

IN THE MATTER OF
THE MILK CAP STATISTICAL BUREAU 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 4448. Complaint, Jan. 16, 1941—Decision, July 8, 1942

Where an unincorporated trade association, which had been the code authority for the paper disc milk bottle cap industry under the National Industrial Recovery Act and which, following the invalidation of said Act and the manager's suggestion to the members that they should not give up "advantages such as cooperative action and good will" which they had "been able to develop," was continued for the purpose of cooperating in the maintenance of uniform trade practices in the sale and distribution of paper disc bottle caps; and the eleven member-manufacturers of said association or Bureau, engaged in the manufacture and interstate sale of products in question to jobbers and dairies, with a combined business amounting to about 75 percent of that of the entire industry; acting under the supervision and regulation of said Bureau—

- (a) Entered into and actively cooperated in agreements and combinations directed to the establishment of uniform prices, discounts, terms and conditions of sale and freight charges, uniform and simultaneous changes of prices, and uniform classifications and rating of customers, in connection with the sale and distribution of paper disc milk bottle caps in commerce; and

Where said "Bureau," in pursuance of such agreements—

- (b) Rated and classified the approximately 50,000 dairies located throughout the United States according to the number of caps used annually, and distributed such ratings and classifications among the member-manufacturer who agreed to, and did, adhere thereto in determining prices and discount at which dairies should be sold; and
- (c) Confined sale of the products in question exclusively to jobbers and dairy consumers, and prevented sales to "super-jobbers," mill agents, cooperative buying agencies, bottle exchanges, and other consumers; and

Where said manufacturer-members, to make more effective the operation of such agreements—

- (d) Filed with said "Bureau" price lists, copies of invoices containing name of purchasers, quantities purchased and prices therefor, customer lists, and copies of contracts and conditions of sale; and

Where said "Bureau"—

- (e) Checked data filed by manufacturer-members in accordance with its policy and practice of policing the industry to determine whether said manufacturers carried out said agreements;

With the result that price competition among manufacturers concerned in the sale of paper disc milk bottle caps in commerce was practically eliminated

Held, That such agreements and combinations and things done pursuant thereto under the circumstances set forth, were all to the prejudice of the public had a dangerous tendency to, and did, hinder and prevent price competition among said member manufacturers in the sale of products in question placed in said association and members the power to control and enhance

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prices; unreasonably restrained commerce in said paper disc milk bottle caps; and constituted unfair methods of competition in commerce.

Mr. Daniel J. Murphy for the Commission.

Mr. Joseph J. Brown, of Philadelphia, Pa., for respondents, with the exception of Standard Cap & Seal Corporation, represented by *Sullivan & Cromwell*, of New York City.

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 parties named in the caption hereof, and more particularly hereinafter 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, The Milk Cap Statistical Bureau, is an unincorporated trade association with its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The said respondent Association was organized prior to 1932, and existed under the name of National Association of Bottle Cap Manufacturers until May 1937, when the name of said respondent Association was changed to The Milk Cap Statistical Bureau. The membership of said respondent Association, hereinafter referred to as the "respondent Bureau," is composed of 11 individuals, firms or corporations engaged in the manufacture, sale and distribution of paper disc milk bottle caps.

The respondent Bureau operates through its officers who consist of a chairman and a manager and an executive committee. The members of the respondent Bureau, at each regular meeting, elect one of the three members, who compose the executive committee, to serve as chairman of the Bureau and chairman of the executive committee until the next regular meeting. The manager of the respondent Bureau is also the executive secretary.

The executive committee of the respondent Bureau consists of:

Respondent, Ray W. Blodgett, President of Mid-West Bottle Cap Co., Belvidere, Ill.

Respondent, George W. Rohrbeck, President of Great Lakes Bottle Cap Co., 2950 West Davison Street, Detroit, Mich.

Respondent, Robert H. Schulz, c/o Piqua Cap Co., 704 Washington Avenue, Piqua, Ohio.

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The manager and executive secretary of the respondent Bureau is respondent, George J. Lincoln, Jr., 1532 Lincoln-Liberty Building, Philadelphia, Pa.

PAR. 2. Respondent, Atlas Paper Box Co., is a corporation organized and existing under the laws of the State of Tennessee and engaged in business under the trade name Atlas Bottle Cap Co., having its principal place of business at 1300 Central Avenue, Chattanooga, Tenn.

Respondent, Great Lakes Bottle Cap Co., is a corporation organized and existing under the laws of the State of Michigan, having its principal place of business at 2950 West Davison Street, Detroit, Mich.

Respondent, Robert S. Leonard Co., is a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at 405 East Eighth Street, Kansas City, Mo.

Respondent, L. Livingston Co., is a corporation organized and existing under the laws of the State of California, having its principal place of business at 383 Fourth Street, San Francisco, Calif.

Respondents, Fowler E. Macy and Edna B. Macy, are copartners doing business under the trade name Fowler E. Macy Co., having a principal place of business in Converse, Ind.

Respondent, Mid-West Bottle Cap Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal place of business in Belvidere, Ill.

Respondent, National Manufacturing Co., is a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at 2800 Mercier Street, Kansas City, Mo.

Respondent, Ohio Bottle Cap Co., is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 411 South College Street, Piqua, Ohio.

Respondent, Piqua Cap Co., is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 704 Washington Avenue, Piqua, Ohio.

Respondent, Sealright Co., Inc., is a corporation organized and existing under the laws of the State of New York having its principal place of business in Fulton, N. Y.

Respondent, Smith-Lee Co., Inc., is a corporation organized and existing under the laws of the State of New York, having its principal place of business in Oneida, N. Y.

Respondent, Standard Cap & Seal Corporation, is a corporation organized and existing under the laws of the State of Virginia,

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having its principal place of business at 1200 Fullerton Avenue, Chicago, Ill.,

Respondents, Atlas Paper Box Co., Great Lakes Bottle Cap Co., Robert S. Leonard Co., L. Livingston Co., Fowler E. Macy and Edna B. Macy, a copartnership doing business under the firm name Fowler E. Macy Co., Mid-West Bottle Cap Co., National Manufacturing Co., Ohio Bottle Cap Co., Piqua Cap Co., Sealright Co., Inc., Smith-Lee Co., Inc., are all respectively respondent members of the respondent Bureau. Said respondent members, together with respondent Standard Cap & Seal Corporation, a nonmember of said respondent Bureau, will hereafter be referred to as respondent manufacturers.

PAR. 3. Respondent manufacturers are all respectively manufacturers of paper disc milk bottle caps and in the regular course and conduct of their respective businesses sell and distribute paper disc milk bottle caps manufactured by them to the purchasers thereof, and in connection with said sales ship and transport, or cause to be shipped and transported, said paper disc milk bottle caps, in commerce, to the purchasers thereof, located in the various States of the United States other than the States of origin of said shipments, and in the District of Columbia. All respondent manufacturers have maintained, and still do maintain, a regular current of trade in paper disc milk bottle caps in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent Bureau, and its respondent officers and respondent members of its Executive Committee are not, in their official capacities, engaged in commerce, but all aided, abetted, furthered, cooperated with, and were instrumentalities of, and parties to, some, or all, of the understandings, agreements, combinations, and conspiracies hereinafter set out and actively cooperated and participated in the performance of some or all of the acts and practices done in pursuance thereto and in furtherance thereof.

PAR. 5. There are in the United States approximately 21 individuals, firms, or corporations engaged in the manufacture of paper disc milk bottle caps which are made to fit inside the tops of milk bottles. Eleven of said individuals, firms, or corporations are members of the respondent Bureau and are all named respectively as respondents herein. The total annual sales of paper disc milk bottle caps by the entire industry in the United States amount to approximately 10,000,000,000 caps, the dollar sales of which amount to approximately \$4,500,000. The sales of said caps are made by the said manufacturers to jobbers and dairies. The combined business of the 11 members, respondents

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herein, of respondent Bureau, amounts to about 75 percent of the total business of the entire industry.

PAR. 6. Respondent manufacturers in the regular course and conduct of their respective business have been and are in active and substantial competition with each other and with other manufacturers and sellers of paper disc milk bottle caps in the sale thereof to purchasers for shipment in commerce between and among the several States of the United States and in the District of Columbia, except to the extent to which such competition has been restrained, lessened, injured, and suppressed by the understandings, agreements, combinations, and conspiracies hereinafter set forth.

PAR. 7. Respondents, namely said Bureau, hereinabove described, its officers, members, and its executive committee and its members, named and included as respondents herein, and respondent, Standard Cap & Seal Corporation, during and in the period of more than 3 years last past have entered into and thereafter carried out understandings, agreements, combinations, and conspiracies, for the purpose of restricting, restraining, suppressing, and eliminating competition and creating a monopoly in the sale of paper disc milk bottle caps in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 8. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, the said respondents have engaged in and performed and are now engaging in and performing the following acts and practices:

1. Respondent manufacturers have agreed to fix and have fixed minimum prices for the sale of paper disc milk bottle caps sold and distributed by them.

2. Respondent manufacturers have agreed to maintain and have maintained uniform prices for the sale of paper disc milk bottle caps sold and distributed by them.

3. Respondent manufacturers have agreed to fix and maintain and have fixed and maintained uniform discounts and other conditions for the sale of paper disc milk bottle caps sold and distributed by them.

4. Respondent manufacturers have agreed to fix and maintain and have fixed and maintained, with dairies, uniform contract terms which provided for the dairies' actual yearly requirements of paper disc milk bottle caps to be sold to said dairies and delivered thereto, in accordance with their needs, at different times of the year, at a price dependent upon the quantity contracted for.

5. Respondent manufacturers agreed to furnish and have furnished the respondent Bureau with lists of dairies under contract with them.

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said respondent manufacturers for the sale and delivery of paper disc milk bottle caps.

6. Respondent Bureau from time to time issued a "Jobber Rating Book," for the use of said respondent manufacturers which classified and rated all jobbers of paper disc milk bottle caps who purchased 350,000 or more of such caps annually.

7. Respondent manufacturers agreed to abide by and did abide by said "Jobber Rating Books" in determining prices and discounts to be allowed jobbers of paper disc milk bottle caps.

8. Respondent Bureau from time to time issued a "Dairy Rating Book," and supplements thereto, which classified and rated the approximately 50,000 dairies located throughout the United States, e. g.: "A" rated dairy uses 25,000,000 or more paper disc milk bottle caps annually.

"B" rated dairy uses 12,000,000 to 25,000,000 paper disc milk bottle caps annually.

"C" rated dairy uses from 5,000,000 to 12,000,000 paper disc milk bottle caps annually, etc.

9. Respondent manufacturers agreed to abide and did abide by said "Dairy Rating Books" in determining the prices at which a dairy would be sold; sales were made by the respondent manufacturers to dairies at an agreed price based upon the quantity listed for such customer in the dairy rationing book and sales were not made by respondent manufacturers to dairies at a price based upon a greater quantity than the quantity listed for such customer in the dairy rating book.

10. Respondent manufacturers agreed to furnish and have furnished the respondent Bureau with copies of all invoices covering the sales of paper disc milk bottle caps; each invoice to contain the name of the purchaser, the quantity sold, and the price.

11. Respondent manufacturers have agreed to change, and, have changed, simultaneously, the prices and discounts at which respondent manufacturers sell paper disc milk bottle caps.

12. Respondent manufacturers, in the event of a price advance, agreed that each respondent manufacturer would have the privilege of shipping customers under contract the same number of paper disc milk bottle caps in the succeeding 2 months as that customer purchased from the same respondent manufacturer in the prior 2 months at the prior price.

13. Respondent manufacturers agreed to furnish and did furnish the respondent Bureau, at the time of each price advance, their lists of customers under contract with them and records showing the quan-

tity of paper disc milk bottle caps which had been shipped to such customer in the prior 60 days.

14. Said respondents have used, and are now using other methods and means designed to suppress and prevent competition and restrict and restrain the sale of paper disc milk bottle caps in said commerce.

PAR. 9. Each of the said respondents herein acted in concert and cooperation 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. 10. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among respondents in the sale of paper disc milk bottle caps in commerce within the intent and meaning of the Federal Trade Commission Act; of unduly and unlawfully restricting and restraining trade and commerce in said products in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly, in the sale of said products in said commerce; of placing in respondents the power to control and enhance prices; of unreasonably restraining such commerce in said products.

Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as above alleged, 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 the 16th day of January 1941, issued its complaint in this proceeding against the respondents named in the above caption and caused such complaint to be served as required by law, charging the respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. On February 25, 1941, the respondents filed their answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respondents, excepting respondent, Standard Cap & Seal Corporation, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission may be taken as the facts in this proceeding and in lieu of

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testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding, excepting in respect to respondent Standard Cap & Seal Corporation, without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Milk Cap Statistical Bureau, is an unincorporated trade association with its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The said respondent Association was organized prior to 1932, and existed under the name of National Association of Bottle Cap Manufacturers until May 1937 when the name of said respondent Association was changed to The Milk Cap Statistical Bureau. The membership of said respondent Association, hereinafter referred to as the "respondent Bureau," is composed of eleven individuals, firms, or corporations engaged in the manufacture, sale, and distribution of paper disc milk bottle caps.

The respondent Bureau operates through its officers who consist of a chairman and a manager and an executive committee. The members of the respondent Bureau, at each regular meeting, elect one of the three members, who compose the executive committee, to serve as chairman of the Bureau and chairman of the executive committee until the next regular meeting. The manager of the respondent Bureau is also the executive secretary.

The executive committee of the respondent Bureau consists of:

Respondent, Ray W. Blodgett, president of Mid-West Bottle Cap Co., Belvidere, Ill.

Respondent, George W. Rohrbeck, president of Great Lakes Bottle Cap Co., 2950 West Davison Street, Detroit, Mich.

Respondent, Robert H. Schulz, c/o Piqua Cap Co., 704 Washington Avenue, Piqua, Ohio.

The manager and executive secretary of the respondent Bureau is respondent, George J. Lincoln, Jr., 1532 Lincoln-Liberty Building, Philadelphia, Pa.

PAR. 2. Respondent, Atlas Paper Box Co., is a corporation organized and existing under the laws of the State of Tennessee and engaged in business under the trade name Atlas Bottle Cap Co., having its principal place of business at 1300 Central Avenue, Chattanooga, Tenn.

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ing Co., Ohio Bottle Cap Co., Piqua Cap Co., Sealright Co., Inc., Smith-Lee Co., Inc., are all respectively respondent members of the respondent Bureau. Said respondent members, together with respondent Standard Cap & Seal Corporation, a nonmember of said respondent Bureau, will hereafter be referred to as respondent manufacturers.

PAR. 3. Respondent manufacturers are all respectively manufacturers of paper disc milk bottle caps and in the regular course and conduct of their respective businesses sell and distribute paper disc milk-bottle caps manufactured by them to the purchasers thereof, and in connection with said sales ship and transport, or cause to be shipped and transported, said paper disc milk bottle caps, in commerce, to the purchasers thereof, located in the various States of the United States other than the States of origin of said shipments, and in the District of Columbia. All respondent manufacturers have maintained, and still do maintain, a regular current of trade in paper disc milk bottle caps in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. There are a number of different types of coverings used for milk bottles—the flat or disc caps which fit inside the tops of milk bottles and various kinds of closure or hood caps which cover a part or all of the pouring lips of the bottles. The manufacturing of flat or disc paper milk bottle caps is considered as a separate industry from the manufacturing of various types of closure or hood caps.

PAR. 5. There are in the United States approximately 21 individuals, firms, or corporations engaged in the manufacture of paper disc milk bottle caps which are made to fit inside the tops of milk bottles. Eleven of said individuals, firms, or corporations are members of the respondent Bureau and are all named respectively as respondents herein. The total annual sales of paper disc milk bottle caps by the entire industry in the United States amount to approximately 10,000,000 caps, the dollar sales of which amount to approximately \$4,500,000. The sales of said caps are made by the said manufacturers to jobbers and dairies. The combined business of the 11 members, respondents herein, of respondent Bureau, amounts to about 75 percent of the total business of the entire industry.

PAR. 6. Approximately 99 percent of all the disc caps sold are special brand caps. The remaining 1 percent are stock print caps or caps which do not have the names of dairies printed on them. The methods of selling, including published prices, terms, and other conditions of sale, are practically the same for all of the companies in the industry. Practically all of the manufacturers sell to jobbers and

dairies. The dairies enter into contracts with the manufacturers for a certain quantity of a specified kind of cap to be delivered during the year as needed by the dairies. It has been a custom of long standing in the industry for manufacturers to allow lower prices for greater quantities contracted for.

PAR. 7. Respondent Bureau was the code authority for the paper disc milk bottle cap industry when the National Recovery Act was in force. After the National Recovery Act was declared unconstitutional on May 28, 1935, the manager of said respondent Bureau advised the industry in a memorandum that they should not "give up a lot of the advantages such as cooperative action and good will which the members have been able to develop." The following excerpt is taken from said memorandum:

There is no Law against, and in fact there is a law supporting the Trade Practice of publishing a price and selling in accordance with that published price. It is also proper that you should continue to file copies of your invoices which represent past transactions, and continue the statistical reports that we have been doing, except as to the Labor Reports.

PAR. 8. At a meeting on June 7, 1935, called by the respondent manager of the respondent Bureau, the members of the industry agreed that they would continue to cooperate in the maintenance and observance of trade practices in the sale and distribution of paper disc milk bottle caps.

PAR. 9. From 1935 up to the time of the institution of these proceedings in January 1941 the members of the industry under the supervision and regulation of the respondent Bureau and its officers have actively and consistently cooperated in the establishment and maintenance of uniform prices, uniform discounts, uniform terms and conditions of sale, uniform contracts, uniform and simultaneous changes of prices, and uniform classifications and ratings of customers in connection with the sale and distribution of paper disc milk bottle caps.

PAR. 10. There have been only four industry price changes since August 1933. The said price changes were made effective on December 20, 1935, on February 1, 1937, on November 17, 1937, and on April 6, 1938. These price changes were uniform and simultaneous as affecting the sale of paper disc milk bottle caps by the members of the industry.

PAR. 11. One week prior to the effective date of the industry price change on December 20, 1935, the respondent manager of the respondent Bureau in a memorandum to the respondent manufacturers announced several agreed changes in Trade Practices in relation to discounts and classification of customers. The following excerpt is quoted from said memorandum:

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The new price list has been worked out with great thought and care. You can advise your Jobber that on the actual operation of the Jobber's business his gross profit on the new basis is within $\frac{1}{4}$ of 1% of what it formerly was, taking into consideration the trade discounts and everything.

PAR. 12. A week following the effective date of said industry price change on December 20, 1935, the respondent manager of the respondent Bureau in another communication to respondent manufacturers stated in part as follows:

* * * In the recent changes made December 20, 1935, there are certain points that we would like to clarify so that they will be interpreted by all the manufacturers in the same manner.

In the consumer's price list the customers buying up to and including one million caps either pay the same price or a lower price, and in this case the consumers are given the benefit of the decrease immediately, which is in accordance with your contract terms. Consumers purchasing 350M and less per year on contract, the prices were raised. In accordance with your contract terms, these customers are given a protection of 90 days for the same quantity of caps that they purchased in the prior 90 days at the old price. In effect this means that the old prices are to be invoiced up to March 20, 1936.

PAR. 13. On February 1, 1937, the effective date of the second above referred to industry price change, the following memorandum was forwarded by the respondent manager of the respondent Bureau to the respondent manufacturers:

In connection with the New Bottle Cap prices filed by a manufacturer, effective February 1, 1937, please note the following points:

1. Do not publish National Buyer or carload lists.
2. Standard packing is a fibre or corrugated case of 25M caps. Wooden cases holding 50M caps take a 1¢ M upcharge.
3. There will be no contracts on stock caps but these will be sold at 3¢ M less than the same quantity special prints.
4. Minimum printing to secure contract price 25M caps.
5. The new price lists are effective February 1, 1937, subject to the new Trade Practice on contracts. (See Memorandum No. 389, dated December 29, 1936, attached. Your attention is particularly called to the third paragraph regarding lists.)

6. *Important.*—There are no longer any Preferred Jobbers. The old 1¢ M Preferred Jobber Discount has been taken into consideration on the new jobber price list. We think that to avoid misunderstanding you should cover this with your jobbers and we suggest you send a bulletin at once to each one on your books.

PAR. 14. A day prior to November 17, 1937, the effective date of the third above referred to industry price change, the respondent manager of the respondent Bureau in a memorandum to the respondent manufacturers reminded the said manufacturers of the approved Trade Practice, which was effective since December 1936, that in the event of a price advance, each respondent manufacturer could sell to any of its contract customers the same number of caps in the next 60 days

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at the same price as was sold such customers in the 60 days prior to the price advance.

The memorandum in part was as follows:

In order to do this in an orderly way, we ask that you list your contracts with the records that you have of quantities due them, send them to the office of the Statistical Bureau so that they may be checked with our records, and also keep on file to check shipments against them in accordance with your contract terms. This must be done immediately not only for your own records, but for ours, and we ask that you send us this data without delay.

PAR. 15. On the effective date, to wit November 17, 1937, of the said third industry price change a memorandum from the respondent manager to the respondent manufacturers stated as follows:

We are enclosing herewith new price lists #34 and #34-A published by Sealright Co., Inc., Fulton, N. Y.

We would appreciate your notifying us if you will file your prices in accordance with these, sending us about twenty-five (25) copies of your new price list.

PAR. 16. On April 5, 1938, the day before the effective date of the fourth and last above referred to industry price change, a resolution was adopted at a meeting of the members of the respondent Bureau terminating a special assessment of 1 cent per thousand bottle caps theretofore levied against the members as a contribution to the National Dairy Council.

PAR. 17. From time to time the respondent members of the respondent Bureau communicated, by letter and by telephone, with the authorized officials of the respondent Bureau relative to prices, discounts, and other terms of sale of paper disc milk bottle caps. A member would desire and seek information from the respondent Bureau as to whether "any change was to be made in the current price structure in the near future."

PAR. 18. The respondent members of the respondent Bureau entered into mutual agreements as to identical contract terms and other conditions in the sale of paper disc milk bottle caps. Contracts were entered into with dairies for a year's supply of caps to be delivered at different times during the year as needed by the dairy. The price paid by the dairies was dependent upon the quantity contracted for rather than upon the quantity of each printing. The contract terms and other conditions of sale for all of the respondent members were substantially the same. Some of the agreed contract order terms included the following:

The seller will not be obligated to supply a larger quantity of milk bottle caps than is contracted for.

In the event of price decline, the purchaser will receive immediate benefit of the lower prices applicable to the quantity contracted for.

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Any contract against which no shipments have been made over a period of three months from the effective date thereof will become null and void.

A contract becomes effective on date of first shipment provided shipments start within 60 days after the contract is written. Otherwise effective date is 60 days after the date the contract is written.

Small printings. Items of less than 25 M caps of a printing will be billed at list prices for quantities so ordered. Miscellaneous printing of less than 25 M may not be combined for the purchaser to gain the contract price.

Terms of payment. The condition of this contract is that seller's regular terms of payment be observed by purchaser; otherwise, seller shall have the privilege of treating each quantity shipped as a separate order and to collect for the same at his regular published price list.

No contract shall be accepted for a greater quantity of disc milk bottle caps than is given in the official rating book of the industry or subsequent revisions. Any situation not specifically covered by this agreement will be treated in accordance with seller's normal practice as set forth in his regular published price list.

PAR. 19. The respondent members at the meetings of the respondent Bureau discussed, agreed upon and made effective various Trade Practices such as:

(a) The members would not accept contracts from dairies using less than 100,000 caps per year.

(b) The members would strictly adhere to the practice of not accepting or shipping any orders at contract prices without actually having a contract from the customer.

(c) The members, at the time of a price advance, would forward to the Bureau their lists of contract customers with the quantity of caps their records show had been shipped in the prior 60 days for checking and approval by the Bureau.

(d) The members could not sell to super-jobbers or mill agents or consumers.

(e) The members would not recognize cooperative buying.

(f) The members could not sell to bottle exchanges.

(g) The sale of stock printed caps shall be governed by the same classifications as special printed caps and all the Trade Practices governing special printed caps will include stock printed caps.

PAR. 20. Several other Trade Practices in reference to prices mutually and concertedly agreed upon by the respondent manufacturers are noted in the following excerpts taken from official memoranda and bulletins issued by the respondent Bureau to the respondent manufacturers:

1. Combination pull and straw drink cap—1 cent up charge.
2. Straw drink cap only—2 cents less than pull cap with staple.
3. Flat cap—0.04 less than regular pull cap.
4. Stock print cap—2 cents less than special print.
5. Plain cap (no printing)—4 cents less than special print.

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6. Tinted board—1 cent higher than list price.
7. Snow white board—1 cent higher than list prices (single lined).
8. Snow white board—2 cents higher than list prices (double lined).
9. Electrotpe charges—same as previous.
10. Prices on other than No. 2 size milk cap—same as before.
11. Sour cream—cottage cheese—electrotypes—same as previous.
12. Milk can caps—changed—see enclosed list.
13. Full freight allowed everywhere—actual weight times actual rate.
14. Packing of caps—same—price differentials same.
15. Contract terms—will be the same except for the following changes:
The paragraph dealing with PRICE ADVANCE will be changed as follows:
"All orders for future delivery will be billed at the effective price as of date of shipment—in cases of price advance, buyer may have the option of cancelling balance of contract."
- The paragraph in regard to ELECTROTYPE CHARGES will be changed as follows:
"The purchaser will be charged for electrotpe plates under the terms and conditions set forth in our price lists current at time of shipment."
16. MISPRINT PRICES—10 cents per 1,000 f. o. b. plant (memorandum December 14, 1935).
17. The next procedure that we request is that no manufacturer quote or grant any dairy a special price without taking it up with this office to see what the present competitive situation is. The effect of this will be that every manufacturer can, if he so wants to, be competitive on any account but no manufacturer need make the situation worse than it is. This is important and I am going to ask that you give this matter your immediate attention and strictly adhere to the practice of communicating with this office *prior* to quoting anything different than your *published* price in this market (memorandum, February 15, 1936).

PAR. 21. Additional excerpts taken from numerous memoranda and bulletins issued by the respondent Bureau and showing further concerted efforts of the respondents in the matter of prices, discounts, terms of sale and classification of customers in connection with the sale of paper disc milk bottle caps are as follows:

In the consumer's price list the customers buying up to and including one million caps either pay the same price or a lower price, and in this case the consumers are given the benefit of the decrease immediately, which is in accordance with your contract terms. Consumers purchasing 350 M and less per year on contract, the prices were raised. In accordance with your contract terms, these customers are given a protection of 90 days for the same quantity of caps that they purchased in the prior 90 days at the old price. In effect this means that the old prices are to be invoiced up to March 20, 1936 (memorandum, December 26, 1935).

Several manufacturers have notified the Association Office that all their billings to jobbers since December 20, 1935, take the new jobber prices and are subject to the new jobber terms. The 6 percent and 4 percent cash discounts have been withdrawn, and all billings are subject to the new 2 percent cash discount only.

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In other words, the jobber bills consumers at the old prices for 90 days or until the contract expires, whichever happens first, while he receives billings from the manufacturer at the new jobber prices and terms.

New contracts are taken at the new prices and terms.

We are sending this memorandum to you in duplicate and if it meets with your approval, we ask that you sign one copy and return to us so that we may know that you accept the above suggestion and that you will function in the above manner. We ask that you do this promptly because it is important for the reason that if all members do not approve of the suggestion, we will have to notify all other members of the Industry so that they may be guided accordingly (memorandum, December 31, 1935).

Another point has arisen in our new price structure that we think needs clarifying.

Our present Trade Practice is that all National Buyers must be sold and billed direct. This Trade Practice includes 5 and 10 M printings, even though they are not subject to contract and contract prices. This means that all caps, no matter what size printing, are sold and billed direct to National Buyers, the 5 and 10 M being invoiced at your published consumer's price for the quantity ordered.

In regard to the commission that may be paid jobbers, this commission is 1 cent per M on all caps, irrespective of the size of the printing. In other words, they receive 1 cent per M on 5 and 10 M printings just the same as they do on larger quantities. While on the subject of this 1 cent per M commission to jobbers, let me remind you that although this is permitted, it is not being generally done, and is, in fact, the rare case.

We will also state that this above Trade Practice has been concurred in by Toledo Bottle Cap Co., Sealright Co., Smith-Lee Co., as well as several other manufacturers (memorandum, January 13, 1936).

You have heard a good deal from me, particularly recently, stating that I do not think our present Trade Practice in selling stock printed caps and blanks is a good one. I am not going to approach this question from a standpoint of cost as much as I am from a standpoint of selling, which means stability in the market.

I think that in the first place there is too much difference in selling price between stock printed caps and special printed caps. This is primarily occasioned by the fact that we have no control over the quantity of contract jobbers have, and when that is the case it very soon develops that the jobbers secured contracts for greater quantities than their purchasing power warrants. The present situation is that any number of jobbers have five million or more quantity contracts when their actual purchases are a fraction of this. This is the major reason for the wide spread between stock printed caps and special printed, but this is accentuated by the 2-cent reduction of stock printed over special printed caps, and a further 2 cents of blanks over special printed caps.

Now the whole stock printed business is, in fact, a small percentage of the total Industry, and the blank cap business is rather insignificant, and I think we are making a mistake in jeopardizing the stability of our whole industry over this division of it. My suggestion is that every manufacturer have an entirely separate sheet for stock printed caps and sell those without contract and on a spot order basis only. I think this suggestion has a good deal of merit because it is a distinct division of our business and certainly very little can be said for our present price list on stock caps, because I doubt if there

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is one person in ten in the Industry who can properly figure down the stock printed prices on account of starting with a base that is subject to all kinds of deductions.

Now, my suggestion would have the advantage that if any jobber or customer wanted to know the price on stock printed caps they would just pick up your price list for stock printed caps, and the price would be all figured out for him and it would be definite. However, before sending this price form out or discussing it any more, I would appreciate your comments (memorandum, June 28, 1936).

There are several radical changes that you made in your Trade Practices recently that we think should be emphasized to your jobbers so that they will not be overlooked. We would suggest your handling this with either a special letter or bulletin.

1. *On stock caps.*—The change of Trade Practices emphasizing the fact that there are no longer contracts on stock caps.

2. That there is no longer any 1 cent per M deduction for Preferred Jobbers to which they are accustomed.

3. It should be called to their attention that *blank* caps are now sold at the same price as stock print caps (memorandum, February 5, 1937).

Another Trade Practice on can caps is that stock *print* and *plain* can caps in quantities less than 25,000 carry the same price as *special print* can caps. For quantities of 25,000 and more, deduct 10 cents per thousand from the *special* print price for *stock* print or *plain can caps*. Likewise, there are no contracts for stock print or plain can caps (memorandum, February 5, 1937).

In order to clarify the new Trade Practice in selling Stock Printed Caps, we would like to emphasize the following points:

To define first a Stock Printed Cap, we will state that Stock Printed Caps and Blank Caps are considered one and the same thing, and are subject to identically the same Trade Practices. There is no deduction for Blank Caps over Stock Printed Caps. The points that we want to emphasize are:

1. There are absolutely no Stock Printed Caps sold on a contract. This even prohibits the selling of Stock Printed Caps on Consumers' special print contracts. In order to keep it clear in your mind, just remember that all Stock Printed Caps are sold on a spot order basis.

2. Stock Printed Caps are invoiced for the quantity of the one order for minimum printings of 25 M. This practice is identical with the practice in effect on Special Printed Caps. The following are some illustrations:

(a) *Order for 100 M Stock Printed Caps* Four (4) printings of 25 M each, 100 M price effective—53¢ M.

(b) *Order for 100 M Stock Printed Caps* 25 M printing "Milk" @ 53¢ M. 25 M printing "Cream" @ 53¢ M. Five (5) printings of 10 M each, two colors @ 81¢ M.

The 100 M price is effective for the 25 M printings, and the 10 M price is effective on the 10 M printings (memorandum, February 23, 1937).

We beg to call your attention to the Trade Practice confirmed at the Industry meeting held in Chicago on July 21, 1937.

All export sales made to foreign countries shall be on the basis of consumer's price list C. I. F. port of destination, less 10% export brokerage commission.

If this is not entirely clear to you, kindly write us so that there will be no misunderstanding of the Trade Practice.

We are sending this memorandum to you in duplicate, asking that you keep one copy for your files, and sign the other copy and return to us, so that we will know the matter has had proper attention (memorandum, July 28, 1937).

Supplementing our Memorandum No. 502 regarding Trade Practice for sales on Export Caps, beg to advise that this mentions export sales are to be made on the basis of Consumer's price list, C. I. F. port of destination, less 10% export brokerage commission.

We beg to advise that the above includes Stock Prints the same as Special Prints, as there is no difference on your own present published Consumer's price list (memorandum, August 24, 1937).

The following trade practice supersedes our Memorandum No. 714 of February 24th, 1939, and Memorandum No. 748 of May 9th, 1939, on the same subject. The interpretation of charges on electrotypes, when changing from one size cap to another, from the above date, shall be as follows:

When interchanging from No. 1, 2, 3, and 4 size milk bottle cap to another size, either on Disc Cap or Closure type of cap, there shall be no electrotypes charge; but, when changing from the above sizes of milk bottle caps to the Sour Cream size cap or the Can caps, or from the Sour Cream or the Can Caps to Milk Caps, the published price for the electrotypes charges shall be made.

There has been confusion over the interpretation of this trade practice. We would therefore ask if you would please sign the duplicate copy of this memorandum and return it to our office advising whether or not the above is in accordance with your interpretation. We should appreciate receiving your reply promptly, so that this matter can be clarified (memorandum, May 15, 1939).

We beg to remind you of your trade practice that you do not recognize bottle exchanges as jobbers (memorandum, August 29, 1939).

PAR. 22. That respondent members agreed upon a trade practice on freight allowance in the sale of paper disc milk bottle caps. Officials of the respondent Bureau forwarded the following memorandum on February 17, 1940, in relation to the trade practice of freight allowance:

There seems to be some little confusion on the part of one manufacturer of the interpretation of our trade practice of freight allowance. For this reason we would like to be sure that the trade practice is understood by all.

The trade practice reads that freight allowance is the weight times the rate. The interpretation of this is that the above is the published rail rate and is the maximum freight allowance made. As an illustration, if the caps are shipped by express the difference between the express charges and the above rail allowance would be the expense of the customer. The same holds true if the trucking rate would be higher than the rail rate. In other words, the trade practice is not free transportation at the discretion of the customer no matter what such charges may be.

Now another point that we want to raise is that in no way does the customer ever make a profit on the transportation. If the possible rail allowance should be greater than the actual trucking cost, the customer is allowed only the lower trucking charge.

We think this important enough that we are going to ask that you reply to this memorandum, advising whether or not the above interpretation is in accordance with your own trade practice.

PAR. 23. Shortly after the enactment of the NRA the idea was conceived of rating dairies according to the number of caps used annually. The respondent Bureau undertook the task of collecting data as to the number of caps used annually by dairies and publishing Rating Books.

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The first set of such books was published in 1933. The Eleventh edition was published in October 1939. In such books the approximately 50,000 dairies in the United States are rated according to the number of caps they used during the year preceding the issuance of the books. All the respondent manufacturers sent to the respondent Bureau copies of all invoices covering sales of paper disc milk bottle caps. The respondent Bureau maintains a card index for every dairy in the United States and each sale made by a manufacturer is entered on such card. The price, as well as the quantity, is entered on the card. As a dairy's purchases increase or decrease, its rating changes and each month the respondent Bureau issues supplements to the Rating Books. The Rating Books are furnished by the respondent Bureau to its members. It also sells the Rating Book to nonmembers and outsiders at a price of \$50 per set.

PAR. 24. The respondent manufacturers used said Rating Books to ascertain the price at which a particular dairy should be sold and said respondents strictly adhered by agreement to said ratings in determining the prices at which dairies should be sold. The manager and executive secretary of the respondent Bureau and other authorized representatives of the respondent Bureau policed the industry to see that the respondent manufacturers observed and carried out in their sales the ratings of said Rating Books.

The following excerpt is taken from a communication dated October 21, 1936, by Robert S. Leonard, now the president of the respondent, Robert S. Leonard Co.:

* * * we are spending hundreds of dollars ourselves and the cap industry thousands of dollars to furnish Rating Books which are more than 99% correct in the ratings the dairies should have. If these Rating Books are not kept up then jobbers and manufacturers will have no way of telling what price to quote the dairy.

PAR. 25. If a respondent manufacturer sold a customer in accordance with a higher rating than that accorded such customer in the Rating Book, the authorized officials of the respondent Bureau would contact such respondent manufacturer and call the fact to his attention with the request that "you kindly solicit * * * business according to the present listings in the Rating Books."

PAR. 26. The respondent manager in a communication to a respondent manufacturer on August 29, 1939, stated in part as follows:

* * * we check every invoice that comes into this office and challenge those that are not in accordance with the manufacturer's own published price. It may be that there are some irregularities going on, but if there are, we can tell you that they must be from members not reporting to this office.

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PAR. 27. The respondent Bureau rated and clasified the dairies as follows:

"A"—A grade dairy was one that used 25 million or more paper disc milk bottle caps annually.

"B"—B grade dairy was one that used from 12 million to 25 million or more paper disc milk bottle caps annually.

"C"—C grade dairy was one that used from 5 million to 12 million or more paper disc milk bottle caps annually, etc.

PAR. 28. The respondent Bureau also published a Rating Book for jobbers in which jobbers are rated according to whether they purchase annually from 350 M to 1,000 M caps.

The following excerpt was taken from the minutes of a meeting of respondent Bureau held January 21, 1937:

The following Trade Practice was unanimously adopted concerning the selling of Stock Printed Caps; Stock Printed caps shall now be classified identically the same as special-printed caps and all the Trade Practices governing special-printed caps will include stock printed. The basis of selling stock printed caps to jobbers shall be on contract basis in accordance with individual manufacturer's published price, and the individual jobber's official rating. Note: This will require the Statistical Bureau to issue a Rating Book governing purchases for jobbers. The Statistical Bureau will rate all jobbers 350 M and over. All Jobbers less than 350 M will be sold on the spot order basis. This Jobber Rating Book will be kept distinct from the Dairy Rating Book and will be issued only for the confidential use of all manufacturers.

PAR. 29. The Jobber Rating Book was issued and is used by the respondent manufacturers in the sale of stock print caps or caps which do not have any special printing on them which are sold to jobbers for resale to retail stores for customers who use exceptionally small quantities. Mail order houses such as Sears, Roebuck and Montgomery Ward purchase large quantities of stock print caps.

PAR. 30. The industry prices which were uniformly observed by respondent manufacturers during 1940 on standard pull caps No. 2 size for jobbers and dairies are as follows:

	Price per M			
	Jobber's list		Consumer's list	
	One color	Two colors	One color	Two colors
5 M to 10 M.....	\$0.71	\$0.81	\$1.02	\$1.16
10 M to 25 M.....	.59	.62	.83	.87
	One or two colors		One or two colors	
25 M to 50 M.....	0.49		0.66	
50 M to 100 M.....	.46		.61	
100 M to 350 M.....	.45½		.58	
350 M to 1 M M.....	.44½		.55	
1 M M to 5 M M.....	.44		.52	
5 M M to 12 M M.....	.43½		.49	
12 M M to 25 M M.....	.43		.47	
25 M M to 50 M M.....	.42½		.44½	
50 M M and over.....				

PAR. 31. The respondent manufacturers and some nonmembers of respondent Bureau filed identical prices with the respondent Bureau. Such filing was referred to as "official filing." All of the respondent manufacturers sent copies of each invoice covering the sale of paper disc bottle caps to the respondent Bureau. Each of the member manufacturers also furnishes the Bureau with a list of contract customers.

PAR. 32. Excerpts from official memoranda and bulletins issued by the respondent Bureau relative to the Rating Books are as follows:

At the present time, it is the practice of the Statistical Bureau to send out rating supplements once a month. In order to make their work more accurate and more efficient, we are going to ask that you send us copies of your invoices more promptly than some manufacturers have been accustomed to.

Some manufacturers have been sending us their copies daily. We ask those to continue to do so, but irrespective of what your past performance has been, we ask that you send your invoices to us at least twice a week. We appeal to you for this additional cooperation to help us in our work (memorandum, May 29, 1936).

Every manufacturer is urged to adhere strictly to the existing Trade Practices, with particular emphasis on the observance of the Rating Books and their own filed prices (memorandum, November 16, 1935).

PAR. 33. Price lists filed by the respondent manufacturers with the respondent Bureau were identical; Rating Books were used by the respondent manufacturers in determining the ratings and classifications of jobbers and dairies and ascertaining the prices at which jobbers and dairies should be sold; the respondent manufacturers by so doing practically eliminated price competition among themselves in the sale of paper disc milk bottle caps.

PAR. 34. The Commission finds that the acts and practices hereinabove described, and the circumstances herein set forth, constitute agreements and combinations on the part of the respondents to fix and maintain uniform prices, discounts, contract terms, and other conditions for the sale and distribution, in commerce, of paper disc milk bottle caps. That in pursuance to said agreements and combinations the respondent Bureau and its representatives have rated and classified the approximately 50,000 dairies located throughout the United States according to the number of caps used annually; said ratings and classifications have been distributed among the respondent manufacturers who agreed to adhere, and did adhere, to said ratings in determining prices and discounts at which dairies should be sold. To make more effective the operation and carrying out of said agreements and combinations, the respondent manufacturers filed, with the respondent Bureau, price lists; copies of invoices containing names of purchasers, quantities purchased, and prices there-

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for; customer lists; copies of contracts and conditions of sale. These data filed by the respondent manufacturers were checked by the representatives of the respondent Bureau in accordance with the policy and practice of said Bureau to police the industry and thus to determine whether the respondent manufacturers observed and carried out the aforementioned agreements and combinations. As a result of the effectiveness of the operations of said agreements and combinations, price competition among the respondent manufacturers, in the sale of paper disc milk bottle caps in commerce, was practically eliminated.

PAR. 35. All the respondent manufacturers are members of the respondent Bureau excepting respondent, Standard Cap and Seal Corporation. These proceedings are concerned with paper disc milk bottle caps and not with closure or hood milk bottle caps; the manufacture of paper disc milk bottle caps is considered a separate industry from the manufacture of closure or hood caps. Although the respondent, Standard Cap & Seal Corporation, does manufacture some paper disc milk bottle caps, it is primarily engaged in the manufacture of closure or hood caps. All of the respondent manufacturers herein, excepting respondent, Standard Cap & Seal Corporation, through counsel, assented and were parties to a formal stipulation as to the facts, which stipulation has been approved and entered of record herein. The said stipulation contains admissions of the material allegations of the complaint herein with reference to the acts of the respondent Bureau, its respondent officers and its respondent members in connection with the sale and distribution of paper disc milk bottle caps.

CONCLUSION

The said understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto, and in furtherance thereof, as herein found, are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of paper disc milk bottle caps in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in paper disc milk bottle caps; 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 answer of the re-

spondents, and a stipulation as to the facts entered into between counsel representing all the respondents, excepting Standard Cap & Seal Corporation, and W. T. Kelley, Chief Counsel for the Commission, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein, excepting Standard Cap & Seal Corporation, findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The Milk Cap Statistical Bureau; its manager and executive secretary, George J. Lincoln, Jr.; the members of its executive committee, Ray W. Blodgett, George W. Rohrbeck, and Robert H. Schulz; and its members, Atlas Paper Box Co., a corporation; Great Lakes Bottle Cap Co., a corporation; Robert S. Leonard Co., a corporation; L. Livingston, Co., a corporation; Fowler E. Macy and Edna B. Macy, copartners doing business under the firm name Fowler E. Macy Co.; Mid-West Bottle Cap Co., a corporation; National Manufacturing Co., a corporation; Ohio Bottle Cap Co., a corporation; Piqua Cap Co., a corporation; and Sealright Co., Inc., and Smith-Lee Co., Inc., and their agents, representatives, and employees, in connection with the offering for sale, sale and distribution of paper disc milk bottle caps, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, carrying out, or aiding or abetting the carrying out of any agreement, understanding, combination, conspiracy, or concert of action between and among any two or more of said respondents, with or without the cooperation of others not parties hereto, for the purpose or with the capacity, tendency, or effect of restricting, restraining, monopolizing, or eliminating competition, in the sale in commerce of said paper disc milk bottle caps and from doing any of the following acts and practices pursuant thereto:

1. Fixing or maintaining prices for the sale of various types of paper disc milk bottle caps in said commerce.

2. Fixing or maintaining uniform discounts, terms, conditions of sale or freight charges to be observed in the sale of paper disc milk bottle caps in said commerce.

3. Fixing or maintaining uniform quantity prices or price differentials on quantity purchases based upon quantity purchases from all sources as are fixed and determined by jobber rating books or dairy rating books or other similar devices.

4. Consulting, or communicating in any manner, with the respondent Bureau, or any of its officials, for the purpose of obtaining con-

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sent or agreement relative to prices at which paper disc milk bottle caps should be sold.

5. Limiting the number or quantity of paper disc milk bottle caps which jobber customers or dairy customers may contract for, with, or purchase from, the respondent manufacturers.

6. Preventing the sale of paper disc milk bottle caps to so-called "super-jobbers" or mill agents or cooperative buying agencies and confining the sale of such products exclusively to jobbers and dairy consumers.

7. Forwarding, by the respondent manufacturers, to the respondent Bureau, invoices, or copies thereof, showing the details in respect to prices, discounts and terms of sale at which paper disc milk bottle caps are being sold.

8. Compiling, publishing, or distributing a Jobber Rating Book or other similar device, for the use of respondent manufacturers, which rates or classifies jobbers of paper disc milk bottle caps according to the total number of paper disc milk bottle caps purchased annually.

9. Compiling, publishing, or distributing a Dairy Rating Book or other similar device, for the use of respondent manufacturers, which rates or classifies dairies according to the total number of paper disc milk bottle caps used annually, provided, however, that nothing herein contained shall be construed to prevent respondents, or any of them, from compiling, publishing, or distributing for the use of respondent manufacturers and others, such information as to the annual paper disc milk bottle cap requirements of the respective dairies as may enable each manufacturer to check or determine the propriety of any orders or contracts which may be received by it, if and when such information is not used for the purpose or with the effect of establishing corresponding ratings or classifications of dairies, or corresponding price differentials, that are uniform among respondents.

10. Holding and sponsoring meetings of the respondent manufacturers for the discussion and interchange of information relative to prices, discounts, conditions, charges, or terms to be fixed for the sale of paper disc milk bottle caps.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to respondent, Standard Cap & Seal Corporation.

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

IN THE MATTER OF

JOHN CARNER, AS OFFICER OF FRETTED INSTRUMENT
MANUFACTURING CORPORATION, ETC., 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 4444. Complaint, Jan. 7, 1941—Decision, July 9, 1942

Where four officers of a corporation and its successor, engaged in the manufacture and interstate sale and distribution of stringed musical instruments such as guitars and mandolins, which depended upon the wood for their resonance or amplification—

Simulated the cone amplifying device with which amplifying or resonating types of guitars and mandolins are equipped, and which produces a sound from 50 to 85 percent louder than that of an instrument made entirely from wood, through affixing to the top of the body portion of their guitars and mandolins a polished perforated metal disk or plate (and, at one time, through painting the interior of their instruments with aluminum paint which, when seen through the perforations in the disk, had the appearance of the amplifying cone), result of which was to give their instruments a metallic ring, but not to increase the volume or resonance of the tone, as does the cone;

With the result that the average person, on viewing the instrument, could not distinguish between a genuine resonating or amplifying one and one of their said products decorated with a polished perforated metal disk or plate; and with consequence that a number of dealer-customers, by means of advertisements in musical magazines of general circulation, represented that their products were so equipped:

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

Before *Mr. Lewis C. Russell* and *Mr. John L. Hornor*, trial examiners.

Mr. Joseph C. Fehr and *Mr. Carrel F. Rhodes* for the Commission.

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 John Carner, individually and as an officer of Fretted Instrument Manufacturing Corporation and United Guitar Corporation; Morris Brooks, individually and as an officer of Fretted Instrument Manufacturing Corporation; Frank Solvino and Frank Masiello, individually and as officers of United Guitar Corporation; Fretted Instrument Manufacturing Corporation, a corporation; and United Guitar Corporation, a corporation,