

Syllabus

IN THE MATTER OF
BERLAND SUPPLY COMPANY, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3861. Order, November 10, 1941

Modified order in proceeding in question, in which findings and cease and desist order were made as of July 9, 1941, 33 F. T. C. 547, requiring respondents, including respondent Hotel, Restaurant and Tavern Equipment Association, and its members, in connection with the offer, etc., in commerce of glassware to cease and desist from—

Continuing, entering into, or assisting each other in carrying out any conspiracy, etc., among themselves, between any two or more of them, or between the officers, etc., of any two or more of them, to—

- (a) Refuse to sell glassware to any person, partnership, or corporation;
- (b) Cut off the source or sources of supply of any person, etc., or hinder, etc., any person, etc., in the effort to obtain supplies of glassware for sale or resale in trade and commerce or otherwise deprive any person, etc., of opportunity to compete in the sale or resale thereof;
- (c) Determine or designate who shall be a wholesaler of said products, and who not, in Milwaukee and the surrounding trade area, or in any other trade area in the United States;
- (d) Coerce or persuade any wholesaler, retailer, or dealer of glassware to refrain from engaging in price competition in the sale and distribution thereof in commerce; and
- (e) Limit the number of persons, partnerships, or corporations who may participate in trade and commerce in glassware or limit or proscribe or seek to limit or proscribe the right of any person, etc., to conduct trade or commerce according to its own free will thereof.

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

Mr. Lynn C. Paulson for the Commission.

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

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

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

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

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

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

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34 F. T. C.

MODIFIED ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the request of respondent Anchor-Hocking Glass Corporation, by its attorney, that the cease and desist order entered in this case by the Commission on July 9, 1941, be modified, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the cease and desist order aforesaid be, and the same hereby is, modified to read as follows:

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

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

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

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

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

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partnership, or corporation of an opportunity to compete in the sale or resale of glassware.

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

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

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

It is further ordered, That the 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.

IN THE MATTER OF
SALT PRODUCERS' ASSOCIATION 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 4320. Complaint, Sept. 18, 1940—Decision, Nov. 10, 1941

Where a salt producers' association; twenty salt producers, members thereof with one exception, manufacturing, selling, and distributing a large percentage of all the salt produced in the United States, and in active and substantial competition with each other and with other members of the industry prior to and but for the practices below described; and a corporation which they employed for the purposes below set forth, together with its president and treasurer—

Entered into and carried out certain agreements, combinations, and conspiracies with intent and effect of restraining, monopolizing, and suppressing and eliminating competition in the interstate sale of salt; and pursuant thereto and in furtherance thereof—

- (a) Concertedly fixed and maintained uniform prices, terms, and conditions in the sale of salt; set up a system of price zones throughout the United States and agreed to and did cooperate in the maintenance of delivered prices which they fixed and established within each of such zones;
- (b) Agreed to and did exchange price lists and information for use in fixing delivered zone prices, discounts, and terms and conditions of sale;
- (c) Agreed to and did curtail production of salt; and
- (d) Agreed to and did file invoices and other reports with said association to secure enforcement of such agreements; and

Where said association, pursuant to such understandings, etc.,—

- (e) Collected from and distributed among such producers and other participants in said agreements useful statistics, lists showing the current delivered prices, terms, and conditions of sale, names of dealers and distributors to be allowed special discounts, and other information; and

Where corporation above referred to, employed by producers herein from about November 1935 to about August 1939, and its president and treasurer;

Following their preliminary survey of the business concerned and distribution among producers herein of composite figures (and to each separate producer, corresponding figures pertaining to it alone) covering volume of sales and average yield f. o. b. plant for delivered price zones established, plant capacity, marketing expense, and financial returns; report of its conclusion that there was a large excess productive capacity, that composite net earnings were small in relation to investment, that composite figure of sales expenses was inordinate in relation to prices received, and that such conditions were caused by efforts of each participant to obtain an increased portion of the total volume of business without due regard to net return and sales expense; and advice that the consequences of continuance of such practice would inevitably be an inadequate return upon investment to the individual participant, and excessive and uneconomic marketing costs;

- (f) Collected and disseminated aforesaid business figures monthly with sales figures reduced to common denominator terms for the several grades of salt in—