

Syllabus

IN THE MATTER OF

POWER & GANG MOWER MANUFACTURERS' ASSOCIATION, COLDWELL LAWN MOWER COMPANY, JACOBSEN MANUFACTURING COMPANY, MILBRADT MANUFACTURING COMPANY, MOTO MOWER COMPANY, TORO MANUFACTURING COMPANY, IDEAL POWER LAWN MOWER COMPANY, OUTBOARD MOTORS CORPORATION, ROSEMAN TRACTOR MOWER COMPANY, AND ECLIPSE LAWN MOWER COMPANY

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

Docket 3689. Complaint, Jan. 19, 1939—Decision, Oct. 15, 1941

Where an association of manufacturers of power or gang mowers or both, whose combined sales approximated from 65 to 85 percent of the total sales of such equipment, of which, it appeared, a large part was sold to agencies of the Federal Government; following the abandonment of the N. R. A. code of fair competition for the industry, which carried into effect many of the practices previously established by said association and included provision for filing of prices and strict adherence thereto as filed, various restrictive rules relating to marketing, uniform cash discounts and establishment of trade-in allowances which were not to be exceeded, and in order "to salvage such provisions of the power and gang mower code as were found of value under the N. R. A."—

- (a) Provided for the filing of prices with the association and the furnishing of copies to all known members of the industry, and also for uniform cash discounts and uniform guarantees to purchasers; and prohibited the sale of any product at any other price or discount than those set forth in such published price sheets;
- (b) Prohibited members from repurchasing or taking in trade any product of the industry, or granting credit or allowances therefor, in amounts in excess of those set forth in the trade-in allowance schedule adopted by the association, and published, in different years, a "Blue Book" fixing trade-in allowances for various makes, models, and years, which were less, it appeared, than the average actual value of the equipment concerned;
- (c) Established a uniform rate of discount to be granted to agencies of the Federal Government and, where price was the only factor considered, undertook to place their various models, which were not identical and prices of which ordinarily were not the same, on an absolute price parity; and—
- (d) Organized distributors, in order more fully to effectuate such association and member policies in various territories in the United States, including, particularly, four large cities, and frequently met with such dealer organizations, and exerted pressure upon dealers to secure compliance with their said policies, including observance of established prices, discounts, and trade-in allowances, and avoidance of price cutting;

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With result that such agreements for maintenance of filed prices, for standard discounts and terms to the more important classes of purchasers, and for uniform trade-in allowances, resulted, in substance, in stabilization of the prices of their products; prices to government units were enhanced and, during existence of their N. R. A. Code, an executive order permitting 15 percent discount in sales to the Government was, through understanding, disregarded; organization of dealer groups and participation in the conduct thereof aided in more effectively reflecting to consumers the effects of said agreements; and effect of said various agreements, acts, and practices was to unduly and unreasonably restrict and restrain competition in the sale of their products; to hinder and prevent competition between and among them, and enhance the prices of their products to the consuming public, and otherwise deprive the public of the benefits which would flow from normal competition:

Held, That such acts and practices were all to the prejudice of the public, had a dangerous tendency to, and did, hinder and prevent competition in the sale and distribution of power and gang mowers in commerce, and constituted unfair methods of competition.

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

Mr. Lynn C. Paulson for the Commission.

Cassedy & Northrop, of Newburgh, N. Y., for Coldwell Lawn Mower Co.

Barthel & Bugbee, of Detroit, Mich., for Motor Mower Co.

Van Fossen & Van Fossen, of Minneapolis, Minn., for Toro Manufacturing Corp. and Ideal Power Lawn Mower Co.

Butzel, Levin & Winston, of Detroit, Mich., for Outboard Motors Corp.

Miller, Gorham, Wescott & Adams, of Chicago, Ill., for Roseman Tractor Mower Co.

Ramsay, Bull & Yost, of Morrison, Ill., for Eclipse Lawn Mower Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Power and Gang Mower Manufacturers' Association, Coldwell Lawn Mower Co., Jacobsen Manufacturing Co., Milbradt Manufacturing Co., Moto Mower Co., Toro Manufacturing Co., Ideal Power Lawn Mower Co., Outboard Motors Corporation, Roseman Tractor Mower Co., and Eclipse Lawn Mower Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Power and Gang Mower Manufacturers' Association, hereinafter referred to as respondent association, is a

voluntary unincorporated association comprised of the respondents named in paragraph 2 hereof, all of whom are engaged in the manufacture, sale, and distribution of power lawn mowers. Its principal office is in the city of Chicago, State of Illinois. It was organized in December 1932 or thereabouts by the respondents named in paragraph 2 hereof as a trade association, for the promotion of the interests of its members, and since its organization has so acted. The activities of its members hereinafter described were and have been and are being carried out through and under the supervision, and by means of, said respondent association.

PAR. 2. The following respondents are corporations organized, existing and doing business under and by virtue of the laws of the States hereinafter mentioned and with their principal places of business in the cities hereinafter mentioned, to wit:

Name of respondent	State of incorporation	Principal place of business
Coldwell Lawn Mower Co.....	New York.....	Newburgh, N. Y.
Jacobsen Manufacturing Co.....	Wisconsin.....	Racine, Wis.
Milbradt Manufacturing Co.....	Missouri.....	St. Louis, Mo.
Moto Mower Co.....	Michigan.....	Detroit, Mich.
Toro Manufacturing Co.....	Minnesota.....	Minneapolis, Minn.
Ideal Power Lawn Mower Co.....	Michigan.....	Lansing, Mich.
Outboard Motors Corporation.....	Delaware.....	Milwaukee, Wis.
Roseman Tractor Mower Co.....	Illinois.....	Evanston, Ill.
Eclipse Lawn Mower Co.....	do.....	Prophetstown, Ill.

PAR. 3. The respondents named in paragraph 2 hereof are now and since their respective organizations have been engaged in the manufacture, at their respective places of business, of power lawn mowers and in the sale thereof. In the course and conduct of their businesses, all the said respondents for more than 6 years last past have caused and still cause such power lawn mowers when sold by them to be transported in commerce from their respective places of business, to, into, and through various States of the United States other than the States in which they respectively have their places of business, to the purchasers in such other States and in the District of Columbia. The number of power lawn mowers manufactured and sold by the said respondents constitutes and at all times since 1931 has constituted substantially all of the power lawn mowers manufactured in the United States and sold therein. Many purchasers of power lawn mowers have no regular source of supply thereof excepting from said respondents, and since 1931 have had no regular source of supply of power lawn mowers excepting from said respondents. An important class of purchasers of power lawn mowers from the said respondents consists of cities and other municipalities,

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State governments and divisions thereof, the Federal Government and divisions thereof, and State and Federal institutions. The said respondents were, prior to 1932, in competition with one another as to discounts, terms and conditions of sale in the sale of power lawn mowers between and among the various States of the United States and in the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since 1931, and would now be, in such competition with one another.

PAR. 4. In or about December 1932, the respondents named in paragraph 2 hereof, for the purpose of eliminating among themselves competition as to discounts, terms, and conditions of sale, entered into and have since carried out and are still carrying out, through and by means of respondent association, an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained, uniform discounts, terms, and conditions of sale in selling power lawn mowers in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out the aforesaid agreement, combination, understanding, and conspiracy, said respondents have done, among other things, the following:

(a) By agreement among themselves have fixed and maintained list prices at which each of the said respondents would sell and have sold power lawn mowers manufactured by it.

(b) By agreement among themselves have fixed and maintained and have adhered to and still adhere to schedule of uniform trade-in allowances for used power lawn mowers.

(c) By agreement among themselves have fixed and maintained uniform discounts, terms, and conditions of sale.

(d) By agreement among themselves have fixed and maintained and still fix and maintain uniform discounts to be, and which have been and are, allowed to their respective distributors.

(e) By agreement among themselves have filed and still file with respondent association schedules of prices, discounts, terms, and conditions of all sales.

(f) By agreement among themselves have not deviated and do not deviate from prices, discounts, terms, and conditions of sale filed with respondent association.

(g) By agreement among themselves have organized in various cities of the United States local distributors of power lawn mowers into associations for the purpose of maintaining the prices, uniform

discounts, and terms and conditions of sale fixed as hereinbefore described.

(h) By agreement among themselves have allocated territories and prospective customers to certain of the said respondents, to the exclusion of the other of said respondents, the latter agreeing not to solicit sales nor to sell in such territories and to such customers, which such agreements have been and are being carried out.

PAR. 5. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented competition as to discounts, terms and conditions of sales, territories of sale, and customers between and among respondents in the sale of power lawn mowers in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of power lawn mowers in such commerce; have unreasonably restrained such commerce in power lawn mowers, 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 January 19, 1939, issued and subsequently served its complaint upon respondents Power and Gang Mower Manufacturers Association, a voluntary unincorporated association, Coldwell Lawn Mower Co., Jacobsen Manufacturing Co., Milbradt Manufacturing Co., Moto-Mower Co., Toro Manufacturing Co., Ideal Power Lawn Mower Co., Outboard Motors Corporation, Roseman Tractor Mower Co., and Eclipse Lawn Mower Co., corporations, charging them with combination and conspiracy in restraint of trade in violation of the provisions of said act.

After the issuance of said complaint and the filing of answers by several of respondents, testimony and other evidence in support of the allegations of said complaint were introduced by an attorney for the Commission and in opposition thereto by attorneys for several of the respondents, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument by counsel; and the Commission, having duly considered

the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Power and Gang Mower Manufacturers Association, was a voluntary unincorporated association of which Edwin S. George of the Moto-Mower Co. was president and O. T. Jacobsen of the Jacobsen Manufacturing Co. was secretary, and the membership of which consisted of the other respondents in this proceeding and certain additional manufacturers of power and/or gang mowers. It was organized in 1932 and its last meeting was held early in 1937, since which time it has been inactive though not formally dissolved.

Respondent, Coldwell Lawn Mower Co., is a corporation organized and existing under the laws of the State of New York, having its principal place of business in Newburgh, N. Y.

Respondent, Jacobsen Manufacturing Co., is a corporation organized and existing under the laws of the State of Wisconsin, having its principal place of business at Racine, Wis.

Respondent, Milbradt Manufacturing Co., was a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at St. Louis, Mo. In December 1938 this corporation was dissolved and Mr. Raymond C. Luecke, who had been its president, became proprietor of the business formerly conducted by the corporation.

Respondent, Moto-Mower Co., is a corporation organized and existing under the laws of the State of Michigan, having its principal place of business at Detroit, Mich.

Respondent, Toro Manufacturing Corporation (referred to in the complaint as Toro Manufacturing Co.), is a corporation organized and existing under the laws of the State of Minnesota, having its principal place of business at Minneapolis, Minn. Late in 1935 it succeeded to the business of the Toro Manufacturing Co., a corporation organized under the laws of the State of Delaware which was dissolved in January 1936.

Respondent, Ideal Power Lawn Mower Co., is a corporation organized and existing under the laws of the State of Michigan, having its principal place of business at Lansing, Mich.

Respondent, Outboard Motors Corporation, was a corporation organized under the laws of the State of Michigan. It was dissolved in September 1936 when it and Johnson Motor Co. were consolidated and their business carried on by Outboard, Marine & Manufacturing

Co., a corporation organized and existing under the laws of the State of Delaware.

Respondent, Roseman Tractor Mower Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at Evanston, Ill. It sells only gang mowers and was never very active in the affairs of respondent association, although elected a member in December 1935 without obligation for the payment of any dues.

Respondent, Eclipse Lawn Mower Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business at Prophetstown, Ill.

PAR. 2. Respondents other than Power and Gang Mower Manufacturers Association were during all or a portion of the time alleged in the complaint, engaged in the sale and distribution of power and/or gang mowers to purchasers located in States other than the States in which their respective places of business are located, and caused such mowers, when sold, to be transported in commerce from their respective places of business to, into, and through various other States of the United States and the District of Columbia.

PAR. 3. The corporate respondents were, during all or a portion of the time alleged in the complaint, engaged in the sale and distribution of equipment for mowing or cutting grass. This equipment is of two general types: (1) Power mowers, propelled and operated by a built-in motor; and (2) gang mowers which consist of a number of mowing units coupled together and drawn by a horse, tractor, or other motive power. Some of the respondents manufacture but one of the two general types of mowers mentioned, while others manufacture both types.

Late in 1931 a meeting was held by representatives of certain of the corporate respondents at which it was determined that an effort would be made to organize the industry. Subsequent thereto, at a meeting held in January 1932, the Power and Gang Mower Manufacturers Association was organized, although articles of association and bylaws were not adopted until 1934. Representatives of Toro Manufacturing Co., Ideal Power Lawn Mower Co., Jacobsen Manufacturing Co., and Moto-Mower Co., were most active in the creation of the association and in securing the membership therein of other concerns in the industry.

The early efforts of members of the association were directed toward reducing or minimizing, insofar as possible, price competition in the sale of their products, particularly through control of discounts granted to purchasers and allowances made to purchasers for used equipment turned in as part payment for new equipment.

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Examples of practices in furtherance of these aims appear in correspondence between interested parties. On February 22, 1932, the president of the Moto-Mower Co. wrote to the Jacobsen Manufacturing Co. stating:

Having in mind the expressed desire on the part of the power lawn mower dealers at our conference in Chicago—believing the statements made there were sincere, and also inasmuch as it was agreed that we would report what was looked upon as unfair competition, leads me to forward you this communication.

Our dealer, Mr. Dursch, of Philadelphia, reports that a dealer of yours by the name of Dunn (a repair man) had offered \$50.00 allowance for a 1925 Detroit model Moto-Mower and in addition a 5% discount on the price of your product.

This is certainly unfair competition and destructive of the best interests of power lawn mower manufacturers. I felt it my duty to report this, and I am sending a copy of this communication to Mr. Smith of the Ideal Power Lawn Mower Co., as chairman to whom such information was to be forwarded.

I shall be pleased to hear from you when you are able to advise me of the facts pertaining to the above transaction and would respectfully request that a copy of your communication be forwarded to Mr. Smith.

On November 15, 1932, the Jacobsen Manufacturing Co. wrote the Moto-Mower Co. in part:

You may be interested to note the enclosed copies of letters from and to the Gilson Bolens Manufacturing Company at Port Washington, Wisconsin.

The transaction referred to took place shortly after our last meeting in Chicago and in accordance with our understanding at the meeting, we quoted a discount of 15% on this business. You will note the Cooper Mower Company received the award at a price approximately 40% from list.

A few days ago a dealer from Washington, D. C., came into our office and made the statement that he had been informed by the Ideal agency, Mr. Armiger, in Washington, that they would quote 35% from list on government business in 1933. I understand Mr. Armiger would get a 10% over-rider on such business.

I do not know what truth there is in this report but would appreciate your taking the matter up with Mr. Smith of the Ideal Company so we can disregard the agreement made in Chicago in the event that the Ideal people wish to quote on government business in this fashion.

On November 16, 1932, the president of the Moto-Mower Co. replied to the Jacobsen Manufacturing Co. in part:

This will acknowledge receipt of your favor of November 15th with enclosures, all of which I have read with considerable interest. I shall communicate with Mr. Smith, of the Ideal, and advise you of his reply. Specific instances such as you have stated enables detailed investigation and naturally calls for explanation on the part of any manufacturer that has been accused of doing anything that is detrimental to the best interests of the trade as a whole.

On November 23, 1932, this was followed by a letter from the president of the Toro Manufacturing Co. to the president of the Moto-Mower Co. stating:

On my return from St. Louis this morning, I find your letter of November 18, with copies of letters from Jacobsen Manufacturing Company, Gilson-Bolens Manufacturing Company, Cushman Motor Works, and Ideal Power Lawn Mower Company, all of which are very interesting, and involve a question of policy of vital interest to all manufacturers of power mowing machinery.

Inasmuch as there is a meeting to be held in Chicago the early part of December, and in order to get down to brass tacks in this controversy, I suggest that you address a letter to all of the manufacturers and have them prepare a schedule of all bids that have been submitted by the manufacturer direct, or *through their selling agents*, to any of the governmental departments the past two or three years, showing the list price and the discounts that have been made in submitting the bids.

It is a very easy and simple matter for some of the manufacturers to take refuge behind local dealers who have submitted prices with long discounts, and excuse themselves on the grounds that they have no control over sales agents. I believe the only solution of this matter would be for the manufacturers of such equipment to reserve the sole right to bid and sell direct to the governmental departments.

On November 25, 1932, the president of the Moto-Mower Co. wrote the Jacobsen Manufacturing Co.:

On December 10th the Power Lawn Mower Manufacturers will again hold a meeting at Chicago, at which time several matters of importance will be discussed. These meetings have proven very beneficial to the manufacturers as a whole, brought about through the spirit of co-operation and frankness which has characterized these meetings.

This morning's mail brought me a letter from Mr. Clapper of the Toro Manufacturing Co., under date of November 23rd, of which I enclose a copy herewith.

I believe Mr. Clapper's suggestion a good one. The Moto-Mower Company will be prepared to disclose the bids which they have made during the past two or three years for government business.

May I suggest, inasmuch as this office is being used at present as a clearing house for these matters, that you bring with you to the meeting detailed facts covering bids for government business during the last two or three years and present them for discussion at the meeting in Chicago. This information should furnish interesting discussion and a basis for a decision governing future policy in selling power lawn mowers to the government.

With a view to curtailing and bringing about uniformity in allowances granted on used equipment taken in trade in connection with the sale of new equipment, the association prepared and published a "Blue Book of Trade-In Allowances on Used Power Lawn Mowers, Gang Fairway Mowers, Golf Tractors," commonly referred to as the "Blue Book." This publication was authorized at a meeting of the power and gang mower manufacturers in Chicago, Ill., on September

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8, 1933, and was approved by the board of directors at a meeting in Chicago on October 27, 1933. It was said to be for the confidential use of dealers and that "the values herein established have been worked out on a percentage basis of the retail price of the different pieces of equipment, and therefore are fair and equitable to all makes, and are for your protection." It also stated:

The practice by dealers of allowing more for a used machine than it is worth is merely another way of cutting the price, and price cutting in any form is the greatest menace to dealer's profits. The dealer who cuts his price or offers an excessive trade-in allowance not only sacrifices his rightful profit but also encourages his competitors to compete on the same basis.

* * * * *

Remember, when you take in a piece of equipment on a trade you are buying and paying for it just as much as though you went out and bought it and gave your check for it. It costs real money to condition and resell it, and you cannot afford to take a loss, or make two deals for one profit.

This Blue Book listed under the names of the various manufacturers the models sold by each and set forth an "average appraisal value" for each such model that had been in use for 2 years, 3 years, 4 years, and 5 years or over.

PAR. 4. On March 26, 1934, a code of fair competition for the power and gang lawn mower manufacturing industry negotiated with the National Recovery Administration was approved. This code carried into effect many of the practices previously established by the association and included provision for the filing of prices and strict adherence to prices on file, various restrictive rules relating to the marketing of mowers, uniform cash discounts, and the establishment of trade-in allowances on used mowers, and also prohibited the granting of any trade-in allowance in excess of the amount so established.

An executive order (No. 6767) was issued by the President which provided in substance that bids might be made to the Government or its agencies as much as fifteen percent below filed prices. The attitude of the industry toward members individually availing themselves of the provisions of executive order No. 6767 is indicated by letter of July 31, 1934, from the secretary of the Code Authority, an officer of the Jacobsen Manufacturing Co., to the Outboard Motors Corporation, stating:

In response to your letter of the 26th, advising your quoting the State of Wisconsin a discount of 10 percent as per Executive Order 6767, you will note enclosed application to the Administration for exemption to this order. Since this order is not generally being recognized by the Power and Gang Mower Industry, the Code Authority would greatly appreciate it if you would kindly cooperate with the industry by disregarding this Executive Order for the time being.

Your taking advantage of this order at the present time will only serve to stampede all other members of the industry into doing likewise, which will soon react to your own disadvantage.

The action taken by the mower manufacturers regarding the executive order appears in the following extract from the minutes of a meeting of the industry in Chicago on December 15, 1934, which was attended by most of respondents in this proceeding:

After considerable discussion of Executive Order 6767, it was the consensus of opinion that the Government may be granted a special discount not to exceed 15% from list prices at the discretion of the bidder, but that no cash discount should be given on any Federal sales where bids are entered at a discount of 15%, and that local freight rates should be added in submitting Government bids.

Further discussion on the subject of discounts to State and Municipalities developed the fact that while under Executive Order #6767, and the recommendation of the Board of Directors a 15% discount might be accorded to States and Municipalities, it was the opinion of the majority of those present that State and Municipal departments requesting bids on a single power mower should be quoted list prices or possibly a discount ranging from 5 to 10% depending upon the individual circumstances involved.

PAR. 5. After the abandonment of N. R. A. codes following the decision of the Supreme Court in *A. L. A. Schechter Poultry Corporation, et al. vs. United States* (295 U. S. 495), the Power and Gang Mower Manufacturers Association was anxious to retain the restrictions upon competition enjoyed under N. R. A. The minutes of a meeting of officers of that association in Detroit on July 12, 1935, recite in part:

The meeting was called to order by Colonel George for the purpose of discussing in a preliminary way, recommendations to be submitted to the *Board of Directors for a meeting to be called in Detroit on or about September Sixth*, particularly to formulate a plan to salvage such provisions of the power and gang mower code as were found of value under the NRA.

Colonel George advised that the following concerns had already expressed themselves in favor of continuing cooperative effort, in responding to his recent questionnaire to members of the industry—

Worthington Lawn Mower Company,
Ideal Power Lawn Mower Company,
Jacobsen Manufacturing Company,
Coldwell Lawn Mower Company,
Toro Manufacturing Company,
Eclipse Lawn Mower Company,
Outboard Motors Corporation,
Moto-Mower Company.

On motion of Colonel George, seconded by Mr. Smith, it was resolved that Directors of the Association be requested to inform the Secretary immediately as to any changes desired in the present consumer price policy as established by the Association on February 21, 1935, or of the consumer price policy es-

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established by several of the gang mower manufacturers and as announced by Mr. McCartney of the Toro Company on April 12, 1935.

All recommendations and suggestions received by the Secretary were to be submitted to another meeting of the Officers to be held in Detroit on July 25.

On July 22, 1935, Mr. Hayden W. Wagner of the Coldwell Co., in a letter to the association's secretary, stated as follows:

The sole objective of the Power and Gang Mower Manufacturers Association at this time should be to secure the sincere voluntary co-operation of all members of the industry. With such cooperation prices, discounts and terms of sales can be stabilized, uniform marketing provisions adopted and unfair trade practices controlled or eliminated.

On July 26, 1935, the officers of the association held a further meeting in Detroit, Mich., at which a revised code for the industry prepared by Mr. Hayden W. Wagner was adopted and at a meeting of the association in Chicago on November 22, 1935, according to the minutes:

The proposed Code of Fair Trade Practices, as submitted by Colonel Hayden Wagner, July 26, 1935, was then read and approved.

The marketing rules thus adopted included a provision for the filing of prices with the association and furnishing copies to all known members of the industry, and a prohibition against the sale of any product "at a price or discount other than or more favorable than set forth in published price sheets of such member at the time outstanding and in force under the conditions applicable to such sale therein set forth." Uniform cash discount terms and uniform guarantees to purchasers of equipment were provided and members were prohibited from:

Repurchasing or taking in trade any product of the industry or paying or granting credit or allowances therefor in amounts in excess of the amount for such product as set forth in a trade-in allowance schedule adopted by the Association.

PAR. 6. The Blue Book setting forth trade-in values for used equipment was also published by the association in 1935, 1936, and 1937. The maintenance of the trade-in values thus established was of both direct and indirect interest to members of the association. Some members of the association make few sales at retail while others maintain very little dealer organization and themselves make many sales at retail. The allowances made on equipment traded in on retail sales made by the manufacturer is obviously of direct interest to such manufacturer. Manufacturers are frequently obliged to extend credit to their dealers and sometimes in large measure finance their handling of power and gang mower equipment.

Consequently, insofar as the profitable handling of used equipment affects the success of the dealer, it is of material interest to a manufacturer. It is also apparent that a manufacturer making direct sales in competition with dealers representing other manufacturers would be affected by such dealers granting larger trade-in allowances than the association rules permitted a manufacturer to grant.

The allowances which might be made for used equipment as set out in the Blue Book were apparently less than the average actual value of the equipment in question. The president of the Moto-Mower Co., in writing to the Toro Manufacturing Co. with regard to the schedule of allowances in the Blue Book, said in part:

I again, however, bring to your attention my letter of October 26th, in which I wrote that the two year allowance be 30%; the three year allowance be 20%; the four year allowance 10% and the five year allowance 5%. If you received a report of the last meeting of the dealers in Chicago you will notice that they went on record as being in favor of the two year allowance being 25%.

I am just trading in my Ford automobile toward a new car. I have used it two full years and the allowance for my machine is \$400.00, and I paid approximately \$650.00 for this car completely equipped, and this allowance is with the understanding that the radio is to be removed from my present car and placed in my new car. You will observe that this two year allowance is more than 60%.

One thing is sure, our branches would be glad to take in all the trade-in Moto-Mower they could secure that would be brought to them by dealers provided we could turn against them the other makes of mowers handled by such dealers. Maybe some makes of used mowers have a greater resale value than others. I know that our branches are always able to resell Moto-Mowers that they have traded in, and reconditioned, and make a profit on them. They believe that a used mower such as our City Model, or our Standard or Super, that has been used two or three years, traded in and reconditioned, and which can be offered to the new purchaser for from \$100.00, \$125.00 and \$150.00, is a good buy, and we know that it is. I do not believe it is good business to maintain conditions that exist at present whereby dealers can make more money off of selling reconditioned mowers, based on Blue Book allowances, than they can on the sale of new mowers, and that is a known statement by Moto-Mower dealers.

PAR. 7. The Power and Gang Mower Manufacturers Association on November 22, 1935, established a uniform rate of discount to be granted to agencies of the Federal Government. The minute recording this action reads:

On motion of Colonel Hayden Wagner, seconded by Mr. H. L. McCartney, it was unanimously moved that the discount to be accorded all departments of the Federal Government should not exceed 10%.

A variation from this with respect to sales to the Veterans' Bureau was provided as follows:

After considerable discussion on the matter of submitting bids on proposals from the Veterans' Bureau, the following motion was unanimously carried:

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Resolved, that any manufacturer bidding on proposals from the Veterans' Bureau may be privileged to enter his bid at a price equivalent to any agreed upon Federal discount from the lowest published list price of any competitor, F. O. B. factory, the net amount of bid not to be less than such manufacturer's extreme distributor's net price.

No further cash discount or trade-in allowance should be offered on such bids.

Some of the questions which arose among association members with reference to bidding on sales to the Federal Government are indicated in a letter of December 16, 1935, from the Moto-Mower Co. to the Jacobsen Manufacturing Company, reading:

You undoubtedly have received from the Treasury Department the proposed specifications on power lawn mowers. All of us were supposed to send in our suggestions as regards changes. We did that, and I presume you did likewise. Ramsey today asked the following question:

"If the Government adopts this new proposed specification when purchasing mowers, then doesn't it reasonably follow that if the bidder is able to conform to the specifications, the man submitting the lowest bid will certainly get the business?"

I think Ramsey's point is well taken. If this is the case then why should we not, on Government bids, bid in exactly the same manner that it was proposed to bid when proposals were submitted by the Veterans Bureau? Otherwise I can see where all the business again will go to the man who has the lowest list price.

The machine that we are all going to bump up against next year, when submitting bids to the Government, will be the Ideal, with a list price of \$285.00 for a 30" wheel type mower. Ours is \$295.00 and yours, I believe, is \$300.00. Milbradt has one at \$295.00; Toro has one at \$295.00, and Coldwell's latest list price shows \$290.00.

I do not want to cut the price on our Super-Detroit under \$295.00, but I do not want to lose a lot of business just because we submit our bid on a basis of \$5.00 greater list than some other manufacturer.

Will you please give some consideration to the advisability of our submitting all Government bids based on the resolution passed as governing bids submitted to the Veterans' Bureau?

The proportion of the output of the power and gang mower industry purchased by agencies of the Federal Government is apparently substantial. On July 31, 1934, the secretary of the Code Authority for this industry wrote to the Deputy Administrator of the National Recovery Administration, stating in part:

It is estimated that approximately 80% of the industry's sales are made to some branch of the Government or public institutions, such as State and Federal grounds, hospitals, county court houses, city park departments, city-owned play grounds, golf courses, cemeteries, etc.

The remaining 20% of the industry's sales, going to private estates and golf clubs, would be entitled to the same discount as a public institution.

The action of the association with respect to bids to governmental agencies resulted in substantially reducing the discounts to such

purchasers, and that this action was reasonably successful is indicated in a letter of protest under date of March 3, 1937, from the Jacobsen Manufacturing Co., to the purchasing agent for the city of New York reading in part as follows:

We note that you received lower bids on Moto Mower, Milbradt, and Toro mowers, all representing a discount of approximately 25% from the manufacturers' list prices, all of which are a direct violation of the policy adopted by the Power and Gang Mower Manufacturers Association of which these parties are members.

The standard discount to municipalities, where the purchase of ten or more power mowers is involved, is 10%, the same as quotations to the Federal Government. No discount is accorded to municipalities purchasing only one machine.

These rules were adopted in code form under the NRA and have been effective since.

This sudden departure on the part of certain manufacturers from the established marketing fair practice code of our industry is a surprise to us and we are at a loss to understand the reason for it. Had we known that bids were going to be submitted on this basis, we would have quoted you an equivalent discount on Jacobsen mowers.

PAR. 8. In order to more fully effectuate the policies of the Power and Gang Mower Manufacturers Association, the association late in 1935 took steps to organize distributors in various territories in the United States. This was done in Chicago, St. Louis, Indianapolis, and Philadelphia. In this work the association employed and paid for the assistance of F. S. Jefferies Associates (trade association counsellors) and Peat, Marwick, Mitchell & Co. (accountants and auditors). Some of the distributor associations thus created were more successful and longer lived than others and apparently they all lapsed before the summer of 1937, and this effort on the part of the Power and Gang Mower Manufacturers Association was abandoned. The minutes of the meeting of the Chicago Power Mower Distributors Association for May 1936, state in part:

Luncheon was served to all present after which the Meeting was called to order by Mr. Charles Smith, who explained that the purpose of this Meeting was to check up the results of the agreements made at the previous Meeting, ten days earlier, with respect to Consumer Price Policy adopted at that Meeting.

All reported that there had been no known violation and that retail prices and Blue Book trade-in allowances had been properly maintained.

On May 22, 1936, the Chicago group "agreed that beginning Monday, May 25, they would file all copies of their invoices to consumers and to dealers," and subsequently F. S. Jefferies Associates reported to the group upon the filing of invoices by its members. The minutes of this group for the meeting of November 9, 1936, stated in part:

The distributors were informed at the previous meeting that the services of F. S. Jefferies Associates had been discontinued by the Manufacturers

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Association and now wanted to know what arrangements had been made to replace this service which had proven so successful during the past season.

It was explained that Peat, Marwick, Mitchell & Company of Chicago would continue to serve the Chicago Distributors in the same manner as the F. S. Jefferies Associates. Unfortunately, Mr. E. L. Coleman, of the Peat, Marwick, Mitchell & Company did not receive notice of this meeting in time to enable him to attend but assured us of his attendance at all future meetings. The distributors were emphatic in their opinion that their organization could not function successfully without the aid of an outside agency to assist in the conduct of meetings, filing of invoices, etc. Regret was also expressed as to the absence of two members and the necessity for faithful attendance by all members at all meetings was stressed.

It was agreed that all regulations pertaining to the sale of power mowers would apply to the sale of fairways mowers.

In order to further the association's program, compliance with it by dealers was necessary. Representatives of association members frequently met with the dealer organizations created and also exerted pressure upon dealers to secure compliance. For example, the Coldwell Lawn Mower Co. on March 30, 1936, wrote to the Jacobsen Manufacturing Co. in part:

We will be very glad to cooperate with the other members of the Power and Gang Mower Manufacturers Association in using every effort to have our dealers and distributors maintain the marketing practices which have been adopted by the Association.

On April 23, 1936, the Toro Manufacturing Corporation wrote the Jacobsen Manufacturing Co. and in discussing a report of excessive trade-in allowances said to have been given by a Toro distributor said in part:

Our distributors are naturally not price cutters, but of course when the other fellow gets in and takes a deal or two away from them by giving discounts or paying an exorbitant price for used equipment, they are very apt to retaliate. This, however, does not excuse the Indianapolis deal so far as I know, and I do not believe that after receiving the letter I have written him that Mr. Cohee will let anything of this kind happen again.

On December 8, 1936, Ideal Power Mower Company wrote to one of its distributors in part as follows:

What I want to convey to you is this, that you cannot improve a situation by retaliating. The only way to improve a situation is to get together, discussing common problems and agreeing on certain business ethics, then if the situation does not improve and there is still those who will not either join or live up to agreements, the manufacturer will step in and we are confident that mistakes that have been made can be corrected.

On February 17, 1937, the Jacobsen Manufacturing Co. wrote to Worthington Mower Co., and in referring to apparent price cutting

on the sale of Worthington mowers by a dealer distributing both Jacobsen and Worthington machines stated:

We, therefore, feel disposed to request Mr. Riley to take his choice between the Worthington and Jacobsen line *unless* you will instruct him in writing, sending us a copy, that he must maintain your published prices and comply with the policies that may be adopted by the Indianapolis distributors association as constituting fair and ethical competition on Power and Gang Mower equipment in that territory.

In view of the assurances you gave me in Washington that you were for price maintenance, I anticipate the pleasure of receiving your fullest cooperation in this matter.

PAR. 9. Active furtherance of the association's program ceased at about the time the Commission's inquiry began, or soon thereafter. Complete compliance by members of the association and their dealers was never obtained but substantial results were secured. The following extracts from correspondence indicate the results secured, and the attitude of those concerned with respect to occasional infractions of the restrictive regulations imposed.

In letter of October 10, 1935, from the secretary of the Power and Gang Mower Manufacturers Association to the president of the Moto-Mower Co., with copies to several other association members, it was stated in part:

I recognize, of course, that regardless of what we do it is a physical impossibility to secure 100% compliance where a considerable portion of our sales go through dealers who have no further interest than the purchase and sale of a single machine. Nevertheless, I am sure that we could all be satisfied to tolerate a certain amount of non-compliance from this source, if we can get at least 90% compliance among ourselves and our principal distributors.

On April 4, 1936, the secretary of the Power and Gang Mower Manufacturers Association wrote to Ideal Power Lawn Mower Co.:

The enclosed summary of bids, received by the Veterans' Bureau on Proposal No. 450-M, is submitted for your information.

While bids were submitted by three leaders, only in one instance were such bids disturbing to our present plan of bidding on Federal specifications.

On June 15, 1936, the secretary of the Power and Gang Mower Manufacturers Association wrote the Toro Manufacturing Corporation in part:

Without a doubt, you have been considerably vexed this year by the half-dozen competitive dealers who have not complied with our Association federal discount, which has caused you to reach the conclusion as expressed in your letter of the 12th.

We likewise, have lost two or three deals on this account, but this has not been enough to disturb us. As far as I know, there have only been a few Moto-Mower dealers and one Ideal dealer who did not comply. Candidly, I think that is a pretty good record for the first year and that we all have

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benefited immeasurably by the 10 percent discount adopted last November. It has enabled us to put most of this Government business through our dealers and protect them with a reasonable margin on the business that should be theirs.

I am further convinced that the few infractions which we have suffered are easily corrected. I believe the Moto-Mower Company are reversing the policy they set out on at the beginning of the year, and with the aid of Mr. Jefferies, we will have their future cooperation in keeping their dealers in line.

PAR. 10. The membership of respondent association represented a substantial portion of the power and gang mower manufacturing industry. Their combined sales approximated from 65 to 85 percent of the total sales of such equipment. The agreements among respondents for the filing of list prices and adherence to the prices filed did not, and were not intended to, create absolute price uniformity. The mowers sold by each of the several respondents vary from those sold by the others and are not identical products intended to be marketed at identical prices. However, in the case of sales to the Veterans' Bureau where price was the only factor considered by the purchaser, provision was made by agreement among respondents for offering each of their several products upon the basis of the lowest list price of any competitor. The agreement for maintenance of prices on file with the association, plus the agreements for standard discounts and terms of sale to the more important classes of purchasers and for uniform trade-in allowances on used equipment, resulted in substance in an agreement among respondents as to stabilization of the prices of their products, although such prices were not necessarily identical. The further implementation of these agreements by the organization of dealer groups and participation in the conduct thereof, aided in more effectually reflecting to consumers the effects of the several agreements among respondents. The agreements and acts and practices of respondents as heretofore found did unduly and unreasonably restrict and restrain competition in the sale of their products to purchasers and have had a dangerous tendency to, and did, actually hinder and prevent competition between and among said respondents and enhance the prices of their products to the consuming public, and otherwise deprive the public of the benefits which would flow from normal competition between and among said respondents.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice of the public and have had a dangerous tendency to, and did, hinder and prevent competition in the sale and distribution of power and/or gang mowers in trade and commerce between and

among the several States of the United States and constitute unfair methods of competition 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 answers of certain of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Power and Gang Mower Manufacturers Association, a voluntary unincorporated association, and respondents Coldwell Lawn Mower Co., Jacobsen Manufacturing Co., Moto-Mower Co., Toro Manufacturing Corporation, Ideal Power Lawn Mower Co., and Eclipse Lawn Mower Co., corporations, their officers, directors, agents, and employees, either with or without the cooperation of others not parties hereto, do forthwith cease and desist from following a common course of action pursuant to or in connection with any mutual understanding, agreement, combination, or conspiracy for the purpose and with the effect of maintaining the prices of their products, establishing and maintaining uniform rates of discounts and terms of sale to any purchasers or classes of purchasers, establishing and maintaining uniform trade-in allowances for used mowing equipment, or otherwise hindering or lessening competition in the sale and distribution of power and/or gang mowers or mowing equipment in commerce, as "commerce" is defined in the Federal Trade Commission Act, by:

1. Agreeing to maintain and maintaining prices published through the Power and Gang Mower Manufacturers Association, or otherwise.
2. Establishing and maintaining uniform discounts on or terms of sale for their products, or any of them.
3. Establishing and maintaining uniform prices for, or allowances on, equipment purchased or taken in trade in connection with the sale of other products.

4. Organizing or participating or cooperating in the actions of any groups or associations of dealers with the purpose and effect of accomplishing or furthering the accomplishment of any of the things prohibited in the preceding paragraphs of this order.

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It is further ordered, That respondents shall, within 60 days after the 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.

It is further ordered, For the reasons set out in paragraph 1 of the findings as to the facts, that this proceeding be, and the same hereby is, dismissed as to respondents Milbradt Manufacturing Co., Outboard Motors Corporation, and Roseman Tractor Mower Co.

Complaint

IN THE MATTER OF

**BILT-RITE BOX CORPORATION, AND JACOB GLEKEL
AND JACOB PRESS, INDIVIDUALLY AND AS OFFICERS
THEREOF**

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4177. Complaint, July 10, 1940—Decision, Oct. 15, 1941

Where a corporation, engaged in the interstate sale and distribution of corrugated paper garment boxes and shipping containers, and its president and treasurer who formulated, directed, and controlled its policies, acts and practices; in letterheads, invoices and other printed matter distributed to customers and prospective customers—

Represented that it owned, operated or controlled the plant or factory wherein its said products were manufactured, through such statements, in connection with its corporate name, as "Manufacturers of Corrugated Boxes and Shipping Containers" and "Manufacturers of Cloak, Suit, Dress, and Fur Shipping Containers";

Facts being it purchased all of its said products from manufacturers, who delivered to it "knock-down" boxes, i. e., products in which all the scoring, creasing, trimming and slotting had been done by the manufacturer, and it merely set up the parts of the boxes and stitched or stapled them together, and was not, as represented, a manufacturer, from whom a portion of the purchasing public prefers to buy direct as, in its belief, enabling it to avoid the middleman's profit and obtain a more uniform line of merchandise;

With effect of misleading and deceiving purchasers into believing that it actually owned and operated or controlled the plant or factory wherein, and machinery whereby, its products were made, and to purchase substantial amounts of its said products on account of such erroneous beliefs:

Held, That such acts and practices were all to the prejudice and injury of the public and competitors, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Louis H. Solomon, 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 Bilt-Rite Box Corporation, a corporation, Jacob Glekel and Jacob Press, individuals, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding