

IN THE MATTER OF

INLAND EMPIRE BAKERS' ASSOCIATION, INC., 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 4550. Complaint, July 30, 1941—Decision, July 10, 1942

Where a nonprofit corporation, membership of which was composed of individuals and concerns engaged in the manufacture and in the sale and distribution of bread and other bakery products in the "Inland Empire," comprising eastern Washington and the Idaho "Panhandle," in the case of certain members transporting their products across the State line between the two, and, except insofar as their competition had been restrained as below set forth, in competition with one another and with other bakeries in the area mentioned; and certain representative members;

Following the court's invalidation of the "Washington Agricultural Adjustment or Triple A Act"—which, enacted shortly after the organization of the association, provided for the adoption and enforcement of marketing agreements by various industries in the State handling agricultural products, and pursuant to which the Washington bakers, acting through the association, had adopted and promulgated a marketing agreement regulating the baking industry in eastern Washington, including the fixing of uniform prices on all bakery products—and subsequent to unsuccessful efforts to embody in a contract, in substance, the provisions of said marketing agreement; with a desire of continuing the benefits which had accrued to them thereunder—

- (a) Undertook to obtain such results through means of informal agreements and understandings reached through the meetings and other activities of the association, and thereby succeeded in maintaining substantially same schedule of prices as had been obtained under said Triple A Marketing Agreement; and, while members mostly sold only intrastate, did not except or exclude from their agreements interstate sales;
 - (b) From time to time checked up on isolated instances in which bakers did not maintain prices fixed by them, and made efforts to coerce such recalcitrant bakers into maintaining fixed prices; and
 - (c) Were instrumental in obtaining State enactment of a price recording statute under which all bakers selling their products within the State were required to file their prices with its Director of Agriculture, and, could change such filed prices only on ten days' notice; and, through their association, supplied bakers with blank forms for use in such price filing and advised and assisted them therein, and thereby were enabled to keep informed with respect to prices and contemplated price changes;
- With the result that uniform prices were thus fixed in all interstate as well as intrastate sales made by any of their number; and with tendency and capacity substantially to restrain and suppress competition in the sale and distribution of bread and other bakery products in commerce, to increase the prices paid by the immediate purchasers and consequently the prices paid by the consuming public, and to deprive such purchasers and consuming public of the advantages which would prevail under conditions of free and open competition;

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Mr. Roy A. Redfield, of Spokane, Wash., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the corporations, associations, firms, and individuals named in the caption hereof, hereinafter referred to as respondents, have been and are now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said 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. The respondent, Inland Empire Bakers' Association, Inc., is a corporation, organized and existing under the laws of the State of Washington, with its principal office and place of business located at 311 Radio Central Building, Spokane, Wash. The membership of said respondent, Inland Empire Bakers' Association, Inc., is composed of individuals, partnerships, and corporations who are engaged in the business of processing, manufacturing, offering for sale, selling, and distributing bread and bakery products in certain areas in the States of Washington and Idaho. Said respondent is hereinafter referred to for convenience as "respondent association."

PAR. 2. The following-named individuals are or have been officers of said respondent association and are named as respondents herein both in their individual capacities, and as officers of said association: L. L. Francis, % Silver Loaf Baking Co., 1102 West Ide Street, Spokane, Wash., president; Mel Jacobsen, % Jacobsen's Bakery, 617 North Ash Street, Spokane, Wash., vice president; V. B. Pringle, 311 Radio Central Building, Spokane, Wash., secretary and executive manager.

PAR. 3. The membership of said respondent association varies from time to time, and it is therefore impractical to specifically name all of said members as respondents herein. The following-named corporations and individuals are representative of the whole membership of said respondent association and are named as respondents herein individually and severally and as members of said association and as

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representatives of all members of said respondent association as a class, including those not herein specifically named, who are also made respondents herein: Silver Loaf Baking Co., a corporation, 1102 West Ide Street, Spokane, Wash.; E. A. Boge, doing business under the name and style of Boge Brothers Bakery, 401 South Sherman Street, Spokane, Wash.; and Olaf Jacobsen, doing business under the name and style of Jacobsen's Bakery, 617 North Ash Street, Spokane, Wash. Said respondents are hereinafter referred to for convenience as "respondent members."

PAR. 4. Respondent, Silver Loaf Baking Co., is a corporation, organized and existing under the laws of the State of Washington, and maintains its principal office and place of business at 1102 West Ide Street, Spokane, Wash.

Respondent, E. A. Boge, is the owner and operator of Boge Brothers Bakery, with his principal office and place of business at 401 South Sherman Street, Spokane, Wash.

Respondent, Olaf Jacobsen, is the owner and operator of Jacobsen's Bakery, with his principal office and place of business located at 617 North Ash Street, Spokane, Wash.

PAR. 5. Said respondent members of respondent association are engaged in the manufacture and distribution of bread and bakery products in the eastern part of the State of Washington and the western part of the State of Idaho. Many of said respondent members, in connection with the distribution for sale and sale of such bakery products, and in the regular course of their respective businesses, ship or cause some of said commodities to be transported across the State line between the States of Washington and Idaho, that is, from the point of origin of such products in one of such States to the customers buying the same in the other. There is and has been at all times herein mentioned a current of trade and commerce in bread and bakery products between said States of Washington and Idaho. Said respondent members are in competition with one another and with other bakers in the distribution for sale and sale of such bakery products, in the areas above mentioned, except insofar as such competition has been hindered, lessened, and restrained as hereinafter alleged.

PAR. 6. Respondent officers and members of respondent association, since about 1935, have agreed and confederated together, and have united in and pursued a common and concerted course of action, acting through and by means of respondent association, to restrict, restrain, and suppress competition in the sale and distribution of bread and bakery products by the manufacturers thereof to their customers located in the eastern part of the State of Washington and the western

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part of the State of Idaho, by agreeing to fix and observe, among themselves, uniform and noncompetitive prices for such commodities, and by agreeing to act collectively to enforce and impose upon all bakers selling said products in such area the use of such noncompetitive prices so fixed by respondents. Since said date, respondents have adopted, followed, and adhered to said policy of fixing and maintaining artificial, uniform, and noncompetitive prices for bread and bakery products in said area by the use of the various devices and means hereinafter set forth.

PAR. 7. Pursuant to said agreement, combination, and policy, and in furtherance thereof, respondents have done, among other things, the following:

1. Formulated, carried out, and made effective the policy and methods described in the preceding paragraph.

2. In 1935 and 1936 respondents attempted to secure the signatures of all bakers in eastern Washington and western Idaho to a written agreement fixing the prices at which bread and bakery products were to be sold in such area.

3. Held meetings of said respondent association and its officers and members at which the policy of fixing prices on bread and bakery products, above described, was discussed, adopted, and agreed to.

4. Issued and circulated bulletins, circulars, and letters in furtherance of said agreement and policy and in aid of efforts by respondents to establish, effectuate, and maintain the same.

5. Assisted all bakers in the area mentioned in drawing up schedules of uniform prices for bread and bakery products to be filed with the Department of Agriculture of the State of Washington, in accordance with a statute of said State, and coercively attempted to prevent changes in such schedules.

6. Coöperated with other associations of bakers in fixing prices on bread and bakery products in areas on the borders of or adjacent to the territory served by respondent members.

7. Checked up on individual bakers refusing to adhere to said prices so fixed by respondents and coerced them, or attempted to coerce them, into adhering to such prices and policy.

8. Supervised generally the practices and prices of all bakers in the area mentioned and attempted to require them to conform to respondents' prices and program.

PAR. 8. The officer respondents hereinbefore named are now, and have been, officers of said respondent association, and as such officers, have had, and now have, full and complete charge of the activities of said respondent association, and have conducted the affairs of said

association in pursuance to and in furtherance of the objects and aims of said association as above set forth. .

PAR. 9. The results of the acts and practices of the said respondent members and of said respondent association, as herein set forth, have been, and now are, to substantially lessen, restrict, restrain, and suppress competition in the interstate sale of bread and bakery products in the States of Washington and Idaho and to empower the said respondents to control the market and enhance the prices of said products above the prices which would prevail under normal, natural, free, and open competition. Said acts and practices also have tended to promote a monopoly in said respondents in the manufacture and sale of said commodities in the trade areas hereinabove mentioned.

PAR. 10. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among said respondents in the sale of said products in commerce within the intent and meaning of the Federal Trade Commission Act, and have placed in said respondents the power to control prices; have increased the prices of said products paid by the purchasers thereof and consequently the prices paid by the public; have tended to create in the said respondents a monopoly in the sale of said products in such commerce, and have unreasonably restrained such commerce in said products, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 30, 1941, issued and subsequently served upon the respondents named in the caption hereof, its complaint, in this proceeding, charging the respondents with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of the respondents' answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondents, before a trial examiner of the Commission theretofore duly designated by it, which testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer of the respondents, testimony and other evidence (including certain testimony omitted from the trial examiner's report, which omissions were made the subject of exceptions by the respondents), report of the trial

examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested), and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Inland Empire Bakers' Association, Inc. (hereinafter referred to as "respondent association" and as "the association"), is a nonprofit corporation organized and existing under the laws of the State of Washington, with its principal office and place of business at 311 Radio Central Building, Spokane, Wash. The membership of the association is composed of individuals, partnerships, and corporations engaged in the manufacture and in the sale and distribution of bread and other bakery products in certain areas in the States of Washington and Idaho.

Respondent, L. L. Francis, 1102 West Ide Street, Spokane, Wash., is or was until recently president of the association; respondent Mel Jacobsen, 617 North Ash Street, Spokane, Wash., is vice president of the association; and respondent V. B. Pringle, 311 Radio Central Building, Spokane, Wash., is secretary and executive manager of the association. These individuals formulate the policies and conduct, direct, and control the acts and practices of the association, and are joined as respondents in this proceeding both in their individual capacities and in their capacities as officers of the association.

The membership of the association varies from time to time, and it is therefore impracticable to name all of the members specifically herein. The corporation and individuals named below are representative of the entire membership of the association and are named as respondents herein individually and as members of the association, and also as representative of all the members of the association as a class: Silver Loaf Baking Co., a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business at 1102 West Ide Street, Spokane, Wash.; E. A. Boge, doing business under the name of Boge Brothers Bakery, with his principal office and place of business at 401 South Sherman Street, Spokane, Wash.; and Olaf Jacobsen, doing business under the name of Jacobsen's Bakery, with his principal office and place of business at 617 North Ash Street, Spokane, Wash. The members of the association, including those named above, are frequently referred to hereinafter as "respondent members" or as "members."

PAR. 2. The members of the association are engaged in the manufacture and in the sale and distribution of bread and other bakery products in the area known as the "Inland Empire," which comprises the eastern part of the State of Washington and the northern part of the State of Idaho, frequently referred to as the "panhandle" of Idaho. In the course and conduct of their respective businesses, and in connection with the sale and distribution of their products, certain members ship some of their products or cause them to be transported across the State line between the States of Washington and Idaho—that is, from the point of origin of such products in one of these States to the purchasers of the products located in the other State. These members maintain, and for many years last past have maintained, a course of trade in their respective products in commerce between the States of Washington and Idaho.

PAR. 3. Except insofar as competition has been hindered, lessened, and restrained as a result of the acts and practices hereinafter described, all of the respondent members are in competition with one another and with other bakers in the sale and distribution of bakery products in the areas mentioned above, and those members selling and distributing their products in interstate commerce are in competition with one another in such commerce and also with other bakers engaged in selling and distributing bakery products in such commerce.

PAR. 4. The association was organized in January 1934, at which time respondent V. B. Pringle was made its secretary and executive manager, and in November 1934, a formal constitution was adopted. The ostensible purposes of the association were set forth in the constitution in the form of a "Declaration of Principles," as follows:

Principle 1.—We believe that men who cooperate in the organization of the baking industry, so as to afford the greatest opportunity for development of this baking industry, to better serve the public and those other industries associated with them, then his service is of value to all.

Principle 2.—The principles of this association shall be to protect, promote, foster, and advance the interest of the baking industry and its members.

Principle 3.—To bring about the stabilization of the baking industry, so that, individually and collectively, members may voice their needs in developing a better industry.

Principle 4.—To cooperate collectively in giving the public an understanding of the importance of the tenth largest industry in the United States.

Principle 5.—To assist members of the baking industry in arriving at a proper cost of operation and perfecting the baking industry in all its branches.

Principle 6.—It is the intent of the association to foster and perpetuate a cooperative spirit and to treat his competitors in the baking industry, as he would like to be treated.

Principle 7.—To effectuate the policy of farm relief and to eliminate such trade practices as tend to lessen the use of farm products.

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Principle 8.—To produce and relieve unemployment and improve the standard of labor.

Principle 9.—To effectuate better competitive conditions of the baking industry, which will tend to increase the consumption of farm products and reflect accordingly to the benefit of the consumer, producer, manufacturer, and employees, as well as a fair and reasonable profit to the employer.

Principle 10.—The association is not organized for pecuniary profit and shall not declare dividends or other financial distribution to its members.

It was originally contemplated that the Association would include in its membership the bakers of eastern Washington, northern Idaho, and the western section of Montana, and in the early days of its operations the association did number among its members, in addition to practically every baker in eastern Washington, a number of bakers located in northern Idaho. Shortly after the association was organized, however, the State of Washington enacted an Agricultural Adjustment Act, known generally as the Washington Triple A, which provided for the adoption and enforcement of marketing agreements by the various industries in the State handling agricultural products. Not long afterward, the State of Idaho enacted similar legislation. As a result of the enactment of these statutes, the bakers composing the membership of the association divided into two groups. The Washington bakers, acting through the association, proceeded to adopt and promulgate a marketing agreement which provided for the regulation of the baking industry in eastern Washington, including the fixing of uniform prices on all bread and other bakery products sold in that part of the State. The effective date of this agreement was March 15, 1934. The secretary and executive manager of the association, respondent Pringle, was the State administrator of the Washington Triple A for the eastern Washington area, and from time to time new price lists were issued by Pringle.

Likewise, the bakers in northern Idaho proceeded to organize under the Idaho Triple A and to adopt and promulgate a marketing agreement fixing the prices on all bakery products sold in that part of Idaho. By this time the Idaho bakers had discontinued their membership in the association (except one baker, who sold a substantial portion of his products in eastern Washington), and their activities were not conducted through the association, as were the activities of the Washington bakers. While the Idaho Agricultural Adjustment Act has never been declared invalid by the courts, the Attorney General of Idaho has rendered an opinion to the effect that the act is unconstitutional.

PAR. 5. In July 1935, the Washington Agricultural Adjustment Act was held invalid by the Supreme Court of that State. As the prices which the eastern Washington bakers had been receiving for

their products under the marketing agreement were substantially higher than the prices which had prevailed prior thereto, the bakers were desirous of continuing in some other form and by some other means the benefits which had accrued to them under the Triple A. They first undertook to do this through a proposed contract designated by them as "Eastern Washington Fair Trade Agreement," which embodied in substance the provisions of the marketing agreement promulgated under the Triple A. This contract was signed by some forty bakers in the eastern Washington area, but it never became effective because it required as a condition precedent to its taking effect the signatures of bakers representing 85% of the normal production of bakery products within that area, and one of the largest bakers in the area declined to join in the agreement.

PAR. 6. Having failed in their efforts to obtain the adoption of this formal contract, the members of the association undertook to obtain the same results by means of informal agreements and understandings reached through the meetings and other activities of the association. The minutes of meetings held between September 5, 1935, and June 2, 1937, are in evidence, and they are replete with statements by various officers and members showing the existence of such agreements and understandings, and showing that concerted and cooperative action was taken by the respondents pursuant thereto. In this manner and by these means, the respondents sought to maintain and were successful in maintaining substantially the same schedule of prices as had obtained under the Triple A marketing agreement. The evidence further shows that the association from time to time checked up on isolated instances in which bakers in that area did not maintain the prices fixed by respondents, and efforts were made to coerce such recalcitrant bakers into maintaining the fixed schedule of prices.

PAR. 7. The respondents were also instrumental in obtaining, in January 1937, the enactment by the State of Washington of a price-recording statute under which all bakers selling their products within the State were required to file their prices with the State director of agriculture. Such prices, once filed, could not be changed except upon 10 days' notice. Through the association the respondents maintained a close check on all prices filed by bakers in the eastern Washington area. Respondent Pringle, in his capacity as secretary and executive manager of the association, contacted the bakers in the area, supplied them with blank forms to be used in filing their prices, and advised and assisted them in their price filings, obtaining a commission as notary public in order that he might be able to notarize

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the executed forms. In this manner the respondents were enabled to keep themselves informed with respect to the prices of the bakers in that area, and with respect also to any contemplated changes in prices.

PAR. 8. The respondents do not deny that they sought, through mutual agreements and concerted action, to maintain a schedule of uniform prices governing the sale of their products, but they insist that such agreements and activities related only to the sale of products within the State of Washington, and that interstate sales were in no way involved. The record discloses, however, that at no time were interstate sales excepted or excluded from the agreements, and those members of the association who sold their products in interstate commerce adopted and maintained the agreed schedule of prices in their interstate transactions as well as in intrastate sales. While the agreements may have contemplated intrastate sales primarily, this being due to the fact that most of the respondents sold only within the State in which they were located, the result of the agreements was that uniform prices were also fixed in all interstate sales made by any of the respondents. A significant circumstance indicating that it was the intention of the respondents to regulate trade in both Washington and Idaho and between the two States is that, in 1940 and 1941, strenuous efforts were made to reenlist the northern Idaho bakers in the association. That these efforts met with substantial success is attested by the fact that in 1941 eleven bakers in northern Idaho renewed their membership in the association.

PAR. 9. The agreements, understandings, combinations, and conspiracies entered into by the respondents, and the acts done pursuant thereto and in furtherance thereof, as herein described, have had and now have the tendency and capacity substantially to lessen, restrict, restrain, and suppress competition among the respondents in the offering for sale, sale, and distribution of bread and other bakery products in commerce between the States of Washington and Idaho, to increase the prices paid by the immediate purchasers of such products, and consequently the prices paid by the consuming public, and to deprive such purchasers and the consuming public of the advantages which would prevail under conditions of normal, natural, free, and open competition among the respondents.

CONCLUSION

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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of the allegations of the complaint and in opposition thereto, taken before a trial examiner of the Commission theretofore duly designated by it, the report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Inland Empire Bakers' Association, Inc., a corporation; L. L. Francis, individually and as president of said association; Mel Jacobsen, individually and as vice president of said association; V. B. Pringle, individually and as secretary and executive manager of said association; Silver Loaf Baking Co., a corporation, a member of said association; E. A. Boge, trading as Boge Brothers Bakery, individually and as a member of said association; Olaf Jacobsen, trading as Jacobsen's Bakery, individually and as a member of said association; all other members of said association, as representatives for whom the said members named above were made respondents herein; and the officers, representatives, agents, and employees of said association and of the respective members thereof, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of bread and other bakery products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, or carrying out, or aiding or assisting in the continuing or carrying out, of any agreement, understanding, combination or conspiracy between or among any two or more of said respondents, or between or among any one or more of said respondents and any other person, partnership, or corporation, for the purpose or with the effect of establishing or maintaining uniform prices for bakery products.

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

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(a) Fixing, establishing, or maintaining uniform prices for bakery products.

(b) Entering into discussions for the purpose or with the effect or agreeing upon, arriving at, adopting, fixing, or maintaining uniform prices for bakery products.

(c) Coercing or attempting to coerce any person, partnership, or corporation engaged in selling bakery products into establishing or maintaining uniform prices fixed by respondents.

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.

Complaint

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IN THE MATTER OF

GRAND RAPIDS FURNITURE CO., INC.

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

Docket 4463. Complaint, Feb. 11, 1941—Decision, July 13, 1942

Where a corporation, engaged in competitive interstate sale and distribution of furniture—

Represented, through use of its corporate name, including words "Grand Rapids," and through use, occasionally, of words "Grand Rapids" and "Grand Rapids Furniture" separately and independently of its corporate name, in newspapers of interstate circulation, and by radio broadcasts, that furniture offered and sold by it, or a major portion thereof, was manufactured in Grand Rapids, Mich.;

The facts being that while in its early days it did purchase a major portion of its furniture from manufacturers in Grand Rapids—long known as an important center of the furniture industry, products of which, by reason of their reputation, for quality, style, and other desirable characteristics, are preferred by a substantial portion of the purchasing public, so that dealers frequently use as a selling point said origin—such purchasing had declined until in recent years it obtained not over 5 percent from the city in question, and none of the specific articles referred to in said advertisements were in fact made there;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public in said respect, and result of thereby causing such public to purchase substantial quantities of its furniture because of such mistaken belief, whereby trade was unfairly diverted to it from its competitors who do not misrepresent the place of origin of their products:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. J. R. Phillips, Jr., and *Mr. Carrel F. Rhodes* for the Commission.

Mr. Aaron Heller and *Mr. Sol Eigen*, of Passaic, N. J., for respondent.

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 Grand Rapids Furniture Co., Inc., a corporation, hereinafter referred to as re-