimum resale prices, discounts and "mark-ups," at which said products should be sold at retail by the retail dealers; and have solicited and secured the active support and cooperation of the Retail Association, the retail dealer members thereof and Manuel J. Davis, individually and collectively, in the maintenance of said minimum resale prices, discounts and "mark-ups."

In order to carry out and make effective the said system or policy, the said respondent wholesale dealers have entered into unlawful con-

tracts, agreements and understandings with retail dealers, directly and through the instrumentality of the respondent Retail Association and the respondent Wholesale Association, for the purpose of binding said retailers and said respondent wholesalers and said respondent Associations to the maintenance of the said uniform, minimum resale prices, discounts, or "mark-ups."

Pursuant to such contracts, understandings and agreements the respondent wholesalers, and each of them, acting separately and through the instrumentality of respondent Wholesale Association, and with the purpose and effect of obtaining and maintaining the said fixed uniform, minimum resale prices of alcoholic beverages, sold to and by the various retail liquor dealers in the District of Columbia, having unlawfully combined, confederated, and agreed among themselves and with the said retail liquor dealer-members of the Retail Association, and with other retail dealers and the Retail Association, to accept, cooperate in, maintain and enforce the said fixed uniform, minimum resale price maintenance system and policy of respondent Wholesale Association and its members.

PAR. 6. The said respondent Wholesale Association and respondent wholesalers, and each of them, pursuant to such policy have entered into agreements and understandings with each other and with their respective retail dealer vendees and with respondent Retail Association, the purpose and effect of which is to maintain a specified standard or uniform, minimum resale price, discount and "mark-up" at which said alcoholic beverages are to be sold by respondent wholesalers, and resold by the retail dealer-members of the respondent Retail Association and others.

Further pursuant to such policy, and acting directly and through the agency of the said respondent Wholesale Association, the respondent wholesalers herein named attempted to and did enforce the resale of the said alcoholic beverages at specified standard or uniform minimum resale prices, discounts or "mark-ups," by, among others, the following methods or means:

(a) By reinstating as their customers price-cutting retail dealers whom they have theretofore refused to sell, upon the agreement or understanding with such retail dealers and the Retail Association, that suggested minimum resale prices, discounts or "mark-ups" will thereafter be maintained.

(b) By circulating and threatening to circulate among retailers, wholesalers, and distributors of alcoholic beverages reports or lists of those retail dealers who have cut prices on said products, and reports of those wholesalers who have continued to sell alcoholic bever-

ages to retail dealers who have cut prices on said products to a figure below the minimum resale price so fixed.

(c) By combining and agreeing, directly and indirectly, with various retailers and with respondent Retail Association and its members to do, and to cause to be done, the foregoing acts and things.

(d) By securing and endeavoring to secure through contract, agreement or understanding, the active support and cooperation of each respondent wholesaler and of other wholesalers of liquor in the District of Columbia; of retail dealer-members of the respondent Retail Association and other retail dealers in the District of Columbia, of the Retail Association, and of Manuel J. Davis, individually and as secretary of said Association, and all individually and collectively, in carrying out the minimum resale price policy aforesaid.

PAR. 7. The respondent Wholesale Association, in furtherance of its objectives, sought and secured the active support and cooperation of the respondent Retail Association, the retail dealer-members of said Association, and Manuel J. Davis, individually and as secretary of said Association, whereby agreements were entered into by the terms of which it was agreed that the said retail dealers would not sell their products purchased from respondent wholesalers at prices below the prices given to said retailers by the said respondent wholesalers; that they would conform to standards and regulations agreed to by both Associations; that the wholesale liquor dealers would not sell to any members of the Retail Association or other retail dealers who violate the provisions of the agreement by cutting prices or otherwise until such retail dealer-member is restored to good standing by said Retail Association, and others not members of the Association have complied with the requirements of both Associations to discontinue price cutting.

The respondent wholesalers and respondent Wholesale Association were active in securing the support and cooperation of the distillers in the enforcing and carrying out of the policies and objectives of both Associations respecting price maintenance.

