

IN THE MATTER OF

PACIFIC FRUIT & PRODUCE COMPANY, WALLA WALLA
GARDENERS' ASSOCIATION, 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 4487. Complaint, Apr. 16, 1941—Decision, Feb 24, 1942*

Where three corporations, two partners and a cooperative association, engaged, among other things, in shipping broad- or flat-leaf spinach from their respective packing houses at Walla Walla, Wash., particularly to jobbers for resale in Chicago and surrounding area in which such spinach, during the shipping season, from early September to late November, normally met no substantial competition—and prior to 1939, and but for acts and practices below set forth, in competition with one another and others in such shipment and sale, as were brokers and jobbers, below referred to, in purchase thereof;

Following a meeting in Chicago of the Chicago manager of a Minneapolis broker, the manager of aforesaid Walla Walla cooperative association, and the sales manager of one of four Chicago jobbers—

- (a) Entered into and carried out agreement to sell such broadleaf spinach only through aforesaid broker, with shipments to be allotted to said shippers on basis of sales of previous years; and

Where such shippers and four Chicago jobbers handling such product, following discussions and correspondence with aforesaid broker's Chicago manager—

- (b) Entered into and carried out agreement to the effect that the purchase and sale of product in question in the Chicago market would be prorated among the four jobbers concerned; and

Where said four jobbers—

- (c) Entered into and abided by agreement that they would purchase such Walla Walla spinach only from aforesaid shippers through said Minneapolis broker, and would rotate cars or portions thereof on the basis of previous years' purchases; and

Where aforesaid shippers, jobbers and brokers—

- (d) Entered into and abided by agreement that any request for purchase of spinach received by said shippers from any dealer other than jobbers herein concerned would be referred to said broker, who would advise such other jobbers or dealers that there were no cars of such spinach available; and

Where aforesaid jobbers, pursuant to such agreement, combination and conspiracy, and in furtherance thereof—

- (e) Established and maintained a fixed resale price at which such broadleaf spinach should be sold in the Chicago market;

With the result that said acts and practices, all to the prejudice and injury of the public, had a tendency to, and did actually, hinder and prevent price competition between and among said shippers, jobbers and brokers in the purchase and sale of fresh broadleaf spinach in commerce, and placed in them the power to control and enhance the prices of said commodity;

Increased and fixed the prices thereof paid by purchasers, and consequently the prices paid by the public; created in said shippers, jobbers and brokers a substantial monopoly in the dealings in such commodity in commerce; and unreasonably restrained commerce in product in question:

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

Before *Mr. William C. Reeves* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Wm. T. Chantland and *Mr. Everett F. Haycraft* for the Commission.

Mr. Howard W. Sanders of Ryan, Askren & Mathewson, of Seattle, Wash., for Pacific Fruit & Produce Co.

Mr. Marvin Evans, of Walla Walla, Wash., for Walla Walla Gardeners' Association.

Mr. John F. Watson of Pedigo, Watson & Gose, of Walla Walla, Wash., for Mojonnier & Sons, Inc.

Mr. William E. Berney, of Walla Walla, Wash., for Walla Walla Produce Co.

Mr. Ewing M. Stephens, of Walla Walla, Wash., for Valley Fruit Co.

Mr. Seward R. Moore, of Minneapolis, Minn., for C. H. Robinson Co. and Robert M. Steinberg.

Gottlieb & Schwartz, of Chicago, Ill., for LaMantia Brothers Arrigo Co., Mark Owen & Co., P. & M. Distributing Co. and Applebaum-Missner Co.

COMPLAINT

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

PARAGRAPH 1. Respondent, Pacific Fruit & Produce Co., sometimes hereinafter referred to as a respondent shipper, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with one of its principal offices and place of business and shipping plants at Walla Walla, Wash. Said respondent now is, and for several years last past has been, engaged

