

Syllabus

IN THE MATTER OF

PHIL J. BLIFFERT, WALTER J. MANHARDT, TRADING AS
CAPITOL BUILDING SUPPLY COMPANY, WAUWATOSA
FUEL & SUPPLY COMPANY, ALSO TRADING AS WISCON-
SIN FACE BRICK & SUPPLY COMPANY, ETC., 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 3631. Complaint, Oct. 18, 1938—Decision, Nov. 23, 1940

Where an individual, since deceased, ostensibly engaged in business in the city of Milwaukee as a so-called building supply dealers' consultant and adviser, and a number of Milwaukee dealers in building supplies, such as, among others, cement, laths, plaster, clay products, pipe, and sand and gravel, and who (1) did 90 percent of the building supply business in county involved, and in which county 60 percent of such supplies therein, and including, more particularly, plaster, cement, lime, and metal lath, were purchased by said dealers and others engaged in similar business and transported from producers and manufacturers and sellers thereof located outside of the State, and, as a group or class, engaged in manufacture and sale of such supplies, including lime, cement, and other building materials, and in selling and shipping large quantities thereof to purchasers in State of Wisconsin from other States, in substantial competition with one another in such manufacture and sale to dealers in question and to competitors of such dealers, and who (2) engaged in business of buying commodities in question, as above noted, and in selling same to various governmental, State, county, and city purchasing agencies and the general trade, and, except to the extent competition in purchase and sale of such products had been restrained, lessened, injured, and suppressed by plans, understandings, agreements, combinations, and conspiracies below set forth, in substantial competition, in purchase and sale involved, with each other and with other dealers in building material supplies—

With intent of fixing prices, discounts, and conditions of sale for building supplies in county in question, and including sale of such supplies made under city, county and State bids—

- (a) Entered into uniform contracts under which dealers employed said individual as consultant in and about the conduct of their respective businesses, relating to sales and trade practices, so that dealer might "be assured of selling its commodities at fair and reasonable prices," and under which dealers agreed to file in writing with such individual all of their respective selling prices for building materials for delivery in county in question, and individual undertook to audit and check all selling prices filed with him as to various costs, and to advise dealer as to correctness thereof, so that it might be assured that its sales should not be made for less than cost, and dealer further undertook to advise such individual of any changes in costs and of advances or reductions in prices of its commodities and to file same with individual not less than 48 hours before quoting such changes in prices to trade, and to sell its commodities only at prices thus filed

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by it, and to pay such individual certain percentage of gross sales of all its commodities made in county during period of contract; and

Where said individual, acting under and in pursuance of combination and conspiracy in question and aforesaid contracts, which he devised with intent of lessening, restraining, injuring, suppressing, and destroying competition in purchase and sale of building supplies in county in question and other counties in State involved, and of developing in dealers in question monopoly in purchase and sale of material in aforesaid territory—

- (b) Mailed back to each of the various dealers involved under such contracts with him, and who filed their respective prices thereunder on various items for building material, prices to each dealer, together with discounts and conditions of sale to which each agreed, and mailed to other dealers in said city, not under contract with him, prices;
- (c) Closely watched and investigated sales and bids of all dealers concerned and, in event of dealer refusal to abide by prices thus distributed, contacted out-of-state manufacturer-seller sources of such dealer in effort to prevent latter from obtaining further any requirements of building supplies; and
- (d) Claimed to be adviser of various dealers involved and received, as compensation for his activities, one-half of 1 percent of such dealers' monthly gross sales of numerous items of supplies in question; and

Where various dealers involved as aforesaid, in pursuance and in furtherance of contracts and agreements above described, and into which they entered as above set forth—

- (e) Established and maintained uniform and minimum prices at which various items of building supplies were sold by them, and uniform terms and conditions attaching to their sales of various items of such supplies;
- (f) Interfered with their competitors in said competitors' efforts to purchase and maintain such supplies, and prevented their competitors from purchasing or obtaining same; and
- (g) Boycotted and threatened to boycott manufacturers and sellers of building supplies who sold or shipped same either to their competitors or directly to consumers thereof, and, through promises, threats, coercion, intimidations, and otherwise, caused and induced manufacturers and sellers of supplies in question not to sell or ship same to their competitors or directly to consumers, and to boycott such competitors and consumers, and to confine to them, dealers involved, said manufacturers' and sellers' sales and shipments of supplies in question intended for use, consumption, or resale in aforesaid counties, and, through said promises, etc., procured such acts on part of manufacturers and sellers in question;

With result that their competitors were prevented from obtaining building supplies through acts and practices of said individual and dealers involved, prices, discounts and conditions of sale of building materials in county in question, from year involved until recent date, were generally uniform, and bids submitted by dealers concerned to procurement officers of the Federal Government and to purchasing agents for said city were generally uniform, and there was an undue tendency, as a consequence of aforesaid conspiracy, to restrain and suppress competition in sale of building material, and to enhance the prices that would otherwise prevail, and tendency to create in them a monopoly in sale of building material supplies in county involved:

Held, That contract aforesaid, entered into by above individual with dealers concerned, and understandings, agreements, combinations, and conspiracies, and acts and practices engaged in and performed pursuant thereto and in furtherance thereof, were all to the prejudice of the public and constituted unfair methods of competition.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Daniel J. Murphy, for the Commission.

Mr. Maurice A. McCabe and *Mr. Walter H. Bender*, of Milwaukee, Wis., for all respondents, other than W. H. Pipkorn Co., which was represented by *Mr. James T. Drought*, of Milwaukee, Wis.

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 Phil J. Bliffert, Walter J. Manhardt, Wauwatosa Fuel & Supply Co., Tews Lime & Cement Co., W. H. Pipkorn Co., Berthelet Fuel & Supply Co., Henry Cook Co., The Froemming Corporation, Schneider Fuel & Supply Co., Heider & Bott Co., Otto Ladwig & Sons, Inc., J. Druecker Sons' Co., respondents herein, 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 this its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Phil J. Bliffert is a citizen of the State of Wisconsin ostensibly engaged in business as a so-called building supply dealers' consultant and adviser, and having an office and place of business at Room 511, Bankers Building, 2200 North Third Avenue, Milwaukee, Wis.

Respondent Walter J. Manhardt is a citizen of the State of Wisconsin engaged in business as a dealer in building supplies under the trade name Capitol Building Supply Co., and having an office and place of business at 3522 North Fratney Street, Milwaukee, Wis.

Respondent Wauwatosa Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business under its own name, and under the trade names Wisconsin Face Brick & Supply Co. and Wisconsin Face & Fire Brick Co., as a dealer in building supplies, having its principal office and place of business at 7700 Harwood Avenue, Wauwatosa, Milwaukee, Wis.

Respondent Tews Lime & Cement Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1136 East North Avenue, Milwaukee, Wis.

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Respondent W. H. Pipkorn Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1548 West Bruce Street, Milwaukee, Wis.

Respondent Berthelet Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 820 West Montana Street, Milwaukee, Wis.

Respondent Henry Cook Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 3029 West Concordia Avenue, Milwaukee, Wis.

Respondent The Froemming Corporation is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 4380 North Green Bay Avenue, Milwaukee, Wis.

Respondent Schneider Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 3438 West Forest Home Avenue, Milwaukee, Wis.

Respondent Heider & Bott Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 274 East Keefe Avenue, Milwaukee, Wis.

Respondent Otto Ladwig & Sons, Inc. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 4541 North Green Bay Avenue, Milwaukee, Wis.

Respondent J. Druecker Sons' Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1325 East Capitol Drive, Milwaukee, Wis.

Respondents Walter J. Manhardt, Wauwatosa Fuel & Supply Co., Tews Lime & Cement Co., W. H. Pipkorn Co., Berthelet Fuel & Supply Co., Henry Cook Co., The Froemming Corporation, Schneider Fuel & Supply Co., Heider & Bott Co., Otto Ladwig & Sons, Inc., and J. Druecker Sons' Co. will hereinafter be referred to as respondent dealers.

The said respondent dealers are typical and representative members of a large group of dealers in building supplies engaged in the busi-

ness of selling building supplies to consumers thereof in Milwaukee County and other counties in the State of Wisconsin. Each and every member of said group of dealers participated in devising, entered into and participated in the execution of, and does now participate in the execution of, the sundry plans, understandings, agreements, combinations, and conspiracies hereinafter referred to, and each and every member of said group of dealers, in concert with one or more other members of said group of dealers and in concert with the respondent Phil J. Bliffert, has engaged in and performed, and does now engage in and perform, the practices and acts hereinafter referred to, but all members of said group of dealers are not known to the Federal Trade Commission and cannot be joined as parties respondent in this proceeding without manifest inconvenience and delay prejudicial to the public interest. Respondent dealers are therefore made parties respondent hereto individually and as representatives of each and every member of said group of dealers.

PAR. 2. For several years prior to the month of November 1935, and ever since that time, the respondent dealers have been, and are now, engaged in the business of buying and selling commodities commonly known as building supplies, such as, among other commodities, cement, laths, plaster, clay products, pipe, sand, and gravel, and in the course and conduct of their respective businesses the said respondent dealers have purchased, and are now purchasing, many building supplies which they have caused, and are now causing, to be shipped and transported to them in commerce into the State of Wisconsin from States other than the State of Wisconsin.

Since November 1, 1935, or thereabout, the respondent Phil J. Bliffert has been, and is now, ostensibly engaged in business as a so-called consultant and adviser to each of the respondent dealers in matters concerning the purchase and sale of building supplies; and since said date, or thereabout, each of the respondent dealers has employed, and does now employ, the respondent Phil J. Bliffert as a so-called consultant and adviser in matters concerning the purchase and sale of building supplies, and each of the said respondent dealers has paid, and now pays, to the respondent Phil J. Bliffert one-half of 1 percent of the said respondent dealers' respective monthly gross sales of numerous items of building supplies as compensation for the said respondent Phil J. Bliffert's activities and so-called services in connection with each respondent dealer's respective business.

PAR. 3. In truth and in fact the respondent Phil J. Bliffert at no time since November 1, 1935, has been, and he is not now, a bona fide consultant or adviser to the respondent dealers, or to any of them, in matters concerning the purchase and sale of building sup-

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plies, nor has he been, and he is not now, employed by the respondent dealers, or by any of them, as a bona fide consultant or adviser in such matters. In truth and in fact since November 1, 1935, the business in which the respondent Phil J. Bliffert has been, and is now, engaged, and the purpose for which the respondent dealers have employed and compensated, and do now employ and compensate, him is that of aiding, assisting, abetting, and participating in the promotion and execution of the plans, understandings, agreements, combinations, and conspiracies hereinafter referred to.

PAR. 4. In the course and conduct of their respective businesses, as aforesaid, except to the extent to which competition in the purchase and sale of building supplies has been restrained, lessened, injured, and suppressed by the plans, understandings, agreements, combinations, and conspiracies hereinafter referred to, the respondent dealers have been, and are now, in active and substantial competition with each other, and with other dealers in building supplies, in the purchase and sale of building supplies.

PAR. 5. For many years prior to November 1, 1935, and ever since that date, there were and have been, and there are now, many manufacturers and sellers of building supplies whose respective places of business were, and are now, located outside the State of Wisconsin, who have been, and are now, engaged in the business of manufacturing and selling building supplies which they have been, and are now, shipping in commerce between and among the several States of the United States, and who have been, and are now, selling large quantities of building supplies to purchasers thereof located in the State of Wisconsin and shipping said building supplies in commerce to said purchasers into the State of Wisconsin from States other than the State of Wisconsin. Except to the extent to which competition between said manufacturers and sellers in the manufacture and sale of building supplies and in the sale thereof for shipment in commerce into the State of Wisconsin from States other than the State of Wisconsin has been restrained, lessened, injured, and suppressed by the plans, understandings, agreements, combinations, and conspiracies hereinafter referred to, the said manufacturers and sellers, in the course and conduct of their respective businesses as aforesaid, have been, and are now, engaged in active and substantial competition with each other in the manufacture and sale of building supplies, in the sale thereof for shipment into the State of Wisconsin from States other than the State of Wisconsin and in the sale thereof to the respondent dealers and to competitors of respondent dealers for shipment to said respondent dealers and competitors of respondent dealers in commerce into the State of Wisconsin from States other than the State of Wisconsin.

PAR. 6. On or about November 1, 1935, for the purpose and with the intention of restraining, lessening, injuring, suppressing, and destroying competition in the purchase and sale of building supplies in Milwaukee County and other counties in the State of Wisconsin, and for the purpose and with the intention of developing in the respondent dealers have engaged in and performed, and are now supplies in Milwaukee County and other counties in the State of Wisconsin, the respondent dealers and the respondent Phil J. Bliffert devised and entered into, and thereafter executed and are now executing, sundry plans, understandings, agreements, combinations, and conspiracies, pursuant to and in furtherance of which the said respondent dealers have engaged in and performed, and are now engaging in and performing, the following practices and acts, to wit:

(a) Establishing and maintaining uniform prices at which various items of building supplies are sold by the respondent dealers.

(b) Establishing and maintaining minimum prices at which various items of building supplies are sold by the respondent dealers.

(c) Establishing and maintaining uniform terms and conditions attaching to the sale by the respondent dealers of various items of building supplies.

(d) Interfering with competitors of respondent dealers in the said competitors' efforts to purchase and obtain building supplies.

(e) Preventing competitors of respondent dealers from purchasing or obtaining building supplies.

(f) Boycotting and threatening to boycott manufacturers and sellers of building supplies who sell or ship building supplies either to competitors of respondent dealers or directly to consumers of building supplies.

(g) Causing, inducing and procuring, by promises, threats, coercion, intimidation and otherwise, manufacturers and sellers of building supplies:

1. Not to sell or ship building supplies to competitors of respondent dealers or directly to consumers of building supplies.

2. To boycott competitors of respondent dealers and consumers of building supplies.

3. To confine to the respondent dealers the said manufacturers' and sellers' sales and shipments of building supplies intended for use, consumption or resale in Milwaukee County and other counties in the State of Wisconsin.

4. To pay to one or more of the respondent dealers commissions upon said manufacturers' and sellers' sales of building supplies made directly to consumers for use upon construction projects upon

which the respondent dealers bid, for which said commissions the recipients thereof render to said manufacturers and sellers no services whatsoever.

PAR. 7. Since November 1, 1935, or thereabout, the respondent Phil J. Bliffert has solicited, and is now soliciting, the respondent dealers and others to enter into and perform the sundry plans, understandings, agreements, combinations, and conspiracies referred to in paragraph 6 hereof, and the respondent Phil J. Bliffert, since November 1, 1935, or thereabout, has encouraged, aided, assisted, abetted, and participated in, and does now encourage, aid, assist, abet, and participate in, the performance of the practices and acts referred to in said paragraph 6.

PAR. 8. Each of the respondent dealers acted, and now acts, in concert with one or more of the other respondent dealers and in concert with the respondent Phil J. Bliffert in engaging in and performing the aforesaid acts and practices, which said acts and practices the respondent dealers and the respondent Phil J. Bliffert concertedly engaged in and performed, and do now concertedly engage in and perform, for the purpose of furthering and consummating the abovementioned sundry plans, understandings, agreements, combinations, and conspiracies devised and entered into as aforesaid.

PAR. 9. The aforesaid plans, understandings, agreements, combinations, and conspiracies, and the practices and acts engaged in and performed pursuant thereto and in furtherance thereof have had, and do now have, the effect of:

(a) Unduly and unlawfully restraining, lessening, injuring, and suppressing competition in the sale of building supplies which are sold to the purchasers thereof for shipment into the State of Wisconsin from States other than the State of Wisconsin.

(b) Unduly and unlawfully hampering, impeding, hindering, and preventing certain manufacturers and sellers of building supplies from selling building supplies for shipment into the State of Wisconsin from States other than the State of Wisconsin.

(c) Extorting unearned commissions from certain manufacturers and sellers of building supplies upon certain of said manufacturers' and sellers' sales of building supplies, which said building supplies the said manufacturers and sellers shipped to the purchasers thereof in commerce into Milwaukee County and other counties in the State of Wisconsin from States other than the State of Wisconsin.

(d) Unduly and unlawfully restraining, lessening, injuring, and suppressing competition in the sale, purchase, and resale of building supplies which are shipped in commerce into the State of Wisconsin from States other than the State of Wisconsin.

(e) Unduly and unlawfully hampering, impeding, hindering, and preventing dealers in building supplies who are engaged in competition with the respondent dealers from purchasing building supplies for shipment to them in commerce into the State of Wisconsin from States other than the State of Wisconsin.

(f) Unduly and unlawfully restraining, lessening, injuring, and suppressing competition in the sale, purchase, and resale of building supplies in Milwaukee County and other counties in the State of Wisconsin.

(g) Tending to create in certain manufacturers and sellers of building supplies a monopoly in the sale of building supplies which are sold to the purchasers thereof for shipment into Milwaukee County and other counties in the State of Wisconsin from States other than the State of Wisconsin and a monopoly in the sale of building supplies in Milwaukee County and other counties in the State of Wisconsin.

(h) Tending to create in the respondent dealers a monopoly in the building supply business in Milwaukee County and other counties in the State of Wisconsin.

(i) Unlawfully and coercively conditioning the right of persons to engage in business as dealers in building supplies in Milwaukee County and other counties in the State of Wisconsin upon such persons becoming parties to, and cooperating with the respondent dealers and the respondent Phil J. Bliffert in executing, the plans, understandings, agreements, combinations, and conspiracies above mentioned and the payment by such persons to the respondent Phil J. Bliffert of one-half of 1 percent of their respective monthly gross sales of numerous items of building supplies.

(j) Substantially and artificially increasing and maintaining the prices at which building supplies are sold to purchasers and consumers thereof in Milwaukee County and other counties in the State of Wisconsin and depriving said purchasers and consumers of the benefits of fair, free, and normal competition in the sale of building supplies.

(k) Unduly and unlawfully restraining, lessening, injuring, and suppressing trade and commerce in building supplies between and among the State of Wisconsin and the several other States of the United States.

PAR. 10. The above-mentioned plans, understandings, agreements, combinations, and conspiracies and the practices and acts engaged in and performed pursuant thereto and in furtherance thereof, with the effect aforesaid, are all to the prejudice of the public 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 October 18, 1938, issued and thereafter served its complaint upon respondents herein, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 3, 1938, the respondents filed their answer. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by Maurice A. McCabe, Walter H. Bender, and James T. Drought, counsel for the respondents, and Daniel J. Murphy, counsel for the Commission, subject to the approval of the Commission, may be taken as some of the facts in this proceeding and in lieu of testimony in support of some of the charges stated in the complaint. It was further stipulated that the Commission might proceed to hold hearings for the presentation of testimony and other evidence in support of other charges stated in the complaint and the respondents would not introduce any testimony or other evidence in opposition thereto, that the Commission might proceed upon said statement of facts and upon said testimony and other evidence presented at said hearings in support of other allegations of the complaint and make its report stating its findings as to the facts and its conclusion based thereon, and its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, testimony and other evidence in support of the allegations of the complaint were introduced by Daniel J. Murphy, attorney for the Commission, before W. W. Sheppard, a trial examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence was duly recorded and filed in the office of the Commission. No testimony was offered on behalf of the respondents and no attorney for the respondents appeared of record at the hearings.

Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, answer, testimony, and other evidence and the stipulation entered into between counsel for the Commission and counsel representing the respondents, said stipulation having been approved, accepted, and filed, and brief in support of the allegations of the complaint, no brief having been filed by the respondents, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Phil J. Bliffert (who died in or about April 1939) was a citizen of the State of Wisconsin, ostensibly engaged in business as a so-called building supply dealers' consultant and adviser, and having had an office and place of business at Room 511, Bankers Building, 2200 North Third Avenue, Milwaukee, Wis.

Respondent Walter J. Manhardt is a citizen of the State of Wisconsin engaged in business as a dealer in building supplies under the trade name Capitol Building Supply Co., and having an office and place of business at 3522 North Fratney Street, Milwaukee, Wis.

Respondent Wauwatosa Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business under its own name, and under the trade names Wisconsin Face Brick & Supply Co. and Wisconsin Face & Fire Brick Co., as a dealer in building supplies, having its principal office and place of business at 7700 Harwood Avenue, Wauwatosa, Milwaukee, Wis.

Respondent Tews Lime & Cement Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1136 East North Avenue, Milwaukee, Wis.

Respondent W. H. Pipkorn Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1548 West Bruce Street, Milwaukee, Wis.

Respondent Berthelet Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 820 West Montana Street, Milwaukee, Wis.

Respondent Henry Cook Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 3029 West Concordia Avenue, Milwaukee, Wis.

Respondent The Froemming Corporation is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 4380 North Green Bay Avenue, Milwaukee, Wis.

Respondent Schneider Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 3438 West Forest Home Avenue, Milwaukee, Wis.

Respondent Heider & Bott Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 274 East Keefe Avenue, Milwaukee, Wis.

Respondent Otto Ladwig & Sons, Inc., is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 4541 North Green Bay Avenue, Milwaukee, Wis.

Respondent J. Druecker Sons' Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1325 East Capitol Drive, Milwaukee, Wis.

Respondents Walter J. Manhardt, Wauwatosa Fuel & Supply Co., Tews Lime & Cement Co., W. H. Pipkorn Co., Berthelet Fuel & Supply Co., Henry Cook Co., The Froemming Corporation, Schneider Fuel & Supply Co., Heider & Bott Co., Otto Ladwig & Sons, Inc., and J. Druecker Sons' Co. will hereinafter be referred to as respondent dealers.

PAR. 2. For several years prior to the month of January 1936, and ever since that time, the respondent dealers have been, and are now, engaged in the business of buying and selling commodities commonly known as building supplies, such as, among other commodities, cement, laths, plaster, clay products, pipe, sand, and gravel, and in the course and conduct of their respective businesses, the said respondent dealers have purchased, and are now purchasing, many building supplies which they have caused, and are now causing, to be shipped and transported to them in commerce into the State of Wisconsin from States other than the State of Wisconsin. In the course and conduct of their respective businesses, except to the extent competition in the purchase and sale of building supplies has been restrained, lessened, injured, and suppressed by the plans, understandings, agreements, combinations, and conspiracies hereinafter referred to, respondent dealers have been, and are now, in substantial competition with each other, and with other dealers in building material supplies, in the purchase and sale thereof.

PAR. 3. For many years prior to January 1, 1936, and ever since that date, there were and have been, and there are now, many manufacturers and sellers of building material supplies whose respective places of business were, and are now, located outside the State of Wisconsin, and who have been, and are now, engaged in the business of manufacturing and selling building supplies, including lime, cement, and other such building supplies, which they have been, and are now, shipping in commerce between and among the several States of the United

States, and who have been, and are now, selling large quantities of such building supplies to purchasers thereof located in the State of Wisconsin, and shipping said building supplies in commerce to such purchasers into the State of Wisconsin from States other than the State of Wisconsin. Said manufacturers and sellers of building supplies in the ordinary and usual course and conduct of their respective businesses are in substantial competition with each other in the manufacture and sale of building material, in the sale thereof for shipment into the State of Wisconsin from States other than the State of Wisconsin, and in the sale thereof to the respondent dealers and to the competitors of respondent dealers for shipment to said respondent dealers and competitors of respondent dealers in commerce into the State of Wisconsin from States other than the State of Wisconsin.

PAR. 4. Respondent dealers, herein, did approximately 90 to 100 percent of the building supplies business in Milwaukee County, State of Wisconsin, which total business averaged approximately \$5,000,000 annually. Approximately 60 percent of the building supplies sold in Milwaukee County are purchased by respondent dealers and others engaged in similar business and transported from producers and manufacturers thereof located outside of the State of Wisconsin, particularly plaster, cement, lime, and metal laths.

PAR. 5. During the early months of 1936, there was a meeting of some 18 dealers in building supplies material in the city of Milwaukee, State of Wisconsin, held in the Association of Commerce Building, Milwaukee, Wis., where talks were made by William Mass and respondent Phil J. Bliffert. At this meeting there were present, either in person or by their representatives, the respondent dealers named in the complaint. Subsequent to said meeting said respondent dealers entered into a contract with respondent Phil J. Bliffert, the contract in substance, providing as follows:

That first party (dealer) hereby employs second party (Bliffert) as consultant in and about the conduct of its business that relates to sales and trade practices so that said first party may be assured of selling its commodities at fair and reasonable prices. That said first party hereby agrees to file in writing with said second party all of its selling prices for building materials for delivery in the County of Milwaukee, Wisconsin. Within 10 days from the date this agreement becomes effective said second party hereby agrees to audit and check all selling prices filed from time to time with him by said first party as to manufacturer's costs, costs of deliveries, selling costs, and overhead, and to advise said first party as to the correctness of such costs so that said first party may be assured that the sales of its commodities shall not be made for less than cost. Said first party further agrees to advise said second party in writing of any changes in manufacturer's costs and other costs and of advances or reductions in the selling prices of its commodities and file

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same with said second party not less than 48 hours before quoting said changes in selling prices to its trade.

Said first party further agrees to sell its commodities only at the prices filed with it by said second party,

Said first party agrees to pay said second party one-half of 1 percent of the gross sales of all of its commodities made in Milwaukee County during the period of this contract.

During the life of said contracts building materials were sold by the respondents to the various Governmental, State, county, and city purchasing agencies and the general trade, excepting certain supplies which were specifically exempted. There were approximately 25 dealers in the Milwaukee area, who originally entered into said contracts with the respondent Phil J. Bliffert. The business of said dealers constituted the great majority of the total volume of business, in building supplies, transacted in the Milwaukee area. Two of said dealers, to wit, N. J. Pipkorn Co. and the Wm. F. Luebke Co., subsequently canceled their contracts.

PAR. 6. Respondents Wauwatosa Fuel & Supply Co., W. H. Pipkorn Co., Tews Lime & Cement Co., and the Capitol Building & Supply Co. are the four largest members of the industry in the Milwaukee area.

PAR. 7. The evidence is uncontradicted that the purpose of the said contract entered into between respondent Bliffert and other respondent dealers in building material in Milwaukee, Wis., was to fix the prices, discounts, and conditions of sale of building supplies in Milwaukee County, including sales of such supplies made under city, county, and State bids. Each respondent dealer under contract with said respondent Bliffert filed his price on various items of building material with respondent Bliffert, and Bliffert then mailed prices back to each respondent dealer, together with discounts and conditions of sale; each respondent dealer agreed to adhere to the prices, discounts, and terms mailed by the said Bliffert; respondent Bliffert further mailed prices to other dealers in Milwaukee who were not under contract with him. Respondent Bliffert closely watched and investigated the sales and bids of all the respondent dealers; if a dealer refused to abide by the prices distributed by the said Bliffert, the evidence is uncontradicted that manufacturers located outside the State of Wisconsin, from whom such dealer purchased his requirements were contacted by Bliffert in an endeavor to prevent such dealer from further obtaining any requirements of building supplies. Respondent Bliffert claims to be the adviser of the various respondent dealers, and received as compensation one-half of 1 percent of the said respondent dealer's monthly gross sales of numerous items of building supplies for the said respondent Phil J. Bliffert's activities.

PAR. 8. Several of respondent dealers after conducting their business in association and under contract with respondent Bliffert for several months, acting on the advice of counsel canceled their contracts with Bliffert and refused further to abide by the agreed prices distributed by Bliffert. These respondent dealers, prior to the cancelation of their said contract with respondent Bliffert, never had any difficulty in obtaining their requirements of building supplies from the manufacturers thereof. After the cancelation of said contract, manufacturers of said building material refused further to sell and ship their products to said respondent dealers. The record discloses that respondent Bliffert informed said manufacturers they had better not ship building material to said respondent dealers. The Wm. F. Luebke Co., one of the dealers who was under contract with respondent Bliffert, because of its inability to obtain its building material requirements for its business, was forced out of business in the spring of 1939. The Pipkorn Co., another respondent dealer, never experienced any difficulty in obtaining its building supplies requirements while under contract with respondent Bliffert, but when said company canceled its contract with Bliffert, then it was that several manufacturers, located both inside and outside of Wisconsin, from whom the company had purchased its material for many years, refused further to fill orders received from said company, Frank A. Pipkorn, an individual engaged in the building material business under the firm name of "Frank A. Pipkorn Co.," and doing an average annual business of between \$30,000 and \$40,000, entered into a contract with respondent Bliffert at the same time as the respondent dealers. This contract was subsequently canceled and several manufacturers located outside and inside of the State of Wisconsin, refused further to sell the company its requirements because of interference by respondents.

The record contains abundant uncontradicted evidence, both oral and documentary that as a result of the contract and agreement entered into between respondent Bliffert and respondent dealers, prices, discounts, and conditions of sale of building material in Milwaukee County, Wis., from 1936 to a recent date, have been generally uniform; that bids of respondent dealers submitted to procurement officers of the Federal Government, and to purchasing agents for the City of Milwaukee, Wis., were generally uniform.

PAR. 9. The Commission finds that on or about November 1, 1935, respondent Phil J. Bliffert, with the intention of restraining, lessening, injuring, suppressing and destroying competition in the purchase and sale of building supplies in Milwaukee County, and other counties in the State of Wisconsin, and for the purpose, and with the intention of

developing in the respondent dealers a monopoly in the purchase and sale of building material in Milwaukee County, and other counties in the State of Wisconsin, devised and entered into, and executed, together with the respondent dealers, the contract and agreement herein set forth, pursuant to and in furtherance of which the said respondent dealers have engaged in and have performed, and are now engaging in and performing the following acts and practices:

(a) Establishing and maintaining uniform prices at which various items of building supplies are sold by the respondent dealers.

(b) Establishing and maintaining minimum prices at which various items of building supplies are sold by the respondent dealers.

(c) Establishing and maintaining uniform terms and conditions attaching to the sale by the respondent dealers of various items of building supplies.

(d) Interfering with competitors of respondent dealers in the said competitors' efforts to purchase and obtain building supplies.

(e) Preventing competitors of respondent dealers from purchasing or obtaining building supplies.

(f) Boycotting and threatening to boycott manufacturers and sellers of building supplies who sell or ship building supplies either to competitors of respondent dealers or directly to consumers of building supplies.

(g) Causing, inducing and procuring by promises, threats, coercion, intimidation and otherwise, manufacturers and sellers of building supplies:

1. Not to sell or ship building supplies to competitors of respondent dealers or directly to consumers of building supplies.

2. To boycott competitors of respondent dealers and consumers of building supplies.

3. To confine to the respondent dealers the said manufacturers' and sellers' sales and shipments of building supplies intended for use, consumption or resale in Milwaukee County and other counties in the State of Wisconsin.

The Commission further finds that respondent Bliffert by and through the contract made and entered into by the said Bliffert with the other respondent dealers, (1) combined and conspired to restrain and suppress competition in the sale of building supplies by agreeing upon uniform prices, discounts and conditions of sale; (2) that competitors of respondent dealers were prevented from obtaining building supplies by the acts and practices of said respondent Bliffert and respondent dealers; and (3) that the result of said conspiracy tended to unduly restrain and suppress competition in the sale of building mate-

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rial and to enhance the prices that would otherwise prevail under normal competition, and tended to create in respondent dealers a monopoly in the sale of building supplies in Milwaukee County, Wis.

CONCLUSION

The above mentioned contract, entered into by respondent Bliffert with the said respondent dealers, and the understandings, agreements, combinations and conspiracies, and the acts and practices engaged in and performed pursuant thereto, and in furtherance thereof, are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and evidence taken before W. W. Sheppard, an examiner of the Commission heretofore duly designated by it, in support of the allegations of said complaint, a brief filed herein also in support thereof, briefs in behalf of respondents, and oral argument having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Wauwatosa Fuel & Supply Co., Tews Lime & Cement Co., W. H. Pipkorn Co., Berthelet Fuel & Supply Co., Henry Cook Co., The Froemming Corporation, Schneider Fuel & Supply Co., Heider & Bott Co., Otto Ladwig & Sons, Inc., and J. Druecker Sons' Co., all corporations, respectively, and Walter J. Manhardt, an individual doing business under the trade name Capitol Building Supply Co., their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase and offering for sale, sale, and distribution of building supplies, in commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from doing and performing by understanding, agreement, or combination between themselves or with others the following acts and things:

1. Establishing and maintaining uniform prices at which the respondent dealers should sell building supplies.
2. Establishing and maintaining minimum prices at which the respondent dealers should sell building supplies.
3. Establishing and maintaining uniform terms and conditions attaching to the sale by the respondent dealers of building supplies.

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4. Interfering with competitors of respondent dealers in the said competitors' efforts to purchase and obtain building supplies.

5. Preventing competitors of respondent dealers from purchasing or obtaining building supplies.

6. Boycotting and threatening to boycott manufacturers and sellers of building supplies who sell or ship building supplies to competitors of respondent dealers.

7. Causing, inducing and procuring, by promises, threats, coercion, intimidation, and otherwise, manufacturers and sellers of building supplies:

(a) Not to sell or ship building supplies to competitors of respondent dealers or directly to consumers of building supplies.

(b) To boycott competitors of respondent dealers and consumers of building supplies.

(c) To confine to the respondent dealers the said manufacturers' and sellers' sales and shipments of building supplies intended for use, consumption, or resale in Milwaukee County and other counties in the State of Wisconsin.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to the respondent, Phil J. Bliffert.

It is further ordered, That the respondent 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.

Complaint

IN THE MATTER OF

JOHN DRUCQUER, TRADING AS DRUCQUER & SONS

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

Docket 4125. Complaint, May 4, 1940—Decision, Nov. 23, 1940

Where an individual engaged in sale and distribution of blended tobaccos and other tobacco products from his place of business in California to purchasers in other States and in the District of Columbia; in statements and representations relative to source and origin of his products and place of manufacture or blending thereof, which he caused to be printed on labels, wrappers, or coverings of packages in which his products were wrapped when shipped, and which he otherwise published and circulated among purchasers and prospective purchasers in various States—

Represented, directly and by implication, that his tobaccos and tobacco products were made or blended in London, England, and imported into the United States from England, through such statements as "Tobacco manufacturers * * * manufactured by Drucquer & Sons of London, England," and "Drucquer & Sons, late of the Strand and Regent Street, London, England," notwithstanding the fact he did not maintain a factory or place of business in London, and his said products were not such products there made and blended, or tobacco products manufactured and blended in England, such as preferred by many members of the purchasing public, and he did not import his said products from England into the United States, but manufactured or blended same at his place of business in California;

With result that many members of purchasing public were led into erroneous and mistaken belief that he had place of business in London, as above set forth, where he made and blended tobacco products which he imported and sold and distributed in the United States, and substantial number of said public were led to purchase his said products because of such erroneous and mistaken belief, and with capacity and tendency to mislead and deceive substantial portion of such public into the erroneous and mistaken belief that said representations were true, and that he operated place of business in London where such products were manufactured, etc., as above set forth, and with result, as consequence of such belief, that number of members of said public purchased substantial volume of his said products:

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

Mr. Carrel F. Rhodes, for the Commission.

Mr. Edward A. Martin, of Berkeley, Calif., for respondent.

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 John Drucquer, an