

IN THE MATTER OF

UNIFORM MANUFACTURERS EXCHANGE, INC., ITS OFFICERS, BOARD OF 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 4712. Complaint, Feb. 25, 1942—Decision, Sept. 15, 1942

Where 23 concerns, engaged in the manufacture, sale, and distribution of uniforms, overcoats and other apparel commonly worn by doormen, bellboys, porters, chauffeurs, and others similarly employed, but excepting policemen and firemen; doing a substantial portion of all business of the industry concerned, particularly in the metropolitan area of New York City, and in competition with one another and with others, except insofar as competition had been lessened or restrained and potential competition forestalled by the acts, practices and policies below set forth; along with their incorporated Exchange or trade association, and the officers and directors thereof—

Entered into and carried out agreements, understandings and conspiracies among themselves to suppress competition in the manufacture, sale and delivery of their products; and in pursuance thereof—

- (a) Organized their said Exchange to control and regulate their business, and thereafter adopted and maintained a cost guide and Manual to govern manufacture and distribution of their said uniforms which (1) required that the price of cloth in any garment made by them should be figured at the market or replacement cost and not at the cost to the purchaser; (2) fixed a standard shrunk net yardage scale for their various products; an average cutting cost; material cost for trimmings, findings, sewings, fronts, pockets, and linings; standard labor costs in detail; minimum overhead costs; and selling terms; and (3) required a member who bid below said Manual cost to submit a revised bid at least 5 percent higher than his original bid;
- (b) Reported to their said Exchange the names of all members who failed to abide by the overhead charges and other items covered by said Manual and by the rules and regulations of the Exchange; and set up and maintained an Arbitration Board or Committee as a disciplinary and punitive agency to enforce the provisions of said Manual, with authority to impose fines, suspend and expel members who failed or refused to comply with the rules and regulations of said Exchange, and otherwise to enforce the same, subject only to the review of a Chairman whose decision was final; and, for that purpose, allowed the examination of the books and records of the respective members by said Committee; and
- (c) Made use of other means to suppress and restrain competition among their members, and through said arbitrary fixing of costs and conditions of sale by their Manual, as above described, and their adherence thereto, fixed minimum prices and terms at which their uniforms and garments were to be sold, with tendency and effect of fixing and regulating prices for such merchandise;

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With effect of unreasonably suppressing and restraining competition in the manufacture, sale and delivery of said products, and depriving the purchasing public of the advantage of competitive prices, terms and conditions in purchase thereof, and of otherwise operating as a restraint upon fair competition in such trade and industry, and particularly between members of said Exchange:

Held, That such acts and practices were all to the prejudice of the public; had a dangerous tendency to hinder and prevent competition between and among said members; placed in them the power to enhance and control prices, terms and conditions in connection with manufacture, sale and delivery of their products; had a dangerous tendency to create in said members a monopoly in said products; unreasonably restrained commerce therein; and constituted unfair methods of competition in commerce.

Mr. George W. Williams for the Commission.

Mr. Elias Lieberman, of New York City, for respondents, with the exception of Fisher-Mair Uniform Co., represented by *Mr. F. Murray Cohen*, of New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and hereinafter particularly described, designated and referred to as respondents, have violated the provisions of section 5 of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Uniform Manufacturers Exchange, Inc., is an incorporated association, organized on or about April 20, 1934, under and by virtue of the laws of the State of New York with its office at 112 East Nineteenth Street, New York, N. Y., and hereinafter referred to as respondent "Exchange."

The following named individuals are officers of said respondent Exchange and as such officers, and individually, are designated as respondent herein; George Appel, president; Howard V. Smith, Sr., vice president; I. Charles Bernhard, secretary; Elias Goldstein, treasurer.

The following-named individuals, together with said officers, are members of, and constitute, the board of directors of said Exchange, and as such directors, and individually, are designated as respondents herein: T. A. DuBois, Arthur Stone, and E. S. Smith.

Respondent Exchange is the successor of a voluntary unincorporated association formed for the same purposes as respondent Exchange.

