

IN THE MATTER OF
INTER-STATE CIGARETTE MERCHANDISERS ASSOCIA-
TION 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 4388. Complaint, Nov. 26, 1940—Decision, July 31, 1941

Where an unincorporated trade association, together with its membership of five associations of operators of automatic cigarette vending machines, engaged in such business in the metropolitan area of New York City, and in New Jersey, New York, Pennsylvania, Connecticut, and Massachusetts, who purchased such machines from manufacturers and distributors and installed them in various types of retail establishments, such as restaurants, taverns, gasoline stations, etc., by agreement with proprietors thereof; controlling between 85 and 90 percent of the business in the territory concerned and enabled, through their aforesaid associations, more effectively to influence such trade for the enhancement of their own profits, and in active and substantial competition with each other and with others except as below set forth; and with the officers, directors, and members of said organizations—

Acting in concert to monopolize business in their respective territories, by means of (1) campaigns designed to force all operators controlling an appreciable number of locations, to join the associations, (2) demands that manufacturers refuse to sell machines to nonmembers, (3) appointment of committees to induce manufacturers to stop selling direct to "locations" and to promise not to create new operators or to sell nonmembers, or to induce nonmembers to join the association, (4) association agreements to purchase from the four leading manufacturers a specified number of machines annually in consideration of manufacturers' agreement not to create new operators or sell nonmembers, (5) threatening with boycott and, in many instances, boycotting, machines of noncooperating manufacturers, and (6) use of the combined power of all the associations in various ways to intimidate and coerce manufacturers as aforesaid—

Entered into and carried out understandings, agreements, and conspiracies between and among themselves for the purpose of restraining and eliminating competition in the purchase, distribution, and installation of automatic cigarette vending machines in interstate commerce; and, in pursuance thereof—

- (a) Established and attempted to establish the members of said associations as a preferred class for the purpose of having manufacturers and distributors confine the sale and distribution of automatic cigarette machines to such member operators exclusively;
- (b) Interfered with efforts of competitors of said member operators to obtain such machines;
- (c) Required, induced, and compelled manufacturers and distributors, by promises and threats, not to sell or ship machines to competitors of said member operators, and to confine the sale and distribution thereof to said member operators; and
- (d) Threatened to and did boycott manufacturers and distributors selling machines to competitors of said member operators;

With result that manufacturers were forced to comply with the requirements of the various associations and created no new operators in their territories, refused to sell to locations or to wholesale dealers who sold to locations, and to nonmembers of associations, and that, in certain territories, manufacturers refusing to abide by their agreements not to create new operators in consideration of an association's undertaking to purchase a definite quantity of their machines annually, were boycotted by the association members:

Held, That such acts and practices, as above set forth, were all to the prejudice of competitors of said member operators and of the public, had a dangerous tendency to and actually did hinder and prevent competition in the sale of automatic cigarette vending machines, unreasonably restrained commerce in said machines, and constituted unfair methods of competition.

Mr. Daniel J. Murphy for the Commission.

Parker, Chapin & Flattau, 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 Inter-State Cigarette Merchandisers Association, The Cigarette Merchandisers Association, Inc., Cigarette Merchandisers Association of New Jersey, Inc., The Automatic Cigarette Vendors Association of Eastern Pennsylvania, The Cigarette Machine Operators of Connecticut, Inc., Cigarette Merchandisers Association of New England, and the officers, directors and members of said organizations and associations, hereinafter referred to as respondents, have violated the provisions of the 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 Inter-State Cigarette Merchandisers Association, hereinafter for convenience referred to as the "Inter-State Associations," is an unincorporated association, with its principal office and place of business located at 60 Park Place, Newark, N. J. The membership of said Inter-State Association is composed of respondent organizations and associations of operators of automatic cigarette vending machines, to wit: The Cigarette Merchandisers Association, Inc., Cigarette Merchandisers Association of New Jersey, Inc., The Automatic Cigarette Vendors Association of Eastern Pennsylvania, The Cigarette Machine Operators of Connecticut, Inc., and Cigarette Merchandisers Association of New England. The said member respondent organizations and associations participate and cooperate in the management and activities of the said Inter-State Association. Each of the said member respondent organizations and associations appoint or elect three authorized delegates or alternates

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who actively represent each respective member respondent organization and association at the meetings of the said Inter-State Association. In addition to said authorized delegates, each member respondent organization and association is further represented in the affairs and activities of said Inter-State Association, by its manager, executive secretary and/or counsel who, by reason of their office in their respective organization or association are associate members of said Inter-State Association.

The respondent officers and directors of the said Inter-State Association are:

President.....	John Sharenow, a representative of the Cigarette Merchandisers Association of New Jersey, Inc.
Vice President.....	William King, a representative of The Automatic Cigarette Vendors Association of Eastern Pennsylvania.
Treasurer.....	Edward Beresth, a representative of The Cigarette Machine Operators of Connecticut, Inc.
Secretary.....	Robert K. Hawthorne, a representative of The Cigarette Merchandisers Association, Inc.
Recorder.....	James V. Cherry, a representative of the Cigarette Merchandisers Association of New Jersey, Inc.
Director.....	Anthony J. Masone, a representative of The Cigarette Machine Operators of Connecticut, Inc.
Director.....	Alfred Sharenow, a representative of The Cigarette Merchandisers Association of New England.
Director.....	Edward J. Dingley, a representative of The Automatic Cigarette Vendors Association of Eastern Pennsylvania.

PAR. 2. Respondent The Cigarette Merchandisers Association, Inc., is a membership 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 located in the Chanin Building in New York City, N. Y. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the metropolitan area of New York City, N. Y. The respondent members of said respondent corporation operate approximately 17,000 of said machines which represent approximately 90 percent of such machines operated in the metropolitan area of New York City.

The respondent officers and directors of the said respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President: Robert K. Hawthorne-----	P & H Cigarette Service, Bronx, N. Y.
First vice president: Alexander Frazer.	Atlas Vending Co., 2840 8th Ave., New York, N. Y.
Second vice president: Albert S. Denver..	Lincoln Cigarette Service (a trade name under which Albert S. Denver as an individual does business), 1645 Bedford Ave., Brooklyn, N. Y.
Treasurer: Samuel Yolen-----	Modern Cigarette Service (a trade name under which Samuel Yolen as an individual does business), 172 Fairview Ave., Port Chester, N. Y.
Secretary: Tom Cola-----	United Cigarette Service, 3734 East Tremont Ave., New York, N. Y.
Manager: Matthew Forbes-----	
Director: Michael Lascari-----	Manhattan Cigarette Service, Inc., 421 East 76th St., New York, N. Y.
Director: Jackson Bloom-----	Cigarette Service, Inc., 36 Cooper Sq., New York, N. Y.
Director: Louis D. Schwartz-----	Smokers Service, Inc., 211 Northland Blvd., Bayside, Long Island, N. Y.
Director: Martin M. Berger-----	Rowe Cigarette Service Co., Inc., New York, N. Y.
Director: Bernard Rosen-----	Supreme Cigarette Service, Inc., 381 Main St., New Rochelle, N. Y.
Director: Harold Roth-----	Herald Vending Corporation, 41 24th St., Long Island City, N. Y.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 3. Respondent Cigarette Merchandisers Association of New Jersey, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 60 Park Place, Newark, N. J. The membership of said respondent corporation consists of certain persons, partnerships and corporations engaged in the operation of automatic cigarette vending machines in the States of New Jersey, New York, and Pennsylvania. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association.

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The respondent officers and directors of the said respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President and director: Charles W. Strange.	Unit Vending Corporation, 227 North Park St., East Orange, N. J.
Vice president and director: Max Jacobowitz.	Hudson County Tobacco Co., 84 Montgomery St., Jersey City, N. J.
Treasurer and director: Henry W. Hartmann.	Pack Shops of Jersey City, Inc., 46½ Fleming Ave., Newark, N. J.
Secretary and director: John Grout----	Jersey Cigarette Service, Inc., 111 4th St., Pelham, N. Y.
Manager: James V. Cherry-----	
Director: Michael Lascarl-----	Public Service Tobacco Co., 1464 North Broad St. (a corporation), Hillside, N. J.
Director: John Sharenow-----	North Jersey Cigarette Service, Inc., 214 33rd St., North Bergen, N. J.
Director: Samuel M. Malkin-----	Malkin Sales Co. (a trade name under which Harry Malkin and Samuel Malkin as copartners do business), 408 Market St., Newark, N. J.
Director: Harry Zink-----	Coast Cigarette Service, Inc., 806 Monroe Ave., Asbury Park, N. J.
Director: Herman Arlein-----	Le Peko Co., Inc., 100 Newark Ave., Jersey City, N. J.

The above-named respondent officers, directors and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 4. Respondent, The Automatic Cigarette Vendors Association of Eastern Pennsylvania, is an unincorporated trade association or organization of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Pennsylvania. The principal office and place of business of said respondent association is located at 1411 Fox Building, Philadelphia, Pa. Said respondent association is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association.

The respondent officers and directors of the respondent association and the respective respondent members of said respondent association by or with which such officers and directors are employed or connected are as follows:

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<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President and director: Walter I. Davidson.	Walday Sales Co. (a trade name under which Walter I. Davidson as an individual does business), 5645 North 15th St., Philadelphia, Pa.
Vice president and director: Patrick J. Bonoma.	Delaware County Tobacco Co. (a trade name under which E. P. Christake as an individual does business), 310 Edgemont Ave., Chester, Pa.
Treasurer and director: LeRoy A. Schackleton.	Automatic Vending Co., 525 Parker St., Chester, Pa.
Director: William L. King-----	Quaker Vending Co. (a trade name under which William L. King, as an individual does business), 605 Wyoming Ave., Philadelphia, Pa.
Director: W. Harry Steele, Jr.-----	Steele Vending Co. (a trade name under which W. Harry Steele, Jr., as an individual does business), 5831 Henry Ave., Philadelphia, Pa.
Director: Harry D'Alessandro-----	Big 4 Distributors (a trade name under which Harry D'Alessandro, Anthony Lalli, Cosimo Lalli, and Alfred Lalli as copartners do business), 1111 Carpenter St., Philadelphia, Pa.
Director: Ralph J. Burnard-----	Saks Cigarette Service (a trade name under which Emma M. Burnard and Amedeo Principi as copartners do business), 1423 Conlyn St., Philadelphia, Pa.
Director: Joseph Silberman-----	R. Baylin Co. (a trade name under which Richard Baylin as an individual does business), 151 West 3rd St., Chester, Pa.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent association but are representative members thereof, respectively.

