

Syllabus

IN THE MATTER OF
UNITED BUYERS CORPORATION, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (c) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED
BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3221. Complaint, Aug. 31, 1937—Decision, Nov. 13, 1941

Where a corporation, the stockholders of which, during a period of nearly 5 years, consisted of about 51 wholesale grocery concerns in cities in 18 States, competitive with other wholesale grocers, and which functioned as a cooperative buying organization for its stockholders, securing quantity discounts and advertising allowances from sellers for them, furnishing them with market reports and advice, and, among other things, services of trained field men to improve their merchandising methods—

- (a) Received and accepted from sellers, brokerage or commissions upon the purchase of commodities in interstate commerce by itself or by its stockholders, and in transactions in which it acted for and in behalf of, and under the direct control of, its respective stockholder buyers, any benefits received by sellers from its activities being merely incidental to the services rendered by it to its stockholders; and transmitted such brokerage or commissions or allowances to its said stockholder buyers, in services and in money in the form of dividends; and

Where 6 wholesale grocers, stockholder buyers of aforesaid corporation, and fairly representative of the approximately 51 stockholders—

- (b) Received brokerage or commissions upon their purchases made through or for said corporation or under arrangements directed thereto, through transmission to them by said corporation of cash dividends resulting from payment by sellers of brokerage or commissions upon said purchases; and

Where some 7 concerns, typical of more than 300 manufacturers who sold and shipped grocery and allied products in interstate commerce to wholesale grocers, including stockholders of said corporation and their competitors—

- (c) Paid, along with other sellers, brokerage fees and commissions in substantial sums upon the purchases in interstate commerce of said corporation's stockholder wholesale grocers, on transactions in which any benefits received by them, as sellers, from said corporation's activities were incidental merely to the services rendered by it to its stockholder grocers:

Held, That such payment and receipt of brokerage, as above set forth, constituted violations of Section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. W. W. Sheppard* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Allen C. Phelps and *Mr. J. J. Smith, Jr.* for the Commission.

Mr. I. J. Berkson, of Chicago, Ill., for respondent United Buyers Corporation, and respondent individuals, as officers and directors thereof; with whom also appeared for former *Taylor & Conradi*s, of Washington, D. C.

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Squire, Sanders & Dempsey, of Cleveland, Ohio, for William Edwards Co.

Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., for Angelus Campfire Co.

Weil, Gotshal & Manges, of New York City, for Champion Chemical Works.

Mr. George F. Nelson, of Chicago, Ill., for J. B. Inderrieden Co.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by an act of Congress, approved June 19, 1936, entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," the Federal Trade Commission, having reason to believe that the respondents named above in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (c) of section 2 of said act as amended, hereby issues its complaint against the said respondents, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, United Buyers Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 111 West Washington Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondents, Arthur E. Koeniger, of 530 Washington Boulevard, Oak Park, Ill.; Eli P. Gale, of 127 North Madison, La Grange, Ill.; W. Wendell Caldwell, of 2310 Asbury Street, Evanston, Ill.; Helen M. Driscoll, of 5460 University Avenue, Chicago, Ill.; and Stella E. Nordlund, of 6326 North Talman Avenue, Chicago, Ill., are the president, vice president in charge of buying, vice president in charge of merchandising, secretary and treasurer, respectively, of the respondent, United Buyers Corporation.

PAR. 3. Respondents, Arthur E. Koeniger, Eli P. Gale; Paul E. Painter, of the Bluffton Grocery Co., Bluffton, Ind.; Milton E. Rolfsmeyer, of H. P. Lau Co., Lincoln, Nebr.; Alfred M. Copps, of the Copps Co., Stevens Point, Wis.; Eldon B. Smith, of the Lima-Kenton Grocery Co., Lima, Ohio; and Oliver J. Lecklider, of the

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S. Zollinger Co., Piqua, Ohio, and each of them, are members of the board of directors of United Buyers Corporation.

PAR. 4. Respondent, H. P. Lau Co., is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, with an office and principal place of business located at 245 North Eighth Street, in the city of Lincoln, State of Nebraska. Respondent, Bluffton Grocery Co., is a corporation organized and existing under and by virtue of the laws of the State of Indiana, with an office and principal place of business in the city of Bluffton, State of Indiana. Respondent, Lima-Kenton Grocery Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with an office and principal place of business at 311 East Market Street, in the city of Lima, State of Ohio. Respondent, S. Zollinger Co., is a corporation organized and existing under the laws of the State of Ohio, with an office and principal place of business at 101 South Wayne Street, in the city of Piqua, State of Ohio. Respondent, Copps Co., is a corporation having an office and principal place of business located at Stevens Point, Wis. Respondent, Wm. Edwards Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with an office and principal place of business at 1300 West Ninth Street, in the city of Cleveland, State of Ohio.

Each of the said respondents in this paragraph hereinabove named are and for more than 1 year last past have been engaged in the business of buying in interstate commerce, commodities, particularly foodstuffs, groceries, and allied products from numerous and divers manufacturers, importers, and other sellers of such merchandise, including those parties respondent named in paragraph 5 hereof as "respondent sellers," located in States other than the States in which said buyer respondents are located, and in reselling such commodities and merchandise at wholesale to their respective retail customers.

Each of said respondents so engaged in the wholesale grocery business is a share-holding member of the respondent, United Buyers Corporation, the terms and arrangements of which membership are hereinafter more fully set out and described. They are named as parties respondent, both individually and as representative of a group or class of a large number of wholesale grocery concerns, each of whom is likewise a share-holding member in United Buyers Corporation, and all of whom are hereby made respondents without being individually named herein, because they constitute a class or group too numerous to be brought before the Commission in this proceeding without manifest inconvenience and delay. The respond-

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ents in this paragraph hereinabove named are fairly representative members of this group or class of wholesale grocery concerns, and they, and each of them, are now and for some time past have been engaged in practices similar to those hereinafter charged against the members of the class who are specifically named as respondents. All respondents of this class are hereinafter designated and referred to as "buyer respondents."

PAR. 5. Respondent, Allison-Bedford Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 2309 South Keeler Avenue, Chicago, Ill. Respondent, Angelus Campfire Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 4800 West 66th Street, Chicago, Ill. Respondent, Blue Seal Products Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 3400 West Forty-eighth Street, Chicago, Ill. Respondent, Bordo Products Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 541 North Franklin Street, Chicago, Ill. Respondent, Champion Chemical Works, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 43 East Ohio Street, Chicago, Ill. Respondent, Cupples Co., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with an office and principal place of business located at St. Louis, Mo. Respondent, Dean Milk Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 20 North Wacker Drive, Chicago, Ill. Respondent, J. B. Inderrieden Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 514 West Erie Street, Chicago, Ill.

Said respondents, and each of them in this paragraph named, are, and for more than 1 year last past, have been engaged in the business of selling commodities, particularly foodstuffs, groceries, and allied products, to numerous and divers wholesalers, jobbers, merchants, and dealers, including the buyer respondents hereinabove, in paragraph 4 hereof, named, and which buyers are usually located in States other than the States in which said sellers are respectively located.

Said respondent sellers are fairly typical and representative members of a large group or class of manufacturers, processors, importers,

and producers engaged in the common practice of selling a substantial portion of their commodities in interstate commerce to the said buyer respondents, who use the purchasing services of respondent United Buyers Corporation. Said group or class of sellers comprises a large number, to wit: approximately 150 of such manufacturers, processors, importers, and producers, too numerous to be individually named herein as respondents or to be brought before the Commission in this proceeding without manifest inconvenience and delay, but each of whom has been and is engaged in practices similar to those hereinafter charged against those sellers herein specifically named as parties respondent. The respondents in this paragraph named are hereinafter designated and referred to as "respondent sellers."

PAR. 6. Respondent United Buyers Corporation is now, and since the time of its incorporation and organization on or about March 27, 1931, has been, engaged in the business of providing market information and purchasing services for approximately 46 wholesale grocery concerns located in the several States of the United States, 6 of whom are specifically named and described herein as respondent buyers. Each respondent buyer owns 5 shares of stock in United Buyers Corporation, which shares are debited upon the corporate books pursuant to the understanding and agreement that such shares will be paid for out of accrued benefits and thereafter become the property of the member stockholder and listed as an added asset to its business. Five of the above-mentioned 6 respondent buyers are directly represented on the board of directors of United Buyers Corporation.

In the course and conduct of its business aforesaid, said respondent receives orders to purchase commodities, particularly groceries and foodstuffs, from its various member stockholders or shareholders, consisting of the wholesale grocery houses and jobbers aforesaid, and transmits such orders to and executes the same with the aforesaid respondent sellers located in States of the United States other than the State in which such respondent buyers are located. As a result of the transmission of said orders by such buyers to respondent United Buyers Corporation, the execution of same by said respondent at the instance and request of said buyers, and the acceptance of said orders by said sellers, or one or more of them, goods, wares, and merchandise, particularly foodstuffs, are in the case of each order and in a continuous succession of such orders, sold or delivered by one or more of the said sellers to one or more of the said buyers. By such means and in the manner aforesaid, respondent United Buyers Corporation, acting for and in behalf of the said buyer respondents, and each of the other respondents, acting individually

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and in their respective capacities as set forth in the caption hereof, cause the above named seller respondents to ship the said commodities, foodstuffs, groceries, and allied products from the State in which such merchandise was located at the time of sale into and through various other States of the United States directly to the said buyer respondents in the States of their respective locations as aforesaid. In the operations and activities referred to, respondents and each of them, are engaged in interstate commerce, in practices which contemplate and result in the transportation of commodities in interstate commerce, and in making purchases which directly affect and bring about such commerce.

The estimated volume of purchases for the year 1936 for the United Buyers Corporation was approximately \$4,250,000, said purchases being made from the seller respondents. The estimated operating expense for the said year of the United Buyers Corporation was \$90,000. In all of said transactions, respondent, United Buyers Corporation, and the other respondents herein named as officers and members of the board of directors of said United Buyers Corporation, and each of them, were in fact acting in behalf of and for the said respondent buyers.

In connection with its aforesaid purchasing service for its various share-holding members, United Buyers Corporation has caused to be organized various local groups of independent retail grocery stores who become affiliated, and cooperate with said respondent, and in many instances use respondent's name on their stores in approximately fourteen States of the United States, in the sale and distribution of foodstuffs and other commodities purchased from the respondent sellers herein named, and said United Buyers Corporation pursues a practice and policy of serving the various wholesale grocery concerns constituting its membership and shareholders through a trained staff of field men who attempt to, and do, increase the sales of such wholesalers to such retailers by instructing and assisting the said retailers in the use of combined advertising, uniform display posters, suggested store rearrangements, and various and sundry centralized sales plans, and in various other ways.

Prior to an amendment to its charter about July 24, 1936, United Buyers Corporation issued to each of its share-holding members aforesaid, a "Participating Certificate" reading as follows:

No. -----	UNITED BUYERS CORPORATION	\$100.00
	Participating Certificate	
	Nontransferable	

This is to certify that _____, hereinafter designated "Member," has paid \$100.00 to the United Buyers Corporation (U. B. C.), and

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in consideration therefor is entitled to the services of such corporation upon the following conditions:

The U. B. C. agrees:

First: To act as purchasing agent for the Member and for others holding like participating certificates (all of such holders being designated as Members), and to combine the Members' requirements so as to secure the largest possible brokerage or commissions.

Second: To remit monthly as participating profits to Members an amount equal to all brokerages or commissions in excess of 1% (one percent) which it receives on (and of) their individual purchasers, except where the brokerage or commission is less than 2% (two percent)—then $\frac{1}{2}$ (one-half) of such brokerage or commission.

Third: To keep as strictly confidential all purchases for each Member—such records including brokerages or commissions will be available to the accredited representative of the Member at the offices of the U. B. C. at any time.

The MEMBER agrees:

A. To cooperate to the fullest possible extent by submitting to the U. B. C. specifications covering its requirements when so requested, in order that all the benefits of volume purchases may be obtained, it being understood that at no time will any purchases be made without the authority of Member.

B. To assist U. B. C. in increasing volume purchases when requested to do so by placing orders through U. B. C., even though prices are the same.

C. To keep and treat as strictly confidential any and all quotations, prices, brokerage or commissions secured by the U. B. C., and to refrain from stating or intimating that lower prices can be obtained through the U. B. C. as any such statement or intimation might cause cancellation of special allowances secured by the U. B. C.

It is mutually agreed that either the MEMBER or the U. B. C. shall have the right to cancel this agreement upon 30 days written notice. If cancelled by either party within 1 year, the U. B. C. agrees to pay back to the holder of this certificate \$100.00 upon the surrender of same to the U. B. C.

Issued at Chicago, Ill., this _____ day of _____, 19____.

UNITED BUYERS CORPORATION

Secretary

President

Subsequent to such reorganization, respondent, United Buyers Corporation, pursued the practice of issuing to its said member shareholders, in lieu of the above "Participating Certificate," a "Stock Certificate" providing for the payment of dividends, as follows:

The interest of shareholder represented by this certificate is subordinate and subject to any and all indebtednesses of the stockholder of the corporation and shall not be transferable until such indebtedness shall be paid and is expressly subject to bylaw No. 55 of said corporation which bylaw provides the terms under which stock of the corporation may be called in and cancelled.

The directors shall have power to declare and pay dividends on the shares of the capital stock of the corporation out of the new assets in excess of

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capital or out of the net profits as permitted by law, but no dividend shall be paid on the shares of the capital stock of the corporation in any year in excess of six dollars (\$6.00) per share. Reasonable reserves as determined by the board of directors may be set aside from year to year. After setting aside such reserves and paying any such dividends as may be declared by the board of directors in any year, the remainder of the net assets in excess of capital or the net profits, available for dividends, shall be distributed by the board of directors to the members of the corporation on a patronage basis in proportion to their purchases, sales or services from, to or through this corporation.

PAR. 7. In the course and conduct of the commerce hereinabove described, the respondent sellers herein named pay or grant, and have paid or granted, to respondent, United Buyers Corporation, and respondent, United Buyers Corporation and the individual respondents herein named in their individual capacities, and as corporate officers and members of the board of directors of the United Buyers Corporation, and each of them, while acting in fact as intermediary for and on behalf of the respondent buyers in the transmittal and execution of the aforesaid buying orders, does receive and has received and accepted commissions, brokerage fees and other compensations and allowances or discounts in lieu thereof, varying from 1 to 10 percent of the quoted sale price agreed upon between buyer and seller, on the foodstuffs, groceries, and allied products so purchased, depending upon the nature of the products involved. Under the circumstances as hereinabove set out, no services connected with the transactions of sale and purchase of the merchandise sold to the said respondent buyers on which such brokerage fees, commissions, compensations, or discounts, or allowances in lieu thereof, were and are being paid to the said United Buyers Corporation, either have been or are being rendered to the sellers by respondent, United Buyers Corporation. Furthermore, such fees, commissions, and allowances or discounts so paid and received are passed on to the respondent buyers in the form of dividends upon the aforesaid shares of stock and in the form of patronage dividends, in accordance with the provisions of the aforesaid stock certificate agreement, in the form of services rendered by United Buyers Corporation to the retail customers of said respondent buyers as aforesaid, and in the operating maintenance and overhead expenses of the United Buyers Corporation.

PAR. 8. The payment by respondent sellers of commissions, brokerage fees, and other compensations or allowances and discounts in lieu thereof to the United Buyers Corporation, and the acts and practices of the individual respondents, acting in their individual capacities and as officers and members of the board of directors, and as representatives of the member stockholders and shareholders in the

United Buyers Corporation in promoting such receipt, and the receipt and the ultimate acceptance of the ensuing benefits therefrom by the respondent buyers, all in the manner and form hereinabove set forth, are in violation of the provisions of section 2, subsection (c) of the act described in the preamble hereof. The receipt and acceptances of said brokerage fees, commissions, and other compensations in lieu thereof by the United Buyers Corporation, and the transmission and payment of same by said respondent to its member shareholders or stockholders constituting the group or class of respondent buyers, in the manner and form hereinabove set forth, are likewise in violation of the terms of said statute.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Clayton Act, approved October 15, 1914 (38 Stat. 730), as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15th U. S. C., sec. 13), the Federal Trade Commission, on August 31, 1937, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of section 2 (c) of the Clayton Act, as amended. After the issuance and service of the complaint, and the filing of respondents' answers, testimony and other evidence was introduced in support of the allegations of the complaint by the attorneys of the Commission, and in opposition thereto by the attorney for respondents, before duly appointed trial examiners of the Commission designated by it to serve in this proceeding, and said testimony and other evidence was duly recorded and filed in the office of the Commission.

Thereafter, stipulations were entered into, signed and executed by or on behalf of each of the respondents, and by counsel for the Commission, whereby it was stipulated and agreed, subject to the approval of the Commission, that this matter be submitted to the Commission for final decision, upon the pleadings, testimony and other evidence, and that upon such pleadings, testimony and other evidence the Commission, without intervening procedure, might proceed to make, enter and serve its findings as to the facts, conclusion and order—further hearings as to the facts, report of the trial examiners, briefs and argument of counsel being expressly waived. This stipulation was approved by the Commission, and this proceeding thereafter regularly came on for final hearing before the Commission on the complaint, the answers thereto, the testimony and other evidence; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the in-

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terest 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, United Buyers Corporation, hereinafter referred to as "UBC," is a Delaware corporation having its principal office and place of business at 1129 Merchandise Mart, Chicago, Ill. Said respondent also maintains a branch office at San Francisco, Calif.

PAR. 2. Respondents, W. Wendell Caldwell, of 2310 Asbury Street, Evanston, Ill., and Stella E. Nordlund, of 6326 North Talman Avenue, Chicago, Ill., are, respectively, vice president and secretary-treasurer of UBC. Respondent Arthur E. Koeniger, deceased, was president of the UBC from the date of its organization, March 27, 1931, until his death on or about March 18, 1938. Respondents, Eli P. Gale, of 127 North Madison Avenue, LaGrange, Ill., and Helen M. Driscoll, of 9616 South Exchange Avenue, Chicago, Ill., were, respectively, vice president and secretary of UBC for several years, but in March 1938, respondent Gale, and in May 1938, respondent Driscoll, resigned from UBC and were thereafter no longer employed by or associated with it. James H. Black succeeded respondent Koeniger as president of the UBC, and respondent Nordlund succeeded respondent Driscoll as secretary, having been elected on or about March 24, 1938, and January 21, 1939, respectively. The office of vice president resigned by respondent Gale was not filled after his resignation.

PAR. 3. Respondents Paul E. Painter, of the Bluffton Grocery Co., Bluffton, Ind.; Milton Rolfmeyer, of H. P. Lau Co., Lincoln, Nebr.; Alfred M. Copps, of the Copps Company, Stevens Point, Wis.; Eldon B. Smith, of the Lima-Kenton Grocery Co., Lima, Ohio; Oliver J. Lecklider, of the S. Zollinger Co., Piqua, Ohio; Arthur E. Koeniger and Eli P. Gale, at one time or another during the period from June 19, 1936, to August 31, 1937, served as members of the board of directors of UBC.

PAR. 4. Respondent, H. P. Lau Co., is a Nebraska corporation, having its principal office and place of business at 245 North Eighth Street, Lincoln, Nebr. Respondent, Bluffton Grocery Co., is an Indiana corporation, having its principal office and place of business at 724 West Cherry Street, Bluffton, Ind. Respondent, Lima-Kenton Grocery Co., is an Ohio corporation, having its principal office and place of business at 311 East Market Street, Lima, Ohio. Respondent, S. Zollinger Co., is an Ohio corporation, having its principal office and place of business at 101 South Wayne Street, Piqua, Ohio. Respondent, Copps Co., is a Wisconsin corporation, having its principal office and place of business at Stevens Point, Wis. Respondent, William

Edwards Co., is an Ohio corporation, having its principal office and place of business at 1300 West Ninth Street, Cleveland, Ohio. These respondents are hereinafter referred to as buyer respondents.

Since June 19, 1936, and for some time prior thereto, each buyer respondent has been engaged in the wholesale grocery business, in competition with other wholesale grocery concerns, and has purchased in interstate commerce, and caused to be shipped to it across State lines for resale by it to its customers, substantial quantities of grocery and allied products.

Until on or about May 21, 1941, each of the buyer respondents had been a stockholder in UBC for more than 6 years, with the exception of respondent William Edwards Co., whose stock in UBC was issued on or about May 9, 1934, and surrendered, redeemed and canceled on or about April 8, 1939. On or about May 21, 1941, each of the remaining buyer respondents sold and disposed of its stock in UBC, and none of them now owns any interest whatever in UBC.

The buyer respondents named herein are typical and fairly representative of the approximately 51 wholesale grocery concerns which, at one time or another between June 19, 1936, and May 21, 1941, owned stock in UBC.

PAR. 5. Respondent, Allison-Bedford Co., is an Illinois corporation, having its principal office and place of business at 2309 South Keeler Avenue, Chicago, Ill. Respondent, Angelus Campfire Co., is a Delaware corporation, having its principal office and place of business at 4800 West Sixty-Sixth Street, Chicago, Ill. Respondent, Blue Seal Products Co., is an Illinois corporation, having its principal office and place of business at 3400 West Forty-eighth Place, Chicago, Ill. Respondent, Bordo Products Co., is an Illinois corporation, having its principal office and place of business at 412 North Orleans, Chicago, Ill. Respondent, Champion Chemical Works, is a New York corporation, having its principal office and place of business at 3884 Fourth Avenue, New York, N. Y. Respondent, Cupples Co., is a Missouri corporation, having its principal office and place of business at St. Louis, Mo. Respondent, Dean Milk Co., is an Illinois corporation, having its principal office and place of business at 20 North Wacker Drive, Chicago, Ill. Respondent, J. B. Inderrieden Co., is an Illinois corporation, having its principal office and place of business at 514 West Erie Street, Chicago, Ill. These respondents are hereinafter referred to as seller respondents.

Since June 19, 1936, and for some time prior thereto, each seller respondent, in competition with other manufacturers and sellers, has been engaged in the business of manufacturing and selling grocery and

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allied products to various wholesale grocers, including stockholders of UBC, and in the course and conduct of their business, each seller respondent has sold and shipped commodities in interstate commerce to various stockholders of UBC, and to competitors of such stockholders.

The seller respondents named herein are fairly typical and representative of a group of more than 300 manufacturers and sellers who, since June 19, 1936, have sold and shipped in interstate commerce to the stockholders of UBC and to competitors of such stockholders substantial quantities of grocery and allied products.

PAR. 6. UBC was incorporated on March 27, 1931, with an authorized capital stock of 1,000 shares, without par value, of which a minimum of approximately 235 shares had been issued and were outstanding during the period between the period June 19, 1936, and May 21, 1941. UBC's charter of incorporation, as amended July 24, 1936, contained among other provisions the following:

The nature of the business, or objects or purposes to be transacted, promoted or carried on, are:

(a) To function on a cooperative basis for the mutual benefit of its stockholders and to promote the general welfare of its members and to provide better and more economical methods of handling and buying merchandise for its stockholders.

(b) To register, require (sic) and use trade-marks and other emblems to distinguish its merchandise, and to act cooperatively and collectively in handling the products and problems of its stockholders and members.

(c) To act as agents for persons, firms and corporations in the buying of all kinds of merchandise, and especially in the buying of food and agricultural products, groceries, paper products, woodenware and hardware.

The charter as amended, also provides:

The directors shall have power to declare any pay dividends on the shares of the capital stock of the corporation * * * but no dividend shall be paid * * * in any year in excess of Six Dollars (\$6.00) per share. * * * After setting aside such reserves and paying any such dividends as may be declared by the board of directors in any year, the remainder of the net assets in excess of capital, or the net profits available for dividends, shall be distributed by the board of directors to the members of the corporation on a patronage basis in proportion to their purchases or sales or services from, to or through this corporation.

This last quoted provision is incorporated in the stock certificates issued by UBC.

Each stockholder is entitled to one vote for each share of stock held by him, with the right to cumulate his votes in the election of directors. The bylaws of UBC vest the power of managing its property and business in its board of directors, elected by the stockholders. UBC's officers are elected and employed, and may be removed and discharged at will, by its board of directors, which has at all times

actively exercised the power to direct and control the affairs of the corporation.

Prior to May 21, 1941, each stockholder in UBC owned five shares of UBC stock, purchased from the corporation at an agreed valuation of \$100 per share. This stock was not paid for in cash, the account of each stockholder being debited for the cost of the stock, and all dividends declared and payable thereon being credited to the stockholders' accounts, rather than paid in cash, until the stock had been paid for in full. Dividends thereafter declared were paid to the stockholders in cash.

Between June 19, 1936, and May 21, 1941, UBC had from 40 to 51 active stockholders, located in 18 States of the United States. Each of said stockholders during such time was engaged in the wholesale grocery business in competition with other wholesale grocery concerns, and each purchased in interstate commerce and caused to be shipped to it across State lines, for resale by it to its customers, substantial quantities of grocery and allied products. In no city did UBC have more than 1 stockholder. In general, UBS's stockholders were located in different and noncompeting territories and, with few exceptions; were not engaged in competition with each other.

PAR. 7. From the date of its organization until May 21, 1941, UBC functioned as a cooperative buying organization, owned, controlled, and operated by and for the benefit of its stockholders. Its purposes and objectives have been to purchase commodities for its stockholders, as their purchasing agent, at the best prices obtainable, and to promote the interests and improve the competitive position of its stockholders by rendering to them numerous other services.

The participating certificates of membership originally issued by UBC provided, among other things, that UBC agreed "to act as purchasing agent for the member * * * and to combine the member's requirements so as to secure the largest possible brokerage or commissions." These certificates were canceled in February, 1934, and stock certificates then and thereafter were issued in lieu thereof; but UBC continued to operate and function as the purchasing agent of the stockholders.

In soliciting prospective stockholders for UBC, both before and after June 19, 1936, UBC representatives told them that UBC was a cooperative buying organization, owned, controlled and operated by and for the benefit of its stockholders; that by combining the purchasing power of its stockholders UBC acquired tremendous purchasing power, which enabled it to obtain for its stockholders better prices than they alone could obtain, and discounts and allowances which they alone could not obtain. Sellers with whom UBC negotiated arrange-

ments under which it received brokerage on its stockholders' purchases were told that UBC was a buying organization for a group of well established wholesale grocers of enormous buying power, who preferred to purchase commodities from sellers who paid brokerage to UBC on their purchases, and that if the sellers would agree to pay UBC brokerage on its stockholders' purchases, UBC could and would favor the sellers with a substantial amount of attractive business.

Both before, and for a considerable time after, June 19, 1936, UBC's most widely used label, the "U BE SEE" label, bore the legend, "United Buyers Expert Service Effects Economies," the initial letters of which spell the name of the label. This label also carried the statement that "The U BE SEE label brings to you through your independent grocer tasty foods at a minimum price. This is made possible through the United Buyers Corporation's enormous group purchasing power, which covers the United States from coast to coast." Some UBC letterheads used after June 19, 1936, referred to UBC as "A Cooperative Association," and in its annual audits for 1936 and 1937, prepared in January of 1937 and 1938, respectively, UBC is referred to as the "agent in the buying of merchandise, especially foods and groceries" for its stockholders. In its 1936, 1937 and 1938 Federal income tax returns, UBC's occupation is described as "wholesale grocers' agent."

PAR. 8. Pursuant to the purposes and objectives of UBC, as stated in the preceding paragraph, from the time of its organization until May 21, 1941, UBC:

1. Acted for and in behalf of its stockholders, as their agent and subject to their direct control, in locating and purchasing commodities for them.
2. Bargained with sellers to secure commodities for its stockholders at the lowest possible prices.
3. Secured quantity discounts and advertising allowances from sellers for its stockholders.
4. Furnished its stockholders with regular and frequent market reports and advice.
5. Supplied its stockholders with information, plans, and suggestions, and, from time to time, with the services of trained field men, to increase their sales, better the appearance of their retail customers' stores, prepare advertising copy and otherwise improve its stockholders' merchandising methods.
6. Devised, developed and promoted labels owned by UBC, under which, in preference to manufacturers' and sellers' own labels, stock-

holders were encouraged to, and many did, purchase and resell commodities.

7. Encouraged and assisted stockholders to organize and operate voluntary chains of affiliated and cooperating, but independently owned, retail stores which favored their sponsoring stockholder, in purchasing the commodities sold by such stores at retail most of such stores being known as "U BE SEE Food Stores," and having a uniform store front appearance.

8. Arranged for sellers to pay it brokerage or commissions upon its stockholders' purchases, which said brokerage or commissions were expended and disbursed by UBC for the benefit of its stockholders in paying its operating expenses, furnishing its stockholders with various services, and making to them cash payments in substantial amounts.

All stockholders of UBC were entitled to all available UBC services without charge. The extent to which stockholders were furnished with the services of field men, however, and the amount of cash payments made by UBC to its stockholders, were directly related to and determined by the amount of UBC's income upon each respective stockholder's purchases through UBC. Prior to June 19, 1936, cash payments made by UBC to its stockholders were paid as patronage dividends declared by UBC's board of directors. No patronage dividends have been declared or paid by UBC from brokerage or commissions received by it upon purchases made by its stockholders since June 19, 1936, but cash payments to its stockholders have been made by it, though not as patronage dividends, from brokerage and commissions received upon purchases made by its stockholders in interstate commerce between June 19, 1936, and May 21, 1941.

PAR. 9. The quantity of business done by UBC on behalf of its stockholders was substantial, its purchases of commodities for them during its 1936 fiscal year amounting to more than \$4,250,000; during 1937 to more than \$4,900,000; and during 1938 to more than \$3,895,000. UBC's gross income from brokerage and commissions during these three years was approximately \$121,000, \$123,000, and \$104,000, respectively. A substantial amount of UBC's income was derived from brokerage paid to it upon purchases made by it for its stockholders in interstate commerce, and requiring the shipment of goods to be made by sellers to its stockholders across State lines.

Daily, UBC receives and executes a large number of orders on behalf of its stockholders, a typical transaction being handled as follows:

Having received from UBC a market letter, bulletin, or other quotation, respecting the availability of commodities, a stockholder will transmit to UBC for execution, an order therefor. This may be done by mail, or by telephone or telegram, the stockholder being privileged to reverse telephone and telegraph charges on his communications to UBC. UBC then places the stockholder's order with a seller, endeavoring to purchase the designated commodities for the stockholder, as his agent, at the lowest price obtainable. If the price offered by UBC is acceptable to the seller, the latter confirms the sale to UBC by notifying it of his acceptance of the order, and UBC in turn notifies the stockholder. The seller then ships and bills the commodities to the stockholder, from whom he receives payment therefor, and in due course pays UBC a brokerage or commission upon the sale. Occasionally such commodities, although shipped to the stockholder, are billed to and paid by UBC, which is reimbursed by the stockholder. Stockholders frequently request UBC to search the market in an effort to obtain and purchase commodities for them at stated prices, and UBC endeavors to comply with such requests. Pursuant to directions given by UBC to its stockholders, in an effort to increase its brokerage income, such stockholders frequently give or transmit orders to sellers direct, or, less frequently but in many instances, purchase commodities from sellers' brokers and insist that brokerage be paid to UBC by the sellers on such orders. In many cases sellers have complied with this insistence, and in some cases they have paid brokerage to UBC as well as to their own brokers on sales made through the latter to UBC stockholders. UBC records all purchases made by its stockholders through it, or upon which it is paid brokerage, and sends to its stockholders monthly an itemized statement of such purchases. This statement does not show UBC's earnings on its stockholders' purchases, but a record of such earnings with respect to each stockholder is made and kept by UBC.

PAR. 10. During the period between June 19, 1936, and May 21, 1941, in all transactions of purchase and sale to which a UBC stockholder was a party and in which UBC participated, UBC was the purchasing agent and representative of the stockholder, and acted in fact for and in behalf of, and under the direct control of such stockholder. UBC was not, in any such transactions, the agent or representative of any sellers from whom UBC stockholders purchased commodities, nor did it represent or act for or in behalf of, or under the control of any such sellers. All services rendered by UBC in such transactions were intended to be, and in fact were, rendered

to its stockholders, and UBC neither rendered nor intended to render to sellers any selling services, or any other services of any kind whatever; such benefits as sellers received from UBC's activities were merely incidental to the services rendered by UBC to its stockholders.

PAR. 11. With the exception of respondent Angelus Campfire Co., which has paid no brokerage or commissions to UBC, each seller respondent, and approximately 300 other sellers and manufacturers, transmitted and paid to UBC within the period from June 19, 1936, to May 21, 1941, and UBC accepted and received from them, brokerage fees and commissions in substantial amounts upon the sale within that period of commodities purchased in interstate commerce by UBC stockholders.

PAR. 12. Within the period from June 19, 1936, to May 21, 1941, each buyer respondent and every other stockholder of UBC made substantial purchases, through UBC, of commodities in interstate commerce upon which brokerage fees and commissions were paid to UBC by the sellers of such commodities, and in services or in money, UBC, within said period, transmitted or paid to each buyer respondent and UBC stockholder, and each buyer respondent and UBC stockholder accepted and received from UBC substantial amounts of such brokerage fees and commissions.

PAR. 13. On May 21, 1941, all the issued and outstanding capital stock in UBC then owned by the buyer respondents and other UBC stockholders was sold by them to James H. Black, W. W. Caldwell, S. E. Nordlund, H. W. Jones and T. N. Fulton, employees of UBC, who had not theretofore owned any of its capital stock. These employees now own absolutely and unconditionally all the issued and outstanding capital stock of UBC, and constitute its board of directors. Its officers are J. H. Black, president; W. W. Caldwell, vice president, and S. E. Nordlund, secretary-treasurer. No stockholder in UBC prior to May 21, 1941, and no person or firm engaged in the wholesale grocery business, now owns any stock or interest in UBC, or is an officer or member of the board of directors of UBC.

CONCLUSION •

The Commission concludes that UBC in the transactions set out was acting for and in behalf of its buyer-stockholders, and that:

(1) The payment of brokerage by the seller-respondent and other sellers to UBC upon its stockholders' purchases of commodities in interstate commerce subsequent to June, 1936.

(2) The receipt of such brokerage by UBC and the transmission thereof to its stockholders in services and in money.

(3) The receipt of such brokerage by the buyer-respondent and other UBC stockholders. constitute violations by the respondents of the provisions of section 2 (c) of the Clayton Act, approved October 15, 1914 (38 Stat., 730), as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U. S. C. sec. 13).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint, and the Commission having made its findings as to the facts and its conclusion that the respondents, with the exception of Angelus Campfire Co., have violated the provisions of section 2 (c) of the Clayton Act, approved October 15, 1914 (38 Stat. 730), as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U. S. C. sec. 13).

It is ordered, That respondent United Buyers Corporation, its officers, directors, agents, representatives and employees, do forthwith cease and desist from:

1. Directly or indirectly, in any manner or form whatever, accepting from sellers any brokerage or commission, or any allowance, discount or thing of value in lieu thereof, upon the purchase of commodities in interstate commerce, by itself, by any of its stockholders, or by any buyer for whom in fact, on whose behalf, or under whose direct or indirect control it acts.

2. Directly or indirectly, in any manner or form whatever, transmitting, passing or granting to buyers of commodities, any brokerage or commission, and any allowance, discount or thing of value, in lieu thereof, received on such buyers' purchases of commodities in interstate commerce.

It is further ordered, That respondents, H. P. Lau Co., Bluffton Grocery Co., Lima-Kenton Grocery Co., S. Zollinger Co., William Edwards Co., and Copps Co., and all other stockholders in United Buyers Corporation prior to May 21, 1941, their officers, directors, agents, representatives, and employees, do forthwith cease and desist from accepting from United Buyers Corporation, directly or indirectly, in any manner or form whatever, any brokerage or commission, and any allowance, discount or thing of value in lieu thereof, upon their purchases of commodities in interstate commerce.

It is further ordered, That respondents, Allison-Bedford Co., Blue Seal Products Co., Bordo Products Co., Champion Chemical Works,

Cupples Co., Dean Milk Co., and J. B. Inderrieden Co., their officers, directors, agents, representatives and employees, do forthwith cease and desist from paying or granting to United Buyers Corporation any brokerage or commission, and any allowance, discount or thing of value in lieu thereof, upon their sales of commodities in interstate commerce, except in transactions in which United Buyers Corporation renders to them a bona fide selling service as their selling agent or broker, and does not act for or on behalf of, or, under the direct or indirect control of, the purchasers in such transactions.

It is further ordered, That the complaint herein be, and hereby is, dismissed as to:

1. Respondent Arthur E. Koeniger.
2. Respondent Eli P. Gale.
3. Respondent Helen M. Driscoll.
4. Respondent Angelus Campfire Co.

Respondent, Arthur E. Koeniger, is deceased; respondents, Eli P. Gale and Helen M. Driscoll, have resigned their offices and positions with the United Buyers Corporation, and there is no indication that they are likely to resume their previous employment with it; and the record does not show that respondent, Angelus Campfire Co., a seller-respondent, has paid any brokerage or commissions to United Buyers Corporation.

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

IN THE MATTER OF

FERD T. HOPKINS, TRADING AS D. WATSON & COMPANY
AND AS COLONNADE ADVERTISING AGENCY.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4527. Complaint, June 30, 1941—Decision, Nov. 13, 1941*

Where an individual engaged in the interstate sale and distribution of "Dr. J. Lariviere's Vegetable Compound," by means of advertisements in newspapers and other advertising literature, directly and by implication—

Represented that his said product constituted a treatment for painful and irregular menstruation; use of which would strengthen the system and organs and build up physical resistance to restlessness, nervousness, cramps, headaches, fainting spells, and other distressing symptoms or ailments accompanying the menstruation period or which might be due to female "functional disorders"; and that restlessness, nervousness, and moody spells in young women are indicative of or symptoms of "dangerous periods" imperiling health;

The facts being that it did not constitute such a treatment and use thereof would not accomplish results as above claimed, and restlessness, nervousness, and moody spells in young women are not indicative of, nor symptoms of "dangerous periods" imperiling "health";

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of inducing it, because of such belief, to purchase his said preparation:

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

Mr. William L. Taggart for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Ferd T. Hopkins, an individual, trading as D. Watson & Co. and as Colonnade Advertising Agency, has 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, Ferd T. Hopkins, is an individual trading as D. Watson & Company and as Colonnade Advertising Agency, with his office and principal place of business at 430 Lafay-