

Syllabus

IN THE MATTER OF

CUP AND CONTAINER INSTITUTE, 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 4036. Complaint, Feb. 17, 1940—Decision, Dec. 14, 1940

Where some 10 corporations and businesses, engaged in manufacture, as case might be, of paper drinking cups, paper food containers, ice cups, ice tubs and related products, and in interstate sale and distribution thereof to franchise distributors, wholesalers, jobbers, retailers, users, and other purchasers, and members then or thereafter and since 1935 of their Institute, or trade association, organized 2 years theretofore and during existence of the National Recovery Administration, and two other similarly engaged corporations which, while never members, cooperated with officers, directors, and members of such Institute and participated in some of the activities below set forth; constituting together dominant factors in paper drinking cup and paper food container industry and controlling more than 60 percent of the output and sale thereof, since 1938 in active and substantial competition with each other and with other members of the industry in the sale of their said products in commerce as aforesaid, and prior thereto and to adoption and use of acts, practices and methods below set-out, in active and substantial competition with each other and with other members of the industry in the sale of their said products in commerce as aforesaid, and which competition, but for such acts and practices, would have continued—

Entered into, along with certain other cooperating manufacturers and their aforesaid Institute, understandings and agreements, and carried out same through and by means of such Institute and various individuals, its officers, executive directors, and other directors; and thereby and as a result of and in pursuance of such various understandings and agreements thus entered and reached—

- (a) Fixed and maintained in many instances uniform minimum prices for some of their aforesaid products, and filed with their said Institute their respective published price lists, discounts and terms of sale, and for more than a year subsequent to invalidation of said National Recovery Act in May 1935, notified such Institute of any deviation from their price lists by giving notice in writing five days prior to effective date thereof;
- (b) Filed also with Institute sample copy of their franchise wholesaler, jobber, and user contract forms, and of their total individual dollar sales, and various other statistics pertaining to previous months' operations and various other related past periodical operating statistics;
- (c) Debated and thrashed out at Institute meetings question of general price increase by all members and as result thereof and acting through instrumentality of said Institute and certain individuals, its general officers, agreed upon and established and rigidly adhered to general price increase of 15 percent on drinking and soda cups and certain dishes and food containers;

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- (d) Issued Public Business Price Lists and Public Business Policy Sheets and sent out same in majority of cases to their so-called franchise distributors who, along with wholesalers in some instances, acted as their agents in placing bids on Federal, State, county, and municipal business and quoting prices as set forth by their respective principals in accordance with the uniform minimum prices set forth in price lists above referred to, and through letters, bulletins, and sales instructions sent to their franchise distributors and wholesalers, emphasized and in effect required the quoting of the uniform and noncompetitive prices on Government bids which they had reached, and requested to be advised of any deviation from prices in question which might come to attention of such agents; and thereby brought about a uniformity in bidding including prices, discounts, and terms of sale in response to Government requests, and including therein such requests from the Procurement Division of the Treasury Department of the United States Government and large cities throughout the country; and
- (e) Maintained through their said Institute procedure governing introduction of a new product by any corporate member or other cooperating manufacturer, and made use of procedure in question, maintained primarily to ascertain whether product did comply with various Governmental laws and regulations, to withhold sale and quotation of prices on new products until it had been classified into particular groups and its price furnished to Institute in advance of sale; and

Where said Institute and aforesaid individuals, officers and directors thereof and acting as the case might be as variously below set forth—

- (f) Entered into and carried out understanding, agreement, combination, or conspiracy among themselves and with others as hereinabove indicated, with intent and effect of restricting, restraining, monopolizing, or eliminating competition in sale in interstate commerce of such paper drinking cups and various other similar products as above set forth; and
- (g) Aided, abetted and encouraged and cooperated with Institute members in accomplishment of aforesaid objectives in acts and things above suggested, and through collecting from and disseminating among members and others in industry various information as to prices, terms and conditions of sale prior to publication date and in other respects:

Held, That such acts and practices, under the circumstances set forth were all to the prejudice of the public and had a dangerous tendency to and actually did hinder and prevent price competition among said corporations and businesses hereinbefore referred to in sale of such paper drinking cups, food containers and other and similar products in commerce and placed in their hands power to control and enhance prices and unreasonably restrain trade and commerce in products in question, and constituted unfair methods of competition.

Mr. Morton Nesmith for the Commission.

McKercher & Link, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the parties named

in the caption hereof, and hereinafter described and referred to as respondents, have violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cup and Container Institute, Inc., is a nonprofit corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 2739 Graybar Building, 420 Lexington Avenue, in the city of New York, State of New York. Respondent Institute was organized on January 27, 1933, as a trade association for manufacturers of paper drinking cups and paper food containers.

Respondent, Dixie-Vortex Co. is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal offices and places of business located in the city of Chicago, State of Illinois, and the city of Easton, State of Pennsylvania.

Respondent, Lily-Tulip Cup Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business at 122 East Forty-second Street, city of New York, State of New York.

Respondent, Crystal Paper Service Corporation, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business at 249 North Reno Street, in the city of Los Angeles, State of California. This company is a subsidiary of the respondent Lily-Tulip Cup Corporation.