Complaint

34 F. T. C.

in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, Walla Walla Gardeners' Association, sometimes hereinafter referred to as a respondent shipper, is a cooperative association organized, existing and doing business under and by virtue of the laws of the State of Washington with its principal office and place of business in Walla Walla, Wash. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, Mojonnier & Sons, Inc., sometimes hereinafter referred to as a respondent shipper, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington with its principal office and place of business in Walla Walla, Wash. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, Walla Walla Produce Co., sometimes hereinafter referred to as a respondent shipper, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington with its principal office and place of business in Walla Walla, Wash. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondents, Ewing M. Stephens and Eugene Tausich, are copartners trading as Valley Fruit Co., sometimes hereinafter referred to as a respondent shipper, with their principal office and place of business in Walla Walla, Wash. Said copartners are now, and for several years last past have been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, C. H. Robinson Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota, sometimes hereinafter referred to as a respondent broker, with its principal office and place of business at 430 Oak Grove Avenue, Minneapolis, Minn. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, and shippers and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, LaMantia Bros. Arrigo Co., sometimes hereinafter referred to as a respondent jobber, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 28-32 South Water Market, Chicago, Ill. Said respondent now is, and for several years last past has been, engaged in the business of brokers, jobbers, dealers, and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondents, Owen T. Hill and Robert S. Hill, are copartners trading as Mark Owen & Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 33 South Water Market, Chicago, Ill. Said copartners now are, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondents, John Plennert and John Mahoney, are copartners trading as P. & M. Distributing Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 8 South Water Market, Chicago, Ill. Said copartners now are, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondents, Arthur Applebaum and Maurice J. Missner, are copartners trading as Applebaum-Missner Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 13 South Water Market, Chicago, Ill. Said copartners now are, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors in commerce of broadleaf spinach and other fresh vegetables and fresh fruits.

Respondent, Robert M. Steinberg, sometimes hereinafter referred to as respondent Steinberg, is, and for the last several years has been, manager of the Chicago branch of respondent broker C. H. Robinson Co., with his office and place of business at 1425 South Racine Avenue, Chicago, Ill. Said respondent, as manager of respondent broker, C. H. Robinson Co., has for the last several years past actively directed the said business of said respondent broker in Chicago.

PAR. 2. In the course and conduct of their said businesses said respondent shippers have shipped fresh broadleaf spinach and other fresh vegetables and fresh fruits from their respective packing houses in the State of Washington to the purchasers thereof located in the States other than the State of Washington, and particularly to customers, including respondent jobbers, for resale to dealers in and

Complaint

34 F. T. C.

consumers of said products in the city of Chicago, State of Illinois, and surrounding area, hereinafter referred to as the Chicago market, and there has for many years last past and now is a continuous current of interstate trade and commerce in said products between and among the several States of the United States.

PAR. 3. Broadleaf spinach is a distinct variety of spinach grown almost exclusively in the region around Walla Walla, Wash., and is packed and handled by only the respondent shippers. The bulk of this type of spinach is sold direct to canners but substantial quantities are shipped fresh to Chicago market where a sale for this particular type of spinach is readily found. Prior to the 1939 shipping season for fresh broadleaf spinach, which began in September and ended in the early part of November, said product was regularly shipped by the respondent shippers to numerous jobbers in the Chicago market including respondent jobbers through a number of brokers including the respondent broker, C. H. Robinson Co.

Said respondent shippers had been for some time prior to the beginning of the 1939 shipping season in competition in the sale of fresh broadleaf spinach between each other and with other shippers in said commerce, and would now be in free and open competition with one another in said commerce but for the agreements, practices and methods as hereinafter set out.

Said respondent jobbers had been for some time prior to the beginning of the 1939 shipping season in competition with one another and with other jobbers and dealers in the purchase of fresh broadleaf spinach from the producers and shippers thereof located in the State of Washington, and in the resale thereof to customers located in the Chicago market, and would now be in competition with the others but for the agreements, practices and methods hereinafter set out.

PAR. 4. On or about September 1, 1939, said respondents entered into and thereafter carried out and are still carrying out an understanding, agreement, combination and conspiracy to monopolize trade and commerce in fresh broadleaf spinach between and among the several States of the United States and to suppress, hinder and lessen competition in the purchase, sale and distribution of said product in said commerce. Pursuant to said agreement, understanding, combination and conspiracy and in furtherance thereof said respondents have done and do among others, the following acts and things:

(a) Respondent jobbers fixed the resale prices at which fresh broadleaf spinach purchased by them from respondent shippers through respondent broker should be sold in the Chicago market.

(b) Respondent jobbers aided and assisted by respondent broker and respondent Steinberg, entered into an agreement with respondent shippers whereby respondent shippers agreed to ship and thereafter did ship all of their pack of fresh broadleaf spinach to the respondent jobbers exclusively through the respondent broker.

(c) Respondent shippers agreed upon and fixed the prices paid for broadleaf spinach to the growers.

