

Syllabus

IN THE MATTER OF
THE HARDWOOD INSTITUTE, 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 3418. Complaint, June 15, 1938¹—Decision, Feb. 20, 1942*

Where a substantial number of corporations, associated in an unincorporated organization or institute, engaged in the manufacture and interstate sale and distribution of hardwood lumber and its products; producing about 37 percent of the hardwood lumber produced in Wisconsin and Michigan, and a larger percentage of that produced in Northern Wisconsin and Northern Michigan, and, prior to acts and practices below set forth, in active and substantial competition with each other and with other manufacturers and dealers;

In pursuance of a plan to establish and maintain a system of minimum prices governing the sale of their products, and following the entering into of agreements with an individual of long experience and standing in the industry, who thereafter became manager and secretary of their said association, and pursuant to which they undertook to submit to him for his distribution among the members full details as to their respective sales and prices and related matters, and to give to him or his agent access to their records and files, and such assistance as he might request in said connection; acting in concert and cooperation with one another and with their said organization or institute—

- (a) Discussed at their meetings called by said individual from time to time, among other matters pertaining to the hardwood lumber market, available supply and demand, prices quoted and received by members and other sellers, future price quotations, and whether current quotations in price lists compiled and issued by said secretary should be changed to accord with participants' views as to prices which could be obtained;
- (b) Followed, usually, in preparing their own price lists for distribution, the new price list prepared by said secretary who was in effect their joint agent in reconciling differences of opinion, and whose list represented a meeting of their minds as to the minimum prices they should seek; and, in the case of some, prepared no separate lists, but merely inserted their own names on his list, and distributed among their salesmen copies thereof;
- (c) Placed in the hands not only of their customers but also of other manufacturers and sellers such list, which, in some instances, specified that lower prices should not be quoted or charged, and which said secretary, in addition to supplying trade journals therewith, furnished to a Minneapolis printing concern which, adding certain minor material, published it as its "Standard Price List";
- (d) Adhered to and maintained the prices set by said Standard Price List as a minimum for their quotations, and frequently a minimum for their actual sales transactions, and through said secretary questioned those who departed therefrom;

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- (e) Established a system of uniform "delivered" prices, published in itemized price lists, through using the same f. o. b. quotation at a common point, and basing freight calculations on fiction that all shipments originated there; as an incident to which it charged and received larger net amounts from buyers located at points nearer the place of production than from more distant buyers, with the result that net price returns to manufacturers and shippers varied, depending upon whether the actual freight rate from the mill to destination was greater or less than the rate from the basing point to such destination;
- (f) Used a system of uniform or standardized weights which were set forth in aforesaid "Standard Price List" to obviate the effect upon delivered prices of variations in weight between shipments of lumber supposed to contain the same number of board feet, due primarily to the degree of dryness and grain of the lumber and the way in which it was sawed;
- (g) Did not, in calculating delivered prices, restrict themselves to the use of the applicable freight rate from basing point to destination, but in some instances agreed upon and incorporated in their delivered price quotations other arbitrary freight rate factors, designating certain market areas as price zones and using uniform delivered price quotations for all shipments moving to any point in such zones, despite the fact that the actual freight rates from any given place of shipment to various destinations therein varied substantially; and from time to time changed and increased such arbitrary freight factors;
- (h) Cooperated with each other and with others in formulating, adopting, and using uniform business practices, terms, and conditions of sale, including discounts and other wholesalers' allowances, for the purpose, and with the effect, of producing uniformity in price quotations; and
- (i) Followed practice, usually, of quoting prices, terms and conditions of sale f. o. b. point of production only when they were equal to a base price plus a freight rate factor from a basing point to the delivery point:

Tendency, capacity and effect of which understanding, combination, and conspiracy, and acts done in furtherance thereof, were to suppress, restrain, eliminate, and lessen competition in sale of hardwood lumber and production thereof in commerce, and to increase prices thereof to purchasers and users of such commodities, and unreasonably to restrict and restrain trade therein:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Merle P. Lyon and *Mr. Everette MacIntyre* for the Commission.

Mr. John Walsh and *Mr. Louis A. Spiess*, of Washington, D. C., and *Mr. Edward J. Dempsey*, of Oshkosh, Wis., for respondents.

AMENDED 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 respondents named herein have violated the provisions of 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, The Hardwood Institute, hereinafter for convenience referred to as the Institute, is an unincorporated trade association, the membership of which consists of twenty-four manufacturers and producers of hardwood lumber. These members, hereinafter named and described, produce approximately 60 percent of the hardwood lumber produced in northern Wisconsin and northern Michigan. Approximately 10 percent of all the hardwood lumber produced in the United States is produced in northern Wisconsin and northern Michigan. These members supply approximately 20 percent of the hardwood lumber sold on the Chicago market, which is one of the principal hardwood markets in the United States.

The respondent, A. L. Osborn, is manager and secretary of the Institute, and manages and directs its activities from his office in the First National Bank Building, Oshkosh, Wis., which is also the office and principal place of business of the Institute.

The respondent, The Antrim Iron Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Grand Rapids, Mich.

The respondent, The Bay de Noquet Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Nahma, Mich.

The respondent, The Boniface Gorman Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 176 West Adams Street, Chicago, Ill.

The respondent, The Brownlee Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at Hawks and Burke Streets, Detroit, Mich.

The respondent, The Edward Hines Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 77 West Washington Street, Chicago, Ill.

The respondent, William Boniface Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Neenah, Wis.

The respondent, Holt Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin,

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with its principal office and place of business in the city of Oconto, Wis.

The respondent, Kinzel Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Merrill, Wis.

The respondent, Marathon Paper Mills Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Wausau, Wis.

The respondent, Menominee & Bay Shore Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Soperton, Wis.

The respondent, Northwestern Cooperage & Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Gladstone, Mich.

The respondent, The Oconto Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Oconto, Wis.

The respondent, The Rib Lake Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Rib Lake, Wis.

The respondent, The Underwood Veneer Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Wausau, Wis.

The respondent, The Von Platen and Fox Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Iron Mountain, Mich.

The respondent, The M. J. Wallrich Land & Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Shawano, Wis.

The respondent, Weidman Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Trout Creek, Mich.

The respondent, Roddis Lumber & Veneer Co., is a corporation organized and existing under and by virtue of the laws of the State

of Wisconsin, with its principal office and place of business in the city of Marshfield, Wis.

The respondent, Sawyer-Goodman Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Marinette, Wis.

The respondent, I. Stephenson Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Wells, Mich.

The respondent, Thunder Lake Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Rhinelander, Wis.

The respondent, The Wisconsin Land & Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Hermansville, Mich.

The respondent, The Yawkey-Bissel Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of White Lake, Wis.

The respondent, The Yawkey-Alexander Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business at Schofield, Wis.

The aforesaid 24 corporations, hereinafter for convenience referred to as respondent members, are now or have been members of the said respondent Hardwood Institute. The membership of said respondent Institute varies from time to time as the result of the dropping out of old and the addition of new members, and they constitute a class so numerous and fluctuating that it is impracticable at any given time to name as parties respondent and bring before the Commission each and all of said members without manifest inconvenience and delay, and the respondent members named are made parties respondent individually and separately, and as representatives of each and all other members as a class.

The members of said respondent Hardwood Institute are all engaged as dealers and manufacturers in the business of producing, buying, selling and distributing to wholesalers, contractors, builders, dealers, jobbers, furniture manufacturers, consumers; and other purchasers, hardwood lumber, lumber products, building material, and supplies.

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PAR. 2. The members of said Institute, in the course and conduct of their business, sell their hardwood lumber, after same has been manufactured by them in their respective mills, largely to furniture manufacturers, and similar users of hardwood lumber, and cause such lumber to be shipped and transported to warehouses and places of business and to customers located in States other than the State where said lumber has been produced, and in States other than the State where the respective shipments originate. In the course and conduct of the business of the members of said Institute, as hereinabove described, respondents have been and are engaged in trade and commerce between and among the several States of the United States and in the District of Columbia, and in the production, sale, and distribution of hardwood lumber, lumber products, building materials, and supplies.

Before the adoption of the understandings, agreements, combinations, and conspiracies hereinafter alleged, respondent members of said Institute were in active and substantial competition with each other and with other manufacturers, nonmembers, and other dealers in making, or seeking to make, sales of lumber and building materials in commerce between, among, in, and with the several States of the United States and in the District of Columbia, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time.

PAR. 3. The said members of said Institute constitute a large and important part of the producers of and dealers in hardwood lumber and building materials in the States of Wisconsin and Michigan, and constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in lumber and building materials within, to, and from the States of Wisconsin and Michigan. Said members as allied and banded together in said Institute, are enabled thereby to more effectively exercise control and influence over such trade and commerce for the promotion and enhancement of their own volume of trade and profits.

Respondent Hardwood Institute was organized on or about February 1, 1928, for the purpose of eliminating price competition among its members and of fixing and maintaining stabilized and identical delivered prices at each given destination of hardwood lumber produced and manufactured in the States of Wisconsin and Michigan; and subsequent thereto the respondent members of said Institute, acting through and by means of respondent Institute, and respondent A. L. Osborn, as its manager and secretary, entered into and there-

after carried out understandings, agreements, combinations, and conspiracies as hereinafter more particularly set out, for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating price competition in the production and manufacture of hardwood lumber and building materials and the sale thereof in trade and commerce between, among, in, and with the several States of the United States and in the District of Columbia.

PAR. 4. The members of said Institute are banded and allied together to carry into effect the program and practices hereinbelow described and to enhance and promote the volume of trade, business, and profits of said respondent members. The said Institute, A. L. Osborn, individually and as manager and secretary of said Institute, and its respondent members hereinbefore more particularly set out, have agreed, conspired, combined, and confederated together and with others, and are agreeing, conspiring, combining, and confederating together and with others, and have united in and are uniting in, and have pursued, and are pursuing, a common and concerted course of action and undertaking among themselves and with others:

1. To fix and maintain the price of hardwood lumber manufactured and sold by members of the Institute; by means of

(a) Daily reports made to the secretary of the Institute by the respondent members thereof on forms supplied by the Institute.

(b) The tabulation thereof by the secretary of the Institute.

(c) The issuance semiweekly of confidential reports to the respondent members by the secretary of the Institute showing the base prices received by each respondent member for each individual item of lumber sold during the period of the reports, and comparing same with so-called established list prices.

(d) The holding of informal meetings of members of the Institute at the call of the secretary at irregular intervals, approximately once a month, for the purpose of discussing prices, market trends, and other matters concerning the lumber industry and of arriving at agreements relative thereto by members of the Institute.

(e) The preparation and publication of a monthly base price list by the secretary of the Institute subsequent to the said monthly meeting of the members thereof, which price list is distributed only to the members of the Institute, and is reprinted by them on their own stationery and becomes the list of base prices at which the various members of the Institute are required to sell their lumber.

(f) The promulgation of the base prices fixed by the Institute to the general public by means of anonymous price lists sent by the secretary of the Institute to the Broughton Publishing Co. at Minneapolis,

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Minn., and printed independently by the latter company and distributed generally by it throughout the United States as being the established list base prices of the hardwood lumber industry.

(g) Coercion, pressure, and publicity brought to bear on all members of the lumber industry and particularly on members of the Institute to abide by and follow the base prices as set forth in the said price lists in the sale of lumber and lumber products.

2. To divert business and trade in lumber and building materials from dealers and manufacturers who are noncooperative or nonmembers of said Institute, for the purpose of enabling or assisting the members of said Institute to appropriate and acquire the patronage and trade of such noncooperative or nonmember dealers and manufacturers, and to monopolize such trade and business in members of said Institute.

