

Syllabus

IN THE MATTER OF

MANCHESTER SILVER COMPANY, AND FRANK S. TRUMBULL, FRANZ S. TIDERMAN AND EDWARD B. PALMER, INDIVIDUALLY AND AS OFFICERS THEREOF

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

Docket 4133. Complaint, May 11, 1940—Decision, Nov. 6, 1940

Where a corporation and three individuals, who were president, vice president, and secretary thereof, and directed and controlled its advertising policies and business activities and practices, engaged in manufacture and in sale and distribution of sterling silver flatware to wholesale and retail dealers, including retail department stores, and to jobbers and other purchasers in various States and in the District of Columbia, in competition with others likewise engaged in sale and distribution of such products, and including many in such commerce who do not in any manner misrepresent their goods or matters pertaining thereto, and in long issuing, in the conduct of their business, and circulating among retailers, wholesalers, and jobbers, their "Pink List," purporting to show usual and regular retail prices or values of their said silverware, and in selling to such vendees at specified discounts from said list, in accordance with prices of which many retailers had offered and sold their said silver flatware and which had, for many years, been used by retailers and, more particularly, large department stores, in conducting special sales of their said products, and to show so-called regular prices thereof as compared with those at which their said silver flatware products were being sold, and amounting, in some instances, in the case of such "Sales Prices," to as much as 33 percent off such "Pink List" prices;

In pursuance and furtherance of a plan devised by them for use by retailers to increase and promote the sale of their said products at such special sales through use of price list which they designated as the "Blue List," and which had words "Wholesale List" printed thereon, and which set forth prices which were substantially higher for identical articles than those shown on the "Pink List," long used by them in conducting their said business, and which did not represent or reflect either the wholesale or retail prices or values of products listed therein, but were wholly fictitious and greatly in excess of prices at which such products were regularly and customarily offered for sale and sold—

(a) Issued and supplied to retailers, for use in conducting so-called special sales of their said flat silverware products, said "Blue List" as above described, and suggested and recommended that retailers make use thereof in promoting special sales of said flatware and display and give said "Blue List" to purchasing and consuming public and cause advertisements quoting said list to be inserted in newspapers in connection with so-called half-price and comparative price sales, and that such dealers represent to purchasing and consuming public that prices shown on said list were the normal prices at which said silver flatware was regularly and customarily sold; and

- (b) Granted to certain large retail dealers special discounts in order to induce them to become parties to and participate in their said plan of using such "Blue List" and so-called special or comparative price sales of their said silver flatware products, and induced many retailers to participate in such plan and to purchase large quantities of their said ware and to display and distribute said "Blue List" to consuming and purchasing public, and to cause advertisements setting forth prices shown therein as regular list prices to be inserted in newspapers in advertising such special or comparative price sales of products in question, and including, as typical, such newspaper advertisements, thus inserted by purchasers of said silverware for resale, as "SALE! LIMITED TIME ONLY SOLID STERLING SILVER— $\frac{1}{2}$ OFF LIST PRICES. Not in Years Has Manchester Sterling Been Offered in Indianapolis at Any Such Startling Reduction! * * * Just Think! You can actually own this famous solid sterling silver and pay only 50% of the maker's long established regular list prices! * * * 28-Pc. Set Sterling—Regular Factory List Price \$78.60. Sales Price \$38.75 * * *," etc.;

Facts being that, as aforesaid indicated, prices stated in said "Blue List" did not represent any real, list or expected prices for said silver flatware, but were wholly fictitious and fantastically exaggerated, and designed to create a false opinion on the part of the consuming and purchasing public as to true list prices and values of their said silver flatware, and prices paid by wholesalers, retailers, and purchasing and consuming public, regardless of list used, were substantially the same and they had not increased prices of their said products to extent indicated in comparing regular "Pink List" and "Blue List" of fictitious prices;

With result that said fictitious prices shown on such "Blue List" created false opinion on part of consuming and purchasing public as to true list prices and values of their said silverware and use of such prices, thus shown, enabled dealers to represent that purchasers at retail were securing up to as much as 50 percent off the regular list price of said flatware, instead of the 33 percent disclosed by use of their "Pink List" or real price list in retailers' conduct of special or comparative price sales, and with further result, through their said acts and practices in compiling and circulating and distributing said "Blue List" among retailers and other purchasers for resale, of placing in hands of such various purchasers means and instrumentality by which purchasing and consuming public was misled and deceived, and with effect, as result of their said acts and practices, of falsely representing and advertising their products as aforesaid, that substantial portion of purchasing public was misled and deceived into erroneous and mistaken belief that said representations and advertisements were true, and that prices shown in said "Blue List" represented the regular and customary prices of said products, and substantial number of members of said public, because of such erroneous and mistaken belief, were caused to purchase their said silver flatware, and trade was thereby unfairly diverted to them from their competitors in commerce as aforesaid who truthfully represent their products; to their injury and that of public:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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Before *Mr. Lewis C. Russell*, trial examiner.

Mr. John M. Russell, for the Commission.

McLyman & Day, of Providence, R. I., for respondents.

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 Manchester Silver Co., a corporation, and Frank S. Trumbull, Franz S. Tiderman, and Edward B. Palmer, individually and as officers of Manchester Silver Co., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Manchester Silver Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, and respondents Frank S. Trumbull, Franz S. Tiderman, and Edward B. Palmer, are president, vice president, and secretary, respectively thereof. The individual respondents, both in their individual and official capacities, direct and control the advertising policies and business activities and practices of said corporate respondent, and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. The principal office and place of business of all of the respondents is located at 49 Pavilion Avenue, in the city of Providence, State of Rhode Island.

PAR. 2. Respondent, Manchester Silver Co., is now and has been for many years last past engaged in the business of manufacturing, selling, and distributing sterling silver flatware. Respondents sell said silver flatware to wholesale and retail dealers, including retail department stores, and to jobbers and other purchasers thereof situated in various States of the United States and in the District of Columbia, and respondents cause said silver flatware, when sold, to be transported from the aforesaid place of business in the State of Rhode Island to the purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said silver flatware in commerce between and among the various States of the United States and in the District of Columbia.

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In the course and conduct of their said business in commerce, as aforesaid, respondents are in competition with corporations, individuals, and partnerships likewise engaged in the sale and distribution of sterling silver flatware. Among said competitors in said commerce are many who do not in any manner misrepresent their products or matters pertaining thereto.

PAR. 3. For many years respondents have issued and circulated, and now issue and circulate, among retail dealers, wholesalers, and jobbers a price list known as the "Pink List." This list purports to show the usual and regular retail prices or values of respondents' said silver flatware. Sales have been and are made to retailers, wholesalers, and jobbers at specified discounts from said "Pink List." Many retail dealers have offered for sale and sold respondents' said silver flatware at the prices shown on said "Pink List," and for many years retail dealers, and more particularly large department stores, have used said "Pink List" in conducting special sales of respondents' said products, the "Pink List" being used by such retailers to show the so-called regular prices of said products were being sold. The "Sales Prices" in some instances were as much as 33 percent off the "Pink List" prices.

PAR. 4. Respondents, on or about January 1, 1939, devised a plan for use by retailers to increase and promote the sale of their said products at said special sales, pursuant to and in accordance with which they issued and supplied to retailers and wholesalers for use in conducting so-called special sales of respondents' said products, a price list referred to as the "Blue List," which has the words "Wholesale List" printed thereon. The prices shown in said "Blue List" for identical articles of silver flatware, are substantially higher than the prices shown in the "Pink List" which has long been used by the respondents in the conduct of said business. The prices shown on the "Blue List" do not represent or reflect either the wholesale or retail prices or values of the products listed therein, but are wholly fictitious and are greatly in excess of the prices at which such products are regularly and customarily offered for sale and sold. Respondents, as alleged, supply said "Blue List" to wholesalers and retailers and suggest and recommend that retail dealers use this list in promoting "Special Sales" of said silver flatware, and that they display and give said "Blue List" to the purchasing and consuming public, and cause advertisements quoting said "Blue List" to be inserted in newspapers in connection with so-called half-price and comparative price sales, and that said dealers represent to the purchasing and consuming public that the prices shown on said "Blue List" are the normal prices at which said silver flatware is regularly and customarily sold. In fur-

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therance of said plan, respondents grant to certain large retail dealers special discounts in order to induce such retailers to become parties to and participate in respondents' plan of using said "Blue List" in so-called special or comparative price sales of respondents' said products. Respondents have induced many retailers to participate in said plan and to purchase large quantities of said silver flatware and to display and distribute said "Blue List" to the consuming and purchasing public, and to cause advertisements, setting forth the prices shown in said "Blue List" as regular list prices, to be inserted in newspapers in advertising said special or comparative price sales of respondents' said products. Among and typical of the advertisements and representations inserted in newspapers by purchasers of respondents' silverware for resale, is the following:

SALE! LIMITED TIME ONLY
SOLID STERLING SILVER
½ OFF LIST PRICES

Not in Years Has Manchester Sterling Been Offered in Indianapolis at Any Such Startling Reduction!

21 Beautiful Patterns

All Open Stock! Regardless of Design, All the Same Price! None Discontinued! Fill-ins May Be Had Any Time!

Just think! You can actually own this famous solid sterling silver and pay only 50% of the maker's long established regular list prices! MANCHESTER STERLING is guaranteed as advertised in Good Housekeeping. * * *

26-Pc. Set Sterling—Regular Factory List Price-----	\$78.60
Sale Price-----	\$38.75
34-Piece Set Sterling—Factory List Price-----	\$99
Open Stock Sterling—½ PRICE	List Pr. Sales Pr.
6 H. H. Dessert Knives-----	21.15 10.58

The prices stated in said "Blue List" do not represent any real, list, or expected prices for said silver flatware, but are wholly fictitious and fantastically exaggerated, and are designed to and do create a false opinion on the part of the consuming and purchasing public as to the true list prices and values of respondents' silver flatware.

The use of the fictitious prices shown on the "Blue List" enable dealers to represent that purchasers at retail are securing up to as much as 50 percent off the regular list price of respondent's said silver flatware, whereas when the "Pink List," that is, the real price list of the respondents, is used, retailers in conducting special or comparative price sales are unable to represent that the purchasers are securing discounts off the list price in excess of 33 percent. The prices paid by wholesalers, retailers, and the purchasing and consuming

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public, regardless of the list that is used, are substantially the same and respondents have not increased the prices of their said products to the extent indicated in comparing the regular "Pink List" and the "Blue List" containing the fictitious prices.

PAR. 5. The acts and practices of the respondents in compiling said "Blue List" and in circulating and distributing it among retailers and other purchasers for resale place in their hands a means and instrumentality by which the purchasing and consuming public is mislead and deceived.

PAR. 6. The acts and practices of the respondents in falsely representing and advertising their products in the manner above alleged, have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and advertisements are true, and that the prices shown in said "Blue List" represent the regular and customary prices of said products, and have caused a substantial number of members of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said silver flatware, and as a result thereof trade has been and is unfairly diverted to respondents from their competitors in said commerce, who truthfully represent their products to their injury and to the injury of the public.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 11th day of May 1940, issued and subsequently served its complaint in this proceeding upon respondents, Manchester Silver Co., a corporation, and Frank S. Trumbull, Franz S. Tiderman, and Edward B. Palmer, individually and as officers of Manchester Silver Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 28, 1940, the respondents filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by the respondents and W. T. Kelley, chief counsel for 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 the charges as stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon the said statement 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 without the filing of a report upon the evidence by the trial examiner, the presentation of arguments or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, 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, Manchester Silver Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, and respondents Frank S. Trumbull, Franz S. Tideman, and Edward B. Palmer, are president, vice president, and secretary, respectively, thereof. The individual respondents, both in their individual and official capacities, direct and control the advertising policies and business activities and practices of said corporate respondent, and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. The principal office and place of business of all of the respondents is located at 49 Pavilion Avenue, in the city of Providence, State of Rhode Island.

PAR. 2. Respondent, Manchester Silver Co., is now and has been for many years last past engaged in the business of manufacturing, selling, and distributing sterling silver flatware. Respondents sell said silver flatware to wholesale and retail dealers, including retail department stores, and to jobbers and other purchasers thereof situated in various States of the United States and in the District of Columbia, and respondents cause said silver flatware, when sold, to be transported from the aforesaid place of business in the State of Rhode Island to the purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said silver flatware in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business in commerce, as aforesaid, respondents are in competition with corporations, individuals, and partnerships likewise engaged in the sale and distribution of sterling silver flatware. Among said competitors in said commerce are many who do not in any manner misrepresent their products or matters pertaining thereto.

PAR. 3. For many years respondents have issued and circulated, and now issue and circulate, among retail dealers, wholesalers, and jobbers a price list known as the "Pink List." This list purports to show the usual and regular retail prices or values of respondents' said silver flatware. Sales have been and are made to retailers, wholesalers, and jobbers at specified discounts from said "Pink List." Many retail dealers have offered for sale and sold respondents' said silver flatware at the prices shown on said "Pink List," and for many years retail dealers, and more particularly large department stores, have used said "Pink List" in conducting special sales of respondents' said products, the "Pink List" being used by such retailers to show the so-called regular prices of said products as compared with the prices at which said products were being sold. The "Sales Prices" in some instances were as much as 33 percent off the "Pink List" prices.

PAR. 4. Respondents, on or about January 1, 1939, devised a plan for use by retailers to increase and promote the sale of their said products at said special sales, pursuant to and in accordance with which they issued and supplied to retailers and wholesalers for use in conducting so-called special sales of respondents' said products a price list referred to as the "Blue List," which has the words "Wholesale List" printed thereon. The prices shown in said "Blue List" for identical articles of silver flatware, are substantially higher than the prices shown in the "Pink List" which has long been used by the respondents in the conduct of said business. The prices shown on the "Blue List" do not represent or reflect either the wholesale or retail prices or values of the products listed therein, but are wholly fictitious and are greatly in excess of the prices at which such products are regularly and customarily offered for sale and sold. Respondents, as alleged, supply said "Blue List" to wholesalers and retailers and suggest and recommend that retail dealers use this list in promoting "Special Sales" of said silver flatware, and that they display and give said "Blue List" to the purchasing and consuming public, and cause advertisements quoting said "Blue List" to be inserted in newspapers in connection with so-called half-price and comparative price sales, and that said dealers represent to the purchasing and consuming public that the prices shown on said "Blue List" are the normal prices at which said silver flatware is regularly

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and customarily sold. In furtherance of said plan, respondents grant to certain large retail dealers special discounts in order to induce such retailers to become parties to and participate in respondents' plan of using said "Blue List" in so-called special or comparative price sales of respondents' said products. Respondents have induced many retailers to participate in said plan and to purchase large quantities of said silver flatware and to display and distribute said "Blue List" to the consuming and purchasing public, and to cause advertisements, setting forth the prices shown in said "Blue List" as regular list prices, to be inserted in newspapers in advertising said special or comparative price sales of respondents' said products. Among and typical of the advertisements and representations inserted in newspapers by purchasers of respondents' silverware for resale, is the following:

SALE! LIMITED TIME ONLY
SOLID STERLING SILVER
½ OFF LIST PRICES

Not in Years Has Manchester Sterling Been Offered in Indianapolis at Any Such Startling Reduction!

21 Beautiful Patterns

All Open Stock! Regardless of Design, All the Same Price! None Discontinued! Fill-ins May Be Had Any Time!

Just think! You can actually own this famous solid sterling silver and pay only 50% of the maker's long established regular list prices! MANCHESTER STERLING is guaranteed as advertised in Good Housekeeping. * * *

26-Pc. Set Sterling Regular Factory List Price.....	\$78.60
Sale Price.....	\$38.75
34-Piece Set Sterling Factory List Price.....	\$99 \$49.50
Open Stock Sterling ½ PRICE	
6 H. H. Dessert Knives.....	List Pr. Sale Pr. 21.15 10.58

The prices stated in said "Blue List" do not represent any real, list, or expected prices for said silver flatware, but are wholly fictitious and fantastically exaggerated, and are designed to and do create a false opinion on the part of the consuming and purchasing public as to the true list prices and values of respondents' silver flatware.

The use of the fictitious prices shown on the "Blue List" enables dealers to represent that purchasers at retail are securing up to as much as 50 percent off the regular list price of respondents' said silver flatware, whereas when the "Pink List," that is, the real price list of the respondents, is used, retailers in conducting special or comparative price sales are unable to represent that the purchasers are securing discounts off the list price in excess of 33 percent. The

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prices paid by wholesalers, retailers, and the purchasing and consuming public, regardless of the list that is used, are substantially the same and respondents have not increased the prices of their said products to the extent indicated in comparing the regular "Pink List" and the "Blue List" containing the fictitious prices.

PAR. 5. The acts and practices of the respondents in compiling said "Blue List" and in circulating and distributing it among retailers and other purchasers for resale place in their hands a means and instrumentality by which the purchasing and consuming public is misled and deceived.

PAR. 6. The acts and practices of the respondents in falsely representing and advertising their products, in the manner above set forth, have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and advertisements are true, and that the prices shown in said "Blue List" represent the regular and customary prices of said products, and have caused a substantial number of members of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said silver flatware, and as a result thereof trade has been and is unfairly diverted to respondents from their competitors in said commerce who truthfully represent their products to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 answer of respondents and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Federal Trade Commission, which provides, 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 to cease and desist disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that the

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said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Manchester Silver Co., a corporation, its officers, representatives, agents, and employees, and Frank S. Trumbull, Franz S. Tiderman, and Edward B. Palmer, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of sterling silver flatware, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or regular retail prices for such products prices which are in fact fictitious and in excess of the prices at which said products are regularly and customarily offered for sale and sold.

2. Using, or supplying to wholesalers, retailers, and others purchasing said silverware for resale for use, in connection with the sale of said silverware, purported wholesale, retail, or other price lists, when such lists contain fictitious prices which are in excess of the price at which said silverware is regularly and customarily offered for sale and sold.

3. Representing that the regular price of any article of said silverware is in excess of the price at which such article is customarily offered for sale and sold.

4. Using, or supplying to wholesalers, retailers, and others purchasing such silverware for resale for use, in connection with special sales of said silverware, any price list which does not correctly set forth the true price at which said silverware is customarily offered for sale and sold.

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.

IN THE MATTER OF

AMERICAN LEAD PENCIL COMPANY, EAGLE PENCIL COMPANY, INC., JOSEPH DIXON CRUCIBLE COMPANY, EBERHARD FABER PENCIL COMPANY, INC., WELDON ROBERTS RUBBER COMPANY, AND A. W. FABER, INC.

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

Docket 4170. Complaint, June 24, 1940—Decision, Nov. 6, 1940

Where six corporations engaged in the manufacture of rubber typewriter erasers and, for a number of years last past, in their corporate capacity and through various agents, in sale and distribution in commerce among the various States and in the District of Columbia, to purchasers in said States and District, of such erasers which, together with many other products made, sold and distributed by them, were used extensively throughout the United States by the general public and by corporations and business concerns and by the United States and States Governments and municipalities, and purchase of which by many firms, corporations, and others, including Federal and States Governments and municipalities, or agents thereof, and because of substantial quantity used, was through invitation for bids and selection, on such basis, of industry member from whom particular purchase was made, and who, for more than 5 years last past, constituted substantially all the manufacturers of such erasers and, prior to acts and practices below set forth, were in active and substantial competition with each other and with other members of the industry—

Entered into and engaged in an agreement, combination, and understanding to suppress price competition and to eliminate competition between themselves, restrain interstate trade, drive out competitors, and monopolize such trade; and in pursuance thereof and for the purpose of carrying out said combination, etc., and in the making of public bids—

(1) Agreed to and did fix and maintain prices at which said products were sold, and uniform terms and conditions governing selling thereof; and

(2) Agreed to and did submit, directly and through certain agents, uniform and identical bids on such products when requests for such bids were made;

With result that effect of such combination, understanding and agreement, and acts and practices of said corporations as above set forth, were to monopolize business of manufacturing and selling rubber typewriter erasers in them, and to unreasonably lessen, eliminate, and restrain and hamper and suppress competition in manufacture and sale of said products in interstate commerce, and to deprive purchasing and consuming public of advantages of price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair competition in said industry, and otherwise to operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade, and to obstruct the natural flow of trade into the channels of commerce: