

Syllabus

IN THE MATTER OF

THE WHOLESALE DRY GOODS INSTITUTE, INC., ITS
OFFICERS, DIRECTORS AND MEMBERSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3751. Complaint, Mar. 31, 1939—Decision, Nov. 24, 1941*

Where a corporate association of dry goods wholesalers representing 80 to 85 percent of the total volume of said business in the United States; most important activity of which had to do with the sales policies and practices of manufacturers as they affected the competitive position of its members, and "differential committee" of which, in its 1930 report referring to the "universal dissatisfaction of wholesalers with prevalent mill selling practices," recommended the adoption by any manufacturer of a selling policy which would not discriminate in favor of one type of retail outlet, to the detriment of another, and that where some of a manufacturer's retail outlets were supplied direct from his own warehouse and others were supplied indirectly through wholesalers, a system of wholesaler's price differentials be established so as to enable recognized distributors to sell the manufacturer's product on a parity with the price charged by him when dealing with retailers direct, and that each wholesaler, before placing an order, ascertain the selling policy of the manufacturer;

Emphasizing the advantage of acting together and the need for full support by every wholesaler and as a means of bringing about the desired changes in the sales policies of manufacturers—

- (a) Compiled and issued to its members its "Mill Selling Policy Reports," which rated each manufacturer upon the basis of his sales policy as it affected wholesalers, classifying as "A" a concern selling only through wholesalers as defined by it, as "A—" a concern selling regular products and/or patterns through wholesalers only, though making contract goods under buyers' specifications and labels for national chains and mail order houses, and so on down through "K,"—"X," and "No"; and, as a practice, advised each manufacturer of his assigned rating and that it would be assumed to be correct unless the Institute was advised to the contrary; and

Where, following the suspension of said selling policy reports during the life of the wholesale dry goods trade code under the National Industrial Recovery Act, and resumption thereof following abolishment of such code, said Institute and its members—

- (b) Supplemented said selling policy reports by the preparation and distribution to its members and to rated manufacturers of a directory entitled "Wholesalers of Dry Goods and Kindred Lines," in which it excluded from its definition of a wholesaler buying offices or syndicates representing retailers, their stock-carrying affiliates, chain store central offices or warehouses, drop shippers, brokers, commission merchants, selling agents, job lot dealers, and second-hand dealers;
- (c) Advised the reader in the introductory matter that "A" rating indicated that the manufacturer confined his distribution exclusively to wholesalers

"and therefore gives complete cooperation, while rating 'K' indicates that the manufacturer gives no cooperation to wholesalers at all," and quoted the Joint Committee for the Advancement of Manufacturer-Wholesaler Relations' suggestion to manufacturers that they confine their branded merchandise or patterns to regular distributors and protect their customers by keeping it out of chains, mail order houses, premium houses and syndicate buying groups, and use utmost care in selection of distributors;

- (d) Listed wholesaler-members in heavy type, followed by names of officials and full statement of lines of merchandise distributed, all enclosed in a box, while listing wholesalers but nonmembers by firm name only in ordinary type, with abbreviations indicating the lines of merchandise handled; thus clearly distinguishing members from others and supplying more detailed information with respect to the former;

With intent and effect of creating a preferred class of buyers of those listed in said directory and of informing manufacturers of buyers to whom they might sell without incurring the disfavor of the Institute and its members and, conversely, that sales to any wholesaler not thus listed might result in their being given an unfavorable classification by the Institute, so preventing or tending to prevent their making sales to Institute members;

- (e) Made its own definition of a wholesaler—gauged by which there were many concerns in the United States in active competition with wholesalers listed in said directory which were not eligible for membership or listing, though selling to retailers buying for resale—the measure for determining whether concerns applying for membership or for listing in such directory should have their applications granted; and
- (f) Made it a practice, upon application for membership or listing, to secure information as to applicant's operations from commercial agencies and from Institute members or others listed in aforesaid directory who were in competition with the applicant, and in numerous instances refused membership or listing to concerns listed as wholesalers by commercial agencies such as Dun & Bradstreet, but operations of which did not conform to its said definition; and

Where said Institute, recognizing that the coercive effect of said mill selling policy reports in determining manufacturers' sales policies would be increased in proportion as the members refused to purchase from those classified as non-cooperative—and its officers, committees and membership—

- (g) Exerted collective pressure upon members to buy only from manufacturers classified as having satisfactory sales policies, through urging, at meetings, that such ratings be regularly used for the intended purpose, among other things, advocating that manufacturers be made "rating conscious," that instances where ratings failed correctly to describe a manufacturer's sales method be promptly reported to the Institute, that all orders be checked against ratings to insure most advantageous placing of business, and that "an occasional pat on the back" be given to earnestly cooperating and favored manufacturers, and through exercising pressure upon individual members; and, as respects most of the members, did confine their purchases, so far as practicable, to manufacturers rated as having favorable sales policies; and

Where said Institute—

- (h) Made it a practice and policy to encourage its members to report to it any instance where a manufacturer made a sale which appeared to be contrary

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to his assigned rating, and in such instance communicated with the manufacturer, making no change in his rating if it appeared that questioned sales were inadvertent and would be discontinued, but, in event no satisfactory adjustment was reached, changing the rating to conform to the new information and advising its members thereof;

Effect of which plan was to coerce manufacturers in the selection of their customers, both in individual instances and as a matter of general sales policy, as evidenced by revision upward in most cases of manufacturer ratings and refusal of manufacturers to accept or continue as customers concerns buying for resale to retailers but not listed in said directory, and, where sales were not actually prevented, as was frequent, that manufacturer's price was increased above that granted by the manufacturer to concerns listed in the directory, through refusal to grant customary wholesaler's discount:

Capacity, tendency, and effect of which understandings, acts, and practices were to coerce and restrict manufacturers of dry goods, notions, and allied lines in the selection of customers; to prevent dealers including competitors of Institute members from purchasing their supplies of such goods from manufacturers; to prevent dealers competitive with said members and dealers selling at retail from buying at prices as favorable as those granted to members and others listed in said directory thereby increasing the prices to them and to the consuming public; to place in the hands of the Institute, its officers and members, control over the business practices of manufacturers and distributors of such products and the power so to harass and restrain the operations of those not conforming to their wishes as substantially to exclude them from the industry; and to hinder and prevent competition in the sale and distribution of dry goods, notions and allied lines of merchandise:

Held, That aforesaid understandings, agreements, combination and conspiracy, and the acts and practices performed thereunder or in connection therewith, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Charles F. Diggs* and *Mr. John L. Hornor*, trial examiners.

Mr. Reuben J. Martin for the Commission.

Mr. Karl Michelet and *Mr. Simon Michelet*, of Washington, D. C., and *Mr. Leland K. Neeves*, of Chicago, Ill., for The Wholesale Dry Goods Institute, Inc., its officers, directors and various members.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Wholesale Dry Goods Institute, Inc., its officers, directors and members, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in

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respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Wholesale Dry Goods Institute, Inc., is an association of members, organized and existing as a corporation under the laws of the State of New York, with its principal office and place of business located at 40 Worth Street, in the city of New York in said State. The membership of said respondent, The Wholesale Dry Goods Institute, Inc., is composed of approximately 135 individuals, partners, and corporations, who are located in the various States of the United States, but principally in the eastern part thereof, and who are engaged in the wholesale distribution of dry goods, notions and kindred lines of merchandise in interstate commerce.

Said respondent, The Wholesale Dry Goods Institute, Inc., was organized for the ostensible purpose of improving trade practices within the wholesale field, furthering better trade relations between wholesalers and other elements of the textile industry, studying and adapting wholesale merchandising methods to new economic conditions, developing practical aid for retail customers and analyzing operating costs and proper allocation of sales effort.

The names and addresses of the officers of said respondent, The Wholesale Dry Goods Institute, Inc., who individually and as such officers of said respondent, are named as respondents herein, are: Henry S. Sommers, president, c/o G. Sommers & Co., St. Paul, Minn.; Henry Matter, executive secretary, 40 Worth Street, New York, N. Y.; and Jarrett H. Buys, treasurer, 40 Worth Street, New York, N. Y.

The names and addresses of the directors of said respondent, The Wholesale Dry Goods Institute, Inc., who, individually, and as such directors of said respondent, are named as respondents herein, are: Henry S. Sommers, representing G. Sommers & Co., St. Paul, Minn.; Fred M. Morris, representing Guthrie-Morris-Campbell Co., Charleston, W. Va.; Robert M. Adair, representing The Jones Witter & Co., Columbus, Ohio; Frederick Quellmalz, representing Butler Brothers, Chicago, Ill.; E. B. Sydnor, representing Richmond Dry Goods Co., Inc., Richmond, Va.; Charles S. Hyde, representing Neal & Hyde, Inc., Syracuse, N. Y.; J. Geo. Kahl, representing Arbuthnot-Stephenson Co., Pittsburgh, Pa.; C. C. Reed, representing William & Reed, Inc., Richmond, Va.; L. C. Wilson, representing Goodall-Brown Dry Goods Co., Birmingham, Ala.; Reagan Houston, representing A. B. Frank & Co., San Antonio, Tex.; J. Russell Fitts, representing Fitts-Smith Dry Goods Co., Kansas City, Mo.; Charles Schneider, representing Schneider-Battinus & Simon, Chicago, Ill.; Earl Partridge,

representing Earl Partridge Co., Minneapolis, Minn.; W. W. Grether, representing Grether & Grether, Inc., Los Angeles, Calif.; Archie Goldsmith, representing Archie Goldsmith & Brother, Portland, Oreg.; Marx D. Slonim, representing S. Blechman & Sons, Inc., 520 Broadway, New York, N. Y.; and Henry Matter, 40 Worth Street, New York, N. Y.

The membership of said respondent, The Wholesale Dry Goods Institute, Inc., constitutes a class so numerous and changing as to make it impracticable to specifically name them all as parties respondent herein. The following concerns, among others, are members of said respondent, The Wholesale Dry Goods Institute, Inc., are fairly representative of the whole membership, and are named as respondents herein in their individual capacities, in their capacities as members of said respondent, The Wholesale Dry Goods Institute, Inc., and as representatives of all members of said respondent, The Wholesale Dry Goods Institute, Inc., as a class, including those not herein specifically named who are also made respondents herein: W. W. Couch Co., Inc., Lynchburg, Va.; Harris, Davis & Co., Inc., Nashville, Tenn.; E & M Hirschler Co., Inc., Norfolk, Va.; Neal & Hyde, Inc., Syracuse, N. Y.; Reed Bros., Inc., Tupelo, Miss.; J. S. Reeves & Co., Inc., Nashville, Tenn.; Schwartz Brothers & Co., Inc., New Orleans, La.; Smith, Gormly Co., Inc., Rochester, N. Y.; Smith, Taylor Co., Inc., Richmond, Va.; F. B. Thomas & Co., Inc., Roanoke, Va.; N. J. Thompson & Co., Inc., Elmira, N. Y.; Whichard Bros. Co., Inc., Norfolk, Va.; and Williams & Reed, Inc., Richmond, Va.

PAR. 2. The aforesaid members of said respondent, The Wholesale Dry Goods Institute, Inc., consisting of approximately 135 individuals, copartnerships, and corporations, are located in various States of the United States. Most of said members are engaged in the business of selling and distributing at wholesale, dry goods, notions and kindred lines of merchandise to retail dealers located in States other than the State in which said respective members are located, causing said products when so sold to be transported from their respective places of business to the purchasers thereof, and there has been, and now is, a course of interstate trade and commerce in said products between the members of said respondents, The Wholesale Dry Goods Institute, Inc., and retail dealers in said products located throughout the several States of the United States.

Said respondent members of said respondent, The Wholesale Dry Goods Institute, Inc., are now, and have been during all of the times mentioned herein, in free, active and substantial competition with other members of the industry in making, and seeking to make, sales of their said products in said commerce, and prior to the adoption of the

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practices hereinafter alleged these respondent members were in free, active, and substantial competition with each other in making, and seeking to make, sales of their said products in said commerce, and but for the facts hereinafter alleged such free, active, and substantial competition would have continued and said respondent members would now be in free, active and substantial competition with each other.

PAR. 3. Respondent members of said respondent, The Wholesale Dry Goods Institute, Inc., acting in cooperation with each other and through and in cooperation with said respondent, The Wholesale Dry Goods Institute, Inc., and its officers and directors, and each of them, during the period of time, to wit, from April 1928, to the date of this complaint, have entered into an understanding, agreement, combination, and conspiracy among themselves and with and through said respondent, The Wholesale Dry Goods Institute, Inc., its officers and directors, to hinder and suppress competition in the interstate sale and distribution of dry goods, notions and kindred lines of merchandise to retailers; to restrain interstate trade in said dry goods, notions and kindred lines of merchandise; to hinder and suppress competition between and among manufacturers of said dry goods, notions, and kindred lines of merchandise in the interstate sale and distribution of their said products to retailers; and to create a monopoly in the interstate sale and distribution of said dry goods, notions, and kindred lines of merchandise in the said members of said respondent, The Wholesale Dry Goods Institute, Inc. Pursuant to said understanding, agreement, combination, and conspiracy and in furtherance thereof, the respondents have acted in concert and in cooperation with each other in doing the following acts and things:

(a) The respondent, The Wholesale Dry Goods Institute, Inc., has prepared and distributed a directory containing the names of approximately 1,400 individuals, copartners, and corporations, which said respondent considers meet with the definition of a wholesaler as defined by said respondent, The Wholesale Dry Goods Institute, Inc. Members of said respondent, The Wholesale Dry Goods Institute, Inc., listed therein are designated by a star opposite their respective names.

(b) Said respondent, The Wholesale Dry Goods Institute, Inc., from time to time has compiled, and compiles, a list of manufacturers of dry goods, notions, and kindred lines of merchandise in which said list or compilation all of the manufacturers are classified or graded according to their respective sales policies. The highest grade or classification is grade A, and in this classification are placed those manufacturers who confine their sales to wholesalers. The lowest classification is group K, and in this classification are placed those

manufacturers who sell not only to wholesalers but chain stores, syndicates, and retail stores without maintaining any differential in price. Said list of manufacturers is distributed by said respondent, The Wholesale Dry Goods Institute, Inc., among its said members. Said list is from time to time revised and the manufacturers listed therein reclassified according to their current selling policies, and the members of said respondent, The Wholesale Dry Goods Institute, Inc., are so notified.

(c) Said respondent, The Wholesale Dry Goods Institute, Inc., has coerced and compelled, and now coerces and compels, manufacturers of dry goods, notions, and kindred lines of merchandise to confine sales of their respective products to those persons, copartners, and corporations who are members of said respondent, The Wholesale Dry Goods Institute, Inc., or who conform to the definition of "wholesalers" as defined by said respondent. The Wholesale Dry Goods Institute, Inc., under penalty (for failure so to do) of reclassifying such manufacturers and placing them in a lower classification in its list of manufacturers and of notifying its members of said reclassification.

(d) Said respondent, The Wholesale Dry Goods Institute, Inc., has coerced and compelled, and now coerces and compels, its said members to refrain from purchasing their respective requirements of dry goods, notions, and kindred lines of merchandise from those manufacturers who do not so confine their sales to wholesalers as defined by said respondent, The Wholesale Dry Goods Institute, Inc.

PAR. 4. The results of said understanding, agreement, combination, and conspiracy, and the acts and things done thereunder and pursuant thereto by said respondents, as hereinbefore set forth, have been and now are: (a) To prevent and hinder manufacturers of dry goods, notions and kindred lines of merchandise from selling their products in interstate commerce to dealers therein who, but for the existence of said understanding, agreement, combination, and conspiracy would purchase said products; (b) to prevent retail dealers in dry goods, notions, and kindred lines of merchandise from purchasing their requirements of said products in interstate commerce from the manufacturers thereof; (c) to force many dealers to discontinue the sale of said products because of their inability to maintain a supply thereof at reasonable prices; (d) to substantially increase the price of dry goods, notions, and kindred lines of merchandise to the manufacturers, retail dealers, and to the consuming public; and (e) to place in the hands of the respondent, The Wholesale Dry Goods Institute, Inc., control over the business practices of the manufacturers and distributors of dry goods, notions, and kindred lines of merchandise and the

power to exclude from the industry those manufacturers and distributors who do not conform to the rules, regulations, and definitions established by said respondent, The Wholesale Dry Goods Institute, Inc., and thus tend to create a monopoly in the said respondent members of The Wholesale Dry Goods Institute, Inc.

PAR. 5. The acts and practices of the said respondents, as herein alleged, are all to the prejudice of competitors of said respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of dry goods, notions and kindred lines of merchandise in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in dry goods, notions, and kindred lines of merchandise, 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 March 31, 1939, issued and subsequently served its complaint upon respondent The Wholesale Dry Goods Institute, Inc., a corporation; upon its officers and directors, individually and as such officers and directors of said Institute; and upon certain members of said Institute, individually and as representatives of all members of the Institute, as a class, charging them with unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answers by certain of the 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 respondents before examiners 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, renewed motion to reverse the rulings of the trial examiners on evidence and supplement to said motion, 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, The Wholesale Dry Goods Institute, Inc., was organized in 1928 as a merger of the Southern Wholesale Association and the National Wholesale Association. It is a membership corporation, incorporated and existing under and by virtue of the laws of the State of New York, having its principal place of business at 40 Worth Street, New York, N. Y. Respondent members of The Wholesale Dry Goods Institute, Inc., are individuals, partnerships, and corporations located in various States of the United States and engaged in the sale and distribution at wholesale of dry goods, notions, and allied lines of merchandise.

Respondent officers of The Wholesale Dry Goods Institute, Inc., are Robert M. Adair, of Jones, Witter & Co., Columbus, Ohio, president, successor to Henry S. Sommers, alleged in the complaint in this proceeding to be president of said Institute; Henry Matter, executive secretary, 40 Worth Street, New York, N. Y.; and Jarrett H. Buys, treasurer, 40 Worth Street, New York, N. Y.

Respondent directors of The Wholesale Dry Goods Institute, Inc., are Henry S. Sommers, representing G. Sommers & Co., St. Paul, Minn.; Robert M. Adair, representing Jones, Witter & Co., Columbus, Ohio; Frederick Quellmalz, representing Butler Brothers, Chicago, Ill.; Charles S. Hyde, representing Neal & Hyle, Inc., Syracuse, N. Y.; J. George Kahl, representing Arbuthnot-Stephenson Co., Pittsburgh, Pa.; L. C. Wilson, representing Goodall-Brown Dry Goods Co., Birmingham, Ala.; Charles Schneider, representing Schneider-Battinus & Simon, Chicago, Ill.; Earl Partridge, representing Earl Partridge Co., Minneapolis, Minn.; W. W. Grether, representing Grether & Grether, Inc., Los Angeles, Calif.; Archie Goldsmith, representing Archie Goldsmith & Brother, Portland, Oreg.; Marx D. Slonim, representing S. Blechman & Sons, Inc., 520 Broadway, New York, N. Y.; Sam K. Harwell, Jr., representing Neely, Harwell & Co., Nashville, Tenn.; R. M. Woodson, representing Quinn-Marshall Co., Lynchburg, Va.; Robert K. Howse, representing The Johnston & Larimer Dry Goods Co., Wichita, Kans.; C. W. Dwight, representing Schramm & Schmieg, Burlington, Iowa; Sydney J. Markovitz, representing Markovitz Brothers, Philadelphia, Pa.; and Henry Matter, 40 Worth Street, New York, N. Y. Respondents Fred M. Morris, E. B. Sydnor, C. C. Reed, Reagan Houston, and J. Russell Fitts, named in the complaint as directors, were not directors at the time the complaint was issued.

Respondent members of The Wholesale Dry Goods Institute, Inc., are: Ades-Lexington Dry Goods Co., 249 East Main Street, Lexing-

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ton, Ky.; Alms & Doepke Co., Central Parkway, Cincinnati, Ohio; S. W. Anderson Co., Inc., 122 East Main Street, Owensboro, Ky.; Arbuthnot-Stephenson Co., 801 Penn Avenue, Pittsburgh, Pa.; Arkansas Dry Goods Co., 137 West Main Street, Batesville, Ark.; Askin Brothers Co., 13 South Hanover Street, Baltimore, Md.; Aycock, Robinson, Purcell Co., 149 Pryor Street, South West, Atlanta, Ga.; Baker, Hanna & Blake Co., 212 W. Second Street, Oklahoma City, Okla.; The J. T. Barlow Co., 543 East Third Street, Dayton, Ohio; Adam H. Bartel Co., 911 North East Street, Richmond, Ind.; The Bentley Gray Dry Goods Co., 916 Twiggs Street, Tampa, Fla.; Berry Dry Goods Co., 218 Garrison Avenue, Fort Smith, Ark.; Bittner-Hunsicker Co., 23 North Seventh Street, Allentown, Pa.; Black & Grant Co., South Fifth Street, Zanesville, Ohio; S. Blechman & Sons, Inc., 549-555 Broadway, New York, N. Y.; Boise Wholesale Dry Goods Co., 711 Idaho Street, Boise, Idaho; W. H. Bosserman & Son, 124 East Picadilly Street, Winchester, Va.; Butler Brothers, 426 West Randolph Street, Chicago, Ill.; Carson Pirie Scott & Co., 366 West Adams Street, Chicago, Ill.; Carter Dry Goods Co., 727 West Main Street, Louisville, Ky.; Cash Wholesale Co., 304 Rock Street, Little Rock, Ark.; Central Alabama Dry Goods Co., 1006 Alabama Avenue, Selma, Ala.; J. H. Churchwell Co., 301 East Bay Street, Jacksonville, Fla.; Chapman Hosiery Co., Forsyth, Ga.

Deaver Dry Goods Co., 200 Commerce Street, Knoxville, Tenn.; James H. Dunham & Co., 345 Broadway, New York, N. Y.; Durham Notion Co., 1131½ East Parrish Street, Durham, N. C.; Gus Edelstein Bro. & Co., 284 Fifth Avenue, New York, N. Y.; Edson, Moore & Co., 1702 West Fort Street, Detroit, Mich.; W. S. Emerson Co., Inc., 192 Exchange Street, Bangor, Maine; Farley Harvey Co., 115 Kingston Street, Boston, Mass.; Fear & Sons, 412 Jackson Street, Fairmont, W. Va.; S. Fein Brothers Co., 428 North Water Street, Milwaukee, Wis.; Archie Goldsmith & Bro., 20 North West Fifth Avenue, Portland, Oreg.; Goodall-Brown Dry Goods Co., 2200 First Avenue, Birmingham, Ala.; Grether & Grether, Inc., 728 South Los Angeles Street, Los Angeles, Calif.; H. J. Grossman, 143 North Oaks Street, Mt. Carmel, Pa.; Guthrie-Morris-Campbell Co., 812 Virginia Street, Charleston, W. Va.; Guy, Curran & Co., Inc., 313 Ninth Street, N. W., Washington, D. C.; Hannah Bros., Inc., 112 Tipton Street, Johnson City, Tenn.; Helena Wholesale Dry Goods Co., 210 Walnut Street, Helena, Ark.; Hess-Mallory Co., Third and Wall Avenue, Sioux City, Iowa; John H. Hibben Dry Goods Co., Seventh and Walnut Streets, Cincinnati, Ohio; Hibben Hollweg & Co., 110 South Meridian Street, Indianapolis, Ind.; Higginbotham-Bailey-Logan Co., Jackson and Lamar Streets, Dallas, Tex.; Hile & Thompson, Inc.,

216 West Fourth Street, Clearfield, Pa.; Horn & Co., 209 North Sixth Street, Allentown, Pa.; Isbell-Kent-Oakes Dry Goods Co., 18-8 Lawrence Street, Denver, Colo.; Janney Dry Goods & Notion Co., Fredericksburg, Va.; Jaubert Brothers, Inc., 200 Magazine Street, New Orleans, La.; The Johnston & Larimer Dry Goods Co., 619 East Douglas Street, Wichita, Kans.; The Jones, Witter & Co., 45 West Spring Street, Columbus, Ohio; Ketchum & Bush, South 152 Lincoln Street, Spokane, Wash.; E. W. King Co., Shelby and Seventh Streets, Bristol, Tenn.; Wm. B. Kohlman, 204 Decatur Street, New Orleans, La.

Leff Brothers Dry Goods & Notions Co., 1711 Preston Avenue, Houston, Tex.; Long, Libby & Hanson Co., 161 Middle Street, Portland, Maine; Markovitz Brothers, 321 Market Street, Philadelphia, Pa.; McConnell-Kerr Co., 350 East Jefferson Avenue, Detroit, Mich.; H. Mendel Co., Inc., 185 Pryor Street, Southwest, Atlanta, Ga.; Miller Brothers Co., 115 Fourth Avenue, Southwest, Portland, Oreg.; Miller Brothers Co., Seventh and Market Streets, Chattanooga, Tenn.; Daniel Miller Co., 30 Hopkins Place, Baltimore, Md.; Myers Dry Goods Co., 100 West Main Street, Morristown, Tenn.; John S. Naylor Co., 1401 West Main Street, Wheeling, W. Va.; Neal & Hyde, Inc., 320 South Clinton Street, Syracuse, N. Y.; Neely, Harwell & Co., 324 Public Square, Nashville, Tenn.; Earl Partridge Co., 400 First Avenue North, Minneapolis, Minn.; Patrick-Lawson Hunter Co., 163 West Second South Street, Salt Lake City, Utah; Perkins Dry Goods Co., 708 Jackson Street, Dallas, Tex.; Pincus & Jarett Dry Goods Co., 213 Milam Street, Houston, Tex.; Puget Sound Mdse. Co., 1001 Lenora Street, Seattle, Wash.; Quinn-Marshall Co., 910 Commerce Street, Lynchburg, Va.; Rice Stix Dry Goods Co., 1000 Washington Avenue, St. Louis, Mo.; Richmond Dry Goods Co., 11 South Seventh Street, Richmond, Va.; W. S. Riddle Notion Co., 338 Public Square, Nashville, Tenn.; The J. C. Ridnour Co., 809 P Street, Lincoln, Nebr.; The Root & McBride Co., 1250 West Sixth Street, Cleveland, Ohio; Rubel Dry Goods Co., Third Avenue and Jefferson St., Paducah, Ky.; J. Rubin & Son Co., Inc., 1004 Gervais Street, Columbia, S. C.; M. R. Sanders & Sons, Inc., 133 West Fourth Street, Cincinnati, Ohio; Sawyer Barker Co., 120 Centre Street, Portland, Maine.

Schenectady Knit Goods House, 138 State Street, Schenectady, N. Y.; Schneider-Battinus & Simon Co., 323 West Adams Street, Chicago, Ill.; Schramm & Schmieg Co., 201 North Third Street, Burlington, Iowa; J. W. Scott & Co., 113 West Washington Street, Greensboro, N. C.; J. H. Semel & Co., 514 Broadway, New York, N. Y.; Nathan Sinkin, 210 West Commerce Street, San Antonio, Tex.; Sam Shainberg Dry Goods Co., 285 Union Avenue, Memphis,

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Tenn.; W. L. Smith Co., Inc., 915 Virginia Street, Charleston, W. Va.; Smith Gormly Co., Inc., 180 St. Paul Street, Rochester, N. Y.; Solomon Brothers Co., Inc., 135 Commerce Street, Montgomery, Ala.; S. & B. Solomon Co., 102 Market Street, Wilmington, N. C.; G. Sommers & Co., Sixth and Wacouta Streets, St. Paul, Minn.; Stein Wholesale Dry Goods Co., 418 Garrison Avenue, Fort Smith, Ark.; M. Steinberg & Son, Inc., 163 Mercer Street, New York, N. Y.; Steiner-Lobman Dry Goods Co., 136 Commerce Street, Montgomery, Ala.; Strauss Brothers, Inc., 109 Hopkins Place, Baltimore, Md.; Levi Strauss & Co., 98 Battery Street, San Francisco, Calif.; Suskin & Berry, Inc., 188 West Main Street, Washington, N. C.; Taylor Symonds Co., 18 Pine Street, Providence, R. I.; Thomas Field & Co., 902 Virginia Street, Charleston, W. Va.; N. J. Thompson & Co., 176 State Street, Elmira, N. Y.; Tinkham Bros., Inc., 201 Cherry Street, Jamestown, N. Y.; Titlow-Schuler Co., 125 South Fifth Street, Reading, Pa.; Triple Quality Hosiery Co., 200 Madison Avenue, New York, N. Y.; W. E. Truesdell, 33 Lyman Street, Springfield, Mass.; Turner Furnishing Goods Co., 201 East Water Street, Springfield, Mo.; Wichard Brothers Co., Inc., 108 Randolph Street, Norfolk, Va.; Whittington Dry Goods Co., 209 Fulton Street, Greenwood, Miss.; Williams & Reed, Inc., 1413 East Franklin Street, Richmond, Va.; Williams-Richardson Co., Ltd., 202 Magazine Street, New Orleans, La.; Williams & Shelton Co., 420 South Tryon Street, Charlotte, N. C.; Zion's Cooperative Mercantile Institution, 13-31 South Main Street, Salt Lake City, Utah; and H. Zussman & Son Co., 314 West Third Street, Cincinnati, Ohio.

Respondents Reed Brothers, Inc., A. B. Frank Co., and Fitts-Smith Dry Goods Co., although not now members of The Wholesale Dry Goods Institute, Inc., were members of and active in such Institute during much of the time mentioned in the complaint herein.

Respondents W. W. Couch Co., Inc., Harris, Davis & Co., Inc., Schwartz Brothers & Co., Inc., and F. B. Thomas & Co., Inc., were not members of The Wholesale Dry Goods Institute, Inc., in 1939 or in 1935. E. & M. Hirschler Co., Inc., and Smith, Taylor Co., Inc., named as respondents, have been out of business for a number of years. Respondent J. S. Reeves & Co., Inc., has not been a member of said Institute since 1932.

The volume of business done by respondent members of The Wholesale Dry Goods Institute, Inc., represents 80 to 85 percent of the total volume of wholesaling done by general dry goods wholesalers and such membership constitutes a substantial, important, and influential

part of the entire business of distributing dry goods, notions, and allied lines of merchandise to retailers in the United States.

PAR. 2. Most of the respondent members of said Institute are engaged in the sale and shipment of merchandise from their places of business to customers located in States of the United States other than the State in which their own business is located. In addition, many of the respondent members cause shipments to be made directly from manufacturers from whom they purchase to their customers located in States of the United States other than the State of origin of such shipments. There has been, and is now, a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act, in said merchandise between respondent members and retail dealers.

PAR. 3. The most important activity of The Wholesale Dry Goods Institute, Inc., and its members from the time of its organization to the present has to do with the sales policies and practices of manufacturers as they affect the competitive position of members of the Institute. This was manifested in the creation by the Institute of a "differential committee" which reported to the Institute in January 1930. In its report this committee referred to the "universal dissatisfaction of wholesalers with prevalent mill selling practices" and the "imperative need for clearing up the reasons for this discontent," and stated that the acuteness of the situation is reflected by correspondence with wholesale houses much of which shows a bitterness "which for the welfare of the industry should be eliminated." It stated in part:-

For example, one of the leading southwestern distributors writes:

The matter of mill selling policies and differentials for wholesalers must be settled in a definite way very soon. The manufacturer should finally, for all time, decide to sell his product either direct or through the wholesaler—one or the other. I cannot conceive how any factory can expect to get a full distribution of its product unless it uses the great distributing avenue, which is the wholesaler. Manufacturers must sooner or later realize that their best friend and greatest source of profit can be made through the wholesaler better than any other way, and it does seem to me that there is every reason why these two great branches of distribution should get together and cooperate in what is best for both.

A wholesaler in the Middle West expresses himself in this vein:

It is certainly both murder and suicide—murder to the wholesaler and suicide for the mills, to continue the present practice of filling up the legitimate, well-functioning wholesalers, and then supplying, willy nilly, merchandise bootleggers all over America.

We have no quarrel at all with the mill or manufacturer who chooses to set up his own distributing machinery, but we are firmly of the opinion that wholesale dry goods distributors should give positive preference to the mills who announce an intention to work with wholesalers as long as wholesalers work with them.

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Another distributor, whose operations are more general, writes thus:

Labor agitators talk a lot about "class consciousness." That's what we wholesalers should learn.

Our worst competition is not from other wholesalers. It is coming direct from the mills.

We wholesalers are fools if we keep on buying from mills that expect us to distribute their products—then turn right around and attempt to sell the same goods to our customers.

I, for one, am ready to stand on one side or the other of the line and ask or dare the mills to do the same thing. We people have got to choose sides, and I am ready to choose my side right now.

The differential committee recommended as a means of eliminating the practices which were considered harmful to the membership of the Institute:

1. That each manufacturer, having the legal right to "choose his customers," do so, and after having chosen the outlets through which he hopes to effect the distribution of his product, then shape his selling policy so as to place these outlets on a parity in their competition with each other.

2. That any manufacturer who chooses to distribute through more than one type of retail outlet, clearly define the types of outlets through which he proposes to work for his distribution, and then adopt a selling policy which will not discriminate in favor of one type and to the detriment of another type.

3. That where some of a manufacturer's retail outlets are supplied direct from his own warehouse, and others are supplied indirectly through wholesalers, that a system of wholesalers' price differentials be established based on the known costs of selling and distribution, which will enable recognized distributors to sell the manufacturer's product on a parity with the price charged by the manufacturer when dealing with retailers direct.

4. That each manufacturer set up the conditions under which his differentials will be allowed and that these conditions be made publicly known to his industry.

5. That in order to avoid confusion in the minds of retailers, manufacturers publish list prices instead of net prices to wholesalers, and that wholesalers' differentials be allowed from said list prices.

6. That in order to aid each individual retailer in the preservation of his individuality, through individualizing the products he distributes, each wholesaler, in handling branded goods, endeavor to avoid selling to his independent retail customers the identical brands sold in his trade territory by chain or syndicate stores.

7. That each wholesaler, before placing an order for any product, ascertain the selling policy of the manufacturer in order to predetermine whether or not such policy discriminates against any type of retail outlet through which that manufacturer proposes to distribute his product.

The intent and plan of the institute and its members are further indicated by the following extracts from statements published and distributed from time to time setting forth such purposes and the benefits to be derived therefrom by members:

It is widely recognized that nowhere in business is there a greater need for the solution of distribution difficulties than in the textile field. It is recog-

nized also that, essentially, this need arises out of a far-reaching maladjustment of production and consumption.

Production consistently outstrips consumption. Distribution, standing between and serving both producers and consumers, has been seriously disturbed, and we are confronted by a huge distributive problem which seems too complex to be solved by any single group, certainly too complex to be solved permanently by any single producer or distributor.

For some years, this chronic lack of adjustment between production and consumption has affected wholesalers. Undoubtedly, it is one of the most pervasive forces underlying the spontaneous and almost inevitable movement to organize the wholesale dry goods trade on a national scale. New stresses imposed upon distributors, particularly in the past decade, have created new problems. These have become universal and they are now to receive the constructive attention of an inclusive national organization.

* * * * *

At the beginning of its program, the Wholesale Dry Goods Institute has for its immediate objects:

Improvement of trade practices within the wholesale field.

Better trade relations between wholesalers and other elements of the textile industry.

Study of wholesale merchandising methods and adaptation to new economic conditions.

Development of practical aid for retail customers.

Analysis of operating costs and proper allocation of sales effort.

This is a bare statement of the activities, all or each of which may involve fairly long programs. In every instance, the goal is a stabilization of wholesale trade conditions generally and the creation of more profitable business for each wholesaler who is a member of the institute.

In another publication, respondent The Wholesale Dry Goods Institute, Inc., explained its advantages to its members in part, as follows:

The program of the institute warrants the full support of every wholesaler of dry goods and kindred lines. To obtain the best results, the cooperation of every wholesaler is essential. This means specialty as well as general wholesalers. Whether a wholesaler deals in a general line, or specializes in a few, is unimportant. What is important is that the trade be banded together solidly in a single organization for a common purpose.

In addition to a few of the benefits described, membership in the institute offers:

1. For a nominal membership fee, a wholesaler enjoys the benefit of an organization costing thousands of dollars a year to operate.

2. As a member, a wholesaler has the benefit of the judgment and counsel, of the board of directors—comprised of outstanding men in the wholesale trade—serving without compensation of any kind but, in fact, paying dues on the same basis as all members.

3. An individual member of the institute has the support of all members, as a group. It must be recognized that a stand taken, or a principle established by the institute (representing the trade) carries weight; whereas a position taken by an individual house may be disregarded.

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4. Each member receives the benefit of the services of the special committees, comprised of the best men in the trade, who donate their time and efforts to the interest of wholesaling.

PAR. 4. As a means of bringing about the changes in the sales policies of manufacturers desired by The Wholesale Dry Goods Institute, Inc., and its members in order to improve their competitive position, the institute began in 1930 to compile and issue to its members reports on the selling policies of manufacturers of dry goods, notions, and allied lines who sell in whole or in part to wholesalers. These reports are frequently referred to as "Mill Selling Policy Reports" and classify or rate each manufacturer listed upon the basis of his sales policy as it affects wholesalers. The information upon which such classification or rating is made is ordinarily secured through a questionnaire sent to manufacturers. It is stated in these questionnaires that "The information here requested regarding your selling policy will not be published, but will be held in strict confidence and will be used only as a basis for the institute's reports to members on mill selling policies." The questionnaire includes the following questions:

1. Are your goods offered or sold to wholesalers? (If answer is "No," it will not be necessary to reply to subsequent questions.)

2. *Chain Stores.*

Are your goods offered to chain stores?

If so, are sales limited to national chains?

If sales to chain stores are not limited to "national chains," on what basis are they sold, in comparison to prices charged to wholesalers?

Are sales to chains confined to special contract goods, made under the buyer's specifications and labels, or do you sell them your regular standard products the same as are sold to wholesalers?

Do you have any objection to supplying to the Wholesale Dry Goods Institute the names of the chain stores to whom you propose to sell?

3. *Retail Stores.*

Will your goods be offered to retail stores?

Are they limited to stores of the metropolitan type?

If so, will there be any limitation upon the list of retail stores you will sell?

If your list of retail stores is to be limited, approximately how many retail stores will be included in your list?

Do you have any objection to supplying to the Wholesale Dry Goods Institute the names of the retail stores to whom you propose to sell direct?

On what basis will such retail stores be sold?

At prices approximately the same as to wholesalers?

On a higher basis than wholesalers?

If sold on a higher basis, what will be the approximate amount of the wholesaler's price differential?

4. *Resident Buying Offices.*

Will your goods be offered to resident buying offices representing retail stores, or to the stock-carrying affiliates of resident buying offices?

If so, will there be any limitation upon the list of resident buying offices you will sell?

If your list of resident buying offices is to be limited, approximately how many resident buying offices will be included in your list?

Do you have any objection to supplying to the Wholesale Dry Goods Institute the names of the resident buying offices to whom you propose to sell direct?

On what basis will such resident buying offices be sold?

At prices approximately the same as to wholesalers?

On a higher basis than to wholesalers?

If sold on a higher basis, what will be the approximate amount of the wholesaler's price differential?

5. *Method of Selling.*

State whether sales are made through your own selling organization or through mill agents, commission merchants, or otherwise.

If you sell to or through agents or commission merchants please list names and addresses of such agents.

In addition to such information as may be secured by the questionnaire method, information as to manufacturers' sales policies is solicited and received by the Institute from its members. Such information is sought concerning the sales and pricing policies of all manufacturers who sell all or any part of their output to dry goods wholesalers.

PAR. 5. When the information secured by the means stated concerning the sales policy of a manufacturer has been considered by a committee of The Wholesale Dry Goods Institute, Inc., a rating is assigned to such manufacture. A manufacturer of a number of different products may be given the same or a different rating on each of his products, depending upon his sales practices in the distribution of each product. The rating or ratings so assigned are designated by one or more of the following symbols: A, A minus, B, C, D, K, X, and No. The meaning of these symbols is as follows:

A sells to or distributes only through wholesalers. (The term wholesaler has the meaning given to it by the Institute in its definition as subsequently quoted.

A minus sells regular products and/or patterns through wholesalers only, but manufacturers special contract goods, under buyer's specifications and labels, for national chains and mail order houses.

B sells regular products and/or patterns only to wholesalers and large metropolitan department stores, but allows a reasonable differential to wholesalers. Also may manufacture special contract goods, under buyer's specifications and labels, for national chains and mail order houses.

C sells regular products and/or patterns through channels (which may include any of all of the following: Independent stores, large and small; buying offices or syndicates representing retailers, their stock carrying affiliates; chain store central offices or warehouses; drop shippers; brokers; commission merchants, selling agents; job lot dealers and second hand dealers) other than

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wholesalers, but allows a reasonable differential to wholesalers. Also may manufacture special contract goods, under buyer's specifications and labels, for National chains and mail order houses.

D sells regular products and/or patterns to wholesalers, and/or large metropolitan stores, National chains and mail order houses, and allows no differential to wholesalers.

K sells regular products and/or patterns through channels other than wholesalers, at substantially the same price as to wholesalers.

X this rating describes the manufacturer who, after announcing one policy, has been found to practice another.

"No" has declined to give any information concerning selling policy.

After a rating has been determined upon for a manufacturer, it is the practice of the Institute to advise the manufacturer concerned by letter, the usual form of which is:

This is to advise you that our-----committee has assigned rating -----to your good concern, as indicative of your selling policy. (See card enclosed.)

Unless we hear from you to the contrary by-----we shall assume this rating to be correct.

PAR. 6. The preparation and use of the mill selling policy reports referred to above were suspended during the life of the code promulgated for the "Wholesale Dry Goods Trade" under the National Industrial Recovery Act, apparently because of certain provisions contained in this code. However, after that code was struck down, the preparation and use of the mill selling policy reports were resumed by The Wholesale Dry Goods Institute, Inc., and its members and supplemented by the preparation and use of a directory of wholesalers in the form of a volume entitled "Wholesale of Dry Goods and Kindred Lines." Copies of this directory are distributed by the Institute to its members and to manufacturers rated by the Institute. The number of wholesalers so listed varies from time to time the most recent issue containing the names of approximately 1,150 concerns. The list is described in part as:

A list of firms whose operations, after careful investigation and a consideration of the facts available, are believed to conform to the definition of a wholesaler employed by the Wholesale Dry Goods Institute for its several and individual purposes.

While every effort has been made to insure the correctness of this list, it is realized that some inaccuracies are unavoidable—(some names may have been omitted which should be included, others included which should be omitted)—but such errors will be corrected in later revisions of this list.

The definition of a "wholesaler," referred to in the directory and regularly used by the Institute in determining who is entitled to be listed in the directory, is as follows:

A "wholesaler" is a person, firm or corporation—

(1) That is organized primarily to sell goods to and render service to retailers generally, and is not primarily interested in securing for a single re-

tailer, or a limited group of retailers, price advantages which are not to be made available to other retailers.

(2) That transacts business in sufficient volume to handle goods in wholesale quantities and sells through salesmen, advertising and/or sales promotion devices;

(3) That carries at all times at its principal place of business a representative stock of the goods it sells, and from which it can fill the orders of its customers;

(4) That extends credit to its customers and carries its own accounts.

This definition excludes (a) buying offices or syndicates representing retailers; (b) their stock carrying affiliates; (c) chain store central offices or warehouses; (d) drop shippers; (e) brokers; (f) commission merchants; (g) selling agents; (h) job lot dealers; (i) second hand dealers.

The introductory statements appearing in this directory of wholesalers include the following:

The ratings run from A to K; A indicating that the manufacturer confines his distribution exclusively to wholesalers, and therefore gives complete cooperation, while rating K indicates that the manufacturer gives no cooperation to wholesalers at all.

This is an interesting experiment in the establishment of a means for voluntary cooperative action. If the experiment is completely successful, it will clarify what has been a confused and complicated marketing situation which in the past has resulted in grave injustices and discriminations against certain types of retail buyers and, likewise, has caused much dissatisfaction to both sellers and buyers in the textile field. From the results so far observed, it seems clearly indicated that a high degree of success will be attained.

Among other recommendations quoted in the directory of wholesalers is one in which the Joint Committee for the Advancement of Manufacturer-Wholesaler Relations suggests to manufacturers that they:

Adopt a selling policy that will give protection to wholesale distributors, and enable them to meet competition at a reasonable profit to themselves and their customers.

Confine their branded merchandise and/or patterns to regular distributors and protect their customers by keeping it out of chains, mail order houses, premium houses and syndicate buying groups.

Use utmost care in the selection of distributors, avoiding those whose practices tend to disrupt the ordinary distributive process. (Note definition of wholesaler employed by the Wholesale Dry Goods Institute for its several and individual purposes.)

In the directory of wholesalers members of the Institute are listed by firm name appearing in heavy type, followed by the names of officials of the member and a full statement of the lines of merchandise distributed by such member, all enclosed in a box. Other concerns listed as wholesalers but who are not members of the Institute are listed by firm name only, which name appears in ordinary type with abbreviations indicating the lines of merchandise han-

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dled. Members of the Institute are thus clearly distinguished from others listed and more detailed information supplied with respect to them.

PAR. 7. When a concern applies for membership in The Wholesale Dry Goods Institute, Inc., or for listing in its directory of wholesalers, the measure used for determining whether it should be admitted to membership or to listing is the previously quoted definition of a "wholesaler" established by the Institute. There are many concerns in the United States who are actively engaged in competition with members of the Institute and with wholesalers listed in the Institute's directory of wholesalers in the sale and distribution of like goods, but which do not conform to the definition of a "wholesaler" as fixed by the Institute and, therefore, are not eligible for membership in the Institute or listing in its directory of wholesalers. Such concerns are, nevertheless, engaged in whole or in part in selling dry goods, notions, and kindred products to retailers buying for resale to the consuming public.

When a concern applies for membership in the Institute or for listing in its directory of wholesalers, it is the practice of the Institute to secure information as to its operations from commercial agencies such as Dun & Bradstreet and by addressing inquiries to members of the Institute or others listed in its directory of wholesalers who are competitively located with respect to the applicant. An instance of this procedure is shown by an application by one Louis Cohen of Ladysmith, Wis., for membership. The Institute wrote a number of competitors of Cohen stating:

We have a request from Louis Cohen, Ladysmith, Wis., asking that his name be included in the list of dry goods wholesalers published by the Wholesale Dry Goods Institute.

Will you please advise us, if in your judgment, the operations of this concern conform to the definition of a wholesaler employed by the Wholesale Dry Goods Institute in its reports to its members.

An instance of a reply to the above inquiry appears in a letter of February 21, 1936, from Lebeis Hosiery Co.:

Replying to your letter requesting advice on Louis Cohen, Ladysmith, Wisc.

We have known Mr. Cohen for quite some time, and we never regarded his store as a wholesale establishment. In our judgment, he is a long jump from being any kind of a wholesaler.

Another of the replies received was from Butler Brothers of Chicago, Ill., which on February 22, 1936, advised the Institute:

Referring to your letter of February 19, we do not consider Louis Cohen, of Ladysmith, Wisconsin, a wholesaler although the agency report shows him as wholesaler and retailer, and he himself claims that the wholesale end of his business represents about 60 percent of his total volume.

In a statement he made he showed total employees for both wholesale and retail, seven, and stated that he had one salesman selling direct from the truck on the road. This statement showed accounts receivable of \$15,231, and he claimed that \$8,197 were wholesale accounts, and \$7,034 retail. His inventory was only \$64,000, with only 2 turns for the year, which included merchandise in another retail store at Rhinelander, which is considered a branch of Ladysmith. He gave his sales as \$143,000, for the year.

I don't think he should be added to our list.

Cohen was not admitted to membership or listing as a wholesaler.

In numerous other instances concerns which are listed as wholesalers by commercial agencies such as Dun & Bradstreet have been refused membership in the Institute or listing in its directory of wholesalers on the ground that their operations did not conform to the Institute's definition of a wholesaler.

The purpose and effort of the publication of this directory of wholesalers and its circulation among manufacturers by the Institute is to create a preferred class of buyers consisting of those concerns listed in the directory and to inform manufacturers of the identity of buyers to whom they might sell without incurring the disfavor of the Institute and its members, and, conversely, to inform such manufacturers that sales to any wholesaler not so listed might result in their being given an unfavorable classification by the Institute, the effect of which might be to prevent or tend to prevent their making sales to members of the Institute.

PAR. 8. The preparation and distribution by The Wholesale Dry Goods Institute, Inc., to its members of the "Mill Selling Policy Reports" classifying and rating manufacturers in the manner stated in and of itself has a coercive effect upon manufacturers in determining their sales policies. The Institute recognized that this coercive effect would be increased in proportion as its members refused to purchase from manufacturers classified as noncooperative by the institute, and concentrated their purchases among those manufacturers having a rating or classification considered satisfactory by the institute. The institute, its officers, committees, and membership took joint action from time to time to increase the coercive effect of the ratings made of manufacturers by exerting collective pressure upon members to consistently use the reports for the purpose intended; that is, to buy only from those classified, as having sales policies satisfactory to the institute. For example, at a meeting of the board of directors of the institute in May 1935 it was voted, among other things:

To suggest to members of the Institute that before placing orders they enquire of manufacturers as to the rating they enjoy with the Institute.

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An instance of collective consideration and action by the membership appears in connection with a report to the 1935 convention of The Wholesale Dry Goods Institute by its then director general, who stated in part:

What your attitude is, what your recommendations or instructions to your buyers may be, will largely influence the effectiveness of this entire Institute campaign. And when I conclude this report, I would like to get from you an indication of what you think about this thing. I would like to have all who believe that you should instruct your buyers to watch these reports and give preference to those manufacturers who have adopted what it appears to you to be a fair selling policy, I would like all of you who favor that and think it proper, to raise your hands. (All hands were raised.)

Officials of the institute from time to time urged upon members that the list of manufacturers' ratings be regularly used for the purpose intended, and exerted the pressure of the Institute and collective pressure of its membership upon members to that end. An instance of this continuing policy appears in an address at the annual convention of the Institute in January 1939 by the executive secretary of the Institute in the course of which he stated in part:

For the benefit of manufacturers, I reiterate that the reports are merely the means of reflecting to members of the Institute the selling policies practiced by those manufacturers to whom they look for their merchandise requirements. No action of the Institute should be construed as intending to influence a manufacturer's selling policy.

* * * * *

Unquestionably, the value and effectiveness of these reports will be greatly enhanced if wholesalers will increase their support to the program, which they can do:

(a) By helping to make manufacturers "rating conscious." Frequent reference to the rating reports when conferring with manufacturers, or their representatives, will impress them with the importance of their rating with the Institute, and the importance of giving protection to wholesalers if their business is to be enjoyed.

(b) By reporting to the Institute promptly any instance detected where the rating assigned fails to correctly describe a manufacturer's method of selling. The ratings must be correct to be of value.

(c) By carefully checking all orders against ratings, to insure the placing of business most advantageously.

(d) By giving an occasional "pat on the back," to manufacturers making an earnest effort to cooperate with wholesalers. Do not hesitate to tell a manufacturer that you are placing your business with him because of his policy of protecting wholesalers, as reflected by his rating with the Institute.

An instance of pressure by the Institute upon an individual member is indicated in an exchange of correspondence between the executive secretary of the Institute and the Richmond Dry Goods Co. On May 16, 1938, in a letter from the executive secretary of the in-

stitute to a member of the executive committee of the Institute representing the Richmond Dry Goods Co. reference was made to a conversation had with a representative of a manufacturer, as follows:

During the conversation Mr. Tansill stated frankly that it was his intention to thoroughly review their selling policy, and felt that such review would indicate that no other course was open to him than to return to selling the retail trade. He asked me to tell him how he could do otherwise, when wholesalers failed to support manufacturers cooperating with wholesalers, and cited the specific instance of Richmond Dry Goods Co. forsaking the Pepperell line, not for the line of another manufacturer giving wholesale protection, but for the line of a manufacturer selling promiscuously to the retail trade—without protecting the wholesaler—and rated “K” by the Institute.

Of course, it is not within the province of the institute to dictate either how a manufacturer is to sell, or how its members are to buy. However, it is reasonable to assume that, in their own interests, wholesalers will favor those manufacturers giving them the greatest degree of protection. I realize that these are abnormal times, but wholesalers will defeat their own ends if they accept temporary advantages to the detriment of the long term program.

In replying to the above letter the Richmond Dry Goods Co., Inc., stated in part:

I am still highly appreciative of the mill selling policies and I will greatly appreciate it if you will let me know the concern that Mr. Tansill referred to, as I did not know that any of our departments were dealing with a concern rated K by the institute. If you have not the name, please drop by and see Mr. Tansill on your way up or down and tell him that I am interested in knowing the name of the manufacturer that he refers to. You can also tell him that I need it for a constructive purpose and I will look into the situation completely.

The executive secretary of the institute secured the information desired from Mr. Tansill and furnished it to the Richmond Dry Goods Co., which thereafter made a full report to the executive secretary of the institute, after which the executive secretary wrote under date of May 31, 1938, to the Richmond Dry Goods Co. in part as follows:

While I can thoroughly appreciate your position in handling Chatham blankets, the fact that you are doing so does have an adverse effect on better rated manufacturers, and on the program of the institute. As you know, a manufacturer's rating is based on his national policy, and the admitted policy of Chatham leaves no doubt as to the K rating assigned. I am sure there are numerous other instances where a manufacturer would be entitled to a better rating in certain territories, but the general policy does not warrant it. No doubt there are manufacturers, selling promiscuously in your territory, whose merchandise you would refuse to handle for this reason, but who are, in other territories, protecting the wholesaler to a degree equal to that accorded you by Chatham.

* * * * *

This subject is one difficult to discuss by letter, and so I shall defer further comment until I may have the pleasure of discussing it personally with you. Any discussion, however, whether by letter or verbally, necessarily must be of

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an informal and unofficial nature. As you already know, the institute would be in violation of the law if it attempted to dictate either the selling policies of manufacturers, or the buying policies of its members.

Most of the members of the institute do, in fact, confine their purchases so far as practicable to manufacturers rated by the institute as having sales policies favorable to wholesalers as that term is defined by the institute. Instances of this policy on the part of members of the institute and the limitations upon it are indicated by testimony in the record.

An official of Goodall-Brown Dry Goods Co., a member of the institute, was questioned concerning the purpose and use made of the rating book furnished by the institute to its members showing the selling policies of manufacturers, and testified in part:

Q. What is the purpose of that?

A. Based on the first law of nature, of self-defense. It is an organization of members to give them the information on the selling policies of the manufacturers. If we bought goods from a manufacturer, who sold our customers, we would be committing suicide, more or less. In other words, the information given as to the sales policies of the manufacturers, which is voluntary on their part, it puts us in position, as a member of The Dry Goods Institute, to protect our customers and to buy from people who are trying to work with the wholesaler as a medium of distribution.

* * * * *

Q. Do you limit your purchases to those manufacturers who have an A rating, or to those manufacturers who, if they do sell the department stores, charge a differential which will protect you?

A. No, we don't limit them. There might be cases when you would have to buy from the other fellow.

An official of Williams-Richardson Co., Ltd., a member of the institute, testified that he was familiar with the system of rating manufacturers in use by the institute, and said:

Q. In your business, the conduct of your business, what type of manufacturer do you do business with? Do you buy from the manufacturer with the high ratings?

A. We always buy from the manufacturer with the best rating.

An official of Leff Brothers Dry Goods & Notion Co., a member of the institute, testified in part:

Q. In buying the merchandise which you offer for sale do you make use of that booklet which is "Commission's Exhibit No. 53" to inform yourself of the ratings of manufacturers?

A. At times I do; yes. It all depends. Occasionally I try to govern myself by it, because it is to my interest to.

Q. Do you try, wherever possible, to buy from the manufacturer who has an A rating in preference to the others?

A. Most of the times I do. Now, getting back to the same question that you asked me a while ago with the Spool Cotton Co. and the American Thread Co., at

times I have to buy hosiery listed there. They are out of the A class but I am forced to buy it to complete my lines.

An official of John H. Hibbin Dry Goods Co., a member of the institute was questioned concerning the use of the information furnished by the institute showing ratings of manufacturers and what instructions the buyers of that company were given concerning the use of such information, and said:

A. My recollection is that the only information—or the only instructions that I have ever given any of them was that—to be careful in their purchases and to try and buy from people who had not, by their selling policies,—who would not be, by their selling policies, direct competitors of ours.

PAR. 9. The Wholesale Dry Goods Institute, Inc., made it a practice and policy to encourage its members to report to it any instance where a manufacturer made a sale or sales which appeared to be contrary to the rating assigned to such manufacturer by the institute, as for example, a sale by a manufacturer listed as A or A— to a concern not listed in the institute's directory of wholesalers. When any instance is reported to the institute of a manufacturer making a sale or sales not within the scope of the rating assigned him, a letter is sent to such manufacturer, usually in the following form:

In its reports on mill selling policies, our ----- committee has assigned rating A— to your good concern, as representing your selling policy. This rating indicates that your product is being sold to wholesalers only with special contract goods, made under buyer's specifications and labels, for national chains and mail order houses.

It has been reported to us that this rating is incorrect for the reason that your product is being offered to the ----- department store, of -----

According to the best information available to us, the operations of this concern do not conform to the definition of a wholesaler as employed by the Wholesale Dry Goods Institute for its various purposes.

We would be pleased to have your comment on the above.

Upon receipt of such inquiry from the institute, if the manufacturer replied that the sales questioned were inadvertent or without knowledge as to the business of the purchaser and would be discontinued, the institute advised the manufacturer in the following form:

We are very glad to have your letter of ----- in which you state that you have found, upon investigation, that the operations of -----, of -----, do not conform to the definition of a wholesaler as employed by the Wholesale Dry Goods Institute.

In view of your statement to the effect that sales to this concern will be discontinued, no change will be made in your A— rating.

Thanking you for the promptness with which you have handled this matter, and appreciating your interest in distribution through the wholesaler, we are, * * *

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In the event no satisfactory adjustment is reached with a manufacturer reported to have made sales outside the scope of his instituting, the rating of such manufacturer is changed to conform to the new information and the institute advises its members of such change in rating.

PAR. 10. The aforesaid plan of The Wholesale Dry Goods Institute, Inc., as carried out, did in fact have the effects planned, and did, and does, coerce manufacturers in the selection of their customers in individual instances and as a matter of general sales policy. This coercive effect on general sales policy is indicated by the fact that most revisions of manufacturers' ratings have been upward on the rating scale established by the institute; that is, a change from a previous rating to one indicating more favorable treatment of wholesalers as defined by the institute. Testimony in the record is indicative of the active desire on the part of manufacturers concerned to secure and retain ratings considered satisfactory by the institute. For example:

A representative of a manufacturer in testifying concerning the policy of his company of refusing to sell to concerns not listed by the institute as wholesalers, said in part:

Q. Is the reason that you cooperate with the Wholesale Dry Goods Institute the fact that you do not wish your rating changed?

A. Quite naturally we would like to protect our rating.

A representative of another manufacturer, in testifying concerning the relations of his company with the institute and its members, said:

Q. Do you think that if the institute were to give you a rating lower than an A rating, and such a rating as would indicate that you didn't confine your sales to jobbers, that the result would be you would lose business among the jobbers, and among the members of the Wholesale Dry Goods Institute?

A. Yes.

In the course of his testimony the sales manager of one of the largest manufacturers of knitted goods, in connection with the discontinuance of sales to certain purchasers and the relation of his company to the institute, said:

Q. Did Mr. Garrison tell you, or intimate to you, that if you continued to make sales to Wayne Leeson & Sons, the Wholesale Dry Goods Institute would change your rating?

A. I don't recall. Our attitude with the Wholesale Dry Goods Institute was one—it was this way: where we were selling eighty percent of our production to wholesalers, we were naturally eager to keep in the status of having a high rating.

Q. In other words, would it affect your business with the wholesalers if the Wholesale Dry Goods Institute lowered your rating?

A. I don't know.

The coercive effect upon manufacturers in the selection of individual customers and their refusal to accept or continue as customers concerns buying for resale to retail dealers, but not listed in the Institute's directory of wholesalers, is indicated by the following examples:

On October 27, 1939, the Perry Knitting Co. wrote to Louis Cohen, of Ladysmith, Wis.:

We have before us your recent letter requesting samples of our line.

As previously advised from time to time, we are not in a position to quote you or submit samples to you until such time as we have advice through the Wholesale Dry Goods Institute that your operations are such that they can be classified as that of a wholesaler.

If you have been advised by the Wholesale Dry Goods Institute that your operations have now been classified as a jobber or wholesaler, please advise.

On January 31, 1939, George E. Ready of Greensboro, N. C., wrote to the Chicopee Sales Corporation for a price quotation on tobacco muslin, to which inquiry the Chicopee Sales Corporation replied on February 1, 1939:

Thank you for your letter of January 31 asking for prices on tobacco muslin.

Sometime ago our mill set up a program of cooperation with the established wholesale dry goods trade, through the wholesale Dry Goods Institute at 40 Worth Street, New York. We sell only to wholesalers on these goods who are on their approved list.

As we do not find you listed with them, and if you are doing a regular wholesaling business, we suggest you write them at New York for approval. At that time, we shall be very glad to get in touch with you further.

Mr. Ready replied to this letter under date of February 6, 1939, stating that he could not understand why he should be required to join an organization to make it possible for him to carry on business; that he was established in his line, recognized by other manufacturers, and listed in Dun & Bradstreet. He concluded by saying, "I do not anticipate joining the Wholesale Dry Goods Institute but I will thank you to quote me prices on tobacco muslin, and as the season is on for the sale of this I will appreciate your reply by return mail." On the same date Chicopee Sales Corporation replied to Mr. Ready as follows:

Thank you for your letter of February 6, from which it appears that we did not make ourselves entirely clear in writing you on the first.

In setting up our program of cooperating with the Wholesale Dry Goods Institute, we do not attempt to get anyone to join the Institute as a requirement for selling. We feel that they are much better posted than we are on the type of firms doing a legitimate wholesaling business and use their information as a guide, though many of the people we sell in the jobbing field are not members of the Institute while approved by them.

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We feel sure you will have no objection to writing them on the matter if you are doing a legitimate wholesaling business, and as soon as they let us know that they have approved your name, we shall be glad to quote you.

In 1937 several competitors of William J. Dykstra of Grand Rapids, Mich., raised with manufacturers from which that concern purchased; and with The Wholesale Dry Goods Institute, a question as to the right of Dykstra to buy on the basis of being a wholesaler. The Institute wrote a number of manufacturers in the manner indicated by the following letter of October 29, 1939, to the Standard Textile Products Co.:

In its Reports on Mill Selling Policies, our Committee has assigned rating A— to your good concern, as indicative of your selling policy.

Some question has arisen regarding the accuracy of this rating, as our attention has been called to the fact that your products are being sold to William J. Dykstra Co., Grand Rapids, Mich.

From the information available to us, the operations of this concern do not conform to the definition of a wholesaler as that term is employed by the Wholesale Dry Goods Institute for its various purposes.

Will you kindly let us hear from you concerning this, so that we may keep our ratings as accurate as possible.

The Standard Textile Products Co. replied to this letter under date of November 3, 1937, stating in part:

We have been selling the William J. Dykstra Co. of Grand Rapids, Michigan during the past several months. The reports from our representative and other information which we have been able to obtain on this concern specify that they are wholesale distributors of dry goods and notions. The Dun & Bradstreet reference book also lists this company as "wholesale dry goods."

Naturally, we are not familiar with the details of the operations of their business and if you can give us any information as to what way they do not conform with the definition of a wholesaler, term employed by Dry Goods Institute, we shall be glad to have our representative go to Grand Rapids and adjust the matter for us.

We, of course, would not want to do anything that might affect our present rating with your institute.

Another concern, Standard Coated Products Corporation, questioned with regard to its sales to William J. Dykstra Co., on April 7, 1938, wrote to Dykstra as follows:

We delayed acknowledging your letter of March 24 until we could communicate with our representative, Mr. Wright. As we understand him, he has gone thoroughly into the distribution question with you. It is unfortunate that this had to come up and we wish to assure you that we were not at all anxious to discontinue soliciting your business.

We sincerely hope that this may be rectified in the near future, and we will again enjoy the privilege of executing orders for you.

At the time a preliminary investigation was being made by the Commission in the present matter Standard Coated Products Cor-

poration called upon its sales representative, Mr. James R. Wright, for full information as to what statements he had made to Dykstra as to why sales to him were discontinued. To this inquiry Mr. Wright replied on July 11, 1938:

In reply to your letter of July 7, the only reason why I told Dr. Dykstra we could not sell him was the fact that I was advised by your office that the Wholesale Dry Goods Institute threatened to take our "A" rating away from us if we continued to sell him. I think Mr. Dykstra will bear me out. Personally, I like Mr. Dykstra very much and it really was not easy to tell a swell fellow like he is, that he could not buy from us any more. As far as I am concerned, if you give me the word, I will be glad to open his account up again if you feel that it is not going to hurt us with the Wholesale Dry Goods Institute.

After all, I do not pay very much attention to the yips made by other customers. If you listen to them very much, they would not want you to sell to anybody except themselves.

Under date of November 8, 1937, in response to an inquiry concerning William J. Dykstra Co., of Grand Rapids, Mich., The Wholesale Dry Goods Institutes wrote the J. V. Pilcher Manufacturing Co., of Louisville, Ky., advising in part:

From the above you will see that the method of operation of this concern does not conform with the definition of a "wholesaler" employed by the Wholesale Dry Goods Institute for its various purposes.

The J. V. Pilcher Manufacturing Co. replied to this letter under date of November 11, 1937, stating to the Institute:

We thank you for your letter of November 8 in regard to Dykstra Dry Goods Co.

We will look further into this matter with an idea of discontinuing selling them direct.

A number of manufacturers did in fact discontinue selling to Dykstra.

In 1936 The Wholesale Dry Goods Institute wrote to a number of competitors of Abe Rubel & Co., of Corinth, Miss., a typical instance being a letter of July 2, 1936, to William R. Moore Dry Goods Co., of Memphis, Tenn., which inquiry reads:

A question has been raised regarding the status of A. Rubel & Co., Corinth, Miss.

Will you please advise me, if, in your opinion, their operations conform to the definition of a wholesaler as that term is employed by the Wholesale Dry Goods Institute.

Under date of July 7 the William R. Moore Dry Goods Co. replied to the Institute:

With further reference to your letter of July 2, regarding A. Rubel & Co., Corinth, Miss. This firm's principal business is that of retailing. They have a small wholesale department and travel two men, one of them is an old man, more or less of a pensioner, and the other is a kinsman. They sell only to

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small merchants, and fill orders both from their retail and wholesale departments.

Therefore, the firm should not be classed as a wholesaler as this term is employed by your institute.

In May 1939 Abe Rubel & Co. sought unsuccessfully to buy tobacco cloth from a number of manufacturers or their agents, and on June 5, 1939, wrote to The Wholesale Dry Goods Institute, Inc., in part:

This firm is not now or never has been in a position so that they would have to beg for anything, but we feel that you should know that we have been in the wholesale game of dry goods and its kindred lines since 1868; that we have 15,000 square feet of floor space devoted entirely to wholesale; that since the time of our organization our men have been on the road traveling twelve months a year.

This was followed by another letter to the institute under date of June 12th reading as follows:

As long as we were with the Old Southern Dry Goods Institute and the time while we were a member of your institution, we were never questioned by anyone on any subject, and now since we are no longer a member of your institution, through some pressure on your part we have been denied purchasing canvas and tobacco cloth from several of the commission houses, which is nothing more than a slap by you in our face.

We are just as much in the jobbing game in proportion to Carson Pirie & Co., of Chicago, Marshall Field of Chicago, or any other jobbing concern with retail outlet.

The writer, knowing most of you in person and having been in the market for the past 40 years, cannot understand any such action on your part against us. We feel that we are certainly due some explanation and when next in your city are going to demand one.

On June 15, 1939, the executive secretary of The Wholesale Dry Goods Institute, Inc., replied to Abe Rubel & Company:

This will acknowledge your letter of June 12.

Please be assured that the Institute has no disposition to do you an injustice. If it has erred in its decision—with respect to recognizing your good concern as operating in conformance of its definition of a wholesaler—then we most certainly want to correct the mistake.

Please do call at the office when you are again in New York, so that we may frankly discuss this matter.

Abe Rubel & Co. on June 17, 1939, replied to the institute:

Referring to your kind letter of the fifteenth, will state that on account of the action of your institution we have been able to purchase from Kendall, Southeastern, and others, tobacco cloth. We have purchased this material for over 50 years.

I trust that you will communicate with Stevens, Woodward, Baldwin, and Kendall, also Southeastern and have this matter straightened out.

The executive secretary of the institute on June 19, 1939, replied to Abe Rubel & Co. in part:

Acknowledging your letter of June 17, I wish it were as easy as you suggest to "have this matter straightened out."

Let me remind you that the institute does not attempt to dictate, or even influence the selling policy of any manufacturer. Its program provides merely for supplying its membership with information concerning the selling practices employed by those manufacturers to whom they look for their merchandise requirements.

Your inability to purchase tobacco cloth from Kendall Mills, Southeastern Cottons, Woodward, Baldwin, and others, is due to the individual action of each, and not because of the institute.

It is true, of course, that if a manufacturer sells to concerns other than those considered to be operating in accordance with the institute's definition of a wholesaler, then a different rating is applicable than when sales are confined to concerns meeting the definition.

Under date of March 21, 1939, Davis & Catterall, manufacturers of textile products, wrote the U. R. M. Wholesale Dry Goods, Inc., of Spokane, Wash., in part as follows:

The writer has just returned from the offices of the Wholesale Dry Goods Institute where he has spent a good part of the day discussing your organization with them, but unfortunately could not change them from their original opinion that you do not conform to their ideas as a wholesaler.

* * * * *

Just so long as the institute do not list you, we must decline to offer you our line due to the reason that they in turn rate us on the accounts that we sell and as we today have an A rating with the institute and jobbing trade, we, naturally, cannot take any chances in jeopardizing our position. We feel certain that you will understand this.

We realize that you will have no difficulty in procuring another source of prints, but it is the writer's suggestion you make your peace with the institute as I believe you will find more and more of the better producers of merchandise affiliating themselves with that organization, and it is very possible that you may have this annoyance with your other sources of supply.

We, of course, do not like to lose you as a customer and hope that you will understand why we must take the position that we do. It is our sincere wish that you will not be prejudiced against our organization. We again offer our services in any way to straighten out this matter with the institution. We most certainly would like to see you get a square deal.

In numerous other instances various concerns were prevented from buying and manufacturers prevented from selling to them, by reason of the aforesaid practices of The Wholesale Dry Goods Institute, Inc. In some instances where sales to such concerns were not actually prevented, the price to such concerns was increased above that granted by manufacturers to concerns listed in the Institute's directory of wholesalers. Such increases represented the

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refusal of manufacturers to grant their customary wholesaler's discount to buyers not recognized by the Institute as wholesalers, thus forcing such buyers to pay higher prices if they continued their purchases.

PAR. 11. The capacity, tendency, and effect of the understandings, agreements, combination, and conspiracy, and the acts and practices performed thereunder and in connection therewith by respondents, has been, and is, to coerce, restrain, and restrict manufacturers of dry goods, notion, and allied lines in the selection of customers to whom they will sell; to prevent dealers in dry goods, notions, and allied lines, including competitors of respondent members of The Wholesale Dry Goods Institute, Inc., from purchasing their supplies of such goods from manufacturers thereof; to prevent dealers competitive with respondent members of The Wholesale Dry Goods Institute, Inc., and dealers selling at retail, from buying at prices as favorable as those granted to members and others listed in said institute's directory of wholesalers, thereby increasing the prices to such purchasers and to the consuming public; to place in the hands of respondents control over the business practices of manufacturers and distributors of dry goods, notions, and allied lines of merchandise and the power to so hinder, harass, and restrain the operations of manufacturers and distributors who do not conform to respondents' wishes as to exclude, or substantially exclude, them from the industry; and to hinder and prevent competition in the sale and distribution of dry goods, notions, and allied lines of merchandise.

CONCLUSION

The aforesaid mutual understandings, agreements, combination, and conspiracy, and the acts and practices performed thereunder or in connection therewith by said respondents under the conditions and circumstances set forth are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of certain 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, renewed motion to reverse the rulings of the trial examiners on evidence and supplement to said motion, and oral arguments of counsel, 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 respondent The Wholesale Dry Goods Institute, Inc., a membership corporation, its officers and directors, individually and as such officers or directors, its members individually and as such members, or any group of such respondents, their agents, representatives, 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, directly, or indirectly, of establishing or seeking to establish respondents, or any of them, as a preferred class of buyers, or of inducing, coercing, or restraining manufacturers or their agents in the determination of their sales and pricing policies or the selection of their customers, or otherwise hindering, restraining, or lessening competition in the sale and distribution of dry goods, notions, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act:

1. By preparing, maintaining, and circulating any list of buyers considered or recognized by respondents as "wholesalers," or any similar list of preferred buyers.

2. By preparing, maintaining, and circulating any list of manufacturers or their agents classified or rated in a manner which designates those whose sales policies are considered satisfactory to respondents and those whose sales policies are less satisfactory or not satisfactory to respondents.

3. By ceasing or threatening to cease to deal, or dealing or threatening to deal less extensively than otherwise, with any manufacturer or his agents on the ground or for the reason that such manufacturer sells to buyers not considered or recognized by respondents as "wholesalers," or sells to retailers, or does not grant a more favorable price to respondents and others considered or recognized by them as "wholesalers" than to other buyers.

4. By advocating and urging said common course of action outlined in paragraph 3 hereof in publications or letters, at meetings of respondents or groups or committees of respondents, or in any other manner.

5. By making threats, express or implied, to any manufacturer or his agents for the purpose or with the effect of inducing, persuading, constraining, or coercing such manufacturer or his agents to refuse to sell, cease selling, or charge a higher price, to any buyer or prospective buyer.

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.

It is further ordered, That for the reasons set out in paragraph 1 of the findings as to the facts in this proceeding the complaint herein be, and it is, hereby dismissed as to respondents W. W. Couch Co., Inc.; Harris, Davis & Co., Inc.; Schwartz Brothers & Co., Inc.; F. B. Thomas & Co., Inc., E. & M. Hirschler Co., Inc.; Smith, Taylor Co., Inc.; and J. S. Reeves & Co., Inc.

It is further ordered, That respondents' motion to reverse certain rulings of the trial examiners on the evidence, which motion was denied without prejudice to respondents' right to renew same and which was duly renewed, and respondents' motion supplementing said renewed motion be, and the same hereby are, denied.

Syllabus

IN THE MATTER OF

ALFRED W. WILSON, TRADING AS
A. W. WILSON CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4131. Complaint, May 8, 1940—Decision, Nov. 26, 1941*

Where an individual engaged in interstate sale and distribution of coin-operated vending machines and candy; by letters, circulars and other advertising material, advertisements in newspapers and other periodicals, and by oral statements of his agents and salesmen—

- (a) Represented that purchasers of such machines would be given exclusive rights to operate them within certain designated territories, that locations for the machines had been or would be, obtained by him prior to the time of delivery to the purchaser, that the machines would be personally installed at the designated locations by his salesmen or agents, and that the amount which purchasers would be required to pay for locations would not exceed certain designated amounts or commissions; the facts being he did not grant such rights, but frequently sold his machines to different purchasers for operation within the same territory and, in view of outright sales thereof, could not control or determine the territories in which the machines would be operated in the future, and he did not obtain locations or make installation, while the amounts his purchasers were required to pay for locations frequently exceeded those represented;
- (b) Represented that such machines would be delivered within a specified time, and that a certain quantity of candy to be dispensed by said machines, would be supplied free by him, when in fact he frequently failed to make delivery within time agreed upon and supplied to purchasers without charge the neither designated, nor any other, amount, of candy;
- (c) Represented that his business was nation-wide in scope, when in fact it was confined principally to States in the western portion of the United States; and
- (d) Represented that net profits of not less than \$30 per week were usually and customarily derived by purchasers, and that said machines would be repurchased by him at the original price, less the net earnings, if at the end of 90 days' operation the machines had not earned for the purchaser profits equal to their original price, when in fact purchasers had not been able to earn any amount approximating aforesaid figure, such profits were not possible under usual conditions, and he did not repurchase such machines at the end of 90 days' operation or any other time, even though they might have failed to earn any profit;

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