

Syllabus

IN THE MATTER OF
STANDARD CONTAINER MANUFACTURERS ASSOCIA-
TION, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3289. Complaint, Jan. 3, 1938—Decision, Mar. 5, 1940

Where some twenty-six concerns composed of corporations, firms, and individuals, engaged in manufacture, sale, and distribution or in sale and distribution of wooden fruit and vegetable containers used in packing fruits and vegetables for transportation from the producers thereof to ultimate consumers, with principal offices and places of business in Georgia and Florida, and who, (1) shipped their products from their respective places of business to customers in other States and in Florida, as case might be, for use by producer purchasers in trade areas in question, in which were grown substantial percentage of fruits and vegetables produced in the United States, in preparing their products for transportation to markets in various States where products in question, thus containered, were distributed to wholesalers and retailers and others for ultimate distribution to the consuming public, and who, (2) with one exception, were or had been members of Association created by members for the promotion and protection of their interests, and who, (3) long prior to and but for acts and practices below set forth, were in active and substantial competition with each other in sale and distribution of products in aforesaid trade area consisting of southeastern portion of the United States and more particularly of Georgia and Florida, and with manufacturers of like products located in various other States, and (4) in case of Florida members sold greater portion of such products sold in said States and controlled and dominated wooden container industry therein and also practice of industry as a whole in such State—

- (a) Entered into and carried out understandings, agreements, combinations, and conspiracies, intent and effect of which were to restrict, restrain and monopolize and suppress and eliminate competition in the sale of unpatented wooden fruit and vegetable containers in trade and commerce among the several States and to which the said Association and three individuals, who were general officers thereof, and, with others, served as board of directors thereof, became parties, and in the carrying out of which they participated; and, in furtherance of such combinations and conspiracies
- (1) Entered into understandings and agreements to fix and maintain uniform and minimum prices, including uniform maximum discounts, brokerage fees, freight allowances and time limitation of contracts, and through medium of their said Association and two of said individuals, i. e., the president and secretary and directors thereof, and, acting in conformity with said understandings and agreements, did thus fix uniform and minimum prices, including maximum discounts, brokerage fees, and time limitations of contracts in sale of wooden fruit and vegetable containers and parts thereof;
- (2) Entered into understandings and agreements to curtail and did curtail production and sale of certain wooden fruit and vegetable containers and parts thereof; and

Syllabus

30 F. T. C.

- (3) Entered into understandings and agreements to secure enforcement through meeting of their said Association and said individuals, of such understandings and agreements to curtail production and sale of such products and whereby designated member and their said president would and did ascertain production figures of some other designated member and file reports as to such member's compliance with understandings and agreements to curtail production and sale during period involved; and

Where said Association by means of understandings and agreements entered into by and between its members—

- (b) Caused its Secretary from time to time to issue and distribute among members of the Association and manufacturers and distributors price list designated "Fair Market Value" and setting forth in detail terms and conditions of sale of various types of wooden fruit and vegetable containers as agreed upon by members; and which lists, changed from time to time in accordance with instructions secured from the Association President and other representatives, were issued and distributed to show changes aforesaid by said Association Secretary; and
- (c) Caused through understandings and agreements of members production to be curtailed in manufacture of products in question and parts thereof and directed that no citrus fruit crates during period involved were to be fabricated, sold or shipped for use in Florida except for current use, and that none were to be sold or offered for sale at less than the present prevailing prices; and
- (d) Provided means whereby compliance with understandings to fix prices and curtail production by members could be investigated and effective corrective methods administered in enforcing adherence to understandings and agreements; and

Where said members and said individual Association president, in cases when there were violations or alleged violations of provisions of understandings and agreements entered into by and between such members;

- (e) Caused to be investigated such alleged violations and threatened, intimidated and coerced violator, and thereby induced such violator to cancel orders and conform to such understandings and agreements with which, but for such threats, intimidations and coercion, he would not have complied; and

Where said individual, Association president, designated and appointed and duly authorized as their representative by said Association and said members to determine, after consultation of members and others, prices at which said wooden fruit and vegetable containers, and parts thereof, were to be sold, acting as such duly authorized agent—

- (f) Met from time to time with other duly authorized representatives of said members and determined current prices at which products in question were to be sold, and caused to be transmitted by telegram, mail and other means, to all members and to others in industry who were not members, fixed and established current prices, terms, and conditions at which were to be sold said wooden fruit and vegetable containers, and parts thereof; and

Where said individual, further authorized and delegated as their agent to investigate activities of members regarding compliance with understandings, agreements, and question and to enforce and secure same—

- (g) Did investigate, enforce and secure adherence of members and non-members to prices, terms, and conditions of sale fixed and established by said members Association and individuals aforesaid; and

Where said Association and members or former members, as case might be,

- (h) Voted said individual substantial compensation as compensation for performing duties above set forth and additional sum to cover portion of expense account during period involved and made regular contribution to assist in defraying expenses in connection with his said work; and

Where said Association, acting through its said Secretary and its said president, as officers and agents thereof, and in accordance with understanding and agreements entered into by and between the members and with intent of carrying out such understandings and agreements—

- (i) Collected from and disseminated among members statistical information used and useful in enforcing compliance with said understandings and agreements made and entered into at such meetings held from time to time of members generally or various members interested in particular container or type of container, and at which prices and terms and conditions of sale were discussed and agreed upon, and transmitted to said secretary either directly or through said president for dissemination among members generally;

With the result that such understandings, agreements, combinations and conspiracies and things done thereunder and pursuant thereto and in furtherance thereof, and in which said various members, association and individuals acted in concert and in cooperation with one or more of the others, had the effect of unduly and unlawfully restricting and restraining sale of said wooden fruit and vegetable containers, and parts thereof, in trade in commerce in the several States, and of unduly and unlawfully restricting and restraining such trade in commerce in said products and of substantially enhancing prices to consuming public and maintaining same at artificial levels and otherwise depriving public of benefits that would flow from normal competition among and between such members and of eliminating competition, with tendency and capacity of creating monopoly in sale of said products in commerce as aforesaid:

Held, That such understandings, agreements, combinations and conspiracies and things done thereunder and pursuant thereto and in furtherance thereof, as above set forth, constituted unfair methods of competition.

