

IN THE MATTER OF
STANDARD CONTAINER MANUFACTURERS'
ASSOCIATION, INC. ET AL

MODIFIED CEASE AND DESIST ORDER

Docket 3289. Order, Aug. 11, 1941

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission on March 5, 1940, made its findings and conclusion and issued cease and desist order in Docket 3289, 30 F. T. C. 577, 598, and (2) Circuit Court of Appeals for the Fifth Circuit on April 23, 1941, in *Standard Container Manufacturers' Association, Inc., et al. v. Federal Trade Commission*, 119 F. (2d) 262, 32 F. T. C. 1879, rendered its decision and, on May 20, 1941, issued its decree modifying said order of the Commission in certain particulars and affirming same in other particulars, and directed the Commission to modify such order in accordance with said decree—

- I. Requiring respondent corporations, partners, and individuals engaged in manufacture, sale, and distribution, or sale and distribution, of wooden fruit and vegetable containers in the southeastern portion of the United States, and more particularly in Georgia and Florida, and their officers, etc., to cease and desist from—

Entering into or carrying out any understanding, agreement, etc., with intent or effect of restricting, etc., competition in sale in interstate commerce of such containers, and, as a part of such understanding, etc.—

- (1) Agreeing to fix and maintain, or fixing and maintaining, (a) uniform or minimum prices, or (b) uniform terms and conditions of sale, such as maximum discounts, brokerage fees, freight and other allowances, and time limitations in contracts;
- (2) Agreeing to curtail, or curtailing, production of such containers or parts, or to check, or checking, production of other parties to agreement *re* agreed curtailment;
- (3) Threatening, etc., members of industry to induce them to become parties to, or to maintain prices fixed by, agreement, or to curtail production in furtherance thereof;
- (4) Filing with their association, its officers, etc., report as to member compliance *re* prices or production; and
- (5) Reporting or conferring with respondent Adkins or any officer, etc., of respondent association *re* prices for sale of product, or production curtailment, or nonconformance to agreement by industry members as to aforesaid matters; and

- II. Requiring respondent association and its officers, etc., including respondents Adkins, Chazal, and Bennett, to cease and desist from—

Aiding, abetting, encouraging, or cooperating with respondent corporations, partners, and individuals, in doing any of the acts and things prohibited by this order; and

- III. Requiring respondent Adkins, former president of association of members of such industry, to cease and desist from—

Threatening, coercing, or in any wise intimidating members of the industry in an attempt to induce them to become a party to such an understanding, etc., or to maintain prices, terms, and conditions of sale or to curtail production in furtherance of any such understanding, etc.

MODIFIED ORDER TO CEASE AND DESIST

This matter coming on for further hearing before the Federal Trade Commission and it appearing that on March 5, 1940, the Commission made its findings as to the facts herein, and concluded therefrom that the respondents had violated the Federal Trade Commission Act, and on March 5, 1940, issued and subsequently served its order to cease and desist; and it further appearing that on May 20, 1941 the United States Circuit Court of Appeals for the Fifth Circuit rendered its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars, and directed the Commission to modify its said order to cease and desist in accordance with said decree.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court decree:

It is ordered, That the respondents Adkins Manufacturing Co., Consumers Lumber and Veneer Co., Elberta Crate & Box Co., Hector Supply Co., Georgia Veneer & Package Co., R. C. Balfour, Jr. and J. V. Hawthorne, doing business as the Georgia Crate & Basket Co., The Greenville Veneer & Crate Co., Keysville Lumber Co., Walton E. Nants and R. A. Nants, trading and doing business as Nants Manufacturing Co., Nocatee-Manatee Crate Co., Ocala Manufacturing, Ice & Packing Co., Inc., The Pierpont Manufacturing Co., Roux Crate & Lumber Co., Inc., Shollar Crate and Box Co., Inc., Southern Crate & Veneer Co., Southern Veneer Co., L. B. Walling, Hugh Walling and Frieda Walling, doing business as Walling Crate Co., Frank R. Pounds Crate Co., Lake Crate and Lumber Co., Zachary Veneer Co., Osceola Crate Mills, Inc., Montbrook Crate Co., Southern Container Co., Cummer Sons Cypress Co., Zach Russ, trading as Russ Crate Co., and Stephen O. Shinholzer, their officers, agents, representatives and employees, cease and desist from entering into, or carrying out, any understanding, agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and any other member or members of the industry, for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in, the sale in interstate commerce of wooden containers used in packaging fruits

Order

33 F. T. C.

and vegetables, variously described and referred to as crates, baskets, boxes, hampers, lugs, cups, and trays, and the parts thereof, and as a part of such understanding, agreement, combination, and conspiracy from doing any of the following acts or things:

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

2. Agreeing to fix and maintain, or fixing and maintaining, uniform terms and conditions of sale, such as maximum discounts, brokerage fees, freight, and other allowances and time limitations in contracts.

3. Agreeing to curtail, or curtailing, production of such containers or the parts thereof or agreeing to check, or checking, the production of the mills of other parties to such an agreement to determine if such other mills have curtailed production as agreed upon.

4. Threatening, coercing or in any wise intimidating members of the industry in an effort to induce such members to become parties to said understanding, agreement, combination or conspiracy, or to induce such members to maintain the prices fixed by, or to curtail production in furtherance of, said understanding, agreement, combination, or conspiracy.

5. Filing with the respondent association, Standard Container Manufacturers' Association, Inc., its officers, agents, or employees, any report as to the manner and form in which any member of the industry is carrying out any agreement or understanding with reference to prices or production.

6. Reporting to or conferring with respondent James B. Adkins, or any officer, agent or employee of said respondent association, as to the prices at which said products are to be sold or as to the curtailing of the production of any of such products, or as to the failure of any member of the industry to carry out any agreement or understanding on the part of such member of the industry to maintain prices, terms, and conditions of sale or to curtail production.

It is further ordered, That the respondent Standard Container Manufacturers' Association, Inc., its officers, agents, and employees, and the respondents James B. Adkins, Charles P. Chazal, and Russel W. Bennett, forthwith cease and desist aiding, abetting, or encouraging, or cooperating with, the respondents hereinabove named in doing any of the acts and things prohibited by this order.

It is further ordered, That the respondent James B. Adkins cease and desist threatening, coercing, or in any wise, intimidating members of the industry in an attempt to induce such members to become

a party to such an understanding, agreement, combination, or conspiracy, or to maintain prices, terms, and conditions of sale or to curtail production in furtherance of any such understanding, agreement, combination, or conspiracy.

It is further ordered, That the respondent shall, within 30 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.

Syllabus

33 F. T. C.

IN THE MATTER OF
AJAX TIRE & RUBBER CORPORATION

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

Docket 3943. Complaint, Nov. 6, 1939—Decision, Aug. 12, 1941

Where a corporation engaged in interstate sale and distribution of its "Ajax" automobile tires and tubes; in dealing with the matter of plies in its tires, as to which there is an established manufacturers' practice, familiar to the purchasing public which necessarily relies thereon, of indicating on the side walls and wrappings of tires the number of plies contained therein; by means of letters, blotters, signs, price lists, and other advertising matter circulated among dealers—

- (a) Represented that its tires were six-ply and eight-ply construction, respectively, through such typical statements as "Silent 6 Six—Silent 8 Eight" and "Cleated 6 Six—Cleated 8 Eight," "Ajax—The World's Premier Tire—Since 1904," and "The World's Premier Tires for over 34 years," through means aforesaid and through placing on the side walls and wrappings of said tires marks, brands, numbers, and insignia which purported to represent that six and eight plies, respectively, were used in their construction; facts being its said products contained less than six and eight plies, respectively;
- (b) Represented that it had been selling tires and tubes since 1904, facts being that, while its predecessors sold such products from 1904 to 1934, it did not sell or distribute them prior to 1934; and
- (c) Represented that certain designated amounts were the retail prices of its products, when in fact they were in excess of the prices at which such tires and tubes were customarily sold by retailers, and thereby placed in the hands of dealers means of deceiving members of the purchasing public as to the regular retail prices;

With the result, notwithstanding fact it neither owned nor controlled any retail outlets and disseminated no advertising which reached the consumer directly from it, and the passing of its products through varying multiple channels before reaching the ultimate consumer, that use of such practices had the capacity and tendency to and did mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with result that the purchasing public bought substantial quantities of its said products:

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.

Levien, Singer & Neuburger, of New York City, for respondent.