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The membership of said respondent Exchange is made up of numerous corporations, partnerships, firms, and individuals, engaged in the manufacture, sale, and distribution of uniforms, overcoats, and other articles of wearing apparel commonly worn by policemen, firemen, doormen, bell boys, porters, chauffeurs, and others engaged in similar employment.

PAR. 2. The following members of respondent Exchange are named as respondents herein and hereinafter sometimes referred to as respondent members: All-Bilt Uniforms, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 147 Fulton Street, New York, N. Y.

S. Appel & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 18 Fulton Street, New York, N. Y.

Bernhard, Schrag & Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 18 West Eighteenth Street, New York, N. Y.

Brooks Uniform Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1140 Sixth Avenue, New York, N. Y.

I. Buss, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 84 Fifth Avenue, New York, N. Y.

Walter Cahn Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 237 Lafayette Street, New York, N. Y.

Stone Uniform Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 9 East Nineteenth Street, New York, N. Y.

Uniforms By Ostwald, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 18 East Sixteenth Street, New York, N. Y.

The Joseph F. Webber Uniform Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws

of the State of New York, with its office and principal place of business at 273 Fifth Avenue, New York, N. Y.

Wender & Goldstein Uniform Service Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 387 Fourth Avenue, New York, N. Y.

Z. & O. Uniform Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 45 East Twentieth Street, New York, N. Y.

Russell Uniform Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1600 Broadway, New York, N. Y.

B. Schellenberg & Sons, is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 72 Willoughby Street, Brooklyn, N. Y.

Smith-Gray Corporation, is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 740 Broadway, New York, N. Y.

A. DuBois Son, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York with its office and principal place of business at 17 Union Square, West, New York, N. Y.

L. P. Maher, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 331 Fourth Avenue, New York, N. Y.

Merson Clothes, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 254 Canal Street, New York, N. Y.

Charles Palley and Abraham Cebulsky, are individuals and copartners, trading as Acme Uniform Co., with their office and principal place of business at 817 Broadway, New York, N. Y.

Charles Mitchell and Paul Perkins, are individuals and copartners, trading as Mitchell & Perkins, with their office and principal place of business at 260-262 West Forty-first Street, New York, N. Y.

John A. Hughes and William A. Thomas, are individuals and copartners, trading as Hughes & Thomas, with their office and principal place of business at 53 East Nineteenth Street, New York, N. Y.

L. M. Barth, is an individual, with his office and principal place of business at 257 Fourth Avenue, New York, N. Y.

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Arthur R. Meyers, is an individual, trading as National Uniform Co., with his office and principal place of business at 41 East Twenty-eighth Street, New York, N. Y.

Albert T. Scafati, is an individual, trading as A. T. Scafati Corporation, with his office and principal place of business at 226 West Forty-first Street, New York, N. Y.

Henry Fisher, is an individual, trading as Fisher-Mair Uniform Co., with his office and principal place of business at 11 West Twenty-fifth Street, New York, N. Y.

PAR. 3. Said respondent members at all times herein mentioned have been and now are engaged in the manufacture, sale and delivery of articles of the type and character mentioned in paragraph 1 hereof and delivering the same to their customers in the various States of the United States other than New York, the State of origin, and in the District of Columbia, whereby said respondents created and maintained, and still maintain, a constant and continuous current of commerce in said uniforms and other like articles of merchandise between the respondent members and the purchasers thereof, in, among and between the various States of the United States, and in the District of Columbia.

The volume of business done by respondent members constitutes a substantial portion of the whole of such done by this industry particularly in the metropolitan area of New York City.

PAR. 4. Said respondent members are in competition with one another in the manufacture, sale and distribution of their said products and other like articles in the various States of the United States and in the District of Columbia, except insofar as their said competition has been hindered, lessened or restrained, or potential competition among them forestalled, by the acts, practices, methods, and policies of said respondents hereinafter set forth.

There are other corporations, partnerships, firms, and individuals not affiliated with respondent Exchange and which are engaged in the manufacture, sale and distribution of similar articles of merchandise in the area in which said respondents trade, in competition with one another, and with one or more of said member respondents, except insofar as such competition has been hindered, lessened and restrained, or potential competition among them forestalled, by the said respondents' acts, practices, methods, and policies hereinafter described.

PAR. 5. Said respondents, during the time herein referred to, have entered into, maintained and carried out agreements, understandings, combinations and conspiracies, between and among themselves to suppress, hinder and lessen competition in the manufacture, sale and delivery of their said products in the course of said commerce, in,

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among and between the various States of the United States, and in the District of Columbia.

Pursuant to, and in furtherance of, and to make effective said agreements, understandings, combinations and conspiracies, said respondents have cooperatively, concertedly and collectively adopted, engaged in, and carried out, among others, the following methods, acts and practices:

1. Organized respondent Exchange, as aforesaid, to control and regulate the business of manufacturing, selling, and delivering the said articles of merchandise.

2. Adopted in January 1936 and maintained, and still maintain, a cost guide and Manual for the manufacture and distribution of uniforms which required, and requires, among other things:

(a) That the price of cloth in any garment manufactured by respondent members shall be figured at the market or replacement cost, and not at the specific cost to the purchaser thereof; and

(b) Fixed

(1) A standard shrunk net yardage scale in detail for their various products;

(2) An average cutting cost;

(3) Material cost for trimmings, findings, sewings, fronts, pockets, and linings for their various products;

(4) Standard labor costs in detail for their various products;

(5) Minimum overhead costs;

(6) Selling terms; and

(c) Required, and now require, a respondent member who bids below Manual cost to submit a new or revised bid at least 5 percent higher than his original bid.

3. Reported and now report to respondent Exchange the names of all members who failed to abide by the overhead charges and other items covered by said Manual and by the rules and regulations of said Exchange, as herein set forth.

4. Set up and maintain, and still maintain, an arbitration board or committee as a disciplinary and punitive agency to enforce the various provisions of said Manual, with authority to impose fines, suspend and expel members who failed or refused to comply with the rules and regulations of said Exchange and to otherwise enforce the same, subject only to the review and approval of a chairman whose decision is final.

5. Allowed and now allow the examination of the books and records of the respondent members by said committee for the purpose of assuring the compliance with all the rules and regulations of the

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said Manual and for the employment of the necessary aid to enforce the aforesaid rules and regulations.

6. Used other similar means and methods to lessen, suppress, and restrain competition among respondents' members and with other members engaged in the manufacture, sale, and delivery of said products.

PAR. 6. The capacity, tendency, and effect of the aforesaid agreements, understandings, combinations, and conspiracies and the policies, practices and acts and things done and performed by respondents in pursuance thereof are and have been to unreasonably lessen, suppress and restrain competition in the manufacture, sale and delivery of respondents' products in the various States of the United States and in the District of Columbia and to deprive the purchasing, using and consuming public of the advantage of competitive prices, terms and conditions in connection with the purchase thereof, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction and detriment to the freedom of fair and legitimate competition in such trade and industry; and particularly between the members of said Exchange.

PAR. 7. The acts and practices of said respondents, and the things done and performed by them, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition between and among said member respondents in the manufacture, sale and delivery of their said products in commerce, within the intent and meaning of the Federal Trade Commission Act; and placed in member respondents the power to control and enhance prices and other terms and conditions in connection with the manufacture, sale and delivery of their said products; have a dangerous tendency to create in member respondents a monopoly in said products in said commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 25, 1942, issued, and on February 26, 1942, served, its complaint in this proceeding upon the respondents named in the above caption, 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 an answer on behalf of the respondents, except the respondent, Henry Fisher, the Commission, by order entered herein, granted the respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, except as hereinafter set forth, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. An admission answer was filed on behalf of respondent, All S. Mair, trading as Fisher-Mair Uniform Co. (sued herein as Henry Fisher, trading as Fisher-Mair Uniform Co.), admitting all the material allegations of fact set forth in said complaint, except as therein set forth, and waiving all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer, and substitute answer, 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, Uniform Manufacturers Exchange, Inc., is an incorporated association, organized in 1934 under and by virtue of the laws of the State of New York with its office at 112 East Nineteenth Street, New York, N. Y., and hereinafter referred to as respondent "Exchange."