PAR. 5. Respondent The Cigarette Machine Operators of Connecticut, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of Connecticut with its principal office and place of business located at 106 Meadow Street, Waterbury, Conn. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the said respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Connecticut.

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The respondent officers and directors of the said respondent corporation and the respective respondent members of respondent said corporation by or with which such officers and directors are employed or connected, are as follows:

<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President: Anthony R. Nastro-----	Automatic Sales Co., Inc., 106 Meadow St., Waterbury, Conn.
Vice president: Robert Zimmerman-----	Self-Service Sales Corporation, 627 Albany Ave., Hartford, Conn.
Secretary: Anthony J. Masone-----	Automatic Sales Co., Inc., 106 Meadow St., Waterbury, Conn.
Treasurer: M. E. Norris-----	Norris Tobacco Co. (a trade name under which M. E. Norris as an individual does business), Main Street, Danbury, Conn.
Director: John J. Fitzgerald-----	Connecticut Automatic Cigarette Co. (a trade name under which John J. Fitzgerald as an individual does business), 61 Broadway, New Haven, Conn.
Director: Samuel Aliener-----	1507 Chapel St., New Haven, Conn.
Director: Nathan Dubowry-----	Connecticut Automatic Sales Co. (a trade name under which Nathan Dubowry as an individual does business), 93 Lafayette St., New Britain, Conn.
Director: Lena Bonelli-----	Bonelli Cigarette Service (a trade name under which Lena Bonelli as an individual does business), 407 East Elm St., Torrington, Conn.
Director: Charles Sparrow-----	Cigarette Machines Sales Co. (a trade name under which Charles Sparrow as an individual does business), 298 Wayne St., Bridgeport, Conn.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 6. Respondent Cigarette Merchandisers Association of New England, is a membership corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its principal office and place of business located at No. 1 Federal Street, Boston, Mass. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the said respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships and corporations engaged in the operation of automatic cigarette vending machines in the State of Massachusetts.

The respondent officers and directors of the respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President: Samuel M. Goldstein-----	Metro Automatic Sales Corporation, 330 Massachusetts Ave., Boston, Mass.
Vice president: Louis Berman-----	Vogue Vending Co. (a corporation), 262 Middlesex St., Lowell, Mass.
Secretary: William B. Burns-----	Grand Novelty & Supply Co. (a trade name under which William B. Burns does business), 66 Southgate St., Worcester, Mass.
Manager: Walter R. Guild-----	
Director: Albert M. Coulter-----	M. A. C. Vending Co. (a trade name under which Albert M. Coulter and M. L. Coulter as copartners do business), 6 North Woodfort, Worcester, Mass.
Director: Frank Fendel-----	Fendel Bros. (a trade name under which Frank Fendel as an individual does business), 265 Park Ave., Revere, Mass.
Director: Oscar Gerson-----	Gerson Sales Co. (a corporation), 70 A Green St., Boston, Mass.
Director: Julian Karger-----	Enterprise Cigarette Service Co. (a trade name under which Julian Karger and Louis Elfman as copartners do business), 250 Broadway, Revere, Mass.
Director: Cleo C. Kingsley-----	K. D. Vending Co. (a trade name under which Jullus Ulman and Cleo C. Kingsley as copartners do business), 219 State St., Swampscott, Mass.
Charles E. Knight-----	12 Kimbal Rd., Methuen, Mass.
Alfred I. Sharenow-----	Cigarette Service Co., 266 Salem St., Bedford, Mass.
Jacob Shelman-----	Shelley Sales Co., Inc., 382 Watertown St., Newton, Mass.
Harry Spierer-----	Monroe Sales Co. (a trade name under which Harry Spierer as an individual does business), 56 Harvest St., Lynn, Mass.
William Spiller-----	Massachusetts Vending Co. (a trade name under which Rose D. Spiller as an individual does business), 69 Wayland St., Roxbury, Mass.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent association but are representative members thereof, respectively.

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PAR. 7. Those hereinabove specifically named respondents as officers, directors, and members of the said respondent organizations and associations do not constitute the entire list or number of such officers, directors, or members but are typical and representative thereof. All of the officers, directors, and members of said respondent organizations and associations are not known to the Federal Trade Commission and cannot be joined specifically as parties respondent in this proceeding without manifest inconvenience and delay prejudicial to the public interest. All of the officers, directors, and members of said respondent organizations and associations are, therefore, made parties respondent herein as a class of which those specifically named are representative of the whole.

PAR. 8. Said operators of automatic cigarette vending machines; members of said organizations and associations and respondents herein, in the course and conduct of their business, have purchased and are now purchasing automatic cigarette vending machines from manufacturers, producers and distributors, in various States; said respondent operators, by agreement with proprietors, install such machines in various types of retail establishments in which the sale of cigarettes is contemplated, i. e., restaurants, taverns, grills, barrooms, gasoline station, etc.; the places where such machines are installed are commonly known in the trade as "locations;" the said respondent operators have caused and are now causing automatic cigarette vending machines to be shipped and transported in commerce to the places of business and to the locations of such purchasing respondents from points in States other than the States in which such respective points of destination are located.

PAR. 9. In the course and conduct of their respective business heretofore described, except to the extent to which competition in the purchase and location of automatic cigarette vending machines has been restrained, lessened, injured, and suppressed by the undertakings, agreements, combinations, and conspiracies hereinafter referred to, the respondent operators of automatic cigarette vending machines have been, and are now, in active and substantial competition with each other and with other operators of such machines in the purchase and location of such machines.

PAR. 10. Said respondent operators of automatic cigarette vending machines, members of the said respondent organizations and associations hereinabove described, constitute a large and important part of the operators of automatic cigarette vending machines in the several States of the United States in which the members of respondent organizations and associations are engaged in business; and such members constitute a group so large and influential in the trade as to be

able to control and influence the flow of trade and commerce in automatic cigarette vending machines within, to, and from the several States wherein the said respondent operators are engaged in business. Said members as allied and banded together in associations and organizations are enabled thereby to more effectively exercise control and influence of such trade and commerce for the promotion and enhancement of their own volume of trade and profits.

PAR. 11. For more than 3 years last past there were, and have been and are now, several manufacturers, producers, and sellers of automatic cigarette vending machines whose respective places of business were, and are now located in various States other than the States where the respondent operators of automatic cigarette vending machines have their places of business; said manufacturers, producers, and sellers have been, and are now, engaged in the business of manufacturing and selling such machines which they have been, and are now, shipping in commerce between and among the several States of the United States, and who have been, and are now, selling large quantities of such machines to the respondent operators or their agents and shipping such machines in commerce to said purchasers into the various States of the United States other than the States where said manufacturers, producers, and sellers have their places of business. Except to the extent to which competition, between said manufacturers, producers, and sellers in the manufacture and sale of such machines and in the sale thereof for shipment in commerce into the various States of the United States other than the States where said manufacturers, producers, and sellers have their places of business, has been restrained, lessened, injured, and suppressed by the understandings, agreements, combinations, and conspiracies herein-after referred to, the said manufacturers, producers, and sellers, in the course and conduct of their respective businesses as aforesaid, have been, and are now, engaged in active and substantial competition with each other in the manufacture and sale of such machines, and in the sale thereof for shipment in commerce into the various States of the United States and in the sale thereof to the respondent operators or their agents, and to competitors of respondent operators for shipment to said respondent operators and competitors of respondent operators in commerce into the various States of the United States.

PAR. 12. The respondents, viz, said organizations and associations hereinabove described, their officers, directors, and members, parties respondent herein, during and in the period of more than 3 years last past have entered into and thereafter carried out understandings, agreements, combinations, and conspiracies for the purpose of re-

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stricting, restraining, suppressing, and eliminating competition and creating a monopoly in the purchase and sale of automatic cigarette vending machines in trade and commerce between and among the several States of the United States.

PAR. 13. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, the said respondents have engaged in and performed, and are now engaging in and performing the following practices and acts:

(a) Establishing the respondent operators of automatic cigarette vending machines as a preferred class for the purpose of confining and requiring the sale and distribution of automatic cigarette vending machines by manufacturers, producers, and sellers thereof to such respondent operators exclusively;

(b) Interfering with competitors of respondent operators of automatic cigarette vending machines in the said competitors' efforts to purchase and obtain such machines;

(c) Preventing competitors of respondent operators of automatic cigarette vending machines from purchasing or obtaining such machines;

(d) Requiring, inducing or compelling, by promises, threats, coercion, intimidation and otherwise, manufacturers, producers, and sellers of automatic cigarette vending machines;

1. Not to sell or ship automatic cigarette vending machines to competitors of respondent operators or directly to consumers of automatic cigarette vending machines;

2. To boycott competitors of respondent operators of automatic cigarette vending machines;

3. To confine to the respondent operators the said manufacturers', producers', and sellers' sales and shipments of automatic cigarette vending machines intended for use, consumption or resale in the various States where respondent operators are engaged in business.

