

Syllabus

IN THE MATTER OF
JAMES MACDONALD, LTD., 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 4618. Complaint, Oct. 21, 1941—Decision, May 19, 1942*

Where four corporations and three partners, with principal places of business in Scotland, producers of "Harris Tweed"—distinctive and favorably known cloth or fabric made from pure virgin wool produced in Scotland, spun, dyed and finished in the Outer Hebrides and hand woven by the inhabitants of said islands in their own homes—who had long sold and delivered a substantial part of the product in question in the United States, directly and through certain agents and representatives; and said agents and representatives, who, as competition in "Harris Tweed" developed in the United States, formed a voluntary association known as "Harris Tweed Agents Committee," membership of which always included agents and representatives of some or all of aforesaid producers; in competition, prior to and but for acts and practices below set forth, directly and through their said agents, with each other and with other members of the industry, and holding a dominant position in the substantial trade in said "Harris Tweed" between Great Britain and the United States—

- (a) Entered into and carried out understandings, agreements, combinations and conspiracies with intent and effect of monopolizing trade and suppressing competition in sale of the fabric in question in trade and commerce between Great Britain and the United States; and the several States and in the District of Columbia; and

Where aforesaid producers, with the active cooperation of said agents and representatives and others, and in pursuance of and to effectuate said understandings, etc.—

- (b) Fixed, established and maintained minimum prices, terms, and conditions of sale in connection with the marketing of "Harris Tweed" in the United States; and

Where three of said sales agents, with the active cooperation of producers aforesaid and others, and pursuant to and in order to effectuate said understandings, etc.—

- (c) Inaugurated a plan to fix and maintain prices by clothing manufacturers and resale prices by retailers selling garments made of "Harris Tweed" in the United States, and selected one of their number as their common agent in the United States to enter into agreements with the garment manufacturers and retailers, to the effect that such manufacturers would not sell garments made from "Harris Tweed" purchased from producers and agents involved at prices lower than those fixed by them, or sell to any retailer who would not bind himself similarly to respect the resale prices which they fixed; that the retailers themselves would respect such prices; and that each garment manufacturer and retailer would submit to said common selling agent list of prices at which sales were being made and customers; and

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(d) Compiled and circulated among themselves a list of clothing manufacturers not to be sold "Harris Tweed" because of their cutting the prices so fixed: *Held*, That said acts and practices, as above set forth, were all to the prejudice of the public, had a dangerous tendency to and did hinder and prevent competition in price and terms of sale between and among producers involved and other producers; placed in said producers and sales agents power to control and enhance prices of their products; tended dangerously to create in them a monopoly thereof in commerce aforesaid, unreasonably restrained such commerce, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. George W. Williams for the Commission.

Hervey, Barber & McKee, of New York City, for *Kenneth MacKenzie, Ltd.*, *Kenneth MacLeod, Ltd.*, *S. A. Newall and Sons, Ltd.*, *Thomas Smith and Co.* and *M. Stanley Brown*, and, along with *Steedman, Ramage & Co.*, of Edinburgh, Scotland, for *James MacDonald, Ltd.*

Parker, Chapin & Flattau, of New York City, for *Folkard and Lawrence, Inc.*

Mr. Walter W. Padwe, of New York City, for *E. Yorke Stroud*.

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 and referred to in the caption hereof have violated the provisions of section 5 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 complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, *James MacDonald, Ltd.*, is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondent, *Kenneth Mackenzie, Ltd.*, is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondent, *Kenneth Macleod, Ltd.*, is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Shawbost, Scotland.

Respondent, *S. A. Newall and Sons, Ltd.*, is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondents, W. A. Smith, John Smith, and A. P. C. Lawrence, are copartners, doing business under the firm name and style of Thomas Smith and Co., with their office and principal place of business located in Stornoway, Scotland.

PAR. 2. Respondent, Miles L. Finch, sales agent and representative of respondent, James MacDonald, Ltd., is an individual, doing business under the name and style of Associate British Manufacturers, with his office and principal place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent, Folkard and Lawrence, Inc., sales agent and representative of respondent, Kenneth Mackenzie, Ltd., is a corporation, organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 51 Madison Avenue, New York, N. Y.

