

IN THE MATTER OF
ELECTRICAL ALLOY SECTION OF NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION, 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 4558. Complaint, Aug. 7, 1941—Decision, Mar. 16, 1943

Where a section of an unincorporated trade association together with its five member corporations, engaged in the manufacture, sale, and interstate distribution of electrical alloy resistance wire, and in active and substantial competition with each other and with others except insofar as such competition was restrained and suppressed as below set forth;

Entered into a combination, agreement, and understanding among themselves and through said section for the purpose of restraining price competition in the sale of the unpatented wire concerned; and pursuant thereto, and making use of said section, which aided and abetted acts in question, from time to time—

- (a) Fixed and maintained identical prices and uniform discounts and other conditions for the sale of electrical alloy resistance wire;
- (b) Exchanged price and discount information between and among themselves, with expectation and understanding that prices set forth in price lists and discount sheets would be adhered to until replaced by others similarly filed; and agreed they would not reduce their prices through assumption of any part of certain State sales taxes;
- (c) Adopted and maintained uniform resistance standards and other uniform standards for use in the manufacture of said wire, with the effect, in some instances, of fixing and maintaining identical prices therefor; and
- (d) Submitted uniform bids in connection with the sale of said wire;

With effect of unduly and unlawfully restraining and preventing price competition in the sale of electrical alloy resistance wire in commerce; of unduly restricting and restraining trade and such commerce; of eliminating competition; of creating in said manufacturers a monopoly in the sale of such products therein; of placing in them power to control and enhance prices; and of unreasonably restraining such commerce in said products:

Held, That such acts and practices under the conditions set forth, were all to the prejudice of the public; had a dangerous tendency unduly to hinder and prevent, and actually hindered and prevented, competition in the sale and distribution of unpatented electrical alloy resistance wire in commerce; had a dangerous tendency to create in said manufacturers a monopoly therein; and constituted unfair methods of competition in commerce.

Mr. Fletcher G. Cohn for the Commission.

Donovan, Leisure, Newton & Lumbard, of New York City, for Electrical Alloy Section of National Electrical Manufacturers Ass'n, George B. Cumming and William J. Donald.

Mr. Francis E. Neagle, of New York City, for Wilbur B. Driver Co., and along with—

Ledward & Hinkson, of Chester, Pa., for Alloy Metal Wire Co., Inc.;

Lucking, Van Auken & Sprague, of Detroit, Mich., for Hoskins Manufacturing Co.;

Mr. John H. Hilliard, of New York City, for C. O. Jelliff Manufacturing Corp.; and

Mr. Joseph Kahrs, of Newark, N. J., for Driver-Harris Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717; as amended 52 Stat. 111; 15 U. S. C. A. sec. 41), and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Electrical Alloy Section of the National Electrical Manufacturers' Association, hereinafter referred to as respondent Association, is an unincorporated trade association, having its principal office and place of business located at 155 East Forty-fourth Street, New York, N. Y. The membership of respondent Association is composed of five corporations engaged in the manufacture and sale of copper and nickel alloy wire.

The business and affairs of respondent Association are conducted under the active management and supervision of an executive secretary and managing director.

Respondent, George B. Cumming, is executive secretary of respondent Association with an office at 155 East Forty-fourth Street, New York, N. Y.

Respondent, William J. Donald, is managing director of respondent Association with an office at 155 East Forty-fourth Street, New York, N. Y.

PAR. 2. Respondent, Alloy Metal Wire Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in Prospect Park, Pa.

Respondent, Hoskins Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 4445 Lawton Avenue, Detroit, Mich.

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Respondent, Wilbur B. Driver Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 152 Riverside Avenue, Newark, N. J.

Respondent, C. O. Jelliff Manufacturing Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal office and place of business located in Southport, Conn.

Respondent, Driver-Harris Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 201 Middlesex Street, Harrison, N. J.

Each of the respondents named in this paragraph is a member of respondent Association, and is engaged in the manufacture and sale of copper and nickel alloy wire. These respondents, hereinafter referred to as respondent manufacturers, also manufacture and sell many other items which are not involved in this proceeding.

PAR. 3. In the course and conduct of their respective businesses respondent manufacturers sell and distribute alloy wire to purchasers thereof located in various States of the United States, pursuant to which sales said commodities are shipped or transported to the purchasers thereof across State lines into States other than the State of origin of said shipments. Each of the respondent manufacturers, in the aforementioned manner, maintains a constant current of trade in commerce between and among different States of the United States.

PAR. 4. Respondent Association, and respondents, George B. Cumming and William J. Donald, are not engaged in commerce, but have aided, abetted, furthered, cooperated with, and were instrumentalities of, and parties to some, or all, of the conspiracies, combinations, agreements, and understandings hereinafter set out and actively cooperated and participated in the performance of some or all of the acts and practices done in pursuance thereto and in furtherance thereof.

PAR. 5. Respondent manufacturers in the regular course and conduct of their respective businesses have been, and are, in active and substantial competition with each other, and with other, and with other manufacturers and sellers of alloy wire in the sale thereof to purchasers for shipment in commerce between and among the several States of the United States, except to the extent to which such competition has been restrained, lessened, injured, and suppressed by the conspiracies, combinations, agreements, and understandings hereinafter set forth.

PAR. 6. Respondent manufacturers, respondent Association, and respondents, George B. Cumming and William J. Donald, its execu-

tive secretary and managing director, respectively, have entered into and for more than 3 years last past have been and are now carrying out, a conspiracy, combination, agreement, and understanding for the purpose of restricting, restraining, suppressing, and eliminating all price competition among themselves and creating a monopoly in themselves in the sale of alloy wire in commerce as aforesaid.

PAR. 7. Pursuant to said conspiracy, combination, agreement, and understanding, and in furtherance thereof, said respondents have done and performed, and still do and perform, among others, the following acts and things:

1. Fixed and maintained identical prices at which alloy wire is to be sold, and is sold, by respondent manufacturers.

2. Fixed and maintained uniform discounts and other conditions for the sale of alloy wire by respondent manufacturers.

3. Respondent manufacturers filed with respondent Association their price lists for alloy wire.

4. Respondent manufacturers adhered to filed prices until new and different prices were filed by them.

5. Respondent Association disseminated the price information so filed to all of its members.

6. Otherwise exchanged price and discount information between and among respondent manufacturers.

7. Fixed and maintained uniform resistance standards and other uniform standards for use in connection with the manufacture of the alloy wire sold and distributed by respondent manufacturers.

8. Respondent manufacturers have submitted uniform bids in connection with the sale of the alloy wire manufactured and sold by respondent manufacturers.

9. Used other means and methods designed to suppress and prevent price competition and to accomplish uniform prices and a monopoly on the part of respondent manufacturers in the sale of alloy wire in commerce as hereinabove described.

PAR. 8. Each of the said respondents herein acted in concert and cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said conspiracy, combination, agreement, and understanding.

PAR. 9. The conspiracy, combination, agreement, and understanding, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among respondent manufacturers in the sale of alloy wire in commerce within the intent and

meaning of the Federal Trade Commission Act; of unduly and unlawfully restricting and restraining trade in commerce in said products in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said products in said commerce; of placing in respondent manufacturers the power to control and enhance prices; of unreasonably restraining such commerce in said products. The conspiracy, combination, agreement, and understanding, and the things done thereunder and pursuant thereto and in furtherance thereof, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 7th day of August 1941, issued and served its complaint in this proceeding upon the respondents named in the caption hereof charging them with the use of unfair methods of competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, in violation of the provisions of said act. All of the respondents have duly filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed on behalf of the respective respondents and W. T. Kelley, chief counsel of the Federal Trade Commission, subject to the approval of the Commission, may be made a part of the record herein and may 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 the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument, the filing of briefs, or the filing of a report upon the evidence by a trial examiner for the Commission. The said stipulation further provided that the respondent Electrical Alloy Section of National Electrical Manufacturers Association, an unincorporated trade association, should be bound legally by any order which the Commission might enter properly against it pursuant to said stipulation, by service, as provided under the rules of the Commission, upon the managing director of National Electrical Manufacturers Association. Thereafter, this proceeding regularly came on to be heard before the Commission upon said complaint, answers, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully

advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Electrical Alloy Section, is a section of the National Electrical Manufacturers Association, an unincorporated trade association, having its principal office and place of business located at 155 East Forty-fourth Street, New York, N. Y., and said section is hereinafter referred to as "respondent section." During the times hereinafter mentioned the membership of said respondent section has from time to time included the five corporate respondents hereinafter in paragraph 2 described, which five corporate respondents are hereinafter referred to as "respondent manufacturers"; the respondent, C. O. Jelliff Manufacturing Corporation, was a member of respondent section from January 19, 1934, through December 31, 1940; respondent, Alloy Metal Wire Co., Inc., is, and has been, a member of respondent section since August 25, 1933, except during the period from November 1, 1934, to July 1, 1937. The only other members of respondent section at any time were Geo. W. Prentiss & Co., which was a member of said section during all of the times hereinafter mentioned up to October 23, 1939, and Walter Gilby Alloy Co., which was a member of the section from August 25, 1933, to July 1, 1935, both of said companies having theretofore ceased manufacturing and selling copper-nickel alloy resistance wire.

The respondent section has officers consisting of a chairman and a vice chairman elected from the personnel of the membership of the section. Prior to February 7, 1939, said respondent section also had a secretary elected from the personnel of the membership of the section.

From 1935 to December 19, 1941, respondent, George B. Cumming, was elected from the staff of the National Electrical Manufacturers Association annually by said respondent section as executive secretary of said respondent section, his office being at 155 East Forty-fourth Street, New York, N. Y., and said respondent, George B. Cumming, acted as executive secretary of said section.

PAR. 2. Respondent, Alloy Metal Wire Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in Prospect Park, Pa.

Respondent, Hoskins Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of

the State of Michigan, with its principal office and place of business located at 4445 Lawton Avenue, Detroit, Mich.

Respondent, Wilbur B. Driver Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 152 Riverside Avenue, Newark, N. J.

Respondent, C. O. Jelliff Manufacturing Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut with its principal office and place of business located in Southport, Conn.

Respondent, Driver-Harris Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 201 Middlesex Street, Harrison, N. J. All of said respondent manufacturers are, and at all times mentioned herein have been, engaged in the manufacture and sale of electrical alloy resistance wire, some of which is patented and some unpatented. The facts found herein relate only to unpatented electrical alloy resistance wire.

PAR. 3. In the course and conduct of their respective businesses, each of respondent manufacturers sells and distributes electrical alloy resistance wire to purchasers thereof located in various States of the United States, and pursuant to such sales, said products are shipped or transported to the purchasers thereof across State lines into States of the United States other than the State of origin of said shipments. Each of respondent manufacturers, in the aforementioned manner, has maintained, and still does maintain, a constant current of trade in said products in commerce between and among the several States of the United States.

PAR. 4. Respondent manufacturers in the regular course and conduct of their respective businesses have been, and are, in active and substantial competition with each other and with other manufacturers and sellers of electrical alloy resistance wire in the sale thereof to purchasers for shipment in commerce between and among the several States of the United States, but such competition has been restrained, lessened, injured, and suppressed by the combinations, agreements, and understandings hereinafter set forth.

PAR. 5. From time to time during the periods hereinafter mentioned, respondent manufacturers (except respondent, Alloy Metal Wire Co., Inc., for the period hereinbefore mentioned in paragraph 1) and Geo. W. Prentiss & Co., and Walter Gilby Alloy Co. (at the times these two companies were members of respondent section) as the sole members of said respondent section, held meetings which were at-

tended by representatives of some or all of said respondent manufacturers, and at which, from September 29, 1935 to December 19, 1941, respondent, George B. Cumming, acted as executive secretary of said respondent section.

PAR. 6. All of respondents herein have stipulated that the respondent manufacturers, at the time when they were, with the addition of Geo. W. Prentiss & Co., the only members of respondent section, did enter into a combination, agreement, and understanding among themselves for the purpose of restraining price competition among themselves in the sale of electrical alloy resistance wire in the commerce hereinbefore described, and pursuant thereto and in furtherance thereof, have, from time to time, done and performed the following acts and things:

1. Fixed and maintained identical prices at which electrical alloy resistance wire is to be sold, and is sold, by respondent manufacturers.

2. Fixed and maintained uniform discounts and other conditions for the sale of electrical alloy resistance wire by respondent manufacturers.

3. Exchanged price and discount information between and among respondent manufacturers.

4. Adopted and maintained uniform resistance standards and other uniform standards for use in connection with the manufacture of the electrical alloy resistance wire sold and distributed by said respondent manufacturers with the effect, in some instances, of fixing and maintaining identical prices at which said wire was to be sold and was sold by said respondent manufacturers.

5. Submitted uniform bids in connection with the sale of the electrical alloy resistance wire manufactured and sold by respondent manufacturers.

The Commission finds that the aforefound agreement, understanding, and combination among the respondent manufacturers was entered into, through and by means of the respondent section, as well as by other means and methods herein set forth, and further, that the purpose and effect of said combination, agreement, and understanding were aided, abetted, and furthered by the respondent section, which often was used by the respondent manufacturers as an instrumentality for effectuating such purpose.

PAR. 7. Each of said respondent manufacturers has stipulated that they acted in concert and cooperation with one or more of the other respondent manufacturers in doing and performing the acts and things herein found, in furtherance of said combination, agreement, and understanding.

PAR. 8. At the meeting of respondent section on September 9, 1935, the said section adopted a motion that each member should send to respondent, George B. Cumming, as executive secretary of said respondent section, his published price list, terms, and conditions of sale with instructions concerning distribution of such information. At this meeting, the respondent section also adopted a resolution that the section approve the investigation of closed-business transactions and that the investigation should be conducted by respondent George B. Cumming as executive secretary of respondent section.

Under date of September 25, 1935, respondent George B. Cumming, as executive secretary of respondent section, wrote to respondent manufacturers, as members of respondent section, to the effect that the counsel for the National Electrical Manufacturers Association had disapproved the action of the respondent section in connection with the voluntary distribution of published prices, and further, that the said counsel also had disapproved the aforementioned motion of respondent section regarding the investigation of closed-business transactions "because it provides that closed-business transaction statistical activities shall be conducted by the executive secretary," and that "was contrary to the ruling of the law committee and to the board of governors which has specifically ruled that such statistics cannot be collected other than through the statistics department of the Association."

At the next meeting of the respondent section, which was held on November 13, 1935, it was resolved that the previous action of the respondent section regarding voluntary distribution of published prices be rescinded and that the matter "be in the hands of each member individually with respect to his own prices." Also, the action of respondent section, with respect to closed transactions likewise was rescinded.

The minutes of subsequent meetings of the said respondent section do not disclose that the subject of voluntary distribution of price lists or the subject of closed-business transactions was considered or discussed at any subsequent meeting or meetings of said respondent section.

However, in his annual report to the members of respondent section, Stanley M. Tracy, secretary of the section, on September 16, 1936, stated that "the matter of distribution of published prices was considered at the first two meetings during the year and finally disposed of by recommending that each member should mail his individually prepared price sheets to the other members of the section, as well as the trade" and that "the section considered the advisability of in-

vestigating closed-business transactions in accordance with the standard NEMA procedure. After some discussion it was decided that the section would not benefit from such an activity." This annual report was prepared for Mr. Tracy by respondent George B. Cumming, as executive secretary of respondent section.

The Commission concludes and finds that the exchange of price lists directly among respondent manufacturers was the result of their concerted action through respondent section.

PAR. 9. On May 16, 1935, one of the respondent manufacturers wrote a second respondent manufacturer, that he was in receipt of a letter from a third respondent manufacturer to the effect that it was agreeable to this third respondent manufacturer to use the catalog figures of the first respondent manufacturer "as a basis for price determination, until such time as there is a reprint of their own pamphlet."

PAR. 10. On May 5, 1937, one of respondent manufacturers wrote another respondent manufacturer requesting price and delivery terms on certain alloy wires, to which letter was attached a plain sheet reading as follows:

You can guess that my request for this information is due to the fact that we have been told our prices are high, and that customer is purchasing at a lower price.

If you check with us, we feel sure that our figures are right and the gentleman is lying.

I would suggest that you destroy this plain sheet.

On May 7, 1937, a reply to the aforementioned letter of May 5, 1937, was written and the concluding paragraph of said letter of reply reads as follows:

Our figures have been checked, and we feel that what we quote above is entirely correct. However, if you are at variance with any of these figures through any of your own matriculations, we would like very much to have you check with us again.

PAR. 11. A salesman of one of respondent manufacturers, reporting to his superior on May 4, 1937, of his call on another respondent manufacturer, stated:

Spoke about Capitol situation * * * Thought our practice of loaning colling machines was unfair advantage. Had agreeable understanding and will report verbally. Thought exchange of credit information would be helpful and intended to raise the question at meeting in N. Y. tomorrow.

PAR. 12. On August 18, 1938, an official of one of the respondent manufacturers wrote an official of another of said respondent manufacturers, addressing the letter as "Personal" as follows:

There seems to be a little discrepancy in some of the prices that we are finding true in our own organization, and in order to greatly help me, I would appreciate

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It very much if you would give us your price with method of figuring on the following: * * *

To this letter, the reply, dated August 24, 1938, which likewise was marked "Personal" read, in part, as follows:

Let me say at the out-set, that you certainly picked out two tough coils. If we sold many coils of this type I am afraid all of our time would be consumed in figuring prices. Of course, these particular coils are special and are not covered by any established price list. I have therefore figured as far as I can go in accordance with the established practice and have then added * * *

* * * In this connection, Mr. (herein was given the name of an official of a third respondent manufacturer) has been endeavoring to set up standards which would cover every type of coil that might be ordered * * * Until such time as definite action has been taken I would say that you would be free to do as you please on all types of special coils which are not covered in the established price schedule. Of course, your price may be higher or lower than competitors, but I don't know of any other answer.

PAR. 13. On May 7, 1940, one of the respondent manufacturers wrote another respondent manufacturer as follows:

SUBJECT: Exports to Italy

Relative to our telephone conversation of Friday last, we, like yourselves, are a little divided as to what ought to be done.

The Industry Meeting is next Saturday at Hot Springs, and we would be content to allow the matter to rest until it could be discussed there.

We can't see any better solution than the above, even though it may not be very satisfactory.

Will see you at Hot Springs.

PAR. 14. On July 31, 1940, one of respondent manufacturers wrote another respondent manufacturer as follows:

Will you please give me the details of your practice covering freight charges on orders totalling less than 100 pounds. For example, if you have an order for 10 pounds of nickel chromium resistance wire and you ship it via parcel post, do you add the postage to the invoice? Or, is it your practice to prepay parcel post, express or freight charges on all orders irrespective of the quantity involved?

PAR. 15. The Commission infers, and therefore finds, that the filing or interchange of current price lists and discount sheets among respondent manufacturers, as herein described and found, was predicated on the expectation and understanding that the prices set forth in such lists and sheets would be adhered to until and unless they were replaced by other price lists and discount sheets similarly filed or interchanged.

The Commission also finds that pursuant to, and as a part of, the combination, agreement, and understanding hereinbefore found in

paragraph 6, that the respondent manufacturers wrote the letters, performed the acts and did the things set out in paragraphs 9, 10, 11, 12, 13, 14, and 20.

PAR. 16. At a meeting held on June 13, 1933, at the offices of the National Electrical Manufacturers Association, the minutes of which are entitled "Organization Meeting—Electrical Alloy Section" and at which were present representatives of respondent manufacturers, Driver-Harris Co., Hoskins Manufacturing Co., Alloy Metal Wire Co., and Wilbur B. Driver Co. (the successor to Gilby Wire Co.), together with representatives of Geo. W. Prentiss & Co., Walter Gilby Alloy Co., and Somers Brass Co., all of whom, with the exception of Somers Brass Co., subsequently became members of respondent section at the dates hereinafter set forth, the following resolutions were adopted:

RESOLVED that this group of manufacturers form an association and elect as officers a chairman, a vice-chairman, and secretary and treasurer, and that the association make application to NEMA for affiliation with that group as a Section.

* * * * *

RESOLVED that the name of this association shall be the Electrical Alloy Section of NEMA.

At this meeting it was also

RESOLVED that no contracts or orders for products of this association shall be taken by a member of the association for a longer period than three (3) months beginning October 1, 1933, and that in the meantime no contracts are to be made for delivery after December 31, 1933, and that such contracts must cover a specific amount of material, and full and complete shipments must be taken by the customer; also, that a standard form of contract be established for use by members of the Association.

On June 23, 1933, the Board of Governors of National Electrical Manufacturers Association "authorized the formation of an Electrical Alloy Section."

At a meeting of the aforementioned manufacturers held on August 10, 1933, at National Electrical Manufacturers Association headquarters, the minutes of which are entitled "Electrical Alloy Section" a resolution was passed reading as follows:

RESOLVED that the Electrical Alloy Section of NEMA extend a vote of thanks to Mr. Berresford, Managing Director of NEMA, for the help which he has extended to this Section in their organization work.

At this meeting of August 10, 1933, the following resolution also was passed:

RESOLVED, that the minutes of the meeting of manufacturers of high nickel alloy wire and strip, held on June 13, 1933, before becoming a Section of NEMA, be ratified as corrected.

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At this meeting of August 10, 1933, there was also passed a resolution that "Inasmuch as it has been the practice of members of this section to sell materials manufactured by them on the basis of printed net price lists or price lists with discount sheets and fixed terms of sale, which are distributed to the trade, it will be the policy of members of this section to file said schedules as required by clause X of the Code of Fair Competition for the Electrical Manufacturing Industry," under the National Industrial Recovery Act (hereinafter called the "Basic code") (National Electrical Manufacturers Association was designated as the code authority under the basic code. Pursuant to paragraph XII of the Basic Code, a supervisory agency for the Wire and Cable Subdivision was set up. Paragraph X of the basic code provided that "If a supervisory agency determined that in any branch or subdivision of the electrical manufacturing industry, it has been the generally recognized practice to sell a specified product on the basis of printed net price lists, or price lists with discount sheets and fixed terms of payment, which are distributed to the trade, each manufacturer of such product shall, within 10 days after notice of such determination, file with the supervisory agency a net price list or a price list and discount sheets, as the case may be, individually prepared by him, showing his current prices, or prices and discounts, and terms of payment, and the supervisory agency shall immediately send copies thereof to all known manufacturers of such specified product.")

At this same meeting of August 10, 1933, there also was adopted a resolution declaring it to be "the consensus of opinion of the members of the Electrical Alloy Section that certain unfair trade practices existing in the industry should be included in the Supplemental Code to the Code of Fair Competition for the Electrical Manufacturing Industry, as follows:"

The supplying to customers of any of the following materials or services without making adequate charge:

Wire in the form of helical coils;

Resistance wire and ribbon, hot and cold, rolled, with resistance limits less than standard;

Resistance wire and ribbon in intermediate sizes;

Any wire or ribbon, hot or cold rolled, in straightened or cut length;

Any wire or ribbon in special surface finishes involving an increased cost in manufacture;

The shipping of spools on which wire or ribbon is wound (which charge must be paid by customer when invoice covering material is paid).

The board of governors of National Electrical Manufacturers Association approved the applications for membership in said Association and affiliation with the Electrical Alloy Section of the respondent,

Driver-Harris Co., at its meeting on July 11, 1933, and of the respondents, Hoskins Manufacturing Co., Alloy Metal Wire Co., Inc., Wilbur B. Driver Co. (then known as Gilby Wire Co.) and of Geo. W. Prentiss & Co., and Walter Gilby Alloy Co., at its meeting on August 25, 1933.

On August 20, 1933, the supervisory agency for the wire and cable subdivision of the electrical manufacturing industry appointed under the basic code, issued a notification to manufacturers of electrical resistance wire and ribbon and strips composed of alloys of nickel chromium, nickel iron and chromium, nickel copper, and nickel steel, directing them to "file with this supervisory agency for distribution, as required by said code, to all other manufacturers of the products specified above, at the offices of National Electrical Manufacturers Association, 155 East Forty-fourth Street, New York City, * * * copies of your price lists, or price lists and discount sheets, showing your current prices for fixed terms of sale, payment, delivery, and other conditions affecting the sale price on the products specified above."

At the meeting which was held on September 28, 1933, at the headquarters of the National Electrical Manufacturers Association, the minutes of which meeting are entitled "Electrical Alloy Section," the respondent section approved the minutes of the meeting of August 10, 1933, and these minutes were ordered to be filed with the secretary "after approval by NEMA counsel."

At this same meeting of September 28, 1933, respondent section adopted the following resolution:

RESOLVED that the suggestion that an extra price of ten percent (10%) be charged on orders for weaving wire, and especially Monel Metal and Pure Nickel, where the customer specified the number of spools on which the wire is to be wound, be referred to the Standing Committee for action as to whether or not this is an unfair trade practice.

At the same meeting the following resolution was also adopted:

RESOLVED that the Secretary instruct the supervisory agency that this Section is now ready to file schedule of prices on the following, and ask that a call be sent out for such filing:

- (1) Additional prices for other than standard resistance tolerances;
- (2) Methods of determining prices for intermediate sizes of both wire and ribbon;
- (3) Prices for straightening and cutting to length both wire and rod;
- (4) When material is sold for net prices, these prices are to be figured at the published list prices less discount to third decimal place and all other decimals disregarded.

The minutes of the aforementioned meetings of June 13 and August 10, 1933, were submitted to counsel for National Electrical Manufacturers Association under date of September 22, 1933, and on October 2, 1933, said counsel advised the section that he disapproved the

resolution contained in the June 13, 1933, minutes relative to contracts or orders, and also advised the section with reference to the resolution adopted at the August 10th meeting regarding the practice of members of the section to sell on the basis of printed price lists that "It is for the supervisory agency to determine whether or not any branch of the industry shall go on a printed price list basis. There is, however, no objection to the section's indicating what has been their practice."

On October 18, 1933, members of the respondent section were advised by its secretary that counsel for National Electrical Manufacturers Association had returned the minutes of the September 28, 1933 meeting, with his approval, with a comment that it was beyond the power of the "Supervisory agency" to tell any manufacturer how he should figure his net prices. (The minutes of subsequent meetings of respondent section do not disclose that the Secretary of said section instructed the supervisory agency in accordance with the aforementioned resolution of September 28, 1933.) Counsel also commented that if the aforementioned resolution adopted at the meeting of September 28, 1933, regarding an extra price of ten percent to be charged on orders for weaving wire was intended to be voted by the section as an unfair trade practice which should not be indulged in by any members of the section, that he then disapproved same, but, if it was intended as being proper for submission in a supplemental code, then no action should be taken regarding such matter until the supplemental code had been approved.

At the meeting of respondent section held on November 8, 1933, which was the next meeting of said section after that of September 28, 1933, the section modified the resolution relative to the filing by members of printed price lists to read as follows:

RESOLVED, that it has been the practice of members of this section to sell materials manufactured by them on the basis of printed net price lists or discount sheets at fixed terms of sale which are distributed to the trade.

At the same meeting of respondent section on November 8, 1933, in accordance with the aforementioned advice given by counsel for the National Electrical Manufacturers Association on October 2, 1933, the respondent section passed a resolution deleting from the minutes of June 13, 1933, the resolution regarding contracts and orders for products of the members of respondent section.

Also, at this meeting of respondent section of November 8, 1933, the said section rescinded its resolution of September 28, 1933, which referred to the Standing Committee for action as to whether or not it was an unfair trade practice to charge an extra price of ten percent on orders for weaving wire where customer specifies the number of spools on which the wire is to be wound.

PAR. 17. At the meeting of the respondent section on January 15 and 16, 1934, a discussion took place as to items which should be submitted to the NEMA Code Committee for action, and which were to be submitted to the authorities at Washington as a supplemental code for respondent section. Among the items which the respondent members, together with the other members, of respondent section believed should be included in a supplemental code were; that the terms of sale of each member should be uniform and uniformly applied; that no contracts or orders should be accepted for a longer period than three months; and that when material is sold for net prices, these prices should be figured at published list less discount to third decimal place with all other decimals disregarded.

At the next meeting of respondent section which was on May 2, 1934, respondent section voted that the committee previously appointed complete the recommendation for the supplemental code and submit it to the members for approval.

At the meeting of respondent section on November 15, 1934, the section voted that a committee be appointed to draw up the supplemental code for submission to the members for approval and upon receiving such approval, the code was then to be submitted to NEMA Code Administration Department for approval and submission to the authorities in Washington. It was also voted that the code committee formulate a plan in the supplemental code for investigating complaints regarding "violations of unfair trade practices or violations of price filings" under the NRA code, "and arrange a method of payment of expenses to cover the cost of investigating complaints" under the NRA code.

A supplemental code, which was prepared by the Special Code Committee appointed at the aforementioned meeting of November 15th, was reviewed and considered by the respondent members of respondent section under date of December 14, 1934. At this meeting, the said respondent members unanimously approved, among others, the following sections of the proposed supplemental code:

Article III, Section 4.—When the Supervisory Agency shall have given notice of determination that any specified product shall be sold in accordance with net price lists and/or price lists with discount sheets and/or fixed terms of sale or payment, no employer shall bid, quote, offer to sell or sell any modification of such specified product on which price schedules have been filed except in accordance with the provisions of this section unless such employer file, in accordance with Article X of the Basic Code, price schedules covering such modifications.

Article IV, Section 1.—Offering to sell or selling below cost by any employer may be done under the following conditions:

(a) With respect to any product sold competitively under net price lists and/or price lists with discount sheets and/or fixed terms of sale or payment

(herein referred to as price schedules) filed with the Supervisory Agency, any employer may file revised price schedules to meet the filed lower price schedules of any other employer, provided that the Supervisory Agency is advised that selling below cost is involved at the time the revised price schedules to meet competition are filed with the Supervisory Agency.

(b) With respect to any product or specifications on which price schedules have not been filed with the Supervisory Agency, any employer may meet the proven quoted price made on equal or equivalent products of specifications by any other employer, provided proper notification of such intent has been given to the Supervisory Agency.

At the meeting of respondent section on January 31, 1935, the section voted to add to the supplemental code an amendment to article 3, section 4 (d) relating to "Straightening and cutting to length." The section also voted that "the uniform resistance figures for individual sizes, conforming with the specific resistance of the alloy and with the figures shown" in catalogs of two respondent manufacturers, "be recommended as standard to manufacturers who are revising their catalogs." The section further voted to amend the supplemental code by substituting the words "30 days" for the word "net" in article 3, section 1, and to empower the officers of the Supplemental Code Committee "to negotiate and bring to a conclusion with any changes which may be made mandatory, the supplemental code which has now been prepared and approved." The Commission infers that the aforefound amendment substituting the words "30 days" for the word "net" related to an agreement among respondent manufacturers concerning discounts and terms of sale.

The supplemental code which was so prepared and approved by the section did not provide: that the terms of sale of each member should be uniform and uniformly applied; that no contracts or orders should be accepted for a longer period than 3 months; and that when material is sold for net prices, these prices should be figured at published list less discount to third decimal point with all other decimals disregarded.

The supplemental code so prepared and approved was never approved by the President of the United States in accordance with the provision of the National Industrial Recovery Act. The minutes of subsequent meetings of respondent section do not disclose any further discussion of the supplemental code.

PAR. 18. The minutes of the meeting of respondent section held on March 17, 1936, contain "proposed NEMA standards covering electrical resistant alloys," and indicate, when approval by the section, that they would become the "adopted standard" and would be "effective when approved."

Rule 6 of the Organization and Working Rules of the National Electrical Manufacturers Association, of which respondent section is a section, defines an "adopted standard" to be:

A practice of construction to the observance of which in the interest of the public all members of the Association should adhere, and in no event should a member of the Association represent as standard any product falling below such standard.

It is distinctly understood that Adopted Standards relate only to products commercially standardized and subject to repetitive manufacture and do not apply to products built to meet the special requirements of individual customers.

PAR. 19. The minutes of the meeting of respondent section of August 30, 1938, state:

Return of Reels

The attention of the Section was directed to the fact that one of the large users of the products of the Section had requested the members to use a clause reading as follows:

"Spools or reels will be charged and credit given for same when returned in good condition by freight, charges prepaid to destination, within twelve months from date of shipment."

On Motion duly made, seconded and carried,

IT WAS RESOLVED that the Section recommend to its members the use of this clause.

Under date of September 16, 1938, respondent George B. Cumming, as executive secretary of respondent section, wrote the following letter to respondent manufacturers, as members of respondent section:

In returning approved minutes of meeting of the Electrical Alloy Section held August 30, 1938, Mr. Neagle, Counsel, commented as follows:

"The Section should also be advised that its resolution appearing on page 103 with reference to the return of reels should be rescinded. The Federal Trade Commission takes the position that the inclusion of a provision covering the return of reels is not proper in a Section Standard which, of course, carries no recommendation with it and the Federal Trade Commission therefore would consider it a more serious violation of the law if the Section recommended the use of the clause with regard to payment for reels which is quoted."

The minutes of respondent section of November 1, 1938, state:

The entire item and motion headed "Return of Reels" shown on page 103 should be deleted from the minutes as this minute has been disapproved by NEMA Counsel.

The minutes of subsequent meetings of respondent section do not disclose that the subject of return of reels was thereafter considered or discussed at any meeting or meetings of said respondent section.

PAR. 20. On September 14, 1938, one of the respondent manufacturers wrote another respondent manufacturer as follows:

At the last meeting of NEMA, there was a good deal of talk about marking each invoice containing spools to the effect that spools must be returned within a certain length of time.

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The reply to this letter, which reply is dated September 15, 1938, read, in part, as follows:

In reply to your letter of September 14, if you will refer to the reverse side of our invoice #9050, you will see a sheet of conditions of sale. No. 7 of these states that full credit will be given for spools returned prepaid in good condition before the expiration of six months.

At the recent Industry meeting it was suggested that this six months' period be extended to twelve months. In actual practice credit is frequently given for spools after the six months' period has expired, so that I had no basic opposition to the extension of the period of time. I did feel, however, that if twelve months were the stated time customers might show a tendency toward further laxness in this regard, and an additional investment in spools would be required for normal requirements. This is problematical and of no great consequence, so that I am perfectly willing to take such steps as the industry may deem advisable.

PAR. 21. The minutes of the meeting of respondent section on May 11, 1940, contain, among other matters, the following:

ILLINOIS STATE OCCUPATIONAL TAX

The Section further considered the statement from the Retailers Occupational Tax Division of the Illinois Department of Finance covering a new ruling in that State, effective as of April 1, 1940. This statement is based on the United States Supreme Court ruling in the New York City sales tax case and its application to certain phases of interstate commerce:

"Tax liability under the Retailers' Occupational Tax Act is incurred when sales at retail are made in this State, even though the property sold is transported directly to the buyer from a point outside this State, whenever the seller is engaged in the business of selling tangible personal property in this State, and whenever possession of such property is transferred to the buyer in Illinois.

"It is immaterial whether the purchase or contract precedes or follows the interstate shipment or whether the shipment is made f. o. b. point of origin or f. o. b. destination. Contracts or agreements purporting to require shipments of the property sold from points outside of Illinois or transfers of possession of such property outside of Illinois will not operate to exempt sellers where the tax would otherwise apply."

The above regulation presents a new problem to all Michigan companies selling through an Illinois agent and where the merchandise is shipped from Michigan into Illinois. Previous to April 1 no Illinois sales tax applied on such a sale. Since April 1, that type of sale is taxable under the Illinois 3% sales tax. Illinois does not make any exemption for Industrial Processing. * * *

Following the discussion, one of the members advised that his attorney had suggested a clause to be inserted in quotations reading as follows:

"In addition to the above-mentioned price, Buyer agrees to pay Seller the amount of any and all taxes now or hereafter assessed or imposed by any Municipal or State government, or by the United States, on products covered by this contract, unless Buyer shall be entitled by law to an exemption from said tax and shall furnish Seller with proper exemption certificate when shipping instructions are given."

It was pointed out that this might be somewhat lengthy and the Executive Secretary (respondent George B. Cumming) was instructed to ascertain the

type of clause used by the General Electric Company in this situation, and this clause follows:

"The amount of any present or future sales or other similar tax applicable to apparatus sold hereunder shall be added to the prices contained herein and paid by the purchaser in the same manner and with the same effect as if originally added thereto."

The Executive Secretary (respondent George B. Cumming) was instructed to obtain the clause used by the Westinghouse Company, which is as follows:

"Prices do not include State or local taxes based on or measured by sales, which tax or taxes will be added to the prices where applicable."

The Executive Secretary (respondent, George B. Cumming) was instructed to circulate this information among the members and to ask them to indicate which clause appeared most suitable to them, following which the Executive Secretary is to advise all the members concerning the relative popularity of the various clauses submitted.

Pursuant to said instructions, said respondent, George B. Cumming, as executive secretary of respondent section, circularized the members of said section, and but two of the members having replied thereto, respondent Cumming did not advise the members of respondent section concerning the relative popularity of said clauses.

The Commission infers that the foregoing activities with regard to the relation between prices and sales taxes were based on common consent and understanding among respondent manufacturers that their prices would not be reduced through their assumption of any part of such taxes.

PAR. 22. Under date of July 29, 1937, respondent, George B. Cumming, as executive secretary of respondent section, sent the respondent manufacturers, as members of respondent section, copies of the minutes of the meeting of July 20, 1937, together with a letter in which he stated, "These minutes are being circulated in the absence of counsel who is on vacation. They will be subject to his comment upon his return about September 10." Said minutes were approved by counsel on September 8, 1937. At this meeting of July 20, 1937, of respondent section, the said respondent section considered the matter of offering technical advice to the Electric Range Section and the Domestic Appliance Section of National Electrical Manufacturers Association, relative to the causes of increased life of electric heating units, and thereafter adopted a resolution "that the subject of increased life of heating units should be laid on the table, and the executive secretary was instructed to discuss this matter with the executive secretary of the Domestic Appliance and Electric Range Sections and report back to the next meeting."

The minutes of subsequent meetings of said respondent section do not disclose that this subject was thereafter considered or discussed in

collaboration with the Electrical Range or Domestic Appliance Section of National Electrical Manufacturers Association.

PAR. 23. At the meeting of respondent section on October 5, 1937, the following resolution was passed:

It was RESOLVED that the Chairman appoint a Committee to work out suitable procedure with the Statistical Department of NEMA so that the various members would be apprised of companies to whom credit would be no longer extended by any member of the Section.

Under date of October 25, 1937, respondent, George B. Cumming, as executive secretary of respondent section, wrote the following letter to respondent manufacturers, as members of respondent section:

I am enclosing copy of the minutes of the October 5th meeting, together with the comments of Counsel, which are as follows:

"On page 86 the minutes recite a resolution that the Chairman appoint a Committee to work out a procedure with the Statistical Department so that the various members would be apprised of companies 'to whom credit would be no longer extended by any member of the Section.'

"It is improper for the members of the Section to agree that they will not extend credit to any particular person or persons. Such action constitutes a boycott. The resolution in that respect, therefore, is disapproved and should be referred to the Board of Governors.

"The NEMA statistical procedure, as approved by the Board of Governors, does not provide for credit reporting and the action of the Section, therefore, should be referred to the Law Committee for consideration at its meeting on October 24th and for recommendation to the Board."

It is obvious that the minutes do not properly describe the intention of the Section and this matter will, therefore, be considered under the head of "Unfinished Business" at the next meeting of the Section.

The minutes of the meeting of respondent section of January 11, 1938, state:

It was further resolved that the minutes of October 5, 1937, be approved, subject to the following correction, so that the minutes would more accurately describe what took place at that meeting. The resolution contained in the item on Page 86 entitled—"Credit Information" should be read as follows:

"It was RESOLVED that the Chairman appoint a Committee to consider the possibility of the exchange of certain credit information along the following lines:

"When a member company felt doubtful concerning the credit standing of a customer or prospective customer, he should be able to inquire of the NEMA Statistical Department concerning overdue accounts of such customer with other members of the Section and to obtain in return the total amount of overdue indebtedness and the maximum and minimum period in days which these accounts are overdue."

At this meeting a procedure for providing such credit information was adopted by respondent manufacturers and Geo. W. Prentiss & Co. as the members of respondent section. This procedure was developed by and proposed to the section by the Committee on Credit Information

after consultation with and approval by counsel. The counsel had approved this procedure on December 6, 1937. Respondent, George B. Cumming, assisted the Committee on Credit Information in its contact with the National Electrical Manufacturers Association Statistical Department and National Electrical Manufacturers Association counsel, and in the preparation of the proposed procedure. The proposed procedure as set forth in exhibit A attached to the minutes of the meeting of the said respondent section held on January 11, 1938, was as follows:

PROCEDURE FOR CONDUCT OF ELECTRICAL ALLOY SECTION CREDIT EXPERIENCE
REPORTING ACTIVITY

1. Any member of the Electrical Alloy Section who wishes to find out if one of its customers or prospective customers has an account or accounts of more than 60 days outstanding with any other member of the Section may ask for a canvass of these other members by sending in Form Telegram #1 to the NEMA Statistical Department.

2. The NEMA Statistical Department upon receipt of this telegraphic request will immediately canvass the other members of the Section, using Form Telegram #2.

3. The other members will then reply at the date and time specified. Any telegram sent in earlier than the time specified, or after reply has been made to the original inquirer by the Statistical Department, will not be considered. If no reply is received up to the time answer is made to the original inquirer, it will be considered as indicating that the member has no account outstanding of more than 60 days with the customer in question.

4. The Statistical Department upon receipt of the replies at the stated date and time will immediately telegraph the inquirer a tabulation of these replies, using form Telegram #4.

5. Any request for information or reply to an inquiry which is not made in the proper approved telegraphic form will not be considered by the Statistical Department.

November 30, 1937

IIII: AP

23-EA-1—Jan. 11, 1938

Exhibit A

FORM TELEGRAM #1

Statistical Dept.
National Electrical Manufacturers Assn.
155 E. 44th St.
New York, N. Y.

KINDLY INQUIRE AS TO WHETHER ANY MEMBER OF THE
ELECTRICAL ALLOY SECTION HAS AN ACCOUNT WITH THE
(Customer's Name) WHICH IS MORE THAN SIXTY
DAYS OUTSTANDING.

FORM TELEGRAM #2-----

To-----Co.

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WE HAVE BEEN ASKED BY A MEMBER OF THE ELECTRICAL ALLOY SECTION TO INQUIRE IF YOU HAVE AN ACCOUNT WITH (Customer's Name) WHICH IS MORE THAN SIXTY DAYS OUTSTANDING. IF YOU HAVE SUCH AN ACCOUNT ABOUT WHICH THERE IS NO DISPUTE AS TO THE DEBT OR THE AMOUNT DUE KINDLY WIRE AT (Time) ON (Date) THE AMOUNT INVOLVED AND NUMBER OF DAYS OUTSTANDING.

STATISTICAL DEPT.

NEMA

23-EA-2-

Jan. 11, 1938

Exhibit A

FORM TELEGRAM #3

STATISTICAL DEPT.

NATIONAL ELECTRICAL MANUFACTURERS ASSN.

155 E. 44th STREET

NEW YORK NY

RETEL --- (Date)----- WE HAVE AN ACCOUNT WITH
 --- (Customer's Name)----- ABOUT WHICH THERE IS NO
 DISPUTE AS TO THE DEBT OR AMOUNT DUE WHICH IS
 --- (Number)----- DAYS OUTSTANDING. THE AMOUNT
 OWING IS --- (Amount)-----

FORM TELEGRAM #4

-----CO.

RETEL --- (Date)----- (Three) COMPANIES HAVE ACCOUNTS
 OUTSTANDING WITH --- (Customer's Name)----- ABOUT WHICH
 THERE IS NO DISPUTE AS TO THE DEBT OR THE AMOUNT DUE. THESE
 ACCOUNTS ARE FROM --- (Number)----- TO --- (Number)-----
 DAYS OUTSTANDING AND TOTAL --- (Amount)----- DOLLARS
 IN AMOUNT.

STATISTICAL DEPARTMENT

NEMA

23-EA-3--

Jan. 11, 1938

Exhibit A

PAR. 24. From the facts found in paragraph 22 and from the other facts herein set forth, especially those found in paragraphs 16, 19, and 20, the Commission finds that the respondent manufacturers, acting through and by means of respondent section, did follow courses of action which they agreed upon in the meetings of respondent section before such actions were approved or disapproved by counsel of National Electrical Manufacturers Association.

PAR. 25. The rules of the National Electrical Manufacturers Association define the duties of an executive secretary. Such duties are

the arranging for meetings of the section and acting as recording secretary at such meetings, contacting members, and prospective members, keeping the section informed at section meetings and by bulletins of information of interest to the section, coordinating section activities with National Electrical Manufacturers Association activities and with activities of other associations and agencies, and generally, the handling of such other matters as may be assigned to him by the section.

Respondent George B. Cumming, as executive secretary of the said respondent section, has received from time to time instructions that he, as the executive secretary, must record in the minutes all actions and discussions at any section meeting, that he must remain in the meeting room until all members have left the meeting, and that he must attend all section meetings. At all times herein mentioned the said respondent George B. Cumming has complied with these instructions, except when on several occasions illness prevented his attendance. Respondent, George B. Cumming, likewise has acted as the executive secretary of special committees of respondent section.

PAR. 26. The said rules also provide, as rule 8 thereof, that:

No action taken by a Division, Section, Group, or Sub-Group, or directions given to an officer or Committee of a Division, Section, Group or Sub-Group, shall be followed unless its legality and conformity with the Constitution, By-Laws and these Organization and Working Rules shall have been approved by Counsel.

PAR. 27. At a meeting of the respondent section of May 2, 1934, a report of the standing committee relating particularly to the employment of an "Executive secretary" for the respondent section, was read, whereupon the section passed a resolution that the matter be allowed to remain in abeyance for the time being.

At a meeting of the respondent section on June 7, 1934, a member of the standing committee on the subject of the employment of the executive secretary for the section, explained the functions of such an official, and respondent, William J. Donald, presented to respondent section the advantages of an executive secretary and of the services available through the National Electrical Manufacturers Association for said section, including those of respondent, George B. Cumming, "to assist on supplemental code" under the basic N. R. A. Code for the Electrical Manufacturing Industry.

Respondent, George B. Cumming, visited the meeting of the respondent section on June 26, 1935, and, according to the minutes of this meeting, "reviewed his qualifications as a possible supervisor for the industry organization." Thereafter, at said meeting, said respondent George B. Cumming was duly elected by the respondent section

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as its executive secretary, and was instructed that his first duty was to call at the plants of all members "for the purpose of acquainting himself with the companies and personnel." At this meeting, in connection with the employment of respondent, George B. Cumming, as executive secretary of respondent section, it was also decided to create a fund to pay his traveling expenses as the executive secretary.

At the meeting of the respondent section on September 29, 1935, a resolution was passed that the National Electrical Manufacturers Association should bill the respondent section as a section for the services of respondent, George B. Cumming, "as executive secretary on the basis of the previous supplementary budget to be apportioned on the same basis that dues of this section are assessed." Also, at this meeting, respondent section considered a supplementary budget for the services of the respondent, George B. Cumming, as executive secretary of said respondent section, and among the items included in this budget were allowances for telephone and telegram expenses, four trips to Detroit a year and for miscellaneous traveling in the East.

From July 1, 1935, to December 1, 1941, the total compensation paid by the said respondent section to the said respondent, George B. Cumming, and his secretary for services rendered to the section as executive secretary was:

<i>Period</i>	<i>Amount</i>
July 1 to December 31:	
1935.....	\$1, 447. 20
1936.....	1, 641. 93
1937.....	1, 184. 97
1938.....	1, 736. 02
1939.....	1, 736. 00
1940.....	906. 33
1941.....	929. 00
Total	9, 581. 45

From July 1, 1935, to December 31, 1941, the total amount paid by the said section to the said respondent, George B. Cumming, for traveling expenses as executive secretary of the said section was:

<i>Period</i>	<i>Amount</i>
July 1 to December 31:	
1935.....	\$117. 59
1936.....	124. 73
1937.....	112. 45
1938.....	35. 86
1939.....	127. 92
1940.....	109. 20
1941.....	132. 83
Total.....	760. 58

From July 1, 1935, to December 31, 1941, the amount paid by the said section to the respondent, George B. Cumming, for telephone and telegraph charges incurred as executive secretary of the said section was:

<i>Period</i>	<i>Amount</i>
July 1 to December 31:	
1935.....	\$18. 64
1936.....	94. 19
1937.....	20. 25
1938.....	10. 05
1939.....	9. 30
1940.....	10. 25
1941.....	91. 82
Total.....	254. 50

PAR. 28. At the meeting of respondent section on May 22, 1937, the minutes of said meeting disclose that "it was the consensus of the meeting that in view of the absence" of respondent, George B. Cumming, as executive secretary of respondent section, "and a need for further study of the question of the section program by the members and the executive secretary, no action be taken at this time."

The minutes of said respondent section show that at the meetings of January 26, March 23, May 21 and 22, and July 20, 1937, and October 5, 1937, respectively, the question of a "section program" was considered. The minutes of said respondent section show that at the meeting of July 20, 1937, the executive secretary reported that he had received no suggestions from the members concerning a "section program."

The consideration of a "section program" resulted in the setting up of a definite program for the engineering committee of the section.

PAR. 29. At the meeting of respondent section on January 11, 1938, respondent, George B. Cumming, as executive secretary, reported that he had performed the normal functions of his office; had assisted the Committee on Credit Information in its contact with the National Electrical Manufacturers Association's Statistical Department and the National Electrical Manufacturers Association's counsel, and in its preparation of the proposed procedure, had attended the meeting of the General Engineering Committee held in Washington; had prepared the minutes for approval; and had taken care of their distribution.

PAR. 30. The minutes of respondent section, whenever referred to herein, were, unless otherwise indicated, submitted to, and approved by, counsel for the National Electrical Manufacturers Association.

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PAR. 31. The Commission finds that respondent, George B. Cumming, as executive secretary of respondent section, had no personal knowledge of the letters set forth in paragraphs 9, 10, 11, 12, 13, 14, and 20, inclusive, hereof, nor of the contents thereof, nor of the activities set forth therein, with the exception that, as shown by paragraph 19 hereof, he knew of a discussion at the August 30, 1938 meeting regarding the return of reels, and that none of said letters referred to was ever discussed at any section meeting at which he was present.

PAR. 32. Respondent, William J. Donald, is not the managing director of respondent section, as alleged in the complaint, and has no direct contact with the business and affairs of same, but is the managing director of National Electrical Manufacturers Association.

PAR. 33. The Commission finds that the tendency and effect of the combinations, agreements, and understandings hereinbefore mentioned, and the things done thereunder and in pursuance thereto and in furtherance thereof, and the further facts, acts and practices hereinbefore enumerated, have had, and do have, as stipulated by the respondents, the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among said respondent manufacturers in the sale of electrical alloy resistance wire in commerce as defined in the Federal Trade Commission Act; of unduly restricting and restraining trade and such commerce in said products; of eliminating competition; of creating in said respondent manufacturers a monopoly in the sale of said products in said commerce; of placing in respondent manufacturers the power to control and enhance prices; and of unreasonable restraining such commerce in said products.

CONCLUSION

The acts and practices of the respondent manufacturers and the respondent section, as hereinabove found, are all to the prejudice of the public, have a dangerous tendency to unduly hinder and prevent, and have actually hindered and prevented competition in the sale and distribution of unpatented electrical alloy resistance wire in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act; have a dangerous tendency to create in respondent manufacturers a monopoly in the sale and distribution of said product, in said commerce; 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, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein, 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 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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Electrical Alloy Section of National Electrical Manufacturers Association, an unincorporated trade association, and respondent corporations, Alloy Metal Wire Co., Inc., Hoskins Manufacturing Co., Wilbur B. Driver Co., C. O. Jelliff Manufacturing Corporation, and Driver-Harris Co., together with all of said respondents' officers, representatives, agents, and employees, directly or indirectly or through any corporate or other device, in connection with the offering for sale and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of unpatented electrical alloy resistance wire of any type or description, do forthwith cease and desist from continuing, entering into, carrying out, cooperating, aiding, or abetting in carrying out, any planned common course of action, agreement, understanding, or combination, express or implied, between and among any two or more of said respondents or between one or more of said respondents and any others not parties hereto, to do or perform any of the following acts or practices:

1. Fixing, establishing, or maintaining prices, terms, discounts, or conditions of sale for electrical alloy resistance wire, or adhering to or promising to adhere to the prices, terms, discounts, or conditions of sale so fixed.

2. Exchanging, distributing, or relaying between and among themselves or between and among themselves and others competing with any of the respondent corporations either directly among respondent manufacturers and their competitors or indirectly through respondent section or other common agency, information as to prices, terms, discounts, or conditions of sale of said electrical alloy resistance

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wire, for the purpose or with the effect of restraining competition in the offering for sale or sale of such wire.

3. Fixing, establishing, or maintaining uniform resistance standards or other uniform standards for use in connection with the manufacture of said electrical alloy resistance wire, for the purpose or with the effect of fixing or attempting to fix identical prices at which said electrical alloy resistance wire is sold or offered for sale by respondent corporations.

4. Submitting uniform bids in connection with the sale or offering for sale of said electrical alloy resistance wire sold or offered for sale by respondent corporations.

It is further ordered, That the case growing out of the complaint be, and the same hereby is, closed as to respondents, William J. Donald, as managing director of the National Electrical Manufacturers Association, and George B. Cumming, as executive secretary of Electrical Alloy Section of National Electrical Manufacturers Association, but without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

It is further ordered, That all and each of the respondents, except those against whom the complaint herein has been dismissed by this order, shall within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That this order be served upon the respondent Electrical Alloy Section of National Electrical Manufacturers Association by service, in accordance with the rules of the Commission, upon William J. Donald, managing director of National Electrical Manufacturers Association, 155 East Forty-fourth Street, New York, N. Y.

Syllabus

IN THE MATTER OF

EUGENE M. WOOLARD, TRADING AS MASTER ARTISTS' ASSOCIATION, INC., ET AL.

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

Docket 4514. Complaint, June 3, 1941—Decision, Mar. 23, 1943

Where an individual, engaged in the competitive interstate sale and distribution of tinted or colored enlargements of photographs or snapshots, and frames therefor; and 12 sales agents who canvassed homes in cities, towns, and rural communities, carrying with them sample cases and taking orders on contract forms bearing his trade name—

- (a) Represented, through said sales agents, that said colored enlargements, described as "Portraits of Distinction" in contract forms referred to, were "portrait paintings" or "hand painted";

When in fact they were not paintings, either water color or oil, but were enlargements from photographic bases, tinted or colored with pastel or crayon, water color, or other powdered pigments sprayed thereon mainly through the use of an air brush;

- (b) Made use of the so-called "draw," under which scheme salesmen assured prospective customer that person drawing the "lucky" certificate was entitled to take advantage of the "special introductory offer" as thereon set forth, entitling him to a \$30 portrait or hand-painted portrait at the reduced price of \$7.50, or two for \$10;

The facts being that \$7.50 was the customary price at which said product was sold; the \$10 offer for two was employed by him to increase the volume of his business; no advantage was obtained by the customer through said "draw" since anyone apparently acceptable was permitted to secure a "lucky" certificate and purchase said "paintings" or "portraits" at the usual price; and the alleged "draw" was a deceptive scheme with intent and effect of inducing prospects to believe that if they drew the "lucky" certificate they would, as one of a favored few, have the advantage of obtaining pictures at prices greatly below those which other customers were required to pay therefor;

- (c) Made use of trade name "Master Artists' Association" upon his forms and in referring to his aforesaid business;

Notwithstanding fact his business did not partake of the nature of such an association and he did not operate, or possess equipment or personnel essential to the operation of, an art studio or place where tinted and colored enlargements of photographs were made, but products in question were made for him by other companies at stipulated prices; and

- (d) Made use of a sales plan under which salesmen concealed from or failed to advise prospective customer that the finished picture—which according to the contract form must be delivered framed but without obligation to accept the frame—would be hexagonal in shape with convex surface so that it could only be fitted into a specially designed frame not ordinarily obtainable; and under which salesmen delivering the enlargement framed