

IN THE MATTER OF

AR. WINARICK, INC., UNION BEAUTY & BARBER SUPPLY, INC., LOUIS SAUL AND ANTHONY NICASTRI, TRADING AS A. B. C. BARBER & BEAUTY SUPPLY COMPANY, VASILIS THALIS, TRADING AS AMERICAN BEAUTY & BARBER SUPPLY COMPANY, JOSEPH A. GALLAGHER, GEORGE MILLER, E. D. CHAPMAN, FRANK WATERS, AND GLADYS WELCH

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

Docket 4470. Complaint, Feb. 28, 1941—Decision, Nov. 28, 1941

Where a corporation and the four officers who formulated and directed its policies, two partners, and an individual, engaged in Washington, D. C., in competitive sale of beauty and barber supplies and shipment of such merchandise to purchasers in the District of Columbia and nearby points in Maryland and Virginia,—constituting a group so large and influential as to be able to control and influence the flow of trade and commerce in products in question within, to and from such areas, with aforesaid corporate jobber alone having exclusive contracts covering the sale of 80 percent of the items concerned in the territory in question—and, but for acts and practices below set forth, in free and active competition with one another;

Acting upon the suggestion of an individual, vice president and general sales manager of a corporate manufacturer of beauty and barber supplies, who, following complaints of chaotic conditions in the industry concerned, due to sale by some jobbers at less than manufacturer's list prices and the granting of discounts of more than 20 percent, and including particularly the price cutting activities of one "S"; and who, acting in his own behalf and that of his corporation, arranged a dinner and meeting attended, with the exception of two corporate officers, by jobbers above referred to and also by several others—

- (a) Agreed to sell their merchandise at the prices suggested by the manufacturers' price lists and not to give discounts in excess of 10 percent, and concertedly abided by said agreements; and, in order to effectuate them,
- (b) Attempted to coerce said competitor "S" to refrain from cutting prices of his merchandise and to prevent him from giving discounts in excess of aforesaid percentage, and threatened to prevent him from securing merchandise in event of his continuing in disregard of such course; and in order to carry out their said threats,
- (c) Sought to coerce manufacturers into refusing to sell to "S," with result that a number thereof did so refuse;

With effect that operators of beauty parlors and barber shops, and other purchasers of beauty and barber supplies in said District and nearby points were deprived of the benefits of normal competition theretofore existing, and the consuming public was deprived of the benefits which would flow from normal competition in sale of such products by beauty parlors, bar-

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ber shops and other retailers; with result of unlawfully restraining trade in such products in said area, and of creating a monopoly in aforesaid jobbers in the sale and distribution thereof; and with capacity and tendency to substantially enhance the prices of such products to beauty parlors and barber shops and, through them, to the consuming public in said area, and to maintain them at artificial levels and otherwise to deprive said beauty parlors, barbers and consuming public of the benefit of normal competition between and among aforesaid jobbers, and with jobbers, in such products:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair methods of competition in commerce.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Mr. Lewis C. Bernstein, of New York City, for AR. Winarick, Inc. and Joseph A. Gallagher.

Schlesinger & Schlesinger, of New York City, and *Mr. Robert Ash*, of Washington, D. C., for Union Beauty & Barber Supply, Inc., its officers, A. B. C. Barber & Beauty Supply Co., and American Beauty & Barber Supply Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations, partnerships, firms and individuals named in the caption hereof, hereinafter more particularly described and referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, AR. Winarick, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 805 East One Hundred and Fortieth Street in New York City, N. Y., with branches in Canada and Mexico. Said respondent now is, and for several years last past has been, engaged in the manufacture, sale, and distribution in commerce of beauty parlor and barbers' supplies some of which are put out under the name of "Jeris Products."

Respondent, Union Beauty & Barber Supply, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business at 516 Twelfth Street NW., in Washington, D. C. Said respondent now is, and for the last several years has been, engaged in the business of jobbing or selling, shipping, and distributing at wholesale,

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beauty parlor and barbers' supplies in the District of Columbia and nearby points in Maryland and Virginia.

Respondents, Louis Saul and Anthony Nicastri, are partners trading as A. B. C. Barber & Beauty Supply Company, with their principal office and place of business at 1414 Fourteenth Street NW., Washington, D. C. For the last several years said respondents have been engaged in the business of jobbing or selling, shipping, and distributing at wholesale beauty parlor and barbers' supplies in the District of Columbia and nearby Maryland and Virginia points.

Respondent, Vasili Thalís, is an individual trading as American Beauty & Barber Supply Co., with his principal office and place of business at 733 Seventh Street NW., Washington, D. C. For the last several years said respondent has been engaged in the business of jobbing or selling, shipping, and distributing at wholesale beauty parlor and barbers' supplies in the District of Columbia, and nearby points in Maryland and Virginia.

Respondent, Joseph A. Gallagher, now is, and for the last several years has been, a vice president and the general sales manager of Respondent AR. Winarick, Inc., and as general sales manager thereof has had the direct, active control, and effectuation of its selling and sales policies. His office is with respondent AR. Winarick, Inc., at 805 East One hundred and Fortieth Street in New York City, N. Y.

Respondent, George Miller, E. D. Chapman, Frank Waters, and Gladys Welch, are, respectively, the president, a vice president, a vice president, and secretary and treasurer of respondent Union Beauty & Barber Supply, Inc., and have been such officers for the said respondent corporation for the last several years and as such officers have had a part in formulating and directing the policies of said respondent, and all have their offices with said respondent at 516 Twelfth Street NW., Washington, D. C.

PAR. 2. In the course and conduct of their said businesses, the respondent manufacturer and wholesalers and jobbers have shipped or caused to be shipped their said beauty parlor and barbers' supplies into the District of Columbia, and have shipped or caused to be shipped their said products into the nearby States of Maryland and Virginia. There is now, and during the past several years has been, a current of trade and commerce into the District of Columbia and between the District of Columbia and the nearby States of Maryland and Virginia and elsewhere in said beauty parlor and barbers' supplies.

PAR. 3. The respondent jobbers or wholesalers, to wit, Union Beauty & Barber Supply, Inc., A. B. C. Barber & Beauty Supply Co., and American Beauty & Barber Supply Co., constitute, and for the last

several years have constituted, a group in the beauty parlor and barbers' supply jobbing or wholesale business within the District of Columbia and nearby areas in the States of Virginia and Maryland so large and influential as to be able to control and influence the flow of trade and commerce in said beauty parlor and barbers' supplies within, and to and from said area. Said respondents were, and would now be, in free and active competition with one another and with other jobbers or wholesalers in such beauty parlor and barbers' supplies in said trade area, but for the unlawful agreement, combination and conspiracy entered into, and the unlawful acts and practices done thereunder and pursuant thereto by them and the respondent, AR. Winarick, Inc., and its respondent officers, as hereinafter set out.

PAR. 4. On or about February 13, 1939, respondents entered into an agreement, combination, and conspiracy to suppress, restrain, stifle, and eliminate competition and to create a monopoly in the sale of beauty parlor and barbers' supplies within the District of Columbia and the aforesaid described area and elsewhere within the United States, and all of said respondents have since continued to be and still are members of said combination and conspiracy.

PAR. 5. Pursuant to and in furtherance of said agreement, combination, and conspiracy and in order to effectuate the same, the said respondents acting in cooperation with each other have committed and performed and now perform and do among other things, the following acts and practices:

(a) At a meeting attended by said respondents, agreed upon the wholesale and retail prices at which beauty parlor and barbers' supplies are to be sold in the District of Columbia and said area.

(b) Thereafter all of said respondents sold said products in said area at the uniform prices set forth in price lists circulated among them which were agreed upon as aforesaid.

(c) Respondent jobbers and wholesalers ceased to compete among themselves or with others in the sale of the afore-described products in the District of Columbia and the said area,

(d) Respondents threatened to cut off the supplies of said products from those jobbers or wholesalers and retailers who refused or failed to sell said products at the prices set out in said price lists.

(e) Respondents did cut off and cause to be cut off the supplies of such products from those jobbers and wholesalers and others who refused or failed to sell the afore-described products at said prices.

PAR. 6. Each of the respondents herein has acted at times separately and at times in concert with one or more of the other respondents in doing and performing the acts alleged in furtherance and effectua-

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tion of the agreement, combination, and conspiracy hereinbefore set out.

PAR. 7. As a result of the agreement, combination, conspiracy, and acts performed thereunder and pursuant thereto set forth in the foregoing paragraphs, the operators of beauty parlors and barber shops and other purchasers of beauty parlor and barbers' supplies in the District of Columbia and in said area have been deprived of the benefits of normal competition that theretofore existed as to their purchases of said products from respondent jobbers and wholesalers, and the purchasing and using public has been deprived of the benefits that would flow from the normal competition in the sale of said products at retail by beauty parlors and barber shops and other retailers of said products in said District and area.

PAR. 8. The agreement, combination, and conspiracy, and the acts and things done thereunder and pursuant thereto and in furtherance thereof as hereinbefore alleged have had and now have the capacity and tendency and effect of unlawfully restricting, hindering, lessening, and restraining the trade in the District of Columbia and in commerce between the District of Columbia and the nearby States of said beauty parlor and barbers' supplies, and of monopolizing in the respondent jobbers and wholesalers named in paragraph 1 hereof the sale and distribution of said products in the trade area of the District of Columbia and nearby States of Maryland and Virginia, and has the capacity and tendency of substantially enhancing the prices of such products to the beauty parlors and barbers and through them to the consuming public in said area, and of maintaining said prices at artificial levels and otherwise of depriving said beauty parlors and barbers and through them the consuming public in said area of the benefit of normal competition between and among the said respondent jobbers and wholesalers.

PAR. 9. The acts and practices of the respondents as herein alleged are all to the prejudice of the public and have a dangerous tendency to hinder and have actually hindered and prevented price competition between and among respondents in the sale of beauty parlor and barbers' supplies in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices of said products in the District of Columbia and surrounding area in the States of Maryland and Virginia; have increased the prices of said products paid by the purchasers thereof and consequently the prices paid by the public; have created in said respondents a monopoly in the sale of said products, in such commerce in the District of Columbia and said area; have unreasonably restrained such commerce in beauty parlor and

barbers' supplies, 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 February 28 A. D. 1941, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, 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 respondents' answers thereto, testimony and other evidence were introduced in support of the complaint by the attorneys for the Commission, and in opposition thereto by the attorneys for respondents, before a duly appointed trial examiner of the Commission designated by it to serve in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the complaint, the answer thereto, the testimony and other evidence, report of the trial examiner thereon, briefs in support of the complaint and in opposition thereto, and oral argument. 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. AR. Winarick, Inc., is a corporation organized under the laws of the State of New York. Its principal place of business is located at 805 East One Hundred and Fortieth Street, in the city and State of New York.

Respondent Joseph A. Gallagher is vice president and general sales manager of respondent AR. Winarick, Inc., and controls the selling and sales policy of said corporation. His office is with the corporation.

Respondent Union Beauty & Barber Supply, Inc., is a corporation organized under the laws of the District of Columbia. Its principal place of business is located at 516 Twelfth Street, in the city of Washington, D. C.

Respondents George Miller, E. D. Chapman, Frank Waters, and Gladys Welch are, respectively the president, a vice president, a vice president, and secretary and treasurer of respondent Union Barber

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& Supply Inc., and have been such officers for the last several years, and as such officers they have formulated and directed the policies of said corporation. All their offices are with said corporation.

Respondents Louis Saul and Anthony Nicastri are copartners trading as A. B. C. Barber & Beauty Supply Co. Their principal place of business is located at 1414 Fourteenth Street NW., in the city of Washington, D. C.

Vasili Thalís is an individual trading as American Beauty & Barber Supply Co. His principal place of business is located at 733 Seventh Street, NW., in the city of Washington, D. C.

PAR. 2. Respondent AR. Winarick, Inc., is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of beauty and barber supplies, and has caused said products, when sold, to be shipped from its principal place of business to purchasers thereof located in various States of the United States and in the District of Columbia.

Respondent Union Beauty & Barber Supply, Inc., Louis Saul and Anthony Nicastri, and Vasili Thalís, are jobbers engaged in the business of selling and distributing beauty and barber supplies, and for the last several years have been and are now engaged in shipping said merchandise, when sold, to purchasers thereof located in the District of Columbia and nearby points in Maryland and Virginia.

The respondent jobbers are in competition with others similarly engaged in the sale of beauty and barber supplies in the territory in which said respondents sell their merchandise.

PAR. 3. The total business done by jobbers of beauty and barber supplies located in the District of Columbia, for several years last past has been approximately \$420,000 a year, and more than \$400,000 of this amount has been done by the respondent jobbers. Respondent Union Beauty & Barber Supply, Inc., has exclusive contracts covering the sale of 80 percent of the items sold in the beauty and barber supply lines in said territory.

Respondent jobbers constitute a group in the beauty and barber supply jobbing business within the District of Columbia and nearby areas in Maryland and Virginia, so large and influential as to be able to control and influence the flow of trade and commerce in such beauty and barber supplies within, to and from said areas. Said respondents were, and, but for their unlawful acts and practices hereinafter set forth, would now be, in free and active competition with one another.

PAR. 4. In 1918 there were but one or two beauty and barber supply jobbers doing business in the District of Columbia, but by 1938 the number had increased to eight. The respondents were com-

plaining, in 1938, about the chaotic condition of the industry, due to some jobbers selling at less than the manufacturers' list prices and giving discounts of more than 20 percent.

Respondent Joseph A. Gallagher, acting on behalf of himself and of respondent AR. Winarick, Inc., sent invitations to all the jobbers in the District of Columbia to attend a dinner to be given by him at the Harrington Hotel, on February 13, 1939. Representatives of respondent Union Beauty & Barber Supply, Inc., and all respondents except E. D. Chapman and Gladys Welch were present at the dinner. There were also several other jobbers present.

Gallagher testified that the dinner was not given for the purpose of fixing prices, but was one of a series of dinners given by his company throughout the United States in order to advance its sales and to promote good will in the trade. He denies having discussed prices at the dinner, and states that, to the contrary, he warned those present that an attempt to fix prices would be a violation of law. He is corroborated in this by three other respondents.

There is testimony to the effect that respondents discussed the chaotic conditions of the industry, due to price-cutting, and complained about the "chislers" present at the dinner, who were engaged in the practice; that Gallagher urged that the jobbers sell at one price, that no discounts be given in excess of 10 percent, and that gradually all discounts be eliminated; but warned them not to allow their salesmen to inform barbers concerning these matters, and added, "If Uncle Sam would find out, God help all of us."

After these discussions, all the jobbers agreed to sell their products at the suggested list prices of the manufacturers; that for the present they would not allow discounts in excess of 10 percent, and that ultimately they would refuse to allow any discount. Respondent Chapman was designated as the one to prepare and circulate the price list agreed upon.

There appears in the evidence a price list which Louis Sciscent, a jobber, testified was delivered at his place of business by respondent Chapman about a week after the dinner. Chapman admits that this list was prepared by his company for use by his salesmen, but denied having given same to Sciscent. Since the dinner all the jobber respondents have carried out the understanding and agreement concerning prices entered into during the dinner, and have sold their products at the prices suggested in the manufacturers' price lists, and have not given discounts in excess of 10 percent.

PAR. 5. Sciscent, who was primarily responsible for the price-cutting complained about by the respondents, was present at the dinner and agreed to discontinue the practice, but failed to keep his

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agreement. He was later visited by respondents Chapman and Saul, who inquired why he was cutting prices on Noxzema, and upon being told that he was satisfied with quick sales and quick profits, they threatened to see that he would not be able to buy any merchandise unless he stopped the practice.

Subsequent to the dinner, representatives of four or more manufacturers visited Sciscent and complained of his continuing to cut prices, warning him that unless he discontinued this practice they would refuse to sell him. Sciscent later received letters from two of these manufacturers, advising him that because of a change in their distribution policies they would be unable to fill his orders.

Respondent Saul admits writing the manufacturer of Noxzema complaining about Sciscent cutting prices and indicating his intention to discontinue the sale of their product if this practice was continued.

Respondent Thalís telephoned the manufacturer of Noxzema complaining about Sciscent cutting prices, and October 27, 1939, this manufacturer wrote Thalís to the effect that it had taken the matter up with the Sciscent organization and hoped that its efforts would be successful; that they would do all in their power to protect Thalís' interests.

Respondent Miller admits that he has written manufacturers requesting them to discontinue selling to price-cutters.

PAR. 6. The Commission finds that the hereinbefore described meeting held on February 13, 1939, was called by respondent AR. Winarick, Inc. and Joseph A. Gallagher, for the purpose of preventing price-cutting by the beauty and barber supply jobbers in the District of Columbia, and the giving of discounts in excess of 10 percent, and that all the respondent jobbers present at the meeting, acting upon the suggestion of respondent Gallagher, agreed to sell their merchandise at the prices suggested by the manufacturers' price lists, and further agreed not to give discounts in excess of 10 percent; and that said respondents, acting in accord one with another, have since said meeting carried out said agreement and have at all times sold their merchandise at the prices suggested by the manufacturers and have at all times refused to give discounts exceeding 10 percent; that said respondents, in order to effectuate the said agreement and understanding, have attempted to coerce their competitor Sciscent to refrain from cutting the price of his merchandise and to prevent him from giving discounts in excess of 10 percent; and that said respondents have threatened Sciscent that, if he continued to cut prices and to allow discounts in excess of 10 percent, they would prevent him

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from securing any merchandise. That in order to carry out their threats in this regard, they have sought to coerce manufacturers into refusing to sell said competitor, and, as a result of said coercion, a number of manufacturers have refused to sell him their products.

PAR. 7. As a result of the agreements, understanding, combinations, and conspiracies, and the acts performed thereunder and pursuant thereto, set forth in the foregoing paragraphs, the operators of beauty parlors and barber shops, and other purchasers of beauty and barber supplies in the District of Columbia and nearby points in Maryland and Virginia have been deprived of the benefits of the normal competition which theretofore existed in their purchase of said products from respondent jobbers; and the purchasing and consuming public have been deprived of the benefits which would flow from normal competition in the sale of said products at retail by the beauty operators and barber shops and other retailers in said area.

PAR. 8. The agreements, understandings, combinations, and conspiracies, and the acts and things done thereunder and pursuant thereto, in furtherance thereof, as hereinbefore set forth, have had, and now have, the capacity, tendency, and effect of unlawfully restricting, hindering, lessening, and restraining the trade in beauty and barber supplies in the District of Columbia and nearby States, and of creating a monopoly in the respondent jobbers in the sale and distribution of said merchandise in said area, and have the capacity and tendency to substantially enhance the prices of such products to the beauty parlors and barber shops and through them, to the consuming public in said area, and of maintaining the prices of said products at artificial levels and otherwise depriving said beauty parlors, barbers, and through them the consuming public in said area, of the benefit of normal competition between and among the said respondent jobbers, and with jobbers, in such products.

CONCLUSION

The foregoing acts and practices of the respondents are all to the prejudice of the public 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 respondents, the testimony and other evidence taken before a duly appointed trial examiner of the Commission theretofore duly designated by

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it to serve in this proceeding, the report of the trial examiner thereon, briefs in support of the complaint and in opposition thereto, and oral arguments; and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Union Beauty & Barber Supply, Inc., a corporation, its officers, directors, agents, representatives, and employees; Louis Saul and Anthony Nicastri, copartners trading as A. B. C. Barber & Beauty Supply Co., or under any other name or designation; Vasili Thalís, an individual trading as American Beauty & Barber Supply Co., or under any other name or designation; Joseph A. Gallagher, individually or as general sales manager of AR. Winarick, Inc.; George Miller, individually and as president of Union Beauty & Barber Supply, Inc.; E. D. Chapman, individually and as vice president of Union Beauty & Barber Supply, Inc.; Frank Waters, individually and as vice president of Union Beauty & Barber Supply, Inc.; and Gladys Welch, individually and as secretary and treasurer of Union Beauty & Barber Supply, Inc.; jointly and severally, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of beauty and barber supplies in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from continuing, entering into, carrying out, or aiding or abetting the carrying out, of any agreement, understanding, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents, and any other person, partnership, or corporation, for the purpose or with the effect of restricting, restraining, monopolizing, or eliminating competition in the purchase or sale in said commerce of such products, and from doing or performing by cooperative or concerted action, agreement, or understanding between any two or more of them, or between any one or more of them and any other person, partnership, or corporation, the following acts and things:

(a) Fixing, establishing, quoting, or maintaining prices, or agreeing to fix and maintain the prices at which said products shall be sold by them.

(b) Fixing and maintaining, or agreeing to fix and maintain, the amount of discount to be allowed purchasers of said products.

(c) Agreeing not to sell their products at prices less than the suggested price lists circulated by the manufacturers of such products, or at discounts in excess of 10 percent, or at any other agreed discount.

(d) Coercing, threatening, or intimidating any jobber of beauty and barber supplies, for the purpose or with the intent or effect of com-

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selling such jobber to sell his products at the manufacturers' list prices, or at an agreed discount therefrom, or to refuse to allow discounts in excess of 10 percent or any other agreed amount.

It is further ordered, That respondent AR. Winarick, Inc., a corporation, its officers, directors, agents, representatives, and employees, and respondent Joseph A. Gallagher, individually and as general sales manager of said respondent corporation, jointly or severally, directly or through any corporate or other device, forthwith cease and desist from directly or indirectly, jointly or severally, cooperating with; assisting, or in any manner aiding or abetting the hereinbefore named respondents in doing any of the things prohibited in subparagraphs (a), (b), (c), and (d) hereof.

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

IN THE MATTER OF
WHITEWATER BREWING COMPANY, AND ALEX WEIN-
GART, INDIVIDUALLY AND AS MANAGER THEREOF

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

Docket 4188. Complaint, July 13, 1940—Decision, Dec. 3, 1941

Where a corporation with principal place of business in Whitewater, Wis., and the manager of its Chicago warehouse and branch office, who directed and controlled its acts, policies and practices; engaged in the brewing and competitive interstate sales and distribution of its "Cream Top" beer and also in bottling, labelling and selling half gallon bottles of its "Badger" beer, brewed by a Chicago concern which delivered it in barrels to said corporation at its Chicago branch, and itself bottled and labelled all other cans and bottles of such "Badger" beer—

Made use of depiction of a badger holding a plaque on which appeared an outline of the State of Wisconsin and the word "Wisconsin" and in large type the words "Badger Beer" and "The Pride of Wisconsin", on placards distributed by them for use in the sale of their "Badger" beer, and employed similar depictions on labels on bottles and containers, and on which also appeared name and Wisconsin address of said corporation but not the words "The Pride of Wisconsin"; and subsequently made use on placards, window streamers, cards and labels of depictions of a badger, words "Badger Beer" in large type, and corporate name and Wisconsin address, along with, in the most recent labels, in much smaller and less conspicuous type, "Bottled by Chicago Branch", etc., and in very small type, the words "Brewed by Manhattan Brewing Co., Chicago, Ill."; and upon letterheads employed by it for a time displayed aforesaid depiction of the badger together with its name and Wisconsin address, while failing, in invoices of "Badger beer, containing its said name and address, to make any reference to such Chicago brewing company or the fact that said beer was not brewed by them;

When in fact, as above indicated, the beer in question was not brewed in the State of Wisconsin, law of which imposes certain requirements with respect to brewing not found in other States and beer of which State is markedly preferred by a substantial portion of the purchasing public as superior, in their belief, to beer brewed elsewhere;

With effect of causing a substantial portion of the purchasing public to believe that such beer was brewed in Wisconsin, with result that substantial quantities thereof were purchased by it and trade was unfairly diverted to them from competitors who do not misrepresent the place of origin of their product; to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Charles A. Vilas*, trial examiner.
Mr. DeWitt T. Puckett for the Commission.