PAR. 5. The said Hardwood Institute and its members, and A. L. Osborn, in his individual capacity as well as in his capacity as manager and secretary of said Institute, have agreed, combined, confederated, and conspired together for the purpose and with the intent of carrying out the aforesaid program; and they have been and are now engaged in carrying into effect and maintaining said program and the said agreement, combination, confederation, conspiracy, and undertaking as set forth in paragraph 4 of this complaint. For the purpose of effecting and carrying out the said program and said agreement, combination, federation, conspiracy, and undertaking the Institute, its secretary, and its respondent members, among other things, have done and are doing the following:

(a) Exacted and procured promises and agreements from each member of said Institute to the effect that such members will support, adhere to, and enforce the foregoing program of respondents as set forth in paragraph 4 hereof.

(b) Used and continue to use, in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against other manufacturers, producers, and dealers to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of said Institute.

(c) Held meetings of members, officers, and directors of said Institute to devise means of exerting influence, pressure, coercion, or other means of inducing, coercing, and requiring manufacturers, producers, distributors, and others engaged in said lumber industry to abide by, and adhere to, said program.

(d) Agreed to fix and maintain, and do fix and maintain, uniform base prices for their products.

(e) Agreed to fix and maintain, and do fix and maintain, minimum base prices for said products.

(f) Agreed to fix and maintain, and do fix and maintain, uniform maximum discounts which are allowed in the sale of said products.

(g) Agreed to fix and maintain, and do fix and maintain, uniform terms and conditions, including but without limitation, brokerage fees, freight, and other allowances, in the sale of said products.

(h) Agreed to file, and do file, with the secretary of respondent Institute, daily reports showing the base prices received by respondent members in the sale of said products, including discounts and the terms and conditions of all sales at which said members will and do sell said products.

(i) Agreed to use and engage in, and have used and engaged in, other cooperative concerted acts and practices, coercive methods and policies, in promoting, establishing, and carrying out said understandings, agreements, combinations, and conspiracies of said respondent members, acting through and by means of respondent Institute, its members, officers, and agents, for the purpose of suppressing and preventing competition and restricting and restraining the sale of hardwood lumber and building materials in trade and commerce between, among, in and with the several States of the United States.

(j) The respondent Institute collects from and disseminates among the respondent members information as to prices, discounts, and terms and conditions of sale, and other information used and useful in carrying out said undertaking. Said respondent members and the respondent Institute and its secretary have adopted and agreed upon detailed rules and regulations designed and intended to prevent deviation on the part of respondent members from the prices, discounts, and terms and conditions of sale announced by such members.

PAR. 6. Each of said respondents has acted and is now acting in concert and in cooperation with one or more of the other respondents and with the respondent Institute in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 7. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices of respondents, as set forth in paragraphs 4 and 5 hereof, have been, and are:

(a) To monopolize, in the members of said Institute in the States of Wisconsin and Michigan, the business of dealing in and distributing hardwood lumber and building materials.

(b) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the said hardwood lumber and building mate-

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rials trade and industry, and to deprive the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; and otherwise to operate as a restraint upon, and a detriment to, the freedom of fair and legitimate competition in such trade and industry.

(c) To substantially increase the cost to purchasers of such hardwood lumber and building materials, and consequently to increase the cost of furniture and the cost of construction, repair, maintenance, and remodeling of homes, dwellings, buildings, highways, and all kinds of construction and building works.

(d) To oppress, eliminate, and discriminate against nonmembers of said Institute who are or have been engaged in selling, distributing, manufacturing, or using hardwood lumber and building materials.

(e) To obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in hardwood lumber and building materials in, to, and from the States of Wisconsin and Michigan, and to injure competitors of the members of said Institute.

PAR. 8. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a tendency to and have hindered and prevented price competition between and among said member respondents in the sale of hardwood lumber and building materials in commerce between, among, in and with the several States of the United States and in the District of Columbia; have placed in respondents the power to control and enhance prices; have increased the prices of hardwood lumber and building materials to the purchasers and users thereof, have tended to create in the respondents a monopoly in the sale of hardwood lumber and building materials in said commerce; have unreasonably restricted and restrained trade in said commerce in hardwood lumber and building materials, 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 June 15, 1938, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the filing of the respondents' answers to said complaint, testimony and other evidence in support of the allegations of said complaint were introduced by attorneys for the

Commission, and in opposition to the allegations of said complaint by attorneys for the respondents, before Robert S. Hall, trial examiner of the Commission theretofore duly designated by it, which testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for hearing before the Commission on said amended complaint and the answers thereto, testimony, and other evidence, report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint and oral argument, and the Commission having duly considered the matter, on May 23, 1941, directed that the proceeding be reopened for the purpose of taking such further testimony and other evidence as might be offered in support of and in opposition to the allegations of said complaint. Thereafter a stipulation as to certain facts was entered into between W. T. Kelley, Chief Counsel for the Commission, and Edward J. Dempsey, attorney for the respondents (except respondents A. L. Osborn, Kinzel Lumber Co., Menominee & Bay Shore Lumber Co., and Northwestern Cooperage & Lumber Co.), which provided, among other things, that, subject to the approval of the Commission, such statement of facts might be made a part of the record herein and might be taken as facts in this proceeding and in lieu of further testimony in support of or in opposition to the charges stated in the complaint, and that the Commission might proceed upon the entire record, including said statement of stipulated facts, to make its report, stating its findings as to the facts (including inferences which it might draw from the entire record, the admissions made by representatives of the respondents in the pleadings and as otherwise disclosed by the record and by said statement of stipulated facts), and its conclusion based thereon, and might enter its order disposing of the proceeding without the presentation of further argument or the filing of additional briefs.

Thereafter the proceeding regularly came on for final hearing before the Commission on said amended complaint, answers, testimony and other evidence, and stipulation, such stipulation having been approved, accepted, and filed, 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 Hardwood Institute, hereinafter for convenience referred to as the Institute, is an unincorporated trade

association, the membership of which at the time of the issuance of the amended complaint on June 15, 1938, consisted of 22 manufacturers and producers of hardwood lumber. Such members, hereinafter named and described, produced during the year 1937 approximately 37 per cent of the hardwood lumber produced in Wisconsin and Michigan, and during the same year they produced a larger percentage of the hardwood lumber produced in northern Wisconsin and northern Michigan.

Respondent, A. L. Osborn, was on June 15, 1938, and for a period of several years prior thereto had been, manager and secretary of the Institute. Until his death on April 19, 1940, he managed and directed its activities from his office in the First National Bank Building in Oshkosh, Wis., which also served as the office and principal place of business of the Institute.

Respondent, the Antrim Iron Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business, in the city of Grand Rapids, Mich.

Respondent, the Bay de Noquet Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Nahma, Mich.

Respondent, the Bonifas Gorman Co. (referred to in the complaint as the Boniface Gorman Co.), is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 176 West Adams Street, Chicago, Ill.

Respondent, the Brownlee Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at Hawks and Burke Streets, Detroit, Mich.

Respondent, the Edward Hines Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 77 West Washington Street, Chicago, Ill.

Respondent, William Bonifas Lumber Co. (referred to in the complaint as William Boniface Lumber Co.), is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Neenah, Wis.

Respondent, Holt Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Oconto, Wis.

Respondent, Kinzel Lumber Co., was, prior to April 19, 1939, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Merrill, Wis. On April 19, 1939, it was duly dissolved in accordance with law.

Respondent, Marathon Paper Mills Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Wausau, Wis.

Respondent, Menominee & Bay Shore Lumber Co., was, prior to October 6, 1941, a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Soperton, Wis. On October 6, 1941, it was duly dissolved in accordance with law.

Respondent, Northwestern Cooperage & Lumber Co., was, prior to August 26, 1937, a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Gladstone, Mich. On August 26, 1937, it was duly dissolved in accordance with law.

Respondent, the Oconto Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Oconto, Wis.

Respondent, the Rib Lake Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the city of Rib Lake, Wis.

Respondent, the Underwood Veneer Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Wausau, Wis.

Respondent, the Von Platen & Fox Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Iron Mountain, Mich.

Respondent, the M. J. Wallrich Land & Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Shawano, Wis.

Respondent, Weidman Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Trout Creek, Mich.

Respondent, Roddis Lumber & Veneer Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Marshfield, Wis.

Respondent, Sawyer-Goodman Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Marinette, Wis.

Respondent, I. Stephenson Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Wells, Mich.

Respondent, Thunder Lake Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Rhineland, Wis.

Respondent, the Wisconsin Land & Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Hermansville, Mich.

Respondent, the Yawkey-Bissel Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of White Lake, Wis.

Respondent, the Yawkey-Alexander Lumber Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business at Schofield, Wis.

PAR. 2. The aforesaid 24 corporations, hereinafter for convenience referred to as respondent members, for a period of several years prior to the date of the issuance of the amended complaint in this case, June 15, 1933, had maintained membership in the respondent Hardwood Institute. On June 15, 1938, 22 of these corporations maintained membership in the Institute, the Northwestern Cooperage & Lumber Co., and the M. J. Wallrich Land & Lumber Co. having ceased manufacturing and selling lumber prior thereto. Since that date the following respondent members have ceased manufacturing hardwood lumber because their timber holdings were exhausted: The Brownlee Lumber Co., Holt Lumber Co., Kinzel Lumber Co., Menominee & Bay Shore Lumber Co., Weidman Lumber Co., and the Sawyer-Goodman Co.

The other members of the respondent Institute are all engaged as manufacturers in the business of producing, selling, and distributing to wholesalers, contractors, builders, dealers, jobbers, furniture manu-

facturers, consumers, and other purchasers, hardwood lumber, and the products thereof. In the course and conduct of their business they sell hardwood lumber, after it has been manufactured by them in their respective mills, to furniture manufacturers and similar users of hardwood lumber, and cause such lumber and the products thereof to be shipped and transported to warehouses and places of business and to customers located in States other than the State where said lumber has been produced, and in States other than the State where the respective shipments originate.

In the course and conduct of their business all of the respondent members are now or have been engaged in trade and commerce between and among the several States of the United States and in the District of Columbia in the production, sale, and distribution of hardwood lumber and the products thereof.

PAR. 3. Until the adoption of the understanding, agreement, combination, and conspiracy hereinafter described, respondent members were inactive and substantial competition with each other and with other manufacturers and dealers in making or seeking to make sales of hardwood lumber and the products thereof in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. The Hardwood Institute had its beginning in the early part of 1928, when a committee representing a group of hardwood lumber manufacturers proposed to respondent, A. L. Osborn, that he assume the task of tabulating and compiling information with respect to the hardwood lumber market and supplying such information to the members of the group. Osborn had had many years of experience in the hardwood lumber industry and was widely recognized throughout the industry as possessing unusual knowledge and ability with respect to the production and marketing of lumber. The committee's negotiations with Osborn resulted in an agreement to which some 30 manufacturers subscribed at that time. Under the plan of operation agreed upon each manufacturer was to report to Osborn daily all of its sales of lumber, and Osborn was to compile these reports into general sales bulletins which were to be supplied by Osborn to all of the manufacturers entering into the agreement. Osborn was to receive as compensation for his services 8 cents for each thousand feet of lumber sold by the manufacturers. The written form of agreement adopted was as follows:

The undersigned agrees with A. L. Osborn that it will hereafter report without exception all of its orders for hardwood lumber to him daily in full detail on the order blank hereto attached and made a part hereof, or on an equivalent form giving the same information.

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The undersigned assents to these orders being tabulated to show the price received on sales made by the undersigned for each individual item and hereby assents to such prices being incorporated in a report to be issued semiweekly to other firms signing a concurrent agreement with the following exception:

If the undersigned feels in certain isolated cases that it has good and sufficient reason for not desiring a particular order to be shown in the aforesaid semiweekly report, it shall advise A. L. Osborn of that fact and the said A. L. Osborn will confer with the undersigned on the propriety of not showing said sale in said report, and he shall not publish the same without the consent of the undersigned.

The undersigned hereby assents to A. L. Osborn or his agent having access to its records, files, papers, and correspondence pertaining to orders taken by it for hardwood lumber and agrees to give him or his agent such assistance as may be requested in the examination of said records and files.

The undersigned assents to the information it furnishes as mentioned above being duplicated in said semiweekly reports and furnished to those who make agreements similar to this with A. L. Osborn, said information to be held in confidence by those who make such agreements and/or their sales managers.

The undersigned reserves the right to cancel this agreement on ten (10) days' notice to A. L. Osborn.

Between February 1, 1928, and November 1, 1933, all of the respondent members, except William Bonifas Lumber Co., entered into this agreement. While the William Bonifas Lumber Co. never executed the written form of agreement, it did, during the period from the abandonment of the NRA Code to June 15, 1938, report its sales to Osborn and otherwise utilized the services of Osborn in the same manner and to the same extent as did the other respondent members.

So far as the record discloses, there was never any formal adoption by respondents of the name Hardwood Institute to designate their organization and activities. Within some 2 or 3 years, however, the name had come into fairly general use among respondents and in the industry generally.

PAR. 5. In accordance with their agreement the respondent members have opened their books of account and other records for examination by Osborn and have made daily reports to him covering all of their sales. Such reports were usually made on blank forms prepared by Osborn, although in some instances certain of the respondents have simply sent Osborn copies of their invoices. These reports showed in detail each separate sale, giving the name of the purchaser; the items, sizes, and quantities of the lumber involved, the terms and conditions of sale, and the price at which the lumber was sold. Upon receipt of the reports Osborn proceeded to incorporate the information contained therein in general sales bulletins which were distributed to the respondent members and other sellers of hardwood lumber and the products thereof. The frequency of issuance of these bulletins depended upon market conditions. If the market was active and the

volume of sales large, a bulletin might be issued every second day. If, however, there was little activity in the market, as much as a week might elapse between bulletins. The bulletins showed the grade of the lumber sold, the name of the manufacturer reporting the order, whether the purchaser was a wholesaler, retailer, consumer, etc., any commission or concession allowed the purchaser, the destination of the shipment, the freight rate from the mill to destination, the freight rate from Wausau, Wis., to destination, the delivered price received and the current delivered list price, figured from Wausau, irrespective of the location of the point from which it was proposed that shipments be made. Adjoining columns showed the difference, if any, between the delivered price received and the list price on such lumber as shown by the Institute's current delivered price list. Through the reporting and exchanging of information in this manner the respondent members were able to secure a collective comparison among themselves of the prices obtained by the various respondent members for their products, and each respondent member was enabled to compare such prices with its own price quotations.

PAR. 6. Meetings of the members of the Institute were called by Osborn from time to time, usually every month or every 6 weeks, depending upon the activity of the market. While the meetings were usually open only to members of the Institute, occasionally Osborn would invite outsiders to attend. Aside from Osborn, who was regarded by the members as the Institute's manager and secretary, and who presided at the meetings, the Institute had no officers. No minutes or other records of the meetings were kept.

At these meetings the respondents discussed, considered and arrived at common understandings among themselves, upon which they later acted, with respect to various matters pertaining to the hardwood lumber market, including, among others: (a) The supply of hardwood lumber available and the market demand therefor; (b) the prices which had been and were being quoted and received by respondent members and other sellers of hardwood lumber for their products; (c) prospective or future price quotations under consideration by respondent members and other sellers of hardwood lumber; (d) questions raised by respondent members and respondent Osborn as to the prices which could and should be obtained in the future for the various items, sizes, and quantities of hardwood lumber and the products thereof; and (e) whether the current price quotations contained in price lists previously compiled and issued by respondent Osborn should be changed to accord with respondents' views as to the prices which could be obtained in the future.

Using the information obtained at these meetings, Osborn would proceed to prepare and supply to the respondent members a new list of prices on the various kinds and grades of lumber sold by them. He was regarded by respondent members as an expert analyst of the hardwood lumber market, and was in effect the joint agent of respondent members for the purpose of reconciling differences of opinion among respondent members with respect to prices and determining the prices which should appear in the next list. The price list prepared by Osborn represented a meeting of respondents' minds as to the minimum prices to be sought by respondent members for their products. In preparing their own price lists for distribution among their salesmen and customers, respondent members usually followed the Osborn list in all material respects. In fact, some of the respondent members prepared no price lists of their own but merely adopted the Osborn list, imprinting their own name on copies of the Osborn list and distributing such copies among their salesmen.

Osborn also supplied copies of his price list to the American Lumberman, a trade journal, and the Chicago Journal of Commerce, for publication by them. A copy was also regularly supplied by him to A. L. Broughton & Co., a printing concern in Minneapolis, Minn., which published the price list, with certain minor material added thereto, under the name "Broughton's Standard Price List." The respondent members, after discussion and consideration among themselves, have not only adopted and used such "standard" price list and placed it in the hands of their customers, but have also placed such list in the hands of other manufacturers and sellers of hardwood lumber, who proceeded to use the list. In this manner the respondents have caused the Osborn list to be circulated generally throughout the hardwood lumber industry and to be used by members of the industry in Wisconsin and Michigan who were not connected with the Institute. The so-called standard price list specified in some instances that prices or charges less than those contained in the list should not be quoted or charged.

In the sale of their products the respondent members have followed the practice of adhering to and maintaining the prices set by the standard price list as a minimum for their quotations, and frequently as a minimum for their actual sales transactions. For example, the sales reports made by the respondent members to Osborn during the period from January 1 to January 31, 1937, show that out of 1,108 items reported, 487 or 44 percent were sold at the exact standard list price, 416 or 37 percent were sold at prices above the standard list price, and 205 items or 19 percent were sold at prices less than the standard

list price. It thus appears that of all of the sales reported during that period 81 percent were at prices equalling or exceeding the standard list prices.

PAR. 7. A further circumstance bearing upon the point that the Osborn price list represented a common understanding and agreement among the respondent members is that members who failed to maintain the prices shown on the list were subjected to questioning by Osborn with respect to such departures. An example of this is a letter addressed by Osborn to the sales manager of one of the respondent members which read as follows:

My attention has been called to your sale to the Northern Furniture Co. of 4/4 #2 Common and Better Soft Maple.

I have been asked whether this is the usual run of #2 Common and Better or not. Inasmuch as this calls for \$42.25 on #2 Common and Better Soft Maple, I will be glad to have your say as to what you will ship.

Replying to this letter the sales manager of the respondent member wrote Osborn as follows:

Wish to advise that our Soft Maple is not as good as the ordinary run. We don't get very much Soft Maple: at the most our cut would be not to exceed 100,000 ft. of No. 2 and Better per year. The lumber does run quite narrow, also contains about 40% No. 2 Common, 20% FAS and the balance No. 1 Common and Selects. We don't get enough of it to sort the different grades out, which necessitates our selling it No. 2 and Better, and as it is not a very good run of stock we have always had to make a very low price on same to move it.

PAR. 8. In further pursuance of their plan to establish and maintain a system of minimum prices governing the sale of their products, the respondent members have by concerted and cooperative action arrived at and promulgated schedules of delivered prices on their products. The freight or transportation charges on lumber from the mill to the purchaser constitutes one of the largest of the items making up the cost of the lumber delivered to the purchaser. Even though a group of manufacturers might establish uniform prices for lumber at their mills, the ultimate delivered cost to a given purchaser would vary widely, if, as in the present case, the mills of the sellers were located at different points. To overcome this difficulty the respondent members established a system of "delivered" prices, which purported to include the freight as well as the f. o. b. price at the mill. Uniformity in these delivered prices was achieved by respondents through the use of Wausau, Wis., as a basing point; that is, as the point from which the freight was calculated, irrespective of the fact that the mills of most of the respondent members were not located in Wausau, Wis., but were located at various other points in Wisconsin and in Michigan, and had different freight rates to given destinations. Moreover, some of the respondent members

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made shipments by water at lower rates than those on which their delivered price quotations were calculated. By using the same f. o. b. base quotation at a common point, namely, Wausau, Wis., and basing the freight calculation on the fiction that all shipments originated at Wausau, the respondent members obtained a uniformity of delivered prices which otherwise would have been impossible. As an incident to their calculations of delivered price quotations in that manner, the respondents have among themselves discussed and followed the practice of asking, charging, and receiving larger net sums and amounts for hardwood lumber and the products thereof from buyers located at points nearer the place of production than from other buyers at points more distant from the place of production.

There frequently are substantial variations in weight between shipments of lumber which are supposed to contain the same number of board feet, these variations being due primarily to the degree of dryness of the lumber, the grain of the lumber, and the way in which the lumber is sawed, that is, whether it is sawed evenly or unevenly. To obviate the effect of these variations in weight upon delivered prices the respondent members have used a system of uniform or standardized weights, the weight schedules being set forth in the Broughton Standard Price List.

This system of delivered prices and fixed schedules of weights was in common use among the respondent members. After discussion and consideration among themselves the respondent members adopted and made use of detailed and itemized price lists of hardwood lumber and the products thereof, calculated f. o. b. Wausau as a basing point, such lists being published by representative respondents or by co-operating publishers from information supplied by respondent Osborn or other representatives of respondents. One of such lists, the Broughton Standard Price List, which was in fact the Osborn list, carried a foreword that:

This book contains F. O. B. Wausau prices of Northern Hardwoods on date of issue.

Also Table of Weights, Millwork Charges, and Delivery Table showing proper amounts to Add to Rough F. O. B. prices for Rough or Mill Worked stock from 4¢ to 47¢ rates inclusive, and will save much time in deciding Delivered prices. The Mill Work Charges are figured in with the Freight Charges and to obtain Delivered Prices add amount shown in proper Rough or Millwork and Rate column.

The use of a common basing point results in varying net price returns to manufacturers and shippers, depending upon whether the actual freight rate from the mill to the destination of the shipment

is greater or less than the rate from the basing point to the destination of the shipment. In those cases where the rate from mill to destination is higher than the rate from the basing point to destination the shipper nets less than the base price. Conversely, in those cases where the rate from mill to destination is less than the rate from the basing point to destination the shipper nets more than the base price. The substantial character of these freight rate differentials is apparent from the following testimony of respondent Osborn:

There are quite a number of mills south of the Wausau group, including two mills at Oconto, one large mill in New London, or was until recently, a large mill at New London, Tigertown, Shawano, Milwaukee, and Marshfield, who to the large consuming markets, have rates running from 1¢ to 4¢ better than the Wausau group. New London, for instance, takes 8¢ or 9¢ rate to Sheboygan, the rate from Wausau would be 13¢ I believe. The rate from New London to Oshkosh, a very large consuming market, would be 7¢, from Wausau 13¢.

Thus on a shipment to Oshkosh, Wis., a mill located at New London, Wis., would have a freight rate advantage of 6¢ per hundredweight over a mill located at Wausau, Wis. Using the standard weight of 4,000 pounds per 1,000 feet as set forth in the Broughton price list, the net price advantage to the New London mill would be \$2.40 per 1,000 feet, but by quoting delivered prices on the Wausau base, that shipper would refrain from quoting less than mills or shippers with freight disadvantages.

In calculating delivered prices the respondents have not in all cases restricted themselves to the use of the applicable freight rate from Wausau, Wis., to the point of destination of the shipment, but have in some instances agreed upon and incorporated in their delivered price quotations certain other arbitrary freight rate factors. Certain market areas have been designated by respondents as comprising particular price zones, and uniform delivered price quotations have been used by respondents for all shipments moving to any point in such zones, despite the fact that the actual freight rates from any given place of shipment to the various destinations in such zones varied substantially. One of the zones so designated by respondents comprised the Lower Peninsula of Michigan. From time to time the respondents, after discussion among themselves, changed and increased the arbitrary freight factor used in the compilation of such delivered price lists and quotations.

PAR. 9. In addition to the use of uniform delivered price quotations the respondent members have also cooperated with each other and with other sellers of hardwood lumber and the products thereof in formulating, adopting and using uniform business practices, terms,

and conditions of sale, including discounts and other amounts to be allowed wholesalers, retailers, and other tradesmen, for the purpose and with the effect of producing uniformity in price quotations.

PAR. 10. The respondents usually followed the practice of quoting prices, terms, and conditions of sale f. o. b. mill or point of production only when such prices, terms and conditions were determined under, dependent upon or related to base price or a method or system of making delivered price quotations, so that such f. o. b. mill quotations were equal to a base price plus a freight rate factor from some basing point to the delivery point.

PAR. 11. Each of the respondent members has acted in concert and in cooperation with one or more of the other respondent members and with the respondent Institute in doing the foregoing acts and things in furtherance of the understanding, agreement, combination, and conspiracy herein described.

PAR. 12. The Commission finds that the understanding, agreement, combination, and conspiracy entered into by the respondents, including respondents' use of the methods set forth herein, and their acts done pursuant thereto and in furtherance thereof, as herein described, had and have the tendency and capacity to suppress, restrain, eliminate, and lessen competition, and did substantially suppress, restrain, eliminate, and lessen competition in the sale of hardwood lumber and the products thereof in commerce between and among the several States of the United States and in the District of Columbia. Such understanding, agreement, combination, and conspiracy and the acts done pursuant thereto and in furtherance thereof also had and have the tendency and capacity to increase the prices of hardwood lumber and the products thereof to the purchasers and users of such commodities, and unreasonably to restrict and restrain trade in hardwood lumber and the products thereof in commerce between and among the several States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents as herein found 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 amended complaint of the Commission, the answers of

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respondents, testimony and other evidence taken before Robert S. Hall, a trial examiner of the Commission, theretofore duly designated by it, in support of and in opposition to the allegations of said complaint, and a stipulation as to certain facts entered into between Edward J. Dempsey, attorney for the respondents (except respondents A. L. Osborn, Kinzel Lumber Co., Menominee & Bay Shore Lumber Co. and Northwestern Cooperage & Lumber Co., and W. T. Kelley, chief counsel for the Commission, which provided, among other things, that the Commission might proceed upon the entire record, including such statement of stipulated facts, to make its report, stating its findings as to the facts (including inferences which it might draw from the entire record, the admissions made by representatives of the respondents in the pleadings and as otherwise disclosed by the record, and by such statement of stipulated facts), and its conclusion based thereon, and might enter its order disposing of the proceeding without the presentation of further argument or the filing of additional briefs, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, the Hardwood Institute, an unincorporated association, and the Antrim Iron Co., the Bay de Noquet Co., the Bonifas Gorman Co., the Brownlee Co., the Edward Hines Lumber Co., William Bonifas Lumber Co., Holt Lumber Co., Marathon Paper Mills Co., the Oconto Co., the Rib Lake Lumber Co., the Underwood Veneer Co., the Von Platen & Fox Co., the M. J. Wallrich Land & Lumber Co., Weidinan Lumber Co., Roddis Lumber & Veneer Co., Sawyer-Goodman Co., I. Stephenson Co., Thunder Lake Lumber Co., the Wisconsin Land & Lumber Co., the Yawkey-Bissel Co., and the Yawkey-Alexander Lumber Co., corporations, both separately and as representatives of each other, and said respondents' officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce among and between the several States of the United States and in the District of Columbia, of hardwood lumber or products thereof, do forthwith cease and desist from:

1. Entering into, carrying out, or aiding or abetting in the carrying out, or the continuing of any agreement, understanding, combination, or conspiracy or cooperation or concert of action (to produce harmonious individual action) between and among any two or more of said respondents or between any one or more of said respondents and any other persons, partnerships, or corporations, for the purpose or with the effect of restricting, restraining, or eliminating competition in price.

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2. Doing and performing, by cooperative or concerted action, or agreement, or understanding, between and among any two or more of said respondents, or between any one or more of said respondents, and any other person, partnerships, or corporations, the following acts, practices, or things:

(a) Fixing, establishing, or maintaining prices, terms, or conditions of sale, or promising or attempting to adhere to prices, terms, and conditions of sale of hardwood lumber or products thereof so fixed.

(b) Adopting, maintaining, or using a method or system for calculating and quoting prices predicated upon the use of figures f. o. b. Wausau, Wis., or any other basing point, plus freight therefrom, for the purpose or with the effect of matching or making the same the delivered price quotations of any two or more sellers of hardwood lumber or the products thereof at any given destination.

(c) Preparing, calculating, or circulating a compilation or compilations of delivery charges, freight factors, or so-called freight rates for use by sellers of hardwood lumber or products thereof for the purpose or with the effect of making or aiding in making the same delivered price quotations on the part of any two or more sellers of hardwood lumber or the products thereof at any given destination.

(d) Quoting prices, terms, and conditions of sale determined under a method or system of basing point—delivered price—quotations for the purpose or with the effect of matching or making the delivered price quotations of any two or more sellers of hardwood lumber or the products thereof the same at any given destination; or quoting prices, terms, or conditions of sale f. o. b. point of production or shipment that are dependent on, related to, or determined by such method or system.

(e) Treating buyers and users of hardwood lumber and the products thereof in an unfair or discriminatory manner or differently by systematically demanding, charging, accepting, or receiving, as an incident to the use of any basing-point method or system or any freight equalization method or system of delivered price quoting, larger mill net sums and amounts for products equal in quality and quantity from buyers and users located at or near the respective places of production of the respondents, than from other buyers and users more distantly located freight-wise from such respective places of production or shipment, for the purpose or with the effect of matching or making the same the delivered price quotations on the part of any two or more sellers of hardwood lumber and the products thereof at any given destination.

(f) Reporting, filing, or exchanging among themselves, or with other competing sellers of hardwood lumber or the products thereof, base or other price lists, or adhering or agreeing to adhere to any extent to the prices quoted or included in such lists, or collaborating among themselves or with other competing sellers concerning any price quotations included in such lists; Provided, this subparagraph (f) shall not be construed as a prohibition against a seller giving to a customer price lists on items involved in sales by such seller to such customer.

(g) The opening of books or other records for examination by a common agent, or the reporting, filing, or exchanging among themselves or with others through a common agent or otherwise, information regarding the sales of any individual seller of hardwood lumber or products thereof, including the prices at which such sales are made, for the purpose or with the effect of securing a collective or cooperative comparison, through a common agent or otherwise, of the prices therein with the price quotations previously announced by any seller of hardwood lumber or products thereof.

(h) Filing or exchanging among themselves or with others, through a common agent or otherwise, statistical or other intimate details of sales made by any one seller of hardwood lumber or products thereof for the purpose or with the effect of aiding or abetting in eliminating or restraining competition in the sale of hardwood lumber or the products thereof;

(i) Formulating, adopting, or using price quotations, business practices, terms, or conditions of sale, including discounts or other amounts to be allowed wholesalers, retailers, or other tradesmen, for the purpose or with the effect of producing uniformity in such quotations, business practices, terms, and conditions of sale and discounts among competitors in their sale of or offers to sell hardwood lumber or the products thereof.

(j) Discussing or collaborating in the course of meetings or otherwise, among themselves or with others, or cooperating among themselves or with others, for the purpose or with the effect of continuing or carrying out or aiding in the continuing or the carrying out of any of the methods or practices specified and set forth in the immediately preceding subparagraphs lettered (a) to (i) inclusive.

3. Reporting, filing, or exchanging, among themselves or with other competing sellers of hardwood lumber or the products thereof, base or other price lists; provided this paragraph 3 shall not be construed as a prohibition against a seller giving to a customer price lists on items involved in sales by such seller to such customer.

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4. Opening of books or other records for examination by a common agent, or reporting, filing, or exchanging among themselves or with others through a common agent or otherwise, information regarding the sales of any individual seller of hardwood lumber or products thereof, including the prices at which such sales are made, for the purpose or with the effect of securing a collective or cooperative comparison, through a common agent or otherwise, of prices with price quotations previously announced by any seller of hardwood lumber or products thereof.

It is further ordered, That said 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.

The respondent corporations Kinzel Lumber Co., Menominee & Bay Shore Lumber Co., and Northwestern Cooperage & Lumber Co., having been dissolved, *It is further ordered*, that this proceeding be, and it hereby is, dismissed as to said respondents.

The individual respondent, A. L. Osborn, having died subsequent to the institution of this proceeding, *It is further ordered*, that this proceeding be, and it hereby is, dismissed as to said respondent.

Syllabus

IN THE MATTER OF

CLARENCE B. COUNCIL, TRADING AS STATISTICAL RE-
SEARCH BUREAU, AND METALS AND MINERALS RE-
SEARCH BUREAU.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3572. Complaint, Dec. 14, 1940¹—Decision, Feb. 24, 1942*

Where an individual, engaged in the compilation and interstate sale and distribution of a publication known as "The Mining Manual," in competition with a concern which compiled and published its "The Mines Register" of information concerning mining and mining companies—

(a) Represented, through statements published and circulated to subscribers of "The Mines Register" and to others, that his said "Manual" was published periodically throughout the year, thereby giving complete and up-to-date information concerning various companies and their activities, and was superior to said competitive "Register," that latter was not an authentic and high-grade publication, and that information and material therein contained were out of date;

When as a matter of fact his own publication comprised only the first 200 pages of a perpetual manual which he never completed, and of which section 1 of part 1 did not appear for nearly a year after the making of his said representations, to be followed eight months later by section 2, and in the following year by section 3, the last; and said "Mines Register," published from time to time, gave as complete information as was obtainable concerning mining companies, organizations, equipment, etc., and was considered to be authentic, reliable, and up-to-date;

(b) Represented, directly and by implication, through circular letters, that he had been engaged in publishing books of mining information since 1925, and that his said "Manual" was generally recognized as of preeminent merit, constituting a standard reference work, and the only up-to-date information service on mines published, containing all the information with respect to mining companies contained in the aforesaid "Register," and ready for immediate delivery;

The facts being he had not been engaged in business as claimed; his said "Manual" was not generally recognized as a standard reference work, or the only one publishing up-to-date information service on mines; and said "Register" contained mining information not included in his "Manual," no part of which was ready for delivery until almost a year later, as noted above;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true; that said "Register" was not authentic, reliable and up-to-date, and that his "Manual" was a superior product, whereby purchasing public was

¹ Amended.