Respondent, Biddle-Bernstein, sales agent and representative of respondent, Kenneth Mackenzie, Ltd., is a corporation, organized, existing and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 112 North Twelfth Street, Philadelphia, Pa.

Respondent, R. J. Beneville, sales agent and representative of respondent, Kenneth Macleod, Ltd., is an individual, with his office and principal place of business located at 23 East Twenty-sixth Street, New York, N. Y.

Respondent, E. Yorke Stroud, sales agent and representative of respondent, S. A. Newall and Sons, Ltd., is an individual, with his office and principal place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent, Walter Bradshaw, is an individual, doing business under the name and style of Bradshaw Linen Co., with his office and principal place of business located at 1182 Broadway, New York, N. Y.

Respondent, M. Stanley Brown, general representative of said producer respondents, is an individual, with his office and principal place of business located at 103 Park Avenue, New York, N. Y.

Said respondent agents are generally informed in respect to the business matters of their principals and are fully acquainted with the conditions of the trade in the United States and keep their principals constantly informed as to trade conditions in the United States and advised as to their best interests in relation thereto and cooperate with them in promoting and effecting the same.

PAR. 3. The respondents named in paragraph 1 hereof are, and have been for many years, producers, among other things, of a woollen cloth or fabric known as "Harris Tweed," a material generally known

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for its durability and fine wearing quality, which has a distinctive place in the opinion of the general public for those qualities, and which is, therefore, preferred by the general public for many purposes.

The original "Harris Tweed" was for many years produced in the Islands of Lewis, Harris, Uist, Barra, all a part of the group of Islands known as the Outer Hebrides, lying about 60 miles west of the mainland of Scotland, in the North Atlantic Ocean. By reason of the relatively small area only a relatively small quantity of such material was produced. The said cloth or fabric, as originally introduced and generally known to the purchasing public was a cloth or fabric entirely the handiwork of the crofters of said islands in that the wool was sheared, carded, dyed, spun, woven, shrunken, and finished by hand and the dyes used were produced locally from various forms of vegetable matter. The wool used in the cloth or fabric was coarse but very strong, and the cloth or fabric made from it was also coarse and was of great durable wearing quality, as well as possessing water-repellent qualities to a remarkable degree. Furthermore, said cloth or fabric had a characteristic odor which it took from the crude manufacturing process and from the peat smoke which circulated freely throughout the cottages in which the wool was fabricated into cloth or fabric.

As said cloth or fabric became known to the general public there was developed a large demand for it in the United States and elsewhere for certain purposes, such as the making of coats, suits and sportswear for men and women, and for various other like purposes. The supply being limited as aforesaid, and the same being brought to the attention of the British Board of Trade, the definition of "Harris Tweed" was liberalized in 1934 so that now, in the British Isles, at least, "Harris Tweed" is defined as follows:

"HARRIS TWEED" means a Tweed made from pure virgin wool produced in Scotland, spun, dyed and finished in the Outer Hebrides and hand-woven by the Islanders at their own homes in the Islands of Lewis, Harris, Uist, Barra and their several appurtenances and all known as the Outer Hebrides.

As a result of such definition of "Harris Tweed" the wool from which the same is made need not now come from the said Outer Hebrides but may come from anywhere on the mainland of Scotland. Furthermore, the yarns are not necessarily any longer hand-spun nor are they necessarily dyed with the native dye nor, therefore, is the finishing any longer necessarily a process carried out by the community as a whole, but is, or may be done in finishing plants thereof, though the cloth or fabric carries the characteristic odor of peat smoke, as it appears that it is sufficient if the cloth or fabric is made

from pure virgin wool produced in Scotland and spun, dyed and finished in said Outer Hebrides and hand-woven by the inhabitants of said islands in their own homes.

PAR. 4. The producers named in paragraph 1 as respondents herein sell and deliver, and have for many years sold and delivered, a substantial part of the said product, namely, "Harris Tweed" cloth or fabric, hereinafter referred to as "Harris Tweed," and maintained a constant course of trade and commerce in said product in the United States, directly and through the agents and representatives named as respondents in paragraph 2 hereof. "Harris Tweed," as the same has been redefined as above set forth, is also sold and delivered in the United States by other producers, and through other agents and representatives to various dealers and manufacturers, and others, for the purposes aforesaid. As competition developed in the sale and delivery of said "Harris Tweed" in the United States, a voluntary association was formed by the said agents and representatives known as Harris Tweed Agents' Committee (hereinafter referred to as "Agents Committee") for their mutual protection and the furtherance of the mutual interests of themselves and their principals (who constituted the Advisory Committee of the producers otherwise known as H. S. A. C.). The membership in said committee has changed from time to time but has always included the agents and representatives of said respondent producers.

Prior to the adoption of the practices hereinafter described, said respondent producers, directly and through said aforesaid agents, were in active and substantial competition with each other, and with other members of the industry, in making and seeking to make sales and deliveries of said "Harris Tweed" in trade and commerce between Great Britain and the United States and but for the practices hereinafter described, such active and substantial competition would have continued until the present, and said respondent producers, acting directly and through their aforesaid agents, would now be in active and substantial competition with each other and with other members of the industry.

The trade of respondent producers in the United States is substantial and respondent producers hold a dominant position in the sale of "Harris Tweed" in the United States or such a position as to enable them at least from time to time to effect and carry out the purpose hereinafter set forth.

PAR. 5. Within the past 5 years respondent producers, in cooperation with respondent agents and representatives, entered into understandings, agreements, combinations and conspiracies and carried out the same for the purpose and with the effect of restricting, restrain-

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ing and monopolizing, and suppressing and eliminating competition in, the sale of said "Harris Tweed" in trade and commerce between Great Britain and the United States and between the several States of the United States and in the District of Columbia.

PAR. 6. Pursuant to, in furtherance of, and to effectuate said understandings, agreements, combinations and conspiracies, said respondent producers with the active cooperation of respondent agents and representatives and with others have adopted, put into effect and carried out the following methods of competition, policies and practices:

(a) Fixed, established and maintained minimum prices, terms and conditions of sale in connection with the marketing of "Harris Tweed" in the United States.

(b) Prepared and inaugurated in the year 1939 a plan to fix and maintain prices by clothing manufacturers and resale prices by retailers selling garments made of said "Harris Tweed" in the United States whereby respondent agents and representatives agreed with the respondent producers as to what such prices and resale prices should be, and selected respondent Brown as a common agent in the United States to represent respondents, who in turn would enter into agreements with garment manufacturers and retail dealers as follows, to wit:

1. That the garment manufacturers would sell garments manufactured from "Harris Tweed" purchased from the respondents at prices lower than those fixed by the respondents; and

2. That the garment manufacturers would not sell "Harris Tweed" garments to any retailer who would not bind himself to sell garments manufactured from "Harris Tweed" at said fixed resale prices or at retail prices not less than the said fixed resale prices; and

3. That retail dealers would not sell such garments at prices less than the resale prices fixed by respondents as aforesaid; and

4. That each garment manufacturer and retail dealer should submit to the said common selling agent a list of prices at which sales were being made, together with the names of the customers being sold.

(c) Compiled and circulated among each other a list of clothing manufacturers which said respondents agreed should not be sold "Harris Tweed" because they were cutting the prices fixed by said respondents as aforesaid.

PAR. 7. Each of said respondents, within the time hereinabove mentioned, acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations and conspiracies.

PAR. 8. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in price and terms of sale between and among said respondent producers and between said respondent producers and other producers in the sale of their said products in commerce within the intent and meaning of section 4 of the Federal Trade Commission Act; and placed in said respondents power to control and enhance prices of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition and unfair and deceptive acts and practices, in said commerce, within the intent and meaning of section 5 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 October 21, 1941, issued, and on various dates from October 21, 1941, to November 26, 1941, served its complaint in this proceeding upon the following respondents, namely: James MacDonald, Ltd., a corporation; Kenneth MacKenzie, Ltd., a corporation; Kenneth MacLeod, Ltd., a corporation; S. A. Newall and Sons, Ltd., a corporation; W. A. Smith, John Smith, and A. P. C. Lawrence, copartners, doing business under the firm name and style of Thomas Smith and Co.; Miles L. Finch, individually and doing business under the name and style of Associate British Manufacturers; Folkard and Lawrence, Inc., a corporation; E. Yorke Stroud, an individual; Walter Bradshaw, individually, and doing business under the name and style of Bradshaw Linen Co.; M. Stanley Brown, an individual, and Biddle-Bernstein, a corporation, charging them with the use of unfair methods of competition and unfair and deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing by respondents, E. Yorke Stroud, Walter Bradshaw, and Folkard & Lawrence, Inc., of their respective answers, the Commission, by orders herein, granted the motion of each of said respondents for permission to withdraw their respective answers, and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint, except as hereinafter set forth, and waiving all intervening procedure and further hearing as to said facts. The substitute answers were duly filed in the office of the Commission. Respondents,

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James MacDonald, Ltd., Kenneth MacKenzie, Ltd., S. A. Newall and Sons, Ltd., and W. A. Smith, John Smith, and A. P. C. Lawrence, copartners, doing business under the firm name and style of Thomas Smith and Co., filed a joint answer, and respondents, Kenneth MacLeod, Ltd., M. Stanley Brown, an individual, and Miles L. Finch, an individual, filed separate answers, admitting all the material allegations of fact set forth in said complaint, except as hereinafter set forth, and waiving all intervening procedure and further hearing as to said facts. Respondent, Biddle-Bernstein, a corporation, filed its answer denying the allegations of the complaint. Respondent, R. J. Beneville, an individual, having died prior to the service of the complaint, filed no answer. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and substitute answers, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts, and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, James MacDonald, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondent, Kenneth MacKenzie, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondent, Kenneth MacLeod, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Shawbost, Scotland.

Respondent, S. A. Newall and Sons, Ltd., is a corporation, organized, existing and doing business under the laws of Great Britain with its office and principal place of business located in Stornoway, Scotland.

Respondents, W. A. Smith, John Smith, and A. P. C. Lawrence, are copartners, doing business under the firm name and style of Thomas Smith and Co., with their office and principal place of business located in Stornoway, Scotland.

PAR. 2. Respondent, Miles L. Finch, sales agent and representative of respondent, James MacDonald, Ltd., is an individual, doing business under the name and style of Associate British Manufacturers, with his office and principal place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent, Folkard and Lawrence, Inc., sales agent and representative of respondent, Kenneth MacKenzie, Ltd., is a corporation, organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 51 Madison Avenue, New York, N. Y.

Respondent, E. Yorke Stroud, sales agent and representative of respondent, S. A. Newall and Sons, Ltd., is an individual, with his office and principal place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent, Walter Bradshaw, is an individual, doing business under the name and style of Bradshaw Linen Co., with his office and principal place of business located at 1182 Broadway, New York, N. Y.

Respondent, M. Stanley Brown, general representative of said producer respondents, is an individual, with his office and principal place of business located at 103 Park Avenue, New York, N. Y.

Respondent, Biddle-Bernstein (Co.), a corporation, located at 112 North 12th Street, Philadelphia, Pa., was never in fact an agent or representative of any Harris Tweed producer in Scotland, but purchased outright all Harris Tweed products handled by it. Said respondent was not a party to any of the understandings, agreements, combinations, conspiracies, methods, or practices hereinafter mentioned, and none of the facts hereinafter set forth refers to said respondent.

PAR. 3. The answers of the various respondents admit all the material allegations of fact set forth in the complaint with the following exceptions and qualifications, to wit:

Respondent, Folkard & Lawrence, Inc., states that on November 1, 1938, it resigned from membership in the Agents' Committee and did not thereafter act as member thereof.

Respondent, Walter Bradshaw, denied that he was at any time a member of the Harris Tweed Agents' Committee or had any connection whatsoever therewith.

Respondent, E. Yorke Stroud, stated "If it be material, * * * that at all times he acted under the direction of and instructions from his producer, the respondent, S. A. Newall & Sons, Ltd."

The joint answer of respondents, James MacDonald, Ltd., Kenneth Mackenzie, Ltd., S. A. Newall & Sons, Ltd., and W. A. Smith, John Smith and A. P. C. Lawrence, copartners, as aforesaid, stated that "if it be material, respondents deny that they have information or knowledge sufficient to form a belief as to the truth of the allegations contained in the complaint regarding the Harris Tweed Agents'

Committee, except that they admit that they knew of the existence thereof, and that the committee was attempting to protect the good will of Harris Tweed in the United States.