Before *Mr. E. J. Hornibrook* and *Mr. John L. Hornor*, trial examiners.

Mr. Edw. W. Thomerson and *Mr. Richard P. Whiteley* for the Commission.

Treadwell & Treadwell, of Arcadia, Fla., *Mr. F. C. Hillyer*, of Jacksonville, Fla. and *Mr. R. Granville Curry*, of Washington, D. C., for respondents in general, excepting *Keysville Lumber Co.* and *Roux Crate and Box Co.*, who were represented by *Raney & Raney*, of Tampa, Fla.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the associa-

Complaint

30 F. T. C.

tion, the individuals, and the corporations, hereinafter described and named as respondents, have been, and are now, using unfair methods of competition in commerce, as "commerce" is defined in said act; and it appearing to the said 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. Standard Container Manufacturers' Association, Inc., hereinafter referred to as respondent association, is a nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Florida. Its offices and place of business are at 301 Hildebrant Building, Jacksonville, Fla.

Respondent association was organized, and for the past several years has acted, as a trade association for the promotion and protection of the interests of the respondents hereinafter described as being members of said respondent association. Said members are engaged in the manufacture and sale of one or more of the various types of wooden containers used in packaging fruits and vegetables for transportation from the producers of said fruits and vegetables to ultimate consumers. These containers are described and designated as crates, baskets, boxes, hampers, lugs, cups, trays, cartons, and by various and sundry other names commonly used in the industry in referring to wooden containers, and the parts thereof, for the packaging of fruits and vegetables.

PAR. 2. Respondent, Adkins Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Gainesville, Fla.

Respondent, Consumers Lumber & Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Apopka, Fla.

Respondent, Elberta Crate & Box Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Bainbridge, Ga. This respondent operates two manufacturing plants, one at Bainbridge, Ga., and the other at Tallahassee, Fla. It also owns and controls the respondent Southern Crate & Veneer Co., whose principal office and place of business is at Macon, Ga. Respondent, Hector Supply Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 235 South Miami Avenue, Miami, Fla., and is, and acts as, a sales agent for respondent Elberta

Crate & Box Co., and it cooperated with the other respondents named in this paragraph in doing the acts and things hereinafter alleged.

Respondent, Georgia Veneer & Package Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Brunswick, Ga.

Respondent, Georgia Crate & Basket Co.,¹ is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Thomasville, Ga.

Respondent, The Greenville Veneer & Crate Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Greenville, Fla.

Respondent, Keysville Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Keysville, Fla.

Respondents, Walton E. Nants and R. A. Nants, are individuals, trading and doing business under the firm name Nants Manufacturing Co., with their principal office and place of business at Live Oak, Fla.

Respondent, Nocatee-Manatee Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Nocatee, Fla. It also owns and operates a mill at Manatee, Fla.

¹ R. C. Balfour, Jr., and J. V. Hawthorne, partners doing business under the name Georgia Crate & Basket Co., were substituted as parties respondent for said corporation by order amending complaint and substituting parties, dated June 25, 1938, as follows:

This matter coming on to be heard by the Commission upon the request of R. C. Balfour, Jr., and J. V. Hawthorne, individuals, doing business as a copartnership under the name Georgia Crate & Basket Co., that the complaint herein be amended and that they be substituted as parties respondent in lieu and in stead of the Georgia Crate & Basket Co., a corporation, named in said complaint as one of the parties respondent herein; and it appearing to the Commission that the Georgia Crate & Basket Co., a corporation, named in said complaint as a party respondent has been dissolved; that a copy of said complaint has been served on said copartnership composed of R. C. Balfour, Jr., and J. V. Hawthorne, trading as Georgia Crate & Basket Co.; that said copartnership has continued the business formerly conducted by the Georgia Crate & Basket Co., a corporation, under the name of Georgia Crate & Basket Co.; that said copartnership accepted service of the copy of the complaint herein directed to said corporation and have filed their answers to said complaint; and that the other parties respondent herein have waived the service of notice of amendment of said complaint and the substitution of parties; and the Commission having duly considered said request and being now fully advised in the premises.

It is ordered, That the complaint herein be, and the same hereby is amended so as to name the said R. C. Balfour, Jr., and J. V. Hawthorne, copartners, doing business under the name Georgia Crate & Basket Co., as parties respondent herein in lieu and in stead of the Georgia Crate & Basket Co., a corporation; and

It is further ordered, That R. C. Balfour, Jr., and J. V. Hawthorne be, and they hereby are, substituted as parties respondent in lieu and in stead of the Georgia Crate & Basket Co., a corporation.

Complaint

30 F. T. C.

Respondent, Ocala Manufacturing, Ice & Packing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Ocala, Fla.

Respondent, The Pierpont Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Savannah, Ga.

Respondent, Roux Crate & Lumber Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Bartow, Fla.

Respondent, Shollar Crate & Box Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Shamrock, Fla.

Respondent, Southern Crate & Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Macon, Ga.

Respondent, Southern Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Palatka, Fla.

Respondent, Walling Crate Company,² is a corporation organized, existing, and doing business under and by virtue of the laws of the

² L. B. Walling, Hugh Walling, and Frieda Walling, partners doing business under the name Walling Crate Co., were substituted as parties respondent for said corporation by order amending complaint and substituting parties, dated June 24, 1938, as follows:

This matter coming on to be heard by the Commission upon the request of L. B. Walling, Hugh Walling, and Frieda Walling, individuals, doing business as a copartnership under the name Walling Crate Co., that the complaint herein be amended and that they be substituted as parties respondent in lieu and in stead of Walling Crate Co., a corporation, named in said complaint as one of the parties respondent herein; and it appearing to the Commission that Walling Crate Co., a corporation, named in said complaint as a party respondent, has been dissolved; that a copy of said complaint has been served on said copartnership composed of L. B. Walling, Hugh Walling, and Frieda Walling, trading as Walling Crate Co.; and that said copartnership has continued the business formerly conducted by Walling Crate Co., a corporation, under the name of Walling Crate Co.; that said copartnership accepted service of the copy of the complaint herein directed to said corporation and have filed their answers to said complaint; and that the other parties respondent herein have waived the service of notice of amendment of said complaint and the substitution of parties, and the Commission having duly considered said request and being now fully advised in the premises.

It is ordered, That the complaint herein be, and the same hereby is, amended so as to name the said L. B. Walling, Hugh Walling, and Frieda Walling, a copartnership doing business under the name Walling Crate Co., as parties respondent herein in lieu and in stead of Walling Crate Co., a corporation; and

It is further ordered, That L. B. Walling, Hugh Walling, and Frieda Walling be, and they hereby are, substituted as parties respondent in lieu and in stead of Walling Crate Co., a corporation.

State of Florida, with its principal office and place of business at Leesburg, Fla.

Respondent, Frank R. Pounds Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 314 North Garland Street, Orlando, Fla.

Respondent, Lake Crate & Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Mount Dora, Fla.

Respondent, Osceola Crate Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Kissimmee, Fla.

Respondent, Zachary Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Sanford, Fla. It also owns and operates a mill at Palatka, Fla.

Respondent, Montbrook Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Baldwin, Fla.

Respondent, Southern Container Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Commodore's Point, Jacksonville, Fla.

Respondent, Cummer Sons Cypress Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 1616 Barnett National Bank Building, Jacksonville, Fla. It also owns and operates manufacturing plants at Lacoochee and Otter Creek, Fla.

Respondent, Zack Russ, is an individual, trading and doing business under the firm name Russ Crate Co., with his principal office and place of business at Coleman, Fla.

Respondent, Stephen O. Shinholzer, is an individual, with his principal office and place of business at Sanford, Fla.

All of the respondents named in this paragraph, except respondent, Hector Supply Co., are now, or have been during the time mentioned herein, members of the respondent association. These respondents will hereinafter on occasion be referred to as member respondents. These member respondents are engaged in the manufacture, sale, and distribution, or in the sale and distribution, of some one or more of the wooden fruit and vegetable containers described in paragraph 1 hereof, and

Complaint

30 F. T. C.

said member respondents cause such containers, when sold, to be transported from their respective places of business, as aforesaid, in the States of Georgia and Florida, as the case may be, to the purchasers of said containers at their respective locations in the various States of the United States. Many purchasers of said containers are located in States other than the State of the origin of the shipment of said containers by said member respondents.

Before the adoption of the practices hereinafter alleged, these member respondents were in active and substantial competition with each other, and with other members of the industry, some of whom have been members of the respondent association and others of whom have not been members of the respondent association, in making and seeking to make sales of their said products in commerce between and among the several States of the United States, and, but for the facts hereinafter alleged such active and substantial competition would have continued to the present time and the said member respondents would now be in active and substantial competition with each other and with members of the industry not presently members of the respondent association in such commerce.

The trade area in which the member respondents sell and distribute their said products covers the southeastern portion of the United States, including the States of Florida, Georgia, South Carolina, North Carolina, Virginia, and New Jersey. Within the trade area of said member respondents there is produced a substantial percentage of the fruits and vegetables produced in the United States. The wooden containers sold and distributed by the member respondents are used by the producers of fruits and vegetables in this area in preparing said products for transportation to markets located in various States of the United States, where said fruits and vegetables in said containers are distributed to wholesalers, retailers, and others for ultimate distribution to the consuming public.

The wooden containers sold by the member respondents in the trade area hereinabove described, constitute substantially all of said products sold in said trade area, and especially so in the States of Georgia and Florida. Said member respondents control and dominate the wooden container industry in the trade area above described, and especially so in the States of Georgia and Florida, and they control the practices of the industry as a whole in said trade area.

PAR. 3. Respondent James B. Adkins is president of the member respondent Adkins Manufacturing Company, and is president and chief executive officer of the respondent association. He is located in Gainesville, Fla.

Respondent Charles P. Chazal is an employee of the member respondent Ocala Manufacturing, Ice & Packing Co., Inc., and is the vice-president of the respondent association. He is located in Ocala, Fla.

Respondent Russell W. Bennett is secretary, treasurer, and general manager of the respondent association, and is the individual through whom the information hereinafter mentioned is gathered and disseminated. He is located at 301 Hilderbrant Building, Jacksonville, Fla.

These three respondents, and other individuals not named herein as respondents, serve as a board of directors for the respondent association and in that capacity, and in the respective capacities hereinabove named, they control and direct the policies and practices of said respondent association.

PAR. 4. Prior to July 15, 1935, the member respondents caused the organization of the respondent association for the promotion and protection of the interests of said member respondents. On or about July 15, 1935, and on divers days and dates thereafter, said member respondents entered into and thereafter carried out understandings, agreements, combinations and conspiracies, hereinafter, at times, referred to as an undertaking, for the purpose and with the effect of restricting, restraining, and monopolizing, and suppressing and eliminating competition in, the sale of wooden fruit and vegetable containers in trade and commerce between, among, in and with the several States of the United States.

PAR. 5. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said member respondents have done and performed, and still do and perform, the following acts and things:

1. Said member respondents agreed to fix and maintain, and have fixed and maintained, uniform prices in the sale of said wooden fruit and vegetable containers, and the parts thereof.

2. Said member respondents agreed to fix and maintain, and have fixed and maintained, minimum prices in the sale of said wooden fruit and vegetable containers, and the parts thereof.

3. Said member respondents agreed to fix and maintain, and have fixed and maintained, uniform terms and conditions, including, but without limitation, maximum discounts, brokerage fees, freight and other allowances, and time limitations of contracts, in the sale of said wooden fruit and vegetable containers, and the parts thereof.

4. Said member respondents agreed to curtail, and have curtailed, the production of said wooden fruit and vegetable containers, and the parts thereof, and for the purpose of securing the enforcement

Complaint

30 F. T. C.

of the agreement to curtail production, each member respondent checks upon the production of some other designated member and files reports as to the compliance of such designated member with the agreement to curtail production during the period when such curtailment is in effect.

5. Said member respondents have threatened, coerced, and intimidated members and nonmembers of the respondent association and induced such members and nonmembers to become parties to and thereafter carry out said undertaking, when, but for the threats, coercion, and intimidation, such members and nonmembers would not have become parties to and carried out said undertaking.

6. Said respondent James B. Adkins from time to time meets with duly authorized representatives of said member respondents and determines the prices at which said wooden fruit and vegetable containers, and the parts thereof, are to be sold, and from time to time, by telegraphic messages and other means of communication, transmits to all of the member respondents, and to others in the industry who are not members of the respondent association, the current prices and terms and conditions at which said wooden fruit and vegetable containers, and the parts thereof, are to be sold.

7. Said member respondents have designated and appointed said respondent James B. Adkins, and he has so acted, as the person to whom is delegated the duty of determining, after consultation with member respondents and others, the prices to be charged for the products of the industry, and as the person to secure the adherence of the member respondents and nonmembers to the prices, terms and conditions of sales, etc., so fixed and established.

8. Said respondent association, through the respondents Russell W. Bennett and James B. Adkins, collects from, and disseminates among, member respondents and other participants in said undertaking, statistical information used and useful in carrying out said undertaking, and it distributes from time to time among said member respondents and nonmembers participating in said undertaking, detailed lists showing the current prices, terms and conditions of sale, and other information used and useful in carrying out said undertaking.

9. Said member respondents have used, and are now using, other methods and means designed to suppress and prevent competition and restrict and restrain the sale of said wooden fruit and vegetable containers, and the parts thereof, in said commerce.

PAR. 6. Each of said respondents acted in concert and in cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 7. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining the sale of said wooden fruit and vegetable containers, and the parts thereof, in trade and commerce between, among, in and with the several States of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said wooden fruit and vegetable containers, and the parts thereof, in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said wooden fruit and vegetable containers, and the parts thereof, in said commerce. Said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and are to the prejudice of the public.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 3, 1938, issued and served its complaint in this proceeding upon the respondents Standard Container Manufacturers' Association, Inc., a corporation, and its members; James B. Adkins, Charles P. Chazal, Russell W. Bennett, individually and as president, vice-president, and secretary, treasurer, and manager, respectively, and as members of the board of directors of Standard Container Manufacturers' Association, Inc.; Adkins Manufacturing Co., a corporation; Consumers Lumber & Veneer Co., a corporation; Elberta Crate & Box Co., a corporation; Georgia Veneer & Package Co., a corporation; Georgia Crate & Basket Co., a corporation; The Greenville Veneer & Crate Co., a corporation; Keyville Lumber Co., a corporation; Walton E. Nants and R. A. Nants, trading as Nants Manufacturing Co.; Nocatee-Manatee Crate Co., a corporation; Ocala Manufacturing, Ice & Packing Co., Inc., a corporation; The Pierpont Manufacturing Co., a corporation; Roux Crate & Lumber Co., Inc., a corporation; Shollar Crate & Box Co.,

Findings

30 F. T. C.

Inc., a corporation; Southern Crate & Veneer Co., a corporation; Southern Veneer Co., a corporation; Walling Crate Co., a corporation; Frank R. Pounds Crate Co., a corporation; Lake Crate & Lumber Co., a corporation; Osceola Crate Mills, Inc., a corporation; Zachary Veneer Co., a corporation; Montbrook Crate Co., a corporation; Southern Container Co., a corporation; Cummer Sons Cypress Co., a corporation; Hector Supply Co., a corporation; Zack Russ, an individual, trading as Russ Crate Co.; Stephen O. Shinholzer, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On June 24, 1938, it issued its order amending complaint and substituting parties, serving its amended complaint on a copartnership, composed of L. B. Walling, Hugh Walling, and Frieda Walling, trading as Walling Crate Co., in the place and stead of Walling Crate Co., a corporation, which had been dissolved. On June 25, 1938, it issued its order amending complaint and substituting the parties R. C. Balfour, Jr., and J. V. Hawthorne, copartners, trading as Georgia Crate & Basket Co., in the place and stead of respondent Georgia Crate & Basket Co., a corporation, which had been dissolved. After the issuance of said complaint and said amended complaints and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edw. W. Thomerson and Richard P. Whiteley, attorneys for the Commission, and in opposition to the allegations of the complaint by F. C. Hillyer and J. H. Treadwell, attorneys for all respondents except Keysville Lumber Co., a corporation, and Roux Crate & Lumber Co., Inc., a corporation, and George P. Raney, attorney for respondent Keysville Lumber Co., a corporation, and Roux Crate & Lumber Co., Inc., a corporation, before E. J. Hornibrook and John L. Hornor, examiners of the Commission theretofore duly designated by it, 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 on said complaint and said amended complaints, the answers thereto, testimony and other evidence, brief in support of the complaint and in opposition thereto, and the oral argument of counsel Edw. W. Thomerson for the Commission and F. C. Hillyer for respondents, 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. Standard Container Manufacturers' Association, Inc., is a nonprofit corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business at 301 Hildebrant Building, Jacksonville, Fla., and since prior to July 15, 1935, has acted as a trade association for the promotion and protection of the interests of the respondents hereinafter described as members of said respondent association, which said members are engaged in the manufacture and sale of one or more of the various types of wooden containers used in packaging fruits and vegetables for transportation from the producers of said fruits and vegetables to ultimate consumers. These containers are described and designated as crates, baskets, boxes, hampers, lugs, cups, trays, and by various and sundry other names commonly used in the industry in referring to wooden containers, and the parts thereof for packaging of fruits and vegetables in preparing such products for transportation to markets in various States. Some of the member respondents hereinafter described manufacture patented wooden containers which are not involved in this proceeding.

PAR. 2. Respondent, James B. Adkins, is president of the member respondent, Adkins Manufacturing Co., and was president and chief executive officer of the Standard Container Manufacturers' Association, Inc., from December 18, 1935, to January 1939, being succeeded by C. P. Chazal as president thereof. He is located in Gainesville, Fla.

Respondent, Charles P. Chazal, an employee of the member respondent Ocala Manufacturing, Ice & Packing Co., Inc., was the vice-president of the respondent Standard Container Manufacturers' Association, Inc., until January 1939. At that time he was elected president of said Association, succeeding J. B. Adkins in that office. He is located in Ocala, Fla.

Respondent, Russell W. Bennett, is secretary, treasurer, and general manager of the respondent Standard Container Manufacturers' Association, Inc., and is the individual through whom the information relating to the activities of the respondent Standard Container Manufacturers' Association, Inc., was gathered and disseminated. He is located at 301 Hildebrant Building, Jacksonville, Fla.

The three above-named respondents will hereinafter be referred to on occasion as the individual respondents.

PAR. 3. Respondent, Adkins Manufacturing Co., is a corporation organized and existing and doing business under and by virtue of

Findings

30 F. T. C.

the laws of the State of Florida, with its principal office and place of business at Gainesville, Fla.

Respondent, Consumers Lumber & Veneer Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Apopka, Fla.

Respondent, Elberta Crate & Box Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Bainbridge, Ga. This respondent operates two manufacturing plants, one at Bainbridge, Ga., and the other at Tallahassee, Fla. It also owns and controls the respondent Southern Crate & Veneer Co., whose principal office and place of business is at Macon, Ga.

Respondent, Hector Supply Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Florida, with its office and place of business at 235 South Miami Avenue, Miami, Fla., and is, and acts as, a sales agent for respondent, Elberta Crate & Box Co., and owns and controls a substantial amount of stock in said Elberta Crate & Box Co. and had a representative present at meetings with the individual respondent Adkins when current prices as to wooden containers were agreed upon.

Respondent, Georgia Veneer & Package Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Brunswick, Ga.

Respondents, R. C. Balfour, Jr. and J. V. Hawthorne, are copartners doing business as the Georgia Crate & Basket Co., with their principal office and place of business at Thomasville, Ga.

Respondent, The Greenville Veneer & Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Greenville, Fla.

Respondent, Keysville Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Keysville, Fla.

Respondents, Walton E. Nants and R. A. Nants, are individuals, trading and doing business under the firm Nants Manufacturing Co., with their principal office and place of business at Live Oak, Fla.

Respondent, Nocatee-Manatee Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of Florida, with its principal office and place of business at Nocatee, Fla. It also owns and operates a mill at Manatee, Fla.

Respondent, Ocala Manufacturing, Ice & Packing Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Ocala, Fla.

Respondent, The Pierpont Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Savannah, Ga.

Respondent, Roux Crate & Lumber Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Bartow, Fla.

Respondent, Shollar Crate & Box Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Shamrock, Fla.

Respondent, Southern Crate and Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Macon, Ga.

Respondent, Southern Veneer Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Palatka, Fla.

Respondents, L. B. Walling, Hugh Walling and Frieda Walling, are copartners doing business as Walling Crate Company, with their principal office and place of business at Leesburg, Fla.

Respondent, Frank R. Pounds Crate Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 314 North Garland Street, Orlando, Fla.

Respondent, Lake Crate and Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Mount Dora, Fla.

Respondent, Zachary Veneer Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Sanford, Fla. It also owns and operates a mill at Palatka, Fla.

Respondent, Osceola Crate Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the

Findings

30 F. T. C.

State of Delaware with its principal office and place of business at Kissimmee, Fla.

Respondent, Montbrook Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Baldwin, Fla.

Respondent, Southern Container Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Commodore's Point, Jacksonville, Fla.

Respondent, Cummer Sons Cypress Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 1616 Barnett National Bank Building, Jacksonville, Fla. It also owns and operates manufacturing plants at Lacoochee and Otter Creek, Fla.

Respondent, Zack Russ, is an individual, trading and doing business under the firm name Russ Crate Company, with his principal office and place of business at Coleman, Fla.

Respondent, Stephen O. Shinholzer, is an individual with his principal office and place of business at Sanford, Fla.

The respondents named in this paragraph will hereinafter on occasion be described and referred to as member respondents. All of the member respondents named above, except respondent Hector Supply Co., are now, or have been at some time since July 15, 1935, members of the respondent Standard Container Manufacturers' Association, Inc. All of the member respondents are engaged in the manufacture, sale, and distribution, or in the sale and distribution, of some one or more of the wooden fruit and vegetable containers described above.

PAR. 4. In the regular course of business the respondents Keyville Lumber Co., Nocatee-Manatee Crate Co., Hector Supply Co., Russ Crate Co., Ocala Manufacturing, Ice & Packing Co., Inc., Consumers Lumber & Veneer Co., Elberta Crate & Box Co., The Pierpont Manufacturing Co., Sholler Crate & Box Co., Inc., Georgia Veneer & Package Co., Nants Manufacturing Co., Southern Crate & Veneer Co., Southern Container Co., Cummer Sons Cypress Co., and Adkins Manufacturing Co., upon receipt of orders, shipped their products from their respective places of business in the States in which they are located to customers located in States of the United States other than the State of origin of such shipments. Respondents, Southern Veneer Co., R. C. Balfour, Jr., and J. V. Hawthorne, copartners, doing business as Georgia Crate & Basket Co., Greenville

Veneer & Crate Co., Roux Crate & Lumber Co., Inc., L. B. Walling, Hugh Walling, and Frieda Walling, copartners, doing business as Walling Crate Co., Frank R. Pounds Crate Co., Lake Crate & Lumber Co., Osceola Crate Mills, Inc., Zachary Veneer Co., Montbrook Crate Co., and Stephen O. Shinholzer, upon receipt of orders, shipped their products from their places of business in Florida to customers located in the State of Florida.

PAR. 5. All of the member respondents of respondent Standard Container Manufacturers' Association, Inc., before the adoption of the practices hereinafter set forth, and for long periods of time prior thereto, were in active and substantial competition with each other in the sale and distribution of said products in the trade area in which they operate, namely, in the southeastern portion of the United States, and more particularly in the States of Georgia and Florida, and with manufacturers of like products located in various other States of the United States. Such active and substantial competition would have continued to the present time and said member respondents would now be in active and substantial competition with each other but for the understandings, agreements, combinations and conspiracies hereinafter set forth. Within the trade area of said member respondents there is produced a substantial percentage of the fruits and vegetables produced in the United States. The wooden containers sold and distributed by the member respondents are used by the producers of fruits and vegetables in this area in preparing said products for transportation to markets located in various States of the United States, where said fruits and vegetables in said containers are distributed to wholesalers, retailers, and others for ultimate distribution to the consuming public. The wooden containers sold by the member respondents in the State of Florida constitute the greater portion of said products sold in said State and said member respondents control and dominate the wooden container industry therein, and they control the practices of the industry as a whole in said State.

PAR. 6. Respondents, James B. Adkins, Charles P. Chazal, and Russell W. Bennett, hold and have held their respective positions in respondent Standard Container Manufacturers' Association, Inc., as set forth above and they and other individuals serve as a Board of Directors for the respondent Standard Container Manufacturers' Association, Inc.

PAR. 7. Prior to July 15, 1935, the member respondents caused the organization of the respondent association for the promotion and protection of the interests of said member respondents. Beginning about July 15, 1935, and at various times thereafter, said member

Findings

30 F. T. C.

respondents entered into and thereafter carried out understandings, agreements, combinations and conspiracies for the purpose and with the effect of restricting, restraining and monopolizing, and suppressing and eliminating competition in, the sale of nonpatented wooden fruit and vegetable containers in trade and commerce between, among, in and with the several States of the United States. Respondent association and said individual respondents became parties to, and participated in, the carrying out of said understandings, agreements, combinations, and conspiracies.

PAR. 8. In furtherance of said combinations and conspiracies, respondents have done and performed, among others, the acts and things hereinafter set out in this paragraph.

Said member respondents entered into understandings and agreements to fix and maintain uniform and minimum prices including uniform maximum discounts, brokerage fees, freight allowances, and time limitation of contracts; and acting in conformity with said understandings and agreements did fix and maintain, through the medium of respondent association and respondents Adkins and Bennett, uniform and minimum prices including maximum discounts, brokerage fees, freight allowances and time limitation of contracts in sale of wooden fruit and vegetable containers and parts thereof. Said member respondents entered into understandings and agreements to curtail, and did curtail, the production and sale of certain wooden fruit and vegetable containers and parts thereof, and entered into understandings and agreements for the purpose of securing enforcement, through the medium of respondent association and respondents Adkins and Bennett, of said understandings and agreements to curtail the production and sale thereof whereby a said designated member respondent and respondent James B. Adkins would and did ascertain the production figures of some other designated member respondent and file, and they did file, reports as to the compliance of such designated member respondent with the said understandings and agreements to curtail production and sale during the period when such curtailment was in effect.

Said respondent association, through understandings and agreements, entered into by and between its members, caused its secretary, Russell W. Bennett from time to time to issue and distribute among members of the respondent association and manufacturers and distributors price lists designated "Fair Market Value" setting forth in detail the terms and conditions of sales of various types of wooden fruit and vegetable containers agreed upon by the member respondents. Typical of the lists circulated by respondent, Russell W. Bennett, is the following:

Manufacturers Wholesale

FAIR MARKET VALUES

Effective December 6, 1936

Terms and Conditions of sale:

No orders will be accepted for future delivery at a stipulated price.

Quotations are for immediate acceptance and prompt shipment, including delivery at public carrier rates to points in Florida consuming territory in straight or mixed carlot volume.

Unless otherwise specified, prices are for standard specifications and dimensions.

Each shipment constitutes a closed transaction. Invoices are not subject to rebate or refund other than shown thereon, except in case of proven shortage or sub-standard quality.

Terms may not exceed thirty days at net price except on citrus fruit crates shipped prior to January 1, each year, on which terms may not exceed sixty days at net price.

Discounts:

2%—10 days, cash discount, is applicable to all sales.

No discount may be given to any buyer of citrus fruit boxes or crates, or parts thereof, other than 2% discount for cash within ten days.

Vegetable crates in carlot minimum quantities, only when sold to established dealers, are subject to a maximum trade discount of 5% on gross of invoice.

For discounts on baskets and hampers see current listing.

Extra Charges:

Two prints will be furnished without extra charge on citrus fruit crates. If not printed, deduct one-quarter ($\frac{1}{4}\text{¢}$) cent for each impression not furnished. Boxes shipped without printing shall be so specifically designated on invoice.

Extra prints on citrus fruit crates and all prints on other packages will be charged for at the rate of one-quarter ($\frac{1}{4}\text{¢}$) cent each impression.

One-half ($\frac{1}{2}\text{¢}$) cent per package will be charged for dyed or printed cleats, except basket and hamper prices may include one or more colored hoops without extra charge. Printing is extra.

(The above statement is followed by a detailed listing of the prices of various types of wooden containers and the parts thereof.)

Changes were made in these lists in accordance with instructions secured from respondent Adkins and other representatives of the member respondents, and respondent Russell W. Bennett issued and distributed from time to time among member respondents lists showing these changes. Respondent association caused, through understandings and agreements of member respondents, production to be curtailed by its members in the manufacture of wooden fruit and vegetable containers and parts thereof and directed that no citrus fruit crates were to be fabricated, sold or shipped for use in the State of Florida between June 15 and August 15, 1936, except for current use and that

Findings

30 F. T. C.

none were to be sold or offered for sale at less than the then present prevailing prices. Respondent association provided a means whereby compliance with the understandings and agreements to fix prices and curtail production by its members could be investigated, ascertained and corrective measures administered in enforcing and securing adherence to the understandings and agreements.

When there were violations or alleged violations of the provisions of the understandings and agreements entered into by and between the respondent members of the said association, member respondents and respondent James B. Adkins caused the alleged violations to be investigated and threatened, intimidated and coerced the violator, thereby induced said violator to cancel orders and conform to said understandings and agreements when but for such threats, intimidations and coercion such member would not have conformed to such understandings and agreements.

Respondent, James B. Adkins, was designated and appointed and duly authorized as their representative by said respondent association and said respondent members, to determine, after consultation with member respondents and others, the prices at which said wooden fruit and vegetable containers and parts thereof were to be sold. Acting as such duly authorized agent, respondent Adkins from time to time met with the other duly authorized representatives of said member respondents and determined the current prices at which said products were to be sold and caused to be transmitted by telegram, mail and by other means to all member respondents, and to others in the industry who were not members of respondent association, the fixed and established current prices, terms and conditions at which said wooden fruit and vegetable containers and parts thereof were to be sold. Typical of the communications from respondent Adkins to the member respondents and others in the industry is a telegram dated December 6, 1936, which is as follows:

Gainesville, Florida,
December 6, 1936.

Nocatee Crate Company,
Nocatee, Florida.

Effective last night Sunday December 6th Fair Market Value Prices on all packages both square and round except bushel tubs and half bushel tubs advanced one cent per package discount and extras remain the same Stop Add 5% to current parts prices Stop All manufacturers will mail me copies of all invoices Gainesville until further notice Stop Confirm by Western Union.

J. B. Adkins

and a telegram dated January 31, 1937, which is as follows:

Jacksonville, Fla.
January 31, 1937.

Nocatee-Manatee Crate Company,
Nocatee, Fla.

Effective today noon Fair Market Prices on all citrus packages one cent advance
Stop All vegetable packages one-half cent advance except lugs hampers bushel
and one-half bushel tubs which remain as is Stop Discount and extras remain
same Stop Add five percent to current parts prices Stop This price spot and
subject to change dependent further increase labor and raw material.

J. B. Adkins

Many other telegrams relating to prices, terms and conditions of sale and curtailment of production were sent to member respondents by respondent Adkins. Respondent Adkins was further authorized and delegated as the agent of respondents to investigate the activities of respondent members regarding compliance with said understandings and agreements and to enforce and secure, and respondent Adkins did investigate, enforce and secure, the adherence of the member respondents and nonmember respondent to the prices, terms and conditions of sale so fixed and established by respondents.

As compensation for performing the duties herein described, respondent Adkins was voted by respondent association the sum of \$500 per month beginning January 1, 1936, and an additional sum of \$250 per month to cover a portion of his expense account during the period of time he so acted. Some of the member respondents who did not retain their membership in the respondent association during all of the time respondent Adkins was president of the respondent association made regular contributions to assist in defraying expenses in connection with the work of respondent Adkins.

Respondent association, through respondents Russell W. Bennett and James B. Adkins, as officers and agents of said respondent association, and in accordance with the understandings and agreements entered into by and between said respondent members, and for the purpose of carryig out said understandings and agreements, collected from and disseminated among the member respondents statistical information used and useful in enforcing compliance with said understandings and agreemets. The aforesaid understandings and agreements by and between the member respondents were made and entered into at meetings held from time to time during the period from about July 15, 1935 to the date of the issuance of the complaint herein, at general meetings of the member respondents and at meetings by various of the member respondents interested in a particular

Order

30 F. T. C.

container or type of container, such as peach baskets, tomato lugs or celery crates, where prices and terms and conditions of sale were discussed and agreed upon. Information as to the prices and terms and conditions of sale determined at these meetings was transmitted to respondent Bennett, either directly or through respondent Adkins, for dissemination among the member respondents generally.

PAR. 9. Each of said respondents acted in concert and in cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove set forth in furtherance of said understandings, agreements, combinations and conspiracies.

PAR. 10. Said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinabove set forth, have had, and do have, the effect of unduly and unlawfully restricting and restraining the sale of said wooden fruit and vegetable containers, and the parts thereof, in trade and commerce between, among, in and with the several States of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said wooden fruit and vegetable containers, and the parts thereof, in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said wooden fruit and vegetable containers, and the parts thereof, in said commerce.

CONCLUSION

Said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as above set forth, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint issued herein on January 3, 1938, and the answers filed by the respondents, testimony and other evidence taken by E. J. Hornibrook and John L. Hornor, examiners for the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein and oral argument by Edw. W. Thomerson, counsel for the Commission, and by F. C. Hillyer, counsel for all of the respondents except

Keysville Lumber Co. and Roux Crate & Lumber Co., Inc., and the Commisison 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 respondents Adkins Manufacturing Co., Consumers Lumber and Veneer Co., Elberta Crate & Box Co., Hector Supply Co., Georgia Veneer & Package Co., R. C. Balfour, Jr., and J. V. Hawthorne, doing business as the Georgia Crate & Basket Co., The Greenville Veneer & Crate Co., Keysville Lumber Co., Walton E. Nants and R. A. Nants, trading and doing business as Nants Manufacturing Co., Nocatee-Manatee Crate Co., Ocala Manufacturing, Ice & Packing Co., Inc., The Pierpont Manufacturing Co., Roux Crate & Lumber Co., Inc., Shollar Crate and Box Co., Inc., Southern Crate & Veneer Co., Southern Veneer Co., L. B. Walling, Hugh Walling and Frieda Walling, doing business as Walling Crate Co., Frank R. Pounds Crate Co., Lake Crate and Lumber Co., Zachary Veneer Co., Osceola Crate Mills, Inc., Montbrook Crate Co., Southern Container Co., Cummer Sons Cypress Co., Zach Russ, trading as Russ Crate Co., and Stephen O. Shinholzer, their officers, agents, representatives, and employees, cease and desist from entering into, or carrying out, any understanding, agreement, combination or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and any other member or members of the industry, for the purpose or with the effect of restricting, restraining or monopolizing, or eliminating competition in, the sale in interstate commerce of wooden containers used in packaging fruits and vegetables, variously described and referred to as crates, baskets, boxes, hampers, lugs, cups, and trays, and the parts thereof, and as a part of such understanding, agreement, combination and conspiracy from doing any of the following acts or things:

1. Agreeing to fix and maintain, or fixing and maintaining, uniform or minimum prices.

2. Agreeing to fix and maintain, or fixing and maintaining, uniform terms and conditions of sale, such as maximum discounts, brokerage fees, freight and other allowances and time limitations in contracts.

3. Agreeing to curtail, or curtailing, production of such containers or the parts thereof or agreeing to check, or checking, the production of the mills of other parties to such an agreement to determine if such other mills have curtailed production as agreed upon.

4. Threatening, coercing or in any wise intimidating members of the industry in an effort to induce such members to become parties to said understanding, agreement, combination or conspiracy, or to in-

Order

30 F. T. C.

duce such members to maintain the prices fixed by, or to curtail production in furtherance of, said understanding, agreement, combination or conspiracy.

5. Filing with the respondent association, Standard Container Manufacturers' Association, Inc., its officers, agents or employees, any report as to the manner and form in which any member of the industry is carrying out any agreement or understanding with reference to prices or production.

6. Reporting to or conferring with respondent James B. Adkins, or any officer, agent or employee of said respondent association, as to the prices at which said products are to be sold or as to the curtailing of the production of any of such products, or as to the failure of any member of the industry to carry out any agreement or understanding on the part of such member of the industry to maintain prices, terms and conditions of sale or to curtail production.

It is further ordered, That the respondent Standard Container Manufacturers' Association, Inc., its officers, agents, and employees, and the respondents James B. Adkins, Charles P. Chazal, and Russell W. Bennett, forthwith cease and desist aiding, abetting, or encouraging, or cooperating with, the respondents hereinabove named in doing any of the acts and things prohibited by this order, and more particularly collecting from or disseminating among said above-named respondents, or any other member of the respondent Standard Container Manufacturers' Association, Inc., or the wooden container industry, any information as to prices, terms, and conditions of sale, or curtailment of production.

It is further ordered, That the respondent James B. Adkins cease and desist threatening, coercing or, in any wise, intimidating members of the industry in an attempt to induce such members to become a party to such an understanding, agreement, combination, or conspiracy, or to maintain prices, terms and conditions of sale or to curtail production in furtherance of any such understanding, agreement, combination or conspiracy.

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

Syllabus

IN THE MATTER OF

MAURICE SEIDEL AND CHARLES SEIDEL, TRADING AS
M. SEIDEL & SONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3961. Complaint, Dec. 2, 1939—Decision, Mar. 7, 1940*

Where two partners engaged in sale and distribution of furs, fur coats and other fur products to purchasers in various other States and in the District of Columbia; in soliciting the sale of and in selling and distributing their said merchandise—

- (a) Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which merchandise in question was sold and distributed to ultimate consumer thereof wholly by lot or chance, and involved distribution to purchasing public of certain literature and instructions, including push cards, order blanks, illustrations of goods and articles concerned, and circulars explaining their said plan of selling such merchandise and of allotting it as premiums or prizes to operators of such push cards under plan in accordance with which and card's explanatory legend, person securing by chance selection from list of feminine names displayed name corresponding with that concealed under card's master seal secured "a beautiful new fur cape," or other article being thus disposed of, and amount paid for chance was dependent upon number secured by chance as concealed under card's various discs, and under other sales plans or methods in connection with which they furnished various devices accompanied by order blanks, instructions and other printed matter for use in sale and distribution of their merchandise by means of game of chance, gift enterprise, or lottery scheme similar to plan or method above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with plan above described, under which facts as to whether purchaser received article or nothing for amount of money paid and amount to be paid were determined wholly by lot or chance, and involving game of chance or sale of chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plan or method involving game of chance or sale of chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by their said sales plan or method employed in sale and distribution of their merchandise and element of chance involved therein, and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by their said competitors who do not use such or equivalent sales plan or method, and with result, through use of such plan or method and because of such game of chance, of unfairly diverting trade in commerce from their competitors aforesaid who do not use such or equivalent sales plan or method, to the substantial injury of competition in commerce.