The following named individuals are officers of said respondent Exchange: George Appel, president; Howard V. Smith, Sr., vice president; I. Charles Bernhard, secretary; and Elias Goldstein, treasurer.

The following named individuals, together with said officers are members of, and constitute the board of directors of said Exchange; T. A. DuBois, Arthur Stone, and E. S. Smith.

Respondent Exchange is the successor of a voluntary unincorporated association formed for the same purposes as respondent Exchange.

The membership of said respondent Exchange is made up of numerous corporations, partnerships, firms, and individuals, engaged in the manufacture, sale, and distribution of uniforms, overcoats, and other articles of wearing apparel commonly worn by doormen, bell-boys, porters, chauffeurs, and others engaged in similar employment, except policemen and firemen.

PAR. 2. Respondent members of said respondent Exchange are as follows:

All-Bilt Uniforms, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New

York, with its office and principal place of business at 147 Fulton Street, New York, N. Y.

S. Appel & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 18 Fulton Street, New York, N. Y.

Bernhard, Schrag & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at 18 West Eighteenth Street, New York, N. Y.

Brooks Uniform Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1140 Sixth Avenue, New York, N. Y.

I. Buss, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 84 Fifth Avenue, New York, N. Y.

Walter Cahn Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 237 Lafayette Street, New York, N. Y.

Stone Uniform Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 9 East Nineteenth Street, New York, N. Y.

Uniforms by Ostwald, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 18 East Sixteenth Street, New York, N. Y.

The Joseph F. Webber Uniform Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 273 Fifth Avenue, New York, N. Y.

Z. & O. Uniform Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with office and principal place of business at 45 East Twentieth Street, New York, N. Y.

Russell Uniform Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1600 Broadway, New York, N. Y.

B. Schellenberg & Sons, is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 72 Willoughby Street, Brooklyn, N. Y.

Smith-Gray Corporation, is a corporation, organized, existing and doing business by virtue of the laws of the State of New York, with its office and principal place of business at 740 Broadway, New York, N. Y.

A. DuBois Son, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with office and principal place of business at 17 Union Square, West, New York, N. Y.

L. P. Maher, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with office and principal place of business at 331 Fourth Avenue, New York, N. Y.

Merson Clothes, Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, with office and principal place of business at 254 Canal Street, New York, N. Y.

Charles Palley and Abraham Cebulsky, are individuals and co-partners, trading as Acme Uniform Co., with their office and principal place of business at 817 Broadway, New York, N. Y.

Charles Mitchell and Paul Perkins, are individuals and copartners, trading as Mitchell & Perkins, with their office and principal place of business at 260-262 West Forty-first Street, New York, N. Y.

John A. Hughes and William A. Thomas, are individuals and co-partners, trading as Hughes & Thomas, with their office and principal place of business at 53 East Nineteenth Street, New York, N. Y.

L. M. Barth, is an individual, with his office and principal place of business at 257 Fourth Avenue, New York, N. Y.

Arthur R. Meyers, is an individual, trading as National Uniform Co., with his office and principal place of business at 41 East Twenty-eighth Street, New York, N. Y.

Albert T. Scafati, is an individual, trading as A. T. Scafati Corporation, with his office and principal place of business at 226 West Forty-first Street, New York, N. Y.

Respondent, Wender & Goldstein Uniform Service Corporation, is, and was, during the time hereinafter mentioned, a service corporation, and was not a member of the respondent Exchange, and did not participate in the acts and practices hereinafter described.

While it appears from the answer filed by Al S. Mair, trading as Fisher-Mair Uniform Co., whose office and principal place of business

is at 11 West Twenty-fifth Street, New York, N. Y., that during a part of the time hereinafter mentioned, said company was composed of said Harry Fisher and Al S. Mair, copartners, trading under said name, but at the time of the issuance of the complaint said partnership had been dissolved and said Al S. Mair became the sole owner of, and continued to trade as, Fisher-Mair Uniform Co. at the above address and filed his answer herein.

PAR. 3. Said respondent members at all times mentioned have been, and now are, engaged in the manufacture and in the sale and distribution of uniforms and wearing apparel in commerce among and between the various States of the United States, and caused said products when sold to be shipped to purchasers thereof located in the various States of the United States other than the State of origin of such shipments, whereby said respondents created and maintained a constant and continuous current of commerce in said uniforms and other like articles of merchandise between the respondent members and the purchasers thereof, in, among, and between the various States of the United States, and in the District of Columbia.

The volume of business done by respondent members constitutes a substantial portion of the whole of such done by its industry, particularly in the metropolitan area of New York City.

PAR. 4. Said respondent members are in competition with one another in the manufacture, sale, and distribution of their said products and other like articles in the various States of the United States and in the District of Columbia, except insofar as their said competition has been hindered, lessened, or restrained, or potential competition among them forestalled, by the acts, practices, methods, and policies of said respondents hereinafter set forth.

There are other corporations, partnerships, firms, and individuals not affiliated with respondent Exchange and which are engaged in the manufacture, sale, and distribution of similar articles of merchandise in the area in which said respondents trade, in competition with one another, and with one or more of said member respondents, except insofar as such competition has been hindered, lessened, and restrained, or potential competition among them forestalled by the said respondents' acts, practices, methods, and policies hereinafter described.

PAR. 5. Said respondents, during the time herein referred to, have entered into, maintained, and carried out agreements, understandings, combinations, and conspiracies, between and among themselves to suppress, hinder and lessen competition in the manufacture, sale, and delivery of their said products in the course of said commerce, in, among and between the various States of the United States, and in the District of Columbia.

Pursuant to, and in furtherance of, and to make effective said agreements, understandings, combinations and conspiracies, said respondents have cooperatively, concertedly, and collectively adopted, engaged in, and carried out, among others, the following methods, acts and practices:

1. Organized respondent Exchange, as aforesaid, on or about August 20, 1934, to control and regulate the business of manufacturing, selling and delivering the said articles of merchandise.

2. Adopted in January 1936 and maintained for sometime thereafter a cost guide and Manual to govern manufacture and distribution of said uniforms which required, and requires, among other things:

(a) That the price of cloth in any garment manufactured by respondent members shall be figured at the market or replacement cost, and not at the actual cost to the specific purchaser thereof; and which

(b) Fixed

(1) A standard shrunk net yardage scale in detail for their various products;

(2) An average cutting cost;

(3) Material cost for trimmings, findings, sewings, fronts, pockets, and linings for their various products;

(4) Standard labor costs in detail for their various products;

(5) Minimum overhead costs;

(6) Selling terms; and which

(c) Required a respondent member who bids below Manual cost to submit a new or revised bid at least 5 percent higher than his original bid.

3. Reported to respondent Exchange the names of all members who failed to abide by the overhead charges and other items covered by said Manual and by the rules and regulations of said Exchange, as herein set forth.

4. Set up and maintained an arbitration board or committee as a disciplinary and punitive agency to enforce the various provisions of said Manual, with authority to impose fines, suspend and expel members who failed or refused to comply with the rules and regulations of said Exchange and to otherwise enforce the same, subject only to the review and approval of a chairman whose decision is final.

5. Allowed the examination of the books and records of the respective respondent members by said committee for the purpose of assuring their compliance with all the rules and regulations of the said Manual and providing for the employment of the necessary sanctions to enforce the aforesaid rules and regulations.

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6. Used other similar means and methods to lessen, suppress and restrain competition among respondent members in the manufacture, sale, and delivery of said products.

PAR. 6. The Commission finds that the arbitrary fixing of material, labor and overhead costs and conditions of sale by means of a cost guide or manual as hereinbefore described, and the adherence to such costs and conditions of sale by the respondents, constituted the fixing of the minimum prices at which respondents' uniforms and garments were to be sold and had the tendency and effect of fixing or regulating prices for such merchandise.

PAR. 7. The capacity, tendency and effect of the aforesaid agreements, understandings, combinations and conspiracies and the policies, practices and acts and things done and performed by respondents in pursuance thereof are and have been to unreasonably lessen, suppress, and restrain competition in the manufacture, sale, and delivery of respondents' products in the various States of the United States and in the District of Columbia and to deprive the purchasing, using and consuming public of the advantage of competitive prices, terms and conditions in connection with the purchase thereof, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction and detriment to the freedom of fair and legitimate competition in such trade and industry; and particularly between the members of said Exchange.

CONCLUSION

The acts and practices of said respondents, and the things done and performed by them, as herein found, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition between and among said member respondents in the manufacture, sale and delivery of said products in commerce, within the intent and meaning of the Federal Trade Commission Act; and placed in member respondents the power to control and enhance prices and other terms and conditions in connection with the manufacture, sale and delivery of their said products; have a dangerous tendency to create in member respondents a monopoly in said products in said commerce; have unreasonably restrained such commerce in their said products; and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

the respondents, except Henry Fisher, in which answers all the respondents, except Wender & Goldstein Uniform Service Corporation,¹ a corporation, admit all the material allegations of fact set forth in said complaint and waive all intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and its conclusion that said respondents, except Wender & Goldstein Uniform Service Corporation, a corporation, and Henry Fisher, have violated the provisions of section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, Uniform Manufacturers Exchange, Inc., an incorporated association, All-Bilt Uniforms, Inc., a corporation; S. Appel & Co., Inc., a corporation; Bernhard, Schrag & Co., Inc., a corporation; Brooks Uniform Co., Inc., a corporation; I. Buss, Inc., a corporation; Walter Cahn Co., Inc., a corporation; Stone Uniform Co., Inc., a corporation; Uniforms by Ostwald, Inc., a corporation; The Joseph F. Webber Uniform Corporation, a corporation; Z. & O. Uniform Co., Inc., a corporation; Russell Uniform Co., a corporation; B. Schellenberg & Sons, a corporation; Smith-Gray Corporation, a corporation; A. DuBois Son, Inc., a corporation; L. P. Maher, Inc., a corporation; and Merson Clothes, Inc., a corporation; and their respective officers, directors, agents, and representatives; and Charles Palley and Abraham Cebulsky, individuals, trading as Acme Uniform Co.; Charles Mitchell and Paul Perkins, individuals, trading as Mitchell & Perkins; John A. Hughes and William A. Thomas, individuals, trading as Hughes & Thomas; L. M. Barth, an individual; Arthur R. Meyers, an individual, trading as National Uniform Co.; Albert T. Scafati, an individual, trading as A. T. Scafati Corporation; and Al S. Mair, an individual, trading as Fisher-Mair Uniform Co. (sued herein as Henry Fisher, trading as Fisher-Mair Uniform Co.); and their respective agents, representatives, and employees; and George Appel, Howard V. Smith, Sr., I. Charles Bernhard, Elias Goldstein, T. A. DuBois, Arthur Stone, and E. S. Smith, individuals, and as officers and directors of the Uniform Manufacturers Exchange, Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of uniforms, overcoats, and other like articles of wearing apparel commonly worn by doormen, bellboys, porters, and others engaged in similar employment or any other uniforms or articles of wearing apparel, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any common course of action, agreement, understanding, combina-

tion, or conspiracy, between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Compiling, publishing, or distributing any cost guide or manual, or any other similar device for use of respondents, which establishes or provides an arbitrary method for fixing or determining material, labor, and overhead costs.

2. Establishing, fixing, or maintaining minimum prices for respondents' garments by adhering to, or promising to adhere to, any arbitrary or fixed cost for material, labor, and overhead costs established by any cost guide or manual, or by any other plan or method, or fixing or regulating prices for said products by any other means or in any other manner.

3. Establishing, fixing, or maintaining terms or conditions of sale for respondents' garments by adhering to, or promising to adhere to, any arbitrary or fixed selling terms established by any cost guide or manual or by any other plan or method.

4. Establishing, fixing, or maintaining material, labor, or overhead costs, as a basis for any price or bid quotation on respondents' garments, by adhering to, or agreeing to adhere to, any cost guide or manual or any other plan or method which provides for any of the following or similar arbitrary methods of fixing or determining such costs:

(a) The use of market or replacement costs, or any other specific or arbitrary price other than actual cost to the manufacturer, to determine the cost of cloth used in the manufacture of any garment,

(b) The use of any standard shrunk net yardage scale,

(c) The use of an average cutting cost,

(d) The use of standard or uniform costs for trimmings, findings, sewings, fronts, pockets, and linings used in the manufacture of any garment,

(e) The use of standard labor costs in detail for various products,

(f) The use of minimum overhead costs.

