

IN THE MATTER OF
NEWTON PAPER COMPANY ET AL.

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

Docket 4559. Complaint, Aug. 8, 1941—Decision, Dec. 16, 1941

Where a corporate manufacturer of specialty papers, which had attained and maintained a dominant position approaching monopoly in the manufacture and original interstate sale of "bogus" paper, a cheap flexible product cut by dies into stays of various shapes and sizes for lining handbags and pocket-books; an association of stay die cutters; the executive secretary of said association, in effect its business manager; four corporations, two partners and an individual, engaged in stay die cutting, all organizers and members of said association and participants in the formation of its policies and the unlawful acts and practices below set forth; engaged, excepting said association and secretary thereof, in interstate sale and shipment of such "bogus" paper or converted products thereof, and, prior to 1933, in free and open competition which would have continued but for unlawful acts and practices below set forth—

- (a) Entered into, on or about October 1, 1933, and thereafter continuously carried out an understanding and combination to lessen and restrain competition and trade in the interstate sale and distribution of "bogus" paper, either in its original or converted form, and to monopolize such business in themselves; and

Where said die cutters, pursuant to such understanding and combination—

- (b) Organized aforesaid association to assist them in carrying out the same and, under its auspices, held meetings at which they fixed and established prices, terms, discounts and charges for their products;
- (c) Refused to solicit or sell their products to customers of other members, under penalties prescribed and assessed by said association, and, through said association, allocated among themselves all new and prospective customers;
- (d) Furnished such association with lists of their customers and the name of any customer who was delinquent in his accounts, and refused to sell any customer who had become delinquent with any other member; and
- (e) Restricted, as far as practicable, their purchases of "bogus" paper to aforesaid manufacturer and distributors; and

Where such association and its aforesaid secretary, chief instrumentality in coordinating efforts and unlawful acts and practices in question of the corporations and concerns above referred to; in the pursuit of their objectives—

- (f) Cooperated with said die cutters by holding meetings of members, by circulating prices, discounts, and charges fixed and established by said die cutters, by circulating lists of delinquent customers, by prescribing and assessing penalties for members' violation of said understandings and agreements, and by other acts and practices; and

Where aforesaid manufacturer—

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(g) Restricted its sales and shipments of said paper to aforesaid three distributors, thereby giving them sole control and monopoly of the sale and distribution thereof; and

Where distributors aforesaid—

(h) Refused to sell to any die cutter not a member of said association on the same terms and conditions they sold to members;

Capacity, tendency and effect of which understanding and combination, and things done in pursuance thereof, were, as respects "bogus" paper and its converted products, to—

1. Unduly restrict and restrain competition in the manufacture and interstate distribution thereof;

2. Enable aforesaid corporations, partners and individuals to control and substantially monopolize such business;

3. Prevent competitors and prospective competitors from entering into the field of manufacture, conversion, or sale and distribution of said products; and

4. Fix, maintain and enhance the price thereof and enhance the price to the consuming public of the products of which "bogus" paper had become a part:

Held, That such acts and practices were all to the prejudice of the public, and had a dangerous tendency to and did actually hinder and prevent price competition between and among aforesaid corporations and concerns in the purchase and sale of "bogus" paper, both in its original and converted forms, in commerce; placed in aforesaid corporations and concerns the power to fix, control, maintain and enhance prices of such commodity; increased the prices thereof to purchasers and users, and to the public for the finished products of which such commodity had become a part; created in aforesaid corporations and concerns a substantial monopoly in the dealings in said commodity in interstate commerce; unreasonably restrained commerce; and constituted unfair methods of competition therein.

Mr. Wm. T. Chantland for the Commission.

Mr. Herbert S. Blake, Jr., of New York City, for Newton Paper Co.

Mr. Max Siskind, of New York City, for Henry Fuchs & Son, Joe Salwen Paper Co. and Salwen Paper Co.

Mr. Samuel N. Haberman, of New York City, for Stay Die Cutters Association, Inc., Sidney Haberman, Art Metal Die Manufacturers, Die-Craft Cutting Co., Inc., R. & C. Mounting & Finishing Co., New York Leather Embossing Co., Harry Litky, Lansky Die Cutting Co. and F. & S. Die Cutting 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 respond-

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ents, 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. (a) Respondent, Newton Paper Mills, for many years last past has been, and now is, a corporation duly organized, existing, and doing business as a Massachusetts corporation, with its principal office and place of business at Holyoke, Mass. For many years last past it has been, and still is, engaged in the business of manufacturing, selling, and shipping in interstate commerce of various specialty papers including so-called "bogus" paper, of which up to the present time, respondent has attained and maintained a dominant position approaching monopoly in the manufacture and original sale.

(b) Respondents, Samuel Fuchs, trading as Henry Fuchs and Son, with his principal office and place of business at 215 Greene Street, New York; Solomon J. Salwen and Morris Ruben and Sidney Salwen, copartners trading as Joe Salwen Co., with its principal office and place of business at 405 East Fourth Street, New York, N. Y.; and Salwen Paper Co., a New York corporation with its principal place of business at 187 Greene Street, New York, N. Y. (all hereinafter referred to as distributors), have each for several years last past been engaged and still are engaged in the sale, shipment, and distribution in interstate commerce of various types of paper, including so-called "bogus" paper.

(c) Respondent, Stay Die Cutters Association, Inc., is a corporation organized about October 1933 and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 225 West Thirty-fourth Street, New York, N. Y. Said respondent is a trade association organized by and comprised of and controlled by individuals and concerns engaged in the stay die cutting industry.

Respondent, Sidney Haberman, since during 1938 has been and still is executive secretary of said Stay Die Cutter Association, Inc., and using said title, has acted as and performed the duties of business manager and has been in active charge of the office and business of said Association.

(d) Respondent, Art Metal Die Manufacturers, is a New York corporation with its principal office and place of business at 115 West Twenty-ninth Street, New York, N. Y.; and respondent, Die-Craft Cutting Co., Inc., is a New York corporation with its principal office and place of business at 120 East Sixteenth Street, New York, N. Y.; and respondent, R. & C. Mounting & Finishing Co., is a New

York corporation with its principal office and place of business at 102 Tompson Street, New York, N. Y.; and respondent, New York Leather Embossing Co., is a New York corporation with its principal office and place of business at 129 West Twenty-fifth Street, New York, N. Y.; and respondent, Harry Litky, maintains his principal office and place of business at 580 Broadway, New York, N. Y.; and respondent, Jennie Lansky, trading as Lansky Die Cutting Co., maintains her principal office and place of business at 194 Greene Street, New York, N. Y.; and respondent, Morris Silverberg, trading as F. & S. Die Cutting Co. maintains his principal office and place of business at 57 East Eleventh Street, New York; and all of the hereinaforesaid corporations, partnerships and individuals have been, and still are, engaged in the stay die cutting business and industry, and sell and ship their products in interstate commerce, and all of them took part in organizing, and have since been, and still are members of respondent, Stay Die Cutters Association, Inc., and all have participated in the formation of its policies and the doing of unlawful acts and practices hereinafter set forth.

PAR. 2. In the course and conduct of their said businesses, all of said respondents (except the respondent association and its executive secretary), have caused to be sold and shipped, and have shipped "bogus" paper, or the converted products thereof, from their various places of business within the States of New York and Massachusetts to the purchasers thereof located in States other than said States of New York and Massachusetts, and there has been for many years last past and now is a continuous current of interstate trade and commerce in "bogus" paper product in its original or converted form between and among the several States of the United States; and respondent, Stay Die Cutters Association, Inc., and its executive secretary, Sidney Haberman, have cooperated with and aided the other respondents in the directing and restricting of such sales and shipments.

PAR. 3. "Bogus" paper is a cheap, flexible paper cut by dies into stays of various shapes and sizes and used chiefly in lining handbags and pocketbooks. Said paper has been and is sold by respondent, Newton Paper Mills, and any of its competitors that may still be in the business, to die cutting concerns. When respondent die cutting concerns have cut said paper into the shapes and sizes as required by its customers, they sell and ship the converted product to their various competing customer-makers of handbags and pocketbooks. The stay die cutting industry aggregates in excess of \$300,000 gross sales per annum. For said business, those engaged therein use approximately \$200,000 worth of "bogus" paper made by respondent,

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Newton Paper Mills, and buy said paper either direct from said manufacturer, or from some one or more of the three above-named respondent distributors.

For some years prior to October 1933, there was free and open competition between and among the makers of, and dealers in "bogus" paper, including respondent Newton Paper Mills and the distributors hereinbefore named, and between and among the various concerns engaged in the die cutting industry, including the respondent die cutting concerns, in the sale of their converted product of said paper; and all of said concerns would still be thus engaged in free and open competition but for the unlawful acts and practices as hereinafter stated.

PAR. 4. On or about October 1, 1933, the respondents entered into and thereafter carried out and are still carrying out an understanding, agreement, combination and conspiracy to hinder, lessen, restrict, and restrain competition and trade in the sale and distribution of "bogus" paper, either in its original or converted form, in commerce between and among the several States of the United States and to monopolize in themselves the business in said commerce.

Pursuant to and in furtherance of said understanding, agreement, combination, and conspiracy, said respondents have performed, and now perform, among others, the following acts and practices:

1. Respondent die cutters organized respondent, Stay Die Cutters Association, Inc., to assist them in carrying out said understanding, agreement, combination, and conspiracy.

2. Respondent die cutters refuse to solicit or sell their products to customers of other members of respondent association, under penalties prescribed and assessed by respondent association.

3. Respondent die cutters, through respondent Association, allocate among themselves all new and prospective customers.

4. Respondent die cutters furnish respondent Association with lists of their customers and the name of any customer who is delinquent in his accounts.

5. Respondent die cutters refuse to sell any customer who has become delinquent in his accounts with any other member.

6. Respondent die cutters restrict their purchases of "bogus" paper to the respondent manufacturer and distributors.

7. Respondent manufacturer and distributors refuse to sell to any die cutter not a member of respondent Association on the same terms and conditions they sell to said members.

8. Respondent die cutters, under the auspices of respondent Association, hold meetings at which they fix and establish prices, terms, discounts, and charges for their respective products.

9. Respondent Association, and respondent, Haberman have cooperated with the respondent die cutters by holding meetings of members; by circulating and distributing prices, discounts, and charges fixed and established by said respondent die cutters; by circulating and distributing lists of delinquent customers, and also by prescribing and assessing penalties for violation of said understandings and agreements entered into by said members, as hereinbefore described, and by doing and performing other acts and practices in carrying out said understandings and agreements.

Respondents have carried out, and are still carrying out, the aforesaid purposes and objectives, and in the carrying out of said purposes and objectives, respondent Association and its executive secretary have been the chief instrumentality in coordinating such efforts and unlawful acts and practices of all the respondents.

PAR. 5. The said understanding, agreement, combination, and conspiracy as aforescribed, and the things done thereunder and in pursuance and furtherance thereof, as hereinbefore alleged, have had and now have the capacity, tendency and effect of:

(a) Unduly restricting and restraining competition in the manufacture and distribution of "bogus" paper in its original and converted forms in commerce between and among the several States of the United States.

(b) Enabling the respondents to control and substantially monopolize the business of the manufacture, sale, and distribution of "bogus" paper and its converted products in said commerce.

(c) Preventing competitors and prospective competitors, either in the manufacture or distribution of said "bogus" paper and its converted products, from entering into the field of manufacture, conversion, or distribution of said products.

(d) To fix, maintain, and enhance the price to the users of said products, and to the extent of any such enhancement of price, to likewise enhance the price to the consuming public of the products of which "bogus" paper became a part.

PAR. 6. The understanding, agreement, combination, and conspiracy and acts described in the foregoing paragraphs have continued to the present.

PAR. 7. The acts and practices of respondents as aforealleged 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 purchase and sale of "bogus" paper both in its original and converted forms, in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to fix, control, maintain, and enhance

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prices of said commodities; have increased the prices of said commodities paid by purchasers thereof, and consequently the prices paid by the users thereof, and of the public for the finished products of which they became a part; have created in said respondents a substantial monopoly in the dealings in said commodities in commerce throughout the several States of the United States; have unreasonably restrained such commerce in "bogus" paper both in its original and converted forms, 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 August 8, 1941, issued, and August 11, 1941, served its complaint in this proceeding upon respondents, Newton Paper Co. (designated in the complaint as Newton Paper Mills), Samuel Fuchs, trading as Henry Fuchs & Son, Solomon J. Salwen and Sidney Salwen, two of the copartners, trading as Joe Salwen Co., Salwen Paper Co., a corporation, Stay Die Cutters Association, Inc., Sidney Haberman, individually, and as executive secretary of Stay Die Cutters Association, Inc., Art Metal Die Manufacturers, a corporation, Die-Craft Cutting Co., Inc., a corporation, R. & C. Mounting and Finishing Co., a corporation, New York Leather Embossing Co., a corporation, Harry Litky, Jennie Lansky, trading as Lansky Die Cutting Co., and Morris Silverberg, trading as F. & S. Die Cutting Co., and on September 9, 1941, served its complaint upon Reuben Salwen, one of the copartners trading as Joe Salwen Co., and on September 10, 1941, served its complaint upon Maurice J. Salwen, one of the copartners, trading as Joe Salwen Co., charging said respondents with the use of unfair methods of competition in violation of the provisions of said act. After the issuance of said complaint and after the time set for filing answer had expired, the Commission by order entered herein granted the motion of respondents, Stay Die Cutters Association, Inc., Sidney Haberman, individually, and as executive secretary of Stay Die Cutters Association, Inc., Art Metal Die Manufacturers, Die-Craft Cutting Co., Inc., R. & C. Mounting and Finishing Co., New York Leather Embossing Co., Harry Litky, Jennie Lansky, trading as Lansky Die Cutting Co., and Morris Silverberg, trading as F. & S. Die Cutting Co., for permission to file an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which answer was duly filed

in the office of the Commission; and after the issuance of said complaint and the filing of answers by certain other respondents, namely, Samuel Fuchs, trading as Henry Fuchs & Son, Solomon J. Salwen, Maurice J. Salwen, Reuben Salwen, and Sidney Salwen, copartners, trading as Joe Salwen Paper Co. (designated in the complaint as Solomon J. Salwen, Morris Ruben and Sidney Salwen, copartners trading as Joe Salwen Co.), Salwen Paper Co., and Newton Paper Co., the Commission, by order entered herein, granted the motion of said respondents for permission to withdraw their said answers and to substitute therefor answers admitting all the material allegation of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for hearing before the Commission on said complaint and answer and substitute answers, 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. Newton Paper Co., a corporation, named in the complaint as Newton Paper Mills, a corporation, accepted service and has filed its answer in its proper name; respondents Maurice J. Salwen and Reuben Salwen, named in the complaint as "Morris Ruben," were served with the complaint in their proper names as two of the copartners, trading as Joe Salwen Paper Co. and have joined in the answer of said Joe Salwen Paper Co., named in the complaint as Joe Salwen Co.

PAR. 2. Respondent, Newton Paper Co., for many years last past has been, and now is, a corporation duly organized, existing, and doing business as a Massachusetts corporation, with its principal office and place of business at Holyoke, Mass. For many years last past it has been, and still is, engaged in the business of manufacturing, selling, and shipping in interstate commerce various specialty papers including so-called "bogus" paper, as to which up to the present time respondent has attained and maintained a dominant position approaching monopoly in the manufacture and original sale.

PAR. 3. Respondents, Samuel Fuchs, trading as Henry Fuchs & Son, with his principal office and place of business at 215 Greene Street, New York, N. Y.; Solomon J. Salwen, Maurice J. Salwen, Reuben Salwen, and Sidney Salwen, copartners trading as Joe Salwen Paper

Co., with their principal office and place of business at 405 East Fourth Street, New York, N. Y.; and Salwen Paper Co., a New York corporation with its principal place of business at 187 Greene Street, New York, N. Y. (all hereinafter referred to as distributors) have each for several years last past been engaged and still are engaged in the sale, shipment and distribution in interstate commerce of various types of paper, including so-called "bogus" paper.

PAR. 4. Respondent, Stay Die Cutters Association, Inc., is a corporation organized about October 1933, and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 225 West Thirty-fourth Street, New York, N. Y. Said respondent is a trade association organized by and comprised of and controlled by individuals and concerns engaged in the stay die cutting industry.

PAR. 5. Respondent, Sidney Haberman, since during 1938 has been and still is executive secretary of said Stay Die Cutters Association, Inc., and using said title, has acted as and performed the duties of business manager and has been in active charge of the office and business of said association.

PAR. 6. Respondent, Art Metal Die Manufacturers, is a New York corporation with its principal office and place of business at 115 West Twenty-ninth Street, New York, N. Y.; and respondent, Die-Craft Cutting Co., Inc., is a New York corporation with its principal office and place of business at 120 East Sixteenth Street, New York, N. Y.; and respondent, R. & C. Mounting and Finishing Co., is a New York corporation with its principal office and place of business at 102 Tomp-son Street, New York, N. Y.; and respondent, New York Leather Embossing Co., is a New York corporation with its principal office and place of business at 129 West Twenty-fifth Street, New York, N. Y.; and respondent, Harry Litky, maintains his principal office and place of business at 580 Broadway, New York, N. Y.; and respondent, Jennie Lansky, trading as Lansky Die Cutting Co., maintains her principal office and place of business at 194 Greene Street, New York, N. Y.; and respondent, Morris Silverberg, trading as F. & S. Die Cutting Co., maintains his principal office and place of business at 57 East Eleventh Street, New York, N. Y. (all hereinafter referred to as die cutters); and all of the hereinaforesaid corporations, partnerships, and individuals have been, and still are, engaged in the stay die cutting business and industry, and sell and ship their products in interstate commerce, and all of them took part in organizing and have since been and still are members of respondent Stay Die Cutters Association, Inc., and all have participated in the

formation of its policies and the doing of unlawful acts and practices hereinafter set forth.

PAR. 7. "Bogus" paper is a cheap, flexible paper cut by dies into stays of various shapes and sizes and used chiefly in lining handbags and pocketbooks. Said paper has been and is sold by respondent Newton Paper Co. only to respondent distributors and such paper has been sold by said Newton Paper Co.'s competitors either to distributors, or direct to die cutting concerns. When respondent die cutting concerns have cut said paper into the shapes and sizes as required by its customers, they sell and ship the converted product to their various competing customer-makers of handbags and pocketbooks. The stay die cutting industry aggregates in excess of \$300,000 gross sales per annum, and for said business, those engaged therein use approximately \$200,000 worth of "bogus" paper made by respondent Newton Paper Company, which they can and do buy only from some one or more of the three respondent distributors.

PAR. 8. In the course and conduct of their said businesses, all of said respondents (except the respondent association and its executive secretary), have caused to be sold and shipped, and have shipped, "bogus" paper, or the converted products thereof, from their various places of business within the States of New York and Massachusetts to the purchasers thereof located in States other than said States of New York and Massachusetts, and there has been for many years last past and now is a continuous current of interstate trade and commerce in "bogus" paper product in its original or converted form between and among the several States of the United States; and respondent Stay Die Cutters Association, Inc., and its executive secretary, Sidney Haberman, have cooperated with and aided the other respondents in the directing and restricting of such sales and shipments.

PAR. 9. For some years prior to October 1933, there was free and open competition between and among the makers of, and dealers in, "bogus" paper, including respondent Newton Paper Co. and the distributor respondents, and between and among the various concerns engaged in the die cutting industry, including the respondent die cutting concerns, in the sale of their converted product of said paper; and all of said concerns would still be engaged in full, free, and open competition, but for the unlawful acts and practices as hereinafter set forth.

PAR. 10. On or about October 1, 1933, respondents entered into and thereafter carried out and are still carrying out an understanding and combination to hinder, lessen, restrict, and restrain competition and

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trade in the sale and distribution of "bogus" paper, either in its original or converted form, in commerce between and among the several States of the United States, and to monopolize in themselves the business in said commerce.

PAR. 11. Pursuant to and in furtherance of said understanding and combination, said respondents have performed and now perform, or have aided and participated in, among others, the following acts and practices:

(a) Respondent die cutters organized respondent Stay Die Cutters Association, Inc., to assist them in carrying out said understanding and combination.

(b) Respondent die cutters refuse to solicit or sell their products to customers of other members of respondent association, under penalties prescribed and assessed by respondent association.

(c) Respondent die cutters, through respondent association, allocate among themselves all new and prospective customers.

(d) Respondent die cutters furnish respondent association with lists of their customers and the name of any customer who is delinquent in his accounts.

(e) Respondent die cutters refuse to sell any customer who has become delinquent in his accounts with any other member.

(f) Respondent die cutters, as far as practicable, restrict their purchases of "bogus" paper to the respondent manufacturer and respondent distributors.

(g) Respondent die cutters, under the auspices of respondent association, hold meetings at which they fix and establish prices, terms, discounts, and charges for their respective products.

(h) Respondent association and respondent Haberman have cooperated with the respondent die cutters by holding meetings of members; by circulating and distributing prices, discounts, and charges fixed and established by said respondent die cutters; by circulating and distributing lists of delinquent customers, and also by prescribing and assessing penalties for violation of said understandings and agreements entered into by said members, as hereinbefore described, and by doing and performing other acts and practices in carrying out said understandings and agreements.

(i) Respondent manufacturer has restricted its sales and shipments of said paper to the three respondent distributors, thereby giving them sole control and monopoly of the sale and distribution of said product of the said dominant producer respondent.

(j) Respondent distributors refuse to sell to any die cutter not a member of respondent association on the same terms and conditions they sell to said members.

PAR. 12. Respondents have carried out, and are still carrying out, the aforesaid purposes and objectives, and in the carrying out of said purposes and objectives respondent association and its executive secretary have been the chief instrumentality in coordinating such efforts and unlawful acts and practices of all the respondents.

PAR. 13. The said understanding and combination as aforescribed, and the things done thereunder and in pursuance and furtherance thereof, as hereinbefore set forth have had, and now have, the capacity, tendency and effect of:

(a) Unduly restricting and restraining competition in the manufacture and distribution of "bogus" paper, in its original and converted forms, in commerce between and among the several States of the United States;

(b) Enabling respondents to control and substantially monopolize the business of the manufacture, sale and distribution of "bogus" paper and its converted products in said commerce;

(c) Preventing competitors and prospective competitors, either in the manufacture or distribution of said "bogus" paper and its converted products, from entering into the field of manufacture, conversion, or sale and distribution of said product;

(d) Fixing, maintaining, and enhancing the price to the users of said product and to the extent of any such enhancement of price, of likewise enhancing the price to the consuming public of the products of which "bogus" paper has become a part.

PAR. 14. The understanding and combination, and acts and practices above set forth have continued to the present.

CONCLUSION

The acts and practices of respondents as aforestated 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 purchase and sale of "bogus" paper both in its original and converted forms, in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to fix, control, maintain, and enhance prices of said commodity; have increased the prices of said commodity to the purchasers thereof, and consequently the prices to the users thereof, and to the public for the finished products of which they have become a part; have created in said respondents a substantial monopoly in the dealings in said commodity in commerce throughout the several States of the United States; have unreasonably restrained commerce in "bogus" paper both in its original and converted forms, and all con-

stitute 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 and the answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Newton Paper Co., hereinafter referred to as respondent manufacturer, Samuel Fuchs, trading as Henry Fuchs & Son, Solomon J. Salwen, Sidney Salwen, Reuben Salwen and Maurice J. Salwen, copartners trading as Joe Salwen Paper Co., Salwen Paper Co., a corporation, hereinafter referred to as respondent distributors, Stay Die Cutters Association, Inc., hereinafter referred to as respondent Association, Sidney Haberman, individually and as executive secretary of said respondent Association, Art Metal Die Manufacturers, a corporation, Die-Craft Cutting Company, Inc., a corporation, R. & C. Mounting and Finishing Co. a corporation, New York Leather Embossing Co., a corporation, Harry Litky, Jennie Lansky, trading as Lansky Die Cutting Co., and Morris Silverberg, trading as F. & S. Die Cutting Co., hereinafter referred to as respondent die cutters, and their officers, representatives, agents and employees, and each of them, directly or indirectly, or through any corporate or other device in connection with the sale, offering for sale, or distribution of "bogus" paper in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into or carrying out any understanding, agreement, combination, or conspiracy, or any equivalent cooperation, concert or common course of action to hinder, lessen, restrict, or restrain competition and trade in the sale or distribution of "bogus" paper, either in its original or converted form, in commerce between and among the several States of the United States, or to monopolize in themselves the business or any part of such business in said commerce, and to that end,

It is further ordered, That respondent die cutters, directly or indirectly, or through any corporate or other device in connection with the sale, offering for sale, or distribution of "bogus" paper in said commerce do forthwith cease and desist from performing any of the

following acts or practices pursuant to understanding or agreement, or any equivalent cooperation, concert or common course of action:

1. Fixing and establishing prices, terms, discounts and charges for said "bogus" paper, or attending meetings for such purpose.

2. Allocating through respondent Association, or any other similar agency, new and prospective customers for "bogus" paper among the members of said respondent Association.

3. Refusing to solicit the sale of or to sell "bogus" paper to customers of other members of said respondent Association.

4. Restricting their purchases of "bogus" paper to the respondent manufacturer and distributors, or any other manufacturer or distributor.

5. Furnishing said respondent Association, or its officers or representatives, with lists of their respective customers or the names of their customers delinquent in their accounts.

6. Refusing to sell any delinquent customer or other members of said respondent Association.

7. Utilizing respondent Association, or any similar agency, or its officers or representatives, as a means or instrumentality in aid of, or in carrying on, any of the acts or practices forbidden by this order, and

It is further ordered, That respondent Association and Sidney Haberman, either individually or as an officer or representative of said Association, or any other agent or representative of said Association, directly or indirectly, or through any corporate or other device, pursuant to said understanding or agreement, or any equivalent cooperation, concert, or common course of action, do forthwith cease and desist from:

1. Holding meetings of respondent die cutters to fix and establish prices, terms, discounts, and charges for their products.

2. Circulating and distributing prices, terms, discounts, and charges for "bogus" paper fixed and established by respondent die cutters.

3. Circulating and distributing lists of customers and prospective customers of respondent die cutters and the names of customers of respondent die cutters who are delinquent in their accounts.

4. Prescribing and assessing penalties for violation of said understanding or agreement by the respondent die cutters.

5. Otherwise cooperating with the said respondent die cutters in the carrying out and enforcement of said understanding or agreement, and

It is further ordered, That respondent manufacturer and respondent distributors and their officers, representatives, agents, and employees,

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directly or indirectly, or through any corporate or other device, in connection with the sale, offering for sale, or distribution of "bogus" paper in said commerce, pursuant to said understanding or agreement, or any equivalent cooperation, concert, or common course of action, do forthwith cease and desist from:

1. Refusing to sell "bogus" paper to any die cutter not a member of respondent Association on the same terms and conditions as they sell to members of said Association.

2. Otherwise cooperating with the respondent die cutters and respondent Association in the carrying out and enforcement of said understanding or agreement.

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.

Syllabus

IN THE MATTER OF

D. J. BORTZ AND EDITH BORTZ, TRADING AS CHAMPION
BATTERY COMPANY AND THE BALL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4134. Complaint, May 16, 1940—Decision, Dec. 18, 1941*

Where two individuals, engaged under the names, "The Ball Co." and "Champion Battery Co.," in the competitive interstate sale and distribution to retailers of so-called sales promotional plans, involving (1) in its dealing under former name, units for which the dealer paid 5 cents to their representative and undertook to pay balance of 15 cents, upon delivery, without prior opportunity for inspection, and which consisted of gift certificate, "ivory ware" cup, saucer and cereal dish, and printed handbills and pen-nants or posters for the merchant's use, the scheme purportedly contemplating that \$5.00 in purchases, when stamped out on his certificate, entitled a customer to receive said dishes from the dealer with the further provision that the dealer sending in such punched-out certificate, together with name and address of customer and 39 cents for an additional unit of such "ivory ware", was entitled to 23 cents refund; and involving, (2) when trading under latter name, a purported selling plan, varying from the former, in that when the punched-out certificate was sent to them with name of the customer, it was to be accompanied by a varying remittance for a so-called trial order of dry batteries, depending on the particular novelty desired by the customer, and the 20 cents paid by the dealer for certificate was to be refunded—

- (a) Made use, as aforesaid, of trade name "The Ball Co." in offer and sale of their first-described promotional sales plan and dinner ware, and in their contract forms and on letterheads displayed the heading "The Ball Co., Dinnerware Department"; and represented, through their sales representatives, that such concern was a department of, or connected with, or a representative of, the well known Ball Brothers Company, manufacturers of mason jars, and that said plan was an effort on the part of the latter to recoup lost sales volume attributed to increased use of tin and other food containers, and was to introduce the new dinnerware made by said Ball Bros. Co., and, further, that the retail dealer might become the representative of said company and receive substantial profits on future sales of such dinnerware;
- (b) Concealed, in some instances, the fact that the dealer would not receive a refund unless additional purchases were made by his customer, and displayed to dealers, as samples of the ware, merchandise of substantially better grade and more attractively colored and decorated than that actually furnished;
- (c) Made use, as aforesaid, of name "The Champion Battery Co." in offer and sale of their said promotional sales plan involving batteries, and represented, through their sales representatives, that they were agents of, or