PAR. 8. Representatives of the respondent wholesale dealers and distiller missionary representatives (men employed by the various distilling companies to visit the retail and wholesale trade throughout the United States as good-will representatives who distribute advertising matter and window displays; check all sales and prices obtained for their products by wholesale and retail dealers; adjust differences and complaints, and generally do whatever may be necessary to keep the various dealers favorably disposed toward their products), and salesmen of said distillers shopped and policed the retail dealers, reporting to the respondent wholesale dealers and Retail Association the results of their activities. Said distillers' repre-

sentatives participated in meetings of both Associations and actively cooperated in the aims and objects of said Associations and members thereof to enforce the price maintenance policy hereinbefore mentioned.

PAR. 9. The respondent Wholesale and Retail Association members constitute a large and important part of the wholesale and retail distributors of alcoholic beverages in the District of Columbia; and such members constitute a group so powerful and influential in the trade as to be able to substantially control and influence the flow of trade and commerce in alcoholic beverages into and in the District of Columbia.

PAR. 10. From the inception or organization of the Retail and Wholesale Associations, the said Associations and the dealer-members thereof directed their efforts to bringing about price maintenance. The Retail Association was particularly active, and as early as October 1935, took active steps against several distilling companies, because said companies lowered their prices without notifying the said Association or its members.

Davis, upon direction of the Association, addressed the following letter to the Schenley Products Corporation:

D. C. EXCLUSIVE RETAIL
LIQUOR DEALERS ASSOCIATION
829-831 WOODWARD BUILDING
WASHINGTON, D. C.

NOVEMBER 19, 1935.

Mr. LOU ROSENSTEIL,
20 W. 40th Street, New York City, N. Y.

DEAR MR. ROSENSTEIL: The D. C. Exclusive Retail Liquor Dealers Association, at a regular meeting, informed me to send you this letter bearing out the following information:

Schenleys Red Label Whiskey, priced at \$1.33 per pint was reduced to \$1.19 per pint with no notice given of the contemplated change in price but to a few retailers.

The organization, comprised of one hundred and twenty-three (123) retail package stores out of one hundred seventy-five (175), feel that some definite steps should be taken whereby the respective distillers should take cognizance of the fact that such an organization is in being. Heretofore this organization has co-operated with every distillery desiring co-operation from the retailers. In the past such distilleries as Seagram's and National Distillers have informed us of any change in price or policy. This arrangement annured to the ultimate benefit of both parties concerned. We personally believe that there is no reason in the world why a similar agreement can not be worked out between Schenley Products Corporation and the respective retailers throughout the country.

The notice of a contemplated change in price or policy by the distilleries to the retailer would give the retailer a sufficient amount of time within which to dispose of your goods in the event that you intended to reduce the price.

Findings

30 F. T. C.

Under your present policy the retailer receives no notice of any change in policy or of price.

If your distillery had contemplated to repay the respective retailers the difference in prices to the retailer, such a policy would be equally as agreeable to us. That policy or the one that the Penn-Maryland organization used with us prior to bringing their new "Town Tavern" on the market is equally as agreeable to the retailers. The Penn-Maryland Corporation gave us more than 10 days notice that the age of "Penn-Maryland" would be changed, thereby enabling us to dispose of the younger whiskey on our shelves. In the case of "Old Overholt," the retailer was permitted to exchange the old "Old Overholt" for the new.

There is no reason in the world why the retailer should not be able to work out its problem with the Schenley Products Company in the same manner as it has with other distilleries.

When this industry was still in its infancy and when all the price-cutting was going on in this city, this organization stepped to the front and called in all the distilleries' representatives. If I recall correctly, Mr. Dyer represented your organization and you also sent a man down from New York City to represent your Import Corporation. At this meeting we retailers who sell over eighty percent (80%) of the liquor in package form in the District of Columbia went on record to uphold and maintain the suggested retail prices by the distilleries with the thought in view that it would be properly policed and advertised.

Because of that meeting, we in the District of Columbia enjoy a healthier and more stable liquor trade than practically any city in the country. We police our own members and co-operate with the respective distilleries to the utmost extent.

We want you to feel that this organization is one with whom you can co-operate and who is willing to co-operate with your distillery at all times. Such meetings as the one which I mentioned above should be given your utmost consideration for there is no reason in the wide world why such agreements should not exist between the distiller and some one hundred package stores.

The organization desired that I express their regrets as to the manner in which you handled the situation and are willing to meet you on any working basis to remedy the situation.

Yours very truly,

(Sgd) MANUEL J. DAVIS
Manuel J. Davis.

According to the minutes of meetings of said Retail Association, in practically every instance said Association was successful in bringing about a correction of the situations where distillers reduced a price without consulting the Retail Association. The Association also concerned itself with activities of dealers outside the District of Columbia. The Alexandria State Liquor Store, of Alexandria, Va., was selling well-known brands of liquors at prices below those obtained by the dealer-members of the local Association; Davis, upon instruction of the members, contacted various distillers for the purpose of bringing about a marking-up of price by the Virginia State Store.

PAR. 11. Respondent Retail Association, acting directly and through the agency of its retail dealer-members, and the respondent Manuel J. Davis, individually and as secretary of said Retail Association, and each of them, in concert with said Association and its members, have unlawfully combined, conspired, confederated and agreed with each other to fix uniform, minimum resale prices and "mark-ups" at which said liquors were to be sold at retail in the District of Columbia, and have unlawfully combined, conspired, confederated and agreed with respondent Wholesale Association and its members to accept, cooperate in, and enforce the said fixed uniform, minimum resale price maintenance system or policy as described herein. And, on their part, and on the part of each of them, respondent Retail Association and respondent Manuel J. Davis, individually and as secretary of said Association, have agreed with each other and with the various retail dealer-members of said Retail Association in substance and effect as follows:

1. That the retail dealers' profits should be increased by fixing and maintaining a uniform price for alcoholic beverages.

2. That fixed prices on various brands should be maintained between the retail dealer members of the said respondent Retail Association.

3. That the products of those wholesalers, including the respondent wholesalers, who have permitted their liquors to be sold to retail dealers known to be engaged in price-cutting activities, shall be boycotted and threatened with boycott.

4. That only such wholesale liquor dealers in the District of Columbia as conform to the established resale price maintenance policy formulated and agreed upon as aforesaid should be supplied with alcoholic beverages by the distillers, and that through resolutions, and joint action of committees appointed for that purpose, the various distiller sellers and their distributors should be so informed and requested to conform to such policy, under penalty of concerted boycott and threats of boycott by the retail dealer members of said Retail Association.

5. That wholesalers in the District of Columbia, including respondent wholesalers, should be notified not to supply any price-cutting retailers under threatened penalty of forfeiture and boycott.

PAR. 12. Pursuant to and in execution of the aforesaid unlawful combinations, conspiracies, confederacies, agreements or understandings, and with the purpose and effect of making them effective, the respondent wholesalers, respondent Wholesale Association, respondent Retail Association and its members, and Manuel J. Davis, and each of them, executed and performed the acts and things by each of

Findings

30 F. T. C.

them agreed to be done pursuant thereto; appointed committees and joint committees to confer with the respective respondent Associations, and held joint meetings with each other, and by means of exerting improper and unlawful pressure, influence, coercion, boycotts, and threats of boycotts, demanded and received from the aforesaid distiller-sellers and distributors outside the District of Columbia, and from each other, the adoption, establishment, and maintenance of the aforesaid and similar systems or policies of merchandising, fixing standard, uniform minimum resale prices, discounts and "mark-ups" at which the said alcoholic beverages of various distillers should be and were resold by wholesalers and retail dealers in commerce in the District of Columbia.

The said Manuel J. Davis, in furtherance and execution of said combinations, conspiracies, confederacies, agreements or understandings, did spy upon retailers, report price cutting and make demands upon distiller-sellers and respondent wholesalers that they "black-list" price-cutters, and acting individually and on behalf of respondent Retail Association, sought to and did enforce such demand with boycotts, and threats of boycott, upon the said respondent wholesalers, who refused to cooperate fully in maintaining uniform minimum resale prices.

PAR. 13. The efforts of both Associations, and their members, were intensified during the Christmas holidays of 1937-38, to stop the cutting of prices by retail dealers, and to prevent wholesalers from making it possible for retail dealers to cut prices by making deals with said retail dealers, giving discounts and by other schemes, which so reduced the prices of standard advertised brands of whiskeys as to permit certain retail dealers to sell said whiskeys at prices below those obtained by a majority of the members of the Retail Association. Officers and members of the Retail Association attended meetings of the Wholesale Association; officers and members of the Wholesale Association attended meetings of the Retail Association and at each and all of these meetings the representatives of the two Associations participated in the business being conducted at said meetings, and put forward their various ideas as to how to accomplish the purpose in mind. Committees and joint committees were appointed by each Association to bring about the price maintenance policy advocated by both Associations.

Pursuant thereto, and as a result of the meetings of the committees and joint committees and other activities, there was finally a definite agreement and understanding between the said Associations and the members thereof whereby the Retail Association and members thereof agreed they would continue the active surveillance, shopping, and

policing of the retail business, and take prompt steps to correct the cutting of prices by citing price-cutter members of the said Association to show cause why they should not be expelled from membership in the said Association.

The Wholesale Association and its members agreed that upon notification from the Retail Association of the citation or expulsion of any retail dealer from membership, they would refuse further merchandise to such retail dealer until said retail dealer had, upon promise to maintain prices, been reinstated in the Retail Association, or if said price-cutter was not a member, had promised and agreed to maintain the suggested retail prices. Immediately thereafter, Acme Liquor Store, Famous Brands Liquor Store, Slavitt's Liquor Store, and several others were branded as price-cutters.

PAR. 14. The above named and other retail liquor stores, shortly after these activities and agreements, were refused supplies of whiskey by respondent wholesalers. The said refusals dated from on or about December 24, 1937, to January 20, 1938. After refusal by all of the respondent wholesalers, the Acme Liquor Store, under dates of January 5, 6, 7, and 8, 1938, directed registered letters and telegrams to each of the above named respondent wholesalers, ordering certain well-known advertised brands of whiskey, and all of said wholesalers refused to fill said orders because of Acme Liquor Store price-cutting activities. The same course was followed by the wholesaler respondents with respect to other retail dealers, both members and non-members of the Retail Association.

The above mentioned retail stores, and others, were cited by the Retail Association to show cause why they should not be expelled from membership because of violation of Article V of the Constitution and By-Laws, which provides:

A member is subject to being suspended or expelled for not complying with the regulations and purposes adopted by the Association.

The minutes of meetings and record establish that these dealers were charged with price cutting, and the cited members were refused the right of counsel at said hearings. Several of those cited were expelled from membership in the Retail Association. Those who agreed to abide by the price maintenance system were restored to membership, as is evidenced by the following extract from the minutes of the Retail Association meeting of January 20, 1938:

The said committee (here the reference to the special committee) met in the office of the Association Tuesday, January 11, 1938, 10:00 a. m., at which it heard the statements made by Mr. Wilner, Famous Brands Liquor Store. Mr. Wilner admitted the fact that he had cut prices, but attempted to justify his acts by stating that he was meeting competition from several dealers whom

Findings

30 F. T. C.

he named. To summarize Mr. Wilner's statements and testimony would be to state that Mr. Wilner assured the committee that he was more than willing to abide by the Constitution and By-Laws of the Association and support any resolution that it adopted in the interest of licensees. He was more than willing to maintain suggested prices, and in fact would do so whether the Association caused his suspension from its presence or not. He now felt that the Association was sincere in its efforts to see that suggested prices were maintained, and that they now can call upon him to do his share.

Mr. Wilner further volunteered to remove his electric sign which he had in his window, "We will not knowingly be undersold."

PAR. 15. About this time respondent Globe Distributing Co., Inc. sold liquor to a cut-price liquor store. A boycott was instituted against the said company by the Retail Association and its members, and practically every member of the Retail Association who theretofore had purchased liquors from the Globe Distributing Co., Inc. refused to purchase any merchandise from said company resulting in the loss of many thousands of dollars and also a very valuable special franchise held by the Globe Distributing Co., Inc., as the agent for the sale and distribution of all alcoholic beverages manufactured and sold by the National Distilling Co. in the District of Columbia. (This contract is considered the best in the trade.)

PAR. 16. Soon thereafter, to wit, January 11, 1938, Milton S. Kronheim & Son, Inc., forwarded to every retail dealer in the District of Columbia a circular letter in which, among other things, the following statements were made:

* * * Tomorrow, or as soon as possible, you will be offered a Kronheim franchise agreement. You will be asked to sell our brands on a basis of fair practices and fair prices. Your signature will entitle you to buy our goods and receive our best cooperation. We will promise you not to sell anyone else who does not agree to the same conditions under which you, and all others who sign, will operate.

We cannot control any other wholesaler's merchandise, but we will control our own to the limit of the law. Unfortunately, some of the laws designed to protect legitimate business are so constructed that they also permit undue freedom to unethical operators. Right now we operate under definite standards. Our franchises from our distillers impose certain obligations which we cannot maintain without the support of the retailers.

Therefore our sub-franchise agreements will be obtainable only by retailers whose business standards enable us to maintain our own standards. This agreement will protect us as wholesalers, you as a retailer and allow the consumer to buy at a fair price. Anything that will accomplish all three points is worthy of your support. Anything that does otherwise should not interest you.

When our salesman calls upon you, please give him your sincere attention, and sign the agreement with the assurance that it means better business for you.

Following this, and bearing the same date, a contract was distributed

to all of the retailers in the said District. This contract provided as follows:

You are hereby designated by Milton S. Kronheim & Son, Inc., as distributor in the District of Columbia of our imported and domestic wines and liquors, a list of which is hereto attached, for a term to begin upon the acceptance by you of the terms of this letter, signified by your signature upon the enclosed duplicate copy, and to continue until terminated upon notice by one party to the other.

#2. During the term of this agreement you agree to use your best efforts and all your facilities in actively promoting the sale of our products.

#3. You agree not to advertise or sell our products in any way that violates the spirit or letter of the local A. B. C. Board laws.

#4. You agree to maintain the suggested consumer prices of Milton S. Kronheim & Son, Inc., as given the 12th day of January, subject to change at all times with due notice.

#5. You will at all times carry floor stocks in reasonable amount of the brands of Milton S. Kronheim & Son, Inc., enumerated in the lists submitted to you.

#6. This agreement shall be subject to cancellation by us without notice if your bills are not paid when due and shall be automatically terminated in the event of your bankruptcy, insolvency, receivership or liquidation.

#7. It is further agreed that we shall cooperate with you in every way, with every facility of our organization, in the interest of the public, the liquor industry, and you.

MILTON S. KRONHEIM & SON, INC.

Accepted by: _____

Proprietor or manager.

Accompanying this letter, there was submitted in certificate form a Sub-Franchise Agreement, as follows:

An Agreement by which
MILTON S. KRONHEIM & SON, INC.
awards Sub-Franchise to

for Better Cooperation between Wholesaler and Retailer
in the Maintenance of
FAIR PRICES AND FAIR TRADE PRACTICES
in the District of Columbia
for the Benefit and Protection of the Public
and to Maintain the
High Standards of the Wine and Spirits Industry

MILTON S. KRONHEIM (Sgd.)
(MILTON S. KRONHEIM & SON, INC.)

(Proprietor or Licensee.)

Findings

30 F. T. C.

Approximately 400 retail dealers signed this contract. If a retail dealer refused to sign the said contract or said franchise agreement and contract, he would not be supplied with alcoholic beverages. As an instance of the effect of retailers refusing to sign the franchise agreement, Kronheim's letter of January 25, 1938, to Luther A. Butler, liquor dealer, 1829 Columbia Road, NW., Washington, D. C., is an example. In this letter Kronheim states as follows:

I am very sorry that you have not signed our dealer franchise agreement.

We have always enjoyed doing business with you. You have been one of our valued accounts and it has been for just such accounts as yours our "dealer franchise" was originated. Three hundred eighty-two of the four hundred package stores have signed this agreement. Three hundred eighty-two licensed dealers can't be wrong. Our plan has been received by them with a great deal of enthusiasm. Other plans and other ideas have failed, and this might be the one effective idea to bring order to a disorganized business.

We hope you will give it a little further thought and get on our bandwagon. We need your support and we are most anxious for your business.

I assure you that it is not our purpose to be arbitrary in this matter—but we simply are trying to promote an idea that will insure legitimate profits for you and the rest of our customers.

Respectfully,

MILTON S. KRONHEIM & SON, INC.

(sgd.) BERNARD COHEN.

Bernard Cohen.

Butler refused to sign the contract and thereafter could secure no merchandise from Kronheim or others. As a result of which, Butler secured from the Alcoholic Beverage Control Board of the District of Columbia permits to purchase his requirements from without the District. He attempted to secure same from Pierce & Hebnér, of Baltimore, Md. The franchise agreements between the wholesalers and retailers and their respective Association's activities were in some manner brought to the attention of the Baltimore wholesaler who had contacted Kronheim and other wholesale dealers of the District of Columbia, following which, Pierce & Hebnér refused to ship the merchandise for which said Pierce & Hebnér had accepted Butler's check for \$548.15. Their refusal was brought to the notice of Butler by their letter of March 28, 1938, as follows:

PIERCE AND HEBNÉR

Incorporated

WINES AND LIQUORS

LaFayette Avenue at Mt. Royal

BALTIMORE, MD.

MAR. 28, 1938.

BUTLER'S BEER & LIQUOR STORE

1829 Columbia Rd., Washington, D. C.

GENTLEMEN: It is with great regret that I am returning to you the enclosed check and District of Columbia permits #8928 and #8930.

We certainly hope you appreciate the situation, as we would like to take care of this business for you. However, the various developments in the past few days would make it extremely embarrassing if this business were handled as outlined in your letter.

Without going further into the matter the writer is quite sure you will understand the factors which have governed this decision.

With kindest regards, we are,

Sincerely,

(Sgd.) GEO. HEBNER, Jr.

GH GW

ENCL.

PAR. 17. Two days after the issuance of the contracts, circulars and franchise agreements by respondent Milton S. Kronheim & Son, Inc., the Globe Distributing Co., Inc., issued identical circulars, agreements, and franchises, which were signed by approximately the same number of retailers as had signed the Kronheim agreements.

PAR. 18. In addition to the above, and during the time which these latter activities were taking place, and following meetings by committees of both Associations and members thereof, the members of the Wholesale Association, at a meeting in the office of Milford Schwartz, on or about January 8, 1938, each deposited a check for \$1,000.00, the money to be held by Mr. Schwartz for the purpose of binding each member to adhere to their agreement and understanding that if a wholesale dealer-member of the Wholesale Association sold knowingly to price-cutting retailers his \$1,000.00, or a portion thereof, was subject to forfeiture.

PAR. 19. As a further means of forcing adherence to the agreements and understandings between the retailers and the wholesalers and their Associations, the Burns Detective Agency was employed by the Retail Association and Manuel J. Davis, to spy upon certain dealers for the purpose of ascertaining whether wholesalers were shipping to cut-price retail dealers or those alleged to have been cutting prices, in quantities above that which had been agreed upon by the two associations and members thereof, and at prices other than agreed-upon prices. When Davis was called upon for a copy of the agreement between his Association and the Burns Detective Agency, he at first stated that he had no agreement, and later admitted that there were some memoranda, but that he or his Association never retained any such matter in the files. This was after denial by Davis that the said spying by the Detective Agency was for the purpose of checking on price cutters. The evidence, however, discloses the purpose of this spying, as is shown by Commission's Exhibit 41-A, a copy of the work journal of the Burns Detective Agency concerning this employment

deal, dated December 22, 1937, upon which the following statement is found:

Client desires us to check the liquor deliveries to four retail stores for three days. This check is to cover ten hours time a day and client desires the number of cases, brands, and identity of the house or firm making the delivery.

PAR. 20. Beginning on or about December 24, 1937, the respondent wholesale dealers, pursuant to their agreements and understandings with the retail dealers and Retail Association and Wholesale Association, adopted a price and discount schedule aimed and intended to further prevent any price cutting. This agreement provided for the allowance of 1 percent discount on the purchase of one case of advertised standard brand whiskeys, 2 percent on three-case purchases, and 3 percent on five-case purchases. The limit to be sold the retail dealer was five cases. These discounts replaced discounts ranging from 2 percent to 15 percent theretofore allowed on purchases.

PAR. 21. At all times, the wholesale dealers furnished to the retail dealers certain price lists covering spirits, wines, and liquors, disclosing the per case price, and the wholesalers suggested resale price per bottle, the latter being the price at which the retailer, under the contracts, agreements and understandings entered into by them and their Association with the wholesalers and the Wholesale Association, was to resell to consumers.

PAR. 22. The Retail Association and the Wholesale Association, through their attorneys Manuel J. Davis and Milford Schwartz, had many meetings and conferences with the counsel for the Distilled Spirits Institute—an organization composed of all of the distillers in the United States—for the purpose of securing aid in the joint endeavor of their Associations and members to fix standard, minimum resale prices for alcoholic beverages in the District of Columbia.

PAR. 23. In the course and conduct of their respective businesses, respondent wholesale dealers, but for the matters and things herein set out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships and corporations also engaged in the sale and distribution in commerce of alcoholic beverages to retail dealers in the District of Columbia.

In the course and conduct of their respective businesses, the members of the respondent Retail Association, but for the matters and things herein set out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships and corporations engaged in the sale and distribution in commerce of alcoholic beverages to the consumers thereof in said District.

PAR. 24. The capacity and tendency and effect of said agreements, combinations, conspiracies and undertakings, and the acts and practices performed thereunder by the said respondents, as herein set forth, have been, and now are:

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

(b) To prejudice and injure the public producers of alcoholic beverages, retail dealers, distributors, wholesalers, and others who do not conform to, or cooperate in, the program of respondents.

CONCLUSION

The aforesaid acts and practices of respondents herein, under the conditions and circumstances set forth in the foregoing findings of facts are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce in violation of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, briefs filed herein and oral arguments by Floyd O. Collins and DeWitt T. Puckett counsel for the Commission, and by Milton W. King, counsel for the respondents Manuel J. Davis, and D. C. Exclusive Retail Liquor Dealers Association. Norman J. Morrison, counsel for the respondent International Distributing Corporation, John R. Fitzpatrick, counsel for the respondent Washington Wholesale Liquor Corporation, F. Joseph Donohue, counsel for respondent Milton S. Kronheim & Son, Inc., William E. Furey, counsel for respondent Marvin & Snead Sales Corporation, Milford Schwartz, counsel for respondent Wholesale Liquor Dealers of Washington, Henry M. Seigal, counsel for respondents Philip Hurwitz and Leon Samet, individually and as copartners trading under the name and style Roma Wine and Liquor Co., Hyman M. Goldstein, counsel for respondent Globe Distributing Co., Inc., and

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

It is ordered, That the respondent wholesalers, Milton S. Kronheim & Son, Inc., a corporation, its officers, representatives, agents, and employees, Marvin & Snead Sales Corporation, a corporation, its officers, representatives, agents, and employees, International Distributing Corporation, a corporation, its officers, representatives, agents and employees, Globe Distributing Company, Inc., a corporation, its officers, representatives, agents and employees, Philip Hurwitz and Leon Samet, individually, and as partners trading under the name and style Roma Wine & Liquor Co., their representatives, agents, and employees, Washington Wholesale Liquor Corporation, a corporation, its officers, representatives, agents, and employees, and the respondent Wholesale Liquor Dealers of Washington, an unincorporated association of wholesale liquor dealers, its members, officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale and offering for sale of whiskies, wines, and other alcoholic beverages in the District of Columbia, and in connection with the shipment of whiskies, wines and other alcoholic beverages into the District of Columbia for resale therein, do forthwith cease and desist from:

1. Entering into or enforcing the provisions of any contract, agreement or understanding, verbal or written, with any retail dealer, jobber or wholesaler, distiller or other distributor of alcoholic beverages, the purpose or effect of which is to maintain a specified standard or uniform minimum resale price discount or "mark-up" at which whiskies, wines or other alcoholic beverages are to be sold by such retail dealers, jobbers, wholesalers or distributors.

2. Enforcing or attempting to enforce the maintenance of standard or uniform minimum resale prices, discounts or "mark-ups" by any of the following methods or means:

- (a) Collectively refusing to sell or threatening to refuse to sell whiskies, wines or other alcoholic beverages to price cutting retail dealers.

- (b) Reinstating as their customers price cutting retail dealers, whom they have therefore refused to sell, upon an agreement or understanding with such retail dealers that such suggested minimum resale prices, discounts or "mark-ups" will thereafter be maintained.

- (c) Circulating and threatening to circulate among retail dealers, wholesalers and other distributors of whiskies, wines and alcoholic beverages reports or lists of those retail dealers who have cut prices on said products and reports of wholesalers who have given dis-

452

Order

counts greater than those agreed upon and reports of those wholesalers who have continued to sell alcoholic beverages to retail dealers who have cut prices on said products to a price below the minimum resale price so fixed.

(d) Combining and agreeing directly or indirectly with distillers, retail dealers or with the D. C. Exclusive Retail Liquor Dealers Association to do or cause to be done any of the foregoing acts or things.

(e) Securing and endeavoring to secure through contracts, agreements or understandings the active support and cooperation of respondent wholesalers or other wholesale liquor dealers or distillers or of respondent D. C. Exclusive Retail Liquor Dealers Association or retail dealer members of said respondent Association or of respondent Manuel J. Davis, or of other retail dealers in the District of Columbia individually or collectively in carrying out the minimum resale price policy aforesaid.

It is further ordered, That the respondents D. C. Exclusive Retail Liquor Dealers Association, a corporation, its members, officers, agents, servants, or employees, and Manuel J. Davis, individually and as secretary of said D. C. Exclusive Retail Liquor Dealers Association, in connection with the sale and offering for sale of whiskies, wines and other alcoholic beverages in the District of Columbia and in connection with the shipment of whiskies, wines and other alcoholic beverages into the District of Columbia for resale therein do forthwith cease and desist from:

1. Entering into or enforcing the provisions of any contract, understanding or agreement, either verbal or written, with any retail dealer, jobber, distiller, wholesaler, or other distributor of alcoholic beverages in the District of Columbia, the purpose and effect of which is to maintain a specified standard or uniform minimum resale price, discount or "mark-up" at which said alcoholic beverages are to be re-sold by such retail dealers, jobbers, wholesalers or other distributors.

2. Enforcing or attempting to enforce the maintenance of standard or uniform minimum resale prices, discounts or "mark-ups" by any of the following methods or means:

- (a) Boycotting or threatening to boycott any wholesaler, distiller, jobber, retail dealer or other distributor of alcoholic beverages for selling such merchandise to retail dealers known to engage in price cutting activities.

- (b) Notifying or threatening to notify the wholesalers in the District of Columbia, including respondent wholesalers, not to sup-

Order

30 F. T. C.

ply any price cutting retail dealers under threatened penalties of forfeiture and boycott.

(c) Notifying or threatening to notify distillers of any wholesaler not conforming to the aforesaid price maintenance policy.

It is further ordered, That the said respondent, within 60 days from and after the date of service upon them of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
AFFILIATED PRODUCTS, INC.

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

Docket 3734. Complaint, Mar. 9, 1939—Decision, Feb. 14, 1940

Where corporation engaged as business successor in selling and distributing under various names, including names "Edna Wallace Hopper's Special Restorative Cream" and "Edna Wallace Hopper's White Youth Pack (Clay)," cosmetics to customers in other States, in active and substantial competition with others engaged in sale and distribution of cosmetics in such commerce and including many who do not misrepresent the character or effectiveness of their said products; in (1) advertisements which it disseminated through newspapers and periodicals of general circulation in and through the various States and through broadcasts from radio stations of extra-state audience, and which, prepared, placed and contracted for by its business predecessor and running or in press on date of its acquisition of business it continued and employed for a time, and in (2) advertisements which it thereafter disseminated through radio continuities, street and sub-way car cards and retail store window displays—

- (a) Made use of word "restorative" in designating and referring to its said Edna Wallace Hopper's Special Restorative Cream and represented, as case might be, directly or by implication that its said product was a discovery of a great French scientist or famous beauty expert which would rejuvenate the skin and restore the oils of youth and a youthful appearance to skin discolored by the natural consequences of age and would make user's face appear ten years younger than it was and keep skin young and prevent and erase wrinkles and age lines, facts being said cream was not such a discovery but was made from a formula developed by a cosmetician and graduate chemist, and would not rejuvenate skin or accomplish other results claimed therefor as above set forth; and
- (b) Represented and implied that its said Edna Wallace Hopper's White Youth Pack (Clay) was of French origin and a preparation which would cause the blood to nourish and revive the skin, and would remove blackheads and eliminate enlarged pores, facts being said White Youth Pack was not of French origin and would not cause blood to nourish and revive skin, and, while it might loosen and aid in removal of blackheads, would not itself thus remove such defects nor eliminate enlarged pores;

With effect of misleading and deceiving substantial portions of purchasing public into erroneous and mistaken belief that such false statements, representations and advertisements were true, and with result as consequence thereof that number of consuming public purchased substantial volume of its product and trade in commerce was diverted unfairly to it from those competitors who truthfully advertise their respective products and effectiveness thereof; to the injury of competition in commerce: