

Syllabus

IN THE MATTER OF

AMERICAN VENEER PACKAGE ASSOCIATION, INC., EASTERN PACKAGE ASSOCIATION, SOUTHERN PACKAGE ASSOCIATION, INC., THE STEVENSON CORPORATION, AND CHARLES R. STEVENSON 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 3556. Complaint, Aug. 25, 1938—Decision, Mar. 15, 1940

Where three local trade groups and members, manufacturers of veneer containers, in the formation of which, in the latter part of 1935 and the early part of 1936, American Veneer Package Association, with membership comprising many of the larger or more important members of the industry, cooperated and assisted for the more effective self-regulation of the industry, and which three local trade groups included (1) Georgia Association, composed of larger and principal manufacturers of veneer containers in said and southern States, (2) Eastern Package Association, made up of manufacturers of veneer containers in New Jersey, Pennsylvania, Delaware, and contiguous territory, and (3) North and South Carolina Veneer Association, made up of principal manufacturers making and selling veneer containers in said States; by and with the active assistance and cooperation of said American Association and its officers, and acting within and for their respective territories—

- (a) Discussed, at open meetings, and agreed upon, prices, conditions, terms of sale and discounts, and entered into and executed contracts and agreements which resulted in the fixing of such prices, etc., relative to the sale and distribution of veneer containers used in packaging fruits and vegetables, and, in certain cases, made f. o. b. prices and delivered prices same, and revised prices of one group, so as to be in harmony with those of another, and in certain situations to meet condition brought about by shipments from State of Texas into territory involved of products in question at substantially lower prices as result of high price level fixed, and following effort to induce Texas manufacturers to protect prices filed and agreed upon by particular trade group here involved, and in such general connection and among other things, took measures designed to meet price-disrupting factor involved in sale of No. 2 baskets;
- (b) Executed written membership contracts between the various members and their respective associations which set forth terms and conditions of sale and charges for various items and dealer discounts, and which defined as dealer one who sold product and guaranteed and collected account but did not haul or warehouse and for whom manufacturer made delivery, and distributor or jobber as one who sold product and guaranteed and collected account and in addition thereto warehoused and delivered product, and which limited discount of former to 5 percent, and provided for latter additional 5 percent; and
- (c) Voted on lists submitted by various manufacturing members of persons or firms submitted to manufacturer's respective association as entitled,

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in his opinion, to dealer or distributor discounts, and placed on dealer-distributor list for each association only such names as thus approved, and agreed that only those appearing on such lists were entitled to such discounts, and, after vote, compiled and distributed, through respective secretaries, master lists of such approved dealers and distributors, with many originally submitted for such lists by respective members rejected by vote of members' competitors; and

- (d) Employed, in case of some, representatives to investigate complaints of sales made below agreed prices and granting of discounts to persons and firms not on dealer lists, and to determine compliance with agreed prices and the allowing of proper discounts to dealers and distributors, and, at meetings, made complaints of sales below prices agreed on subject of discussion; and

Where said American Veneer Package Association and its officers—

- (e) Took an active part in promoting said membership contracts in various localities and acted as medium for exchange of information between members of such various groups and as a general bureau for such exchange;
- (f) Sought to ascertain Texas manufacturer responsible for supplying or shipping baskets at lower prices into trade territory involved, as above set forth, setting forth that "we cannot let one or two manufacturers dictate the situation in other territories," and that any information addressee could supply with respect to the matter would be appreciated; and
- (g) Took an active part, through secretary common to both organizations, in the matter of submission of lists of those entitled to various discounts, and aided, in such and other trade territory, the revision, making and dissemination of agreed schedules and prices and price schedules, not distributed generally either to customers or members of trade, but for member use exclusively; and

Where a corporation, together with numerous individuals doing business as partners, and engaged under firm name in business management and business engineering, following the explanation of their "live and let live" plan by representative before convention of aforesaid American Veneer Package Association and before meeting of aforesaid North and South Carolina Veneer Package Association, and their resulting employment to conduct survey of entire veneer package industry, and the making of such surveys in Eastern Package Association, North and South Carolina Association and Georgia Association territories, and in New York, the East, Midwest, West, and Texas, as below set forth, and division of territories into zones, secretaries of which said various zones were employees of such business management and engineering firm—

- (h) Persuaded manufacturers, acting through such secretaries and representatives, to hold their production within their normal position as indicated by above surveys, which covered, for particular zones, production and sale of bushel and half-bushel baskets and other containers and dollar value thereof for period involved, and incident to which they furnished each member, in respective territory where survey was conducted, statistical report showing his normal volume relationship over two-year period involved as compared to total volume of sales in territory, and further incident to which monthly reports were furnished showing volume of sales of each member as compared to total volume, and attempted to impress

on manufacturers in various zones necessity for not exceeding their so-called normal positions, telling members that they, the members, could increase their volume relationship only by taking some of another manufacturer's volume;

- (i) Obtained assurances from many members, as aforesaid, that they, the members, would curtail their production so that it would remain somewhat within its so-called normal volume, and contacted manufacturer found at any time to be exceeding to any great extent his normal production through zone secretary or representative, and requested such manufacturer to curtail production, and obtained promises wherever possible from manufacturers who, in the various zones, expected said firm's operation to stabilize and increase prices, that they would reduce production so that their normal volume would not greatly exceed that shown in original survey; and

Where said various manufacturers concerned, engaged in manufacture and sale of aforesaid containers for fruit and vegetables, and members, as case might be, of different associations and groups concerned, and located within different geographical zones created by said business management firm, i. e.—

(1) Zone C, or territory of Southern Package Association, result of consolidation of aforesaid Georgia and North and South Carolina Associations;

(2) Zone B, or territory of Eastern Package Association, covering Virginia, Maryland, Delaware, New Jersey, and certain specified counties in Pennsylvania, West Virginia, and North Carolina;

(3) Zone A, or territory of Northeastern Package Association, embracing all of New England, New York State, various counties in Pennsylvania and West Virginia, formed early in 1937 by said business management firm and followed its survey in territory as above indicated;

(4) Zone E, or territory of Midwest Package Association, including veneer package manufacturers in Michigan, Indiana, Kentucky, Tennessee, Illinois, Iowa, Minnesota, Wisconsin, Missouri, Ohio, and western part of West Virginia (with Ohio and western part of West Virginia considered jointly as part of Zone A), and in which there had been no organization or association until formation of such Midwest group under supervision of said management firm and survey in territory in question; and

(5) Zone D, or territory of Texas group in which similar survey was conducted, and which included all States west of Mississippi and east of Rocky Mountains in which were located veneer package manufacturers and customers, and activities of which were similar to those of other groups and zone organizations, as above described, and involved intent and effect of establishing non-competitive prices and stabilizing relative volumes of business done by various members—

- (j) Divided the territory in which their producing plants were located, and into which their products were shipped, into geographical zones or areas composed as above indicated, and with definite exact boundary lines, and filed, after conference and discussion among the producers in the respective zones and effective therein, zone prices for delivery at all points throughout a particular zone and for all producers therein, without regard to fact that cost of delivery varied substantially between respective producing points and any given place of delivery, and including

in such prices, filed with their respective zone secretaries, both current and future prices which, as applicable within each zone, were identical, but which, as to prices of different zones, differed, and which prices or price lists, distributed to members of zone in which they were filed by zone secretary, were also filed by various zone secretaries with American Veneer Package Association, and by latter, through its secretary, distributed to member manufacturers in all zones who were interested in making sales to zones in which filed prices were effective, and which price lists and statistical information were, as general practice, neither published nor furnished to customers of trade, but were for confidential use of members only;

- (k) Continued, generally, practices hereinbefore set forth and indicated, preceding employment of said business management firm and surveys thereof, and including the making of membership agreements setting forth prices, terms, etc., and price discussions and understandings at meetings, and the submission of those thought eligible for dealer or distributor discounts, and the making therefrom of master lists for distribution among members and guidance thereof in granting of discounts, and also filed with various secretaries and employees of said business management firm their invoices, or submitted to inspection thereof by such secretaries and employees, and took measures directed against disruption of price levels, such as deferring, controlling, or withholding production in anticipation of small demand and crop shortages, or through purchase of containers to prevent their offer in organization territory by cut-price manufacturer, and through steps directed at controlling sale of No. 2 baskets as price-disrupting factor, and, in certain territory, agreed, as price maintenance measure, to follow, in lieu of general filing of price lists, lists filed by certain company or concern; and

Where said business engineering firm, through its representatives—

- (l) Checked invoices of members of various zones and contacted any member thus found to have made sales below filed prices, either in his zone or in another, or to have quoted discount to others than those appearing on dealer-distributor lists, and sought to persuade such member or members to discontinue making such below-price sales in his own or in outside zones, and to discontinue money discounts to others than those who appeared on such distributor lists, or in excess of those provided for, and emphasized control or curtailment of production as essential step in direction of price maintenance or increase, and sought to and did bring about such production control or curtailment; and

Where members of the aforesaid various group or zone associations—

- (m) Agreed that they would not ship into adjoining zone without conforming to prices prevalent in zone of vendee, and protected in accordance with understanding of members of the various associations, the prices filed in the different zones and cooperated in the maintenance thereof; and

Where said various zones and their representatives, following said business management concern's becoming business manager thereof—

- (n) Cooperated more closely between and among themselves, with their secretaries, who were employees of said business management firm and the managing directors of each zone and under general supervision of an official of said firm, receiving from members filed prices and distributing same to other secretaries and to secretary of aforesaid American Veneer

Package Association, and with and through invited attendance of representatives of the different zones at meetings of other zone associations, the holding of joint association meetings, and attendance at different zone meetings of aforesaid official of said business management firm, who was general zone supervisor, and report by him of progress of other zones, and discussion of price and dealer lists of other zones at different zone meetings; and

Where secretary of said American Veneer Package Association—

(c) Collaborated with the various secretaries in general distribution of prices to all members of all zones, with members instructed, when selling in other zones, to obtain information from their zone secretary as to whether proposed vendee was dealer or distributor, with intent of protecting prices and discounts prevalent in various zones;

With result that said understandings, agreements, combinations and conspiracies, and things done thereunder and pursuant thereto and in furtherance thereof, had a dangerous tendency to, and actually did, hinder and prevent price competition between and among member concerns of said various associations in sale of veneer fruit and vegetable containers and parts thereof in commerce, and placed in said various concerns, associations, etc., as hereinabove set forth, power to control and enhance prices and unreasonably restrain commerce in said products and parts thereof:

Held, That said understandings, agreements, combinations and conspiracies, and things done thereunder and pursuant thereto and in furtherance thereof, as above set forth, were all to the prejudice of the public and constituted unfair methods of competition.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Morelock & Lamb, of Washington, D. C., for American Veneer Package Association, Eastern Package Association, Southern Package Association, Inc., Northeastern Veneer Package Association, Midwest Package Association, and various officers and members of said associations, and together with *Mr. Ross R. Guthrie*, of Washington, D. C., for various members of said associations.

Wise, Corlett & Canfield, of New York City, for The Stevenson Corporation, Stevenson, Jordan & Harrison, Frederick W. Masie, Norman G. Asbury, George A. Cooper and J. L. Giacomino.

Brown & Watts, of Barnwell, S. Car., for Greene Lumber & Crate Co.

Mr. F. C. Hillyer, of Jacksonville, Fla., for Adkins Manufacturing Co., Georgia Veneer & Package Co., Pierpont Manufacturing Co. and Southern Crate & Veneer Co.

Clark, Pryor, Hale & Plock, of Burlington, Ia., for Burlington Basket Co.

Dewey & Cummins, of Cairo, Ill., for Swisshelm Veneer Co.

Foulston, Siefkin, Foulston & Morris, of Wichita, Kans., for Roberts-Liggett Co.

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Mr. Frederick C. Cogshall, of South Haven, Mich., for Pierce-Williams Co.

Murrey & Murrey, of Gallatin, Tenn., for Strawberry Crate Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations, associations, firms, and individuals hereinafter 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. Respondent American Veneer Package Association, Inc., is a nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office at 804 Seventeenth Street, NW., Washington, D. C. It was organized, and, for the past several years, has acted, as a trade association for the promotion and protection of the interests of its members who are engaged in the manufacture and sale of one or more of various types of veneer 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 baskets, tubs, crates, hampers, lugs, boxes, cartons, and by various and sundry other names commonly used in the industry in referring to veneer containers, and the parts thereof, for the packaging of fruits and vegetables.

The respondent officers of said respondent corporation are as follows:

President, Frank M. Harrison, % F. W. Harrison & Company, Painesville, Ohio;

Vice-president, George Talbot, Jr., % Evansville Container Company, Evansville, Indiana;

Vice-president, R. O. Fletcher, % Acme Veneer Package Company, Orchard Park, New York;

Treasurer, Willis W. Hargroves, % Planters Manufacturing Company, Portsmouth, Virginia;

Secretary-manager, Robert W. Davis, 804 17th Street, N. W., Washington, D. C.

PAR. 2. Respondent Eastern Package Association is an unincorporated trade association having its headquarters or executive offices

at 133 South 36th Street, Philadelphia, Pa. Its membership consists of certain persons, partnerships, and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the States of New Jersey, Maryland, Delaware, Virginia, eastern Pennsylvania, and eastern West Virginia. In 1936, Edwin P. Brown and Robert W. Davis served as chairman and secretary, respectively, of said respondent association, and said officers were succeeded, in 1937, by Frederick W. Masie and Ross R. Guthrie. The respondent members of said respondent association are as follows:

Berryville Basket Co., Berryville, Va.

M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., Dividing Creek, N. J.

William W. Dilks & Son, Inc., Swedesboro, N. J.

Farmco Package Co., Norfolk, Va.

Louis P. Finger, trading as Finger Bros., Franklinville, N. J.

Goldman Package Manufacturing Co., Glassboro, N. J.

Jersey Package Co., Bridgeton, N. J.

Marvil Package Co., Laurel, Del.

Planters Manufacturing Co., Portsmouth, Va.

Ramsey Package Corporation, Driver, Va.

Riverside Manufacturing Co., Murfreesboro, N. C.

Virginia Cooperage Co., Inc., Cloverdale, Va.

PAR. 3. Respondent Southern Package Association, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, and having its offices and principal place of business at 1617 First National Bank Building, Charlotte, N. C. The said respondent corporation was formerly known as Georgia Basket Association; on or about June 1937, after the said Georgia Basket Association included in its membership the members of the North and South Carolina Veneer Package Association, an unincorporated group of veneer package manufacturers, the name of Georgia Basket Association was changed to Southern Package Association, Inc. The respondent officers of said respondent corporation are as follows:

Chairman, Herbert J. Linder, Adams Run, S. C.

Vice president, Walter E. Morgan, Americus, Ga.

Secretary, Norman G. Asbury, Charlotte, N. C.

Treasurer, D. E. Shuman, Allendale, S. C.

The respondent members of said respondent corporation are certain persons, partnerships, and corporations engaged in the manu-

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facture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the States of North Carolina, South Carolina, Georgia, and Alabama; said respondent members are as follows:

W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Co., Williston, S. C.
Leigh Banana Case Co., 1421 South Aberdeen Street, Chicago, Ill.
B. E. Martin, Mount Olive, N. C.

Patten Package Co., Inc., Calypso, N. C.

Farmco Package Corporation, Norfolk, Va.

Planters Manufacturing Co., Portsmouth, Va.

Atkins Manufacturing Co., Gainesville, Fla.

Georgia Veneer & Package Co., Brunswick, Ga.

Pierpont Manufacturing Co., Savannah, Ga.

Marvil Package Co., Laurel, Del.

Evansville Container Co., Evansville, Ind.

Hollywood-Beaufort Package Corporation, Norfolk, Va.

Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Wilmington, N. C.

Mount Olive Manufacturing Co., Mount Olive, N. C.

Riverside Manufacturing Co., Murfreesboro, N. C.

Alabama Basket Co., Inc., Eufaula, Ala.

Dayton Veneer & Lumber Mills, Dayton, Tenn.

John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co., Cuthbert, Ga.

Southern Crate & Veneer Co., Macon, Ga.

Edgerton Manufacturing Co., Plymouth, Ind.

PAR. 4. Respondents, The Stevenson Corporation, organized, existing and doing business under the laws of the State of New York, and Charles R. Stevenson, T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. P. Platt, Howard Marvin, and D. M. Metzger, are partners doing business under the firm name of Stevenson, Jordan & Harrison, with a principal place of business at 19 West 44th Street, New York, N. Y. The said respondents are engaged in business management and business engineering.

PAR. 5. Respondent Northeastern Veneer Package Association is an unincorporated trade association having its offices and principal place of business at 517 Terminal Building, 65 Broad Street, Rochester, N. Y. The respondent officers of said respondent association are:

President, B. H. Droman; vice-president, T. W. Windnagel; secretary-treasurer, George A. Cooper.

The respondent members of said respondent association are certain persons, partnerships, and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the New England States, New York and western Pennsylvania. The said respondent members of said respondent association are as follows:

Acme Veneer Package Co., Inc., Orchard Park, N.Y.

John Bacon, Inc., Gasport, N. Y.

Guile & Windnagle, Inc., Penn Yan, N. Y.

Webster Basket Co., Webster, N. Y.

Ellicottville Basket Co., Ellicottville, N. Y.

Attica Package Co., Attica, N. Y.

Barden & Robeson Co., Penn Yan, N. Y.

Sodus Basket Co., Sodus, N. Y.

Bellaire & Schroeder, Inc., Hamburg, N. Y.

Madison County Basket Co., Hamilton, N. Y.

PAR. 6. Respondent Midwest Package Association is an unincorporated trade association having its offices and principal place of business at 130 East Washington Street, Indianapolis, Ind. The respondent officers of said respondent association are:

President, George H. Talbot, Sr.; vice-president, S. C. Bulliet; secretary-treasurer, J. L. Giacomino.

The respondent members of said respondent association are certain persons, partnerships and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the States of Kentucky, Tennessee, Indiana, Illinois, and various other States in the Midwest. Said respondent members of said respondent association are as follows:

Berrien County Package Co., Benton Harbor, Mich.

Burlington Basket Co., Burlington, Iowa.

Edgerton Manufacturing Co., Plymouth, Ind.

B. C. Jarrel & Co., Humboldt, Tenn.

Swisshelm Veneer Co., Mound City, Ill.

Frank L. Deaner & Sons, Sodus, Mich.

New Albany Box & Basket Co., New Albany, Ind.

Ottawa Basket Co., Oak Harbor, Ohio.

Roberts-Liggett Co., Metropolis, Ill.

Bloomington Basket Co., Bloomington, Ind.

H. A. DuBois and Sons Co., Cobden, Ill.

Evansville Container Co., Evansville, Ind.

Newton Box & Basket Co., Newton, Ill.

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Schwarz Basket & Box Co., Topeka, Kans.
Paducah Box & Basket Co., Paducah, Ky.
Harrison Manufacturing Co., Shelby, Mich.
Pierce-Williams Co., Jonesboro, Ark.
Strawberry Crate Co., Portland, Tenn.

PAR. 7. The members of the respondent associations and organizations, as described in paragraphs 2, 3, 5, and 6, and hereinafter referred to as member respondents, in the course and conduct of their business, manufacture, sell, and distribute a large percentage (probably 90 percent) of all the veneer containers, described in paragraph 1 hereof, used in the packaging of fruit and vegetables in the various States of the United States east of the Rocky Mountains. The said member respondents sell their said products to wholesalers, dealers, and consumers located at various points throughout the United States, and, when sales are made and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States, other than in the States of the origin of such shipments. Said member respondents maintain a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

Prior to the adoption of the practices hereinafter described, said member respondents were in active and substantial competition with each other, and with other members of the industry, in making and seeking to make sales of their products in trade and commerce between and among the several States of the United States and in the District of Columbia; but for the practices hereinafter described such active and substantial competition would have continued until the present and said member respondents would now be in active and substantial competition with each other and with other members of the industry.

PAR. 8. Beginning about July 1935, and continuing until about the early part of the year 1937, the member respondents, as set forth in paragraphs 2 and 3 hereof, as members of the respondent Eastern Package Association, North and South Carolina Veneer Package Association, and Georgia Basket Association and in cooperation with the respondent American Veneer Package Association, Inc., entered into understandings, agreements, combinations, and conspiracies; and in the early part of the year 1937, at which time the respondents Northeastern Veneer Package Association and Midwest Package Association were organized, all the respondents entered into understandings, agreements, combinations, and conspiracies; said understandings, agreements, combinations, and conspiracies were entered

into, and thereafter carried out, for the purpose and with the effect of restricting, restraining and monopolizing, and suppressing and eliminating competition in, the sale of veneer fruit and vegetable containers in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 9. Pursuant to said understandings, agreements, combinations, and conspiracies and in furtherance thereof, said member respondents, with the active cooperation of the other respondents named herein, have done and performed, and still do and perform, the following acts and things:

1. Said member respondents agreed to exchange and have exchanged, through the medium of said respondent organizations, price lists in order to establish the prices at which veneer fruit and vegetable containers, and the parts thereof, were to be sold.

2. Said member respondents agreed to fix and maintain, and have fixed and maintained, uniform prices, terms, and conditions in the sale of veneer fruit and vegetable containers and the parts thereof.

3. Said member respondents have agreed to exchange, and have exchanged, information to be used in connection with the fixing of prices, discounts, terms, and conditions of sale of veneer fruit and vegetable containers and the parts thereof.

4. Said member respondents have agreed to establish, and have established, a system of zones throughout the United States to aid in the establishment and the fixing of prices of veneer fruit and vegetable containers, and parts thereof.

5. Said member respondents have agreed to cooperate, and have cooperated, in the maintenance of the various prices determined for particular zones.

6. Said member respondents have agreed to curtail, and have curtailed, the production of veneer fruit and vegetable containers and the parts thereof, and for the purpose of securing the enforcement of the agreements to curtail production, member respondents have filed, and do file, with their respective respondent organizations invoices and other reports.

7. Said member respondents have agreed to compile and distribute, and have compiled and distributed, lists of recognized dealers and distributors for the purpose and with the effect of exclusively confining, to or through the medium of such recognized dealers and jobbers, the sale and distribution of veneer fruit and vegetable containers and the parts thereof.

8. Said respondent organizations, through the respondent officers, collect from, and distribute among, member respondents and other

participants in said undertaking, statistical information used and useful in carrying out said undertaking, and they distribute from time to time among said member respondents and nonmembers participating in said undertaking, lists showing the current prices, terms, and conditions of sale, dealers and distributors to be allowed special discounts, 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 veneer fruit and vegetable containers, and the parts thereof, in said commerce.

PAR. 10. Each of the said respondents at the times herein mentioned acted in concert 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. 11. Said understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinbefore alleged, have had, and do have, the effect of unduly and unlawfully restricting and restraining the sale of said veneer fruit and vegetable containers, and the parts thereof, in trade and commerce between and among the several States of the United States and in the District of Columbia; of unduly and unlawfully restricting and restraining trade and commerce in said veneer 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; and of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said veneer 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 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 August 25, 1938, issued its complaint against the respondents named in the above caption and caused such complaint to be served as required by law, charging the respondents

with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 24, 1939, the Commission accepted, approved, and entered of record a stipulation in behalf of all the respondent associations, their officers (excepting 5 respondent secretaries), and their members, excepting 14 respondent members, whereby it was stipulated and agreed that a statement of facts, signed and executed in behalf of the aforesaid respondents by their counsel, George P. Lamb, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto and that the Commission may proceed upon such statement of facts, in reference to said respondents, to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. On July 13, 1939, the Commission entered of record "Statement of Admitted Facts" signed by counsel William W. Corlett for the respondents named in paragraph four of the said complaint, said respondents being members of a firm doing business under the name of Stevenson, Jordan & Harrison, engaged in business management and business engineering. On August 16, 1939, the respondent Evansville Container Co., not a party to said stipulation, filed its answer, in which it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. On September 20, 1939, the Commission, by orders entered herein, granted the motions of respondents Swisshelm Veneer Co. and Newton Box & Basket Co., Inc., not parties to said stipulation, for permission to withdraw their original answers and to substitute therefor answers admitting all material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answers were duly filed in the office of the Commission. On October 16, 1939, copies of said stipulation as to the facts and statement of admitted facts were introduced in support of the allegations of said complaint and four affidavits were introduced in opposition to the allegations of the complaint in behalf of respondents Pierpont Manufacturing Co., Adkins Manufacturing Co., Georgia Veneer & Package Co., and Southern Crate & Veneer Co. before John L. Hornor, an examiner of the Commission theretofore duly designated by it, the said evidence was duly recorded and filed in the office of the Commission. Testimony or other evidence was not introduced at said hearing on behalf of the other respondents. On October 25, 1939, the Commission granted the motion of counsel for respondents Georgia Veneer & Package Co. and the Southern Crate & Veneer Co., to expunge the names of these

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respondents from the said stipulation because the said names had been inserted therein through misunderstanding. Further hearings were held on November 20, 1939, and December 1, 1939, at which hearings respondents, Ross R. Guthrie and Robert W. Davis testified that the statements contained in the said stipulation as to the facts were true statements of fact to the best of their knowledge. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto and the entire record, including stipulation as to the facts, statement of admitted facts, affidavits, oral testimony, and briefs in support of the respondents named paragraph 4 of the complaint, to wit, Stevenson, Jordan & Harrison, and in opposition thereto, other respondents not having filed briefs and oral arguments not having been requested by any of the respondents; and the Commission having duly considered the matter and being now fully advised in the premises, finds 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. (a) Respondent American Veneer Package Association, Inc., is a nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office at 804 Seventeenth Street, NW., Washington, D. C. It was organized, and, for the past several years, has acted, as a trade association for the promotion and protection of the interests of its members who are engaged in the manufacture and sale of one or more of various types of veneer 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 baskets, tubs, crates, hampers, lugs, and by various and sundry other names commonly used in the industry in referring to veneer containers, and the parts thereof, for the packaging of fruits and vegetables.

(b) The respondent officers of said respondent corporation for the year 1937 were as follows:

President, Frank M. Harrison, c/o F. W. Harrison & Company, Painesville, Ohio.

Vice-president, George Talbot, Jr., c/o Evansville Container Company, Evansville, Indiana.

Vice-president, R. O. Fletcher, c/o Acme Veneer Package Company, Orchard Park, New York.

Treasurer, Willis W. Hargroves, c/o Planters Manufacturing Company, Inc., Portsmouth, Va.

Secretary-Manager, Robert W. Davis, 804 17th Street, NW., Washington, D. C.

PAR. 2. Respondent Eastern Package Association is an unincorporated trade association having its headquarters or executive offices at 133 South 36th Street, Philadelphia, Pa. Its membership consists of certain persons, partnerships and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph one hereof, and having places of business in the States of New Jersey, Maryland, Delaware, Virginia, eastern Pennsylvania, and eastern West Virginia. In 1936, Edwin P. Brown and Robert W. Davis served as chairman and secretary, respectively, of said respondent association; in 1937 respondent Frederick W. Masie began to serve as chairman of said association. The respondent members of said respondent association are as follows:

Berryville Basket Co., Inc., Berryville, Va.

M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., Dividing Creek, N. J.

William W. Dilks & Son, Inc., Swedesboro, N. J.

Farmco Package Corporation, Norfolk, Va.

Louis P. Finger, trading as Finger Bros., Franklinville, N. J.

Goldman, Package Manufacturing Co., a corporation, Glassboro, N. J.

Jersey Package Co., a corporation, Bridgeton, N. J.

Marvil Package Co., a corporation, Laurel, Del.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Ramsey Package Corporation, Driver, Va.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.

Virginia Cooperage Co., Inc., Cloverdale, Va.

PAR. 3. (a) Respondent Southern Package Association, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, and having its offices and principal place of business at 1617 First National Bank Building, Charlotte, N. C. The said respondent corporation was formerly known as Georgia Basket Association; on or about June 1937, after the said Georgia Basket Association included in its membership the members of the North and South Carolina Veneer Package Association, an unincorporated group of veneer package manufacturers, the name of Georgia Basket Association was changed to Southern Package Association, Inc. The respondent officers of said respondent corporation, for the year 1937, were as follows:

Chairman, Herbert J. Linder, Adams Run, S. C.

Vice-president, Walter E. Morgan, Americus, Ga.

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Secretary, Norman G. Asbury, Charlotte, N. C.

Treasurer, D. E. Shuman, Allendale, S. C.

(b) The respondent members of said respondent corporation are certain persons, partnerships, and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph one hereof, and having places of business in the States of North Carolina, South Carolina, Georgia, Alabama, and various other States; said respondent members are as follows:

W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Company, Williston, S. C.

Leigh Banana Case Co., a corporation, 1421 South Aberdeen Street, Chicago, Ill.

B. E. Martin, Mount Olive, N. C.

Patten Package Co., Inc., Calypaso, N. C.

Farmco Package Corporation, Norfolk, Va.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Adkins Manufacturing Co., a corporation, Gainesville, Fla.

Georgia Veneer & Package Company, a corporation, Brunswick, Ga.

Pierpont Manufacturing Co., a corporation, Savannah, Ga.

Marvil Package Co., a corporation, Laurel, Del.

Evansville Container Co., a corporation, Evansville, Ind.

Hollywood-Beaufort Package Corporation, Norfolk, Va.

Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Company, Wilmington, N. C.

Mount Olive Manufacturing Co., a corporation, Mount Olive, N. C.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.

Alabama Basket Co., Inc., Eufaula, Ala.

Dayton Veneer & Lumber Mills, a corporation, Dayton, Tenn.

John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co., Cuthbert, Ga.

Southern Crate & Veneer Co., a corporation, Macon, Ga.

Edgerton Manufacturing Co., a corporation, Plymouth, Ind.

PAR. 4. Respondents, The Stevenson Corporation, organized, existing, and doing business under the laws of the State of New York, and Charles R. Stevenson, T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. P. Platt, Howard Marvin, and D. M. Metzger, are partners doing business under the firm name of Stevenson, Jordan & Harrison, with a prin-

cipal place of business at 19 West 44th Street, New York, N. Y. The said respondents are engaged in business management and business engineering.

PAR. 5. (a) Respondent Northeastern Veneer Package Association is an unincorporated trade association having its offices and principal place of business at 517 Terminal Building, 65 Broad Street, Rochester, N. Y. The respondent officers of said respondent association, for the year 1937, were:

President, B. H. Droman; vice-president, T. W. Windnagle; secretary-treasurer, George A. Cooper.

(b) The respondent members of said respondent association are certain persons, partnerships and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the New England States, New York and western Pennsylvania. The said respondent members of said respondent association are as follows:

Acme Veneer Package Co., Inc., Orchard Park, N. Y.

John Bacon, Inc., Gasport, N. Y.

Guile & Windnagle, Inc., Penn Yan, N. Y.

Webster Basket Co., Inc., Webster, N. Y.

Ellicottville Basket Co., Inc., Ellicottville, N. Y.

Attica Package Co., Inc., Attica, N. Y.

Barden & Robeson Co., a corporation, Penn Yan, N. Y.

Sodus Basket Co., Sodus, N. Y.

Bellaire & Schroeder, Inc., Hamburg, N. Y.

Madison County Basket Co., a corporation, Hamilton, N. Y.

PAR. 6. (a) Respondent Midwest Package Association is an unincorporated trade association having its offices and principal place of business at 130 East Washington Street, Indianapolis, Ind. The respondent officers of said respondent association, for the year 1937, were:

President, George H. Talbot, Sr.; vice-president, S. C. Bulliet; secretary-treasurer, J. L. Giacomino.

(b) The respondent members of said respondent association are certain persons, partnerships and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the States of Kentucky, Tennessee, Indiana, Illinois, and various other States in the Midwest. Said respondent members of said respondent associations are as follows:

Berrien County Package Co., a corporation, Benton Harbor, Mich.

Burlington Basket Co., a corporation, Burlington, Iowa.

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Edgerton Manufacturing Co., a corporation, Plymouth, Ind.
B. C. Jarrell & Co., a corporation, Humboldt, Tenn.
Swisshelm Veneer Co., a corporation, Mound City, Ill.
H. A. Schwarz, an individual, doing business under the firm name of Schwarz Basket & Box Co., Topeka, Kans.
New Albany Box & Basket Co., a corporation, New Albany, Ind.
Ottawa Basket Co., a corporation, Oak Harbor, Ohio.
Roberts-Liggett Co., Metropolis, Ill.
Bloomington Basket Co., a corporation, Bloomington, Ind.
H. A. DuBois & Sons Co., Inc., Cobden, Ill.
Evansville Container Co., a corporation, Evansville, Ind.
Newton Box & Basket Co., Inc., Newton, Ill.
Frank L. Deaner & Sons, Sodus, Mich.
Paducah Box & Basket Co., a corporation, Paducah, Ky.
Harrison Manufacturing Co., a corporation, Shelby, Mich.
Pierce-Williams Co., a corporation, Jonesboro, Ark.
Strawberry Crate Co., a corporation, Portland, Tenn.

PAR. 7. (a) The members of the respondent associations and organizations, as described in paragraphs 2, 3, 5, and 6, and hereinafter referred to as member respondents, in the course and conduct of their business, manufacture, sell, and distribute approximately 75% of all the veneer containers, described in paragraph 1 hereof, with the possible exception of wire-bound and sawed crates, used in the packaging of fruit and vegetables in the various territories covered by the said respondent associations, respectively. The said member respondents sell their said products to wholesalers, dealers, and consumers located at various points throughout the United States, and, when sales are made and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States, other than in the States of the origin of such shipments. Said member respondents maintain a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

(b) Prior to the adoption of the practices hereinafter described, said member respondents were in active and substantial competition with each other, and with other members of the industry, in making and seeking to make sales of their products in trade and commerce between and among the several States of the United States and in the District of Columbia; but for the practices hereinafter described such active and substantial competition would have continued until the present and said member respondents would now be in active and

substantial competition with each other and with other members of the industry.

PAR. 8. The respondent American Veneer Package Association, Inc., which was incorporated in 1934, included in its membership many of the larger or more important members of the industry. In 1937, the membership consisted of 81 manufacturers of veneer packages located throughout the eastern United States and 10 associate members, who were suppliers of raw material to the veneer package manufacturing industry. Thirty-five of the veneer manufacturing members are listed as members of one of the groups designated by respondents Stevenson, Jordan & Harrison, which will be further set out later in these findings.

PAR. 9. In the latter part of 1935 and the early part of 1936, respondent American Veneer Package Association, Inc., for the more effective self-regulation of the industry, cooperated and assisted in the formation of several local grade groups. Principal among such groups were:

(a) The Georgia Basket Association, composed of the larger and principal manufacturers of the veneer containers in Georgia and southern States; the said Association was chartered a corporation under the laws of the State of Georgia on April 29, 1936. It operated under the name of the Georgia Basket Association until June 28, 1937, at which time its name was changed to the Southern Package Association, Inc.

(b) Eastern Package Association, made up of manufacturers of veneer containers located in New Jersey, Pennsylvania, Delaware, and contiguous territory; said Association was organized as an unincorporated association during January 1936.

(c) North and South Carolina Veneer Package Association was made up of the principal manufacturers making and selling veneer containers in North and South Carolina. The said Association was an unincorporated group of package manufacturers organized in 1936. This Association operated under the name North and South Carolina Package Association until the early part of 1937, when its membership became a part of the membership of the Georgia Basket Association.

PAR. 10. The Georgia Basket Association, Eastern Package Association, and North and South Carolina Veneer Package Association, by and with the active assistance and cooperation of the respondent American Veneer Package Association, Inc., and its officers, entered into and executed contracts and agreements which resulted in the fixing of prices, conditions and terms of sale and discounts relative to the

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sale and distribution of veneer containers used in packaging fruits and vegetables. At open meetings of these Associations, prices, conditions and terms of sale and discounts were discussed and agreed upon. Written membership contracts, between the members and their respective Associations, were executed. The respondent American Veneer Package Association, Inc., and its officers were active in promoting said membership contracts in these various localities. The said American Veneer Package Association, Inc., acted as a medium for the exchange of information between members of its said various groups, and continued to act in the capacity of a general bureau for the said exchange of information throughout 1936.

PAR. 11. The membership contracts contained definitions of a dealer and a distributor. A dealer was defined as one who sold the product, guaranteed and collected the account, but did not haul or warehouse, and for whom the manufacturer made the delivery. It was provided that dealer's discounts should not exceed 5 percent, and where carload shipments were made, an additional unloading allowance was granted in the amount of 1 cent per dozen on half bushel containers or 2 cents per dozen on bushels. A distributor or jobber was defined as one who sold the product, guaranteed and collected the account, and, in addition thereto, warehoused and delivered the product. A distributor or jobber received 5 percent in addition to the 5 percent discount allowed to dealers.

PAR. 12. Each manufacturing member of the various groups submitted a list of the persons or firms, to his respective Association, which he thought were entitled to the dealer or distributor discounts. The list submitted by each member was voted on by the membership of his respective Association at meetings thereof. Only such names as were approved were placed on the dealer and distributor list for each Association, and it was agreed among all members that only those names appearing on the dealer and distributor list were entitled to the dealer and distributor discounts. A master list of dealers and distributors was compiled after a vote had been taken on each name to appear thereon. These master lists for the respective groups were distributed to the members of the respondent Associations by the respective secretaries. Many of the persons and firms proposed for the dealer and distributor lists by the members were rejected by vote of the competitors of such members. Complaints were made by some respondent manufacturers as to the method of determining these lists. One such complaint referred to the "rather arbitrary and high-handed manner" of the Georgia Basket Association in making up its list.

Georgia Basket Association

PAR. 13. (a) Early in 1936, before membership contracts were executed, veneer manufacturers in Georgia and the southern States held meetings for the purpose of forming an association. Prices for veneer containers were discussed at these meetings.

(b) The membership contracts, executed on April 13, 1936, set forth in full the terms and conditions of sale, the charges for extras such as printing and coloring, and discounts to be allowed. The signatories to said membership contracts included:

Adkins Manufacturing Co., a corporation, Gainesville, Fla.

Evansville Container Co., a corporation, Evansville, Ind.

Dayton Veneer & Lumber Mills, a corporation, Dayton, Tenn.

Southern Crate & Veneer Co., a corporation, Macon, Ga.

Farmco Package Corporation, Norfolk, Va.

John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co., Cuthbert, Ga.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Alabama Basket Co., Inc., Eufaula, Ala.

Leigh Banana Case Co., a corporation, Chicago, Ill.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.

Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Wilmington, N. C.

Georgia Veneer & Package Co., a corporation, Brunswick, Ga.

(c) At a meeting of the members of the Georgia Basket Association held in Atlanta, Ga., on April 13, 1936, prices were discussed and adopted subject to a dealer's discount of 5 percent and a distributor's discount of 5 percent, with an additional discount of 5 percent on all baskets unloaded and handled through the distributor's warehouse; and discounts to apply only to those on the approved Georgia and Florida dealer and distributor list, the said prices to remain in effect until June 4, 1936. These prices were sufficiently high that basket manufacturers in Texas began shipping into the Georgia territory and made sales at \$1.65 per dozen delivered for the same type of baskets on which the Georgia Basket Association had established a price of \$1.85 per dozen. This action on the part of the Texas manufacturers forced the members of the Georgia Basket Association to file new prices. A committee representing the Georgia Basket Association went to Texas to persuade Texas manufacturers to protect the prices filed and agreed upon by members of the Georgia Basket Association. The Texas manufacturers refused to protect these prices. The American Veneer

Package Association, Inc., was interested in determining what Texas manufacturers caused the price break in Georgia. Robert W. Davis, Secretary of the American Veneer Package Association, Inc., in a communication dated July 14, 1936, addressed to the respondent Dayton Veneer & Lumber Mills, stated in part as follows:

* * * I would be interested to know what company in Texas furnished these baskets. * * *.

We cannot let one or two manufacturers in Texas dictate the situation in other territories. Any information you can give me on the above would be appreciated.

(d) At a meeting of the Georgia Basket Association held in Atlanta, Ga., on June 4 and 5, 1936, and participated in by W. A. Corbett, president of the American Veneer Package Association, Inc., prices were again adopted and agreed upon; for example, \$1.65 per dozen on Bushel Tubs with Crown Covers, \$1.50 per dozen on Bent Bottoms, \$1.30 per dozen on Round Half Bushels, \$1.35 per dozen on Board Bottom Half Bushels. These prices were delivered prices and said prices prevailed until the end of the 1936 season.

(e) On May 19, 1936, the Georgia Basket Association approved a list of distributors and jobbers. The first paragraph of said list read:

Distributors or Jobbers (Those entitled to maximum discount of 5% with an additional discount of 5% on all baskets unloaded into their warehouse and delivered by them to growers or shippers).

Then followed a list of the names entitled to the discounts stated.

North and South Carolina Veneer Package Association

PAR. 14. (a) The membership agreements of the North and South Carolina Veneer Package Association were executed on April 2, 1936. Said agreements contained a complete statement covering the terms and conditions of sale of fruit and vegetable veneer containers. The functions of a dealer and distributor were set forth and the discounts allowed each. Among the signatories to the North and South Carolina agreement were the following:

W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Co., Williston, S. C.

B. E. Martin, Mount Olive, N. C.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Marvil Package Co., a corporation, Laurel, Del.

Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Wilmington, N. C.

Alabama Basket Co., Inc., Eufaula, Ala.

Dayton Veneer & Lumber Mills, a corporation, Dayton, Tenn.
Southern Crate & Veneer Co., a corporation, Macon, Ga.
Leigh Banana Case Co., a corporation, 1421 South Aberdeen Street,
Chicago, Ill.

Patten Package Co., Inc., Calypaso, N. C.
Farmco Package Corporation, Norfolk, Va.
Adkins Manufacturing Co., a corporation, Gainesville, Fla.
Hollywood-Beaufort Package Corporation, Norfolk, Va.
Mount Olive Manufacturing Company, a corporation, Mount Olive,
N. C.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.
John D. Gunn and John M. Gunn, partners, doing business under
the firm name of The Peerless Basket Co., Cuthbert, Ga.

(b) At a meeting of said Association held in March 1936, prices for hampers, lettuce and pepper crates, and tomato lugs were agreed upon. Effective April 1, 1936, through July, the fixed price on Export Tubs with Crown Covers was \$1.65 per dozen in the territory designated in the membership agreement; that is, North and South Carolina, excepting Surry and Wilkes Counties. At a meeting held on May 12, 1936, the price on cantaloupe crates was agreed upon.

(c) The North and South Carolina Veneer Package Association, at a meeting held at Florence, S. C., on June 23, 1936, discussed, and agreed upon, prices for hampers, round bushels, improved three hoop, and bent bottoms and tubs for both flat and Crown covers. The details of this meeting were mailed to all members of said Association by Robert W. Davis, Secretary of American Veneer Package Association, Inc. It was agreed at this meeting that the f. o. b. factory price was to be the same as the delivered prices throughout the zone.

(d) At another meeting of said Association held in January 1937, attended by practically 100 percent of the membership, prices for hampers were revised in line with prices prevailing in Georgia and Florida as fixed by the Georgia Basket Association. At a meeting held in February 1937, prices for bushel and half bushel tubs were fixed to correspond with prices established by the Eastern Package Association but without the additional charge for the side loops which are recognized as standard in this territory.

(e) The membership agreements of said Association defined the functions of dealer and distributor and designated the discounts to be allowed to each of them. The discounts to dealers was 5 percent and that to jobbers or distributors was 5 percent and 5 percent. Each member of the Association submitted a list of persons or firms which he thought were entitled to the dealer or distributor discount. Before being placed on the master list, each of these persons or firms was

voted on by the members of the Association. All members agreed to allow only those firms appearing on the master dealer and distributor list the respective discounts designated for that classification of buyers.

(f) On April 10, 1936, a list of dealers and distributors which had been approved by the North and South Carolina Veneer Package Association was distributed to its members.

(g) The following resolution was adopted at a meeting of the Association held on September 10, 1936:

A resolution was offered and adopted requiring proposed names for consideration as to classification on the Distributor-Dealer list to be in the Secretary's office at least one week before the meeting, so that the Secretary may be allowed time to send the bulletins to each signatory member of the Association, listing proposed names, and requesting that each manufacturer be prepared to vote on the names.

(h) All members agreed that they would stamp all off-grade or No. 2 baskets so that they could be easily identified. It was further agreed that the total amount of No. 2 baskets sold during any season should not under any circumstances exceed 5 percent of the total production of the factory selling same.

(i) The said Association employed representatives to investigate complaints of sales made below the agreed prices and the granting of discounts to persons and firms who were not on the dealer lists.

Eastern Package Association, 1936

PAR. 15. (a) At a meeting of the Eastern Package Association held on January 27, 28 and 29, 1936, prices, terms and conditions of sale of bushel and half bushel baskets were discussed and agreed upon. It was agreed that the f. o. b. factory price was to be the same as the delivered price throughout the territory. The charges for extras such as the various types of covers, loops, printings, etc., were agreed upon. Dealers and distributors were defined at this meeting.

(b) On January 29, 1936, the following bulletin was addressed to the members of the Eastern Package Association by Robert W. Davis, secretary (also secretary of American Veneer Package Association, Inc.):

At the meeting held in Washington, D. C. January 27, 28 and 29, it was agreed that each manufacturer should furnish without delay the following lists:

1. List of dealers including large consumers who are entitled to the 5 percent discount.
2. List of Distributors and Jobbers who are entitled to the 5 percent and 5 percent discount.
3. List of cooperative associations which should go on the dealers list and be entitled to the 5 percent discount.

4. List of cooperative associations which should go on the Distributor-Jobber list and who are entitled to the 5 percent and 5 percent discount.

These lists are to include for the present all of the above for the following states: Entire states of Pennsylvania, New Jersey, Maryland, Delaware and Virginia, the eastern part of West Virginia and the apple growing section of North Carolina, which is Surry and Wilkes counties.

It was agreed that these lists should be in the hands of the Washington office not later than February 6, 1936. It is *extremely important* that *each and every* manufacturer cooperate in this important task. If lists are not received in time, it may be necessary to change the date of the next meeting, which has been called for February 13, 1936, at the Raleigh Hotel, Washington, D. C.

Lists will be kept absolutely confidential by the Secretary's office until the time of the next meeting, when there will be a discussion of a master list from all manufacturers.

(c) The membership agreement of said Association, executed on February 24, 1936, fixed all the terms and conditions of sale covering bushel and half bushel tubs. Among the signatories to the Eastern Package Association Agreement were the following:

Berryville Basket Co., Inc., Berryville, Va.
 William W. Dilks & Son, Inc., Swedesboro, N. J.
 Farmco Package Corporation, Norfolk, Va.
 Goldman Package Manufacturing Company, a corporation, Glassboro, N. J.
 Marvil Package Co., a corporation, Laurel, Del.
 Ramsey Package Corporation, Driver, Va.
 Riverside Manufacturing Co., Murfreesboro, N. C.
 M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., Dividing Creek, N. J.
 Louis P. Finger, trading as Finger Bros., Franklinville, N. J.
 Jersey Package Co., a corporation, Bridgeton, N. J.
 Planters Manufacturing Co., Inc., Portsmouth, Va.
 Virginia Cooperage Co., Inc., Cloverdale, Va.

(d) All the above members on March 1, 1936, issued price schedules showing identical prices of \$1.50 per dozen for Export Bushel Tub with Crown covers. It was understood among them that manufacturers in the North and South Carolina Veneer Package Association would cooperate with the members of the Eastern Package Association in maintaining these prices.

(e) On June 3 and 4, 1936, at a meeting of the Eastern Package Association, the price on Export Bushel Tub with Crown covers was increased to \$1.60 per dozen.

(f) The price schedules were not distributed generally, either to customers or to the members of the trade, but were for the exclusive use of the members of the Association.

(g) The Association employed representatives to check on the sales, by the members, to determine compliance with the agreed prices and also to determine that the proper discounts were made to dealers and distributors. Complaints of sales made below the agreed prices were discussed at Association meetings.

(h) The sale of No. 2 baskets presented a method by which manufacturers could make sales below their agreed prices. This was a subject of discussion at some of the meetings of the Association and certain steps were taken to eliminate the sale of such baskets.

(i) At a meeting of August 21, 1936, it was decided that the manufacturers should pay 10¢ a dozen to the Association on the sale of all off-grade or No. 2 baskets.

Stevenson, Jordan & Harrison

PAR. 16. (a) Frederick W. Masie, a representative of Stevenson, Jordan & Harrison, at the meeting of the Eastern Package Association on November 19, 1936, explained the "live and let live" plan of Stevenson, Jordan & Harrison. F. W. Masie further outlined the plan before the 1936 convention of the American Veneer Package Association, Inc., and before a meeting of the North and South Carolina Veneer Package Association. On F. W. Masie's proposal, Stevenson, Jordan & Harrison was employed to conduct a survey of the entire veneer package industry. The first survey was conducted in the territory covered by the Eastern Package Association, and shortly thereafter a similar survey was conducted in the territory covered by the North and South Carolina Veneer Package Association and the Georgia Basket Association. Shortly thereafter, a further survey was conducted in western New York, the Midwest and Texas. Stevenson, Jordan & Harrison divided the territory into zones known as A, B, C, D, and E (these zones will be described later).

(b) These surveys conducted by Stevenson, Jordan & Harrison in the various territories covered the production and sales of bushel and half bushel baskets and the dollar value thereof, of members in the respective territories for the years 1935 and 1936. The survey for Zones A and C also covered shipments on certain additional types of containers such as hampers, tomato lugs, crates, etc. When the original survey was completed, a statistical report was furnished to each member in the respective territory where the survey was conducted, showing the manufacturers' normal volume relationship over the two-years' period as compared to the total volume of sales in the territory. After this, monthly reports were furnished showing the volume of sales of each member as compared to the total volume. The compensation paid Stevenson, Jordan & Harrison for the service performed amounted to \$1,000 monthly from each association.

(c) It was the practice of the various zone secretaries, who were employees of Stevenson, Jordan & Harrison, to persuade manufacturers to hold their production within their normal position as in-

licated by the survey above described. F. W. Masie and the zone secretaries have attempted to impress on manufacturers in various zones the necessity for not exceeding their so-called normal positions. The members were told that they could increase their volume relationship only by taking some of another manufacturer's volume. In many instances the zone secretaries and F. W. Masie obtained assurances from members that they would curtail their production so that it would remain somewhat within its so-called normal volume. At any time it was found that a manufacturer was exceeding to any great extent his normal production, he was contacted by the zone secretary or by F. W. Masie and requested to curtail his production, and wherever possible, promises were obtained from such manufacturers that they would reduce their production so that their normal volume would not greatly exceed that shown in the original survey. Manufacturers in the various zones expected the operations of Stevenson, Jordan & Harrison to stabilize and increase prices.

(d) The principal method employed by the several manufacturing respondents, under the guidance of respondents Stevenson, Jordan & Harrison, for the purpose and with the effect of restricting price competition, was to divide the territory in which their producing plants were located and into which their products were shipped, into zones. These zones were geographic areas, each composed of more than one State and/or parts of States and with definite, exact boundary lines. Effective within each of these zones prices were filed by the producers with the zone secretary after conference and discussion among the producers in the respective zones. The filed prices were the same for delivery at all points throughout a particular zone and for all producers therein, without regard to the fact that costs of delivery varied substantially between the respective producing points and any given place of delivery. Transportation rates and costs, from respondents' shipping points in a particular zone to given destinations within the same zone, varied substantially.

(e) The members of the various zones filed both current and future prices with their respective zone secretaries. These prices were distributed to the members of the zone in which they were filed by the zone secretary thereof. The prices were also filed by the various zone secretaries with American Veneer Package Association, Inc., the secretary of which Association distributed the prices to member manufacturers in all the zones who were interested in making sales to the zone in which the filed prices were effective. The prices filed as applicable within each zone were identical, but the prices of various zones differed. In some instances there were deviations from filed prices. As a general practice, neither the filed price lists nor the

statistical information were published or furnished to customers of the trade. Such information and price lists were filed for the confidential use of members only.

(f) Representatives of Stevenson, Jordan & Harrison checked the invoices of the members of various zones and if, as a result of said checking, a member was found to have made sales below filed prices either in his own zone or in another or if he was found to have quoted a discount to others than those appearing on the dealer and distributor list, such member or members were contacted by representatives of Stevenson, Jordan & Harrison. An attempt was made to persuade such member or members to discontinue making sales at prices below those filed for his own zone and to discontinue making sales outside his or their zone at prices below those filed by members operating in outside zones and also to discontinue money discounts to others than those who appeared on distributors' lists.

Southern Package Association, Inc.

PAR. 17. (a) Stevenson, Jordan & Harrison conducted a survey of the business of the members of the North and South Carolina Veneer Package Association and Georgia Basket Association in the early part of 1937. The survey covered the sales of the members for 1935 and 1936. After the survey was completed, a statistical report was furnished to each member disclosing his volume relationship as against the total volume sold in the territory where he operated. The purpose and intent of determining the normal volume relationship of each member was to stabilize prices.

(b) After the survey had been completed by Stevenson, Jordan & Harrison, the members of the Georgia Basket Association voted to include the members of the North and South Carolina Veneer Package Association in its membership. The name of Georgia Basket Association was formally changed to the Southern Package Association, Inc., on June 28, 1937. The 1936 membership contracts of both Associations were continued and extended through 1937. The prices established by agreement and in force in the early part of 1937 were left undisturbed and continued in force until subsequently changed. The established dealer and distributor list also continued in effect until the mechanics of its composition were subsequently changed. The territory covered by the Southern Package Association, Inc., was known as Zone C, and included South Carolina, Georgia, Alabama, and North Carolina, excepting the counties of Surry and Wilkes. The secretary of said Association was Norman G. Asbury, an employee of Stevenson, Jordan & Harrison.

(c) Prior to the formal adoption of the name Southern Package Association, Inc., meetings were held at which prices to be filed were discussed. On May 3, May 8 and June 15, 1937, several members of said Association filed identical prices, to wit, 15½¢ each, on Export Bushel Tubs with Crown Covers.

(d) On May 13, 1937, H. J. Linder, president of Southern Package Association, Inc., addressed a communication to a member, which is in part as follows:

I am sorry that I have failed to advise you sooner the results of our May 3 meeting in Augusta. However, the matter of most importance was covered in the price filing sent out from Atlanta, copy of which we feel sure you must have.

* * * * *

The levels proposed at this meeting were the best that could be worked out of several conflicting conditions. You will note the reduction of 1¢ on tomato lugs. This was heartbreaking to me but it was absolutely necessary. * * *

(e) The secretary of the Association was able at all times to determine the exact amount sold by each member and the prices, terms and conditions of sale prevailing with each, as all members filed their invoices with the secretary of the Association or allowed him to check the invoice records at their respective offices.

(f) On June 8, 1937, Secretary Norman G. Asbury addressed a bulletin to all members of the Association, the last paragraph of which is as follows:

When filing lists outside of your normal membership zone, be sure that list does in no way run counter to the accepted practice as followed in the territory in question.

(g) At meetings of said Association held on August 20, and October 4 and 5, 1937, identical price lists were filed by several of the members of said Association. None of the price lists filed was distributed either to the customers or the trade. They were for the use of, and distributed to, members only.

(h) The 1937 Georgia peach crop was approximately 30 percent of normal. Secretary Norman G. Asbury advised members of this condition and further warned them to refrain from producing more than 30 percent of their normal volume. As a result of the efforts of Secretary Asbury, the factories of the members did not start operating during the 1937 season until April of that year. Generally, factory operations begin in February. Secretary Asbury further attempted to persuade the members to sell only to their regular customers.

(i) Each member submitted a list of those persons or firms which he felt were entitled to the dealer or distributor discount. The lists submitted by the various members were compiled into a master list,

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which was distributed to all members. It was understood that all members would allow discounts only to those persons or firms appearing on the dealer and distributor list. On June 8, 1937, Secretary Asbury addressed a bulletin to all members, in part as follows:

You have been supplied with a complete list of customers in your zone who are to be allowed a dealer's discount.

If in quoting in any of the other zones you are in doubt as to whether or not a customer is a listed dealer, please contact your secretary for information.

We are having the cooperation of other zones in this regard, and it is to be desired that we reciprocate in kind.

(j) The statistical information and the dealer and distributor list were discussed in Association meetings. Such information was filed for the use of members only. It was not distributed to the trade or to competing nonmembers.

(k) The membership of the Southern Package Association, Inc., on November 5, 1937, consisted of the following:

W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Co., Williston, S. C.

Leigh Banana Case Co., 1421 South Aberdeen Street, Chicago, Ill., a corporation.

B. E. Martin, Mount Olive, N. C.

Patten Package Co., Inc., Calypaso, N. C.

Farmco Package Corporation, Norfolk, Va.

Planters Manufacturing Company, Inc., Portsmouth, Va.

Adkins Manufacturing Co., Gainesville, Fla., a corporation.

Georgia Veneer & Package Co., a corporation, Brunswick, Ga.

Pierpont Manufacturing Co., a corporation, Savannah, Ga.

Marvil Package Co., Laurel, Del., a corporation.

Hollywood-Beaufort Package Corporation, Norfolk, Va.

Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Wilmington, N. C.

Mount Olive Manufacturing Co., a corporation, Mount Olive, N. C.

Riverside Manufacturing Co., Murfreesboro, N. C., a corporation.

Alabama Basket Co., Inc., Eufaula, Ala.

Dayton Veneer & Lumber Mills, Dayton, Tenn., a corporation.

John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co., Cuthbert, Ga.

Southern Crate & Veneer Co., Macon, Ga., a corporation.

Edgerton Manufacturing Co., Plymouth, Ind., a corporation.

Evansville Container Co., Evansville, Ind., a corporation.

Eastern Package Association, 1937

PAR. 18. (a) During the latter part of 1936 and in January 1937, Stevenson, Jordan & Harrison conducted a survey of the membership

of the Eastern Package Association. The survey was conducted for the purpose of determining the volume relationship of each member as compared to the total volume sold during the years 1935 and 1936 and covered only the sale of bushel and half bushel baskets. When the original survey was completed, Stevenson, Jordan & Harrison furnished statistical information to members of the Association which indicated their normal position in the industry in the territory in which they operated, and which territory was designated as Zone B, which included Virginia, Maryland, Delaware, New Jersey, the counties of the State of Pennsylvania east of and including the counties of Tioga, Lycoming, Union, Mifflin, Cambria, Somerset; the counties of the State of West Virginia east of and including the counties of Monongalia, Taylor, Preston, Tucker, Randolph, Webster, Braxton, Clay, Nicholas, Fayette, Boone, Logan, Wyoming, and McDowell; and the counties of Wilkes and Surry in the State of North Carolina.

(b) After the original survey was completed, monthly reports were compiled by N. G. Cameron of the firm of Stevenson, Jordan & Harrison, showing the percentage to the total volume produced by each member in a particular month. All members submitted copies of the invoices to N. G. Cameron, from which he prepared these statistics. Neither the result of the original survey nor any of the monthly statistical reports were published or distributed to the trade. These were for the individual use of each participating company. This information was discussed at meetings of the Association.

(c) The membership agreements of Eastern Package Association continued in effect until amendments and revisions were adopted on July 1, 1937. The first filing of prices in this territory occurred on January 15, 1937, at which time a price of \$1.75 per dozen for Export Bushel Tubs with Crown Covers was filed by 14 members of the Association. Practically all of these lists were effective from January 15 to May 1, 1937.

(d) At a meeting held on January 14, 1937, it was agreed that all companies would file their unfilled orders with the Secretary of the Association, or N. G. Cameron, who was preparing statistics; said Cameron, in a letter to the secretary dated March 24, 1937, stated in part:

In this way we shall be able to recognize prior commitments on future invoices which may appear to be out of line.

The secretary of the Association, in his response on March 25, 1937, enclosed "a list of the unfilled orders which the members of the Eastern Package Association reported * * * as of January 15".

(e) At practically all of the meetings held, prices were discussed and each member knew the prices which the others were expected to file.

All members filed the same prices, and these prices were generally maintained.

(f) In August, 1937, Willis E. Hargroves, president of the respondent member Planters Manufacturing Co., Inc., purchased 12,000 dozen baskets from an Alabama manufacturer to prevent these baskets from being shipped and sold in Zone B at prices below those prevailing in said zone.

(g) Stevenson, Jordan & Harrison continually checked on the sales of members. N. G. Cameron of said firm, who compiled the statistics of this Association, at all times had access to the invoices which disclosed the prices and discounts at which sales were made. F. W. Masie and N. G. Cameron, both respectively of the firm of Stevenson, Jordan & Harrison, investigated complaints that other than the regular prices and discounts were allowed. Houston-White Co. and George A. Bounds & Co., two nonmember manufacturers in this territory, at times allowed larger discounts than the agreed discounts of the Association members. This caused some Association members, on occasion, to lower the agreed prices. Considerable effort was made to have both of these companies become members. On November 1, 1937, F. W. Masie wrote a letter to Houston-White Co., which is in part as follows:

It is practically impossible to accomplish the desired result unless we have all important members of the industry, striving toward a common goal.

Volume has been satisfactory this year and all members have enjoyed a reasonable share; however, we must look forward to the likely possibility of short crops next season, in some areas, and guard against the natural desire for volume at the expense of a demoralized level which is inevitable unless some restraint is practiced. How best to arrive at a solution to this problem may only be reached in formulating a definite program.

We need every industry member to assist in this respect to lend his support and enter into the discussions now under way.

(h) Each member submitted a list of the names which he thought should be entitled to the trade discounts usually allowed to dealers and distributors. Such names were compiled into a master list and were submitted to the members of the Association. They were not distributed to the trade or published. Stevenson, Jordan & Harrison checked all sales to determine whether or not dealer or distributor discounts were allowed to any firm whose name did not appear on the list. For example, N. G. Cameron, on June 9, 1937, addressed a letter to a member of the Association, which is in part as follows:

In summarizing your Invoices for the May report, I observed several sales were made to Gerson & McCormick, Bridgeton, New Jersey, at a 5 percent discount.

Inasmuch as this customer does not appear on the list of dealers entitled to this discount, I should appreciate knowing the facts surrounding this case.

(i) The members of the Eastern Package Association, as of February 28, 1938, were as follows:

Berryville Basket Co., Inc., Berryville, Va.

M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., Dividing Creek, N. J.

William W. Dilks & Son, Inc., Swedesboro, N. J., a corporation.

Farmco Package Corporation, Norfolk, Va.

Louis P. Finger, trading as Finger Bros., Franklinville, N. J.

Goldman Package Manufacturing Co., a corporation, Glassboro, N. J.

Jersey Package Co., Bridgeton, N. J., a corporation.

Marvil Package Co., Laurel, Del., a corporation.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Ramsey Package Corporation, Driver, Va.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.

Virginia Cooperaage Co., Inc., Cloverdale, Va.

(H. R. Linsbury & Sons resigned in December, 1937.)

Northeastern Veneer Package Association

PAR. 19. (a) Early in 1937 Stevenson, Jordan & Harrison conducted a survey of veneer package manufacturers in the territory known as Zone A, which included all of the New England States, the State of New York, the following counties in the State of Pennsylvania west of and including Potter, Clinton, Centre, Indiana, Clearfield, Westmoreland, and Fayette; the counties in the State of West Virginia west of, but not including, the counties of Monogalia, Taylor, Preston, Tucker, Randolph, Webster, Braxton, Clay, Nicholas, Fayette, Boone, Logan, Wyoming, and McDowell; and the State of Ohio. The State of Ohio and the western part of West Virginia were also considered jointly as a part of Zone E. There was no association or organization of the veneer package manufacturers in this territory until the formation of the Northeastern Veneer Package Association early in 1937 by Stevenson, Jordan & Harrison. The Secretary and Treasurer of said Association was George A. Cooper, an employee of Stevenson, Jordan & Harrison. The first meeting of said Association was held on February 3, 1937.

(b) The survey conducted by Stevenson, Jordan & Harrison covered the sale of bushel and half bushel tubs, hampers, tomato lugs, and other additional types of containers, during the years 1934, 1935 and 1936. Upon completion of the survey, each member was furnished with a statistical report showing his relative percentage of

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volume as against the total volume sold in the territory. These percentages were accepted by the members as normal and treated as such. Following this a monthly report was submitted to the membership disclosing to each his relative position. Statistical information furnished to the membership of the Association by Stevenson, Jordan & Harrison was compiled from invoices submitted by members to the secretary. Such statistics as were received by members were for their confidential use only, and were not published or distributed to the trade. Secretary Cooper and F. W. Masie attempted to persuade members of said Association to maintain their so-called normal volume of production, or at least to refrain from exceeding it.

(c) Both current and future prices were filed by different members of the Association. Price lists filed covered the same territory and contained identical terms and conditions of sale. Not all members filed prices with the Association, and such price lists as were filed were not distributed to the trade or published, but were used for distribution to members only, except where the American Veneer Package Association, Inc., distributed such lists to members of other associations in the other zones. It was understood among the members that they would follow the filed prices of the firm doing the filing. F. W. Masie in a letter to Secretary Cooper dated April 20, 1937, in part stated as follows:

With regard to Trade Practice Rules, I have inquired into this, and the suggestion is that if your Group wishes to use the rules as outlined under date of February fifteenth, that some Company in connection with the publication and announcement of their price schedule cover as a part of their present set-up, all of these details. Then if the rest of the members feel disposed to follow leadership for the purpose of a stabilized market, they can observe the terms as set forth in the published list.

This part of the original agreement used by Zone "B" has been divorced from their Constitution and By-Laws, and will, undoubtedly, be set up in the near future in the form of a handbook on Trade Practice or usages in the industry.

(d) On April 26, 1937, F. W. Masie addressed another letter to Secretary G. A. Cooper, which reads in part as follows:

With regard to filed schedule of prices Zone A members it is important that the territory covered by Zone A members be shown on his schedule. In the future, will you kindly see that this matter is covered?

(e) The members of said Association submitted a list of the names of the persons or firms which were considered a dealer or distributor. From all lists submitted, a master list was compiled. It was understood that all members were to allow discounts only to those names appearing on the dealer and distributor list.

(f) The members of the Association agreed to refrain from producing, or at least to curtail the production of, No. 2 baskets.

(g) The membership in this Association as of March 2, 1938, consisted of the following firms:

Acme Veneer Package Co., Inc., Orchard Park, N. Y.
 John Bacon, Inc., Gasport, N. Y.
 Guile & Windnagle, Inc., Penn Yan, N. Y.
 Webster Basket Co., Inc., Webster, N. Y.
 Ellicottville Basket Co., Inc., Ellicottville, N. Y.
 Attica Package Co., Inc., Attica, N. Y.
 Barden & Robeson Co., Penn Yan, N. Y., a corporation.
 Sodus Basket Co., Sodus, N. Y.
 Bellaire & Schroeder, Inc., Hamburg, N. Y.
 Madison County Basket Co., Hamilton, N. Y., a corporation.

Midwest Package Association

PAR. 20. (a) Stevenson, Jordan & Harrison conducted a similar survey of veneer package manufacturers in what was designated as Zone E, which included the States of Michigan, Indiana, Kentucky, Tennessee, Illinois, Iowa, Minnesota, Wisconsin, Missouri, Ohio, and the western part of West Virginia. The State of Ohio and the western part of West Virginia were also considered jointly as a part of Zone A. There was no organization or association of veneer package manufacturers in this territory until the formation of the Midwest Package Association under the supervision of Stevenson, Jordan & Harrison.

(b) The members of said Association on March 2, 1938, consisted of the following:

Berrien County Package Co., a corporation, Benton Harbor, Mich.
 Burlington Basket Co., a corporation, Burlington, Iowa.
 Edgerton Manufacturing Company, a corporation, Plymouth, Ind.
 B. C. Jarrell & Co., Inc., Humboldt, Tenn.
 Swisshelm Veneer Co., a corporation, Mound City, Ill.
 Frank L. Deaner & Sons, Sodus, Mich.
 New Albany Box & Basket Co., a corporation, New Albany, Ind.
 Ottawa Basket Co., a corporation, Oak Harbor, Ohio.
 Roberts-Liggett Co., a corporation, Metropolis, Ill.
 Bloomington Basket Co., Inc., Bloomington, Ind.
 H. A. DuBois & Sons Co., Inc., Cobden, Ill.
 Evansville Container Co., a corporation, Evansville, Ind.
 Newton Box & Basket Co., Inc., Newton, Ill.
 H. A. Schwarz, an individual doing business under the firm name of Schwarz Basket & Box Co., Topeka, Kans.
 Paducah Box & Basket Co., a corporation, Paducah, Ky.

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Harrison Manufacturing Co., a corporation, Shelby, Mich.
Pierce-Williams Co., a corporation, Jonesboro, Ark.
Strawberry Crate Co., Inc., Portland, Tenn.

The secretary of said Association was J. L. Giacomino, an employee of Stevenson, Jordan & Harrison.

(c) Members of said Association filed current and future prices with the Secretary. There were three divisions of the territory known as Zone E for price filing purposes, as price lists were filed for these respective territories. For example, on July 31, 1937, a price of 12½¢ each was filed on three-hoop round bottom baskets with Star covers in one territory, while a price of 13¼¢ was filed for another territory. The prices filed for use within each territory were identical and the terms and conditions of sale were the same.

(d) Prices were discussed in Association meetings and each member knew the prices which others expected to file. It was understood that members would abide by the filed price until a new price was filed. The prices filed were for the exclusive use of members only and were not published or distributed to the trade except that copies of said filed prices were forwarded by the secretary to the secretaries of the other zone associations, who in turn distributed the said prices to members of their respective associations.

(e) The members of this group, when they employed Stevenson, Jordan & Harrison, intended that prices should be stabilized and increased. A member manufacturer on February 1, 1937, wrote to F. W. Masie of Stevenson, Jordan & Harrison in part as follows:

We are not interested in the bushel basket business until the price can be increased to say 50% over the present market.

F. W. Masie's reply dated February 5, 1937, is in part as follows:

I do not know whether you are familiar with the progress we are making in organizing the bushel basket manufacturers and so, assuming that you are not, I am pleased to give you a brief resume of our activities since the first of the year.

Early in January we were authorized to make a survey of the Eastern Package Association and also employed as Business Managers to guide and direct the activities of this group. A short time later similar authorization was secured from the manufacturers located in New York state and a group was set up, covering the western part of the state of Pennsylvania and the New England states.

Last week it was my pleasure to meet with the manufacturers in Texas and they were favorably inclined toward our plan.

At the present time, we are endeavoring to have a meeting with the Kentucky-Tennessee manufacturers and also a meeting with the so-called Midwest group.

Next Thursday, I shall attend a meeting of the North and South Carolina manufacturers, who have extended me an invitation to outline our plan.

It is realized we have quite a job on our hands in organizing this industry, which for the past several years has been in rather chaotic condition. We are, nevertheless, hopeful of the ultimate outcome which will result in stabilization and a reasonable price for bushel baskets.

(f) F. W. Masie and Secretary Giacomino contacted members to persuade them the only way to stabilize prices was to control volume. The success of the efforts of Stevenson, Jordan & Harrison is noted in a letter of F. W. Masie to Secretary Giacomino, dated June 30, 1937, which is in part as follows:

* * * There has already developed a degree of stability and the prices which manufacturers on the whole are receiving should represent a reasonable profit at these volumes.

* * * If we can finally convince the industry that *volume alone* is not the answer, we will then have solved their problem, but until we accomplish this there will be many headaches.

(g) Dealers and distributors were classified by the members of the Association and the names of such were placed on a master list. On April 14, 1937, F. W. Masie, in a communication to Secretary Giacomino, stated in part as follows:

The best manner in which to handle the dealer question, after the "kinks" have been ironed out, is to have each member file a full list of the dealers they sell and have it attached to their filed prices. In this manner they state, in effect, these, and only these dealers, are the ones we allow a discount of 7% and before a name is allowed by this manufacturer he must advise of the additional name. Your Group should have a distinct classification for dealers—a classification that covers the services a dealer will render to entitle him to a discount. The fewer names on the list the better. Dealers present quite a problem in the Eastern Zones.

(h) Secretary J. L. Giacomino checked the invoices of the members to determine compliance with the filed prices and to see that the proper discounts were made only to those on the dealer and distributor lists.

(i) Reports of the sales of No. 2 baskets were made by the members to the secretary. A bulletin of the secretary, dated May 19, 1937, stated in part as follows:

Any member whose sales of (2) baskets * * * exceeds 1% of his total monthly volume shall have his name brought before the meeting and his percentage announced.

Zone "D"—Texas Group

PAR. 21. Stevenson, Jordan & Harrison conducted a similar survey of veneer package manufacturers in what was designated as Zone D, which included all the States west of the Mississippi and east of the Rocky Mountains, in which veneer package manufacturers and customers were located. The headquarters of this group were located

in Texarkana, Texas. Its activities were similar to those of the other groups and zone organizations as heretofore described and involved the purpose and effect of establishing non-competitive prices and stabilizing the relative volumes of business done by the various members.

Inter-Zone Group Cooperation

PAR. 22. (a) It was understood that members of the various zone associations would protect the prices filed in the different zones. Members of the various zone associations did cooperate in the maintenance of these prices. Members agreed that they would not ship into an adjoining zone without conforming to the prices prevalent in the zone of the vendee.

(b) After Stevenson, Jordan & Harrison became the business managers of the various zones, a closer cooperation existed between and among the respective zones. The zone secretaries, who were employees of Stevenson, Jordan & Harrison, and the managing directors of each respective zone, under the general supervision of F. W. Masie, an official of Stevenson, Jordan & Harrison, received the filed prices from the members and distributed them to the other secretaries, respectively, and to the secretary of the American Veneer Package Association, Inc. The secretary of the American Veneer Package Association, Inc., collaborated with the various secretaries in a general distribution of prices to all members of all zones. Members were instructed when selling in other zones to obtain information from their zone secretary as to whether the proposed vendee was a dealer or distributor. The purpose was to protect the prices and discounts prevalent in the various zones. In the interest of furthering inter-zone relations, representatives of the different zones were invited to attend and did attend the meetings of other zone Associations; joint meetings of some of the zone Associations were held; F. W. Masie, the general supervisor of all the various zones, attended the different zone meetings and reported the progress of the other zones; price lists and dealer lists of other zones were discussed at the different zone meetings.

PAR. 23. The record contains affidavits from each of the following respondents: Pierpont Manufacturing Co., Adkins Manufacturing Co., Georgia Veneer and Package Co. and Southern Crate and Veneer Co. Said affidavits deny that said four respondents were parties to the alleged combination and conspiracy. The record contains evidence that the said four respondents in 1936 and 1937 were members of respondent associations and engaged in the practices complained of. The said four respondents are respondents in Docket No. 3289, Standard Container Manufacturers' Association, Inc., et al., which involves

similar charges as in the instant matter and in which the Commission issued its cease and desist order on March 5, 1940.¹ Although the record in the instant case supports the allegations of the complaint with respect to said respondents, it does not appear necessary to subject the said respondents to the order issued in the instant matter as they are bound by a similar order issued in said Docket No. 3289.

PAR. 24. It appears that respondent Ross R. Guthrie was not associated with the respondents herein except when in 1937 he was acting in a clerical capacity as secretary of respondent Eastern Package Association, which association was then operating under the control of respondent Chairman Frederick W. Masie, who was a representative of respondents Stevenson, Jordan & Harrison.

CONCLUSION

Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as above set forth, are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among the member respondents of the respondent associations in the sale of veneer fruit and vegetable containers and the parts thereof in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in the respondents the power to control and enhance prices; have unreasonably restrained such commerce in veneer fruit and vegetable containers and the parts thereof and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answers of respondents; a stipulation as to the facts entered into between counsel representing the respondent associations, their respondent officers (excepting 5 respondent secretaries) and their respondent members (excepting 14 respondent members) and W. T. Kelley, Chief Counsel for the Commission, which provides among other things that without further evidence or other intervening procedure, the Commission may issue and serve upon the aforementioned respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding (the Commission, on October 25, 1939, granted the motion of counsel for respondents Georgia Veneer & Package Co. and the Southern Crate & Veneer Co. to expunge their names from the said stipulation for the reason that the said names were included therein

¹ 30 F. T. C. 577.

through misunderstanding); statement of admitted facts signed by counsel for the respondents designated under the firm name of Stevenson, Jordan & Harrison; the answers of respondents Evansville Container Co., Swisshelm Veneer Co. and Newton Box & Basket Co., Inc., in which answers the said three respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to the said facts; other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designaed by it, in support of the allegations of said complaint and affidavits in opposition thereto with respect to respondents Pierpont Manufacturing Co., Adkins Manufacturing Co., Georgia Veneer & Package Co. and Southern Crate & Veneer Co.; and briefs filed herein in support of, and in answer to, said respondents Stevenson, Jordan & Harrison; other respondents not having filed briefs and oral arguments not having been requested by any of the respondents, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents:

1. American Veneer Package Association, Inc., and its officers as follows: president, Frank M. Harrison; vice-president, George Talbot, Jr.; vice-president, R. O. Fletcher; treasurer, Willis W. Hargroves; secretary-manager, Robert W. Davis; (2) Eastern Package Association, its chairman, Frederick W. Masie; and its members as follows: Berryville Basket Co., Inc., M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., William W. Dilks & Son, Inc., Farmco Package Corporation, Louis P. Finger, trading as Finger Bros., Goldman Package Manufacturing Co., a corporation, Jersey Package Co., a corporation, Marvil Package Co., a corporation, Planters Manufacturing Co., Inc., Ramsey Package Corporation, Riverside Manufacturing Co., a corporation; Virginia Cooperage Co., Inc.; (3) Southern Package Association, Inc., its officers as follows: Chairman, Herbert J. Linder; vice-president, Walter E. Morgan; secretary, Norman G. Asbury; treasurer, D. E. Shuman; and its members as follows: W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Co.; Leigh Banana Case Co., a corporation, B. E. Martin, Patten Package Co., Inc., Farmco Package Corporation, Planters Manufacturing Co., Inc., Marvil Package Co., a corporation, Evansville Container Co., a corporation, Hollywood-Beaufort Package Corporation; Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Mount Olive Manufacturing Co., a corporation; River-

side Manufacturing Co., a corporation, Alabama Basket Co., Inc.; Dayton Veneer & Lumber Mills, a corporation; John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co.; Edgerton Manufacturing Co.; (4) The Stevenson Corporation, Charles R. Stevenson; T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. P. Platt, Howard Marvin and D. M. Metzger, partners, doing business under the firm name of Stevenson, Jordan & Harrison; (5) Northeastern Veneer Package Association, its officers as follows: President, B. H. Droman; vice-president, T. W. Windnagle; secretary-treasurer, George A. Cooper, and its members as follows: Acme Veneer Package Co., Inc.; John Bacon, Inc.; Guile & Windnagle, Inc.; Webster Basket Co., Inc.; Ellicottville Basket Co., Inc.; Attica Package Co., Inc.; Barden & Robeson Corporation; Sodus Basket Co.; Bellaire & Schroeder, Inc.; Madison County Basket Co., a corporation; (6) Midwest Package Association, its officers as follows: President, George H. Talbot, Sr.; vice-president, S. C. Bulliet; secretary-treasurer, J. L. Giacomino; and its members as follows: Berrien County Package Co., a corporation; Burlington Basket Co.; Edgerton Manufacturing Co., a corporation; B. C. Jarrell & Co., a corporation; Swisshelm Veneer Co., a corporation; Frank L. Deaner & Sons; New Albany Box & Basket Co., a corporation; Ottawa Basket Co., a corporation; Roberts-Liggett Co.; Bloomington Basket Co., Inc.; H. A. DuBois & Sons Co., Inc.; Evansville Container Company; Newton Box & Basket Company, Inc.; H. A. Schwarz, an individual doing business under the firm name of Schwarz Basket & Box Co.; Paducah Box & Basket Co., a corporation; Harrison Manufacturing Co., a corporation; Pierce-Williams Co.; Strawberry Crate Co., Inc.; and their agents, representatives, and employees, in connection with the offering for sale, sale and distribution of veneer containers, used in the packaging of fruit and vegetables, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, carrying out, or aiding or abetting the carrying out of, any agreement, understanding, combination or conspiracy between and among any two or more of said respondents, for the purpose or with the effect of restricting, restraining or monopolizing, or eliminating competition in, the purchase or sale in said commerce of any of such products, and from doing any of the following acts and things pursuant thereto:

1. Fixing and maintaining uniform prices.
2. Fixing and maintaining uniform discounts or other terms and conditions of sale.

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3. Compiling, publishing and distributing any uniform compilation of prices or other information to be used in connection with the fixing of prices, discounts, terms and conditions of sale.

4. Determining or establishing any system of zones throughout the United States in connection with the fixing of prices, discounts, terms and conditions of sale.

5. Adopting any joint or uniform price list or other device which fixes prices.

6. Agreeing to curtail the production of veneer fruit and vegetable containers, and the parts thereof, in connection with the fixing of prices.

7. Preparing, publishing and circulating lists of recognized jobbers and dealers for the purpose or with the effect of indicating that specified persons or concerns as jobbers are recognized as entitled to receive special jobber discounts, that specified persons or concerns as dealers are entitled to receive special dealer discounts, and that other persons or concerns are not so entitled.

8. Adopting and taking any other concerted or cooperative action to carry out or make effective the acts and things as set forth in the said findings of fact herein, in furtherance of said understandings, agreements, combinations, or conspiracies.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondents Ross R. Guthrie, Pierpont Manufacturing Co., Adkins Manufacturing Co., Georgia Veneer and Package Co., and Southern Crate and Veneer Co.

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

AMERICAN DISTRIBUTORS, INC., UNITED ADVERTISING COMPANIES, INC., AND JOHN H. MORGAN, DOING BUSINESS AS CHAMPION PRODUCTS COMPANY

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

Docket 3918. Complaint, Oct. 7, 1939—Decision, Mar. 15, 1940

Where an individual engaged in sale and distribution of medicinal preparation which he designated as "Vita-Perles" and which was claimed by him to contain Vitamins A, B-1, D, G, and E, and corporation which he caused to be organized and of which he was president, and which, following such organization, continued to carry on, as theretofore conducted by him, sale and distribution of said product, in commerce among the various States, to purchasers in other States and in the District of Columbia; and a concern which acted as their advertising agent and participated in preparation and dissemination of advertising matter as below set forth; in advertisements which they disseminated concerning said "Vita-Perles" through the mails, through newspapers and periodicals of general circulation and through circulars and other printed matter distributed in commerce among the various States and in other ways, and which were intended and likely to induce purchase of such medicinal preparation—

- (a) Represented that said product might be obtained and tested "without risking a single penny," facts being it could not be obtained and tested in fashion proposed by them without any risk of money;
- (b) Represented that backache, headache, loss of appetite and energy, faulty vision, reduced resistance to infection, premature evidence of advancing age, and various other ailments and conditions, were caused by vitamin deficiency, and that such conditions would be relieved or corrected by use of preparation in question, and that those who were thin, pale and sickly would, by the use thereof, acquire additional weight, improved complexion, increased resistance to colds and infection, and improved appetite, and become less nervous, facts being ailments, conditions and symptoms specified and indicated were not positive or usual indications of deficiency in Vitamins A, B-1, D, G, or E, usual adult diet in United States furnishes supply of such vitamins adequate for ordinary health, energy, development and resistance to disease, and product in question, except in cases of actual deficiency in one or more of the vitamins contained by it, and existence of which can be determined only by physicians after consideration of many factors, including objective symptoms as one only, is of no therapeutic, preventive or tonic value;
- (c) Represented that impairment or premature loss of sexual desire, vigor or potency in the male was due to a vitamin deficiency, and would be restored or improved by use of said preparation, and that its use would increase the general strength and energy, facts being such impairment, whether premature or otherwise, is not due to deficiency of Vitamin E or any other vitamin, and will not be restored, improved or remedied by use of said "Vita-Perles" or vitamin referred to; and