

IN THE MATTER OF

AGRICULTURAL INSECTICIDE & FUNGICIDE ASSOCIATION, ITS OFFICERS, DIRECTORS, AND MEMBERS, 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 4145. Complaint, May 29, 1940—Decision, July 24, 1942

Where numerous concerns, engaged in the manufacture and competitive interstate sale and distribution of various types of insecticides, fungicides, and related items, including such bulk or staple items as arsenate of lead, calcium arsenate, lime sulphate, nicotine, etc., as well as patented items; and the Association, of which all but two of said concerns were members; and its various officers and directors; entering into an understanding, agreement, combination, or conspiracy to restrict, restrain, and suppress competition in the sale and distribution of various types of insecticides, fungicides, and related items to customers—

- (a) Agreed to fix and maintain uniform prices, terms, and discounts at which said items were to be sold to various classes of customers, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said Association as to prices, etc., at which said members and certain nonmembers were selling and offering their said products; and

Where said members—

- (b) Concertedly fixed many of the said agreed prices on a delivered basis to certain consumers and to various classes of dealers, including therein actual rail freight to purchasers at respective destinations but no allowance on shipments by truck; with intent and effect of preventing differences in the delivered cost to many buyers by reason of differences in the cost of delivery from the members' respective shipping points;
- (c) Entered into agreements to fix and maintain uniform price differentials between carload and less than carload lots, and uniform discounts for payment of invoices within certain fixed periods; and
- (d) Entered into agreements to fix the prices to be quoted on all government, state, and municipal bids, and to require dealers to maintain certain uniform retail prices; and

Where said members, various individuals, officers, and directors of aforesaid Association, and others, as aforesaid, or certain of them, as the case might be, pursuant to and in furtherance of aforesaid general understandings, etc.—

- (e) Organized said Association to act as a clearing house for the exchange of statistical, price, and trade information submitted by the members, including reports as to the prices, terms, and discounts at which various products were sold or offered, and advance notice of future prices; and
- (f) Attended regular meetings of the Association at convenient locations, at which were discussed trade and competitive conditions and matters such as use of all legal efforts to police filed price schedules, continuance of the price

basis, protection of prices in certain territories, withholding of freight allowances on shipments from jobbers' stocks, etc., the naming of the minimum price for quotation on all government, state, and municipal bids, and the fixing of various prices and action in the interest of maintaining various price levels, and trade policies, and prices to be charged were agreed on; and

Where aforesaid Association, pursuant to said agreements, etc.—

- (g) Acted as a clearing house for the exchange of aforesaid information and policed reported failures to adhere, as agreed and understood among the members, to the prices respectively filed with it;
- (h) Held meetings from time to time to vote on dealers to be recognized as distributors of products in question, and compiled and distributed to the members and cooperating nonmembers lists of dealers to be recognized as retailers and sold as such to the exclusion of others, and also lists of dealers to be similarly sold by them on a wholesale basis, and assisted in policing the enforcement of the use of such "distributor guides" or "white lists";
- (i) Mailed out a special bulletin dealing with the merchandising policy for the industry, which advised that "B" and "C" buyers must be registered with the Association, and their names added or rejected by "mutual agreements" and reviewed by the Board of Directors at their next meeting;
- (j) Maintained an open price filing system whereby it relayed to the members and to cooperating nonmember concerns advance notice of immediate and future price rises and declines; and

Where two member corporations, engaged in the manufacture and competitive interstate sale and distribution of monohydrated copper sulphate and certain other copper sulphate byproducts and specialties—

- (k) Agreed with other members of aforesaid Association that copper producers would sell only to a selected list of agents, and that sales were to be made in car lots to legitimate dealers and jobbers at the established price schedule only; and named a committee to submit a list of agents and proposed price schedules, and agreed thereon and established the same;

With tendency and effect of unduly restraining and suppressing competition in the sale and distribution of insecticides, fungicides, and related items; of enhancing the prices of said products and maintaining them at artificial levels above those which would prevail under open competition; and of tending to create a monopoly in said concerns in the manufacture, sale and distribution of said products:

Held, That such acts and practices, under the circumstances set forth, hindered and prevented price competition between said concerns in the sale of the products in question; placed in said concerns the power to control and enhance prices; unreasonably restrained commerce in said products; and constituted unfair methods of competition in commerce.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Scandrett, Tuttle & Chalaire, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for Agricultural Insecticide & Fungicide Assn., L. S. Hitchner and June C. Heitzman; the latter also appearing, along with—

Mr. Thomas J. McDowell, of Cleveland, Ohio, for H. D. Whittlesey, Acme White Lead & Color Works, Lucas Kil-Tone Co., and Sherwin-Williams Co., Inc.;

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Franchot, Runals, Cohen, Taylor & Rickert, of Niagara Falls, N. Y., for J. B. Cary and Niagara Sprayer and Chemical Co., Inc.;

White & Case, of New York City, for J. H. Boyd and Commercial Chemical Co.;

Mr. Arthur W. Rinke, of New York City, for R. E. Demmon, John Powell & Co., Inc., and Stauffer Chemical Co., Inc.;

Mr. Robert F. Vaughan, of Louisville, Ky., for G. F. Leonard and Tobacco By-Products & Chemical Corporation;

Mr. Henry C. Little, of New York City, for American Cyanamid & Chemical Corporation;

Wood, Molloy & France, of New York City, for Chipman Chemical Co., Inc.; and

Mr. John W. Eckelberry, of Wilmington, Del., for E. I. duPont de Nemours & Co., Inc.

Mr. Felix T. Smith, of San Francisco, Calif., for A. J. Flebut and California Spray-Chemical Corporation.

Sullivan & Cromwell, of New York City, for G. E. Riches and American Agricultural Chemical Co.

Mr. Calvin A. Campbell, of Midland, Mich., for Dow Chemical Co.

Mr. Leland Hazard and *Mr. Joseph T. Owens*, of Pittsburgh, Pa., for Pittsburgh Plate Glass Co., Corona Chemical Division.

Mr. Julien D. Goell and *Levin, Rosmarin & Schwartz*, of New York City, for Ansbacher-Siegle Corporation.

Willkie, Owen, Otis, Farr & Gallagher, of New York City, for General Chemical Co.

Reeves, Todd, Ely & Beaty, of New York City, for Phelps Dodge Refining Corporation.

Guggenheimer, Untermeyer & Goodrich, of Washington, D. C., and *Guggenheimer & Untermeyer*, of New York City, for Tennessee Corporation.

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 the 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, Agricultural Insecticide & Fungicide Association is a corporation organized and existing under the

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laws of the State of New Jersey with its principal office and place of business located at 285 Madison Avenue in the city of New York, N. Y. The membership of said respondent, Agricultural Insecticide & Fungicide Association is composed of individuals, partnerships, and corporations who are engaged in the manufacture and sale of chemicals, paints, fertilizers, various types of insecticides and fungicides, and related items. 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 Agricultural Insecticide & Fungicide Association and are named as respondents herein both in their individual capacities and as officers of said Agricultural Insecticide & Fungicide Association: R. N. Chipman, % Chipman Chemical Co., Inc., Bound Brook, N. J., chairman of the board of directors; L. S. Hitchner, 285 Madison Avenue, New York, N. Y., president and treasurer; June C. Heitzman, 285 Madison Avenue, New York, N. Y., secretary.

The following named individuals are or have been members of the board of directors of said respondent Agricultural Insecticide & Fungicide Association and are named as respondents herein both in their individual capacities and as members of the board of directors of said respondent association; R. N. Chipman, % Chipman Chemical Co., Inc., Bound Brook, N. J.; H. D. Whittlesey, % Sherwin-Williams Co., Inc., Cleveland, Ohio; H. P. Mansfield, % E. I. duPont de Nemours & Co., Inc., Wilmington, Del.; J. B. Cary, % Niagara Sprayer and Chemical Co., Inc., Middleport, N. Y.; J. H. Boyd % Commercial Chemical Co., Memphis, Tenn.; A. J. Flebut, % California Spray-Chemical Corporation, Lucas & Ortho Way, Richmond, Calif.; R. E. Demmon, % Stauffer Chemical Co., Inc., 420 Lexington Avenue, New York, N. Y.; G. F. Leonard, % Tobacco By-Products and Chemical Corporation, Columbia Building, Louisville, Ky.; G. E. Riches, % American Agricultural Chemical Co., 50 Church Street, New York, N. Y.; and L. S. Hitchner, 285 Madison Avenue, New York, N. Y. Said respondents are hereinafter referred to for convenience as "officer and director respondents."

PAR. 3. The membership of said respondent Agricultural Insecticide & Fungicide 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 partnerships are representative of the whole membership of said respondent association and are named as respondents herein individually and severally and as members of said respondent association, and as representatives of all members of said respondent association as a class, including those not herein specifically named who are also made respondents

herein; Acme White Lead and Color Works, a corporation, 8250 St. Aubin, Detroit, Mich.; American Agricultural Chemical Co., a corporation, 50 Church Street, New York, N. Y.; American Cyanamid and Chemical Corporation, a corporation, 30 Rockefeller Plaza, New York, N. Y.; American Nicotine Co., Inc., Henderson, Ky.; The Antiseptic Products Co., a corporation, 3101-3119 Walnut Street, Denver, Colo.; California Spray-Chemical Corporation, Lucas & Ortho Way, Richmond, Calif.; Chipman Chemical Co., Inc., Bound Brook, N. J.; George W. Cole & Co., Inc., New York, N. Y.; Hercules Glue Co., Ltd., a corporation trading as Colloidal Products Corporation, 2598 Taylor Street, San Francisco, Calif.; Commercial Chemical Co., a corporation, Memphis, Tenn.; Derris, Inc., 79 Wall Street, New York, N. Y.; Dow Chemical Co., a corporation, Midland, Mich.; E. I. duPont de Nemours & Co., Inc., Wilmington, Del.; The Latimer-Goodwin Chemical Co., a corporation, Grand Junction, Colo.; Fred L. Lavanburg Co., a corporation, 105 Bedford Avenue, Brooklyn, N. Y.; Lucas Kil-Tone Co., a corporation, 322 Race Street, Philadelphia, Pa.; Niagara Sprayer and Chemical Co., Inc., Middleport, N. Y.; Nicotine Production Corporation, Inc., Clarksville, Tenn.; John Powell & Co., Inc., 114 E. Thirty-second Street, New York, N. Y.; Sherwin-Williams Co., Inc., Cleveland, Ohio; Southern Acid & Sulphur Co., Inc., Rialto Building, St. Louis, Mo.; Stauffer Chemical Co., Inc., 420 Lexington Avenue, New York, N. Y.; J. M. Taylor, E. P. Brown and E. W. Parker, partners, trading as Taylor Chemical Works, Ltd., Aberdeen, N. C.; Tobacco By-Products and Chemical Corporation, Columbia Building, Louisville, Ky.; The J. W. Woolfolk Co., a corporation, Fort Valley, Ga.; and Pittsburg Plate Glass Co., Corona Chemical Division a corporation, 235 E. Pittsburg Ave., Milwaukee, Wis. Said respondents are hereinafter referred to for convenience as "respondent members."

PAR. 4. Respondent, Allegheny Chemical Corporation, is a corporation organized and existing under the laws of the State of Delaware and maintains its principal office and place of business at 35 North Sixth Street in the city of Reading, within the State of Pennsylvania.

Respondent, Ansbacher-Siegle Corporation, is a corporation organized and existing under the laws of the State of New York and maintains its principal office and place of business at 310 North Seventh Street, in the city of Brooklyn, within the State of New York.

Respondent, General Chemical Co., is a corporation organized and existing under the laws of the State of New York and maintains its principal office and place of business at 40 Rector Street in the city of New York within the State of New York.

Phelps Dodge Refining Corporation, is a corporation organized and existing under the laws of the State of New York and maintains its principal office and place of business at 40 Wall Street, in the city of New York, within the State of New York.

Respondent, Tennessee Corporation, is a corporation organized and existing under the laws of the State of New York and maintains its principal office and place of business at 61 Broadway, in the city of New York, within the State of New York.

All of said respondents mentioned in this paragraph have cooperated with the other respondents in the acts and things hereinafter more particularly described and set forth, and are hereinafter referred to for convenience as "cooperating respondents."

PAR. 5. All of said respondent members hereinbefore set out in paragraph 3 and said cooperating respondents hereinbefore set out in paragraph 4, save and except respondents Phelps Dodge Refining Corporation and Tennessee Corporation have been for more than 2 years last past and are now engaged in the manufacture and distribution of chemicals, fertilizers, various types of insecticides and fungicides, and related items which the said respective respondent members and said cooperating respondents sell to their respective customers located in the various States of the United States and in the District of Columbia, causing said products, when sold, to be transported from the State of location of the respective respondent members and cooperating respondents to the purchasers thereof located at various points in the several States of the United States other than the State of the origin of such shipments and in the District of Columbia. Except for the acts and practices engaged in by said respondent members and said cooperating respondents as hereinafter set forth, said respondent members and said cooperating respondents would be in free, open, and active competition with each other in the sale and distribution of their respective products in commerce between and among the several States of the United States. There has been and now is a course of interstate trade and commerce in said products between said respondent members and said cooperating respondents and dealers in said products located throughout the several States of the United States and in the District of Columbia. At all times mentioned herein said respondent members and said cooperating respondents have been in competition with other corporations, partnerships and individuals likewise engaged in the manufacture and sale in interstate commerce of chemicals, fertilizers, various types of insecticides and fungicides, and related items.

PAR. 6. Said respondents, Phelps Dodge Refining Corporation and Tennessee Corporation, have been for more than two years last past and are now engaged in the manufacture and distribution of monohydrated copper sulphate and certain other copper byproducts and specialties which the said respondents sell to their respective customers located in the various States of the United States and in the District of Columbia, causing said products, when sold, to be transported from the State of the location of the respective respondents to the purchasers thereof located at various points in the several States of the United States other than the State of origin of such shipments and in the District of Columbia. Except for the acts and practices engaged in by said respondents hereinafter set forth, said respondents would be in free, active and open competition with each other in the sale and distribution of their respective products in commerce between and among the several States of the United States. There has been and now is a course of interstate trade and commerce in said products between said respondents and dealers in said products located throughout the several States of the United States and in the District of Columbia. At all times mentioned herein said respondents have been in competition with other corporations, partnerships, and individuals likewise engaged in the manufacture and distribution in interstate commerce of monohydrated copper sulphate and certain other copper byproducts and specialties.

PAR. 7. Said respondent members acting in cooperation with each other and with the said cooperating respondents and through and in cooperation with said respondent association for more than 2 years last past and particularly since on or about October 1, 1936, have entered into an understanding, agreement, combination or conspiracy among themselves and with and through said respondent association and with said cooperating respondents to restrict, restrain, and suppress competition in the sale and distribution of chemicals, various types of insecticides and fungicides, and related items to customers located throughout the several States of the United States and in the District of Columbia as aforesaid by agreeing to fix and maintain uniform prices, terms, and discounts at which said items are to be sold and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said respondent association as to the prices, terms, and discounts at which said respondent members and said cooperating respondents have sold and are offering to sell their said products to customers and prospective customers.

PAR. 8. Pursuant to said understanding agreement, combination or conspiracy, and in furtherance thereof, the said respondents have

done and performed, and still do and perform, the following acts and things:

1. Certain of said respondent members organized in February of 1934 said respondent Association, Agricultural Insecticide and Fungicide Association, which said Association since its organization has acted as a clearing house for the exchange of information submitted to it by said respondent members including reports as to the sales of the chemicals, various types of insecticides and fungicides, and related items together with the prices, terms, and discounts at which said items are sold or will be sold or offered to be sold.

2. Regular meetings of the members of said respondent Association have been and are held from time to time at convenient locations within the United States and at said meetings said respondent members have discussed and do discuss trade and competitive conditions in said industry and have agreed upon and established and do agree upon and establish trade policies to be followed and prices to be charged by said respondent members in the interstate sale and distribution of their said products.

3. Said respondent Association has compiled and distributed to respondent members and to the cooperating respondents white lists containing the names of those dealers in chemicals, various types of insecticides and fungicides, and related items, who are to be sold by the respondent members and the said cooperating respondents on a wholesale basis to the exclusion of other dealers which said lists are known as Distributor Guides, and have assisted in policing the respondent members and the said cooperating respondents in the enforcement of the use of such white lists or Distributor Guides.

4. Said respondent Association has compiled and distributed to respondent members and to the said cooperating respondents lists of dealers in chemicals, various types of insecticides and fungicides, and related items, who are to be recognized by the said respondent members and said cooperating respondents as retail dealers in said products and are to be sold as such retail dealers in said products to the exclusion of other dealers therein.

5. Said respondent Association has maintained and now maintains an open price filing system whereby it has and does relay to respondent members and said cooperating respondents, advance notice of immediate and future price rises and declines.

PAR. 9. Respondents, Phelps Dodge Refining Corporation and Tennessee Corporation, have entered into an agreement, combination, or conspiracy with certain members of respondent Association to establish uniform terms and conditions of sale and to fix and maintain the prices and to designate certain respondent members and their respec-

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tive customers who are to purchase and resell monohydrated copper sulphate and certain other copper byproducts and specialties.

PAR. 10. Said cooperating respondents hereinbefore named in paragraph 4, while not members of respondent Association, Agricultural Insecticide and Fungicide Association, have joined with the said respondent Association and said respondent members in said conspiracy hereinbefore set out in paragraphs 7 and 8 and have assisted in and cooperated in carrying out the objects and aims of said combination, agreement or conspiracy.

PAR. 11. The officer and director respondents hereinbefore named in paragraph 2 hereof are now and have been officers and directors of said respondent Association and as such officers and directors of said respondent Association have had and now have full and complete charge of the activities of said respondent Association, conducting the meetings of said members of said respondent Association, collecting statistical information from the members of said respondent Association, and compiling and disseminating the same to the members of said respondent Association and formulating the trade policies of said respondent members, all in pursuance and furtherance of the objects and aims of said respondent Association, as hereinbefore set out in paragraphs 7 and 8.

PAR. 12. The results of the acts and practices of the said respondent members and of said respondent Association and said cooperating respondents as hereinbefore set out in paragraphs 7 and 8, have been and now are to substantially lessen, restrict, restrain, and suppress competition in the interstate sale of chemicals, various types of insecticides and fungicides, and related items, throughout the several States of the United States and in the District of Columbia and empower the said respondents to control the market and enhance the prices of said products above the price which would prevail under normal, natural and open competition between said respondents; and also tend to create a monopoly in said respondents in the manufacture and sale of said products in interstate commerce.

PAR. 13. 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 created in the said respondents a monopoly in the sale of said products in such

commerce and 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 May 29, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Agricultural Insecticide & Fungicide Association, a corporation; R. N. Chipman, L. S. Hitchner, June C. Heitzman, H. D. Whittlesey, H. P. Mansfield, J. B. Cary, J. H. Boyd, A. J. Flebut, R. E. Demmon, G. F. Leonard, and G. E. Riches, individually and as officers and directors of respondent Agricultural Insecticide & Fungicide Association; Allegheny Chemical Corporation, a corporation; Ansbacher-Siegle Corporation, a corporation; General Chemical Co., a corporation; Phelps Dodge Refining Corporation, a corporation; Tennessee Corporation, a corporation; The Acme White Lead and Color Works, a corporation; The American Agricultural Chemical Co., a corporation; The American Cyanamid and Chemical Corporation, a corporation; The American Nicotine Co., Inc., a corporation; The California Spray-Chemical Corporation, a corporation; The Chipman Chemical Co., Inc., a corporation; The Hercules Glue Co., Ltd., a corporation trading under the name of Colloidal Products Corporation; The Commercial Chemical Co., a corporation; Derris, Inc., a corporation; Dow Chemical Co., a corporation; E. I. duPont de Nemours & Co., Inc., a corporation; The Latimer-Goodwin Chemical Co., a corporation; The Niagara Sprayer and Chemical Co., Inc., a corporation; The Nicotine Production Corporation, a corporation; John Powell & Co., Inc., a corporation; The Sherwin-Williams Co., Inc., a corporation; The Southern Acid & Sulphur Co., Inc., a corporation; The Stauffer Chemical Co., Inc., a corporation; J. M. Taylor, general partner, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd.; The Tobacco By-Products and Chemical Corporation, a corporation; The J. W. Woolfolk Co., a corporation; George W. Cole & Co., Inc., a corporation; Antiseptic Products Co., a corporation; Fred L. Lavanburg Co., a corporation; Lucas Kil-Tone Co., a corporation; and Pittsburgh Plate Glass Co., Corona Chemical Division, a corporation; charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answers thereto, a stipulation was entered into whereby it was stip-

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ulated and agreed that a statement of facts signed and executed by the respondents or by their counsel on their behalf (except the respondents Allegheny Chemical Corporation, Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., and Pittsburgh Plate Glass Co., Corona Chemical Division), and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that said Commission might 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 without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of a trial examiner's report upon the evidence.

Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Agricultural Insecticide & Fungicide Association, hereinafter referred to as "respondent Association," is a corporation organized on February 27, 1934, under the laws of the State of Delaware, having its principal office at 285 Madison Avenue, in the city of New York, N. Y. Said respondent Association has as its members, manufacturers, and processors of insecticides and fungicides and related items. These products fall into two general classes, namely: (1) bulk or staple items, such as arsenate of lead, calcium arsenate, lime sulphate, nicotine, etc., and (2) patented items which are made and sold by the several members of the industry as their own products and not in competition in the sense that more than one company manufactures the product in accordance with the same formula. These patented insecticides and fungicides, however, do compete as to purpose and more than one member makes a product which it sells for the extinction of a particular insect, fungus growth, or other enemy of plant life. Some of the members of the respondent association are not engaged in the manufacture of these products but serve only in the capacity of a reseller in said products.

Respondent, R. N. Chipman, is an individual and a representative of The Chipman Chemical Co., Inc., Bound Brook, N. J., and acted as chairman of the board of directors of respondent Association until January 10, 1940.

Respondent, L. S. Hitchner, 285 Madison Avenue, New York, N. Y., is an individual and is a director and officer of said respondent Association, having held the office of president and treasurer from June 5, 1935, to August 31, 1940, and the position of executive secretary and treasurer from September 1, 1940, to date.

Respondent, June C. Heitzman, 285 Madison Avenue, New York, N. Y., is an individual and an officer of respondent Association, having held the office of secretary from June 5, 1935 to August 31, 1940.

Respondent H. D. Whittlesey, is an individual and a representative of The Sherwin-Williams Co., Inc., Cleveland, Ohio, and has been a director of respondent Association from September 1, 1937, to date.

Respondent, H. P. Mansfield, is an individual and a representative of E. I. duPont de Nemours & Co., Inc., Wilmington, Del., and has been a director of respondent Association from its organization to date.

Respondent, J. B. Cary, is an individual and a representative of The Niagara Sprayer and Chemical Co., Inc., Middleport, N. Y., and has been a director of respondent Association from its organization to date.

Respondent, J. H. Boyd, is an individual and a representative of The Commercial Chemical Co., Memphis, Tenn., and has been a director of respondent Association from its organization to date.

Respondent, A. J. Flebut, is an individual and a representative of The California Spray-Chemical Corporation, Lucas & Ortho Way, Richmond, Calif., and was a director of respondent Association from September 1, 1938, to August 31, 1941.

Respondent, R. E. Demmon, is an individual and a representative of The Stauffer Chemical Co., Inc., 420 Lexington Avenue, New York, N. Y., and has been a director of respondent Association from its organization to date.

Respondent, G. F. Leonard, is an individual and a representative of The Tobacco By-Products and Chemical Corporation, Columbia Building, Louisville, Ky., and has been a director of respondent Association from its organization to date.

Respondent, G. E. Riches, is an individual and a representative of The American Agricultural Chemical Co., 50 Church Street, New York, N. Y., and was a director of respondent Association from June 5, 1935, to May 15, 1940.

Respondent, The Acme White Lead and Color Works, is a corporation organized and existing under the laws of the State of Michigan, with its principal office at 8250 St. Aubin Street, Detroit, Mich.

Respondent, The American Agricultural Chemical Co., is a corporation organized and existing under the laws of the State of Delaware, having its principal office at 50 Church Street, New York, N. Y.

Respondent, The American Cyanamid and Chemical Corporation, is a corporation organized, and existing under the laws of the State of Delaware, with its principal office located at 30 Rockefeller Plaza, New York, N. Y.

Respondent, The American Nicotine Co., Inc., is a corporation organized and existing under the laws of the Commonwealth of Kentucky, with its principal office in Henderson, Ky.

Respondent, The California Spray-Chemical Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at Lucas and Ortho Way, Richmond, Calif.

Respondent, The Chipman Chemical Co., Inc., is a corporation organized and existing under the laws of the State of New York with its principal office at Bound Brook, N. J.

Respondent, The Hercules Glue Co., Ltd., is a corporation trading under the name of Colloidal Products Corporation, organized and existing under the laws of the State of California, with its principal office located at 2598 Taylor Street, San Francisco, Calif.

Respondent, The Commercial Chemical Co., is a corporation having its principal office at Memphis, Tenn.

Respondent, Derris, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office at 79 Wall Street, New York, N. Y.

Respondent, Dow Chemical Co., is a corporation organized and existing under the laws of the State of Michigan, with its principal office at Midland, Mich.

Respondent, E. I. duPont de Nemours & Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal office at Wilmington, Del.

Respondent, The Latimer-Goodwin Chemical Co., is a corporation organized and existing under the laws of the State of Colorado, with its principal office at Grand Junction, Colo.

Respondent, The Niagara Sprayer and Chemical Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office at Middleport, N. Y.

Respondent, The Nicotine Production Corporation, is a corporation organized and existing under the laws of the State of Virginia, with its principal office at Clarksville, Tenn.

Respondent, John Powell & Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office at 114 East 32nd Street, New York, N. Y.

Respondent, The Sherwin-Williams Co., Inc., is a corporation organized and existing under the laws of the State of Ohio, with its principal office at Cleveland, Ohio.

Respondent, The Southern Acid & Sulphur Co., Inc., is a corporation organized and existing under the laws of the State of Virginia, with its principal office in the Rialto Building, St. Louis, Mo.

Respondent, The Stauffer Chemical Co., Inc., is a corporation organized and existing under the laws of the State of California, with its principal office at 420 Lexington Avenue, New York, N. Y.

Respondent, J. M. Taylor is general partner, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd., a limited partnership organized under and by virtue of the laws of the State of North Carolina, with their principal office at Aberdeen, N. C.

Respondent, The Tobacco By-Products and Chemical Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office in the Columbia Building, Louisville, Ky.

Respondent, The J. W. Woolfolk Co., is a corporation organized and existing under the laws of the State of Georgia, with its principal office at Fort Valley, Ga.

Respondents, The Acme White Lead and Color Works, The American Agricultural Chemical Co., The American Cyanamid and Chemical Corporation, The American Nicotine Co., Inc., The California Spray-Chemical Corporation, The Chipman Chemical Co., Inc., The Hercules Glue Co., Ltd., The Commercial Chemical Co., Derris, Inc., Dow Chemical Co., E. I. duPont de Nemours & Co., Inc., The Latimer-Goodwin Chemical Co., The Niagara Sprayer and Chemical Co., Inc., The Nicotine Production Corporation, John Powell & Co., Inc., The Sherwin-Williams Co., Inc., The Southern Acid & Sulphur Co., Inc., The Stauffer Chemical Co., Inc., J. M. Taylor, general partner, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd., The Tobacco By-Products and Chemical Corporation, and J. W. Woolfolk Co., are all, respectively, respondent members of the respondent Association and are hereinafter referred to as "respondent members."

Findings

Respondent, George W. Cole and Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office in the city of New York, N. Y. Said respondent has not been a member of respondent Association since August 31, 1938, but has cooperated with respondent Association and its members in some of its and their activities hereinafter described.

Respondent, Ansbacher-Siegle Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office at 310 North Seventh Street, Brooklyn, N. Y. Said respondent was formerly a member of respondent Association, having resigned its membership on July 6, 1938, but has cooperated with the respondent Association and with its members in some of its and their activities hereinafter set forth.

Respondent, General Chemical Co., is a corporation organized and existing under the laws of the State of New York, with its principal office at 40 Rector Street, New York, N. Y. Said respondent is not a member of respondent Association but has cooperated with the respondent Association and its members in some of its and their activities as hereinafter set forth.

Respondent, Phelps Dodge Refining Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office at 40 Wall Street, New York, N. Y. Said respondent is not a member of respondent Association but has cooperated with the respondent Association and its members in some of its and their activities as hereinafter set forth.

Respondent, Tennessee Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office at 61 Broadway in the city of New York, N. Y. Said respondent is not a member of respondent Association but has cooperated with respondent Association and its members in some of its and their activities as hereinafter set forth.

Respondent, Allegheny Chemical Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 35 North Sixth Street, Reading, Pa. The plant of said respondent burned on September 6, 1940, since which date respondent has been in liquidation and has discontinued all other business activities.

Respondent, Antiseptic Products Co., was formerly a corporation with its principal office at 3101 Walnut Street, Denver, Colo., but sold its assets and was dissolved in 1939.

Respondent, Fred L. Lavanburg Co., was formerly a corporation with its principal office at 105 Bedford Avenue, Brooklyn, N. Y. Said

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corporation was dissolved and ceased all business activities in or about the month of December, 1939.

Respondent, Lucas Kil-Tone Co., was formerly a corporation with its principal office at 322 Race Street, Philadelphia, Pa. Said respondent was dissolved and its assets sold on August 31, 1941.

Respondent, Pittsburgh Plate Glass Co., Corona Chemical Division, is a corporation, with its principal office at 235 East Pittsburgh Avenue, Milwaukee, Wis. This respondent is not a member of respondent Association. Said respondent did, on two occasions, contribute funds to respondent Association, the last of which contributions to said Association was made on October 13, 1936. Since October 13, 1936, said respondent has neither contributed to, nor cooperated with, the respondent Association or its members in any of its or their activities.

PAR. 2. The respondent members and the respondents, Ansbacher-Siegle Corporation and General Chemical Co., have been for more than 2 years last past, and are now, engaged in the manufacture and in the sale and distribution of various types of insecticides, fungicides, and related items. The respective respondents have caused their said products, when sold by them, to be transported from the State of location of the respective respondents to the purchasers thereof located at various points in the several States of the United States other than the States of origin of such shipments and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. At all times mentioned herein, each of said respondents has been engaged in competition with some of the other respondents and with other dealers in said products in commerce among and between the various States of the United States and in the District of Columbia in the sale and distribution of their respective products.

PAR. 3. The respondents, Phelps Dodge Refining Corporation and Tennessee Corporation, have been for more than 2 years last past, and are now, engaged in the manufacture and in the sale and distribution of monohydrated copper sulphate and certain other copper by-products and specialties. Said respondents cause said products, when sold, to be transported from the State of the location of the respective respondents to the purchasers thereof located at various points in the several States of the United States other than the State of origin of shipment and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. At all

times mentioned herein said respondents have been in competition with other corporations, partnerships, and individuals engaged in the manufacture and in the sale and distribution of monohydrated copper sulphate and certain other copper by-products and specialties in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The respondent members in cooperation with each other, and in cooperation with certain respondents who were not members of the respondent Association, and in cooperation with the respondent Association, entered into and have engaged for more than 2 years last past and particularly since on or about October 1, 1936, in an understanding, agreement, combination, or conspiracy among themselves and with and through the respondent Association and with certain respondents who were not members of the respondent Association, to restrict, restrain, and suppress competition in the sale and distribution of various types of insecticides, fungicides, and related items to customers located throughout the several States of the United States and in the District of Columbia, by agreeing to fix and maintain uniform prices, terms, and discounts at which the said items were and are to be sold to various classes of customers, and to cooperate with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through the respondent Association as to the prices, terms, and discounts at which the said respondent members of the respondent Association, and certain nonmember respondents have sold and are offering for sale their said products to customers and to prospective customers.

Respondent members have agreed that many of the prices agreed upon should be fixed, and they have been fixed, on a delivered basis to certain consumers and to various classes of dealers. Such delivered prices included blanket charges for delivery by rail to all destinations within certain States, certain groups of States, or throughout the entire United States. Actual rail freight was allowed to purchasers at their respective destinations but no allowance was made on shipments by truck. The purpose and effect of fixing prices on a delivered basis was to prevent differences in the cost of delivery from the members' respective shipping points creating differences in the delivered cost to any buyer at a given destination.

Agreements were also entered into among respondent members to fix and maintain certain uniform price differentials between carload and less than carload lots and certain uniform discounts or price differentials for payment of invoices within certain fixed periods of time. Agreements were also entered into among respondent members to fix the prices to be quoted on all Government, State, and municipal

bids and to require their dealers to maintain certain uniform resale prices.

PAR. 5. Pursuant to and in furtherance of the above-described general understanding, agreement, or conspiracy entered into by said respondents, the said respondents have entered into numerous agreements on specific occasions and have concertedly and cooperatively done the following acts and things:

1. Certain of said respondents organized in February of 1934 the respondent Association, Agricultural Insecticide & Fungicide Association. The respondent Association since its organization has acted as a clearing house for the exchange of statistical, price, and trade information which was submitted to it by the respondent members. The information so collected and disseminated by the respondent Association has included reports as to the sales of various types of insecticides, fungicides, and related items. The said reports have included the prices, terms, and discounts at which these said items were sold or offered to be sold by the various respondents, and have included advance notice of future prices.

For instance, on March 11, 1937, The Sherwin-Williams Co., Inc., one of the respondent members herein, telegraphed to L. S. Hitchner, then president of the respondent Association, as follows:

Effective March fifteenth advancing schedule standard arsenate lead one-cent pound to base price eleven and one-half cents east and west of Rockies.

On the same day Mr. Hitchner wired this information to The J. W. Woolfolk Co., another respondent member herein. On March 12, 1937, the respondent member The California Spray-Chemical Corporation also telegraphed to Mr. Hitchner that it was advancing its schedules on arsenate of lead 1 cent a pound to the base price of 11½ cents in dealer carloads, and that it was advancing its schedule on basic lead ¾ of a cent per pound to the base price of 12 cents in dealer carloads effective as of March 15th. On the same day Mr. Hitchner wired this information to the respondent member The J. W. Woolfolk Co.

There was an agreement and understanding among respondent members that they would adhere to the prices which they respectively filed with respondent Association and alleged failures to so adhere were reported to, and policed by, the Association.

2. The said respondent members have from time to time at convenient locations within the United States, attended regular meetings of its membership held under the auspices of respondent Association. These meetings have been widely attended by the respondent members of the Association, and at the meetings the respondent members

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have discussed trade and competitive conditions in the industry and have agreed upon, and established, trade policies which are to be followed and prices which are to be charged by the respondent members and the respondents cooperating with them in the interstate sale and distribution of their said products. Meetings have been held at various dates since January 1936, in such widely separated places as Augusta, Ga.; Spring Lake, N. J.; Buffalo, N. Y.; New York, N. Y.; Atlanta, Ga.; Pine Valley, N. J.; Absecon, N. J.; Philadelphia, Pa.; Boca Raton, Fla.; Chicago, Ill.; Greenwich, Conn.; Portland, Oreg.; White Sulphur Springs, W. Va.; Del Monte, Calif.; and Cleveland, Ohio.

One such meeting of the respondent Association was held in New York, N. Y., on July 26 and 27, 1937. Among the respondent members represented at this meeting were The Tobacco By-Products and Chemical Corporation, General Chemical Co., The Chipman Chemical Co., Inc., The American Agricultural Chemical Co., Ansbacher-Siegle Corporation, The Acme White Lead and Color Works, Grasselli Chemical Division of E. I. duPont de Nemours & Co., Inc., The California Spray-Chemical Corporation, Lucas Kil-Tone Co., The Niagara Sprayer and Chemical Co., Inc., The Commercial Chemical Co., The Sherwin-Williams Co., Inc., Dow Chemical Co., The J. W. Woolfolk Co., and L. S. Hitchner, president, and June C. Heitzman, secretary of the respondent Association. At this meeting the following matters were discussed: trade and competitive conditions in the industry with especial emphasis on so-called fair trade practices; proposed uniform sales contract forms; the coloring of lead and calcium arsenates; package merchandising and standardization of containers; merchandising through distributors with especial emphasis on the recommendation that the principles of the distributor service fee should be adopted and continued through 1938 and that the requirements for service fees should be limited to a report of total pounds sold to dealers; the using of all legal efforts to police filed price schedules; a continuance of the present price basis with no change in quoting full dealer price and issuing credit memorandum to follow, to cover service fees monthly as the material is sold; increased service fees; the removal of distributors' names from the list during the season should such action be necessary; the continuance of the 1 percent cash discounts for the season of 1938; the protection of prices in certain territories; the withholding of outbound freight allowances on shipments from jobbers' stocks; the withholding of service allowances on sales to companies in which the distributor is financially interested; and the discouraging of pool cars.

In February of 1937 at a meeting of the respondent Association there was set up a dealer price on 20-20-60 dust of \$5.20 for carloads and \$5.70 for less than carloads.

On September 30, 1937, the respondent, Hitchner, president of the respondent Association; advised the respondent, Ansbacher-Siegle Corporation, by telephone that the minimum price which it should quote on all government, State or municipal bids for lead arsenate was 13 cents delivered. Mr. Hitchner further advised that this procedure had been agreed to by Sherwin-Williams, Corona, Dow, General, and others.

The carload price of lead arsenate was advanced by respondents from 9½ cents in October 1936 to 10½ cents in February 1937, 11½ cents in March 1937, and 13 cents in October 1937. In February 1938, it declined to 12½ cents.

Respondents attempted to police the enforcement of prices. At an executive meeting of the respondent Association held at the Hotel Biltmore, New York, N. Y., on December 2, 1937, a report made by the respondent, Ansbacher-Siegle Corporation, relative to the Gulf States Fertilizer Co. of Gulfport, Miss., which report shows not only respondents' activities in policing prices but also in selecting distributors, stated in part as follows:

We are satisfied Gulf States can be depended upon to maintain the industry's resale prices, terms and conditions and Ansbacher will undertake to "police" the account, provided they can be sold on an equitable basis with other legitimate distributors.

At the same meeting respondent, Ansbacher, reported on Grand Rapids Growers, Inc., in part as follows:

Ansbacher has sold Grand Rapids for the past two years and we have yet to receive a complaint that they have violated any price schedules or quoted special dealer prices at any time. They have been confronted with flagrant violations; for example, the pool car to growers at Peach Ridge made by Field of Shelby, Michigan, an unlisted distributor of Corona Chemical Company. This business was offered to Grand Rapids Growers but refused by them.

We are confident that Grand Rapids is not only qualified as a distributor but will function strictly in accordance with the insecticide industry's requirements.

At a meeting of the respondent Association held in Rochester, N. Y., on December 10, 1937, it was announced by Mr. Hart, vice president and sales manager of the respondent member, The Niagara Sprayer and Chemical Co., Inc., that the New York Insecticide Co. would not be represented at the meeting but that Mr. O'Brien of the New York Insecticide Co. had expressed his intention to cooperate and had stated that on lime sulphur solution his proposed price for 1938 would be on the 1937 basis, namely, to dealers in drums for 13 cents per gallon, less 1 cent per gallon for drums, and less 1 cent per gallon for cash.

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It was agreed at the meeting that lime sulphur prices would not be filed until February 15, 1938, and it was further agreed that the cash and time prices as established by the New York Insecticide Co. would be met.

On January 5, 1938, Taylor Chemical Works, Ltd., one of the respondent members, wrote in part to The J. W. Woolfolk Co., another respondent member, as follows:

* * * we have reasonable cause to believe that General Chemical Company has made a price on lime sulphur with full freight allowed to destination, the buyer then turning around and hiring a trucking company to deliver this at considerable less than the LCL freight, which makes the buyers net delivered cost less than published delivered price. Do you think that this is according to the letter of regulations? If you do not, what would you suggest that the proper action would be?

On January 6, The J. W. Woolfolk Co. replied to this letter in part as follows:

With regard to the General Chemical Company's proposal, we think that it would be better for us to handle this matter and suggest that you give us the names of the buyer and, if possible, the trucking company and the quantity of material involved and we will handle it by air mail with the proper parties.

3. The respondent Association compiled and distributed to respondent members and to cooperating nonmember respondents, lists which contained the names of those dealers in insecticides, fungicides, and related items who were to be sold by the respondent members and the cooperating nonmember respondents on a wholesale basis to the exclusion of other dealers in said products which said lists were known as distributor guides. The respondent Association has assisted in policing the respondent members and the cooperating nonmember respondents in the enforcement of the use of such distributor guides, which were white lists of dealers jointly recognized and agreed upon by respondents as entitled to certain prices.

On October 17, 1935, the Association mailed out a special bulletin dealing with the merchandising policy for the industry and attaching thereto "a suggested method of procedure based on recommendations received from the different members of the industry." The bulletin stated that the industry would recognize

three classes of buyers performing special functions for the industry other than that of a jobber or dealer, thereby entitling them to special considerations from the posted jobber open price schedule.

The bulletin advised that B and C buyers must be registered with the Association and that their names should be added or rejected by "mutual agreements," and informed the respondents that the classification of names listed in Class "B" and "C" should be reviewed by

the board of directors at their next meeting and any additions, deletions, or corrections to these facts should be made at the earliest possible date.

It was further advised that this was tentative, subject to approval, and that no action should be taken on any names, indicated, pending general approval.

Meetings of the respondent Association were also held from time to time for the purpose of approving the names of dealers in insecticides, fungicides, and related items who were to be recognized by the respondents as distributors of such products and at such meetings the names of dealers to be so recognized as distributors of such products were submitted and voted on by those present. The names approved for recognition as distributors were added to the list and the names disapproved were deleted therefrom. Printed copies of the list of distributors as finally approved were distributed among the respondents by the respondent Association.

4. The respondent Association compiled and distributed to the respondent members and to the cooperating nonmember respondents, lists of dealers in various types of insecticides, fungicides, and related items, who were to be recognized by the respondent members and by the cooperating nonmember respondents as retail dealers in said products and were to be sold as such retail dealers in said products to the exclusion of other dealers therein.

For instance, at a meeting held just prior to June 6, 1935, in Corpus Christi, Tex., it was agreed that the distributors would at a subsequent meeting present lists of the retail dealers that they sold in the Corpus Christi area. The lists would then be gathered at a subsequent meeting and gone over, and the names passing as approved retail dealers would be adopted as the lists that each distributor would follow and no other retail dealers would be created until the following season. It was agreed that this list of approved retail dealers would be furnished to the various manufacturers of insecticides, fungicides, and related items.

5. The respondent Association has maintained and now maintains an open price filing system whereby it relays to respondent members and to cooperating nonmember respondents, advance notice of immediate and future price rises and declines.

PAR. 6. The respondents, Phelps Dodge Refining Corporation and Tennessee Corporation, entered into an agreement, combination, or conspiracy with some of the members of respondent Association to establish uniform terms and conditions of sale, and to fix and maintain the prices, and to designate certain respondent members and the respective customers who were to purchase and resell monohydrated

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copper sulphate and certain other copper byproducts and specialties. At a meeting held on November 15, 1937, which was presided over by respondent Hitchner of the respondent Association, there were present representatives of the respondents, Phelps Dodge Refining Corporation, Tennessee Corporation, General Chemical Co. and Ansbacher-Siegle Corporation, and of the respondent members, The Chipman Chemical Co., Inc., The Sherwin-Williams Co., Inc., E. I. duPont de Nemours & Co., Inc., Lucas Kil-Tone Co., and The Niagara Sprayer and Chemical Co., Inc. At this meeting, it was agreed that copper producers would sell only to a selected list of agents. It was also agreed that sales would be made in car lots to legitimate dealers and jobbers at the established price schedule only. A committee was appointed to prepare and submit, and prepared and submitted at a subsequent meeting, a list of agents and proposed price schedules. At this later meeting, prices were agreed upon and established, and the following names were selected as agents: DuPont, General, Ansbacher, Sherwin-Williams, Niagara, Chipman, Woolfolk, Allegheny, American Agricultural, Florida Agricultural Supply, New York Insecticide, and Corona.

PAR. 7. The directors of respondent Association hereinbefore named have, during their respective terms of office, had general control and supervision of the activities of the Association, including the formulation of policies; and the officers hereinbefore named, during their respective terms of office, have, under the supervision and direction of said directors, had control of the active affairs of respondent Association, including the collection and distribution to the members of said Association of said statistical, price, and trade information.

PAR. 8. The aforesaid understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinabove found, have had and now have the tendency and effect of unduly lessening, restricting, restraining, and suppressing competition in the sale and distribution of insecticides, fungicides, and related items in commerce among and between the various States of the United States and in the District of Columbia, and of enhancing the prices of said products and maintaining prices at artificial levels above the prices which would prevail under normal, natural, and open competition between said respondents; and also tend to create a monopoly in said respondents in the manufacture and in the sale and distribution of said products in said commerce.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of competitors of respondents and of the public and

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have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of insecticides, fungicides, and related items in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein (except Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., Allegheny Chemical Corporation, and Pittsburgh Plate Glass Co.) and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, and which waives the filing of a report upon the evidence by the trial examiner; 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 said respondent Agricultural Insecticide & Fungicide Association, its officers, agents, and employees; the following respondent corporations, The Acme White Lead and Color Works, The American Agricultural Chemical Co., The American Cyanamid and Chemical Corporation, The American Nicotine Co., Inc., The California Spray-Chemical Corporation, The Chipman Chemical Co., Inc., George W. Cole and Co., Inc., The Hercules Glue Co., Ltd. (a corporation trading under the name of Colloidal Products Corporation), The Commercial Chemical Co., Derris, Inc., Dow Chemical Co., E. I. duPont de Nemours & Co., Inc., The Latimer-Goodwin Chemical Co., The Niagara Sprayer and Chemical Co., Inc., The Nicotine Production Corporation, John Powell & Co., Inc., The Sherwin-Williams Co., Inc., The Southern Acid & Sulphur Co., Inc., The Stauffer Chemical Co., Inc., The Tobacco By-Products and Chemical Corporation, The J. W. Woolfolk Co., Ansbacher-Siegle Corporation, General Chemical Co., Phelps Dodge Refining Corporation, and Tennessee Corporation, their officers, agents, and employees; and the following individual respond-

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ents, R. N. Chipman, L. S. Hitchner, June C. Heitzman, H. D. Whitteley, H. P. Mansfield, J. B. Cary, J. H. Boyd, A. J. Flebut, R. E. Demmon, G. F. Leonard, G. E. Riches, and J. M. Taylor, general partners, and E. P. Brown and E. W. Parker, special partners, trading as Taylor Chemical Works, Ltd., and their respective representatives agents, and employees, in connection with the offering for sale or sale and distribution of agricultural insecticides, fungicides, and related chemicals and items for similar uses in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, carrying out, directing, instigating, or cooperating in, any common course of action, mutual agreement, understanding, combination, or conspiracy 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 tendency or effect, of fixing the prices for, or of restricting, restraining, or eliminating competition in, the sale in said commerce of agricultural insecticides, fungicides, or related chemicals and items for similar uses, and from doing any of the following acts and practices pursuant thereto.

1. Fixing, establishing, or maintaining the prices, whether on a delivered basis or otherwise, or the charges at which the products of said respondents are to be sold or offered for sale, or fixing, establishing, or maintaining any method of pricing which deprives buyers of opportunity to obtain more favorable terms from one respondent corporation than from another, or fixing, establishing, or maintaining any discounts, terms, or conditions of sale.

2. Adhering to any price list compiled or distributed by or on behalf of any of the said respondents.

3. Imposing, or attempting or threatening to impose, any penalty on, or coercing, or attempting to coerce by any means, any manufacturer who fails or refuses to adhere to or adopt charges, discounts, terms or conditions of sale, prices, of pricing methods fixed or established by said respondents.

4. Exchanging, distributing, or relaying among respondent members or through respondent Association or any other medium or central agency, price lists or other information showing current or future prices or current or future terms or conditions of sale.

5. Determining or attempting to determine by any means, either directly or indirectly, which purchasers shall be recognized as jobbers of, or as retail dealers in, and thus entitled to certain price differentials on, said products manufactured and sold or offered for sale by said respondents.

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6. Furnishing to the respondent Association, or to any other central medium or agency, any list or lists of jobbers or retail dealers or any classification of customers as jobbers or retail dealers and thus entitled to certain price differentials on products sold or offered for sale by any of the said respondents.

7. Compiling or distributing in any manner, either directly or indirectly, between and among any of the respondents, lists of names or classifications of dealers or users who are to be sold by any of said respondents.

8. Holding or participating in any meetings, discussions, or exchanges of information concerning proposed or future prices, terms or conditions of sale, or concerning any actual or proposed recognition or classification as jobber or retail dealer of any customer to whom the products of any of said respondents are sold or offered for sale.

9. Taking any action for the purpose, or with the effect, of preventing or hindering any dealer or user or any class of dealers or users from obtaining the products manufactured by the respondents, or any of them, at such prices and terms as may be satisfactory between the individual buyer and seller.

10. Continuing or resuming by tacit and common consent among two or more respondents, any practice herein forbidden when such continuation or resumption results in purchasers being prevented from obtaining more favorable prices, terms, or conditions of sale from one of respondent corporations than from the others.

It is further ordered, That the complaint herein be, and it hereby is dismissed as to the following named respondents: Antiseptic Products Co., Fred L. Lavanburg Co., Lucas Kil-Tone Co., Allegheny Chemical Corporation, and Pittsburgh Plate Glass Co.

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

Syllabus

IN THE MATTER OF
SUCCESS PORTRAIT COMPANY, 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 4522. Complaint, Mar. 31, 1942.¹—Decision, Aug. 3, 1942*

A drawing is a representation produced by the art of drawing, a work of art produced by pen, pencil, or crayon; a crayon drawing is the act or art of drawing with crayons; the pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a paste; and a drawing made with colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

A painting is understood by artists who paint pictures, photographers who color photographs, and the general public, as an original representation by the painter of a design, image, or object on a surface by means of paints, water color, or oil; a freehand image painted directly on the surface without the intervention of any mechanical means, such as a camera; a water color is a painting with pigments for which water is used as a solvent; and an oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other materials, without the aid of photography.

Where a corporation, engaged in producing and in selling and distributing colored or tinted enlargements and miniatures of photographs and snapshots, and frames therefor; the officers and directors thereof, who exercised a substantial measure of control over the other associates as hereafter set out; some fifteen "operators" who cooperated with said corporation in the sale and distribution of said products, employing numerous persons in various capacities such as "crew managers", "sales agents", "record managers", "proof passers", "field artists" and "delivery men" to contact the purchasing public; and some 30 "sales agents" of one or more of said "operators", who visited homes in cities, towns, and rural communities of other States, carrying purported typical samples and soliciting orders;

In carrying on the competitive sale of said products under a sales plan in which all cooperated and under which said corporation (1) furnished to said "operators" and "sales agents", upon their order, as well as to prospective agents, equipment including catalogs, order blanks, daily report forms, receipts, and, in many instances, sample cases; (2) caused orders or contracts for its products to be entered on printed forms provided by it, which contained, in some cases, its own corporate name and address as well as the name or trade name of the "operator" through whom the order was secured, and, in other instances, only the trade name of the operator, using the corporation's address, and also stated, in some cases, that the "operator" was "affiliated" with or a "subsidiary" of said corporation; (3) furnished "operators" and "sales agents", if desired, with identification and credential certificates and letters; (4) was in possession at all times of the names and addresses of customers whose pictures it was making; (5) when so

¹ Amended.