(d) Respondent shippers agreed to and did prorate the tonnage of fresh broadleaf spinach throughout the season, all handled through respondent broker, to the respondent jobbers.

(e) The respondent jobbers agreed to and did purchase all of their requirements of fresh broadleaf spinach for the Chicago market from the respondent shippers through the respondent broker.

(f) Respondent Steinberg actively aided and assisted in negotiating the said agreement between respondent jobbers and shippers, and cooperated in enforcing said agreement.

PAR. 5. Said agreement, understanding, combination and conspiracy and the things done thereunder and pursuant thereto and in furtherance thereof as hereinbefore alleged, have had and do have the capacity, tendency and effect of:

(a) Unduly restricting and restraining competition in the purchase and sale of fresh broadleaf spinach in commerce between and among the several States of the United States, particularly between the State of Washington and the State of Illinois.

(b) Enabling the respondents to control and substantially monopolize the business of buying, selling and distributing fresh broadleaf spinach in interstate commerce.

(c) Preventing competitors of respondent jobbers from purchasing fresh broadleaf spinach from respondent shippers, the sole source of supply of said product, to their injury and detriment.

(d) The enhancement of the retail price of fresh broadleaf spinach to the dealers and to the public in the city of Chicago and surrounding area.

PAR. 6. The agreements, 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 fresh broadleaf spinach in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices of said commodity; have in-

Findings

34 F. T. C.

creased and fixed the prices of said commodity paid by purchasers thereof, and consequently the prices paid by the public; 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 such commerce in fresh broad-leaf spinach, 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 April 16 A. D. 1941, issued and subsequently served its complaint upon the respondents, Pacific Fruit & Produce Co., a corporation; Walla Walla Gardners' Association, a cooperative association; Mojonner & Sons, Inc., a corporation; Walla Walla Produce Co., a corporation; Ewing M. Stephens and Eugene Tausich, copartners, trading as Valley Fruit Co.; C. H. Robinson Co., a corporation; LaMantia Brothers Arrigo Co., a corporation; Owen T. Hill and Robert S. Hill, copartners, trading as Mark Owen & Co.; John Plennert and John Mahoney, copartners, trading as P. & M. Distributing Co.; Arthur Applebaum and Maurice J. Missner, copartners, trading as Applebaum-Missner Co.; and Robert M. Steinberg, individually and as manager of the Chicago branch of C. H. Robinson Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answers thereto, testimony, and other evidence in support of said complaint were introduced by Everett F. Haycraft, attorney for the Commission, and in opposition to the allegations of the complaint by Howard W. Sanders, Marvin Evans, John F. Watson, Ewing M. Stephens, William E. Berney, S. R. Moore, David L. Bazelon, and Martin J. Harris, attorneys for the respondents, before William C. Reeves and W. W. Sheppard, trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers thereto, testimony, and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, and briefs in support of the complaint and in opposition thereto (oral argument not having been requested); 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, Pacific Fruit & Produce Co., sometimes hereinafter referred to as a respondent shipper, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with one of its principal offices, and place of business and shipping plants, at Walla Walla, Wash. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, Walla Walla Gardners' Association, sometimes hereinafter referred to as a respondent shipper, is a cooperative association organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business in Walla Walla, Wash. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, Mojonner & Sons, Inc., sometimes hereinafter referred to as a respondent shipper, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business in Walla Walla, Wash. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, Walla Walla Produce Co., sometimes hereinafter referred to as a respondent shipper, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business in Walla Walla, Wash. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondents, Ewing M. Stephens and Eugene Tausich, are co-partners trading as Valley Fruit Co., sometimes referred to as a respondent shipper, with their principal office and place of business in Walla Walla, Wash. Said co-partners are now, and for several years

Findings

34 F. T. C.

last past have been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, C. H. Robinson Co., sometimes hereinafter referred to as a respondent broker, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Dakota, with its principal office and place of business at 430 Oak Grove Avenue, Minneapolis, Minn. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, shippers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, LaMantia Brothers Arrigo Co., sometimes hereinafter referred to as a respondent jobber, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 28-32 South Water Market, Chicago, Ill. Said respondent is now, and for several years last past has been, engaged in the business of brokers, jobbers, dealers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondents, Owen T. Hill and Robert S. Hill, are copartners trading as Mark Owen & Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 33 South Water Market, Chicago, Ill. Said copartners are now, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondents, John Plennert and John Mahoney, are copartners trading as P. & M. Distributing Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 8 South Water Market, Chicago, Ill. Said copartners are now, and for several years last past have been, engaged in the business of brokers, jobbers, dealers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondents, Arthur Applebaum and Maurice J. Missner, up until November 1940, were copartners trading as Applebaum-Missner Co., sometimes hereinafter referred to as a respondent jobber, with their principal office and place of business at 13 South Water Market, Chicago, Ill. In November 1940 Maurice J. Missner died, leaving Arthur Applebaum as his surviving partner. For several years prior to November 1940, said copartners were engaged in the business of brokers, jobbers, dealers, and distributors, in commerce, of various fresh fruits and fresh vegetables, including broadleaf spinach.

Respondent, Robert M. Steinberg, an individual, is now, and for the last several years has been, manager of the Chicago branch of respondent broker C. H. Robinson Co., with his office and place of business at 1425 South Racine Avenue, Chicago, Ill. Said respondent, as manager of respondent broker C. H. Robinson Co., has, for the last several years past, actively directed the business of said respondent broker in Chicago.

PAR. 2. In the course and conduct of their said businesses, said respondent shippers have shipped various fresh fruits and fresh vegetables, including broadleaf spinach, from their respective packing houses in the State of Washington to the purchasers thereof located in various other States of the United States, and particularly to customers, including respondent jobbers, for resale to dealers in, and consumers of, said products in the city of Chicago, State of Illinois, and surrounding areas.

All of said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their businesses, the respondent shippers are engaged in the sale and distribution of a distinct type of spinach known to the trade as Walla Walla or Washington spinach, which is of the broadleaf or flatleaf variety of spinach. During the shipping season, which is from the early part of September to the latter part of November, this product has a ready market in the Chicago area. There are other areas which supply the Chicago market with broadleaf or flatleaf variety of spinach. These are chiefly Michigan, Illinois, Indiana, and Ohio, which are considered in the Chicago area, and Texas. Under normal weather conditions, the season for spinach in the Chicago area is practically closed by the early part of September, and the season for Texas spinach does not begin until around December. Consequently, the Walla Walla spinach does not meet any substantial competition in the Chicago market during its season, except possible overlapping at the beginning and end of the season during normal weather conditions. There are times, however, when the weather conditions continue abnormally warm in the Chicago area in the fall season, resulting in greater quantities of spinach being shipped into Chicago from that area.

The broadleaf spinach received from the Chicago area, and also that received from Texas, is customarily shipped into the Chicago market in bushel baskets and packed in such a way as to cause loss by deterioration of the product. The shippers in Walla Walla,

however, due to the necessity of transporting their spinach for considerable distance, have adopted the practice of carefully grading all spinach shipped, so that on inspection it shows "U. S. Grade 1." In addition, the spinach is carefully packed in twenty-pound boxes lined with paper, with ice placed in the center, and after being packed in freight cars, such cars are carefully top-iced. As a result of this treatment, the Walla Walla spinach reaches the Chicago market in good condition, with little or no shrinkage or loss from deterioration, and, by reason of this fact, this spinach commands a higher price on the Chicago market than the spinach received from the other localities mentioned.

PAR. 4. Prior to 1939 the shippers located in the Walla Walla district sold their spinach either direct to jobbers in the Chicago district or through various brokers. Among the brokers who dealt in Walla Walla spinach were C. H. Robinson Co., Riley McFarland Co., McCaffrey Brothers Co., and Chandler-Allen Co. Among the jobbers in the Chicago area who purchased either direct from the shippers in the Walla Walla district or the brokers above mentioned were LaMantia Brothers Arrigo Co., Mark Owen & Co., P. & M. Distributing Co., Applebaum-Missner Co., Cooney & Korshak, Schoenburg, Price & Co., and others. In making such sales, the spinach was offered through brokers, or direct for sale, at a price in line with what was thought to be the market and what the buyers would pay.

PAR. 5. In the sale and distribution of said Walla Walla spinach to the Chicago district, the respondent shippers, prior to 1939, were in competition between each other and with other shippers in commerce among and between the various States of the United States, and would now be in free and open competition with one another in said commerce but for the agreements, practices, and methods as hereinafter set forth.

Prior to 1939 the respondent jobbers were in competition with one another and with other jobbers and dealers in the purchase of said fresh broadleaf spinach from the producers and shippers thereof located in the State of Washington and in the resale thereof to customers located in the Chicago market, and would now be in competition with the others but for the agreements, practices, and methods hereinafter set out.

PAR. 6. In the early part of February 1939 Robert M. Steinberg, manager of the Chicago branch of respondent C. H. Robinson Co. J. J. Mahar, manager of respondent Walla Walla Gardeners' Association, and Anton Ernst, sales manager of respondent Applebaum-

Missner Co., held a meeting in Chicago, for the purpose of discussing and arranging for an agreement or combination between certain shippers of broadleaf spinach located in the Walla Walla district and certain jobbers located in the Chicago area, under which arrangement the shippers were to sell only through the respondent C. H. Robinson Co., as broker, to certain selected jobbers in the Chicago area, shipments by the shippers to be prorated among such shippers, and the spinach received in the Chicago market to be prorated among the selected jobbers.

PAR. 7. Subsequent thereto, after various meetings held by the shippers, the respondent shippers agreed to sell said broadleaf spinach only through the respondent broker C. H. Robinson Co., shipments to be allotted to the shippers on the basis of sales of previous years, and on August 25, 1939, J. J. Mahar, manager of respondent Walla Walla Gardeners' Association, advised R. M. Steinberg, manager of respondent, C. H. Robinson Co., by letter, of the conclusion of this arrangement among the shippers and that the proration among the respondent shippers would be as follows: Walla Walla Gardeners' Association, 50 percent; Mojonnier & Sons, Inc., 22 percent; Pacific Fruit & Produce Co., 16 percent; Walla Walla Produce Co., 11 percent; and Valley Fruit Co., 1 percent.

PAR. 8. In like manner, after discussions between R. M. Steinberg and various jobbers, and also correspondence between various jobbers and certain of the respondent shippers, it was agreed that the purchase and sale in the Chicago market would be handled by four jobbers in the Chicago area, these four jobbers being the respondent jobbers Applebaum-Missner Co., LaMantia Bros. Arrigo Co., Mark Owen & Co., and P. & M. Distributing Co. It was agreed among such respondent jobbers that they would purchase Walla Walla broadleaf spinach only from the respondent shippers, through the respondent broker C. H. Robinson Co., and would rotate the cars or portions of cars in such manner as might be considered equitable by such respondent jobbers, based upon purchases of previous years. It was further agreed between the respondent shippers, the respondent jobbers, and the respondent broker that any requests for the purchase of spinach received by the respondent shippers from any jobber or dealer other than the respondent jobbers would be referred to respondent broker C. H. Robinson Co. and that said respondent broker would advise such jobbers or dealers that there were no cars of broadleaf spinach from the Walla Walla district available.

This agreement or understanding was maintained during the 1939 season and continued during the 1940 season, with only a slight

change in proration of shipments by the respondent shippers, reducing respondents Mojonnier & Sons, Inc., and Pacific Fruit & Produce Co. 1 percent and increasing respondent, Valley Fruit Co. 2 percent.

PAR. 9. Pursuant to this agreement, understanding, combination and conspiracy, and in furtherance thereof, the respondent shippers shipped approximately 100 cars during the 1939 season through respondent broker C. H. Robinson, exclusively, which cars were distributed exclusively to the respondent jobbers. Due to unfavorable weather conditions during the 1940 season, only 25 cars of spinach were shipped pursuant to this arrangement and agreement. Although requests for shipments were received by jobbers other than the respondent jobbers, including Cooney & Korshak and Schoenburg, Price & Co., shipments to said jobbers were refused by the respondent shippers, and they were referred to the respondent broker, who either ignored such requests or advised that there were no cars available. During the 1939 and 1940 seasons, the respondent shippers prorated the tonnage of fresh broadleaf spinach in accordance with their agreement and shipped exclusively through respondent broker to the respondent jobbers, exclusively. The respondent jobbers purchased all of their requirements of fresh broadleaf spinach for the Chicago market during the 1939 and 1940 seasons from the respondent shippers through the respondent broker. During said seasons of 1939 and 1940 the respondent shippers supplied all of the fresh broadleaf spinach shipped from the Walla Walla district of Washington to the Chicago market.

PAR. 10. In addition, the respondent jobbers, pursuant to said agreement, understanding, combination, and conspiracy, and in furtherance thereof, did establish and maintain a fixed resale price at which said fresh broadleaf spinach purchased by them from the respondent shippers should be sold in the Chicago market. From September 19 to September 30, 1939, this resale price ranged from \$1.15 to \$1.40 per 20-pound box. From October 2 to October 14, 1939, the price ranged from \$1.15 to \$1.20, with some sales on October 10, 11, and 12 at \$1 to \$1.10, due to market conditions. From October 16 to October 30, 1939, the price was \$1.25 per box, with two exceptions of \$1.15 on October 20 and October 30. From November 1 to November 20, 1939, the price was maintained at \$1.25 per box, and from November 21 to November 30, 1939, at \$1.50 per box.

The prices received by the shippers during the 1939 season ranged from 65 cents to 55 cents per box f. o. b. Walla Walla. The first few cars in the 1939 season were priced at 65 cents per box. The remaining shipments for September were priced at 60 cents per box. Around October 1 the price per box was reduced to 55 cents, with the

understanding that the price would be increased as conditions improved. Although the resale price of the jobbers to retail dealers increased to \$1.50 per box in November 1939 the price to the shippers remained at 55 cents per box for the remainder of the season. After deducting expenses of boxes and commission, the prices received during the same period by the growers of spinach who sold through the respondent Walla Walla Gardeners' Association were 32 cents per box from September 1 to September 16, 26.6 cents from September 18 to September 30, and 22.1 cents for the remainder of the season. The prices paid by the other respondent shippers were approximately the same.

PAR. 11. A comparative effect of this agreement, understanding, combination and conspiracy on the resale price may be obtained from comparison of the price of Walla Walla spinach with Seattle and Sumner spinach, both of which are of the same grade and variety, and both of which are similarly packed. The Seattle and Sumner spinach season overlaps the Walla Walla spinach for a short period at the beginning of the Walla Walla season. Comparative figures are as follows:

	Walla Walla	Seattle and Sumner
Tuesday, Sept. 19, 1939-----	\$1.40	\$1.00-\$1.10
Wednesday, Sept. 20, 1939-----	1.25	1.00
Thursday, Sept. 21, 1939-----	1.30	.85- 1.00
Friday, Sept. 22, 1939-----	1.25-1.30	.75- 1.00
Saturday, Sept. 23, 1939-----	1.30	.75- 1.00
Tuesday, Sept. 26, 1939-----	1.25-1.20	.75- .85
Wednesday, Sept. 27, 1939-----	1.25	.50- .85
Thursday, Sept. 28, 1939-----	1.25	.75
Friday, Sept. 29, 1939-----	1.15	.50- .75
Saturday, Sept. 30, 1939-----	1.15	1.15

PAR. 12. Said agreement, understanding, combination, and conspiracy, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove described, have had, and now have, the capacity, tendency, and effect of—

(a) Unduly restricting and restraining competition in the purchase and sale of fresh broadleaf spinach in commerce among and between the various States of the United States, particularly between the State of Washington and the State of Illinois;

(b) Enabling the respondents to control and substantially monopolize the business of buying, selling, and distributing fresh broadleaf spinach in commerce among and between the various States of the United States, particularly between the State of Washington and the State of Illinois;

(c) Preventing competitors of respondent jobbers from purchasing fresh broadleaf spinach from respondent shippers, the sole source of supply of said product, to their injury and detriment; and

(d) Enhancing the retail price of fresh broadleaf spinach to the dealers and to the public in the city of Chicago and the surrounding area.

PAR. 13. The acts and practices of the respondents, as aforesaid, are all to the prejudice and injury of the public and have a tendency to hinder, and have actually hindered and prevented, price competition between and among the respondents in the purchase and sale of fresh broadleaf spinach in commerce among and between the various States of the United States; have placed in respondents the power to control and enhance the prices of said commodity; have increased and fixed the prices of said commodity paid by purchasers thereof, and consequently the prices paid by the public; have created in said respondents a substantial monopoly in the dealings in said commodity in commerce among and between the various States of the United States; and have unreasonably restrained such commerce in fresh broadleaf spinach.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence taken before William C. Reeves and W. W. Sheppard, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents, Pacific Fruit & Produce Co., a corporation; Walla Walla Gardeners' Association, a cooperative association; Mojonner & Sons, Inc., a corporation; Walla Walla