Respondent, MacLeod, stated that "if it be material, respondent denies that it has any information or knowledge sufficient to form a belief as to the truth of the allegations contained in the complaint regarding the Harris Tweed Agents' Committee."

Respondent, M. Stanley Brown, stated that "if it be material, respondent denies that he was at any time a member of the voluntary association known as the Harris Tweed Agents' Committee, or had any connection whatever therewith."

None of said answers admitted that any acts therein admitted were done with intention to violate the law.

PAR. 4. The respondents named in paragraph 1 hereof are, and have been for many years, producers, among other things, of a woolen cloth or fabric known as "Harris Tweed," a material generally known for its durability and fine wearing quality, which has a distinctive place in the opinion of the general public for those qualities, and which is, therefore, preferred by the general public for many purposes.

The original "Harris Tweed" was for many years produced in the Islands of Lewis, Harris, Uist, Barra, all a part of the group of islands known as the Outer Hebrides, lying about 60 miles west of the mainland of Scotland, in the North Atlantic Ocean. By reason of the relatively small area only a relatively small quantity of such material was produced. The said cloth or fabric, as originally introduced and generally known to the purchasing public, was a cloth or fabric entirely the handiwork of the crofters of said islands in that the wool was sheared, carded, dyed, spun, woven, shrunken, and finished by hand and the dyes were produced locally from various forms of vegetable matter. The wool used in the cloth or fabric was coarse but very strong, and the cloth or fabric made from it was also coarse and was of great durable wearing quality, as well as possessing water-repellent qualities to a remarkable degree. Furthermore, said cloth or fabric had a characteristic odor which it took from the crude manufacturing process and from the peat smoke which circulated freely throughout the cottages in which the wool was fabricated into cloth or fabric.

As said cloth or fabric became known to the general public there was developed a large demand for it in the United States and elsewhere for certain purposes, such as the making of coats, suits and sportswear for men and women, and for various other like purposes. The supply being limited as aforesaid, and the same being brought

to the attention of the British Board of Trade, the definition of "Harris Tweed" was liberalized in 1934, so that now, in the British Isles, at least, "Harris Tweed" is defined as follows:

"Harris Tweed" means a tweed made from pure virgin wool produced in Scotland, spun, dyed, and finished in the Outer Hebrides and hand-woven by the Islanders in their own homes in the Islands of Lewis, Harris, Uist, Barra, and their several appurtenances and all known as the Outer Hebrides.

As a result of such definition of "Harris Tweed" the wool from which the same is made need not now come from the said Outer Hebrides but may come from any where on the mainland of Scotland. Furthermore, the yarns are not necessarily any longer hand-spun nor are they necessarily dyed with the native dye nor, therefore, is the finishing any longer necessarily a process carried out by the community as a whole, but is, or may be done in finishing plants thereof, though the cloth or fabric carries the characteristic odor of peat smoke, as it appears that it is sufficient if the cloth or fabric is made from pure virgin wool produced in Scotland and spun, dyed, and finished in said Outer Hebrides and hand-woven by the inhabitants of said islands in their own homes.

PAR. 5. The producers named in paragraph 1 as respondents herein sell and deliver, and have for many years sold and delivered, a substantial part of the said product, namely, Harris Tweed cloth or fabric, hereinafter referred to as Harris Tweed, and maintained a constant course of trade and commerce in said product in the United States, directly and through the agents and representatives named as respondents in paragraph 2 hereof. Harris Tweed, as the same has been redefined as above set forth, is also sold and delivered in the United States by other producers, and through other agents and representatives to various dealers and manufacturers, and others, for the purposes aforesaid. As competition developed in the sale and delivery of said Harris Tweed in the United States, a voluntary association was formed by the said agents and representatives known as Harris Tweed Agents' Committee (hereinafter referred to as "Agents Committee") except respondent, Walter Bradshaw, for their mutual protection and the furtherance of the mutual interests of themselves and their principals (who constituted the advisory committee of the producers otherwise known as H. S. A. C.). The membership in said committee has changed from time to time but has always included agents and representatives of some or all of said respondent producers.

Prior to the adoption of the practices hereinafter described, said respondent producers, directly and through the aforesaid agents, were in active and substantial competition with each other, and with

other members of the industry, in making and seeking to make sales and deliveries of said Harris Tweed in trade and commerce between Great Britain and the United States and but for the practices hereinafter described, such active and substantial competition would have continued until the present, and said respondent producers, acting directly and through their aforesaid agents, would now be in active and substantial competition with each other and with other members of the industry.

The trade of respondent producers in the United States is substantial, and respondent producers hold a dominant position in the sale of Harris Tweed in the United States or such a position as to enable them at least from time to time to effect and carry out the purpose hereinafter set forth.

PAR. 6. Within the past 5 years respondent producers, in cooperation with respondent agents and representatives, entered into understandings, agreements, combinations, and conspiracies and carried out the same for the purpose and with the effect of restricting, restraining, and monopolizing, and suppressing and eliminating competition in, the sale of said Harris Tweed in trade and commerce between Great Britain and the United States and between the several States of the United States and in the District of Columbia.

PAR. 7. Pursuant to, in furtherance of, and to effectuate said understandings, agreements, combinations, and conspiracies, said respondent producers, with the active cooperation of respondent agents and representatives, and with others, fixed, established, and maintained, minimum prices, terms, and conditions of sale in connection with the marketing of Harris Tweed in the United States.

PAR. 8. Pursuant to, in furtherance of, and to effectuate said understandings, agreements, combinations, and conspiracies, respondent sales agent and representative, Miles L. Finch, doing business under the name and style of Associate British Manufacturers, and respondent individuals, E. Yorke Stroud and M. Stanley Brown, with the active cooperation of respondent producers, and with others, have adopted and put into effect the following methods of competition, policies and practices:

(a) Prepared and inaugurated in the year 1939 a plan to fix and maintain prices by clothing manufacturers and resale prices by retailers selling garments made of said Harris Tweed in the United States, whereby respondent agents and representatives agreed with the respondent producers as to what such prices and resale prices should be, and selected respondent Brown as a common agent in the United States to represent respondents, who in turn would enter into

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agreements with garment manufacturers and retail dealers as follows, to wit:

1. That the garment manufacturers would not sell garments manufactured from Harris Tweed purchased from the respondents at prices lower than those fixed by the respondents; and

2. That the garment manufacturers would not sell Harris Tweed garments to any retailer who would not bind himself to sell garments manufactured from Harris Tweed at said fixed resale prices or at retail prices not less than the said fixed resale prices; and

3. That retail dealers would not sell such garments at prices less than the resale prices fixed by respondents as aforesaid; and

4. That each garment manufacturer and retail dealer should submit to the said common selling agent a list of prices at which sales were being made, together with the names of the customers being sold.

(b) Compiled and circulated among each other a list of clothing manufacturers which said respondents agreed should not be sold Harris Tweed because they were cutting the prices fixed by said respondents as aforesaid.

PAR. 9. Each of said respondents, within the time hereinabove mentioned, acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations and conspiracies.

CONCLUSION

The acts and practices of said respondents, as herein set forth, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in price and terms of sale between and among said respondent producers and between said respondent producers and other producers in the sale of their said products in commerce within the intent and meaning of section 4 of the Federal Trade Commission Act; and placed in said respondents power to control and enhance prices of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition and unfair and deceptive acts and practices, in said commerce, within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the various answers

of respondents, in which answers respondents (excepting respondent, Biddle-Bernstein, a corporation) admit all of the material allegations of fact set forth in said complaint, except as set forth in the findings as to the facts, and the answers of all of said respondents (excepting respondent, Biddle-Bernstein, a corporation) stating that they waive all intervening procedure and further hearing as to said fact, and the Commission having made its findings as to the facts and conclusion that said respondents (excepting respondent Biddle-Bernstein, a corporation) have violated the provisions of section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, James MacDonald, Ltd., a corporation; Kenneth MacKenzie, Ltd., a corporation; Kenneth MacLeod, Ltd., a corporation; S. A. Newall & Sons, Ltd., a corporation; W. A. Smith, John Smith, and A. P. C. Lawrence, copartners, doing business under the firm name and style of Thomas Smith & Co.; Miles L. Finch, individually, and doing business under the name and style of Associate British Manufacturers; Folkard & Lawrence, Inc., a corporation; E. Yorke Stroud, an individual; Walter Bradshaw, individually, and doing business under the name and style of Bradshaw Linen Co.; and M. Stanley Brown, an individual, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of Harris Tweed in commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist by any form of cooperative, concerted or collective action, from fixing, establishing and maintaining minimum prices, and the terms and conditions of sale, in connection with the marketing of the cloth or fabric known as "Harris Tweed" in the United States.

It is further ordered, That the respondents, James MacDonald, Ltd., a corporation; Kenneth MacKenzie, Ltd., a corporation; Kenneth MacLeod, Ltd., a corporation; S. A. Newall & Sons, Ltd., a corporation; W. A. Smith, John Smith, and A. P. C. Lawrence, copartners, doing business under the firm name and style of Thomas Smith & Co.; Miles L. Finch, individually, and doing business under the name and style of Associate British Manufacturers; E. Yorke Stroud, an individual; and M. Stanley Brown, an individual, their officers, representatives, agents, and employees, directly or through any corporate or other device, cease and desist from agreeing or cooperating with each other or with others, in negotiating, arranging or carrying out a plan or policy to fix and maintain the prices of clothing manufacturers or the resale prices of retailers selling garments made of said Harris Tweed in said commerce in the United States and from engaging in any form of cooperative, concerted or

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collective action or entering into arrangements or agreements among themselves and with garment manufacturers and retail dealers to the following effect:

1. That garment manufacturers will not sell garments manufactured of Harris Tweed purchased from the respondents or any of them at prices lower than those fixed or indicated by the said respondents; or

2. That the garment manufacturers will not sell Harris Tweed garments to any retailer who does not bind himself to sell such garments at certain fixed resale prices or at retail prices not less than the same; or

3. That said retail dealers will not sell such garments at prices less than the resale prices fixed or indicated by said respondents; or

4. That each garment manufacturer and retail dealer will submit to the respondents or anyone designated by them a list of prices at which sales are made, together with the names of the customers sold; or

5. That respondents will compile and circulate among themselves a list or other information as to the identity of clothing manufacturers which cut the prices fixed or indicated by said respondents for the purpose of facilitating refusals by respondents to sell such manufacturers.

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.

It is further ordered, That the said complaint be, and the same hereby is, dismissed as to respondents, Biddle-Bernstein, a corporation, and R. J. Beneville, an individual, deceased.

IN THE MATTER OF
ETABLISSEMENTS RIGAUD, INC., ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3337. Order, May 20, 1942

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on September 27, 1939, 29 F. T. C. 1032, and in which Circuit Court of Appeals for Second Circuit, on February 4, 1942, in *Etablissements Rigaud, Inc., et al. v. Federal Trade Commission*, 125 F. (2d) 590, rendered its opinion and on February 24, 1942 issued its final decree affirming aforesaid order of Commission by modifying same in certain particulars—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of perfumes, to cease and desist from (1) representing, through use of term "Paris" or "Paris, France," or any other terms, words, symbols, or picturizations indicative of French or other foreign origin of such products, or in any manner that perfumes that are made or compounded in the United States are made or compounded in France or in any other foreign country, subject to proviso in order set forth with respect to permitting statement of country of origin of the various ingredients; and (2) using the terms "Un Air Embaume," "Rigaud," "Igora," or any other French or other foreign words or terms as brand or trade names for perfumes made or compounded in the United States without clearly and conspicuously stating, as in order specified, said fact.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on September 27, 1939, the Commission made its findings as to the facts herein and concluded therefrom that the respondents, Etablissements Rigaud, Inc. and E. Fougera & Co., Inc., corporations, have violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on February 4, 1942 the United States Circuit Court of Appeals for the Second Circuit rendered its opinion, and on February 24, 1942, issued its final decree affirming the aforesaid order of the Commission by modifying said order in certain particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree.