

Syllabus

IN THE MATTER OF
BERLAND SUPPLY COMPANY, 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 3861. Complaint, July 27, 1939—Decision, July 9, 1941

Where three corporations engaged in manufacture of glassware, including tableware such as tumblers, highball glasses, etc., and in interstate sale and distribution thereof to purchasers, among others, in the Milwaukee trade area, in substantial competition with each other and other manufacturers except insofar as such competition had been hindered or restricted and potential competition forestalled as below set forth; an individual, agent, of one of said manufacturers, and a corporation, agent, of the other two, engaged in the sale of their products in aforesaid area; four corporations dealing at wholesale, in glassware, among other things, with places of business in Milwaukee; and two individuals with places of business therein, engaged in sale of hotel and restaurant supplies, including glassware, and charter members, along with the four corporate wholesalers before referred to, of a corporation organized in 1933 as "Hotel, Restaurant & Tavern Equipment Association," in connection with the enforcement of the National Industrial Recovery Act; in substantial competition with each other and other wholesalers except insofar as such competition had been hindered or restricted and potential competition forestalled, as hereinafter set forth—

- (a) Combined and conspired together and with each other, and cooperated, to cut off supply of glassware of a certain concern when latter, organized as "Badger Cash and Carry Stores" to engage in sale of liquors, tobacco, and cigars, thereafter undertaking sale of glassware at wholesale in trade area in question, cut the resale prices of such ware below those of said wholesalers; forming and participating in a plan for the elimination of said "Cash and Carry Stores" as competitor, under which said wholesalers contacted factory representatives of the aforesaid manufacturers, and former notified their principals, following which said manufacturers refused to sell to said competitor; and

Where said "Hotel, Restaurant & Tavern Equipment Association" and its wholesaler members, pursuant to the aforesaid conspiracy and combination—

- (b) Concertedly wrote letters and used other means of persuasion to, and did, enlist the cooperation of said manufacturers who cooperated with them and others and monopolized trade in commerce in glassware in city in question;

With the result that at least one wholesaler of glassware was unable to purchase supplies from said three manufacturers or their agents, and was thereby handicapped in the conduct of his business; interstate sales were curtailed; elimination of at least one wholesaler tended to stabilize wholesale prices of glassware at levels inconsonant with free competition, competition in the wholesaling of such ware in said trade area was suppressed, and trade was restrained; and

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Where said glass manufacturers, pursuant to said conspiracy and combination, and acting in concert with said association and its wholesaler members—

- (c) Canceled or refused to accept orders for glassware from said "Cash and Carry Stores" for resale by latter in Milwaukee trade area, in competition with such wholesalers;

With the result that competition between said "Cash and Carry Stores" and said wholesalers was unduly restrained; competition by and between said manufacturers was unduly suppressed; and interstate commerce in glassware restrained:

Held, That such acts and practices were all to the prejudice of the public, and constituted unfair methods of competition in commerce.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Lynn C. Paulson for the Commission.

Mr. Jack A. Berland, of Milwaukee, Wis., for Berland Supply Co., Inc., I. Shapiro, Inc., Louis M. Mintz, and W. A. Reinemann.

Lecher, Michael, Whyte & Spohn, of Milwaukee, Wis., for S. J. Casper Co., Inc., and Roseware, Inc.

Mr. Alfred Mueller, of Milwaukee, Wis., for National Beverage Distributing Co.

Mr. Hugh C. Laughlin, of Lancaster, Ohio, for Anchor Hocking Glass Corporation and W. H. Peterson.

Mr. Herbert M. Blair, of Weston, W. Va., for West Virginia Glass Specialty Co., Inc.

Bonham & Emshwiller, of Hartford City, Ind., for Indiana Glass Co.

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 Berland Supply Co., Inc., S. J. Casper, Inc., I. Shapiro, Inc., Louis M. Mintz, trading as Mintz Supply Co., W. A. Reinemann, trading as Hotel and Restaurant Supply Co., National Beverage Distributing Co., Anchor-Hocking Glass Co., West Virginia Glass Specialty Co., and Indiana Glass Co., Roseware, Inc., W. H. Peterson, Hotel, Restaurant & Tavern Equipment Association, and its members, hereinafter referred to as respondents, have been and are now, using unfair methods of competition in commerce as "commerce" is defined by 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 Berland Supply Co., Inc., is a Wisconsin corporation with its principal office and place of business at 1914 Vliet Street, Milwaukee, Wis.

Respondent S. J. Casper, Inc., is a Wisconsin corporation with its principal office at 845 North Plankinton Avenue, Milwaukee, Wis.

Respondent I. Shapiro, Inc., is a Wisconsin corporation with its principal office at 334 West Juneau Avenue, Milwaukee, Wis.

Respondent Louis M. Mintz is an individual trading and doing business as Mintz Supply Co., with offices at 144 South First Street, Milwaukee, Wis.

Respondent W. A. Reinemann is an individual trading and doing business as Hotel and Restaurant Supply Co., with offices at 315 West Juneau Avenue, Milwaukee, Wis.

Respondent National Beverage Distributing Co., is a Wisconsin corporation with its principal office at 1134 North Water Street, Milwaukee, Wis.

Respondent Anchor-Hocking Glass Co. is an Ohio corporation with its main plant and principal office at Lancaster, Ohio.

Respondent West Virginia Glass Specialty Co. is a West Virginia corporation with its principal office at Weston, W. Va.

Respondent Indiana Glass Co. is an Indiana corporation with its principal office at Dunkirk, Ind.

Respondent Roseware, Inc., is a Wisconsin corporation with its principal office at 772 North Milwaukee Street, Milwaukee, Wis.

Respondent, W. H. Peterson, is an individual. His principal office is at 334 Commerce Building, Milwaukee, Wis.

Respondent Hotel, Restaurant & Tavern Equipment Association is an incorporated trade association which includes as its members, persons, firms, or corporations engaged in the hotel, restaurant, and tavern equipment industry. It was organized in 1933 for the purpose of promoting the mutual interests of its members. It was incorporated in the State of Wisconsin. It operates through its board of directors and other officers.

PAR. 2. Respondents Berland Supply Co., Inc., I. Shapiro, Inc., S. J. Casper, Inc., Louis M. Mintz, doing business as Mintz Supply Co., W. A. Reinemann, doing business as Hotel & Restaurant Supply Co., and National Beverage Distributing Co. are engaged in the sale of glassware and other hotel, restaurant and tavern supplies at wholesale and retail in Milwaukee, Wisconsin, and the surrounding trade area, which includes the State of Wisconsin and parts of adjoining States.

Respondents Anchor-Hocking Glass Co., West Virginia Glass Specialty Co., and Indiana Glass Co. are engaged in the manufacture and sale of glassware.

Respondent Roseware, Inc., is a factory representative for respondents West Virginia Glass Specialty Co. and Indiana Glass Co., and

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is engaged in the sale of glassware at wholesale and retail in the city of Milwaukee, Wis., and the surrounding trade area.

Respondent W. H. Peterson is a factory representative for respondent Anchor-Hocking Glass Co., and is engaged in the sale of glassware at wholesale and retail in the city of Milwaukee, Wis., and the surrounding trade area.

PAR. 3. In the course and conduct of their respective businesses, respondents Berland Supply Co., Inc., S. J. Casper, Inc., I. Shapiro, Inc., Louis M. Mintz, trading as Mintz Supply Co., W. A. Reinemann, trading as Hotel and Restaurant Supply Co., Roseware, Inc., W. H. Peterson, and National Beverage Distributing Co., have purchased and do purchase various products from the producers and manufacturers thereof located at various points throughout the United States for resale in the city of Milwaukee, and the surrounding trade area, and have sold and shipped, and do cause to be sold and shipped these products to various individuals located at points in the State of Wisconsin and in the adjoining States; and when said purchases are made, and as part thereof, said producers and manufacturers regularly have shipped or caused to be shipped said products from their respective points of location in the several States of the United States other than the State of Wisconsin to the said respondents.

In the course and conduct of their respective businesses, respondent manufacturers Anchor-Hocking Glass Co., West Virginia Glass Specialty Co. and Indiana Glass Co. have sold and shipped, or caused to be sold and shipped, and do sell and ship, or cause to be sold and shipped, their products from the States in which they are located to other States within the United States and the District of Columbia.

Respondent Hotel, Restaurant & Tavern Equipment Association is not engaged in interstate commerce, but is engaged in carrying out certain unlawful methods as alleged herein, which directly and substantially affect competition among its members.

All of the respondents, in the aforementioned manner, maintained, and still do maintain, a course of trade in said products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. Prior to 1938, respondent wholesalers were in active and substantial competition with each other and with other wholesalers and jobbers in the city of Milwaukee, Wis., and the surrounding trade area. Respondent manufacturers sold and shipped glassware to said respondent wholesalers and jobbers in competition with each other and with other manufacturers and producers, and sold and shipped glassware to said other wholesalers and jobbers who were in active competition with the said respondent wholesalers and jobbers.

PAR. 5. During 1938, respondents entered into and thereafter carried out and are still carrying out an understanding, agreement, combination, and conspiracy to prevent, suppress, hinder, and lessen competition in the sale and distribution of said glassware products in commerce in the aforesaid territory. To carry out the aforesaid purposes, the respondents have done, and do among others, the following acts and things:

1. Conspired, combined, cooperated, and bargained amongst themselves to cut off the source of supply of at least one competing jobber and make it impossible for said jobber to purchase merchandise in the same markets as its competitors.

2. Respondent wholesalers cooperated with each other and with respondent factory representatives, Roseware, Inc., and W. H. Peterson, of the respondent manufacturers and producers, and concertedly wrote letters and did other acts to enlist the cooperation of the respondent manufacturers to the end that at least one jobber, who was in active competition, and but for the said acts and practices alleged herein would be in active competition with said respondent wholesalers and respondent factory representatives aforesaid, would be unable to obtain supplies of glassware, which said designated wholesaler had theretofore been able to obtain in like manner, and from the same sources of supply as the respondent wholesalers.

3. Respondent manufacturers directly and through their factory representatives, respondents Roseware, Inc., and W. H. Peterson, bargained, combined, conspired, and cooperated with the said respondent wholesalers and have refused, and do refuse, to fill orders and ship their products to at least one jobber designated by respondent wholesalers in pursuance of the aforesaid agreement, combination, conspiracy, and undertaking, and for no lawful reason.

4. Directly or through their agents in cooperation with one another have maintained and do maintain membership in respondent Hotel, Restaurant & Tavern Equipment Association, and have made and do make use of the respondent association in furtherance of their purpose to restrict and restrain full and free competition in the glassware wholesale and retail markets in the aforesaid trade area, being the city of Milwaukee, the State of Wisconsin, and parts of adjoining States.

5. Used and engaged, in concert and cooperation with one another, other acts and coercive methods and practices in promoting, establishing, and carrying out the foregoing combination, conspiracy, confederation, and undertaking.

PAR. 6. The combination, conspiracy, confederation, and undertaking so entered into and carried out by said respondents, and the acts and things done thereunder and pursuant thereto as hereinabove al-

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leged resulted and result in the suppression, hindrance, and lessening of competition in the sale and distribution of glassware products in commerce between and among the several States of the United States and in the District of Columbia, and more particularly in the aforesaid trade area, to the prejudice and injury of respondents' competitors and of the public. The acts and practices of the respondents, as aforesaid, have resulted and result in the undue enhancement of prices of glassware products to the using public, and the public has been and is deprived of the benefits of the competition that did exist in the glassware market in the city of Milwaukee, Wis., and the surrounding trade area, and which would have continued to exist but for the aforesaid acts and practices.

PAR. 7. The aforesaid acts and practices of the respondents 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 July 27, 1939, issued and thereafter 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 answers thereto by all the respondents except respondent Hotel, Restaurant & Tavern Equipment Association, testimony and other evidence in support of the allegations of the complaint were introduced by Lynn C. Paulson, attorney for the Commission, and in opposition to the allegations of the complaint by W. C. Miller, attorney for respondent Anchor Hocking Glass Corporation (named Anchor-Hocking Glass Co. in the complaint) before Edward E. Reardon, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceedings regularly came on for final hearing before the Commission on said complaint, the answers thereto, the testimony and other evidence, the report of the trial examiner thereon and exceptions to said report and briefs in support of the complaint and in opposition thereto and oral argument by the attorney for the Commission and attorneys for respondents and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Anchor Hocking Glass Corporation, West Virginia Glass Specialty Co., Inc. (named Virginia Glass Specialty Co. in the complaint), and Indiana Glass Co., are corporations having their principal places of business, respectively, in Lancaster, Ohio; Weston, W. Va.; and Dunkirk, Ind.; under the laws of which States, respectively, they were organized and are existing as corporations.

Each of the above three respondent corporations is and has been engaged in the manufacture of glassware including glassware known as tableware, consisting of tumblers, drinking glasses, whiskey glasses, table glasses, and highball glasses, and they are and have been respectively, engaged in the sale of such glassware to purchasers located in Wisconsin and in other States to whom they have caused their glassware, when so sold, by them, to be transported, in commerce, to the purchasers from their respective places of business referred to above.

Each of the above three respondent corporations, in the sale of their glassware, in commerce, are and have been in substantial competition with each other and with other glass manufacturers who are and have been engaged in the sale in commerce of similar glassware, except insofar as said competition has been hindered, lessened, restricted, or restrained, and potential competition among them forestalled by the understandings and agreements among them and the acts and things done in pursuance thereto, as hereinafter set forth.

The Anchor Hocking Glass Corporation does business of about \$100,000 a year in the sale of tableware in the Milwaukee trade area. The gross sales of glassware by the West Virginia Glass Specialty Co., Inc., in the Milwaukee, Wis., trade area for the 3 years 1937, 1938, and 1939 amounted to the total sum of about \$36,000, and the Indiana Glass Co. is also a large seller of glassware in the Milwaukee, Wis., trade area.

PAR. 2. The respondent W. H. Peterson, for several years prior to March 1938 was engaged as a salesman of the Great Northern Products Co. of Chicago, the agent for several States of the Anchor Hocking Glass Corporation, in the sale of its glassware, and since March 1, 1938, he has been and still is the factory agent of the Anchor Hocking Glass Corporation with the authority of his principal to select its customers subject to its approval of all orders taken by him for the purchase of its glassware.

The respondent, Roseware, Inc., is and has been since prior to 1936, the factory agent, respectively, of the respondents West Virginia

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Glass Specialty Co., Inc., and of the respondent Indiana Glass Co. in the sale of their glassware in Milwaukee, Wis., and in the surrounding territory known as the Milwaukee trade area, which includes places in the adjacent State of Michigan. Roseware, Inc., had authority to select customers subject to the approval of these companies.

PAR. 3. The respondents S. J. Casper Co., Inc., (named in the complaint, S. J. Casper, Inc.); I. Shapiro, Inc., National Beverage Distributing Co.; and Berland Supply Co., Inc., are Wisconsin corporations and they are and have been wholesale dealers, among other things, in glassware, with their respective places of business in Milwaukee, Wis.

Respondents Louis M. Mintz, trading as Mintz Supply Co., and W. A. Reinemann, trading as Hotel and Restaurant Supply Co., are and have been engaged in the business of the sale of hotel and restaurant supplies, including glassware, with their respective places of business in Milwaukee, Wis., and the six wholesale dealers mentioned herein are and have been in substantial competition with each other and with other wholesale dealers in glassware in Milwaukee, Wis., and in the Milwaukee trade area above mentioned, except insofar as said competition has been hindered, lessened, restricted, or restrained, and potential competition among them forestalled by the understandings and agreements among them and the acts and things done in pursuance thereto, as hereinafter set forth.

PAR. 4. Respondent, Hotel, Restaurant & Tavern Equipment Association, is a corporation organized in 1933 under the laws of Wisconsin to operate in connection with the enforcement of the N. I. R. A. Act, under the N. R. A. Its charter members included the respondent wholesale dealers mentioned above in paragraph 3 hereof. S. J. Casper, president of respondent S. J. Casper Co., Inc., is and has been at all times president of the Association; I. Shapiro, president of respondent I. Shapiro, Inc., is and has been at all times its treasurer; and Jack Berland, Esq., counsel in this proceeding for respondents, Berland Supply Co., Inc., I. Shapiro, Inc., Louis M. Mintz, and W. A. Reinemann, is and has been at all times the secretary of the respondent Hotel, Restaurant & Tavern Equipment Association.

PAR. 5. In 1933, the Badger Cash & Carry Stores, a Wisconsin corporation, engaged in the business of the sale of liquors, tobacco, and cigars in Milwaukee, Wis., and in 1936 began the sale of glassware, as a wholesale dealer, in the Milwaukee, Wis., trade area. It purchased supplies of glassware from the respondent glass manufacturers at certain times in 1936 and subsequent thereto, among

others, from the Anchor Hocking Glass Corporation, on September 21, 1936, in October and November 1937, and on January 31, 1938. In 1936 it also purchased some glassware from the respondent West Virginia Glass Specialty Co., Inc., and from the respondent Indiana Glass Co. The last purchase of glassware the Badger Cash & Carry Stores made from West Virginia Glass Specialty Co., Inc., was on September 16, 1937, and its last purchase from the Indiana Glass Co. was made on January 6, 1938.

PAR. 6. Early in 1938, or shortly theretofore the Badger Cash & Carry Stores cut the resale prices of its glassware below the resale prices of the above-mentioned respondent wholesale dealers in Milwaukee who learned of this price-cutting through their customers and from advertising circulars distributed by the Badger Cash & Carry Stores to the retail trade.

The respondent wholesale dealers proceeded to cut off the Badger Cash & Carry Stores sources of supply. They indicated plainly to Roseware, Inc., that they would boycott Roseware, Inc., the Indiana Glass Co., and the West Virginia Glass Specialty Co., Inc., unless sales to Badger Cash & Carry Stores were stopped. The president of Roseware, Inc., thereupon contacted every one of the respondent wholesale dealers and persuaded them temporarily from taking steps to carry out the threatened boycott.

On January 21, 1938, respondents S. J. Casper Co., Inc.; I. Shapiro, Inc.; Berland Supply Co., Inc.; and the National Beverage & Distributing Co., by their respective presidents; and W. A. Reinemann trading as the Hotel and Restaurant Supply Co.; and Louis M. Mintz, trading as Mintz Supply Co., wrote to the respondent Anchor Hocking Glass Corporation stating that, as members of the Hotel, Restaurant & Tavern Equipment Association, they were calling the Hocking Corporation's attention to the price-cutting activities and other practices employed by the Badger Cash & Carry Stores in the sale of the Hocking Corporation's products as shown by a circular which they enclosed in the letter revealing price-cutting of the Hocking Glass Corporation's products and stating that they felt that such price-cutting should be discouraged for the welfare of the entire industry and that they were appealing to the Anchor Hocking Glass Corporation for its cooperation to that end.

On January 27, 1938, only a few days after the wholesale dealers sent their letter above mentioned to the Anchor Hocking Glass Corporation, the West Virginia Glass Specialty Co., Inc., received a telegram from Roseware, Inc., its factory agent, stating that it was imperative that an order of January 5, 1938, for glassware still unde-

livered to the Cash & Carry Stores be canceled and on January 29, 1938, the West Virginia Glass Specialty Co., Inc., received a letter from Roseware, Inc., confirming the above-mentioned telegram and in explanation thereof to the effect that the cancellation requested was because of the price-cutting by the Cash & Carry Stores together with the action of the respondent wholesale dealers including the writing of the letter by them of January 21, 1938, to the Anchor Hocking Glass Corporation.

In its letter of January 29, 1938, to its principal the West Virginia Glass Specialty Co., Inc., Roseware, Inc., asked the Glass Co., to cooperate in refusing to sell glassware to the Cash & Carry Stores. The West Virginia Glass Specialty Co., Inc., canceled the Cash & Carry order of January 5, 1938, and in a letter dated February 1, 1938, advised Roseware, Inc., of its action and that they would cooperate with Roseware, Inc., in refusing to fill orders from the same source and for that purpose would not answer any correspondence from the Cash & Carry Stores but would turn all letters and orders which they received back to Roseware, Inc., to be handled by the latter.

PAR. 7. Respondent Anchor Hocking Glass Corporation on January 29, 1938, acknowledged receipt of the letter of January 21, 1938, from the respondent Hotel, Restaurant & Tavern Equipment Association, which was signed by the respondent wholesale dealers as already set forth above, and the Anchor Hocking Glass Corporation sent a copy of the letter received from the respondent wholesale dealers to its agent at Chicago who forwarded the letter to respondent Peterson, the Hocking Corporation's factory agent at Milwaukee. Thereupon on February 5, 1938, Peterson replied to the Hocking Corporation's agent at Chicago that it would be more profitable to cooperate with the respondent wholesale dealers than to sell the Cash & Carry Stores but that at the same time he suggested that two of the wholesale dealers whose names he mentioned should give the Hocking Corporation more business in certain glassware in consideration of the cooperation of the Anchor Hocking Glass Corporation.

On February 12, 1938, the Anchor Hocking Glass Corporation made further reply to the letter of January 21, 1938, from the Hotel, Restaurant & Tavern Equipment Association in which the Hocking Corporation stated that their factory agent, respondent Peterson, could be depended on to cooperate with them if they would in turn reciprocate by favoring the Hocking Corporation somewhat more than they had in the past. Thereafter, the Anchor Hocking Glass Corporation and its factory agent respondent Peterson refused to fill orders for glassware which they received from the Cash & Carry Stores.

PAR. 8. Subsequent to the sending of the letter of January 21, 1938, by the respondent wholesale dealers to the Anchor Hocking Glass Corporation, the Indiana Glass Co. was informed of that letter by its factory agent Roseware, Inc., who stated the substance thereof in a letter dated January 29, 1938, to the Indiana Glass Co. and further stated that it had assured all the jobbers that the situation would be handled in a very satisfactory manner both by the Indiana Glass Co. and Roseware, Inc. Roseware, Inc., also stated in its letter of January 29, 1938, to the Indiana Glass Co. that the Cash & Carry Stores asked the price of a certain item of the Indiana Glass Co.'s glassware and that it quoted them a price on that item which was 50 cents per dozen over the then existing price for that item.

The letter of Roseware, Inc., closed with the statement to the Indiana Glass Co. that it did not want to take upon itself to refuse to sell the Cash & Carry Stores, as a representative of the Indiana Glass Co., without the latter's authority and asked the advices of the Indiana Glass Co. on the matters contained in its letter.

The Indiana Glass Co. replied to the above letter of Roseware, Inc., dated January 29, 1938, in a telephone conversation when the president of the Indiana Glass Co. called the president of Roseware, Inc., on the telephone on another matter. The president of the Indiana Glass Co. was fully informed as to the circumstances in Milwaukee and being fully informed knew that Roseware, Inc., was refusing to accept orders from the Badger Cash & Carry Stores. He told the president of Roseware, Inc., that he had authority to act as he saw fit. The president of Roseware, Inc., indicated to the Badger Cash & Carry Stores on more than one occasion that its orders were no longer welcome and would not be filled. The Badger Cash & Carry Stores wanted to secure merchandise manufactured by the Indiana Glass Co. but was unable to do so. The president of Roseware, Inc., made it plain to the Badger Cash & Carry Stores that it would not fill orders placed by it by such means as misrepresenting current prices and misrepresenting the time necessary for filling orders, and the Indiana Glass Co. had a policy of not selling to the purchasing public when orders were sent directly to it. Respondents Indiana Glass Co. and Roseware, Inc., refused to fill orders for glassware received from the Cash & Carry Stores.

PAR. 9. The respondent glass manufacturing companies and the respondent wholesale dealers conspired, and combined together and with each other and cooperated together to cut off the purchase of a supply of glassware for resale by the Cash & Carry Stores with the purpose and intent unduly to restrain the Cash & Carry Stores from purchasing merchandise for resale in the same markets as its competi-

tors, the respondent wholesale dealers in the trading area of Milwaukee, Wis., and with the effect directly and unduly to hinder and to restrain the interstate commerce in glassware by glass manufacturers with wholesale dealers in the Milwaukee, Wis., trade area.

A plan to eliminate Badger Cash & Carry Stores as a competitor in the sale of glassware was conceived. Respondent wholesalers notified the factory representatives and they in turn notified their principals. For their part, the manufacturing companies refused to sell. The agents of the manufacturers were active in getting the plan underway, and they made contacts with each other and with the respondent wholesalers and helped to persuade their principals to do their part in making the plan effective.

Pursuant to the conspiracy, combination, and cooperation, the respondent Hotel, Restaurant and Tavern Equipment Association and its members, the respondent wholesale dealers, concertedly wrote letters and used other means of persuasion to enlist the cooperation of the respondent glass manufacturers and the respondent glass manufacturers cooperated with the other respondents and monopolized trade in commerce in glassware in the city of Milwaukee. As a result of this combination, at least one wholesaler of glassware was unable to purchase supplies from the three respondent manufacturers or their agents and was therefore handicapped in the conduct of his business. The refusals to sell and fill orders in themselves constituted a curtailment of interstate sales and the elimination of at least one wholesaler tended to stabilize wholesale prices of glassware products at levels inconsonant with free competition. Competition in the wholesaling of glassware in the city of Milwaukee and the surrounding trade area was suppressed and trade was restrained as a result of the combination, conspiracy, and cooperation entered into and carried out among and between the various respondents and the acts and practices done pursuant thereto.

Pursuant to the said conspiracy, combination, and cooperation of the respondents, the respondent glass manufacturers in concert with the respondent Association and its members, the respondent wholesale dealers, canceled or refused to accept orders for glassware from the Cash & Carry Stores for resale by the latter in the Milwaukee, Wis., trade area in competition with the respondent wholesale dealers, and as a result of the above acts and practices of the respondents, competition between the Cash & Carry Stores and the respondent wholesale dealers was unduly restrained, competition by and between respondent glass manufacturers was unduly suppressed, and interstate trade and commerce in glassware was restrained.

CONCLUSION

The aforesaid acts and practices of the respondent Hotel, Restaurant & Tavern Equipment Association and of its members, the respondent wholesale dealers, and of the respondent glass manufacturers, Anchor Hocking Glass Corporation, West Virginia Glass Specialty Co., Inc., and the Indiana Glass Co. were each and all to the prejudice of the public and constitute unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before Edward E. Reardon, a duly appointed trial examiner of the Commission designated by it to serve in this proceeding in support of the allegations of the complaint and in opposition thereto, the report of the trial examiner thereon and the exceptions to said report, brief in support of the complaint and in opposition thereto and oral argument by counsel for the Commission and counsel for respondents and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Berland Supply Co., Inc.; S. J. Casper Co., Inc.; I. Shapiro, Inc.; Louis M. Mintz, trading as Mintz Supply Co.; W. A. Reinemann, trading as Hotel and Restaurant Supply Co.; National Beverage Distributing Co.; Anchor-Hocking Glass Corporation; West Virginia Glass Specialty Co., Inc.; Indiana Glass Co.; Roseware, Inc.; W. H. Peterson; and Hotel, Restaurant & Tavern Equipment Association and its members, their officers, directors, representatives, agents, and employees, directly or through

¹ By order dated November 10, 1941, the Commission, having duly considered the request for modification of respondent Anchor-Hocking Glass Corporation, made a modified order, effect of which was to change the first two paragraphs of the original order, as above published, leaving unchanged the balance thereof, as follows, to wit:

It is ordered, That respondents Berland Supply Company, Inc.; S. J. Casper Company, Incorporated; I. Shapiro, Inc.; Louis M. Mintz, trading as Mintz Supply Company; W. A. Reinemann, trading as Hotel and Restaurant Supply Company; National Beverage Distributing Company; Anchor-Hocking Glass Corporation; West Virginia Glass Specialty Company; Indiana Glass Company; Roseware, Inc.; W. H. Peterson; and Hotel, Restaurant & Tavern Equipment Association and its members, in connection with the offering for sale, sale, and distribution of glassware in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

From continuing, entering into, or assisting each other in carrying out, any conspiracy, agreement, understanding, cooperative plan, program, concert or common course of action among said respondents, between any two or more of them, or between the officers, agents, and employees of any two or more of them:

(a) To refuse to sell glassware to any person, partnership, or corporation; etc.

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any corporate or other device, in connection with the offering for sale, sale and distribution of glassware in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

From combining, conspiring, agreeing, or cooperating among themselves, or between any two or more of them, or with others, or from entering into or carrying out any agreements or understandings, or formulating or participating in any cooperative plan or program with the effect or the tendency of suppressing, hindering, restraining, or interfering with competition:

(a) To refuse to sell glassware to any person, partnership or corporation;

(b) To cut off the source or sources of supply of any person, partnership, or corporation or hinder, impede, or handicap any person, partnership, or corporation in its efforts to obtain supplies of glassware for sale or resale in trade and commerce, or to otherwise deprive any person, partnership, or corporation of an opportunity to compete in the sale or resale of glassware.

(c) To determine or designate who shall be a wholesaler of glassware and who shall not be in Milwaukee and the surrounding trade area or in any other trade area in the United States;

(d) To coerce or persuade any wholesaler, retailer, or dealer of glassware to refrain from engaging in price competition in the sale and distribution of glassware in commerce;

(e) To limit the number of persons, partnerships, or corporations who may participate in trade and commerce in glassware or to limit or proscribe or seek to limit or proscribe the rights of any such person, partnership, or corporation to conduct trade and commerce according to its own free will.

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

Complaint

IN THE MATTER OF

SISCO-HAMILTON COMPANY

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

Docket 4471. Complaint, Mar. 13, 1941—Decision, July 9, 1941

Where a corporation engaged in the manufacture of candy and in the competitive interstate sale and distribution thereof, including certain assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, a typical assortment consisting of 24 boxes of chocolate candy, together with a push card for use in sale and distribution thereof, as thereon explained, by a plan under which customer paid for a box from 1 to 32 cents, depending upon the number he secured by chance—

Sold such assortments to wholesalers, jobbers, and retailers, by whom said candy was exposed and sold to purchasing public in accordance with such sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its candy, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who, unwilling to use method involving a game of chance or other method contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales plan or method and the element of chance involved therein, and were thereby induced to buy and sell its candy in preference to that of its said competitors, and with effect of unfairly diverting trade in commerce to it from them:

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

Mr. J. V. Mishou for the Commission.

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 Sisco-Hamilton Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sisco-Hamilton Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 514 South Loomis