(e) Boycotting and threatening to boycott manufacturers, producers, and sellers of automatic cigarette vending machines who sell or ship such machines either to competitors of respondent operators or directly to consumers of such machines;

(f) Requiring all members of respondent organizations and associations to carry out, and to agree and pledge themselves to support and carry out, the foregoing program;

(g) Using other methods and means designed to suppress and prevent competition and restrict and restrain the sale of automatic cigarette vending machines in said commerce.

PAR. 14. The capacity, tendency and effect of the aforesaid understandings, agreements, combinations, and conspiracies and the acts

and practices engaged in and performed pursuant thereto and in furtherance thereof are, and have been:

(a) To unduly and unlawfully restrain, lessen, injure, and suppress competition in the sale of automatic cigarette vending machines which are sold to the purchasers thereof for shipment into the various States where the respondents are located;

(b) To unduly and unlawfully impede, hinder, and prevent certain manufacturers, producers, and sellers of automatic cigarette vending machines from selling such machines for shipment from the various States where the said manufacturers, producers, and sellers are located into the various States where the respondent operators are located;

(c) To unduly and unlawfully restrain, lessen, injure, and suppress competition in the sale and purchase of automatic cigarette vending machines which are shipped in commerce into the various States where the respondents are located from the various States where the manufacturers, producers, and sellers of such machines are located;

(d) To unreasonably and unlawfully restrain, hinder, and prevent operators of automatic cigarette vending machines who are engaged in competition with the respondent operators of such machines from purchasing such machines for shipment to them in commerce into the various States where such competing operators are located from States where manufacturers, producers, and sellers of such machines are located;

(e) To tend to create in certain manufacturers, producers, and sellers of automatic cigarette vending machines a monopoly in the sale of such machines which are sold to the purchasers thereof for shipment into the various States other than the States where such manufacturers, producers, and sellers are located;

(f) To tend to create in the respondent operators of automatic vending machines a monopoly in the business of purchasing and locating such machines in the various States or parts thereof where the said respondent operators are located;

(g) To unlawfully and coercively condition the right of persons to engage in business as operators of automatic cigarette vending machines upon such persons becoming members of the respondent organizations and associations and cooperating with the respondents in executing the above-described understandings, agreements, combinations, and conspiracies;

(h) To prejudice and injure the public and manufacturers, producers, and sellers of automatic cigarette vending machines and others who do not conform to the program of the respondents or who do not desire but are compelled to conform to said program.

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PAR. 15. Each of the said respondents at the times herein mentioned acted in concert with one or more of the other respondents in doing and performing the acts and practices hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 16. The acts and practices of the respondents as herein alleged are all to the prejudice of competitors of respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of automatic cigarette vending machines in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in automatic cigarette vending machines, and have a dangerous tendency to create in the respondents a monopoly in the sale of automatic cigarette vending machines, 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 26th day of November 1940, issued and served its complaint in this proceeding upon the respondents named in the above caption charging the said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. On February 15, 1941, 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 in behalf of the said respondents by their counsel, Parker, Chapin & Flattau, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges 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 Inter-State Cigarette Merchandisers Association, hereinafter for convenience referred to as the "Inter-State

Association," is an unincorporated trade association, with its principal office and place of business located at 60 Park Place, Newark, N. J. The membership of said Inter-State Association is composed of respondent organizations and associations of operators of automatic cigarette vending machines, to wit: The Cigarette Merchandisers Association, Inc., Cigarette Merchandisers Association of New Jersey, Inc., The Automatic Cigarette Vendors Association of Eastern Pennsylvania, The Cigarette Machine Operators of Connecticut, Inc., and Cigarette Merchandisers Association of New England. The said member respondent organizations and associations participate and cooperate in the management and activities of the said Inter-State Association. Each of the said member respondent organizations and associations appoint or elect three authorized delegates or alternates who actively represent each respective member respondent organization and association at the meetings of the said Inter-State Association. In addition to said authorized delegates, each member respondent organization and association is further represented in the affairs and activities of said Inter-State Association, by its manager, executive secretary and/or counsel who, by reason of their office in their respective organization or association are associate members of said Inter-State Association.

The respondent officers and directors of the said Inter-State Association are:

President-----	John Sharenow, a representative of the Cigarette Merchandisers Association of New Jersey, Inc.
Vice President-----	William King, a representative of The Automatic Cigarette Vendors Association of Eastern Pennsylvania.
Treasurer-----	Edward Beresth, a representative of The Cigarette Machine Operators of Connecticut, Inc.
Secretary-----	Robert K. Hawthorne, a representative of The Cigarette Merchandisers Association, Inc.
Recorder-----	James V. Cherry, a representative of the Cigarette Merchandisers Association of New Jersey, Inc.
Director-----	Anthony J. Masone, a representative of The Cigarette Machine Operators of Connecticut, Inc.
Director-----	Alfred Sharenow, a representative of The Cigarette Merchandisers Association of New England.
Director-----	Edward J. Dingley, a representative of The Automatic Cigarette Vendors Association of Eastern Pennsylvania.

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PAR. 2. Respondent The Cigarette Merchandisers Association, Inc., is a membership 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 located in the Chanin Building in New York City, N. Y. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the metropolitan area of New York City, N. Y. The respondent members of said respondent corporation operate approximately 17,000 of said machines which represent approximately 90 percent of such machines operated in the metropolitan area of New York City.

The respondent officers and directors of the said respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President: Robert K. Hawthorne-----	P & H Cigarette Service, Bronx, N. Y.
First vice president: Alexander Frazer-----	Atlas Vending Co., 2340 Eighth Ave., New York, N. Y.
Second vice president: Albert S. Denver-----	Lincoln Cigarette Service (a trade name under which Albert S. Denver as an individual does business), 1645 Bedford Ave., Brooklyn, N. Y.
Treasurer: Samuel Yolen-----	Modern Cigarette Service (a trade name under which Samuel Yolen as an individual does business), 172 Fairview Ave., Port Chester, N. Y.
Secretary: Tom Cola-----	United Cigarette Service, 3734 East Tremont Ave., New York, N. Y.
Manager: Matthew Forbes-----	
Director: Michael Lascari-----	Manhattan Cigarette Service, Inc., 421 East 76th St., New York, N. Y.
Director: Jackson Bloom-----	Cigarette Service, Inc., 36 Cooper Sq., New York, N. Y.
Director: Louis D. Schwartz-----	Smokers Service, Inc., 211 Northland Blvd., Bayside, Long Island, N. Y.
Director: Martin M. Berger-----	Rowe Cigarette Service Co., Inc., New York, N. Y.
Director: Bernard Rosen-----	Supreme Cigarette Service, Inc., 381 Main St., New Rochelle, N. Y.
Director: Harold Roth-----	Herald Vending Corporation, 41 24th St., Long Island City, N. Y.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 3. Respondent Cigarette Merchandisers Association of New Jersey, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 60 Park Place, Newark, N. J. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the States of New Jersey, New York, and Pennsylvania. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association.

The respondent officers and directors of the said respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

<i>Officers and Directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President and Director: Charles W. Stange.	Unit Vending Corporation, 227 North Park St., East Orange, N. J.
Vice president and director: Max Jacobowitz.	Hudson County Tobacco Co., 84 Montgomery St., Jersey City, N. J.
Treasurer and director: Henry W. Hartmann.	Pack Shops of Jersey City, Inc., 46½ Fleming Ave., Newark, N. J.
Secretary and director: John Grout----	Jersey Cigarette Service, Inc., 111 4th St., Pelham, N. Y.
Manager: James V. Cherry-----	
Director: Michael Lascari-----	Public Service Tobacco Co. (a corporation), 1464 North Broad St., Hillside, N. J.
Director: John Sharenow-----	North Jersey Cigarette Service, Inc., 214 33d St., North Bergen, N. J.
Director: Samuel M. Malkin-----	Malkin Sales Co. (a trade name under which Harry Malkin and Samuel Malkin as copartners do business), 408 Market St., Newark, N. J.
Director: Harry Zink-----	Coast Cigarette Service, Inc., 806 Monroe Ave., Asbury Park, N. J.
Director: Herman Arlein-----	Le Peko Co., Inc., 100 Newark Avenue, Jersey City, N. J.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

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PAR. 4. Respondent, The Automatic Cigarette Vendors Association of Eastern Pennsylvania, is an unincorporated trade association or organization of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Pennsylvania. The principal office and place of business of said respondent association is located at 1411 Fox Building, Philadelphia, Pa. Said respondent association is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association.

The respondent officers and directors of the respondent association and the respective respondent members of said respondent association by or with which such officers and directors are employed or connected are as follows:

<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President and director: Walter I. Davidson.	Walday Sales Co. (a trade name under which Walter I. Davidson as an individual does business), 5645 North 16th St., Philadelphia, Pa.
Vice president and director: Patrick J. Bonoma.	Delaware County Tobacco Co. (a trade name under which E. P. Christake as an individual does business), 310 Edgemont Ave., Chester, Pa.
Treasurer and director: LeRoy A. Shackleton.	Automatic Vending Co., 525 Parker St., Chester, Pa.
Director: William L. King-----	Quaker Vending Co. (a trade name under which William L. King, as an individual does business), 605 Wyoming Ave., Philadelphia, Pa.
Director: W. Harry Steele, Jr.-----	Steele Vending Co. (a trade name under which W. Harry Steele, Jr., as an individual does business), 5831 Henry Ave., Philadelphia, Pa.
Director: Harry D'Alessandro-----	Big 4 Distributors (a trade name under which Harry D'Alessandro, Anthony Lalli, Cosimo Lalli, and Alfred Lalli as copartners do business), 1111 Carpenter St., Philadelphia, Pa.
Director: Ralph J. Burnard-----	Saks Cigarette Service (a trade name under which Amedeo Principi and Emma N. Burnard, referred to in the complaint as Emma M. Bernard, as copartners do business), 1423 Conlyn St., Philadelphia, Pa.
Director: Joseph Silberman-----	R. Baylin Co. (a trade name under which Richard Baylin as an individual does business), 151 West 3d St., Chester, Pa.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent association but are representative members thereof, respectively.

PAR. 5. Respondent The Cigarette Machine Operators of Connecticut, Inc., is a membership corporation organized and existing under and by virtue of the laws of the State of Connecticut with its principal office and place of business located at 106 Meadow Street, Waterbury, Conn. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Connecticut.

The respondent officers and directors of the said respondent corporation and the respective respondent members of respondent said corporation by or with which such officers and directors are employed or connected, are as follows:

<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President: Anthony R. Nastri-----	Automatic Sales Co., Inc., 106 Meadow St., Waterbury, Conn.
Vice president: Robert Zimmerman-----	Self-Service Sales Corporation, 627 Albany Ave., Hartford, Conn.
Secretary: Anthony J. Masone-----	Automatic Sales Co., Inc., 106 Meadow St., Waterbury, Conn.
Treasurer: M. E. Norris-----	Norris Tobacco Co. (a trade name under which M. E. Norris as an individual does business), Main St., Danbury, Conn.
Director: John J. Fitzgerald-----	Connecticut Automatic Cigarette Co., (a trade name under which John J. Fitzgerald as an individual does business), 61 Broadway, New Haven, Conn.
Director: Samuel Aliener-----	1507 Chapel St., New Haven, Conn.
Director: Nathan Dubowry-----	Connecticut Automatic Sales Co., (a trade name under which Nathan Dubowry as an individual does business), 93 Lafayette Street, New Britain, Conn.
Director: Lena Bonelli-----	Bonelli Cigarette Service (a trade name under which Lena Bonelli as an individual does business), 407 East Elm St., Torrington, Conn.
Director: Charles Sparrow-----	Cigarette Machine Sales Co. (a trade name under which Charles Sparrow as an individual does business), 298 Wayne St., Bridgeport, Conn.

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The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent corporation but are representative members thereof, respectively.

PAR. 6. Respondent Cigarette Merchandisers Association of New England, is a membership corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its principal office and place of business located at No. 1 Federal Street, Boston, Mass. Said respondent corporation is a member, and is represented by three authorized delegates or alternates at meetings, of the said respondent Inter-State Association. The membership of said respondent corporation consists of certain persons, partnerships, and corporations engaged in the operation of automatic cigarette vending machines in the State of Massachusetts.

The respondent officers and directors of the respondent corporation and the respective respondent members of said respondent corporation by or with which such officers and directors are employed or connected are as follows:

<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
President: Samuel M. Goldstein-----	Metro Automatic Sales Corporation, 330 Massachusetts Ave., Boston, Mass.
Vice President: Louis Berman-----	Vogue Vending Co. (a corporation), 262 Middlesex St., Lowell, Mass.
Secretary: William B. Burns-----	Grand Novelty & Supply Co. (a trade name under which William B. Burns does business), 93 Southgate St., Worcester, Mass.
Manager: Walter R. Guild-----	
Director: Albert M. Coulter-----	M. A. C. Vending Co. (a trade name under which Albert M. Coulter and M. L. Coulter as copartners do business), 6 North Woodfort, Worcester, Mass.
Director: Frank Fendel-----	Fendel Brothers (a trade name under which Frank Fendel as an individual does business), 265 Park Ave., Revere, Mass.
Director: Oscar Gerson-----	Gerson Sales Co. (a corporation), 70 A Green St., Boston, Mass.
Director: Julian Karger-----	Enterprise Cigarette Service Co. (a trade name under which Julian Karger and Louis Elfman as copartners do business), 250 Broadway, Revere, Mass.
Director: Cleo C. Kingsley-----	K. D. Vending Co. (a trade name under which Julius Ulman and Cleo C. Kingsley as copartners do business), 219 State St., Swampscott, Mass.

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<i>Officers and directors</i>	<i>Name of member respondent with which respective officers and directors are connected</i>
Charles E. Knight-----	12 Kimbal Rd., Methuen, Mass.
Alfred I. Sharenow-----	Cigarette Service Co., 206 Salem St., Medford, Mass.
Jacob Shelman-----	Shelley Sales Co., Inc., 382 Watertown St., Newton, Mass.
Harry Spierer-----	Monroe Sales Co. (a trade name under which Harry Spierer as an individual does business), 56 Harvest St., Lynn, Mass.
William Spiller-----	Massachusetts Vending Co. (a trade name under which Rose D. Spiller as an individual does business), 69 Wayland St., Roxbury, Mass.

The above-named respondent officers, directors, and members do not constitute the entire membership of said respondent association but are representative members thereof, respectively.

PAR. 7. Those hereinabove specifically named respondents as officers, directors, and members of the said respondent organizations and associations do not constitute the entire list or number of such officers, directors, or members, but are typical and representative thereof.

PAR. 8. Said operators of automatic cigarette vending machines, members of said organizations and associations and respondents herein, in the course and conduct of their business, have purchased and are now purchasing automatic cigarette vending machines from manufacturers, producers, and distributors in various States; said respondent operators, by agreement with proprietors, install such machines in various types of retail establishments in which the sale of cigarettes is contemplated, i. e., restaurants, taverns, grills, barrooms, gasoline stations, etc.; the places where such machines are installed are commonly known in the trade as "locations"; the said respondent operators have caused and are now causing automatic cigarette vending machines to be shipped and transported in commerce to the places of business and to the locations of such purchasing respondents from points in States other than the States in which such respective points of destination are located.

In the course and conduct of their respective businesses heretofore described, except to the extent to which competition in the purchase of automatic cigarette vending machines has been restrained, lessened, injured, and suppressed by the undertakings, agreements, and other facts hereinafter referred to, the respondent operators of automatic cigarette vending machines have been, and are now, in active and sub-

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stantial competition with each other and with other operators of such machines in the purchase and location of such machines.

Said respondent operators of automatic cigarette vending machines, members of the said respondent organizations and associations hereinabove described, constitute a large and important part of the operators of automatic cigarette vending machines in the several States of the United States in which the members of respondent organizations and associations are engaged in business; and such members constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in automatic cigarette vending machines within, to, and from the several States wherein the said respondent operators are engaged in business. Said members as allied and banded together in associations and organizations are enabled thereby to more effectively exercise control and influence of such trade and commerce for the promotion and enhancement of their own volume of trade and profits.

PAR. 9. The automatic cigarette vending machine industry came into existence about 10 years ago, and is composed of operators and manufacturers. An operator of cigarette vending machines is one who purchases the machines from the manufacturer and solicits proprietors of various types of retail businesses, such as poolrooms, barrooms, restaurants, or other places, for permission to install one or more of said machines on the premises of the owners, upon the agreement that the operator shall service said machines with the various nationally advertised brands of cigarettes, for which privilege and said service the operator agrees to allow the owner of the premises a commission of anywhere from $\frac{1}{2}$ to 1 cent on each package of cigarettes sold through said machine while on the premises of the owner. The establishment where such a machine is placed is, in the parlance of the operator, called a "location" or "stop." The operator purchases his cigarettes either direct from the manufacturer or from a wholesale tobacco dealer. He employs one or more so-called service men, who in New York City are members of a labor union affiliated with the American Federation of Labor, who from time to time call at the locations, taking with them the various brands of cigarettes which they use in servicing said machines, thereby keeping them supplied with the necessary merchandise for resale. These service men, in addition to keeping the machine supplied with cigarettes, also collect the money deposited therein by purchasers and, after accounting to the owners of the locations for their commissions, return the balance to their employer, the operator. The number of locations in which an operator has installed machines ranges from 20 to 5,000.

Prior to the organization of the various respondent associations, the number of locations which an operator had at any one time fluctuated. This was due to competition among the various operators for these locations, since in the majority of cases the machine was installed and was permitted to remain on location only at the will of the location owner. The competition consisted, among other things, of an offer of more commission per package of cigarettes, the payment of a bonus or rental privilege in addition to the payment of a commission, the offer of various types of premiums such as free matches, attractive electric illumination, clocks, or a more efficient or more attractive looking machine.

PAR. 10. For more than 3 years last past there have been, and are now, several manufacturers, producers, and sellers of automatic cigarette vending machines, the four principal ones being Rowe Manufacturing Co., Inc., New York, N. Y. (which, in addition to manufacturing and selling said machines, also operates its own machines through a number of subsidiary companies in the various territories where respondent operators are located); Arthur H. Du Grenier Co., Haverhill, Mass.; U-Need-A-Pak Products Co., Brooklyn, N. Y.; and National Vendors, Inc., St. Louis, Mo. The places of business of the various manufacturers of such machines were, and are now, located in States other than the States where the respondent operators of automatic cigarette vending machines have their places of business; said manufacturers, producers, and sellers have been, and are now, engaged in the business of manufacturing, and selling such machines which they have been, and are now, shipping in commerce between and among the several States of the United States, and have been, and are now, selling large quantities of such machines to the respondent operators or their agents and shipping such machines in commerce to said purchasers into the various States of the United States other than the States where said manufacturers, producers, and sellers have their places of business. Except to the extent to which competition between said manufacturers, producers, and sellers in the manufacture and sale of such machines, and in the sale thereof for shipment in commerce into the various States of the United States other than the States where said manufacturers, producers, and sellers have their places of business, has been restrained, lessened, injured, and suppressed by the understandings, agreements, and other factors hereinafter referred to, the said manufacturers, producers, and sellers, in the course and conduct of their respective businesses as aforesaid, have been, and are now, engaged in active and substantial competition with each other in the manufacture and sale of such machines, and in the sale thereof for shipment in commerce into the various States of the United States,

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and in the sale thereof to the respondent operators or their agents, and to competitors of respondent operators for shipment to said respondent operators and competitors of respondent operators in commerce into the various States of the United States.

PAR. 11. The manufacturers have been constantly endeavoring to improve the efficiency of their machines and by reason thereof have from time to time manufactured different types and models. As a more efficient model was manufactured and distributed, operators who had purchased previous models which had become obsolete exchanged the obsolescent model for the new model and received as a credit on the purchase price of the new machine a certain amount as a trade-in allowance. In many instances the operator, instead of exchanging the obsolescent models, sold them to operators who made a practice of purchasing and operating only used machines. The manufacturers likewise distributed the old models taken in trade to other operators or to some individual or firm which desired to enter the operating business with used machines.

Since the organization of the various respondent associations, the respondents have engaged in a concerted and cooperative effort and have adopted rules designed to prohibit manufacturers from selling their machines direct to locations, to new operators, or to operators who are not members of the associations. The respondents have conducted campaigns designed to force all nonmember operators, who at the time controlled an appreciable number of locations, to join the associations, and where such nonmember operators have refused to join the respondents have requested and demanded of manufacturers that the said manufacturers should refuse to sell such machines to such nonmembers. As occasion required, they have appointed committees from among their membership whose duty it was to call upon manufacturers for the purpose of inducing them to stop selling direct to locations, to promise or agree not to create new operators, not to sell to nonmembers of the associations, or to agree to endeavor to induce nonmembers to join the association. On divers occasions the various associations have entered into contracts, agreements, or understandings whereby the associations each agreed to purchase from the four manufacturers a specified number of machines each year in consideration of the agreement, understanding, or promise on the part of manufacturers not to create new operators or not to sell to nonmembers. Where manufacturers have refused or failed to carry out their agreement not to sell direct to locations, not to create new operators, or not to sell to nonmembers, said associations have refused to carry out the agreement to purchase from said manufacturers, have threatened to boycott said manufacturers' machines, and in many instances the members of said

associations have boycotted said manufacturers and have refused to purchase machines from said manufacturers.

PAR. 12. The respondent The Cigarette Merchandisers Association, Inc., adopted a constitution, bylaws, and trade practice rules which have been revised from time to time. The objects of the said respondent association as set forth in the preamble of its constitution are as follows:

The objects and purposes of this organization shall be to foster trade and commerce in the automatic cigarette vending machine business; to reform abuses relative thereto; to diffuse accurate information in regard to the standing of customers and other matters; to procure uniformity and certainty in the customs and usages of trade; to settle equitably and justly differences between its members; to promote a more enlarged and friendly intercourse among automatic cigarette vendors; to hold meetings and social gatherings for the better realization of these purposes; and to promote a better understanding and relationship of its members towards each other; to create a code of fair competition in the operation of cigarette vending machines; to exchange such information as will improve the conditions of members.

The trade practice rules of the said respondent association include the following:

SECTION 3. The members are prohibited from purchasing additional cigarette machines when such are made by any manufacturer or vendor who sells, or permits the sale of such machines to individual locations in competition with the operators.

Complaints against members for violating any of the association rules are referred by the president of the association to the grievance committee:

which Committee holds hearings thereon and decides the complaint and reports their decision to the Association. The Association may mete out such punishment for noncompliance with such decision as to them may seem just and proper, under the circumstances, after an opportunity has been given to the offending member to defend himself before the Association. The action of the Association in such matters is final.

The rules and regulations, objects, purposes, and policies of the association were constantly brought to the attention of the manufacturers of automatic cigarette vending machines through committees which were appointed from time to time to call upon said manufacturers. For example, on June 25, 1936, such a committee was appointed. On August 17, 1936, the following resolution was proposed and adopted:

"That a committee be appointed to call on the manufacturers of cigarette vending equipment in order to determine their intentions toward cooperating with the Association." It was decided, after discussion, that Mr. Miller should first call upon these manufacturers and then, at a later date, Mr. Bloom, Mr. Orowitz, and Mr. Berger would follow up with another call.

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At the meeting held on November 27, 1936, the following report was made by a member of such committee:

the results of a combined meeting between representatives of the C. M. A. and the Cigarette Machine Manufacturers, which was held at the Hotel New Yorker several weeks ago at which time the Mills Manufacturing Co., Rowe Mfg. Co., and the U-Need-A-Pak Company assured the operators of their willingness to cooperate with them in every way possible in formulating policies for the benefit of the industry.

On March 25, 1937, such a committee was appointed to call upon National Vendors, Inc., in order to secure its cooperation with the plans and policies of the association. The said committee made its report at a meeting of the association on April 8, 1937. At said meeting held April 8, 1937, a committee was appointed to join with a committee of New Jersey operators in calling upon Stewart-McGuire. A minute of said meeting is as follows:

It was further suggested that this committee as appointed join with a committee of New Jersey operators in calling upon Stewart-McGuire. Mr. Stein, Manager of the New Jersey Association, stated that such a committee of Jersey operators would be appointed at their next regular meeting, to be held Tuesday, April 13th, 1937, and it was decided that after this, a date convenient to all parties concerned would be selected for such a joint meeting. Mr. Berger, speaking for the Rowe Manufacturing Company, advised the membership that his firm was ready and willing to adopt any plan agreeable to the other manufacturers that might lead to stronger cooperation between the manufacturer and the operator and result in their mutual benefit. Mr. Yolen, representing the Mills Novelty Company, assured the membership of the Association that his firm would also cooperate in every possible manner with the operators and adopt any plan agreeable to other manufacturers. Mr. Willens, representing the Uneeda-Pack Manufacturing Company, assured the membership likewise.

A joint conference between manufacturers and operators was held October 13, and October 19, 1937, at the Hotel Commodore, New York City. A report of said meeting was presented at the following regular meeting of the association.

The activities of the association, through its committees appointed by it to call upon manufacturers and impress upon them the necessity of cooperating with the association in its efforts, were successful; manufacturers have cooperated to the fullest extent, in consequence of which very few new operators of vending machines have been created in this territory since 1937. Where a new operator has been created, it was done with the consent of the association. At the present time approximately 90 percent of the cigarette vending machines in operation in the metropolitan area of New York City are owned or controlled by members of the association. This has enabled the association to direct most of its efforts toward elimination of competition

from nonmembers of the association, as well as elimination of competition between their members for one another's locations. The latter was accomplished first by the adoption of various restrictions and the imposition of penalties upon members who refused or failed to adhere to rules and regulations, and by the creation of a separate corporation whose sole function was to assist the members in eliminating competition from nonmembers, principally by paying a bonus to a member for each location he could show was taken away from a nonmember.

The manager of the association, in a letter to the members dated September 20, 1937, stated as follows:

You are all aware of the competitive conditions prevailing throughout the industry at the present time, due principally to the number of new operators who have recently entered the field. Unfortunately, most of these operators are not in sympathy with the objects and policies of CIGARETTE MERCHANTISERS ASSOCIATION and as a consequence are the cause of creating discord in many sections. Unless their activities are controlled, it is very possible that the reforms accomplished by CIGARETTE MERCHANTISERS ASSOCIATION during the past year will be seriously affected and our future effort towards continuing our good work hampered. Even though the effect of this competition has not as yet been felt by all of you, your wholehearted attention and cooperation should be given, so that it may be controlled before becoming widespread throughout the territory covered by CIGARETTE MERCHANTISERS ASSOCIATION. To this end, we ask that you make it a special point to be present at the coming meeting, so that we may have the benefit of your views and opinions in considering this problem and in deciding upon a means to cope with it. - In this respect, I might advise that the National Association has already decided upon a preliminary course of action, with which we will acquaint you at the coming meeting.

At a meeting of the association held March 10, 1938, the following report was made of a discussion concerning the

question and practicability of a central buying agency. It was proposed to favor only those manufacturers who would agree not to sell to nonmembers. Mr. Levy expressed the opinion that this is in the nature of a boycott. The situation was likened by Mr. Forbes to the resident buying offices conducted and patronized by department stores.

At several meetings of the board of directors of the association plans were discussed for the adoption of a central buying office. At a meeting of the board of directors held June 9, 1938, the following report was made:

The policy of the Association regarding the manufacturers' cooperation and the curtailment of the practice of creating new operators. It was the suggestion of a member that a central buying office be established on a non-profit basis for all members of the Association. He felt that the time was ripe for the members of the Association to do something constructive and help stabilize the business. After discussion, no definite plan was reached, and a recommendation was made to submit this problem to the body at large.

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At a meeting of the directors held June 16, 1938, the following report was made:

The matter has been taken up with a legal mind at a meeting of the Committee. The plan is legal and feasible and can be worked out. This plan is as follows. The operators enter into an agreement with the Association. The Association is to make all purchases of machines through an office created by the Association. The operators can make individual deals with the manufacturers, if they notify the Association of the deal. A code of fair trade practices is to be adopted, with penalties for violation of this code. The manufacturers can be placed on the Association accredited list when they agree to restrict the territory of New York to accredited operators. Manufacturers agree to list with the Association all their operations and agree not to extend same. Manufacturers shall not make sales of individual machines to location owners.

At the meeting held September 1, 1938, it was unanimously adopted that a central buying plan be established. At the meeting held on September 15, 1938, it was reported to the membership that the association had gone on record as favoring:

a plan for a central buying office and that the Board of Directors had devised the following plan: Vendomatic Service Corporation will be set up to handle this plan. The members are obliged to sign the contract at a given date.

PAR. 13. The objects and purposes of the Cigarette Merchandisers Association of New Jersey, Inc., as set forth in its constitution, by-laws, and code of fair trade rules, and as disclosed by numerous resolutions adopted at its meetings, and the things and acts done pursuant thereto, are similar to those of the New York association; to wit, The Cigarette Merchandisers Association, Inc.

In connection with the efforts of the association to monopolize the business of operating cigarette machines in its territory for the benefit of its members, the association requested and obtained the cooperation of the manufacturers of automatic cigarette vending machines in refusing to sell to locations and in refusing to create new operators. The association from time to time appointed committees to call upon manufacturers of automatic cigarette vending machines and to impress upon them the advisability of refusing to create new operators and to refuse to sell to locations, and in various other ways attempted to exert, and did exert, pressure on such manufacturers. The association entered into agreements with manufacturers whereby, in consideration for the manufacturer agreeing not to sell to new operators or to locations, it undertook to purchase on behalf of its members a definite number of machines each year. When a manufacturer refused to comply with the association's requests or demands with respect to sales of cigarette vending machines, the manufacturer was boycotted or threatened with a boycott by the association. The association demanded that its members strictly adhere to the rules and regulations

of the association. A grievance or arbitration committee heard complaints respecting violation of the rules and regulations by members; the said committee had authority to mete out, and did mete out, penalties for violations thereof.

PAR. 14. The objects and purposes of The Automatic Cigarette Vendors Association of Eastern Pennsylvania as set forth in its constitution, bylaws, and code of fair trade practice, and the resolutions adopted from time to time at its meetings, and the acts and things done thereunder and pursuant thereto, are similar to those of the Cigarette Merchandisers Association, Inc., and Cigarette Merchandisers Association of New Jersey, Inc. The primary object and purpose of the association, as gathered from its activities, is the creation of a monopoly of the cigarette vending operating business in its territory for the benefit of its members. For the accomplishment of its object and purpose, the association from time to time has adopted rules and regulations designed to eliminate competition among its members. The association accepts and secures the cooperation of manufacturers in eliminating competition from nonmembers. The association from time to time impressed upon manufacturers the advisability of the manufacturers' cooperation in limiting sales of their machines to members of the association. In this connection the association entered into an agreement with the manufacturers whereby it was to purchase a specific number of machines from each manufacturer during the year, in consideration of said manufacturers' promise not to create new operators. One of the manufacturers did not abide by its promise and did sell to nonmembers of the association, with the result that no member of the association since that time has purchased machines from that company, nor has the association carried out its part of the contract to purchase annually a specified quantity of machines from that manufacturer.

PAR. 15. The objects and purposes of The Cigarette Machine Operators of Connecticut, Inc., as set forth in its constitution, bylaws, and code of trade practices, are substantially similar to those of the other respondent associations hereinabove referred to. The association has in its membership the operators in the State of Connecticut. The members of the association control 90 percent of the machines now in operation in that State. The preamble of the association's constitution and bylaws is as follows:

To eliminate unfair and ruinous competition which has caused serious financial loss and embarrassment to the vendors of tobacco products by machines, to improve economic conditions in the industry, and to the end that the sale of tobacco products by machines in the State of Connecticut may be stabilized and conducted profitably, this Association is formed.

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Under the title Objects and Purposes of the Association, the following is stated:

The purpose of the Association shall be to establish such relations and mutual understanding among those engaged in the vending of tobacco products by machines as will contribute to the welfare of the business generally; to consider and adopt such forms of lawful and ethical business practices and principles as seem likely to improve economic conditions; to cooperate with government agencies and with those engaged in the tobacco industry generally to eliminate the evils that now exist or may hereafter arise, and to foster such measures deemed for the best interests of the business and welfare of the public * * *.

The association's trade practice rules prohibit the following as an unfair trade practice:

(the operation of) any cigarette machines when such are made by any manufacturer or vendor who sells or permits the sale of such machines to individual locations, in competition with the operators or to do business with any manufacturer or vendor of such machines who fails to comply with provisions for territorial protection to members of the association.

The association from time to time appointed committees to call on manufacturers for the purpose of protesting sales of machines to new operators. The association likewise adopted resolutions which it mailed to manufacturers in which it was indicated that the members thereof objected to sales of machines to new operators and that such sales would incur the displeasure of members. It also secured written pledges from manufacturers that they would comply with the rules and regulations of the association as they applied to sales to new operators.

At a meeting of the association held September 8, 1936, the following report was made:

A discussion relative to any member being forced to discontinue purchasing machines from a manufacturer because of some breach of territory rights, and what assistance that member could get regarding machines from other members.

PAR. 16. Cigarette Merchandisers Association of New England was organized at a later date than the other heretofore-mentioned respondent associations. Its objects and purposes, as indicated by its constitution, bylaws, and code of fair trade practices, are similar in every respect to the objects and purposes of the other respondent associations. This association has joined forces with the Interstate Association and has participated in its activities. The minutes of meetings of its executive committee and of the membership disclose the appointment of committees to call on manufacturers in reference to the latter's sale to locations and the imposition of penalties on members for violating the association's fair trade rules.

PAR. 17. The objects and purposes of the Inter-State Cigarette Merchandisers Association, as set forth in its constitution and bylaws, are

similar to the objects and purposes of the other respondent associations. Its constitution sets forth:

This Association aims thru *collective action* to lay the foundation for and maintain equitable relations between all factors that affect economic conditions in the Industry. It recommends *uniform action* in securing constructive legislation toward the elimination of any abuses of power or unfairness. This Association leaves all questions of management in this business to the determination of each member.

At a meeting of the association held May 20, 1939, the question arose:

As to what to do where a given manufacturer sold machines to either non-members or started an independent operation in a given area.

Mr. Alfred Sharenow suggested that the better customers of such a manufacturer could speak to such manufacturer where there was such a disturbance in any given area and that the manufacturer would probably seriously consider and remedy any such situation.

Mr. Charles W. Stange reminded the Interstate Association that the purpose of the Inter-State was to eliminate abuses by the manufacturers and that everything should be done to acquaint the manufacturer with the disturbance in a given area.

Mr. Goldstein proposed the following resolution which was seconded by Mr. Nastri: "That the Inter-State CMA appoint representatives to cooperate with the local associations in contacting the particular manufacturer of a given area in order to straighten out any given matter."

Mr. John Sharenow moved that it was the opinion of the Inter-State CMA that New York CMA and New Jersey CMA appoint a Committee to settle the commission rates in overlapping areas.

The minutes of the meeting of the association held October 14, 1939, clearly show that the object and purpose of the association were to use the combined power of the membership of all the local associations as consolidated by the Inter-State organization in intimidating and compelling manufacturers of automatic cigarette machines to refuse to sell to locations, to nonmembers of associations or to new operators. Some of the minutes of said meeting are as follows:

Mr. Barest then brought up the question of whether any of the Inter-State members were having trouble with direct sales to locations or with the creation of new operators in any particular area.

Mr. Zimmerman reported that because of the difficulties arising with new competition created by a manufacturer, the Connecticut C. M. A. called on said manufacturer for cooperation. The manufacturer involved did not offer to assist the association in clearing up the difficulties created.

Mr. John Sharenow told the members that some difficulty had arisen in New Jersey with a cigarette vending machine manufacturer and that following considerable effort, the New Jersey association arrived at an agreement with that manufacturer who has been cooperating with the C. M. A. of New Jersey since that time.

Mr. Al Sharenow expressed himself as being sincerely disappointed in the method used by the Connecticut Association to accomplish *what the Inter-State had originally set out to do*. According to Mr. Sharenow the original purpose

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for the formation of the Inter-State C. M. A. was to attempt to obtain cooperation from manufacturers in all areas where there are C. M. A.'s and that where any manufacturer would not cooperate, the Inter-State was to appoint a committee made up of members from various States to call on the offending manufacturer. *In such a way the full power of the Inter-State Association could be used because in each area covered by any member in the Inter-State there are certain groups who have strength with each manufacturer.*

Mr. Hawthorne suggested that if a manufacturer refused to cooperate that one of the best methods open to any State association was to notify their members of the facts and to allow the members to follow their own best judgments.

Mr. Forbes stated that the C. M. A. of New York has no difficulty with any manufacturer *and that these manufacturers only sell to any new operator at the suggestion of the Association.*

Mr. Sharenow said that the reason for the cooperation of all manufacturers with the New York Association was because all manufacturers were sufficiently represented by the membership for them to cooperate with the Association members. He also suggested that inasmuch as the New York Association is in a friendly status with all manufacturers, *that they use their strength in behalf of other Inter-State members.*

Mr. Zimmerman made a motion that each individual Manager of the various C. M. A.'s write a letter to any offending manufacturer asking for cooperation wherever necessary.

Mr. King stated that at the present time the Pennsylvania Association is receiving all cooperation requested and that they have been working on a private matter with one particular manufacturer for a period of one year and, therefore, he did not want the Pennsylvania Association to go on record to write this one particular manufacturer.

Mr. Forbes suggested that the services of the President and Treasurer of the New York C. M. A. be used for contacting any manufacturer involved.

Mr. Al Sharenow made a motion which was passed that in the event of any disturbance the Recorder be immediately notified by the Association in that territory; that Managers of each association have on file a record of their operators according to number of machines and type of machines; and that each Manager contact the proper operators and arrange for them to meet with the offending manufacturer.

Mr. Fuhrman suggested that the individual association select whatever representatives were best suited to the particular case and Mr. Forbes suggested using operators who were not purchasers of the machines made by the particular manufacturer involved.

PAR. 18. The various local respondent associations all joined the respondent Inter-State Association, appointed the requisite number of delegates who attended its meetings, and in various ways cooperated together and with the Inter-State Association in attempting to effectuate its objects and purposes.

The president of the Cigarette Machine Operators of Connecticut, Inc., in a letter dated October 23, 1939, to the manager of the Cigarette Merchandisers Association of New Jersey, Inc., who was also recorder of the Inter-State Association, after referring to competition

from an operator who, it was alleged, is controlled by a distributor for the U-Need-A-Pak Corporation, stated:

As this has been a serious situation here for some time, and some action must be taken to see if it can be eliminated, I am requesting you to get in touch with the presidents of the various associations who are members of the Interstate C. M. A., to appoint one or two men to act as a committee to call on the head of the U-Need-A-Pak Corporation, I would sincerely recommend that the men chosen should be those who are large U-Need-A-Pak operators, and who are intimately known to the officers of the U-Need-A-Pak Corporation, so that their word will carry more weight.

Arrangements should also be made for an interview with the officers of the Company in question, and I shall be glad to receive any comments or suggestions that would tend to make this meeting a successful one.

The recorder, under date of October 25, 1939, replied as follows:

I received your letter of October 23rd yesterday and will immediately communicate with the other members of the Inter-State C. M. A. I would like to set a date for this meeting with U-Need-A-Pak Products Corp. for the very near future.

I do hope that we shall be able to straighten out the situation so that business in Connecticut can resume its usual smooth operation.

As far as making any appointment for the committee to call on the officers of the company in question, I believe that we should hold the matter in abeyance following the interview with Messrs. Willens and Weiner.

The recorder, on November 2, 1939, in a communication further stated:

After receiving your letter concerning the situation in Connecticut, I contacted all the Managers of the Inter-State Association members.

In the meantime, I also got in touch with Matthew Forbes who asked me to let him handle the matter, if possible. Mr. Forbes told me yesterday that he had lunch with Mr. Willens during the past week and had taken up the situation with him. Mr. Willens has told Mr. Forbes that he will investigate the matter and I am sure that it will be taken care of very shortly without any further contact through the Inter-State members.

At a meeting of the Inter-State Cigarette Merchandisers Association on February 11, 1940, Manager Forbes of the New York association reported that—

A situation had arisen in Connecticut which was causing trouble to members of that Association. Both Mr. Forbes and Mr. Hawthorne volunteered their services to clear up this matter and the manufacturer agreed to sell the operation to members of the Connecticut C. M. A.

A meeting of the Inter-State Association was held February 11, 1940. The eastern representative for the National Vendors, Inc., who was present at said meeting, stated:

January 29, 1940, he received an inquiry from the St. Louis office concerning this operator. He thereupon contacted his representative in Boston, who had sold five machines to this operator without investigating whether or not this

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man was already an established cigarette vending machine operator. Mr. Cantor saw this operator on February 8th at which time they told him that they had purchased fifty machines from another manufacturer and was given an order which he refused to accept.

Mr. Sparrow of Connecticut stated that the report was made that the Diamond Self Service was entering the field about three weeks before the operation actually was started. The company was backed by a tobacco concern. Originally the U-Need-A-Pak Products Corp. was requested to sell machines to this new operator but refused. Mr. Kushner, a representative of the U-Need-A-Pak Corp., had been instructed how to act in this matter by his company. However, the U-Need-A-Pak Corp. had also gone on record that if someone else started a new operator, they would sell equipment to him. Mr. Sparrow said that he heard of the DuGrenier machines which had been sold through his nephew who had lost several locations. He immediately called New York to find out from Mr. Glassgold what the situation was. Mr. Kushner of the U-Need-A-Pak Corp. investigated the locations and found DuGrenier machines operating and then wired his firm the facts.

Mr. Morris Zimmerman stated that Mr. Sparrow had been very instrumental in clearing up the former situation in Connecticut.

He also said that he had been forewarned of new trouble in Connecticut. The Diamond Self Service, according to Mr. Zimmerman is headed by a group of racketeers. This same group has started operations in various lines and then sold out for large sums of money. This group is using politics, other types of pressure and actual arrests in order to put machines into locations.

Mr. Forbes suggested that a campaign of action should be planned without any further recourse to committee meetings with manufacturers.

President Masone stated that he had a conference with Mr. Willens on the evening of February 10th concerning this matter. Mr. Willens promised that if the DuGrenier, Rowe and National organizations would each go on record not to make any more sales that he would stop selling machines to the Diamond Self Service. However, there was one condition to this statement and that was that he must be permitted to fill the last order which he had received.

Mr. Sparrow declared that the situation in Hartford is a matter of a personal grievance. He also said that he had been instrumental in preventing the sale of U-Need-A-Pak machines to newly created nonmembers in Connecticut. Mr. Willens has told Mr. Sparrow that since straightening out the situation in Connecticut, there has been only one U-Need-A-Pak machine sold in that State. Again Mr. Sparrow brought up the fact that a new operator was created in Connecticut by Mr. Zimmerman, a member of the Association, who sold one Aristocrat machine thereby starting another competitor in the field.

Mr. John Sharenow stated that the same evils existed everywhere, that in order for a new operator to purchase machines from a manufacturer, he would have to have originally some equipment. However, he felt that the question in this case was would DuGrenier have sold the Diamond Self Service any more machines when they had been advised of the error which was made. If they would have refused to do so and all other manufacturers had also refused to do so then the situation would have straightened out of itself. In New York and New Jersey we have been able to take care of matters with most of the manufacturers and therefore, we have been able to get the cooperation which we deserve. Mr. Sharenow further asserted that in his opinion a committee could take care of this situation and that a manufacturer who has lost the good will of Association operators, must continue for a reasonable length of time to try to win the respect of those operators.

A motion was made and passed to appoint a committee to take up matters of this sort with any manufacturer with whom trouble might arise. Mr. John Sharenow further stated that he should ask the manufacturers to observe the spirit of our request and not to look for loopholes which could possibly be found. In other words, if a manufacturer were to consult us first before actually shipping machines we could possibly be of assistance to them.

On February 19, 1940, Secretary Masone of The Cigarette Machine Operators of Connecticut, Inc., in a communication to the U-Need-A-Pak Products Corporation stated as follows:

On behalf of our Connecticut Association, I want to thank you for the courtesy shown the representatives of our Inter-State Association when we met in your office last week.

Naturally, we are interested in the outcome of that conference with you and your associates, and we are watching with a great deal of interest any shipments of machines made to the operator we discussed. According to your promise of last week the shipment of machines en route to him at the time of our discussion, must have reached him by this time, and any future shipment of machines made at this time would be against our agreement. It may also interest you to know that we have received further assurances from the other manufacturers that they positively will not ship this concern any machines.

PAR. 19. In the territory covered by the several respondent associations and Inter-State Association the members of said associations control between 85 and 90 percent of the business of operating automatic cigarette vending machines. Manufacturers have been forced to comply with the requirements of the various associations and have not created any new operators in territories covered by the various associations; said manufacturers have refused to sell to locations or to wholesale dealers with whom they formerly did business but who sold to locations; said manufacturers have likewise refused to sell to nonmembers of associations. In certain territories manufacturers who have refused to abide by agreements not to create new operators in consideration for the undertaking on the part of an association to purchase a definite quantity of their machines annually have been boycotted by the members of such association. An example is the case of the U-Need-A-Pak Corporation which entered into such an agreement with the Philadelphia association, The Automatic Cigarette Vendors Association of Eastern Pennsylvania. The U-Need-A-Pak Corporation, subsequent to the making of said agreement did sell its machines to nonmembers. Since that time no member of the Philadelphia association has purchased machines from the U-Need-A-Pak Corporation.

The effect of the activities of the various associations, acting individually and in combination with the Inter-State Association, with respect to manufacturers is clearly indicated by extracts from a memorandum report dated March 14, 1940, prepared by the president of the DuGrenier Sales Co. to the Arthur H. DuGrenier Manufacturing Co.

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concerning his meeting with the secretary of the Cigarette Merchandisers Association of New Jersey, Inc.:

Mr. Cherry called on us for the purpose of reaching an understanding with DuGrenier that we would not sell cigarette machines to any new accounts in New Jersey. Specifically he wanted us to agree not to deliver to Schnorrbusch machines on the order which we have. This led to a general discussion of the policies of his Association, what we could expect in return, etc., etc.

It is our understanding that the Philadelphia Association does not even permit us to sell machines to non-members. Kline reported to me that Uneeda-Pak was blacklisted and that Association members are not permitted to buy from Uneeda-Pak because they violated this ruling.

It is also my understanding that the Connecticut Association tries to enforce the ruling that manufacturers cannot sell to any new accounts although they may be permitted to sell non-members.

The New Jersey Association is attempting to operate on the basis of the Connecticut Association in that manufacturers may sell non-members but cannot start new operations.

* * * * *

He agreed that according to operators, we had the best looking machine for 1940 and that based on identical prices and identical trade-in allowances, DuGrenier should receive orders for at least 500 machines. That if we failed to secure orders from the above named customers, we would be justified in believing that such customers were getting trade-in allowances higher than the published figures or were getting rebates from a competitive manufacturer.

He stated that the New Jersey Association working in conjunction with the Interstate group, i. e., New England, Connecticut, New York City, New Jersey and Pennsylvania Associations, were desirous of having the manufacturers fix a uniform trade-in price to which all would adhere and that the Associations were willing to see the manufacturers raise their list price \$5.00 per machine so that all machines older than our Model "S" and Rowe's Model Imperial could be taken in by the manufacturers at around \$5.00 per machine and destroyed.

The Associations were desirous of not having this old equipment re-sold to used machine dealers and come back on the market and to be put in use in their territories. * * *

From Mr. Cherry's statement there are virtually no non-member operators in New Jersey now except, Gambino in Manville, N. J., who was sold by Mr. Paul some months ago and Schnorrbusch, who only has possibly five machines. There is no question whatever that the Association members ganging up on any new operator can force such new operator to lose so much money operating new cigarette machines that he will be forced to sell out or go out of business. This is practically what happened to Katzman. The Association allowed Katzman to get a fairly large number of good locations but after things were running fairly smoothly for him, they began exerting pressure on his locations by offering advanced commissions, bonuses, etc. so that in order to protect himself and hold what he had, Katzman had to join the Association, but this did not happen until after he had lost many of his better stops.

From our experience in New Jersey, as well as elsewhere in the Metropolitan area, in starting new operations, it seems that the headaches are not justified by the results. If we are unable to work out some satisfactory arrangement to sell machines in accordance with Association requirements, we will be faced with three alternatives:

1. Sell new operators with resultant credit troubles and possible losses. I do not think that any of us would recommend to a friend of ours that he go into the cigarette machine business as a new operator in New Jersey knowing the troubles that he would be almost sure to encounter.

2. Sell to locations either directly ourselves or through some dealer or distributor in New Jersey. It is questionable how much business would result from this policy but certainly we would have far more collection troubles and such procedure would hurt us in Southern New Jersey where Kline sells and would hurt us elsewhere with customers.

3. If we tried to do either of the above, there is a probability of failure which would result in this third alternative of doing little if no business in Northern New Jersey.

While it disagreeable to all of us and I have fought against being dictated to by an Association as to how and whom we can sell, the fact is that such conditions are not working out particularly adversely for Kline in Philadelphia. Our records show that in that part of New Jersey covered by Kline, he sold 133 machines compared to a total of 82 R & S machines and 39 W & V machines sold by Stewart and McGuire, Inc.

Even granting that our figures are not complete, it is possible that Kline has sold more machines to customers in his New Jersey territory during the past year and a half than S & M sold in the same territory during the previous three or four years. I am inclined to believe that a part of our trouble in the Northern New Jersey territory may be our sales coverage. In other words I think that possibly Kline would have gotten a far greater share of the business from Northern New Jersey than we have been able to obtain.

* * * * *

I have an appointment to see Mr. Lascari today at about 3:00 P. M. and while I am still interested in making a distributorship arrangement with him and think it might work out to our advantage, I believe that if the manufacturers did agree to a fixed trade-in allowance price for old equipment, as well as for equipment less than five years old, that we might expect to get a fair share of the business. So I will talk to Mr. Lascari along the line of the Association proposal.

Mr. Cherry states that the Association realizes that they must give us a fair share of the business on our new machines, else we will be forced to use other methods of getting our share of the business, and, although Cherry may be kidding us to some extent, I think there is some truth in what he says. Certainly he was frank enough to admit that our share of the business should be 500 machines which is more than we had originally thought of as securing through Lascari.

This memorandum is for the record so that you will know just what Mr. Cherry has said to us and the intentions of the New Jersey Association.

PAR. 20. Each of the said respondents; to wit, the respondent associations, respondent officers and directors, and respondent members herein mentioned, acted in concert with one or more of the other respondents in doing and performing the acts and practices herein stated in furtherance of understandings and agreements.

PAR. 21. It follows from the foregoing facts that for more than 3 years last past the respondent organizations and associations, their officers, directors, and members herein mentioned have entered into and

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carried out understandings, agreements, and conspiracies between and among themselves for the purpose of restricting, restraining, suppressing, and eliminating competition in the purchase, distribution, and installation of automatic cigarette vending machines in interstate commerce between and among the several States of the United States, and that pursuant to such understandings, agreements, and conspiracies, the said respondents have engaged in and performed the following practices and acts:

(a) Established and attempted to establish the members of the respondent organizations and associations, operators of automatic cigarette vending machines, as a preferred class for the purpose of having manufacturers and distributors of automatic cigarette vending machines confine the sale and distribution of such machines to such respondent member operators exclusively;

(b) The said respondents interfered with and prevented competitors of the said respondent member operators in the said competitors' efforts to obtain such machines;

(c) Said respondents required, induced, and compelled manufacturers and distributors of automatic cigarette vending machines, by promises and threats, not to sell or ship automatic cigarette vending machines to competitors of the said respondent member operators, and to confine the sale and distribution of such machines to the said respondent member operators;

(d) Said respondents threatened to boycott, and have boycotted, manufacturers and distributors of automatic cigarette vending machines selling such machines to competitors of the said respondent member operators.

CONCLUSION

The acts and practices of the respondents as above set forth are all to the prejudice of competitors of respondent member operators and of the public, have a dangerous tendency to and have actually hindered and prevented competition in the sale of automatic cigarette vending machines in commerce within the intent and meaning of the Federal Trade Commission Act, have unreasonably restrained such commerce in automatic cigarette vending machines, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into between the

respondents herein by their counsel, Parker, Chapin & Flattau, 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 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:

1. Inter-State Cigarette Merchandisers Association, its officers as follows: President John Sharenow; Vice President William King; Treasurer Edward Beresth; Secretary Robert K. Hawthorne; Recorder James V. Cherry; and its directors as follows: Anthony J. Masone, Alfred Sharenow, and Edward J. Dingley;

2. The Cigarette Merchandisers Association, Inc., its officers as follows: President Robert K. Hawthorne; First Vice President Alexander Frazer; Second Vice President Albert S. Denver; Treasurer Samuel Yolen; Secretary Tom Cola; Manager Matthew Forbes; its directors as follows: Michael Lascari, Jackson Bloom, Louis D. Schwartz, Martin M. Berger, Bernard Rosen, Harold Roth; and its members with which its respective officers and directors are connected;

3. Cigarette Merchandisers Association of New Jersey, Inc., its officers and directors as follows: President and Director Charles W. Stange; Vice President and Director Max Jacobowitz; Treasurer and Director Henry W. Hartmann; Secretary and Director John Grout; Manager James V. Cherry; its directors as follows: Michael Lascari, John Sharenow, Samuel M. Malkin, Harry Zink, Herman Arlein; and its members with which its respective officers and directors are connected;

4. The Automatic Cigarette Vendors Association of Eastern Pennsylvania, its officers and directors as follows: President and Director Walter I. Davidson; Vice President and Director Patrick J. Bonoma; Treasurer and Director LeRoy A. Shackleton; its directors as follows: William L. King, W. Harry Steele, Jr., Harry D'Alessandro, Ralph J. Burnard, Joseph Silberman; and its members with which its respective officers and directors are connected;

5. The Cigarette Machine Operators of Connecticut, Inc., its officers as follows: President Anthony R. Nastri; Vice President Robert Zimmerman; Secretary Anthony J. Masone; Treasurer M. E. Norris, its directors as follows: John J. Fitzgerald, Samuel Aliener, Nathan Dubowry, Lena Bonelli, Charles Sparrow; and its members with which its respective officers and directors are connected;

6. Cigarette Merchandisers Association of New England, its officers as follows: President Samuel M. Goldstein; Vice President Louis Berman; Secretary William B. Burns; Manager Walter R. Guild; its directors as follows: Albert M. Coulter, Frank Fendel, Oscar Gerson, Julian Karger, Cleo C. Kingsley, Charles E. Knight, Alfred I. Sharenow, Jacob Shelman, Harry Spierer, William Spiller; and its members with which its respective officers and directors are connected; and their respective agents, representatives, and employees, in connection with the purchase and location of automatic cigarette vending machines in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing and performing by understanding, agreement, or combination between themselves, or between any two or more of them, or with others, any of the following acts and practices:

1. Establishing, or attempting to establish, the members of the aforesaid respondent organizations and associations or any other group of operators of automatic cigarette vending machines, as a preferred class for the purpose of confining and requiring the sale and distribution of automatic cigarette vending machines by manufacturers, producers, and sellers thereof to such member operators exclusively.

2. Interfering, or attempting to interfere with competitors of the members of the aforesaid respondent organizations and associations, operators of automatic cigarette vending machines, in the said competitors' efforts to purchase and obtain such machines.

3. Preventing, or attempting to prevent, competitors of the members of the aforesaid respondent organizations and associations, operators of automatic cigarette vending machines, from purchasing or obtaining such machines.

4. Requiring, inducing or compelling, by promises, threats, coercion, intimidation and otherwise, manufacturers, producers and sellers of automatic cigarette vending machines;

(a) Not to sell or ship automatic cigarette vending machines to competitors of the member operators of the aforesaid respondent organizations and associations, or directly to consumers of automatic cigarette vending machines;

(b) To boycott competitors of the member operators of the aforesaid respondent organizations and associations;

(c) To confine to the member operators of the aforesaid respondent organizations and associations, the said manufacturers', producers' and sellers' sales and shipments of automatic vending machines intended for use, consumption, or resale in the various States where the member respondents are engaged in business;

5. Boycotting and threatening to boycott manufacturers, producers, and sellers of automatic cigarette vending machines who sell or ship such machines either to competitors of the member operators of the aforesaid respondent organizations and associations or directly to consumers of such machines.

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

Complaint

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IN THE MATTER OF

BENJAMIN GORDON AND LOUIS GORDON, TRADING AS
BENGOR PRODUCTS COMPANY AND MAGNET MER-
CHANDISE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4474. Complaint, Mar. 24, 1941—Decision, July 31, 1941*

Where two individuals engaged in competitive interstate sale and distribution of drug sundries, notions, household specialties, and other novelty merchandise, and in selling certain assortments thereof so packed and assembled as to involve the use of a lottery scheme or game of chance when sold and distributed to the purchasers, typical assortment including a cigarette lighter and a push card for use in its sale, under a plan, as there explained, by which the purchaser selecting by chance that 1 of 35 feminine names displayed thereon corresponding to that concealed under card's master seal, received the lighter, and the amount paid by a customer for a push was decided by the number disclosed in disk beneath the particular feminine name selected—

Sold and distributed such assortments, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public in accordance with aforesaid sales plan, under which the fact as to whether a purchaser received the lighter or nothing except the right to push, and the amount of money paid for a push were determined wholly by lot or chance, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of their products, involving possibility of procuring merchandise at much less than normal retail price thereof; contrary to an established public policy of the United States Government, and in competition with many who refrain from using any method involving a game of chance or any other method contrary to public policy;

With the result that many persons were attracted by said sales plans and the element of chance involved therein, and were thereby, induced to buy and sell their products in preference to those of said competitors, and with tendency and capacity unfairly to divert trade in commerce to themselves therefrom:

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 acts and practices therein.

Before *Mr. A. B. Duvall*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Samuel J. Ernstoff, 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