

IN THE MATTER OF

HARDWOOD CHARCOAL COMPANY, MANUFACTURERS
CHARCOAL COMPANY, TENNESSEE EASTMAN COR-
PORATION, CLIFFS-DOW CHEMICAL COMPANY, 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 3670. Complaint, Feb. 17, 1939.¹—Decision, Aug. 9, 1940*

Where two corporate entities which, (1) together with two other aggregations of concerns and individuals, as below set forth, produced about 65 percent of all the hardwood charcoal made in the United States, (2) were, along with said aggregations and the component concerns and individuals making up the same, in active and substantial competition with one another in sale of said product in trade and commerce among the various States and in the District of Columbia, prior to and but for the acts and practices below set forth, and which, (3) along with said other groups, etc., in various combinations, and as below described, entered into and carried out agreements to suppress and eliminate price competition among themselves in sale and distribution of said product, and which two, respectively, were—

I. Tennessee selling agency organized in 1932 to act as exclusive agent in sale and distribution of hardwood charcoal produced by its three corporate "hardwood members" in certain areas of the United States and particularly in the southern part thereof, and including the States of Arkansas, Tennessee, Mississippi, Alabama, and some parts of Louisiana, Georgia, Texas, Oklahoma, Missouri, Kentucky, and Florida, and which, as such exclusive agent and within said area, handled entire charcoal output of its members and set prices at which said product was sold throughout such area, and shipped or caused to be shipped said product to the purchasers at their respective points of location in the several States other than the States of origin of such shipments; and

II. Tennessee producing company, engaged among other things, in producing charcoal as byproduct of hardwood distillation, and in selling and distributing same to distributors and dealers at various points throughout the United States and in said District, and in shipping or causing its product to be shipped to purchasers at their respective points of location, in substantial competition with pit or kiln produced hardwood charcoal and pine charcoal for same common purposes—

- (a) Entered into and, since 1932, had, and carried out, a continuous understanding and agreement whereby said agency filled orders received by said producer from latter's customers (in cases in which producer had insufficient supply of own product so to do), and under practice by which particular member of said agency filling order (contract for which was between said producer and its purchaser-customer and with price of which particular member filling order had nothing to do), placed in bags bearing trade name of producer charcoal produced by particular member, with no indication on bags or receptacles that contents were packed for seller, contrary to

¹ Amended.

sellers' common practice throughout the United States of placing upon merchandise not made, produced, or packed by said sellers, or upon containers thereof, sellers' own trade-mark, trade name or other trade identification, accompanied by statement that such merchandise was manufactured or packed for sellers in question; and

Where said Tennessee selling agency, as above described, and Pennsylvania sales organization which operated substantially on nonprofit basis in sale of hardwood charcoal produced by distillation method by its various Pennsylvania and New York members, under agency contracts therewith, and which, acting as such sales agent, sold and distributed hardwood charcoal to distributors and dealers thereof at various points throughout the United States—

- (b) Entered into agreement to fix and maintain identical delivered prices at which hardwood charcoal was to be sold at destination points in the United States, and, since 1932 organization of said Tennessee agency, entered into and carried out an understanding or agreement to exchange information as to delivered prices at which each sold its charcoal to distributors and dealers and as to sales policies, accounting methods and charcoal situation in their respective territories, and other information, with intent better to effectuate said delivered price agreement aforesaid;
- (c) Entered into and carried out 1933 agreement or understanding in behalf of said Pennsylvania agency concern and its members and said Tennessee agency, for allocation of certain territories of the United States to one another, and, under quota system adopted, severally and reciprocally limited, for period of years in furtherance thereof, respective amounts of hardwood charcoal which each might and did seek to sell and deliver to customers in territory allotted, under which, as brokerage arrangement, latter paid former certain amount per ton for handling charcoal of latter's members, with former, or Pennsylvania agency, assuming credit responsibility as sole brokers for other in eastern market, and with other's accounts in eastern area protected so far as concerned receipt of sufficient tonnage;
- (d) Entered into and carried out 1934 agreement or understanding as to distributors in eastern market to whom neither would sell as, in their joint opinion, neither substantial nor reliable, and limited thereby number of dealers to whom they would sell their respective products;
- (e) Entered into and carried out 1935 and 1936 understanding and agreement to fix and maintain uniform resale prices at which hardwood charcoal was to be sold at retail at certain destination points; and
- (f) Entered into and carried out 1935 understanding and agreement not to solicit one another's customers; and

Where said four corporate organizations, i. e., said Tennessee and Pennsylvania selling concerns or agencies, said Tennessee producer, and Michigan producer which, among other activities, produced charcoal as byproduct of hardwood distillation and sold and distributed the same throughout the United States to distributors and dealers at various points—

- (g) Entered into and carried out June 4, 1935, understanding and agreement to fix and maintain identical delivered prices at which they would sell hardwood charcoal to dealers and distributors thereof at destination points throughout the United States; and

Where some fifteen Pennsylvania and New York corporate, partnership or individual businesses engaged as small producers in manufacture of hardwood

charcoal by distillation method, and in sale and distribution thereof to distributors and dealers at various points throughout the United States; with intent, tendency and effect of suppressing and eliminating all substantial price competition between said Pennsylvania selling agency and members thereof, and between and among such members themselves, and between said members and said Tennessee selling agency and its members, and said Tennessee and Michigan and other producers, and sales agents for producers of hardwood charcoal in making and seeking to make sales of said product in trade and commerce among the various States and in the District of Columbia, and as the case might be—

- (h) Entered into and carried out 1935 exclusive sales contracts with said Pennsylvania selling agency, under which the 13 then involved could sell product only to said sales agency, and under which exact price to be received as agency members, unknown at time of various sales, was determined by price received by agency, less amount fixed by latter to cover its operations, with credit risks assumed by it; and
- (i) Entered into 1936 contracts, in response to said selling agency's expressed desire to act as selling agency for two concerns involved and eliminate their competition with it in sale of their products, under which agency was granted right to purchase concerns' entire output, excepting certain specified customers only, and producer, who exchanged information with said Pennsylvania and Tennessee selling agencies as to prices to be charged for product, received from agency specified sum therefor; and
- (j) Entered into 1936 agreement with producer under which business and successor business concerned agreed to sell entire output to said Pennsylvania selling agency, with 3-month retort shut down annually, shipments to be made as directed by agency, and monthly payments to be amount equal to market price at time of purchase, less amount fixed by agency to cover its costs of operation; and

Where said Pennsylvania selling agency, or such various producers acting through it, pursuant to and as result of agreements or understandings between and among said agency's members, as hereinabove set forth—

- (k) Purchased from Canadian concern 35 cars of charcoal, or entire Canadian charcoal output entering United States during 2 or 3 month period involved; with intent to prevent Canadian product from competing with that produced by said producer members and sold and distributed by said agency on its own behalf and for benefit of such members in commerce among the States;

With result that tendency and capacity of such agreements, and acts and practices performed pursuant thereto and in furtherance thereof, as above set forth, were, during periods involved, to unduly and unlawfully restrict and restrain sale of hardwood charcoal to distributors and dealers thereof in United States, and to wholesale and retail trade therein, in trade and commerce in said product between and among the several States and in the District of Columbia, and were to, and did actually, hinder and prevent price competition between and among all of said groups, members, concerns, and individuals in sale and distribution of said product in commerce, and were to enhance substantially prices to consuming public and maintain same at artificial levels and otherwise deprive public of benefits that would flow from normal competition between and among said groups, members, concerns, and individuals;

Held, That such acts and practices of said groups, members, concerns, and individuals, under the circumstances set forth, were all to the prejudice of the public, and had dangerous tendency to hinder and prevent competition in sale and distribution of hardwood charcoal in trade in commerce among the several States, and to place in said various groups, etc., power to control such sale and distribution in the United States, and constituted unfair methods of competition.

Mr. Fletcher G. Cohn for the Commission.

Dixon & Edmondson, of Memphis, Tenn., *Mr. John Gosnell*, of Crossett, Ark., *McConnico, Hatcher & Waller* and *Gaughan, Sifford & Gaughan*, of Nashville, Tenn., for Hardwood Charcoal Co., Tennessee Products Corp., Forest Products Chemical Co., and Crossett Chemical Co.

Downey, Lipper, Shinn & Keeley, of New York City, for Manufacturers Charcoal Co., Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Oswayo Chemical Co., Otto Chemical Co., and Union Charcoal Co.

Kelly, Penn & Hunter, of Kingsport, Tenn., for Tennessee Eastman Corp.

Mr. Calvin A. Campbell, of Midland, Mich., for Cliffs-Dow Chemical Co.

Mr. Paul F. Eaton, of Walton, N. Y., for G. H. Treyz & Co. and the estate of G. I. Treyz.

AMENDED 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, firms and individuals, hereinafter described and named, have been and are now using unfair methods of competition in commerce, as "commerce" is defined by 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hardwood Charcoal Co., hereinafter referred to as "Hardwood," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office in the Sterick Building, Memphis, Tenn. It was organized in 1932 for the purpose of acting, has since acted and is now acting, as the exclusive agent for respondents, Tennessee Products Corporation, Forest Products Chemical Co. and Crossett Chem-

ical Co., hereinafter referred to as "Hardwood Members," in the sale and distribution of hardwood charcoal produced by said respondents, who each owns one-third of its stock; respondent, Hardwood, handles all of the charcoal output of said three respondents, setting the price at which said charcoal is sold; it produces no charcoal itself but maintains distribution warehouses at Atlanta, Ga., Birmingham, Ala., and Chattanooga, Tenn.

Respondent, Tennessee Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee and having its principal office located in Nashville, Tenn.

Respondent, Forest Products Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Memphis, Tenn.

Respondent, Crossett Chemical Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Crossett, Ark.

All of said three respondents, Hardwood Members, produce charcoal as a byproduct of hardwood distillation. Each sells its entire output of hardwood charcoal to respondent Hardwood at cost; respondent Hardwood fixes the price at which the charcoal is sold to the purchasers thereof; each Hardwood Member secures its proportionate share of the profits of Hardwood based on the sales and shipments from its particular plant; each Hardwood Member bears its proportional share of the costs of operating and maintaining Hardwood.

PAR. 2. Respondent, Manufacturers Charcoal Co., hereinafter referred to as "Manufacturers," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in Bradford, Pa. It is a non-profit sales organization which has acted, and still acts, as exclusive sales agent for certain persons, partnerships, and corporations located in the States of Pennsylvania and New York, which produce charcoal as a byproduct of hardwood distillation, most of whom are stockholders in respondent manufacturers.

Under its sales agency contracts, which are entered into semiannually with said producers of charcoal, each producer sells its entire output of charcoal to Manufacturers and, in return, secures the net amount received by Manufacturers from the ultimate purchasers less the pro rata sales expense to Manufacturers computed on a per bushel basis. Respondent Manufacturers is not a producer of charcoal and neither owns nor operates any plants engaged in the production of

charcoal or wood chemicals. It solicits orders for hardwood charcoal on the basis of carload lots, upon receipt of an order, it purchases the charcoal from one of the producers for which it acts as sales agent at said producer's plant, and forwards same to the purchaser thereof.

Respondents, all hardwood charcoal producers, hereinafter referred to as "Manufacturers Members," for which respondent Manufacturers has acted and is now acting as sales agent, are as follows:

Clawson Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Ridgway, Pa., and with charcoal retort plants located at Hallton and Gilson, Pa.

Custer City Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Custer City, Pa.

Genesee Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Genesee, Pa.

The Gray Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Roulette, Pa.

Heinemann Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Crosby, Pa.

Thomas Keery Co., Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office located at Hancock, N. Y.

Kinzua Valley Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Williamsport, Pa., and which maintains a wood, charcoal, and chemical retort plant at Morrison, Pa.

Mayburg Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Endeavor, Pa., and which maintains a chemical retort plant at Mayburg, Pa.

Morris Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Smethport, Pa., and which maintains a charcoal retort plant at Morris, Pa.

Oswayo Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Genesee, Pa., and which maintains a retort plant at Coneville, Pa.

Otto Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Williamsport, Pa., and which maintains a retort plant at Sergeant, Pa.

Pennsylvania Charcoal & Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at East Smethport, Pa.

Union Charcoal Co. of Pennsylvania, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business, located at Westline, Pa.

Beatrice A. Treyz and Carol Treyz Southworth, as individuals, doing business under the trade name of G. H. Treyz & Co., with their principal place of business located at Cooks Falls, N. Y.

Victor and Laura Treyz, individuals, operating the estate of G. I. Treyz, with their principal office at Cooks Falls, N. Y.

PAR. 3. Respondent, Tennessee Eastman Corporation, hereinafter referred to as "Eastman," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office located at Kingsport, Tenn. Among its other activities, it produces charcoal as a byproduct of hardwood distillation and sells and distributes same.

PAR. 4. Respondent, Cliffs-Dow Chemical Co., hereinafter referred to as "Cliffs-Dow," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at Marquette, Mich. Among its other activities, it produces charcoal as a byproduct of hardwood distillation and sells and distributes the same.

PAR. 5. Respondent, Hardwood Members and Manufacturer Members, together with respondents, Eastman and Cliffs-Dow, produce approximately 70 percent of all the hardwood charcoal in the United States.

Hardwood charcoal is produced by the hardwood distillation method, and all of it is of the same quality.

It is a general practice in the hardwood charcoal industry to sell hardwood charcoal at a delivered price at each destination point.

Respondents, Hardwood, Manufacturers, and their respective Members, through and by means of said Hardwood and Manufacturers, together with respondents, Eastman and Cliffs-Dow, sell and distribute to distributors and dealers of charcoal practically all of the charcoal produced by the wholesale and retail trade in the United States; the amount of charcoal, other than that purchased by the hardwood dis-

tillation method, which is sold and distributed to distributors and dealers and to the wholesale and retail trade in the United States by other corporations and by partnerships and individuals, is negligible.

PAR. 6. In the course and conduct of their respective businesses, respondents, Hardwood, Manufacturers, Eastman, and Cliffs-Dow, directly, and respondent Hardwood Members and Manufacturers Members, indirectly, through and by means of said Hardwood and Manufacturers acting as sales agents for their respective Members, sell and distribute hardwood charcoal to distributors and dealers thereof at various points throughout the United States, and, when said sales are made, and as a part thereof, regularly have shipped or caused to be shipped and do ship or cause to be shipped, said product to the purchasers thereof at their respective points of location in the several States of the United States other than in the States of origin of such shipments. All of the respondents, in the aforementioned manner, maintain, and still do maintain, a constant current of trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 7. Prior to 1932, respondent, Hardwood Members were in active and substantial price competition with each other, as well as with respondents, Manufacturers, Eastman, Cliffs-Dow, and other producers and sales agents for producers of charcoal, in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia; and, but for said Hardwood Members entering into and carrying out the understanding, agreement, combination and conspiracy hereinafter set out in paragraph 8, such active and substantial price competition would have continued to the present.

PAR. 8. In 1932, respondent, Hardwood Members, entered into, and thereafter carried out, an understanding, agreement, combination, and conspiracy, to discontinue, eliminate, and suppress all price competition between and among said respondent Hardwood Members themselves and also by and between Hardwood Members and respondents, Manufacturers Members, Eastman, Cliffs-Dow, and other producers and sales agents of producers of hardwood charcoal, in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia.

Pursuant to such understanding, agreement, combination, and conspiracy, and for the purpose of effectuating same, said respondent Hardwood Members did, in 1932, form and organize respondent

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Hardwood for the purpose, and with the effect, of having said Hardwood sell the entire output of hardwood charcoal of said Members; and respondent Hardwood has since operated and functioned, and is still operating and functioning, for the same purpose and with the same effect.

PAR. 9. Prior to their entering into exclusive sales contracts with respondent Manufacturers, respondent Manufacturers Members were in active and substantial price competition with each other, as well as with respondents Hardwood, Hardwood Members, Eastman, Cliffs-Dow, and other producers and sales agents for producers of hardwood charcoal, in making, and seeking to make, sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia; and, but for said respondent Manufacturers Members entering into and carrying out the agreements, understandings, combinations and conspiracies, hereinafter set out in paragraph 10, said active and substantial price competition would have continued until the present.

PAR. 10. Subsequent to the incorporation of respondent Manufacturers in 1912, and particularly since 1932, respondent Manufacturers Members entered into and have since carried out, and still are carrying out, agreements, understandings, combinations, and conspiracies whereby said respondent Manufacturers Members made and executed, and are now making and executing, with respondent Manufacturers, the exclusive sales contracts hereinbefore described in paragraph 4, for the purpose and with the effect, of restricting, suppressing, and eliminating all price competition between and among, said respondent Manufacturers Members themselves and also by and between said Manufacturers Members and respondents, Hardwood, Hardwood Members, Eastman, Cliffs-Dow, and other producers and sales agents for producers of hardwood charcoal, in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. Beginning in 1932, after the organization of respondent Hardwood, and continuing until 1935, respondents, Hardwood, Manufacturers, and Eastman, together with Western Charcoal Co., acting as exclusive sales agent for several Midwestern hardwood charcoal producers, including the Chemical Department of Cleveland-Cliffs Iron Co., the predecessor of respondent, Cliffs-Dow, entered into understandings, agreements, combinations, and conspiracies to suppress and eliminate price competition in the sale and distribution of hardwood charcoal throughout the United States; then during 1935, when the Western Charcoal Co. ceased to function, respondents, Hardwood, Manufacturers, Eastman, and Cliffs-Dow entered into other under-

standings, agreements, combinations, and conspiracies to suppress and eliminate price competition in the sale of hardwood charcoal in the United States; all of said understandings, agreements, combinations, and conspiracies were entered into and thereafter carried out, and those entered into during 1935 and thereafter are still being carried out, for the purpose and with the effect, of restricting, restraining, and monopolizing, and suppressing and eliminating competition in the sale of hardwood charcoal in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 12. Pursuant to the understandings, agreements, combinations, and conspiracies entered into by, between, and among respondents, Hardwood, Hardwood Members, Manufacturers, Manufacturers Members, Eastman, and Cliffs-Dow, and in furtherance thereof, said respondents, among other acts and things, agreed:

1. To fix and maintain, and they have fixed and maintained, identical delivered prices at which hardwood charcoal is to be sold, and is sold, by them to distributors and dealers thereof at each destination point throughout the United States.

2. To fix and maintain, and they have fixed and maintained, uniform resale prices at which hardwood charcoal is to be sold, and is actually sold, at retail throughout the United States.

3. To allot, and they have allotted, territories in the United States to each of said respondents within which each is to sell, and beyond which it shall not sell, its charcoal.

4. To severally and reciprocally limit, and they have so limited, the respective amounts of hardwood charcoal which each respondent may, shall and does sell and deliver to customers in each territory respondents have allotted as the territory of each other, thereby in effect, adopting a quota system.

5. To purchase, and they have purchased, the entire Canadian hardwood charcoal output shipped into the United States for the purpose, and with the intent and effect of eliminating all possible competition arising from, or which might arise from, the sales of said Canadian charcoal in the United States.

6. To coerce, and they have coerced, and are still coercing, producers in the Eastern States of the United States who do not have exclusive sales agency contracts with respondent Manufacturers and who, prior to the acts and things herein averred, competed with the respondents, and except for said acts and things, still might and would compete with respondents in the sale of hardwood charcoal to distributors and dealers thereof in the various States of the United States, to the end that they may make and enter into such exclusive sales agency contracts with respondent Manufacturers.

7. Not to solicit, and they have not solicited, the customers of each other.

8. To penalize, and they have penalized, distributors and dealers who sold below the prices fixed by respondents at which said distributors and dealers were required to resell charcoal, by cutting down the shipments to said dealers and distributors or entirely refusing shipments to them.

9. To fill, and they have filled, each other's orders from distributors and dealers.

10. To refuse to sell, and they have refused to sell, certain designated distributors and dealers of hardwood charcoal, thus cutting off entirely the supply of hardwood charcoal of said distributors and dealers.

11. To limit, and they have limited, the number of distributors and dealers to whom charcoal is to be sold and is sold throughout the United States.

12. To exchange, and they have exchanged, information as to the delivered prices at which each sells its charcoal to distributors and dealers, as to sales policies, accounting methods, the charcoal situation in their respective territories, and other information, all for the purpose, and with the intent, of better effectuating their agreement to fix and maintain the identical delivered prices at which charcoal is to be sold and is sold at each destination throughout the United States.

13. To use, and they have used, and are now using, other means and methods designed to suppress and prevent competition, and to restrict and restrain the sale of hardwood charcoal in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 13. Each of the respondents, at the times mentioned herein, acted in concert with one or more of the other respondents in doing and performing the acts and things herein alleged in furtherance of the understandings, agreements, combinations, and conspiracies hereinbefore set out in paragraphs 8, 10, 11, and 12; said respondents have thus adopted, and maintain and operate a system which is wholly inconsistent with, and is intended to nullify, and does nullify, the play of the forces of full competition in the hardwood charcoal industry in the United States.

PAR. 14. The understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as all have hereinbefore been alleged in paragraphs 8, 10, 11, 12, and 13, have had, and do have, the effect of unduly and unlawfully restricting and restraining the sale of hardwood

charcoal to the distributors and dealers thereof in the United States, and also to the wholesale and retail trade in same, 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 hardwood charcoal in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels, and otherwise depriving the public of benefits that would flow from normal competition among and between the respondents in said commerce; and of eliminating price competition, with the tendency and capacity of creating a monopoly in the respondents' sale and distribution of hardwood charcoal in said commerce. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder 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 the 17th day of February 1939, issued and served its amended complaint in this proceeding upon respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Answers were filed by all of the respondents to this complaint. Thereafter, stipulations were entered into whereby it was stipulated and agreed that statements of fact, signed and executed by respondents Hardwood Charcoal Co., Tennessee Eastman Corporation, Cliffs Dow Chemical Co., referred to in the amended complaint as Cliffs-Dow Chemical Co., Manufacturers Charcoal Co., acting for and on behalf of itself and its members, the respondents Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., referred to in the amended complaint as Pennsylvania Charcoal & Chemical Co., Beatrice A. Treyz & Carol Treyz Southworth, doing business as G. H. Treyz & Co., Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, and by respondents Morris Chemical Co., Penn Charcoal & Chemical Co., Beatrice A. Treyz and Carol Treyz Southworth, copartners doing business under the name and style of G. H. Treyz & Co., and Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, and W. T. Kelley, chief

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counsel of the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of charges stated in the complaint, or in opposition thereto, except those charges contained in paragraphs 7 and 8 of the amended complaint and those contained in any other paragraphs of said amended complaint which pertain to the alleged understanding, agreement, combination, and conspiracy between and among respondents, Tennessee Products Corporation, Forest Products Chemical Co., and Crossett Chemical Co., to discontinue, eliminate, and suppress all competition which may have existed between and among them in the sale or distribution of hardwood charcoal in interstate commerce, through the formation of respondent Hardwood Charcoal Co. in 1932; and that the said Commission may proceed upon said statements of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding; except as above indicated, said respondents having agreed in said stipulations to waive the presentation of arguments or the filing of briefs before the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulations, said stipulations having been approved, accepted, and filed by the Commission, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Hardwood Charcoal Co., hereinafter referred to as respondent "Hardwood," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and having its principal office in the Sterick Building, Memphis, Tenn.

It was organized in 1932 for the purpose of acting, has since acted, and is now acting, as exclusive agent for respondents, Tennessee Products Corporation, Forest Products Chemical Co., and Crossett Chemical Co., hereinafter referred to as "Hardwood Members," in the sale and distribution of hardwood charcoal produced by said respondent Hardwood Members, in certain areas of the United States, particularly in the southern part of the United States, and including the States of Arkansas, Tennessee, Mississippi, Alabama, and some parts of Louisiana, Georgia, Texas, Oklahoma, Missouri, Kentucky, and Florida. Respondent Hardwood Members each own one-third of the capital stock of respondent Hardwood Charcoal Co. Within

the area hereinabove defined, respondent Hardwood Charcoal Co. handles the entire charcoal output of the respondent Hardwood Members, setting the prices at which said charcoal is sold by it throughout said area. Said respondent, Hardwood Charcoal Co., produces no charcoal itself but maintains distribution warehouses at Atlanta, Ga., Birmingham, Ala., and Chattanooga, Tenn.

PAR. 2. Respondent, Manufacturers Charcoal Co., hereinafter referred to as "Manufacturers," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in Bradford, Pa.

It is a sales organization operated substantially on a nonprofit basis, and now sells, or did sell within a year prior to the filing of the original and amended complaints herein, the charcoal produced by a number of small producers of hardwood charcoal, produced by the distillation method, located in the States of Pennsylvania and New York, included among which producers are the respondents Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., Union Charcoal Co. of Pennsylvania, Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., and Victor Treyz and Laura Treyz, operating the Estate of G. I. Treyz, hereinafter referred to as "Manufacturers' Members."

The stock of respondent, Manufacturers, is owned and held by 4 of the aforementioned respondent Manufacturers' Members, 14 individuals who are, in turn, connected with some of the aforesaid respondents, Manufacturers' Members, and 28 individuals, most of whom were formerly, but are not now, engaged in the production of charcoal by the hardwood distillation method, for whom respondent Manufacturers did, at one time, act as a selling agent.

Respondent, Manufacturers, is not a producer of charcoal, and does not own or operate any plants producing charcoal in any form; it is strictly a sales agency. It solicits orders for charcoal on a basis of carload lots; when an order is received, it purchases the charcoal from a producer with whom it has an agency contract, and has said producer then ship said charcoal to the purchaser thereof, who pays respondent Manufacturers for the same at the prices agreed upon between said purchaser and respondent Manufacturers, as hereinafter more fully set forth.

PAR. 3. Respondent, Clawson Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws

of the State of Pennsylvania, with its principal office located at Ridgway, Pa., and with charcoal retort plants located at Hallton and Gilson, Pa.

Respondent, Custer City Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Custer City, Pa.

Respondent, Genesee Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Genesee, Pa.

Respondent, The Gray Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Roulette, Pa.

Respondent, Heinemann Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Crosby, Pa.

Respondent, Thomas Keery Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office located at Hancock, N. Y.

Respondent, Kinzua Valley Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Williamsport, Pa., and which maintains a wood, charcoal, and chemical retort plant at Morrison, Pa.,

Respondent, Mayburg Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Endeavor, Pa., and which maintains a chemical retort plant at Mayburg, Pa.

Respondent, Morris Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at Smethport, Pa., and which maintains a charcoal retort plant at Morris, Pa.

Respondent, Oswayo Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Genesee, Pa., and which maintains a retort plant at Coneville, Pa.

Respondent, Otto Chemical Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Williamsport, Pa., and which maintains a retort plant at Sergeant, Pa.

Respondent, Penn Charcoal & Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at East Smethport, Pa.

Respondent, Union Charcoal Co. of Pennsylvania, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Westline, Pa.

Respondents, Beatrice A. Treyz and Carol Treyz Southworth, are individuals doing business as copartners under the trade name of G. H. Treyz & Co., with their principal place of business located at 61 Front Street, Binghamton, N. Y.

Respondents, Victor and Laura Treyz, are individuals, operating the Estate of G. I. Treyz, with their principal office at Cooks Falls, N. Y.

PAR. 4. Respondent, Tennessee Eastman Corporation, hereinafter referred to as "Eastman," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office located at Kingsport, Tenn. Among its other activities it produces charcoal as a byproduct of hardwood distillation, and sells and distributes same, as hereinafter more particularly described.

Respondent, Eastman, manufactures only hardwood charcoal, and that by the retort method; approximately 80 percent of said charcoal is sold by it for industrial purposes and 20 percent of same to the wholesale and retail trade in the United States. In most parts of the United States where respondent Eastman sells its charcoal, said charcoal is in substantial competition with pit or kiln produced hardwood charcoal, and pine charcoal, all of which are used for the same common purposes, both industrially and domestically.

PAR. 5. Respondent, Cliffs Dow Chemical Co., hereinafter referred to as "Cliffs Dow," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at Marquette, Mich. It began its corporate existence on May 24, 1935. Among its other activities it produces charcoal as a byproduct of hardwood distillation and sells and distributes same throughout the various States of the United States, as hereinafter more particularly described.

PAR. 6. In the course and conduct of its business, respondent Hardwood Charcoal Co. sells and distributes hardwood charcoal to distributors, dealers and customers thereof at various points throughout the territory of the United States in which respondent Hardwood

Charcoal Co. acts as a sales agent for respondent Hardwood Members, which territory has hereinbefore been described; and when said sales are made, and as a part thereof, said respondents regularly have shipped or cause to be shipped, and do ship or cause to be shipped, said product to the purchasers thereof at their respective points of location in the several States of the United States other than the States of origin of said shipments. Said respondent in the aforementioned manner maintained and still does maintain a constant current of trade in commerce of hardwood charcoal between and among the several States of the United States and in the District of Columbia.

PAR. 7. In the course and conduct of their respective businesses, respondent Manufacturers directly, and respondents Manufacturers' Members indirectly, through and by means of respondent Manufacturers, acting as sales agent for said respondents Manufacturers' Members, sell and distribute hardwood charcoal to the distributors and dealers thereof at various points throughout the United States; and when said sales are made, and as a part thereof, regularly have shipped or caused to be shipped, and do ship or cause to be shipped, said product to the purchasers thereof at their respective points of location in the several States of the United States other than the States of origin of said shipments. All of said respondents in the aforementioned manner maintained and still do maintain a constant current of trade in commerce of hardwood charcoal between and among the several States of the United States and in the District of Columbia.

PAR. 8. In the course and conduct of its business, respondent Eastman sells and distributes hardwood charcoal to distributors and dealers thereof at various points throughout the United States and in the District of Columbia, and when said sales are made and as a part thereof, regularly has shipped or caused to be shipped, and does ship or cause to be shipped, said product to the purchasers thereof at their respective points of location in the several States of the United States and in the District of Columbia, said respective points of location being in States other than the States of origin of said shipments. In the aforementioned manner respondent Eastman maintained and still does maintain a constant current of trade in commerce in hardwood charcoal between and among the several States of the United States and in the District of Columbia.

PAR. 9. In the course and conduct of its business, respondent Cliffs Dow sells and distributes hardwood charcoal to distributors and dealers at various points throughout the United States, and when said sales are made, and as a part thereof, regularly has shipped or caused to be shipped, and does ship or cause to be shipped, said product to the

purchasers thereof at their respective points of location in the several States of the United States other than the State of origin of said shipments, the State of Michigan. Respondent Cliffs Dow in this manner has maintained and still does maintain a constant current of trade in commerce in hardwood charcoal between and among the several States of the United States and in the District of Columbia.

PAR. 10. The respondents, Hardwood Members, Manufacturers' Members, Cliffs Dow, and Eastman produce approximately 65 percent of all the hardwood charcoal produced in the United States. Hardwood charcoal is produced by the hardwood distillation method and all of it is of the same general quality. It is a general practice in the hardware charcoal industry to sell hardwood charcoal at delivered prices at the destination point.

PAR. 11. Active and substantial price competition did exist, and would have continued to exist, between and among respondent Manufacturers' Members and by and between said respondent Manufacturers' Members, respondents Hardwood, Hardwood Members, Eastman, Cliffs Dow, and other producers and sales agents for producers of hardwood charcoal, in making and seeking to make, sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia, were it not for said respondent Manufacturers' Members entering into and thereafter carrying out the understandings or agreements hereinafter set forth in paragraphs 12 and 13.

PAR. 12. All of respondent Manufacturers' Members except respondents Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., and Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, in 1935 entered into an understanding or agreement to eliminate competition between and among themselves in selling or seeking to sell the hardwood charcoal produced by them, in trade and commerce between and among the various States of the United States; pursuant to said understanding or agreement, the said respondent Manufacturers' Members, on December 27, 1935, did enter into and thereafter carry out, exclusive sales contracts with respondent Manufacturers, which contracts are similar to those entered into and carried out by these same respondents since 1935.

Under the aforementioned contracts, respondent Manufacturers' Members, all producers of hardwood charcoal by the distillation method, could sell charcoal which they produced, to no one except respondent Manufacturers, which charcoal was handled by respondent Manufacturers in the manner hereinabove found in paragraph 2; but said contracts did not require respondent Manufacturers' Members to produce charcoal nor to sell any of the charcoal which they might

produce unless they so desired, but if they did produce and sell any charcoal, it had to be sold under said contracts through respondent Manufacturers. When respondent Manufacturers' Members, under said contracts, sell the charcoal produced by them to respondent Manufacturers, said respondent Manufacturers' Members do not know the exact price which they will receive from respondent Manufacturers for said charcoal but at the end of each month, respondent Manufacturers pays to respondent Manufacturers' Members, from whom it purchased charcoal during said month, an amount equal to the purchase price paid it for such charcoal, less an amount fixed by respondent Manufacturers to cover its operations. Respondent Manufacturers makes such payments regardless of whether or not it has been paid by the purchasers of the charcoal from it, and assumes all credit risks.

PAR. 13. In 1936 the estate of G. I. Treyz, and also G. H. Treyz & Co., sold their charcoal directly to customers. Respondents Victor Treyz and Laura Treyz operate the estate of G. I. Treyz. In 1936 G. H. Treyz & Co. was owned and operated by Harry Treyz, but at the time of the filing of the amended complaint herein respondents Beatrice A. Treyz and Carol Treyz Southworth were, and still are, copartners doing business under the name and style of G. H. Treyz & Co.

In 1936 respondent Manufacturers expressed its desire to the parties operating the estate of G. I. Treyz, which controlled a 36-cord charcoal plant, and G. H. Treyz & Company, which operated an 18-cord charcoal plant, to act as a selling agent for said concerns, and not have them compete with respondent Manufacturers in seeking to sell and selling charcoal. In August 1936, a verbal agreement was entered into by and between respondent Manufacturers and respondents Victor and Laura Treyz, operating the estate of G. I. Treyz, whereby respondent Manufacturers was granted the right to purchase all of the charcoal produced by the said Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, except that said respondents were privileged to sell certain specified customers which they had prior to the agreement, directly and not through respondent Manufacturers. By the terms of this oral agreement, which was terminable at the will of either party, but which continued in full force until on or about January 1, 1939, respondent Manufacturers paid respondents Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, a price agreed upon by said parties at the time for the charcoal which respondent Manufacturers ordered from respondents Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, to be shipped by the latter respondents to the customers of the respondent Manufacturers. Respondents Victor Treyz and Laura Treyz, operating the estate of G. I.

Treyz, in 1936 interchanged information with respondent Manufacturers and respondent Hardwood as to the prices to be charged by each of them for hardwood charcoal sold by them to the dealers and distributors thereof. Approximately 30 percent of the charcoal produced by respondents Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, was sold by said respondents to respondent Manufacturers, under the agreement heretofore set forth. Respondent Manufacturers, therefore, during the period of the aforementioned agreement acted, in effect, as an exclusive agent for the sale or disposition of a substantial proportion of the charcoal produced by the respondents Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz. Respondents Victor Treyz and Laura Treyz have never owned any stock in respondent Manufacturers nor has either of them ever been a member of the board of directors or executive committee of said respondent, nor has either of them had anything to do with the actual management, operation, or conduct of the business of said respondent Manufacturers.

On or about July 1, 1936, respondent Manufacturers entered into a verbal agreement with Harry Treyz, then doing business as G. H. Treyz & Co., which was adopted, ratified, and continued by respondents Beatrice A. Treyz and Carol Treyz Southworth, copartners, when they succeeded to the business of G. H. Treyz & Co. upon the death of Harry Treyz, which occurred some time prior to January 1, 1939. Said agreement was terminable at the will of either party, but remained in full force and effect until on or about January 1, 1939. By its terms, Harry Treyz, doing business as G. H. Treyz & Co., agreed to sell the entire output of charcoal produced by him to respondent Manufacturers, and to shut down his retorts from June 1 to September 1 of each year. Said agreement further provided that when respondent Manufacturers received an order for charcoal, it purchased same from respondent Harry Treyz, doing business as G. H. Treyz & Co., and instructed him where to ship same; at the end of each month, respondent Manufacturers paid the said respondent Harry Treyz, doing business as G. H. Treyz & Co. (and the respondents Beatrice A. Treyz and Carol Treyz Southworth when they succeeded to said business) for the charcoal purchased from him during the month, an amount equal to the market price at the time of its purchases for him less an amount fixed by respondent Manufacturers to cover its costs of operation. Respondent, Manufacturers, during the period of said agreement, acted as the exclusive sales agent for Harry Treyz, doing business as G. H. Treyz & Co., and for respondents Beatrice Treyz and Carol Treyz Southworth when they succeeded to the business of G. H. Treyz & Co., for

the sale of all charcoal produced by them. Neither Harry Treyz, Beatrice Treyz, or Carol Treyz Southworth, at any time, held stock in respondent Manufacturers, nor has any of them been a member of its board of directors or executive committee or taken any part in its active management, control, or operation.

PAR. 14. The purpose, tendency and effect and result of the agreements or understandings by respondent Manufacturers' Members to enter into and thereafter carry out the exclusive sales contracts and the understandings and agreements heretofore described in paragraphs 12 and 13, are to suppress and eliminate all substantial price competition between respondent Manufacturers and respondents Manufacturers' Members, and between and among said respondent Manufacturers' Members themselves, and also by and between said respondent Manufacturers' Members and respondents, Hardwood, Hardwood Members, Eastman, Cliffs Dow, and other producers and sales agents for producers of hardwood charcoal, in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 15. Pursuant to, and as a result of, the agreements or understandings between and among respondent Manufacturers' Members as hereinbefore found in paragraphs 12 and 13, respondent Manufacturers, from November 1936, to January 23, 1937, purchased a total of 35 cars of charcoal from Yale Fuel Co., of Toronto, Canada, which represented the entire Canadian charcoal output entering the United States during that period. These purchases were made by respondent Manufacturers for the purpose of preventing the Canadian charcoal from competing with that charcoal produced by respondent Manufacturers' Members, and sold and distributed by respondent Manufacturers, on its own behalf and for the benefit of respondent Manufacturers' Members, in commerce between and among the several States of the United States.

PAR. 16. Prior to the agreements and understandings by and between respondents, Manufacturers, Hardwood, Cliffs Dow, and Eastman, as hereinafter found, all of said respondents were in active and substantial competition with each other in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 17. Respondents, Hardwood, Manufacturers, Cliffs Dow, and Eastman, entered into, and thereafter carried out, various understandings and agreements, on the dates and in the manner and method hereinafter specifically set forth, to suppress, and eliminate

price competition between and among themselves, in the sale and distribution of hardwood charcoal, in commerce between and among the various States of the United States and in the District of Columbia; some of these understandings and agreements, and the acts and practices done pursuant thereto, and in furtherance thereof, were entered into and carried out by all of said respondents, acting on their own behalf and also on behalf, and for the benefit, of their respective members; others were only entered into and carried out by some of said respondents; still others were only entered into, and carried out, by two of said respondents, acting either on their own behalf or on behalf of their respective members.

PAR. 18. Respondents, Hardwood and Eastman, since the formation of respondent Hardwood in 1932, have had a continuous understanding and agreement, and have carried same out, whereby respondent Hardwood has filled orders received by respondent Eastman from respondent Eastman's customers. Pursuant to such agreements and understandings, the following acts and practices were performed by said respondents.

1. Respondent Eastman has purchased charcoal from respondent Hardwood for respondent Eastman's customers. During the months of January and February 1937, respondent Eastman placed \$20,938.94 worth of business with respondent Hardwood. Respondent Hardwood keeps a supply of bags on which appears the trade name of charcoal sold by respondent Eastman, to wit, "Tec-Lump," at the plants of respondent Hardwood Members, and when respondent Eastman receives an order which is filled by a respondent Hardwood Member, said respondent Hardwood Member, in approximately 40 percent of the cases where the orders are for nonindustrial charcoal, places in the bag bearing the trade name of respondent Eastman, the charcoal produced by said respondent Hardwood Member, and then ships same to the customer of the respondent Eastman, said charcoal being shipped in the name of respondent Eastman, for which said respondent Hardwood receives from respondent Eastman the price agreed upon between said respondents at the time of purchase by respondent Eastman. In approximately 60 percent of the cases, when respondent Eastman's orders for nonindustrial charcoal are filled by any of respondent Hardwood Members, shipment is made in bulk by said respondent Hardwood Members. The contract for the purchase of said charcoal is made between respondent Eastman and the purchaser thereof, and the respondent Hardwood Member, which fills such an order for respondent Eastman, has nothing to do with the price at which said charcoal is sold by respondent Eastman to its customer.

2. On January 12, 1937, respondent Hardwood Member, Tennessee Products Corporation, had close to 300,000 "Tec-Lump" bags in its plant at Lyles, Tenn., to be used by said respondent Hardwood Member in filling the orders of respondent Eastman, from respondent Eastman's customers.

3. Respondent Hardwood, at various times and occasions, has requested respondent Eastman to give it business, and respondent Eastman has frequently complied with said requests.

4. At various times throughout the year, respondent Eastman has an insufficient supply of its own charcoal to fill its orders, most of which are based on prior contracts; and it is only at such times, respondent Eastman purchases charcoal from respondent Hardwood, in the manner heretofore described; respondent Eastman likewise, on said occasions, sometimes purchases charcoal from the respondent Manufacturers, the said respondent Manufacturers then shipping the charcoal of respondent Manufacturers' Members to respondent Eastman's customers in bulk and not sacked in respondent Eastman's bags.

5. On April 21, 1933, respondent Eastman wrote respondent Hardwood, that its contract customers were pushing it heavily, and it was compelled to give respondent Hardwood Member, Tennessee Products Corporation, an order for five cars instead of firing up one of respondent Eastman's additional retorts.

PAR. 19. Respondents, Hardwood and Manufacturers, since the organization of respondent Hardwood in 1932 and until on or about January 1, 1937, had, and carried out, an understanding or agreement to exchange, and they have exchanged, information as to the delivered prices at which each sells its charcoal to distributors and dealers, as to sales policies, accounting methods, the charcoal situation in their respective territories, and other information, all for the purpose, and with the intent, of better effectuating their agreement to fix and maintain identical delivered prices at which charcoal is to be sold at destination points in the United States.

PAR. 20. In 1933, respondents, Manufacturers acting for and on behalf of itself and its then members, and Hardwood, entered into, and thereafter carried out until on or about April 1938, an agreement or understanding to allot certain territories of the United States to each other, and pursuant to such agreement or understanding, and in furtherance thereof, said respondents severally and reciprocally limited, for the aforementioned period, the respective amounts of hardwood charcoal which each might, and did seek to, sell, and did sell and deliver to customers in the territory they allotted to each other, thereby adopting a quota system.

PAR. 21. The agreement or understanding between respondents, Hardwood and Manufacturers, heretofore found in paragraph 20, was a brokerage arrangement, and respondent Hardwood, at all times paid respondent Manufacturers a certain amount per ton for handling the charcoal of respondent Hardwood Members, with respondent Manufacturers assuming the credit responsibility, with the exception of one account which was indebted to respondent Hardwood; a definite part of the agreement or understanding was that respondent Hardwood's accounts in the eastern area would always be protected so far as their receiving sufficient tonnage was concerned; said agreement or understanding further provided that respondent Manufacturers was to act as respondent Hardwood's sole broker in the eastern market.

PAR. 22. In 1934, respondents, Manufacturers and Hardwood, entered into, and thereafter carried out, an agreement or understanding as to the distributors in the eastern market to whom neither would sell charcoal, because in their joint opinion, said distributors were neither substantial nor reliable; and they thereby limited the number of dealers to whom they would sell their respective charcoal.

PAR. 23. On June 4, 1935, respondents, Manufacturers, Hardwood, Eastman, and Cliffs Dow, entered into an understanding and agreement, and thereafter carried out same until about November 1, 1936, to fix and maintain identical delivered prices at which hardwood charcoal was to be sold, and was sold, by them to dealers and distributors thereof at destination points throughout the United States.

PAR. 24. During the years 1935 and 1936, respondents, Manufacturers and Hardwood, entered into, and thereafter carried out, an understanding and agreement to fix and maintain uniform resale prices at which hardwood charcoal was to be sold, and was actually sold, at retail at certain destination points in the United States.

PAR. 25. Respondents, Manufacturers and Hardwood, in 1935, entered into, and thereafter carried out until March 1938, an understanding or agreement not to solicit the customers of each other.

PAR. 26. It is a common practice throughout the United States for sellers of merchandise which they do not themselves manufacture, produce, or pack, to place upon such merchandise or upon the container or receptacle therefor, their own trade-mark, trade name or other trade identification accompanied by a statement that said merchandise is manufactured or packed for said sellers.

PAR. 27. The tendency and capacity of all of the aforementioned agreements, and the acts and practices performed pursuant thereto, and in furtherance thereof, as heretofore specifically have been

found, were, during the periods when same were performed, to unduly and unlawfully restrict and restrain the sale of hardwood charcoal to distributors and dealers thereof in the United States, and also to the wholesale and retail trade in same, in trade and commerce in hardwood charcoal, between and among the several States of the United States and in the District of Columbia, to hinder and prevent, and did actually hinder and prevent, price competition between and among all of said respondents, in the sale and distribution of hardwood charcoal in commerce, as "commerce" is defined in the Federal Trade Commission Act, to enhance substantially prices to the consuming public and maintain such prices at artificial levels, and to otherwise deprive the public of the benefits that would flow from normal competition between and among said respondents, and between and among respondents Hardwood Members' and Manufacturers' Members.

CONCLUSION

The acts and practices of respondents, Hardwood Charcoal Co., Manufacturers Charcoal Co., Tennessee Eastman Corporation, Cliffs-Dow Chemical Co., Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., Union Charcoal Co. of Pennsylvania, Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, as hereinbefore found, are all to the prejudice of the public, and have a dangerous tendency to hinder and prevent competition in the sale and distribution of hardwood charcoal, in trade and commerce between and among the several States of the United States, to place in the respondents the power to control the sale and distribution of hardwood charcoal in the United States, and constitute unfair methods of competition 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 amended complaint of the Commission, the answers of the respondents and stipulations as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provide, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts

and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Hardwood Charcoal Co., a corporation, Manufacturers Charcoal Co., a corporation, Cliffs Dow Chemical Co., a corporation, and Tennessee Eastman Corporation, a corporation, and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents, directly or indirectly, or while said respondent, Hardwood Charcoal Co. is acting in its own behalf or on behalf of respondents Tennessee Products Corporation, Forest Products Chemical Co. or Crossett Chemical Co., members of said Hardwood Charcoal Co., or while acting on behalf of any other producer of hardwood charcoal or while respondent Manufacturers Charcoal Co. is acting on its own behalf or on behalf of respondents Clawson Chemical Co., Custer City Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., Union Charcoal Co. of Pennsylvania, Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, as members of Manufacturers Charcoal Co., or while acting on behalf of any other producer of hardwood charcoal in connection with the offering for sale, sale or distribution of hardwood charcoal in commerce as "commerce" is defined by the Federal Trade Commission Act, forthwith cease and desist fixing or maintaining, pursuant to agreement, understanding or combination between or among themselves or between or among any two or more of them or between or among any one or more of said respondents and any other competing corporation or corporations or any competing person or persons, identical delivered prices at which hardwood charcoal is to be sold or is sold by them to distributors or dealers thereof at any destination point in the United States.

It is further ordered, That respondents, Manufacturers Charcoal Co. and Hardwood Charcoal Co., and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents, directly or indirectly, or while acting for or on behalf of themselves or for or on behalf of their respective members hereinbefore described, in connection with the offering for sale, sale or distribution of hardwood charcoal in commerce as "commerce" is defined by the Federal Trade Commission Act, forthwith cease and desist pursuant to agreement,

understanding or combination between themselves or between either or both of them and any other competing corporation or corporations, or between either or both of them and any competing person or persons, from doing the following acts and things:

1. Fixing or maintaining identical or uniform resale prices at which hardwood charcoal is offered for sale, or sold, at retail throughout the United States.

2. Allotting territories in the United States to each of said respondents within which each is to sell, and beyond which each shall not sell, the hardwood charcoal produced by its Members, as such Members have heretofore been defined and designated.

3. Limiting severally and reciprocally the respective quantities of hardwood charcoal which each may, shall or does sell to their respective customers.

4. Refusing to solicit, or refraining from soliciting, the customers of each other.

5. Limiting the number of distributors or dealers to whom each shall offer to sell or shall sell hardwood charcoal.

6. Exchanging information as to delivered prices at which each sells its hardwood charcoal to distributors or dealers, as to sales policies, accounting methods, the hardwood charcoal situation in their respective territories, or other information, where any of same is exchanged for the purpose, or with the intent, or with the effect of effectuating any agreement to fix or maintain identical or uniform delivered prices at which hardwood charcoal is to be offered for sale or sold at destination points throughout the United States.

It is further ordered, That respondent, Hardwood Charcoal Co., either while acting for or on behalf of itself or while acting for or on behalf of its members as hereinbefore described, and respondent Tennessee Eastman Corporation and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of either of said respondents, directly or indirectly, in connection with the offering for sale, sale or distribution of hardwood charcoal in commerce as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist, pursuant to agreement or understanding between themselves or between either or both of them and any other competing corporation or corporations, or between either or both of them and any competing person or persons, from filling orders for hardwood charcoal for each other from dealers or distributors throughout the United States in bags or receptacles upon which the trade-mark, trade name, or other trade identification of the seller appears without a statement on such bags or receptacles, that the contents thereof were packed for the seller.

It is further ordered, That respondents, Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., Union Charcoal Co. of Pennsylvania, Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents, directly or indirectly, in connection with the offering for sale, sale or distribution of hardwood charcoal in commerce, as "commerce" is defined by the Federal Trade Commission Act, forthwith cease and desist, by means of contract, agreement, understanding or combination between or among themselves, or between or among any two or more of them, or between or among any one or more of them and any other competing corporation or corporations, or competing person or persons, from doing the following acts or things:

1. Making, designating, or constituting respondent Manufacturers Charcoal Co. or any other corporation or any person or persons, the sole or exclusive agent for the sale of all, or a substantial proportion of, the hardwood charcoal produced by any of said respondents during any 6 months', or other specific, period.

2. Purchasing the entire, or a substantial proportion of, the output of Canadian hardwood charcoal shipped into the United States, where the purpose, intent, or effect of said purchase is to eliminate competition which arises from, or might arise from the sale of said Canadian hardwood charcoal in the United States.

It is further ordered, That as to the allegations contained in the amended complaint pertaining to the alleged understanding, agreement, combination, and conspiracy between and among respondents Tennessee Products Corporation, Forest Products Chemical Co., and Crossett Chemical Co., to eliminate and suppress competition through the formation of respondent Hardwood Charcoal Co., said amended complaint be, and the same hereby is, dismissed against the said respondents Tennessee Products Corporation, Forest Products Chemical Co. and Crossett Chemical Co. without prejudice to the right of the Commission to issue a new complaint containing such allegations should future facts warrant such procedure in the public interest.

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

IN THE MATTER OF
LAMBERT PHARMACAL COMPANY

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

Docket 3749. Complaint, Mar. 29, 1939—Decision, Aug. 12, 1940

Where a corporation engaged in manufacture, offer, sale, and distribution of its "Listerine Antiseptic" mouth wash and allied products, between and among the various States and in the District of Columbia, to purchasers in States other than that in which its place of business was located, in substantial competition with others engaged in manufacture of such products and offer, sale, and distribution thereof in commerce—

In offering and selling its said products, as aforesaid, under practice by which it allowed, from list price for each product, 5 percent trade discount to all customers and additional discount of 1 percent cash with freight prepaid on all shipments, and under which it further (1) granted and allowed to certain group of wholesalers, in consideration for carrying warehouse stocks and furnishing selling services and facilities, as compensation, sum equal to 10 percent of its net billing prices of products sold by group members referred to during previous month, (2) similarly granted to other group of wholesalers, in consideration for carrying warehouse stocks, sum equal to 5 percent of previous month's purchases, and (3) paid to retailer group, in consideration for certain advertising and selling services and facilities, sum equal to 10 percent of previous month's purchases, and (4) similarly paid to other retailer group, in consideration for services and facilities less extensive than those furnished by 10-percent group, sum equal to 5 percent of previous month's purchases, and (5) under which it required \$50 minimum orders of all wholesale customers and \$20 minimum orders of all retail customers, regardless of whether above-mentioned compensation was received or not, with smaller minimums applicable in case of 10-cent merchandise—

- (a) Failed and refused to make compensation allowed, paid and granted to some of its customers, for services or facilities furnished by them in connection with handling, sale or offer for sale of commodities purchased by such customers from it, available to all of its competitor customers in distribution of such commodities on proportionally equal terms, through contracting for payment, and paying and allowing, to some of its wholesale and retail customers compensation for services and facilities furnished by them in connection with such handling, etc., of commodities purchased by them, while failing and refusing to make available or pay and allow compensation for similar and same services and facilities offered to be furnished by such other customers in connection with such handling, etc., of commodities in question, even though requested to do so by said customers last referred to; and
- (b) Refused requested 10 percent compensation payment to certain of its various wholesale and retail customers to whom it had paid compensation in an amount equal to 5 percent of previous month's purchases for various services and facilities, and who claimed to be able and willing to furnish services and