Respondent, Herz Cup Co., is a division of Herz Manufacturing Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 840 East 134th Street, in the city of New York, State of New York.

Respondent, American Lace Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin with its principal office and place of business located at 4425 North Port Washington Avenue, in the city of Milwaukee, State of Wisconsin.

Respondent, Milwaukee Lace Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business at 1770 North Commerce Street, in the city of Milwaukee, State of Wisconsin.

Respondent, Eagle Cup Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the

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State of New York with its principal office and place of business located at 152 Imlay Street, in the city of Brooklyn, State of New York.

Respondent, The American Paper Goods Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located in the city of Kensington, State of Connecticut.

Respondent, Logan Drinking Cup Co., is a division of the United States Envelope Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal offices and places of business in the cities of Springfield and Worcester in the State of Massachusetts.

The respondent, Sutherland Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in the city of Kalamazoo, State of Michigan.

Respondent, Sealright Co., Inc., is a corporation and division of the Oswego Falls Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the city of Fulton, State of New York.

Respondent, Cupples-Hesse Envelope and Lithographing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 4189 King's Highway, Memorial Boulevard, in the city of St. Louis, State of Missouri.

The foregoing respondent corporations hereinafter referred to as corporate respondents, except respondent Cupples-Hesse Envelope and Lithographing Co., are now, or at some time since 1935 have been members of the respondent Cup and Container Institute, Inc., hereinafter referred to as respondent Institute. Cupples-Hesse Envelope and Lithographing Co. although not a member of said respondent Institute has cooperated with the officers, directors, and members thereof in the activities hereinafter set forth.

Respondent, Granville P. Rogers, named herein as an individual and as president and executive director of respondent Institute, has his principal office and place of business located at 2739 Graybar Building, 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, Dale H. Eckerman, named herein as an individual and as vice-president and director of said respondent Institute, has his principal office and place of business located at 2739 Graybar Build-

ing, 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, K. L. Stoler, named herein as an individual and as secretary and director of said respondent Institute, has his principal office and place of business located at 2739 Graybar Building, 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, Robert J. Kieckhefer, an individual named herein as a director of said respondent Institute has his principal office and place of business located at 4425 North Port Washington Avenue, in the city of Milwaukee, State of Wisconsin, the office of respondent American Lace Paper Co.

Respondent, William S. Bacon, an individual named herein as a director of said respondent Institute, has his principal office and place of business located in the offices of the respondent American Paper Goods Co., in the city of Kensington, State of Connecticut.

Respondent, Robert C. Fenner, an individual named herein as a director of said respondent Institute has his principal office and place of business located in the offices of the respondent Dixie-Vortex Co., in the city of Chicago, State of Illinois.

Respondent, Alexander Herz, an individual named herein as a director of said respondent Institute has his principal office and place of business located at the office of respondent Herz Cup Co., 840 East One Hundred and Thirty-fourth Street, in the city of New York, State of New York.

Respondent, Henry Nias, is an individual named herein as a director of said respondent Institute and has his principal office and place of business located in the offices of the respondent Lily-Tulip Cup Corporation, at 122 East Forty-second Street in the city of New York, State of New York.

Respondent, E. W. Skinner, an individual named herein as a director of said respondent Institute, has his principal office and place of business located in the offices of the respondent Sealright Co., Inc., in the city of Fulton, State of New York.

Respondent, R. L. Allison, an individual named herein as a director of said respondent Institute has his principal office and place of business located in the offices of the respondent United States Envelope Co. (Logan Drinking Cup division), located in the city of Springfield, State of Massachusetts.

PAR. 2. All of the corporate respondents hereinbefore named are manufacturers of one or more of the following products: Paper drinking cups, paper food containers, ice cups, ice tubs, and related products, hereinafter referred to as products. Each of said corporate respondents sells and distributes its said products to franchise distributors,

wholesalers, jobbers, retailers, users, and other purchasers in the United States and causes said products, when sold, to be transported from its principal place of business as hereinbefore set out into and through the several States of the United States and the District of Columbia to such purchasers located at various points in the several States of the United States other than in the State of origin of such shipments and in the District of Columbia.

Said corporate respondents maintain and at all times mentioned herein have maintained a course of trade in said paper drinking cups, paper food containers, ice cups, ice tubs, and related products sold and distributed by them in commerce between and among the various States of the United States and the District of Columbia.

Prior to the adoption and use of the acts, practices and methods hereinafter alleged, these corporate respondents were in active and substantial competition with each other and with other members of the industry in the sale of their said products in commerce between and among the several States of the United States and in the District of Columbia and but for the acts and practices hereinafter alleged, such active and substantial competition would have continued.

The corporate respondents have been at all times mentioned herein and now are the dominant factors in the paper drinking cup and paper food container industry and control more than 60 percent of the output and sale of said products.

PAR. 3. Beginning with the formation of the respondent Institute in January of 1933 and subsequent to May 27, 1935, said corporate respondents for the purpose of suppressing, preventing, and eliminating all price competition among themselves and with and among all persons, firms, and corporations engaged in the manufacture and sale of said products in the United States, entered into and have since carried out understandings, agreements, combinations, and conspiracies through and by means of said respondent Institute, its aforesaid officers, executive director, and other directors by which understandings, agreements, combinations, and conspiracies they fixed and maintained uniform minimum prices for the aforesaid products.

PAR. 4. Pursuant to said understandings, agreements, combinations, and conspiracies and in furtherance of said corporate respondents acting through said respondent Institute, its officers, executive director, and other directors, have done and performed the following acts and things:

1. Agreed to fix and maintain and have fixed and maintained minimum prices at which their products are to be sold by said corporate respondents to the purchasers thereof.

2. Agreed upon and adhered to a schedule of minimum prices and uniform discounts, terms and conditions of sale, including maximum discounts and classification of customers applicable to the sale of said products by said corporate respondents.

3. Agreed to maintain and have maintained identical price lists on comparable products.

4. Agreed to change and have changed simultaneously the prices at which comparable products are to be sold in the United States.

5. Agreed to file and have filed with respondent Institute a schedule of prices including discounts and the terms and conditions of all sales at which said respondent corporations will and do sell said products.

6. Agreed that they would not deviate and have not deviated from their said prices, discounts, and terms and conditions of sale filed with respondent Institute.

7. Agreed to notify and have notified respondent Institute of any deviations from said price lists by anyone.

8. Agreed to publish and issued to their franchised distributors, wholesalers, and jobbers Public Business Price Lists and Public Business Policy Sheets in which the prices and terms of sale are uniform as among them as comparable products.

9. Agreed to maintain and do maintain a procedure for the introduction of new products by any member respondent or other manufacturer cooperating with said respondent Institute whereby, among other things, the prices and terms of sale at which such product is to be sold are furnished to said respondent Institute in advance of sale or offering for sale.

10. Offered uniform and identical bids on comparable products either directly or through their distributor agents to municipal, State, or Federal purchasing departments.

11. Employed and now employ other methods, means, and practices designed and intended to further and which have furthered the carrying out of said agreements, understandings, combinations, and conspiracies.

PAR. 5. In order to better effectuate the aforementioned understandings, agreements, combinations, and conspiracies said corporate respondents and those manufacturers cooperating with said Institute have:

1. Agreed upon a division of the products of the industry into nine different groups and classified their respective products falling within each group.

2. Filed with the Institute daily, weekly, monthly, or periodic statistics, including, among other things, contracts, invoices, and gross

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or net sales in both dollars and in units for the previous month's operations.

PAR. 6. Respondent Institute through its president and executive director, Granville P. Rogers, and its vice-president, Dale H. Eckerman, respondents herein, has so supervised the activities of the corporate respondents and those manufacturers who cooperate with said Institute, by collecting from and disseminating among them information as to prices, discounts, terms and conditions of sale and other information used and useful in carrying out said understandings, and agreements, that as a result thereof, adherence to such agreed prices and terms of sale has been secured.

PAR. 7. Each of said corporate respondents and those manufacturers cooperating with said Institute acted in concert and cooperation with one or more of the other respondents and with respondent Institute in doing and performing the acts and things hereinabove alleged in furtherance of said undertakings, understandings, and agreements, and in concert and cooperation with each other in the doings of the acts and things hereinbefore alleged.

PAR. 8. Said agreements, combinations, understandings, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance of the purposes thereof, as hereinbefore alleged, have had and do have the effect of unduly and unlawfully restricting and restraining trade in commerce in said products between and among the several States of the United States and in the District of Columbia; of artificially enhancing prices to the consuming public and maintaining prices at artificial levels, and have otherwise deprived the public of the benefits that would flow from normal competition among and between the member respondents and those cooperating with them and said Institute; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said products in said commerce in the member respondents and those cooperating with them and said Institute, and are all to the injury of the public and of competitors of said respondents 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 the 17th day of February 1940, issued and subsequently served its complaint in this proceeding upon the said respondents Cup & Container Institute, Inc., a corporation, its officers, Granville P. Rogers, president and executive director; Dale

H. Eckerman, vice-president, K. L. Stoler, secretary; and Robert J. Kieckhefer, William S. Bacon, Robert C. Fenner, Alexander Herz, Henry Nias, E. W. Skinner and R. L. Allison, its directors, and Dixie-Vortex Co., a corporation; Lily-Tulip Cup Corporation, a corporation; Crystal Paper Service Corporation, a corporation; Herz Cup Co., a Division of Herz Manufacturing Corporation, a corporation; American Lace Paper Co., a corporation; Milwaukee Lace Paper Co., a corporation; Eagle Cup Corporation, a corporation; the American Paper Goods Co., a corporation; Logan Drinking Cup Co., a Division of the United States Envelope Co., a corporation; Sutherland Paper Co., a corporation; Sealright Co., Inc., a corporation and Division of Oswego Falls Corporation, a corporation; Cupples-Hesse Envelope and Lithographing Co., a corporation; charging them with the use of unfair methods of competition in commerce in violation of said act. On the 1st day of April 1940, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and their counsel, McKercher & Link, and W. T. Kelley, chief counsel for Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cup and Container Institute, Inc., is a nonprofit corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 420 Lexington Avenue, in the city of New York, State of New York. Respondent Institute was organized on January 27, 1933, as a trade association for manufacturers of paper drinking cups and paper food containers.

Respondent, Dixie-Vortex Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal offices and places of business located in the city of Chicago, State of Illinois, and the city of Easton, State of Pennsylvania.

Respondent, Lily-Tulip Cup Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business at 122 East Forty-second Street, city of New York, State of New York.

Respondent, Crystal Paper Service Corporation, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business at 3050 East Eleventh Street, in the city of Los Angeles, State of California. This company is a subsidiary of the respondent Lily-Tulip Cup Corporation.

Respondent, Herz Cup Co., is a division of Herz Manufacturing Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 840 East One Hundred and Thirty-fourth Street, in the city of New York, State of New York.

Respondent, American Lace Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin with its principal office and place of business located at 4425 North Port Washington Avenue, in the city of Milwaukee, State of Wisconsin.

Respondent, Milwaukee Lace Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business at 1306 East Minicke Avenue, in the city of Milwaukee, State of Wisconsin.

Respondent, Eagle Cup Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 152 Imlay Street, in the city of Brooklyn, State of New York.

Respondent, The American Paper Goods Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located in the city of Kensington, State of Connecticut.

Respondent, Logan Drinking Cup Co., is a division of the United States Envelope Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine with its principal offices and places of business in the cities of Springfield and Worcester in the State of Massachusetts.

The respondent, Sutherland Paper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan with its principal office and place of business located in the city of Kalamazoo, State of Michigan.

Respondent, Sealright Co., Inc., is a corporation and division of the Oswego Falls Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located in the city of Fulton, State of New York.

Respondent, Cupples-Hesse Envelope and Lithographing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 4189 Kingshighway, in the City of St. Louis, State of Missouri.

The fore-going respondent corporations, except respondent Cupples-Hesse Envelope and Lithographing Co., are now, or at some time since 1935, have been members of the respondent Cup & Container Institute, Inc. The Cupples-Hesse Envelope and Lithographing Co., although not a member of said respondent Institute, has cooperated with the officers, directors, and members thereof and has participated in some of the activities hereinafter set forth. All of said respondent corporations will hereinafter be referred to as corporate respondents. The respondent Cup & Container Institute, Inc., will hereinafter be referred to as respondent Institute.

Respondent, Granville P. Rogers, named herein as an individual and as president and executive director of respondent Institute has his principal office and place of business located at 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, Dale H. Eckerman, named herein as an individual and as vice-president and director of said respondent Institute has his principal office and place of business located at 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, K. L. Stoler, named herein as an individual and as secretary and director of said respondent Institute has her principal office and place of business located at 420 Lexington Avenue, in the city of New York, State of New York.

Respondent, Robert J. Kieckhefer, an individual named herein as a director of said respondent Institute, has his principal office and place of business located at 4425 North Port Washington Avenue, in the city of Milwaukee, State of Wisconsin, the office of respondent American Lace Paper Co.

Respondent, William S. Bacon, an individual named herein as a director of said respondent Institute, has his principal office and place

of business located in the offices of the respondent American Paper Goods Co., in the city of Kensington, State of Connecticut.

Respondent, Robert C. Fenner, an individual named herein as a director of said respondent Institute, resides at 52 Church Street, Evanston, Ill. This respondent has, however, not been actively associated with the Institute, having resigned such position more than one year prior to the execution of this stipulation.

Respondent, Alexander Herz, a former director of respondent Institute is now deceased.

Respondent, Henry Nias, is an individual named herein as a director of said respondent Institute and has his principal office and place of business located in the offices of the respondent Lily-Tulip Cup Corporation at 122 East Forty-second Street, in the city of New York, State of New York.

Respondent, E. W. Skinner, an individual named herein as a director of said respondent Institute, has his principal office and place of business located in the offices of the respondent Sealright Co., Inc., in the city of Fulton, State of New York.

Respondent, R. L. Allison, an individual named herein as a director of respondent Institute, has his principal office and place of business located in the offices of the respondent United States Envelope Co. (Logan Drinking Cup Division), located in the city of Springfield, State of Massachusetts.

PAR. 2. All of the corporate respondents hereinbefore named are manufacturers of one or more of the following products: Paper drinking cups, paper food containers, ice cups, ice tubs, and related products, hereinafter referred to as products. Each of said corporate respondents sells and distributes its said products to one or more of the following franchise distributors, wholesalers, jobbers, retailers, users, and other purchasers in the United States and causes said products, when sold, to be transported from its principal place of business as hereinbefore set-out into and through the several States of the United States and in the District of Columbia to such purchasers located at various points in the several States of the United States other than in the State of origin of such shipments and in the District of Columbia.

Said corporate respondents maintain and at all times mentioned herein have maintained a course of trade in said paper drinking cups, paper food containers, ice cups, ice tubs, and related products sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

Prior to the adoption and use of the acts, practices, and methods hereinafter set-out, these corporate respondents were in active and

substantial competition with each other and with other members of the industry in the sale of their said products in commerce between and among the several States of the United States and in the District of Columbia, and but for the acts and practices hereinafter set-out, such active and substantial competition would have continued.

Since the year 1938 said corporate respondents have actively competed with each other and with other members of the industry in the sale of their products in commerce in and among the several States.

The corporate respondents have been at all times mentioned herein and now are the dominant factors in the paper drinking cup and paper food container industry and control more than 60 percent of the output and sale of said products.

PAR. 3. The respondent Institute was organized in January of 1933, and during the existence of the National Recovery Administration and subsequent to May 27, 1935, said corporate respondents and certain other manufacturers, cooperating with them and the respondent Institute entered into and have since carried out understandings and agreements, through and by means of said respondent Institute, its aforesaid officers, executive directors and other directors, by which understandings and agreements they fixed and maintained in many instances uniform minimum prices for some of the aforesaid products, and specifically:

Pursuant to agreement all of the corporate respondents have filed and now file with the respondent Institute their respective published price lists, discounts, and terms of sale, and for more than a year subsequent to the invalidation of the National Recovery Act in May 1935, they notified the respondent Institute of any deviation from their price lists by giving notice in writing five days prior to the effective date of such deviation. Since 1937 said corporate respondents have not notified the respondent Institute of deviations from their price lists. Pursuant to agreement, said corporate respondents also have filed and now file with the respondent Institute sample copies of their franchise, wholesaler, jobber, and user contract forms, and most of said corporate respondents file with respondent Institute their total individual dollar sales, except the respondent Cupples-Hesse Envelope and Lithographing Co., for the purpose of assessing dues and advising the members of the industry of the total dollar sales of the industry; also file with the Institute copies of invoices and other statistics. The respondent Institute maintains a bureau for the purpose of collecting and disseminating information of past volume, consumption, and other pertinent information concerning the industry.

Through custom in the trade and through action of the respondent Institute, all of the products in the paper drinking cup and paper food container industry have been classified into nine principal and distinct groups, primarily based upon the use to which the product is put, as follows:

Group 1. Drinking Cups—Cone and wedge shaped; also sampling and communion cups; Sizes, 5-oz. capacity or less.

Group 2. Drinking Cups—Flat bottom, pleated and two-piece; also sampling and communion cups, penny vendor and cocktail cups; Sizes, 5-oz. capacity or less.

Group 3. Soda Cups—Cone and flat bottom, pleated and two-piece; with or without seats for lids; Sizes 5-oz. to 18-oz.*

Sundae Dishes—Cone and flat bottom, pleated and two-piece; also chile bowls, beer cups, etc. Sizes, 4-oz. to 16-oz. capacity.

Group 4. Light Duty Food Containers (Single Wrap)—Flat bottom, pleated and two-piece; and cone and wedge-shaped ice cream cups; Sizes, $\frac{3}{4}$ -oz. to 32-oz. capacity. (Does not include hot drink cups.)

Group 5. Heavy Duty Food Containers (Double Wrap and including some types of Single Wrap)—Flat Bottom one-piece and two-piece; hot drink cups, molded containers and heavy duty containers, including double wrap and also single wrap heavier than the Industry standards for Groups 3 and 4 products; Sizes, quarts and smaller in capacity.

Group 6. Resale Packages—Includes packages of all items packed for sale through retailers to ultimate consumer, such as drinking cups, soda cups, sundae dishes, hot drink cups, cocktail cups and souffle cups.

Type A—"Full Margin" Packages.

Type B—"High Consumer-Value" Packages.

Group 7. Souffle Cups or Ramekins—Flat bottom pleated; all sizes, whether white, colored, tinted, stock printed or fancy; includes souffles with or without seats for lids.

Group 8. Water Ice Cups—Cone and wedge shaped; flat bottom, pleated and two-piece; designed primarily for water ice purposes; Sizes 1, 2, 3, 4, and 5-oz. capacity.

Group 9. Tubs—Double Wrap Tubs or Containers—Sizes over 1 quart to 11½ lbs. in capacity.

On June 23, 24, and 25, 1937, representatives of the corporate respondents other than Cupples-Hesse Envelope and Lithographing Co., met in New York at a meeting of the respondent Institute, which meeting was attended by respondents, Granville P. Rodgers and Dale H. Eckerman, at which, among other things, a general price increase among the corporate respondents was discussed. On June 25, 1937, a general price increase by all corporate respondents was proposed, but met considerable opposition from the Group 4-B manufacturers. This opposition was based upon the fact that there had just been an in-

*The 5-oz. drinking cup, because of consumer use, is classified in both Groups 2 and 3.

crease in that group and they did not feel that the prices should be again raised at that time. The prices for Group 4-A (single wrap cups) could not be raised unless the prices for Group 4-B (double wrap cups) were raised a like amount. Otherwise the 4-A Group would cost more than the 4-B Group. The discussion continued both pro and con for several hours, and it was finally agreed that the prices on Group 1 (wedged-shaped water cups), Group 2 (office water cups), Group 3 (soda cups with covers or lids or with grooves for disk lids), and Group 5 cups be increased 15 percent.

Whereupon a telegram was put together by representatives or sales managers of the corporate respondents other than the respondents, Sealright Co., Inc., and Cupples-Hesse Envelope and Lithographing Co., who did not manufacture or sell the products to which the said telegram applied, piece by piece, and at 3 o'clock in the afternoon the following telegram was agreed upon:

ALL PRICES IN GROUP ONE TWO THREE AND FIVE ARE WITHDRAWN IMMEDIATELY AND ONLY ORDERS POSTMARKED PRIOR TO MIDNIGHT JUNE TWENTY FIFTH WILL BE ACCEPTED AT OLD LEVEL STOP NEW PRICE LIST WILL BE MAILED IN ABOUT TEN DAYS STOP TO PREVENT THE STOPPING OF BOOKING ORDERS WE WILL ACCEPT ORDERS BY ADDING FIFTEEN PERCENT TO PRESENT PRICES WITH AGREEMENT THAT IF LATER PUBLISHED PRICE IS LOWER THAN OLD PRICE PLUS FIFTEEN PERCENT INVOICES WILL BE ADJUSTED TO NEW PUBLISHED PRICE LEVEL.

Then all the sales managers of the corporate respondents, other than the Sealright Co., Inc. and Cupples-Hess Envelope and Lithographing Co., rewrote this telegram in some slight degree, carrying the full sense as set forth above, and transmitted it to their respective offices so that telegrams could be sent to all jobbers, distributors, and regular customers that same night. Typical of such telegrams are the following from corporate respondents, Dixie-Vortex Co., Logan Drinking Cup Co., and American Paper Goods Co., to their respective distributors, jobbers, and customers:

POSTAL TELEGRAPH

ER148 G 57 NL

PID Easton Penn Jun 25 1937

V. A. Dirvin
Paper Manufacturers Co. Inc.
Fifth & Willow Sts. Phila.

Prices are withdrawn immediately on all items in groups one two three and five stop orders postmarked June twenty fifth or before are being honored at present prices stop pending release of new schedules in about ten days orders will be honored at prices fifteen percent above present prices subject to adjustment to new schedules when issued.

DIXIE VORTEX COMPANY.

Findings

32 F. T. C.

WESTERN UNION TELEGRAPH

1937 Jun 26

PM 9 75 NL—Worcester Mass. June 25
Paper Manufacturers Co. Inc.
Fifth & Willow Sts.

All prices on Ajax and Aero Cups are withdrawn immediately and only orders post marked prior to midnight June 25 will be accepted at old prices stop new price lists will be mailed in about 10 days stop Orders will be accepted by adding fifteen percent to present prices with the understanding that if our new published prices are lower than old prices plus fifteen percent invoices will be adjusted to new published price level.

LOGAN DRINKING CUP DIV.

WESTERN UNION

1937 June 26 A. M. 4:14

Geo W Millar
NYC

All prices in groups one two and three round cups withdrawn immediately stop orders postmarked June 25th will be accepted at old prices stop new price lists with approximate fifteen percent increase will be mailed promptly stop orders received in meantime will be priced at this approximate schedule and if any later published list is lower proper adjustment will be made to the published list.

THE AMERICAN PAPER GOODS CO.

This general price increase of 15 percent was not only put into effect by the corporate respondents, through and by means of said respondent Institute, but was rigidly adhered to by all of such corporate respondents in a majority of instances. The corporate respondents Sealright Co., Inc. and Cupples-Hesse Envelope and Lithographing Co., and the individual respondent, E. W. Skinner, did not manufacture and sell the products to which such increased price applied and did not participate in such activity.

Most of corporate respondents distribute their products through what is known as franchise distributors. Such franchise distributor can be described as a quantity purchaser of said products, who resells them to other wholesalers, jobbers, retailers, or users and does not purchase such products for his, its, or their own use. In most instances, in order to obtain a franchise distributor classification, it is necessary to purchase in one shipment a minimum of 500,000 drinking cups. This minimum purchase entitled such franchise distributors to this classification and fill-in privileges for a period of 6 months from the date of such purchase. At the end of this period, should the franchise distributor not reclassify by again purchasing the minimum of 500,000 drinking cups, he, they, or it revert to what is known as a wholesaler classification. If such franchise distributor does reclassify in the above manner, such reclassification entitles him,

them, or it to the franchise distributor status for another period of 6 months.

Each corporate respondent issues a Public Business Price List and a Public Business Policy Sheet. These lists are sent, in the majority of cases, to franchise distributors. In placing bids on Federal, State, county, or municipal business, all franchise distributors, and in some instances wholesalers, act as agents for the corporate respondents in quoting prices as set forth by their respective principals, in accordance with the price lists, above described. These price lists are identical, or substantially so, among all the corporate respondents and constitute the franchise distributor price. Such price is the lowest individual price at which the members of the Industry sell their products. If the franchise distributors or wholesalers file a lower price on Federal, State, county, or municipal business, they would be selling at a loss. If they do file, in accordance with the prices quoted by their respective principals, they receive, if they have been successful in obtaining the bid, a commission of 7½ percent for their efforts, but in actual practice the manufacturers usually accept the business at the prices quoted by the franchise distributors without any deduction from the 7½ percent. As a result, in the majority of cases uniform and identical prices are quoted to Federal, State, county, and municipal governments, and likewise there is no price competition, as distinguished from promotional and service competition, between franchise distributors or wholesalers in many instances for this business.

The city of New York requested bids on paper drinking and medicinal cups, which bids were opened on November 25, 1936. Upon the opening of these bids it was found that 27 out of 28 bidders had quoted identical prices. The one remaining bidder who quoted a lower price withdrew his bid and stated as his reason therefor that he had made an error in the submission thereof. Corporate respondents Herz Cup Company, Dixie-Vortex Company and American Lace Paper Company and franchise distributors constituted all of the bidders on this occasion.

The city of Philadelphia, Pa., on January 12, 1937, received from corporate respondent, Dixie-Vortex Co. and four franchise distributors, bids which were identical in price, discount, and terms of sale. Likewise, the city of Milwaukee, Wis., on May 15, 1936, received identical bids from corporate respondent American Lace Paper Company and four franchise distributors; on July 21, 1937, the city of Los Angeles, Calif., received identical bids from four franchise distributors; and on July 1, 1936, the city of San Francisco, Calif., received identical bids from 13 franchise distributors.

The Procurement Division of the Treasury Department of the United States Government requested bids for drinking cups, which bids were to have been opened at 10:00 a. m., October 19, 1937, and which upon the opening thereof showed that from 17 bidders the price, discount and terms of sale quoted were identical. Corporate respondents American Lace Paper Co., Herz Cup Co., and Lily-Tulip Cup Corporation and 13 franchise distributors constituted all of the bidders on this occasion.

Among and typical of excerpts from letters, bulletins and sales instructions from some of the corporate respondents to their franchise distributors and wholesalers are the following:

The following prices are for use in *Governmental* bids, whether federal, State, or local. These prices should be in line with those offered by our principal competitors.

* * * * *

As a franchise distributor you are asked to cooperate in the observance of three schedules, which are as follows: For Group 2—No. 300—ID, government bids; No. 300—IC, user contract; and No. 300—IA, jobber single delivery. These several schedules are enclosed for your convenience although you may have already received copies of them.

* * * * *

Inasmuch as we are securing the cooperation of other manufacturers and distributors in stabilizing federal, State, county and municipal bids, we are asking you to please be governed by the enclosed schedule when you have occasion to bid on drinking cup business. * * * P. S. Should you run into any deviation from these prices please get in touch with us at once.

* * * * *

This year, we are requesting all who bid out cups in Public Business to cooperate in following our recommended schedules which are attached. Please note that the terms of Public Business are 2%, 30 days. To the successful bidder of American cups on the basis of these prices we will pay a commission of 7½%. To be fair to our trade no commissions will be paid on bids which are lower than our suggested Public Business Schedule.

* * * * *

The following prices are for use in bidding on *Governmental* business, whether federal, State or local. These prices are to be in line with those offered by our principal competitors. These prices are for political units only. Use them until further notice.

* * * * *

The bids on drinking cups from competitor sources should be in line with our prices inasmuch as we have secured the cooperation of other manufacturers and distributors as a means to stabilizing this business. Should you or your distributors run into any deviation from these prices, please write or send us a full report at once.

Respondent Institute maintains a procedure for the introduction of a new product by any corporate respondent or other manufacturer cooperating with respondent Institute, primarily for the purpose of

ascertaining whether the said product would comply with various Governmental laws and regulations with reference to the products of the industry, and, in one instance, respondent Institute has requested corporate respondents, and manufacturers cooperating with it, to withhold the sale and quotation of prices of such new product until such product had been classified into a particular group and its price furnished to respondent Institute in advance of sale. In this instance, the request has been granted and the sale and quotation of prices withheld until agreed upon.

CONCLUSION

The acts and practices of respondents as herein found are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition among respondents in the sale of paper drinking cups, paper food containers, ice tubs, and similar products in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained trade and commerce in paper drinking cups, paper food containers, ice tubs, and similar products, 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 issued herein on February 17, 1940, the joint answer of the respondents and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein, except respondents Robert C. Fenner and Alexander Herz, findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Dixie-Vortex Co., Lily-Tulip Cup Corporation, Crystal Paper Service Corporation, Herz Cup Co., American Lace Paper Co., Milwaukee Lace Paper Co., Eagle Cup Corporation, The American Paper Goods Co., Logan Drinking Cup Co., Sutherland Paper Co., Sealright Co., Inc., Cupples-Hesse En-

velope and Lithographing Co., their officers, representatives, agents, and employees, cease and desist from entering into or carrying out any understanding, agreement, combination, or conspiracy, between and among any two or more of said respondents or between any one or more of said respondents and any other members of the industry, through or by means of said respondent, Institute or otherwise for the purpose or with the effect of restricting, restraining, monopolizing or eliminating competition in the sale in interstate commerce of paper drinking cups, paper food containers, paper ice cups, paper ice tubs, and similar products, and as a part of such understanding, agreement, combination and conspiracy, from doing any of the following acts or things:

1. Agreeing to fix and maintain, or fixing and maintaining uniform or minimum prices.

2. Agreeing upon and adhering to a schedule of uniform prices and uniform discounts, terms and conditions of sale, including maximum discounts.

3. Agreeing to maintain or maintaining pursuant to agreement identical price lists on comparable products.

✓ 4. Agreeing to change or changing simultaneously the price for comparable products.

✓ 5. Agreeing to file, or filing pursuant to agreement, a schedule of prices, including discounts and the terms and conditions of sale.

✓ 6. Agreeing not to deviate from their prices filed with respondent Institute, including discounts and terms and conditions of sale.

✓ 7. Agreeing to notify or notifying respondent Institute of any deviations from said filed prices by anyone.

8. Agreeing to publish and issue, or publishing and issuing to their distributors Public Business Price Lists and Public Business Policy Sheets, or any list or sheet in which the prices and terms of sale are uniform as among respondents or any other manufacturer of the products of the industry as to comparable products.

9. Agreeing to maintain or maintaining a procedure for the introduction of new products by any member respondent or other manufacturer cooperating with said respondent Institute whereby the prices and terms of sale at which said product is to be sold are furnished to said respondent Institute in advance of sale or offering for sale.

10. Agreeing to offer or submit, or offering or submitting pursuant to agreement, uniform and identical bids on comparable products either directly or through their distributor agents to municipal, State, and Federal purchasing departments.

✓ 11. Agreeing to file or filing with respondent Institute pursuant to agreement, daily, weekly, monthly, or periodic statistics, including,

among other things, contracts, invoices, and gross or net sales in both dollars and in units for the previous month's operations.

It is further ordered, That the respondent, Cup and Container Institute, Inc., a corporation, its officers, agents, and employees, and the respondents, Granville P. Rogers, Dale H. Eckerman, K. L. Stoler, Robert J. Kieckhefer, William S. Bacon, Henry Nias, E. W. Skinner, and R. L. Allison, or their successors, cease and desist from entering into or carrying out any understanding, agreement, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and any other member or members of the industry for the purpose, or with the effect of, restricting, restraining, monopolizing, or eliminating competition in the sale in interstate commerce of paper drinking cups, paper food containers, paper ice cups, paper ice tubs, and similar products, and from aiding, abetting, or encouraging or cooperating with the respondent members hereinbefore named in doing any of the acts and things prohibited by this order, or more particularly, collecting from, or disseminating among said member respondents, or any member of the respondent, Cup and Container Institute, Inc., or anyone in the paper drinking cup or paper food container industry, any information as to prices, terms, and conditions of sale prior to their publication date. ✓

It is further ordered, That the respondents, Granville P. Rogers and Dale H. Eckerman, cease and desist supervising, policing, or in anywise intimidating members of the industry in an attempt to induce such members to become a party to any understanding, agreement, combination, or conspiracy or to maintain prices, terms and conditions of sale in furtherance of any such understanding, agreement, combination or conspiracy.

It is further ordered, That the complaint herein be and the same hereby is dismissed as against the respondents Robert C. Fenner and Alexander Herz.

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

IN THE MATTER OF
PRIMROSE HOUSE, INC., AND DELV, LIMITED

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

Docket 3314. Complaint, Jan. 26, 1938—Decision, Dec. 18, 1940

Where a corporation engaged in interstate sale and distribution, and second concern, its wholly owned subsidiary, engaged in manufacture, and similar sale and distribution, of various cosmetics, including "Dely Skin Cream," in active and substantial competition with others engaged in similar sale and distribution of such products—

Represented through various kinds of advertising media, such as radio broadcasts and printed matter circulated among prospective purchasers in various States and in the District of Columbia, that their said "Dely" contained an ingredient which acted on the skin as the natural fluids and served same purpose as such fluids, and would rid the skin of wrinkles, and large and unsightly pores, and would nourish and rejuvenate the skin and create new skin texture and keep face young and complexion beautiful;

Facts being that said cream contained no ingredient which acted on skin as natural fluids thereof, and would not serve same purpose as said fluids, or nourish or rejuvenate skin, or create new texture of skin, which is nourished or fed by blood stream and condition and appearance of which are determined by many factors, including general health, condition of blood and exposure to various external conditions, and said cream would not keep face young or skin beautiful, or remove wrinkles or large unsightly pores or any other imperfections from the skin, or keep complexion beautiful and skin free from imperfections, which cannot be produced by means of cosmetic alone;

With effect of misleading and deceiving substantial portion of purchasing public into mistaken and erroneous belief that such representations were true, and as result of such belief, thus engendered, of inducing substantial portion of said public to purchase said skin cream, and of thereby diverting trade to themselves from their competitors, who do not practice such deception; to the substantial injury of said competitors in said commerce and to the injury of the public:

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

Before *Mr. W. W. Sheppard* and *Mr. Randolph Preston*, trial examiners.

Mr. DeWitt T. Puckett for the Commission.

Mr. Charles P. G. Fuller, of Chadbourne, Hunt, Jaeckel & Brown, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commis-