Produce Co., a corporation; C. H. Robinson Co., a corporation; and LaMantia Bros. Arrigo Co., a corporation; and their respective officers, agents, representatives, and employees; and Ewing M. Stephens and Eugene Tausich, copartners trading as Valley Fruit Co.; Owen T. Hill and Robert S. Hill, copartners, trading as Mark Owen & Co.; John Plennert and John Mahoney, copartners trading as P. & M. Distributing Co.; Arthur Applebaum, surviving partner of copartnership composed of Arthur Applebaum and Maurice J. Missner, trading as Applebaum-Missner Co.; and Robert M. Steinberg, an individual and manager of the Chicago branch of C. H. Robinson Co.; and their respective agents, representatives, and employees, or any two or more of said respondents, with or without the cooperation of others not party hereto, in connection with the offering for sale, sale, and distribution of broadleaf spinach or other produce in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, or carrying out, or directing, instigating, or cooperating in any common course of action, mutual agreement, combination, or conspiracy which is designed to, or has the capacity, tendency, or effect of, restricting, restraining, suppressing, or eliminating competition in, or monopolizing the trade in, broadleaf spinach or other produce in commerce among and between the several States of the United States, and particularly that produced in the Walla Walla district of the State of Washington and sold in the trade area in and around the city of Chicago in the State of Illinois.

2. Entering into, continuing, or carrying out, or directing, instigating, or cooperating in, any common course of action, mutual agreement, combination, or conspiracy which is designed to, or has the capacity, tendency, or effect of—

- (a) Restricting the sale and purchase of broadleaf spinach or other produce, to selected shippers and jobbers.

- (b) Determining, controlling, or limiting the number of jobbers or wholesalers who shall purchase or offer said broadleaf spinach or other produce for sale in any designated area or market.

- (c) Causing all purchases and sales of broadleaf spinach and other produce to be made through C. H. Robinson Co. or any other designated broker or brokers.

- (d) Preventing jobbers and wholesalers not parties to such agreement, from purchasing from selected shippers of broadleaf spinach and other produce from the Walla Walla district of the State of Washington.

Order

34 F. T. C.

(e) Fixing, maintaining, manipulating, or enhancing the price of broadleaf spinach or other produce, to dealers or to the public in the city of Chicago and surrounding area, or any other district.

3. Curtailing, restricting, or regulating the amount of broadleaf spinach or other produce to be shipped into the Chicago market, or any other designated area, from the Walla Walla district of the State of Washington.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent Maurice J. Missner, deceased.

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

WESTERN CHEMICALS, INC., MAFFETT SALES CORPORATION, BARTELL DRUG COMPANY, AND FRANK L. WILSON, N. B. WILSON, AND REUEL K. YOUNT

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

Docket 3735. Complaint, Mar. 9, 1939—Decision, Mar. 2, 1942

Where two corporations, engaged in interstate sale and distribution of their "Alcoban" treatment for alcoholism, to be given in alcoholic drinks or other liquids, or in soft foods; three individuals who were their controlling officers, directors and stockholders; and a third corporation, engaged in the retail drug business; by advertisements of said product, through the mails and in newspapers and periodicals of wide circulation—

- (a) Represented, directly and by implication, that their said "Alcoban" constituted a competent and effective treatment for alcoholism which might be used with safety and without danger of ill effects, through such statements, among others, as "Has aided thousands addicted to the excess use of alcohol," "A doctor's prescription used for years for those addicted to the excessive use of alcohol * * * now offered to the public as Alcoban * * *. Aids the sufferer to overcome the craving for liquor and to build up his resistance," "Contains no narcotics or habit-forming drugs," "* * * leaves no ill effects upon any organ of the body," and "Can be given secretly in alcoholic liquors, other liquids or food * * *";

The facts being that, while nausea induced thereby may cause patient to lose his taste for alcohol, the effect is only temporary; correct treatment of alcoholism, according to the medical consensus, is directed to ascertainment and removal of causes responsible for individual's resort to alcohol and building up his general condition and powers of resistance; active ingredients of product possess substantial capacities for harm in that emetine, used in substantial quantities, produces toxic effects, while ephedrine, in older people, may increase blood pressure sufficiently to injure cerebral vessels, and pilocarpine, in repeated doses, may affect heart action to a marked extent and result in edema of the lungs; and unsupervised use thereof in dosage and over period of time prescribed is dangerous, particularly so in view of the usually low level of physical resistance of alcoholics; and

- (b) Failed to reveal that use of their said product under usual or prescribed conditions might result in serious injury to health, as above indicated; With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and into the purchase of substantial quantities of said preparation because of such mistaken belief:

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