

Syllabus

IN THE MATTER OF

WHOLESALE LIQUOR DISTRIBUTORS' ASSOCIATION OF
NORTHERN CALIFORNIA, INC., LIQUOR TRADES' STA-
BILIZATION BUREAU, INC., 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 4093. Complaint, Apr. 18, 1940—Decision, Nov. 28, 1940*

Where numerous individuals and concerns interested and engaged in sale of liquor at wholesale in territory comprising northern part of California and western part of Nevada, and including various corporations engaged, in course and conduct of their respective businesses, in competition with other distillers, importers, and wholesale liquor dealers who were located outside of said States and who, upon sale of their products, shipped and transported same from their places of business located outside such States into States in question to purchasers thereof, and embracing—

I. Individuals and concerns which were members of a wholesale liquor distributors' association (and through which they and those associated with them in industry operated as herein below indicated), with membership of some 69 northern California wholesale liquor dealers operating in aforesaid territory, or so-called "Northern California Territory," and engaged in purchasing, in the course and conduct of their businesses, for sale to local retail liquor dealers and resale by latter to general public, wines, whiskies, and other alcoholic beverages from distillers, importers, and jobbers of such beverages, whose places of business were located outside State of California, and in causing wines and beverages to be shipped and transported from such other States to the places of business of said wholesale liquor dealers in said State, in which there had been, for a number of years last past, number of cooperative buying organizations, small jobbers and wholesale liquor dealers referred to by concerns, individuals, and organizations herein as "irregular" distributors, and engaged in business of buying and selling such beverages at wholesale and, in course and conduct of their said businesses, in purchasing such beverages from distillers, importers, and wholesalers, great majority of whom were located in other States, and products of which, when thus purchased, were shipped from seller's place of business into State of California to aforesaid purchasers, or "irregular" distributors, by whom said beverages, when received, were sold and distributed to retail liquor dealers in State in question and to purchasing public;

II. Certain corporations engaged in distilling and importing alcoholic beverages, which constituted large and important part of the distillers and importers in the United States and in said northern California territory, and a group so large and influential in the trade as to be able to control and influence flow of trade and commerce in said beverages in the United States and within, to and from said trade area, and which had been, and would have still been, in free and active competition with each other and with other distillers and importers of such beverages in said territory, but for unlawful conspiracy, combination, understanding, and agreement herein described; and

III. Certain corporations engaged in sale and distribution of alcoholic beverages at wholesale, which constituted large and important part of the wholesale liquor dealers in said trade area and, as such, a group so large and influential in the trade as to be able to control and influence flow of trade in commerce in such beverages within, to, and from said trade area, and which had been, and would have still been, in free and active competition with each other and with other distillers and importers of such beverages in said territory, but for unlawful conspiracy, combination, understanding, and agreement herein described—

- (a) Combined, agreed, and conspired with one another to hinder and prevent aforesaid "irregular" distributors from obtaining such beverages from any source, with intent and effect of hampering, stifling, or suppressing competition in sale thereof at wholesale in aforesaid territory, and acting collectively and through the agency of aforesaid "Wholesale Liquor Distributors" association, and through the agency of their "Liquor Trades' Stabilization Bureau," corporate instrumentality, membership of which was composed of distillers, importers, distributors, and retailers of alcoholic beverages, and including various concerns herein involved, and which was engaged, under direct supervision of its officers and directors, as an enforcing agency for maintenance of wholesale and retail prices, discounts, and mark-ups on alcoholic beverages in territory in question, to effectuate their aforesaid purpose—

(1) Refused, and continued to refuse, to sell alcoholic beverages to cooperative buying associations and to small jobbers and wholesale liquor dealers and others, considered by them to be "irregular" distributors;

(2) Boycotted and threatened to boycott the products of distillers, importers, and wholesale liquor dealers, who sell to cooperative buying associations and to small jobbers and wholesale liquor dealers, and others considered by them to be "irregular" distributors; and

(3) Solicited and obtained information with respect to distillers, importers, and wholesale liquor dealers selling to cooperative buying associations, small jobbers, and wholesale liquor dealers and others, considered by them to be "irregular" distributors, and disseminated and threatened to disseminate such information to distillers, importers, and wholesale liquor dealers; and

Where various individuals, members, officers, and directors of said wholesale liquor association, and aforesaid various concerns, including those engaged in sale and distribution of alcoholic beverages at wholesale, the various members of said association, concerns engaged in distilling such beverages, and those engaged in importation thereof, and, as respects those engaged in such distillation and those engaged in such importation, in competition as to price with one another in sale of said beverages between and among various States and its territories, prior to unlawful agreement, combination and conspiracy herein described, and as respects those engaged in sale and distribution of such beverages at wholesale and each and every member of association in question, in competition as to price with one another in sale and distribution of alcoholic beverages in said northern California territory—

- (b) Adopted, established, and maintained a system or policy of merchandising whereby they, through agreements and understanding between and among one another, fixed specified standard and uniform prices, discounts, and

mark-ups at which said products should be sold, both at wholesale and retail, with intent and effect of eliminating price competition among themselves and in order to stabilize and make uniform prices of products sold by such distillers and importers to wholesale liquor dealers and discounts allowed thereon, and prices of products sold by wholesale liquor dealers and discounts allowed thereon, and to stabilize and make uniform the resale prices of such products by them, and by each of them, sold; and

Where said various concerns engaged in sale of alcoholic beverages at wholesale, and each and every member of association in question, concerns engaged in distilling alcoholic beverages, those engaged in importation thereof, and various individuals, as hereinbefore described—

- (c) Endeavored and continued to endeavor to enforce, and enforced and continued to enforce, said merchandising policies pursuant to aforesaid policy, agreements, and understandings, and, acting directly and through the agency of said association and for said purpose, among other things—
- (1) Notified and continued to notify distillers, importers, and wholesale liquor dealers and retail liquor dealers of the said fixed wholesale and retail prices, discounts, and mark-ups, and of changes therein;
- (2) Solicited and obtained information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who did not maintain the fixed resale prices, discounts, and mark-ups and who did not adhere to said merchandising policy, and disseminated and threatened to disseminate such information to distillers, importers, wholesale liquor dealers, and retail liquor dealers who sell alcoholic beverages in said Northern California Territory;
- (3) Coerced and intimidated distillers and importers into the adoption of contracts and agreements, designed and intended to maintain the prices, discounts and mark-ups so fixed, and boycotted and threatened to boycott the products of distillers, importers, wholesale liquor dealers and retail liquor dealers who failed to maintain the prices, discounts, and mark-ups so fixed, and who failed and refused to cooperate in said merchandising policy; and
- (4) Organized and maintained aforesaid Liquor Trades' Stabilization Bureau, as above described, with intent of policing the trade and obtaining information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who failed to maintain the prices, discounts, and mark-ups so fixed, and who failed and refused to cooperate in the merchandising policy adopted, and who violated the terms of the price maintenance contracts entered into with retail liquor dealers as herein described;

With result that the capacity, tendency, and effect of said agreement, combination and conspiracy, and acts and practices of said concerns and individuals as above set forth, were to close and curtail various and sundry outlets within the aforesaid Northern California Territory trade area, and other related and connected territory, in the States of California and Nevada, to the direct and immediate sale and shipment of alcoholic beverages by distillers, importers and wholesale liquor dealers located in other States of the United States; and

With further result that capacity, tendency and effect of said combination, agreement and conspiracy was to monopolize in said concerns and individuals business of dealing in and distributing alcoholic beverages in aforesaid territory, to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress

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competition in said products in the States of California and Nevada, to deprive the purchasing and consuming public of advantages in price and service which they would receive and enjoy under conditions of normal, unobstructed or free and fair competition of said trade and industry, and to otherwise operate as a restraint upon and detriment to the freedom of fair and legitimate competition in such trade and industry, to obstruct the natural flow of commerce in the channels of interstate trade, and to place an undue burden upon such commerce, and to prejudice and injure the public and other distillers, importers, jobbers, wholesale liquor dealers and buying associations, who were not parties to aforesaid agreement, combination and conspiracy, and who took no part therein:

Held, That such acts and practices of said concerns and individuals, under the circumstances set forth, were all to the prejudice of the public, had a tendency to and actually did hinder and prevent price competition between and among them in sale of alcoholic beverages in commerce, and placed in themselves power to control and enhance prices, and created in themselves a monopoly in the sale of alcoholic beverages in commerce aforesaid, and unreasonably restrained, hampered, and burdened such commerce in alcoholic beverages, and constituted unfair methods of competition.

Mr. Floyd O. Collins and Mr. DeWitt T. Puckett, for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., for Gooderham & Worts, Ltd., and Hiram Walker, Inc., and, together with—

Mr. Seibert L. Sefton, of San Francisco, Calif., for Wholesale Liquor Distributors' Ass'n of Northern California, Inc., and various officers, members, and directors thereof, Liquor Trades' Stabilization Bureau, Inc., and Rathjen Bros., Inc.; and for R. F. Jose (who was also further represented by *Mr. Robert J. McGahie*, of San Francisco, Calif.);

Mr. John J. Burns, of New York City, for Somerset Importers, Ltd.;

Lovell & Richardson, of San Francisco, Calif., for Parrott & Co.;

Mr. Richard O'Connor, of San Francisco, Calif., for McKesson & Robbins, Inc.;

Mr. David N. Popik, of Newark, N. J., for Browne Vintners Co., Inc.;

White & Case, of New York City, for Seagram-Distillers Corporation;

Mr. Richard L. Fruchterman, of New York City, for The Fleischmann Distilling Corporation;

Breed, Abbott & Morgan, of New York City, for National Distillers' Products Corporation;

Carroll, McElwain & Ballantine, of Louisville, Ky., for Frankfort Distilleries, Inc.;

Thomas, Beedy & Paramore, of San Francisco, Calif., for Coffin-Redington Co. and Sherwood Coffin, and along with *Mr. Seibert L. Sefton*, of San Francisco, Calif., for Haas Bros. and Max Sobel; and *Mr. Samuel Hauser*, of San Francisco, Calif., for Tonkin Distributing Co. and J. M. Tonkin.

Cooke, Beneman & Morrison, of Washington, D. C., for Brown-Forman Distillers Corporation and Schenley Distilleries, Inc.; and *Mr. Richard O'Connor*, of San Francisco, Calif., for H. L. Hanson.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations, associations, firms, and individuals named in the caption hereof, and hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as commerce is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Wholesale Liquor Distributors' Association of Northern California, Inc., hereinafter referred to as respondent Association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and has its home office in the Sharon Building, 55 New Montgomery Street, San Francisco, Calif. Respondent Association was organized in August 1935, and has a membership of 69 northern California wholesale liquor dealers, who are operating in territory comprising the northern part of California and the western part of Nevada and hereinafter referred to as "Northern California Territory." Of its members, the following now constitute, and for a long time last past have constituted, its board of directors, and its officers, to wit:

J. M. Tonkin, president, 440 Ninth Street, San Francisco, Calif.
 J. F. Ferrari, vice president, 1414 Chester Avenue, Bakersfield, Calif.
 Max Sobel, secretary-treasurer, Third and Berry Streets, San Francisco.
 Sante Quattrin, executive secretary, 55 New Montgomery Street, San Francisco.
 A. M. Berberian, director, 202 Broadway, Fresno, Calif.
 Chas. Bigley, director, 256 North First Street, San Jose, Calif.
 H. L. Hanson, director, 919 Front Street, Sacramento, Calif.
 J. J. Bottaro, director, 521 I Street, Sacramento, Calif.
 Thomas Lenchan, director, 434 Ellis Street, San Francisco, Calif.
 R. F. Jose, director, 314 Front Street, San Francisco, Calif.
 Floyd Trombetta, director, 24 Fourth Street, Santa Rosa, Calif.
 Andrew Rosaia, director, 142 West Fourth Street, Eureka, Calif.
 C. L. Sauer, director, 350 Townsend Street, San Francisco, Calif.

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John Pingree, director, 253 Fourth Street, Oakland, Calif.

Sherwood Coffin, director, 311 Folsom Street, San Francisco, Calif.

Among its members are respondents McKesson & Robbins, Inc., Haas Bros., Rathjen Bros., Inc., Tonkin Distributing Co., and Coffin-Redington Co. The said respondent members, above named, of respondent association do not constitute its entire membership, but are representative members thereof. The members of said respondent association constitute a class so numerous as to make it impractical to name all of them as parties respondent herein. All members of respondent association are made parties herein as a class, of which those specifically named are representative of the whole.

Respondent association, acting under the direction and direct supervision of its officers and directors, among other things, is now, and has been for more than 1 year last past, engaged in attempting to procure legislation, deemed by it to be beneficial to its members, enforcing observance by its members and others of price maintenance policies, as hereinafter described, with respect to the sale of all alcoholic beverages, and in otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage.

Respondent Liquor Trades' Stabilization Bureau, Inc., hereinafter referred to as respondent Bureau, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business in the Sharon Building, 55 New Montgomery Street, San Francisco, Calif. It was organized in 1936, and its membership is comprised of distillers, importers, distributors, and retailers of alcoholic beverages, among whom are all of the respondents herein named. The said respondent members, herein named, of respondent bureau do not constitute its entire membership, but are representative members thereof. The members of said respondent bureau constitute a class so numerous as to make it impractical to name all of them as parties respondent herein. All members of respondent bureau are made parties herein as a class, of which those named herein are representative of the whole.

Respondent bureau, under the direct supervision of its officers and directors, is now, and has been for more than 1 year last past, engaged as an enforcing agency for the maintenance of wholesale and retail prices, discounts and mark-ups on alcoholic beverages in the said Northern California Territory.

Respondent Rathjen Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business

located at 135 Berry Street, San Francisco, Calif. Respondent Rathjen Bros., Inc., is now, and has been for more than 1 year last past, engaged in the purchase in various States of the United States and in the importation from foreign countries of alcoholic beverages, and in the sale and distribution thereof at wholesale in the said Northern California Territory, and in commerce among and between the various States of the United States.

Respondent Gooderham & Worts, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware with its home office and principal place of business located at 2070 Penobscot Building, Detroit, Mich., and maintains a branch office at 650 Second Street, San Francisco, Calif. Respondent Gooderham & Worts, Ltd., is now, and has been for more than 1 year last past, engaged in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale among and between the various States of the United States and in the District of Columbia.

Respondent Somerset Importers, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 9 Rockefeller Plaza, New York, N. Y., and maintains a branch office at 615 Second Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation from foreign countries of alcoholic beverages and in the sale and distribution thereof at wholesale among and between the various States of the United States and in the District of Columbia.

Respondent Parrott & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 320 California Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation from foreign countries of alcoholic beverages and in the sale and distribution thereof at wholesale among and between the various States of the United States.

Respondent McKesson & Robbins, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its home office and principal place of business located at 155 East 44th Street, New York, N. Y., and operates a branch office under the name of Langley-Michaels Division of McKesson & Robbins, Inc., at 50 First Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation from foreign countries of alcoholic beverages and in the sale and distribution thereof at wholesale, among and between the various States of the United States and in the District of Columbia.

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Respondent Browne Vintners 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 home office and principal place of business located at 50 Rockefeller Plaza, New York, N. Y., and maintains a branch office at 625 Second Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Seagram-Distillers Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 405 Lexington Avenue, New York, N. Y. It maintains a branch office at 520 Montgomery Street, San Francisco, Calif. It is a wholly owned subsidiary of Distillers' Corporation—Seagrams, Ltd., a Canadian corporation, and acts as a general sales outlet for all of the producing subsidiaries of said company, with the exception of the Calvert-Maryland Distributing Co., Inc. It is now, and has been for more than 1 year last past, engaged in distilling of alcoholic beverages and in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Brown-Forman Distillers Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its home office and principal place of business located at 1908 Howard Street, Louisville, Ky., and maintains and operates a branch office at 224 Spear Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the business of distilling alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Fleischmann Distilling Corporation is a wholly owned subsidiary of Standard Brands, Inc., and is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its home office and principal place of business located at 595 Madison Avenue, New York, N. Y., and maintains and operates a branch office at 351 California Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages and in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the

various States of the United States and in the District of Columbia.

Respondent National Distillers' Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its home office and principal place of business located at 120 Broadway, New York, N. Y., and maintains and operates a branch office at 625 Second Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages, and in the importation from foreign countries of alcoholic beverages, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Schenley Distillers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 900 Battery Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the distilling, rectifying, blending, and bottling of alcoholic beverages, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Frankfort Distilleries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia with its home office and principal place of business located at 401 West Main Street, Louisville, Ky. It maintains and operates a branch office located at 524 Second Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Hiram Walker & Sons, Inc.,¹ is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its general office at 4450 Penobscot Building, Detroit, Mich. Respondent operates a branch office at 650 Second Street, San Francisco, Calif. It is now, and has been for more than

¹ By order dated Nov. 1, 1940, Commission granted motion of Hiram Walker Incorporated, showing that complaint in proceeding improperly named Hiram Walker & Sons, Inc., as respondent in place of Hiram Walker Incorporated, and moving—

"(1) That Hiram Walker Incorporated be named as the respondent herein in the place and stead of Hiram Walker & Sons, Inc.; and

"(2) That the answer of Hiram Walker & Sons, Inc., be withdrawn and that the answer of Hiram Walker Incorporated, annexed hereto, be filed in lieu of the answer filed in this proceeding by Hiram Walker & Sons, Inc., on July 10, 1940."

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1 year last past, engaged in the distilling and the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Haas Bros. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at Third and Channel Streets, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States.

Respondent Tonkin Distributing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 440 Ninth Street, in the city of San Francisco, State of California. It is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages from foreign countries, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States.

Respondent Coffin-Redington Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 311 Folsom Street, in the city of San Francisco, State of California. It is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States.

Respondent J. M. Tonkin of 440 Ninth Street, San Francisco, Calif., is an individual, and is president and a member of the board of directors of respondent association and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes an active part, individually, and as president and as a director of said association, in all the activities herein alleged.

Respondent J. F. Ferrari, of 1414 Chester Avenue, Bakersfield, Calif., is an individual and is vice president and a member of the board of directors of respondent association, and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes an active part individually and as vice president and director of said association in all of the activities herein alleged.

Respondent Max Sobel of Third & Barry Streets, San Francisco, Calif., is an individual and is secretary-treasurer and a member of the board of directors of respondent association, and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes an active part individually and as secretary-treasurer and director of said association in all of the activities herein alleged.

Respondent Sante Quattrin of 55 New Montgomery Street, San Francisco, Calif., is an individual and as executive secretary of respondent association has taken an active part in the control and management of said association and in all of the activities herein alleged.

Respondents, A. M. Berberian, 202 Broadway, Fresno, Calif.; Charles Bigley, 256 North First Street, San Jose, Calif.; J. J. Bottaro, 521 I Street, Sacramento, Calif.; H. L. Hanson, 919 Front Street, Sacramento, Calif.; Thomas Lenehan, 434 Ellis Street, San Francisco, Calif.; R. F. Jose, 314 Front Street, San Francisco, Calif.; Floyd Trombetta, 24 Fourth Street, Santa Rosa, Calif.; Andrew Rosaia, 142 West Fourth Street, Eureka, Calif.; C. L. Sauer, 350 Townsend Street, San Francisco, Calif.; John Pingree, 253 Fourth Street, Oakland, Calif.; and Sherwood Coffin, 311 Folsom Street, San Francisco, Calif.; are individuals, and are members and directors of said association, and have at all times herein mentioned taken an active part in the control and management of said association, and have engaged individually and as directors of said association in all of the activities herein alleged.

PAR. 2. Respondent corporations engaged in distilling and importing alcoholic beverages constitute a large and important part of the distillers and importers in the United States and in said northern California territory and constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in alcoholic beverages in the United States and within, to, and from the said northern California territory trade area. Said respondents have been and would now be in free and active competition with each other and with other distillers and importers of alcoholic beverages in said territory but for the wrongful and unlawful conspiracy, combination, understanding, and agreement, and unlawful acts and practices herein set out.

PAR. 3. Respondent corporations, named herein, engaged in the sale and distribution of alcoholic beverages at wholesale, constitute a large and important part of the wholesale liquor dealers in the said northern California territory trade area, and as such wholesalers, constitute a group so large and influential in the trade as to be able to control

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and influence the flow of trade and commerce in alcoholic beverages within, to, and from said trade area. Said respondents have been and would now be in free and active competition with one another and with other wholesale liquor dealers in said trade area but for the wrongful and unlawful conspiracy, combination, understanding, and agreement, and unlawful acts and practices herein set out.

PAR. 4. In the course and conduct of their said businesses, as aforesaid, the respondent corporations named herein have been and are now in competition with other distillers, importers, and wholesale liquor dealers who are located outside of the States of California and Nevada, and who, upon the sale of their products, ship and transport such products from their places of business located outside of the States of California and Nevada into the States of California and Nevada to the purchasers thereof.

PAR. 5. The respondent wholesale liquor dealer members of respondent association, in the course and conduct of their businesses, purchase wines, whiskies, and other alcoholic beverages from distillers, importers, and jobbers of alcoholic beverages whose places of business are located outside of the State of California, and cause such wines, whiskies, and other alcoholic beverages to be shipped and transported from such other States of the United States to the places of business in California of said wholesale liquor dealers, when said products are sold to local retail liquor dealers, who, in turn, sell to the general public.

PAR. 6. There are now in California, and have been for a number of years last past, a number of cooperative buying organizations, small jobbers and wholesale liquor dealers, referred to by respondents as "irregular" distributors, engaged in the business of buying and selling alcoholic beverages at wholesale and who, in the course and conduct of their said businesses, purchase alcoholic beverages from distillers, importers, and wholesale liquor dealers, a great majority of whom are located in States of the United States other than the State of California, and when said products are purchased they are shipped from the seller's place of business into the State of California to the purchasers thereof. These so-called "irregular" distributors, when said alcoholic beverages are received by them, sell and distribute the same to retail liquor dealers located in California and to the purchasing public.

PAR. 7. The respondents, with the purpose, intent and effect of hampering, stifling, and suppressing competition in the sale of alcoholic beverages at wholesale in the territory aforesaid, have combined, agreed, and conspired with one another to hinder and prevent the aforementioned "irregular" distributors from obtaining alcoholic beverages from any source; the said respondents have acted collectively and through the agency of said respondent association and through the

agency of respondent bureau, to effectuate their said purpose. In carrying out said combination, agreement, and conspiracy, respondents collectively, and through the agencies of said association and bureau, have done, and are now doing, among other things, the following:

(a) Have refused, and now refuse, to sell alcoholic beverages to cooperative buying associations and to small jobbers and wholesale liquor dealers and others, considered by respondents to be "irregular" distributors.

(b) Have boycotted and have threatened to boycott the products of distillers, importers, and wholesale liquor dealers, who sell to cooperative buying associations and to small jobbers and wholesale liquor dealers, and others considered by respondents to be "irregular" distributors.

(c) Have solicited and obtained information with respect to distillers, importers, and wholesale liquor dealers selling to cooperative buying associations, small jobbers and wholesale liquor dealers and others, considered by respondents to be "irregular" distributors, and have disseminated and threatened to disseminate such information to distillers, importers, and wholesale liquor dealers.

PAR. 8. The respondents engaged in distilling alcoholic beverages and those engaged in the importation of alcoholic beverages were, before the unlawful agreement, combination, and conspiracy herein set out, in competition as to price with one another in the sale of alcoholic beverages between and among the various States of the United States and its territories, and would now be in competition with one another but for said combination, agreement, and conspiracy.

The respondents engaged in the sale and distribution of alcoholic beverages at wholesale, and each and every member of respondent association, were, before the unlawful agreement, combination, and conspiracy herein set out, in competition as to price with one another in the sale and distribution of alcoholic beverages in the said northern California territory.

PAR. 9. Some time prior to December 1938, the respondents, engaged in the sale and distribution of alcoholic beverages at wholesale, each and every member of respondent association, respondents engaged in distilling alcoholic beverages and the respondents engaged in the importation of alcoholic beverages, for the purpose and with the effect of eliminating price competition among themselves, and in order to stabilize and make uniform the prices of the products sold by said distillers and importers to the wholesale liquor dealers, and the discounts allowed thereon, and the prices of the products

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sold by wholesale liquor dealers, and the discounts allowed thereon, and to stabilize and make uniform the resale prices of the products, by them and each of them sold, have adopted, established, and maintained a system or policy of merchandising whereby they, through agreements and understandings between and among one another, fixed and now fix specified standard and uniform prices, discounts and mark-ups at which said products should be sold, both at wholesale and retail.

Pursuant to such policy, agreements, and understandings, while acting directly and through the agency of the respondent association, the respondents engaged in the sale of alcoholic beverages at wholesale, each and every member of respondent association, respondents engaged in distilling alcoholic beverages, the respondents engaged in the importation of alcoholic beverages and each and every individual respondent named herein, have endeavored and now endeavor to enforce and have enforced and are now enforcing said merchandising policy, and to this end, among other things, have done and are now doing the following:

(a) Have notified, and are now notifying, distillers, importers, and wholesale liquor dealers and retail liquor dealers of the said fixed wholesale and retail prices, discounts, and mark-ups.

(b) Have notified, and are now notifying, distillers, importers, wholesale liquor dealers, and retail liquor dealers of changes in the said prices, discounts, and mark-ups.

(c) Have solicited and obtained information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who do not maintain the fixed resale prices, discounts, and mark-ups and who do not adhere to said merchandising policy; and have disseminated and have threatened to disseminate such information to distillers, importers, wholesale liquor dealers, and retail liquor dealers who sell alcoholic beverages in the said northern California territory.

(d) Have coerced and intimidated distillers and importers into the adoption of contracts and agreements, designed and intended to maintain the prices, discounts, and mark-ups so fixed.

(e) Have boycotted and threaten to boycott the products of distillers, importers, wholesale liquor dealers, and retail liquor dealers who have failed to maintain the prices, discounts, and mark-ups so fixed, and who fail and refuse to cooperate in said merchandising policy.

(f) Have organized and maintained the respondent Liquor Trades' Stabilization Bureau, Inc., for the purpose of policing the trade and of obtaining information with respect to distillers, importers, whole-

sale liquor dealers, and retail liquor dealers who fail to maintain the prices, discounts, and mark-ups so fixed, and who fail and refuse to cooperate in the merchandising policy adopted, and who violate the terms of the price maintenance contracts entered into with retail liquor dealers.

PAR. 10. The capacity, tendency, and effect of said agreement, combination, and conspiracy, and the acts and practices of the respondents, as herein set out, are, and have been, to close and curtail various and sundry outlets, within the aforesaid northern California territory trade area, and other related and connected territory, in the States of California and Nevada, to the direct and immediate sale and shipment of alcoholic beverages by distillers, importers, and wholesale liquor dealers, located in other States of the United States. Said combination, agreement, and conspiracy had, and now have the capacity, tendency, and effect to monopolize, in said respondents, the business of dealing in and distributing alcoholic beverages in the aforesaid territory; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said products in the States of California and Nevada; to deprive the purchasing and consuming public of advantages in price and service, which they would receive and enjoy under conditions of normal, unobstructed, or free and fair competition of said trade and industry, and to otherwise operate as a restraint upon and detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade, and to place an undue burden upon such commerce; to prejudice and injure the public and other distillers, importers, jobbers, wholesale liquor dealers, and buying associations, who were not parties to the aforesaid agreement, combination, and conspiracy, and who have taken no part therein.

PAR. 11. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public, have a tendency to and have actually hindered and prevented price competition between and among respondents, in the sale of alcoholic beverages in commerce, within the intent and meaning of the Federal Trade Commission Act, and placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of alcoholic beverages in such commerce; have unreasonably restrained, hampered, and burdened such commerce in alcoholic beverages, and 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 April 18, 1940, issued and subsequently served its complaint in this proceeding upon the 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. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Wholesale Liquor Distributors' Association of Northern California, Inc., hereinafter referred to as respondent association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and has its home office in the Sharon Building, 55 New Montgomery Street, San Francisco, Calif. Respondent association was organized in August 1935, and has a membership of approximately 69 northern California wholesale liquor dealers who are operating in territory comprising the northern part of California and the western part of Nevada and hereinafter referred to as "Northern California Territory." The following are now and have been for several months last past its board of directors and its officers:

Joseph M. Tonkin, president (named in complaint as J. M. Tonkin), 440 Ninth Street, San Francisco, Calif.;

J. F. Ferrari, vice president, 1414 Chester Avenue, Bakersfield, Calif.;

Max Sobel, secretary-treasurer, Third and Berry Streets, San Francisco, Calif.;

Sante Quattrin, executive secretary, 55 New Montgomery Street, San Francisco, Calif.;

A. M. Berberian, director, 202 Broadway, Fresno, Calif.;

Charles Bigley, director, 256 North First Street, San Jose, Calif.;

H. L. Hanson, director, 919 Front Street, Sacramento, Calif.;

J. J. Bottaro, director, 521 I Street, Sacramento, Calif.;

Thomas Lenehan, director, 434 Ellis Street, San Francisco, Calif.;

R. F. Jose, director, 314 Front Street, San Francisco, Calif. ;
Floyd Trombetta, director, 24 Fourth Street, Santa Rosa, Calif. ;
Andrew Rosala, director, 142 West Fourth Street, Eureka, Calif. ;
C. L. Sauer, director, 350 Townsend Street, San Francisco, Calif.
John Pingree, director, 253 Fourth Street, Oakland, Calif.

Sherwood Coffin of 311 Folsom Street, San Francisco, Calif., became a director of respondent association on March 1, 1940.

Respondents McKesson & Robbins, Inc., Haas Bros., Rathjen Bros., Inc., Tonkin Distributing Co., and Coffin-Reddington Co. are all members of said association.

Respondent association, acting under the direction and direct supervision of its officers and directors, among other things, is now, and has been for more than 1 year last past, engaged in attempting to procure legislation deemed by it to be beneficial to its members, enforcing observance by its members and others of price maintenance policies, hereinafter described with respect to the sale of all alcoholic beverages, and in otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage.

The respondent Liquor Trades' Stabilization Bureau, Inc., hereinafter referred to as respondent bureau, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business in the Sharon Building, 55 New Montgomery Street, San Francisco, Calif. Its membership is composed of distillers, importers, distributors, and retailers of alcoholic beverages, among whom are all of the parties herein named.

The said bureau, under the direct supervision of its officers and directors, is now, and has been for more than 1 year last past, engaged as an enforcing agency for the maintenance of wholesale and retail prices, discounts, and mark-ups on alcoholic beverages in the said northern California territory.

Rathjen Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and its home office and principal place of business are located at 135 Berry Street, San Francisco, Calif. Rathjen Bros., Inc., is now, and has been for more than 1 year last past, engaged in the purchase in various States of the United States and in the importation from foreign countries of alcoholic beverages, and in the sale and distribution thereof at wholesale in the said northern California territory, and in commerce among and between the various States of the United States.

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Gooderham & Worts Ltd. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and its home office and principal place of business are located at 2070 Penobscot Building, Detroit, Mich. Said corporation has a branch office at 650 Second Street, San Francisco, Calif. Said corporation is now, and for more than 1 year last past has been, the exclusive sales agency for Gooderham & Worts Ltd. brands of whiskies and other alcoholic beverages distilled by affiliated corporations, selling said products to wholesalers located throughout the several States of the United States and in the District of Columbia, and causing said products when sold, to be transported in commerce from the distilleries located in the State of Illinois in the United States and in the Dominion of Canada to the purchasers thereof, some of whom are located in the said northern California territory.

Somerset Importers, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its home office and principal place of business are located at 9 Rockefeller Plaza, New York, N. Y. Said corporation maintains a branch office at 615 Second Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the importation from foreign countries of alcoholic beverages and in the sale and distribution thereof at wholesale among and between the various States of the United States and in the District of Columbia.

Parrott & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and its home office and principal place of business are located at 320 California Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern California territory and among and between the various States of the United States.

McKesson & Robbins, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, and its home office and principal place of business are located at 155 East Forty-fourth Street, New York, N. Y., and it operates a branch office under the name of Langley-Michaels Division of McKesson & Robbins, Inc., at 50 First Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern

California territory and among and between the various States of the United States and in the District of Columbia.

Browne Vintners Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and its home office and principal place of business are located at 50 Rockefeller Plaza, New York, N. Y., and it maintains a branch office at 625 Second Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Seagram-Distillers Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its home office and principal place of business are located at 405 Lexington Avenue, New York, N. Y. Said corporation maintains a branch office at 520 Montgomery Street, San Francisco, Calif. Said corporation is a wholly owned subsidiary of Distillers' Corporation-Seagrams, Ltd., a Canadian corporation, and acts as a general sales outlet for all of the producing subsidiaries of said company, with the exception of the Calvert-Maryland Distributing Co., Inc. Said corporation is now, and has been for more than 1 year last past, engaged in distilling of alcoholic beverages and in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Brown-Forman Distillers Corporation (named in the complaint as Brown-Forman Distillers Company, Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, and its home office and principal place of business are located at 1908 Howard Street, Louisville, Ky., and it maintains and operates a branch office at 224 Spear Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the business of distilling alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Fleischmann Distilling Corporation is a wholly owned subsidiary of Standard Brands, Inc., and is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and its home office and principal place of business are located at 595 Madison Avenue, New York, N. Y., and it maintains and operates a branch office at 351 California Street, San Francisco, Calif.

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Said corporation is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages and in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

National Distillers' Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, and its home office and principal place of business are located at 120 Broadway, New York, N. Y., and it maintains and operates a branch office at 625 Second Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages, and in the importation from foreign countries of alcoholic beverages, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Schenley Distilleries, Inc. (named in the complaint as Schenley Distillers, Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its home office and principal place of business are located at 900 Battery Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the distilling, rectifying, blending, and bottling of alcoholic beverages, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Frankfort Distilleries, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, and its home office and principal place of business are located at 401 West Main Street, Louisville, Ky. Said corporation maintains and operates a branch office located at 524 Second Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Hiram Walker, Incorporated (named in the complaint as Hiram Walker & Sons, Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and has a general office at 4450 Penobscot Building, Detroit, Mich. Said corporation operates a branch office at 650 Second Street, San Francisco, Calif. Said corporation is now, and for more than 1 year last past has been, the exclusive sales agency for Hiram Walker, Inc., brands of whiskies and other alcoholic beverages distilled by affiliated corporations, selling said products to wholesalers located throughout

the several States of the United States and in the District of Columbia, and causing said products, when sold, to be transported in commerce from the distilleries located in the State of Illinois in the United States, in the Dominion of Canada, and in other foreign countries to the purchasers thereof, some of whom are located in said northern California territory.

Haas Bros. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and its home office and principal place of business are located at Third and Channel Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern California territory and in commerce among and between the various States of the United States.

Tonkin Distributing Co. (described in the complaint as a corporation), is a copartnership composed of Joseph M. Tonkin and Sidney Modlin, and its home office and principal place of business are located at 440 Ninth Street, in the city of San Francisco, State of California. Said partnership is now, and has been for more than 1 year last past, engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern California territory and in commerce among and between the various States of the United States.

Coffin-Redington Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and its home office and principal place of business are located at 311 Folsom Street, in the city of San Francisco, State of California. Said corporation is now, and has been for more than 1 year last past, engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern California territory and in commerce among and between the various States of the United States.

Joseph M. Tonkin (named in complaint as J. M. Tonkin), of 440 Ninth Street, San Francisco, Calif., is an individual, and is president and a member of the board of directors of respondent association and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes part, individually and as president and as a director of said association, in all the activities herein found.

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J. F. Ferrari, of 1414 Chester Avenue, Bakersfield, Calif., is an individual and is vice president and a member of the board of directors of respondent association, and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes part individually and as vice president and director of said association in all of the activities herein found.

Max Sobel of Third and Barry Streets, San Francisco, Calif., is an individual and is secretary-treasurer and a member of the board of directors of respondent association and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes part individually and as secretary-treasurer and director of said association in all of the activities herein found.

Sante Quattrin of 55 New Montgomery Street, San Francisco, Calif., is an individual and as executive secretary of respondent association has taken part in the control and management of said association and in all of the activities herein found.

A. M. Berberian, 202 Broadway, Fresno, Calif.; Charles Bigley, 256 North First Street, San Jose, Calif.; J. J. Bottaro, 521 I Street, Sacramento, Calif.; H. L. Hanson, 919 Front Street, Sacramento, Calif.; Thomas Lenahan, 434 Ellis Street, San Francisco, Calif.; R. F. Jose, 314 Front Street, San Francisco, Calif.; Floyd Trombetta, 24 Fourth Street, Santa Rosa, Calif.; Andrew Rosaia, 142 West Fourth Street, Eureka, Calif.; C. L. Sauer, 350 Townsend Street, San Francisco, Calif.; John Pingree, 253 Fourth Street, Oakland, Calif.; and Sherwood Coffin, 311 Folsom Street, San Francisco, Calif., are individuals and are members and directors of said association and, excepting only respondent Sherwood Coffin, have at all times herein mentioned taken active part in the control and management of said association, and have engaged individually and as directors of said association in all of the activities herein found.

PAR. 2. The corporations hereinbefore named who are engaged in distilling and importing alcoholic beverages constitute a large and important part of the distillers and importers in the United States, and in the said northern California territory and constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in alcoholic beverages in the United States and within, to, and from the said northern California territory trade area. Said corporations have been and would now be in free and active competition with each other and with other distillers and importers of alcoholic beverages in said territory but for an unlawful conspiracy, combination, understanding, and agreement herein described.

PAR. 3. The corporations named herein, engaged in the sale and distribution of alcoholic beverages at wholesale, constitute a large and important part of the wholesale liquor dealers in the said northern California territory trade area, and as such wholesalers, constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in alcoholic beverages within, to, and from said trade area. Said corporations have been and would now be in free and active competition with each other and with other distillers and importers of alcoholic beverages in said territory but for an unlawful conspiracy, combination, understanding, and agreement herein described.

PAR. 4. In the course and conduct of their said businesses, as aforesaid the corporations named herein have been and are now in competition with other distillers, importers, and wholesale liquor dealers who are located outside of the States of California and Nevada, and who, upon the sale of their products, ship and transport such products from their places of business located outside of the States of California and Nevada into the States of California and Nevada to the purchasers thereof.

PAR. 5. The respondent wholesale liquor dealer members of respondent association, in the course and conduct of their businesses, purchase wines, whiskies, and other alcoholic beverages from distillers, importers, and jobbers of alcoholic beverages whose places of business are located outside of the State of California, and cause such wines, whiskies, and other alcoholic beverages to be shipped and transported from such other States of the United States to the places of business in California of said wholesale liquor dealers, when said products are sold to local retail liquor dealers who, in turn, sell to the general public.

PAR. 6. There are now in California, and have been for a number of years last past, a number of cooperative buying organizations, small jobbers, and wholesale liquor dealers, referred to by respondents as "irregular" distributors, engaged in the business of buying and selling alcoholic beverages at wholesale and who, in the course and conduct of their said businesses, purchase alcoholic beverages from distillers, importers, and wholesale liquor dealers, a great majority of whom are located in States of the United States other than the State of California and when said products are purchased they are shipped from the seller's place of business into the State of California to the purchasers thereof. These so-called "irregular" distributors, when said alcoholic beverages are received by them, sell and distribute the same to retail liquor dealers located in California and to the purchasing public.

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PAR. 7. The respondents Gooderham & Worts Ltd.; Brown-Forman Distillers Corporation; Fleishmann Distilling Corporation; National Distillers' Products Corporation; Schenley Distilleries, Inc.; Frankfort Distilleries, Inc.; Hiram Walker, Inc.; Browne Vintners Co., Inc.; Rathjen Bros., Inc.; McKesson & Robbins, Inc.; Parrott & Co.; Haas Bros.; Tonkin Distributing Co.; Coffin-Redington Co.; Joseph M. Tonkin (named in complaint as J. M. Tonkin); Max Sobel; J. F. Ferrari; Sante Quattrin; A. M. Berberian; Charles Bigley; J. J. Bottaro; H. L. Hanson; Thomas Lenehan; R. F. Jose; Floyd Trombetta; Andrew Rosaia; C. L. Sauer; John Pingree and all the other members of respondent association, with the purpose, intent, and effect of hampering, stifling, and suppressing competition in the sale of alcoholic beverages at wholesale in the territory aforesaid, combined, agreed, and conspired with one another to hinder and prevent the aforementioned "irregular" distributors from obtaining alcoholic beverages from any source; the said respondents acted collectively and through the agency of said respondent association and through the agency of respondent bureau, to effectuate their said purpose. In carrying out said combination, agreement, and conspiracy, respondents collectively, and through the agencies of said association and bureau, have done, and are now doing, among other things, the following:

(a) Refused, and do now refuse, to sell alcoholic beverages to cooperative buying associations and to small jobbers and wholesale liquor dealers and others, considered by respondents to be "irregular" distributors.

(b) Boycotted and have threatened to boycott the products of distillers, importers, and wholesale liquor dealers, who sell to cooperative buying associations and to small jobbers and wholesale liquor dealers, and others considered by respondents to be "irregular" distributors.

(c) Solicited and obtained information with respect to distillers, importers, and wholesale liquor dealers selling to cooperative buying associations, small jobbers, and wholesale liquor dealers and others, considered by respondents to be "irregular" distributors, and have disseminated and threatened to disseminate such information to distillers, importers, and wholesale liquor dealers.

PAR. 8. The respondents engaged in distilling alcoholic beverages and those engaged in the importation of alcoholic beverages were, before the unlawful agreement, combination, and conspiracy herein described, in competition as to price with one another in the sale of alcoholic beverages between and among the various States of the United States and its Territories.

The respondents engaged in the sale and distribution of alcoholic beverages at wholesale, and each and every member of respondent

association, were, before the unlawful agreement, combination, and conspiracy herein described, in competition as to price with one another in the sale and distribution of alcoholic beverages in the said northern California territory.

PAR. 9. Some time prior to December 1938, the respondents, engaged in the sale and distribution of alcoholic beverages at wholesale, each and every member of respondent association, respondents engaged in distilling alcoholic beverages and the respondents engaged in the importation of alcoholic beverages, for the purpose and with the effect of eliminating price competition among themselves, and in order to stabilize and make uniform the prices of the products sold by said distillers and importers to the wholesale liquor dealers, and the discounts allowed thereon, and the prices of the products sold by wholesale liquor dealers, and the discounts allowed thereon, and to stabilize and make uniform the resale prices of the products, by them and each of them sold, adopted, established, and maintained a system or policy of merchandising whereby they, through agreements and understandings between and among one another, fixed specified standard and uniform prices, discounts, and mark-ups at which said products should be sold, both at wholesale and retail.

Pursuant to such policy, agreements, and understandings, while acting directly and through the agency of the respondent association, the respondents engaged in the sale of alcoholic beverages at wholesale, each and every member of respondent association, respondents engaged in distilling alcoholic beverages, the respondents engaged in the importation of alcoholic beverages and each and every individual respondent named herein, excepting only Sherwood Coffin, have endeavored and now endeavor to enforce and have enforced and are now enforcing said merchandising policy, and to this end, among other things, have done and are now doing the following:

(a) Have notified, and are now notifying, distillers, importers, and wholesale liquor dealers and retail liquor dealers of the said fixed wholesale and retail prices, discounts, and mark-ups.

(b) Have notified, and are now notifying, distillers, importers, wholesale liquor dealers, and retail liquor dealers of changes in the said prices, discounts, and mark-ups.

(c) Solicited and obtained information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who do not maintain the fixed resale prices, discounts, and mark-ups and who do not adhere to said merchandising policy; disseminated and threatened to disseminate such information to distillers, importers, wholesale liquor dealers, and retail liquor dealers who sell alcoholic beverages in the said northern California territory.

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(d) Coerced and intimidated distillers and importers into the adoption of contracts and agreements, designed and intended to maintain the prices, discounts, and mark-ups so fixed.

(e) Boycotted and threatened to boycott the products of distillers, importers, wholesale liquor dealers, and retail liquor dealers who failed to maintain the prices, discounts, and mark-ups so fixed, and who failed and refused to cooperate in said merchandising policy.

(f) Organized and maintained the respondent Liquor Trades' Stabilization Bureau, Inc., for the purpose of policing the trade and of obtaining information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers, who fail to maintain the prices, discounts, and mark-ups so fixed, and who failed and refused to cooperate in the merchandising policy adopted, and who violated the terms of the price maintenance contracts entered into with retail liquor dealers as herein described.

PAR. 10. The capacity, tendency, and effect of said agreement, combination, and conspiracy, and the acts and practices of the respondents, as herein found, are, and have been, to close and curtail various and sundry outlets, within the aforesaid northern California territory trade area, and other related and connected territory, in the States of California and Nevada, to the direct and immediate sale and shipment of alcoholic beverages by distillers, importers, and wholesale liquor dealers, located in other States of the United States. Said combination, agreement, and conspiracy had, and now have the capacity, tendency, and effect to monopolize, in said respondents, the business of dealing in and distributing alcoholic beverages in the aforesaid territory; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said products in the States of California and Nevada; to deprive the purchasing and consuming public of advantages in price and service, which they would receive and enjoy under conditions of normal, unobstructed or free and fair competition of said trade and industry, and to otherwise operate as a restraint upon and detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade, and to place an undue burden upon such commerce; to prejudice and injure the public and other distillers, importers, jobbers, wholesale liquor dealers, and buying associations, who were not parties to the aforesaid agreement, combination, and conspiracy, and who took no part therein.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of the public, have a tendency to and have actually

hindered and prevented price competition between and among respondents, in the sale of alcoholic beverages in commerce, within the intent and meaning of the Federal Trade Commission Act, and placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of alcoholic beverages in such commerce; have unreasonably restrained, hampered, and burdened such commerce in alcoholic beverages, 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 on the complaint of the Commission and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and the conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

I. *It is ordered*, That the respondents Gooderham & Worts Ltd., a corporation; Brown-Forman Distillers Corporation, a corporation; Fleischmann Distilling Corporation, a corporation; National Distillers Products Corporation, a corporation; Schenley Distilleries, Inc., a corporation; Frankfort Distilleries, Inc., a corporation; and Hiram Walker Inc., a corporation, as distillers; and Browne Vintners Co., Inc., a corporation; Rathjen Bros., Inc., a corporation; and McKesson & Robbins, Inc., a corporation, as importers; their respective officers, agents, and employees, or any of them, in connection with the sale and distribution of alcoholic beverages in interstate commerce, do forthwith cease and desist from:

1. Entering into any agreement, contract, or understanding, either verbal or written, one with another, for the purpose or with the effect of preventing or hindering any wholesalers, jobber, or dealer, or any class of wholesalers, jobbers, or dealers from obtaining alcoholic beverages from the sellers thereof; or enforcing or attempting to enforce any such agreement, contract, or understanding by any of the following methods or means.

(a) Refusing to sell or threatening to refuse to sell any alcoholic beverage to a cooperative buying association or any jobber or dealer or any class of jobbers or dealers.

(b) Boycotting or threatening to boycott the product or products of any distiller or any importer, or blacklisting any liquor dealer who

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sells to a cooperative buying association or a jobber or jobbers, or dealer or dealers not coming within the approved class.

(c) Soliciting information directly or through the agency of the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., or respondent Liquor Trades' Stabilization Bureau, Inc., or through any other agency, regarding distillers, importers, or wholesale liquor dealers who sell alcoholic beverages to a cooperative buying association or to dealers not within the approved class; disseminating or threatening to disseminate such information to distillers, importers, wholesale liquor dealers, or other distributors.

II. *It is further ordered*, That the respondents Rathjen Bros., Inc., a corporation; Parrott & Co., a corporation; McKesson & Robbins, Inc., a corporation; Haas Bros., a corporation; Tonkin Distributing Co., a copartnership composed of Joseph M. Tonkin and Sidney Modlin; Coffin-Redington Co., a corporation; their respective officers, agents, and employees, or any of them; and Joseph M. Tonkin (named in complaint as J. M. Tonkin), Max Sobel, J. F. Ferrari, Sante Quattrin, A. M. Berberian, Charles Bigley, J. J. Bottaro, H. L. Hanson, Thomas Lenehan, R. F. Jose, Floyd Trombetta, Andrew Rosaia, C. L. Sauer, and John Pingree, or any of them, in connection with the purchase and transportation or the sale and distribution of alcoholic beverages in interstate commerce, do forthwith cease and desist from:

1. Entering into any agreement, contract, or understanding, either verbal or written, one with another, or with any two or more distillers or importers or with a distiller and another importer of alcoholic beverages for the purpose or with the effect of preventing or hindering any wholesaler, jobber, or dealer, or any class of wholesalers, jobbers, or dealers from obtaining alcoholic beverages from the sellers thereof; or enforcing or attempting to enforce any such agreement, contract, or understanding by any of the following methods or means.

(a) Refusing to sell or threatening to refuse to sell any alcoholic beverages to a cooperative buying association or any jobber or dealer or any class of jobbers or dealers.

(b) Boycotting or threatening to boycott the product or products of any distiller or any importer, or blacklisting any liquor dealer who sells to a cooperative buying association or a jobber or jobbers, or dealer or dealers not coming within the approved class.

(c) Soliciting information directly or through the agency of the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., or respondent Liquor Trades' Stabilization Bureau, Inc., or through any other agency, regarding distillers, importers, or wholesale liquor dealers who sell alcoholic beverages to a cooperative buying association or to dealers not within the approved class; dis-

seminating or threatening to disseminate such information to distillers, importers, wholesale liquor dealers, or other distributors.

III. *It is further ordered*, That the respondents Gooderham & Worts, Ltd., a corporation; Brown-Forman Distillers Corporation, a corporation; The Fleischmann Distilling Corporation, a corporation; National Distillers' Products Corporation, a corporation; Schenley Distilleries, Inc., a corporation; Frankfort Distilleries, Inc., a corporation; Hiram Walker, Inc., a corporation; Seagram-Distillers Corporation, a corporation, as distillers; and Somerset Importers, Ltd., a corporation; Browne Vintners Co., Inc., a corporation; Rathjen Bros., Inc., a corporation; and McKesson & Robbins, Inc., a corporation, as importers; their respective officers, agents, servants, and employees, or any of them, in connection with the sale and distribution of alcoholic beverages in interstate commerce, do forthwith cease and desist from entering into, continuing, or carrying out any contract, agreement, or understanding with one another, the purpose or effect of which is to maintain specified standard or minimum resale prices, discounts, or mark-ups at which alcoholic beverages are to be sold by distillers, importers, wholesalers, or other distributors, or from enforcing or attempting to enforce any such contract, agreement, or understanding by any of the following methods or means:

(a) Soliciting directly or through the agency of the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., or the respondent Liquor Trades' Stabilization Bureau, Inc., or any other common agency information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who do not maintain fixed resale prices, discounts, and mark-ups and who do not adhere to such a merchandising policy, disseminating or threatening to disseminate such information to distillers, importers, wholesale or retail liquor dealers.

(b) Notifying distillers, importers, or wholesale liquor dealers or retail liquor dealers of said fixed wholesale or retail prices, discounts, and mark-ups.

(c) Notifying distillers, importers, wholesale liquor dealers or retail liquor dealers of changes in said prices, discounts, and mark-ups.

IV. *It is further ordered*, That the respondent wholesalers, Wholesale Liquor Distributors' Association of Northern California, Inc., a corporation; Liquor Trades' Stabilization Bureau, Inc., a corporation; Rathjen Bros., Inc., a corporation; Parrott & Co., a corporation; McKesson & Robbins, Inc., a corporation; Haas Bros., a corporation; Tonkin Distributing Co., a copartnership composed of Joseph M. Tonkin and Sidney Modlin; Coffin-Redington Co., a corporation;

their respective officers, agents, servants, and employees, or any of them; and the individual respondents, Joseph M. Tonkin, Max Sobel, J. F. Ferrari, Sante Quattrin, A. M. Berberian, Charles Bigley, J. J. Bottaro, H. L. Hanson, Thomas Lenahan, R. F. Jose, Floyd Trombetta, Andrew Rosaia, C. L. Sauer, and John Pingree, or any of them, in connection with the sale and distribution of alcoholic beverages in interstate commerce, do forthwith cease and desist from entering into, continuing, or carrying out any contract, agreement, or understanding with one another, the purpose or effect of which is to maintain specified standard or minimum resale prices, discounts, or mark-ups, at which alcoholic beverages are to be sold by distillers, importers, wholesalers, or other distributors, or from enforcing or attempting to enforce any such contract, agreement, or understanding by any of the following methods or means:

(a) Soliciting directly or through the agency of the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., or the respondent Liquor Trades' Stabilization Bureau, Inc., or any other common agency information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who do not maintain fixed resale prices, discounts, and mark-ups and who do not adhere to such a merchandising policy; disseminating or threatening to disseminate such information to distillers, importers, wholesale or retail liquor dealers.

(b) Notifying distillers, importers, or wholesale liquor dealers or retail liquor dealers of said fixed wholesale or retail prices, discounts, and mark-ups.

(c) Notifying distillers, importers, wholesale liquor dealers, or retail liquor dealers of changes in said prices, discounts and mark-ups.

(d) Coercing or intimidating or attempting to coerce or intimidate any distillers or importer into the adoption of contracts and agreements designed and intended to maintain the prices, discounts, and mark-ups so fixed;

(e) Boycotting or threatening to boycott the products of distillers, importers, or wholesale liquor dealers who fail to maintain the prices, discounts, and mark-ups so fixed and who fail or refuse to cooperate in said merchandising policy.

V. *It is further ordered*, That the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., and the respondent Liquor Trades' Stabilization Bureau, Inc., their respective officers, agents, servants, and employees, or any of them, do forthwith cease and desist from enforcing or attempting to enforce by any method or means, any contract, agreement, or understanding which in

effect classifies wholesalers, jobbers, or dealers in alcoholic beverages for the purpose and with the effect of preventing or hindering any wholesaler, jobber, or dealer or any class of wholesalers, jobbers, or dealers from obtaining alcoholic beverages for resale, as set forth in paragraphs I and II hereof.

VI. *It is further ordered*, That the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., and the respondent Liquor Trades' Stabilization Bureau, Inc., their respective officers, agents, servants, and employees, or any of them, do forthwith cease and desist from enforcing or attempting to enforce by any method or means any contract, agreement, or understanding, either verbal or written, among distillers or among importers or among wholesalers, or between one or more distiller and one or more importer, or between one or more distiller and one or more wholesaler, or between one or more importer and one or more wholesaler, or between one or more distiller and one or more importer and one or more wholesaler, the purpose or effect of which is to maintain specified standard or minimum resale prices, discounts, or mark-ups at which alcoholic beverages are to be sold by any distiller or any importer or any wholesaler or any other distributor of alcoholic beverages, as set forth in paragraphs III and IV hereof.

VII. *It is further ordered*, That nothing in this order is to be construed as prohibiting the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of the Sherman Anti-Trust Act, as amended.

VIII. *It is further ordered*, That the complaint herein be, and the same hereby is, dismissed as to the respondent Sherwood Coffin.

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

IN THE MATTER OF
KENDALL COMPANY, TRADING AS BAUER & BLACK

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

Docket 3320. Complaint, Feb. 1, 1938—Decision, Nov. 29, 1940

Where a corporation engaged, among other things, in the manufacture, sale, and distribution of its "Blue Jay" corn plasters, bunion and callus plasters, and liquid corn remover, which, when used in accordance with its directions, embodied substantially same form of treatment and consisted, in case of said plasters, of felt rings attached to adhesive strips and containing disc of medicament with from 41 to 43 percent of salicylic acid in rubber base, and, in case of said liquid, of 13.4 percent solution of said acid, and which were designed, through use of said rings, to surround and protect the growth from outside pressure, with said acid acting upon the cornified tissue and softening same and facilitating eventual removal, and, as thus engaged, in substantial competition with others also engaged in sale and distribution of like and similar products in commerce among the various States and in the District of Columbia; in advertising, at a cost in excess of \$100,000 annually, its said "Blue Jay" line of preparations, in which its business ranked with that of the country's largest, in price lists, advertising circulars, and in newspapers and periodicals of general circulation, and through use of the radio, billboards, window displays, and inside-the-store displays—

- (a) Represented, directly and by inference, that its said plasters would remove corns completely without danger of infection, and scientifically and easily, in 3 days, and would stop pain immediately, and would cure corn cripples within 3 days, enabling such a person to walk within said period; and constituted new treatment;
- (b) Represented that its said liquid would rid the feet of corns and was a safe, scientific treatment therefor, and would permit user, after a period of time, to lift corns out, and would relieve pain immediately, and that corns had roots and its said remedies enabled user to remove them forever, roots and all, and that corn would not grow back; and
- (c) Represented that its said bunion and callus plasters would remove calluses without danger of infection, and that its remedies in question were safe and painless and eliminated aforesaid danger;

Facts being its said products do not constitute a cure for growths in question, since such growths will return after temporary removal unless pressure and irritation which caused them in the first instance is eliminated, and corns of long standing will return after temporary removal without further irritation and pressure, growths referred to do not have a root in the ordinary sense of the term, but cone-like apex thereof, thus referred to by it, is actually part of corn formed last, treatment with its said products cannot always be relied upon to remove entirely such cone-like portions projected into the dermis, nor can use of such products be relied upon to stop instantly pain of corns or calluses, since some time is required for pain caused by pressure of growth on sensory nerves of the skin to subside, following application of shield to relieve outside pressure thereon, preparations containing salicylic acid for treating corns have been in use for about 100 years and are recog-