5. Arriving at the amount of any bid or price quotation to be submitted to any purchaser of uniforms or wearing apparel by any arbitrary method for fixing material, labor, or overhead costs, as a basis for such bid or price quotations, as set out in any cost guide, manual, or by any other plan or method, or requiring a member who bids below such costs to submit a new or revised bid higher than the original bid.

6. Reporting or relaying to respondent Uniform Manufacturers Exchange, Inc., or to any other medium or central agency, the names of members of the Exchange who fail to adhere to any schedule of costs

or prices contained in any cost guide, manual, or in any other plan or method.

7. Coercing, inducing, or persuading, or attempting to coerce, induce, or persuade, members of Uniform Manufacturers Exchange, Inc., to adhere to or maintain the minimum prices, terms, or conditions of sale, or any schedule of costs or prices, contained in any cost guide, manual, or in any other plan or method, by maintaining an arbitration board, committee, or other similar agency as a disciplinary or punitive agency to enforce the various provisions of such cost guide, manual, or other plan or method.

8. Authorizing or permitting the examination of the books and records of the respondent members by any agent of the respondents or by any arbitration board, committee, or like agency having disciplinary, punitive, or other powers to enforce compliance with any rules and regulations pertaining to costs, prices, or terms or conditions of sale, contained in any cost guide, manual, or in any other plan or method.

9. Authorizing, directing, or permitting any arbitration board, committee, or other central agency to impose fines upon, or suspend or expel, members who fail, refuse, or neglect to comply with the rules and regulations of respondent Uniform Manufacturers Exchange, Inc., with reference to costs and prices, or to maintain minimum prices, terms, or conditions of sale, or who fail to adhere to arbitrary or fixed costs for material, labor, or overhead established by any cost guide, manual, or any other plan or method.

10. Formulating or putting into operation any other practice or plan which has the purpose or the tendency or effect of fixing prices for uniforms or other articles of wearing apparel, or otherwise restricting, restraining, or eliminating competition in the sale and distribution of such products.

11. Employing or utilizing respondent Uniform Manufacturers Exchange, Inc., or any arbitration board, committee, or other central agency, as a punitive or disciplinary agency to enforce any rules or regulations pertaining to costs and prices, or as an instrument, vehicle, or aid in performing or doing any of the acts or practices prohibited by this order.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents, Wender & Goldstein Uniform Service Corporation and Henry Fisher.

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

IN THE MATTER OF
BAER LABORATORIES, INC.

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

Docket 4686. Complaint, Jan. 29, 1942—Decision, Sept. 17, 1942

Where a corporation, engaged in the preparation, packing, and interstate sale and distribution of its "Sulfuraid-21" medicinal preparation; by means of advertisements in newspapers and other periodicals, and by booklets and other advertising literature, including purported testimonials, directly and through inference—

- (a) Falsely represented that its said product, when used in hot baths, was an effective relief, preventive, and cure for muscular, articular, and ligamentary pain, and all other pain except headaches, including that due to rupture of muscles, contusions, neuralgia, tubes, and tumors; abdominal spasms, pleural pains, articular rheumatism of women during their climacteric period; and pain from rheumatism, arthritis, neuritis, gout, lumbago, and nervous exhaustion; and
- (b) Falsely represented that in such hot baths, sulphur was absorbed from the water through the skin and mucous membrane and thus had a general pharmacological effect; that said preparation in hot water tended to make one perspire more quickly and freely and aided a more rapid elimination of the body's waste products and the counteraction of overacidity in the body; and that "Sulfuraid-21" was the first successful effort to create sulphur in solution;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby inducing it, because of such belief, to purchase substantial quantities of preparation in question:

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

Before *Mr. Webster Ballinger*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. Emanuel B. Morganstern, of New York City, 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 Baer Laboratories, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows: