

Syllabus

IN THE MATTER OF
NATIONAL ASSOCIATION OF SANITARY MILK BOTTLE
CLOSURE MANUFACTURERS 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 4565. Complaint, Aug. 12, 1941—Decision, June 1, 1943

Where a number of corporations, manufacturing approximately all the closure milk bottle caps produced in the United States, members of an association which was the Code Authority for the industry under the N. R. A., selling practically all of their said product as special printed caps, on an annual requirement basis, to jobbers and dairies and in competition with one another and others except as such competition had been restrained as below set forth—

(a) Entered into agreements and combinations to file with their said association price lists for closure milk bottle caps, and to abide by such filed prices until new and different prices were filed, and to fix and maintain certain uniform discounts, uniform contract terms and trade practices and other uniform conditions for the sale and distribution in commerce of said products; and

Where said association, pursuant to said agreements and combinations—

(b) Rated and classified over 7,800 dairies, located throughout the United States, according to the number of closure caps used annually, through its "Annual Requirement Record" which it compiled and published;

(c) Limited the quantity of such caps which jobbers or dairy customers might contract for or purchase from aforesaid manufacturers, and prevented sale of such caps to cooperative buying agencies, and confined it exclusively to jobbers and dairy consumers; and

Where said manufacturers—

(d) Agreed to and did adhere to said ratings in determining contract prices at which dairies should be sold, and fixed and maintained quantity prices or price differentials based on the quantities purchased from all sources as fixed or determined by such rating books;

(e) To make more effective the operation and carrying out of aforesaid agreements and combinations, filed with the aforesaid association in addition to price lists, copies of invoices containing names of purchasers, quantities purchased and prices paid therefor, and copies of contracts and conditions of sale; and

Where said association—

(f) Checked said filed data to determine whether said manufacturers carried out aforesaid agreements, and invited member manufacturers to complain if another member was not abiding by its policies, in accordance with its policy and practice of policing the industry; and

(g) Held or sponsored meetings of said manufacturers for the discussion and interchange of information relative to prices, discounts, and conditions or terms to be fixed for the sale of said caps;

With the result that competition among them in the sale of closure milk bottle caps in commerce was restrained and prevented:

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Held, That the understandings and agreements, and the things done pursuant thereto, were all to the prejudice of the public; had a dangerous tendency to and did actually hinder and prevent competition between and among said manufacturers in the sale of closure milk bottle caps; unreasonably restrained such commerce therein; and constituted unfair methods of competition.

Before *Mr. John W. Norwood*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Mr. Joseph J. Brown, of Philadelphia, Pa., and *Smith, Buchanan & Ingersoll*, of Pittsburgh, Pa., for National Association of Sanitary Milk Bottle Closure Manufacturers; *Stanley Dennis*, *George J. Lincoln, Jr.*, *Harvey M. Smith*, Aluminum Seal Corporation, *Crown Cork & Seal Co., Inc.*, *Mid-West Bottle Cap Co.*, and *Smith-Lee Co., Inc.*; and, along with *Hiscock, Cowie, Bruce, Lee & Mawhinney*, of Syracuse, N. Y., for *Sealright Co., Inc.*

Edwards & Smith, of New York City, for *Daniel A. Mackin* and *American Seal-Kap Corporation*.

Sullivan & Cromwell, of New York City, for *Jarvis Williams, Jr.*, and *Standard Cap & Seal Corporation*.

Baker, Baker & Bowen, of Fitchburg, Mass., for *Cowdrey Products Co., Inc.*

Mr. William D. Slattery, of Syracuse, N. Y., for *Sanitary Metal Cap Corporation*.

Mr. James Amadei (receiver in bankruptcy), of Brooklyn, N. Y., for *Universal Seal Cap Corporation*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly hereinafter described and referred to as respondents, have 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:

PARAGRAPH 1. Respondent, National Association of Sanitary Milk Bottle Closure Manufacturers, hereinafter for convenience referred to as the respondent association, is an unincorporated trade association, organized in August 1933, and having its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The membership of said respondent association is composed of 10 corporations engaged in the manufacture and sale of closure milk bottle caps, and a corporation engaged in the manufacture and sale

of capping machinery, which latter corporation is not named as a respondent herein.

The respondent association operated through its officers who consist of a chairman, a secretary-treasurer-manager, referred to as manager, and an executive committee.

The respondent officers of the respondent association are:

Stanley Dennis, chairman, 1532 Lincoln-Liberty Building, Philadelphia, Pa.

George J. Lincoln, Jr., manager, 1532 Lincoln-Liberty Building, Philadelphia, Pa.

The present respondent members of the executive committee of the respondent association are:

Daniel A. Mackin, president of American Seal-Kap Corporation, 11-05 Forty-Fourth Drive, Long Island City, N. Y.

Harvey M. Smith, president of Smith-Lee Co., Inc., Oneida, N. Y.

Jarvis Williams, Jr., president of Standard Cap & Seal Corporation, 1200 Fullerton Avenue, Chicago, Ill.

PAR. 2. The respondent members, hereinafter so designated, of the respondent association are as follows:

Aluminum Seal Corporation, is a corporation, the place of whose incorporation is not known to the Commission, and having its principal office and place of business in New Kensington, Pa.

American Seal-Kap Corporation, is a corporation, organized and existing under the laws of the State of New York and having its principal office and place of business at 11-05 Forty-Fourth Drive, Long Island City, N. Y.

Cowdrey Products Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts and having its principal office and place of business at 47 Prescott Street, Fitchburg, Mass.

Crown Cork & Seal Co., Inc., is a corporation, organized and existing under the laws of the State of New York and having its principal office and place of business at 4425 Easton Avenue, Baltimore, Md.

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

Sanitary Metal Cap Corporation, is a corporation, organized and existing under the laws of the State of New York and having its principal office and place of business at 1725 East Water Street, Syracuse, N. Y.

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

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

Standard Cap & Seal Corporation, is a corporation, organized and existing under the laws of the State of Virginia and having its principal office and place of business at 1200 Fullerton Avenue, Chicago, Ill.

Universal Seal Cap Corporation, is a corporation, organized and existing under the laws of the State of Connecticut and having its principal office and place of business at 32 Thirty-third Street, Brooklyn, N. Y.

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

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

PAR. 5. Closure milk bottle caps are caps which cover all or part of the pouring lip of a milk bottle. There are several different kinds of closure caps manufactured and sold by the respondent members including paper, aluminum, cellophane, and metal caps. Some of the respondent members manufacture and sell more than one kind. The manufacture of closure caps has increased tremendously during recent years because health ordinances are requiring the use of caps which cover all or a part of the pouring lip of milk bottles. The respondent members, who compose approximately all the manufacturers of closure milk bottle caps in the industry, in the United States, in 1935 manufactured and sold approximately 1,611,000,000 units, the dollar sales of which amounted to approximately \$3,151,200; whereas in

1940 the respondent members manufactured and sold approximately 4,002,000,000 units, the dollar sales of which amounted to approximately \$6,194,900. The sales of said closure caps are made by the respondent members to jobbers and dairies.

PAR. 6. Respondent members 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 milk bottle caps, in the sale thereof to purchasers for shipment in commerce between and among the several States of the United States and in the District of Columbia, except to the extent to which such competition has been restrained, lessened, injured, and suppressed by the understandings, agreements, combinations, and conspiracies hereinafter set forth.

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

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

1. Respondent members have

(a) Agreed to file and in practice have actually filed with the respondent association their price lists for closure milk bottle caps.

(b) Agreed that they would not change or deviate from such filed prices until new and different prices were so filed by them.

(c) Agreed that the respondent association could and it did disseminate prices so filed to all other members of the respondent association.

2. Respondent members have agreed to fix and maintain and have fixed and maintained uniform discounts and other conditions for the sale of closure milk bottle caps sold and distributed by them.

3. Respondent members have agreed to fix and maintain, and have fixed and maintained, with dairies, uniform contract terms which provided for the dairies' actual yearly requirements of closure milk bottle caps to be sold to said dairies and delivered thereto, in ac-

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cordance with their needs, at different times of the year, at a price dependent upon the quantity contracted for.

4. Respondent association from time to time issues an "Annual Requirement Record," and supplements thereto, which classifies and rates dairies, in the United States, using closure milk bottle caps, the seventh edition of the Annual Requirement Record dated November 1, 1940, rates and classifies approximately 7,809 such dairies.

5. Respondent members agreed to abide and did abide by said Annual Requirement Record in determining the prices at which a dairy would be sold; sales were made by the respondent members to dairies at a price based upon the quantity listed for such customer in the Annual Requirement Record and respondent members agreed that sales were not to be made to dairies at a price based upon a greater quantity than the quantity listed for such customer in the Annual Requirement Record.

6. Respondent members agreed to furnish and have furnished the respondent association with copies of all contracts and invoices covering the sales of closure milk bottle caps showing the name of the purchaser, the quantity sold, and the price.

7. Respondent association checked the contracts and invoices covering the sales of closure milk bottle caps, filed by the respondent members, to determine whether the prices therein were in accordance with the filed prices and the Annual Requirement Record.

8. Respondent association contacted respondent manufacturers who were found making sales of closure milk bottle caps at prices different from their filed prices and such respondent manufacturers were called upon by the respondent association to explain such price differences and to make all future sales in accordance with filed prices.

9. Respondents have agreed not to sell and they have not sold closure milk bottle caps to cooperative buying groups.

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

PAR. 9. Each of the said respondents herein acted in concert and cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 10. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among respondents in the sale of closure milk bottle caps in commerce within the

intent and meaning of the Federal Trade Commission Act; of unduly and unlawfully restricting and restraining trade and commerce in said products in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly, in the sale of said products in said commerce; of placing in respondents the power to control and enhance prices; of unreasonably restraining such commerce in said products.

Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 12th day of August, 1941, issued its complaint in this proceeding against the respondents named in the above caption and caused such complaint to be served as required by law, charging the respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequently, the respondents filed their answers to the complaint. Thereafter, hearings were held on November 4, 1942, and March 2, 1943, before John W. Norwood, a trial examiner of the Commission theretofore duly designated by it, at which latter hearing a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, which was read into the record and subsequently executed by counsel for all the respondents except Aluminum Seal Co. (referred to in the complaint as Aluminum Seal Corporation), Crown Cork & Seal Co., Inc., Sanitary Metal Cap Corporation, and Universal Seal Cap Corporation, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such 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 except as to the four respondents named above without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulation (said stipulation having been approved, accepted, and filed); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this

proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Association of Sanitary Milk Bottle Closure Manufacturers, hereinafter for convenience referred to as the respondent association, is an unincorporated trade association, organized in August 1933, and having its principal office and place of business located at 1532 Lincoln-Liberty Building, Philadelphia, Pa. The membership of said respondent association is composed of ten corporations engaged in the manufacture and sale of closure milk bottle caps, and a corporation engaged in the manufacture and sale of capping machinery, which latter corporation is not named as a respondent herein.

The respondent association operates through its officers, who consist of a chairman, a secretary-treasurer-manager, referred to as manager, and an executive committee.

The respondent officers of the respondent association are:

Stanley Dennis, chairman, 1532 Lincoln-Liberty Building, Philadelphia, Pa.

George J. Lincoln, Jr., manager, 1532 Lincoln-Liberty Building, Philadelphia, Pa.

During the year 1938, the respondent members of the executive committee of the respondent association were:

Daniel A. Mackin, president of American Seal-Kap Corporation, 11-05 Forty-fourth Drive, Long Island City, N. Y.

Harvey M. Smith, president of Smith-Lee Co., Inc., Oneida, N. Y.

Jarvis Williams, Jr., president of Standard Cap & Seal Corporation, 1200 Fullerton Avenue, Chicago, Ill.

PAR. 2. In 1938 the respondent members, hereinafter so designated, of the respondent association were as follows:

Aluminum Seal Co., a corporation, organized and existing under the laws of the State of Pennsylvania, having its principal office and place of business in New Kensington, Pa.

American Seal-Kap Corporation, a corporation, organized and existing under the laws of the State of New York, having its principal office and place of business at 11-05 Forty-fourth Drive, Long Island City, N. Y.

Cowdrey Products Co., Inc., a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at 47 Prescott Street, Fitchburg, Mass.

Crown Cork & Seal Co., Inc., a corporation, organized and existing under the laws of the State of New York, having its principal office and place of business at 4425 Eastern Avenue, Baltimore, Md.

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

Sanitary Metal Cap Corporation, a corporation, organized and existing under the laws of the State of New York, having its principal office and place of business at 1725 East Water Street, Syracuse, N. Y.

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

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

Standard Cap & Seal Corporation, a corporation, organized and existing under the laws of the State of Virginia, having its principal office and place of business at 1200 Fullerton Avenue, Chicago, Ill.

Universal Seal Cap Corporation, a corporation, organized and existing under the laws of the State of Connecticut, having its principal office and place of business at 32 Thirty-third Street, Brooklyn, N. Y.

PAR. 3. During the year 1938, respondent members were all respectively manufacturers of closure milk bottle caps, and in the regular course and conduct of their respective businesses sold and distributed closure milk bottle caps manufactured by them to the purchasers thereof; and in connection with said sales shipped and transported, or caused to be shipped and transported, said closure milk bottle caps in commerce to the purchasers thereof located in the various States of the United States other than the States of origin of said shipments, and in the District of Columbia. All respondent members then maintained a regular current of trade in closure milk bottle caps in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Closure milk bottle caps are caps which cover the pouring lip of a milk bottle. There are several different kinds of closure caps manufactured and sold by the respondent members, including paper, cellophane, and metal caps, and, during 1938, aluminum caps. Some of the respondent members manufacture and sell more than one kind. The respondent members, who compose approximately all the manufacturers of closure milk bottle caps in the industry in the United States, in 1935 manufactured and sold approximately 1,611,000,000 units, the dollar sales of which amounted to approximately \$3,151,200;

whereas in 1940 the respondent members manufactured and sold approximately 4,002,000,000 units, the dollar sales of which amounted to approximately \$6,194,900. The sales of said closure caps are made by the respondent members to jobbers and dairies.

PAR. 5. Respondent members in the regular course and conduct of their respective businesses have been and, with the exception of Cowdrey Products Co., Inc., Aluminum Seal Co., Sanitary Metal Cap Corporation, and Universal Seal Cap Corporation, are still in active and substantial competition with one another, and with other manufacturers and sellers of milk bottle caps, in the sale thereof to purchasers for shipment in commerce between and among the several States of the United States and in the District of Columbia, except to the extent that such competition has been restrained, lessened, injured, and suppressed as a result of the acts and practices herein described.

PAR. 6. The manufacture of closure milk bottle caps is considered a different industry from the manufacture of disk milk bottle caps, although some of the respondents herein manufacture both disk and hood or closure caps. The manufacture of closure caps has increased tremendously during recent years, due principally to the fact that more and more health ordinances have required dairies to use caps which cover the pouring lip of milk bottles. The increase in the use of closure caps, however, has not kept pace with the decrease in the use of the disk caps, due to the use of two-quart milk bottles and paper milk containers. Formerly, closure caps were used principally by dairies only on premium grades of milk merely for the purpose of making the bottle more attractive. It has been only within the past few years that health ordinances have been requiring the use of closure caps. When dairies first began the use of closure caps, they merely placed a hood over the top of bottles which were already covered with a disk cap. In recent years some manufacturers have produced caps which do not require the use of disk caps underneath, while other manufacturers have continued to produce closure caps which require the use of both a hood and a disk cap. It is generally understood in the industry that the term "closure" refers to a complete cap, which in some instances means both a hood and a disk cap.

PAR. 7. There are a number of different kinds of closure caps manufactured. Some of the respondents manufacture more than one kind. Four of the respondents, namely American Seal-Kap Corporation, Mid-West Bottle Cap Co., Sealright Co., Inc. and Smith-Lee Co., Inc., manufacture a cap that is generally referred to as a short-skirted cap. In addition to the four companies named, Universal Seal Cap Corporation formerly manufactured a similar type

of cap. Other kinds of closure caps manufactured include aluminum foil sold by Aluminum Seal Co. and Sanitary Metal Cap Corporation, prior to 1941, cellophane sold by Smith-Lee Co., Inc. and National Manufacturing Co., metal caps sold by Crown Cork & Seal Co., and various kinds of full hood paper caps. Sealright Co., Inc., manufactures and sells a cap called "Sealon" cap which extends over and below the pouring lip of the bottle.

PAR. 8. The total shipments of closure caps in units and in dollars throughout practically the entire industry for the years 1934 through 1940 are as follows:

<i>Year</i>	<i>Units in MM</i>	<i>Amount</i>
1934 -----	2,427. 2	\$2, 821, 200
1935 -----	1, 611. 3	3, 151, 200
1936 -----	1, 920. 1	3, 720, 500
1937 -----	2, 448. 4	4, 573, 300
1938 -----	3, 184. 3	5, 733, 600
1939 -----	3, 690. 7	6, 482, 500
1940 -----	4, 002. 0	6, 194, 900

PAR. 9. Practically all of the closure caps sold are special printed caps. The usual method of selling is through jobbers to dairies. However, a number of manufacturers make sales direct to dairies. Most of the manufacturers sell on an annual requirement basis. The dairy contracts with the manufacturer for a certain quantity of a specified kind of cap to be delivered during the year as needed by the dairy. The prices paid by the dairy are dependent generally upon the quantity contracted for. In order that the manufacturers and jobbers may have information as to the number of caps the dairy ordinarily uses, the association publishes an Annual Requirement Record or Rating Book in which each dairy in the United States which uses closure caps is rated according to the number of caps used during the year preceding the issuance of the book. The last edition of the Annual Requirement Record contains the ratings of 7,809 dairies.

PAR. 10. The National Association of Sanitary Milk Bottle Closure Manufacturers, referred to herein as the association, was organized on August 18, 1933, and was the Code Authority for the Sanitary Milk Bottle Closure Industry under the N. R. A. It was voted at the organization meeting to retain George J. Lincoln, Jr., as manager and as secretary of the association. Upon the termination of the N. R. A. in May 1935, the association continued to function as an association.

Findings

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The purposes of the association are set forth in the revised constitution and bylaws as follows:

The National Association of Sanitary Milk Bottle Closure Manufacturers shall be unincorporated and shall not be conducted for profit. Its purpose shall be to undertake, conduct, and supervise such lawful cooperative activities as will promote the best interests and welfare of the Sanitary Milk Bottle Closure Manufacturers.

PAR. 11. The following tabulation shows the average prices received by the different manufacturers of closure caps for each of the years 1934 through 1939, and for the month of October, 1940:

Co. No.	1934	1935	1936	1937	1938	1939	Oct. 1940
	(Price per M)						
1.....	1.272	1.379	1.420	1.385	1.277	1.251	1.001
2.....	2.080	2.047	1.968	1.911	1.856	1.862	1.623
3.....	2.229	2.142	2.088	1.870	1.705	1.687	1.665
4.....	1.428	1.477	1.516	1.551	1.643	1.606	1.473
5.....	1.079	1.083	1.069	1.226	1.538	1.640	1.683
6.....	1.572	1.564	1.715	1.655	1.714	1.714	1.453
7.....	2.392	2.312	2.310	2.267	2.253	2.143	1.453
8.....	2.174	1.994	2.136	1.958	1.967	1.771	---
9.....	---	2.444	2.412	2.313	2.306	2.314	---
10.....	---	---	---	2.154	2.166	2.145	2.804

PAR. 12. Respondents, American Seal-Kap Corporation, Mid West Bottle Cap Co., Smith-Lee Co., Inc., and Sealright Co., Inc. are manufacturers of the so-called short-skirted caps. The Sealright Co., Inc., first made such caps in 1937, and in 1939 began making its so-called "Sealon" cap. In 1940 such "Sealon" caps comprised about 75 percent of the closure caps this company made, and in 1941 about 85 percent. Sales of "Sealon" caps have been on a spot-order basis. Respondent, Universal Seal Cap Corporation, also manufactured short-skirted caps, but ceased the manufacture of such in December 1940. The prices, exclusive of freight, published by the four manufacturers of the short-skirted caps were uniform. For example, in June 1940, such uniform prices for No. 2 size caps were as follows:

Less than 100,000.....	\$2.6
100,000 to less than 250,000.....	2.5
250,000 to less than 500,000.....	2.3
500,000 to less than 1,000,000.....	2.2
1,000,000 to less than 5,000,000.....	2.0
5,000,000 to less than 10,000,000.....	1.8
10,000,000 to less than 15,000,000.....	1.7
15,000,000 and over.....	1.5
In a dairy taking carload (30,000 lbs. at one time).....	1.1

PAR. 13. Respondent, Universal Seal Cap Corporation, on March 20, 1936, informed the association: "We are at present preparing

new price list which when completed will be the same as Kleen Seal (Smith-Lee Co., Inc.) and Sealright (Sealright Co., Inc.). The moment copies are returned to us from the printer we will forward some to you and include our Jobber's Discount Schedule."

PAR. 14. The respondent, Universal Seal Cap Corporation, on March 4, 1937, wrote to the association: "Some time ago you asked me what we would think of a general price increase—I wonder what the discussion and reaction is respecting this point." The association replied: "There are two or three problems in the price structure that we are now faced with. What is the proper differential between regular manila board and color board and, secondly, now that Chicago is going to be opened up for closure caps, what is the proper differential between the No. 2, No. 2 and No. 3 size caps? This matter is having our attention * * *."

PAR. 15. Respondent association on October 7, 1937, wrote to the respondent, Universal Seal Cap Corporation, reminding it that competitor manufacturers were selling white shells and colored shells at the same price "whereas you make a deduction of 15 cents M for the white shells." Universal replied: "I plan to readjust these prices to conform with our competitors * * *."

On October 13, 1937, the association again wrote to the respondent, Universal Seal Cap Corporation: "I think it would be very much to the benefit of the industry if you would comply with the usual custom that is now prevalent and have the same price on white board as colored board."

PAR. 16. Respondent, Universal Seal Cap Corporation, on January 4, 1938, informed the association that should it ship into one of certain "other territories we will use the same price list as now in effect with Kleen Seal (Smith-Lee Co.)."

PAR. 17. The respondent manufacturers entered into agreements and understandings with each other and with the respondent association and its officials in reference to the filing of price lists, invoices, contracts, and other sales data. Prices, discounts, uniform contract terms, dairy ratings and other trade practices and terms of sale were discussed at meetings of the association and many agreements and understandings in relation to such matters were mutually and severally entered into by the respondent members and the association and its officials. In accordance with such agreements and understandings, the respondent members had and observed several identical trade practices and terms of sale; many respondents so had and observed uniform contract terms; certain respondents so had and observed identical cash and/or jobber discounts.

Findings

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PAR. 18. The association publishes a rating book in which each dairy in the United States which uses closure caps is rated according to the number of closure caps used annually. This book is called the "Annual Requirement Record." It has been a practice in the industry for manufacturers to enter into contracts with dairies for a specified number of caps to be delivered during a year. The prices charged the dairies vary with the number of caps contracted for. The first edition of the Annual Requirement Record was published in October 1935. The seventh edition, dated November 1, 1940, rated a total of 7,809 dairies.

PAR. 19. Each member of the association furnishes copies of invoices or other information as to sales to individual dairies to the association. The association maintains a card index for each dairy, and each sale by a manufacturer is entered on the dairy's card. As a dairy's purchases increase or decrease, its rating is changed. The association issues supplements to the rating book from time to time. The books are sold to nonmembers at a price of \$25 each. Respondent members were expected to adhere and in the main did adhere to such ratings in making contracts with dairies.

PAR. 20. The rating book rates the dairies in the following brackets:

Less than	100,000
100,000 to	250,000
250,000 to	500,000
500,000 to	1,000,000
1,000,000 to	2,500,000
2,500,000 to	5,000,000
5,000,000 to	10,000,000
10,000,000 to	40,000,000

and national buyers such as chain dairies or one corporation with several branches.

PAR. 21. The following instructions were issued by the association to the respondent members as to the use of the ratings as set forth in the Annual Requirement Record:

We ask that you adopt the following procedure in the customary situations:

1. When the dairy is listed in the Closure Rating Book, sell it in accordance with your published price for the designated rating.

2. When the dairy is not yet listed in the rating book, request rating from this office, giving us all the information available as to whether the dairy is to hood all of their milk or part of it, and if only part, what grades and your estimate of the quantity required. (Note: if all the milk is to be hooded, we will be influenced in granting the rating from the records that we have in the Disc Bottle Cap Industry.)

3. When the dairy is listed but is selling only a small quantity of special milk in sealed bottles, and decides to sell more of its products in sealed bottles, it is

entitled to a rerating. In such case, this office will do the rerating, being guided with the data we have on Disc caps.

Please note that ratings and reratings are all decided on and issued by the Association office.

If there are any phases of this new Trade Practice that are not clear to you, we urge that you communicate with this office.

PAR. 22. At the time of the second edition of the Annual Requirement Record the association informed the respondent members as follows:

The second edition of the Annual Requirement Record is being mailed today (July 28, 1936). It becomes effective at once.

Beginning in August a list of changes will be issued at the end of each month to everyone who received the books. The plan is to follow these official ratings, and not to make any changes between publications of these monthly lists. This means that contracts are to be taken only in accordance with the dairy's last published rating.

PAR. 23. The respondent manufacturers filed their price lists with the association; this filing of prices was sometimes termed "official filing," by the office of the secretary of the association. The prices so filed were disseminated by the association to the respondent manufacturers. This practice of disseminating such price lists was terminated on December 30, 1940. The respondent manufacturers were expected to abide by their filed or published prices and sell in accordance therewith until new and different prices were so filed by them.

PAR. 24. During the period of the National Recovery Administration the respondent manufacturers filed with the association copies of their invoices and contracts and this practice was continued to the time of these proceedings excepting that respondent, Crown Cork & Seal Co., did not file invoices and the invoices filed by respondent Aluminum Seal Co., contained no reference to prices. Subsequent to January 1941, no price information has been shown on any data filed with the association.

PAR. 25. If any respondent member failed to file his price lists or copies of his invoices or contracts with the association, a representative or official of the association would check with such member and advise him to file such material as soon as possible "so that we may keep our records up to date." A typical communication from the association in checking on such a delinquent member, is in part as follows:

In order that we may do our work thoroughly here in this office, it is necessary that you file with us copies of your contracts. We would, therefore, very much appreciate your forwarding us a list of all your current contracts, together with the dates on which they were entered, as well as the quantity and price for which they were written. We also ask that you forward us copies of all contracts you accept in the future. This will enable us to keep our files and records up to date.

PAR. 26. The association, through its officials, checked the prices shown on each respondent manufacturer's filed invoices and contracts with the respondent manufacturer's filed prices to determine whether the prices in such invoices and contracts were in accordance with the filed prices and the Annual Requirement Record. If a respondent manufacturer's selling prices as shown in his filed invoices and contracts were at variance with his filed prices and the Annual Requirement Record, the association would check with such manufacturer and ask for an explanation for such price differences and remind such respondent manufacturer that all future sales should be made in accordance with the filed prices and the Annual Requirement Record. A typical communication from the association to a respondent manufacturer in this case is in part as follows:

If our work of checking invoices is to be effective so that each member may be competitive with the others, and so that the consumers may make accurate comparisons, it is necessary for Price Lists to be based on the new system.

When the association found the prices on the filed copies of invoices not in conformity with the filed prices, the association would return such copies of invoices "which we believe are in error—will you kindly advise us if this is the fact?"

PAR. 27. The Annual Requirement Record is referred to as respondents' rating book as it contains the official ratings of dairies based on the dairy's annual requirements. Contracts are made by the respondent manufacturers with dairies for annual requirements against which respondent manufacturers make partial shipments. Spot orders are for a definite quantity to be made up and shipped at one time. The ratings are used for contracts only. When a respondent manufacturer enters into such contracts he is expected to, and in the main does, adhere to the dairy ratings as contained in the rating book and such manufacturer is expected to, and in the main does give the dairy customer his filed or published price for that quantity. For example, if a dairy is rated as using a million caps a year, respondent manufacturer is permitted to accept a contract for a million and make partial shipments at the million price against that contract. Respondent manufacturer must not accept a contract, in such circumstances, for more than a million. A spot order basis means the price applies for the quantity of the order shipped at one time and in such cases the rating book does not apply.

PAR. 28. The association maintains a card index for each dairy and each sale by a manufacturer is entered on a dairy's card. As a dairy's purchases increase or decrease, its rating is changed. The association issues supplements to the rating book from time to time. Respondent manufacturers, by agreement, are expected to follow and

generally do follow the instructions of the association that "contracts are to be taken only in accordance with the dairy's last published rating; and if a dairy's rating is changed the association instructs the members to solicit all future orders on the basis of the new rating."

PAR. 29. The respondents classified certain large dairies as national buyers and agreed that national buyers should be sold in accordance with ratings and in accordance with each respondent manufacturer's filed national buyers prices. A memorandum dated April 10, 1936, issued by the association in this case is as follows:

We beg to advise you that the following is the accepted Trade Practice of this Industry in selling National Buyers. It is the unanimous practice of the Industry to sell National Buyers direct at the manufacturers published price. One or two manufacturers in exceptional cases, however, have placed this business through a Jobber, and in such instances the Jobber has been allowed a commission of 5%.

A further memorandum, dated May 18, 1937, issued by the association to its members in connection with the trade practice in selling national buyers is as follows:

Attached you will find a list of National Buyers, all of which at the present time, are rated "S" in the Rating Book.

As you are aware, there are three prices to National Buyers, the price depending on the number of caps each individual plant purchases during a twelve month period. Due to the fact that the "S" rating does not show the price at which caps should be sold according to your present Price List, we have broken the rating into three divisions, as follows:

SY—is a National Buyer using less than 12MM caps in one market. The price of caps to such concerns is \$2.00 according to your present published Price List.

SZ—is a National Buyer using from 12MM caps to 15MM caps in one market. The price of caps to such concerns is \$1.90 according to your present published Price List.

S —is a National Buyer using over 15MM caps in one market. The price of caps to such concerns is \$1.75 according to your present published Price List.

We have gone over all National Buyers listed in the Rating Book and have re-rated them in accordance with the above. The attached list gives you the up-to-date ratings of these concerns and we ask that you sell them accordingly.

PAR. 30. Officials of the association checked the contracts of the respondent members to see that dairies were sold in accordance with their official ratings as set forth in the rating book and also to see that the prices to be charged were in accordance with filed prices. If any variance was found with respect to such ratings and such prices, the association contacted the respondent manufacturer so involved in order that the matter might be corrected or that such manufacturer should be guided in future transactions.

PAR. 31. The association invited the member manufacturers to

complain to the association if another member manufacturer was not abiding by the policies of the association. The constitution of the association contains the following provisions for the filing of complaints with the association:

Section D.—A member, believing himself to have cause to complain of another member in regard to his action in violation of the Association Trade Practices, or other regulations of the Association, shall file such complaint with the manager for investigation, report, and curative action. The complaining member shall receive from the manager in due process a complete statement of the facts and evidence of the case and the disposition made or decision rendered by the manager.

Some members did complain to the association that another member was violating an agreed-upon sales policy, e. g., respondent Cowdrey Products Co., Inc., complained in February 1938, that respondents, Standard Cap & Seal Co., and Smith-Lee Co., had made sales not in conformity with the said companies' published prices. Again the same respondent complained in May, 1938, against respondent, Sealright Co., to which complaint Manager George A. Lincoln of the association replied in part:

* * * I am positive that with the cooperation of Sealright we can correct this situation * * *.

PAR. 32. The association, on July 8, 1937, informed respondents, Mid-West Bottle Cap Co., Sealright Co., Inc., American Seal-Kap Corporation and Smith-Lee Co., Inc.:

The following is the new method for rating of Closures:

"Y"—5 million to 10 million.....	\$2.00 M
"Z"—10 million to 15 million.....	1.90 M
"YZ"—15 million and over.....	1.75 M

Note: 1. All subsidiaries of chain dairies using a total of 10 million or more are rated "Z".

2. Individual companies or branches of chains using 15 million or more are rated "Z".

PAR. 33. The respondents agreed that it was contrary to a trade practice to recognize cooperative buying groups. The association at different times issued memoranda to the respondent members to the effect that the "Independent Dairymen's Council," "The Washington Cooperative Buyers Association" in the State of Washington, and the "Vermont Milk Producers, Inc.," of Burlington, Vt., etc., were cooperative groups and that the respondent members were advised that "Our trade practices do not recognize cooperative buying. Therefore, every dairy should be sold according to its own rating."

PAR. 34. The association, in November 1934, forwarded to the respondent members a "suggested form of standard contract to be used by all members of the industry" and invited comment in reference thereto.

PAR. 35. The following excerpt is from the minutes of meetings of the association of May 24, 1937:

The present contract terms of this Association are that in the event of a price advance the manufacturer gives his contractual customers the same quantity of caps in the succeeding ninety (90) days as the customer purchased in the prior ninety (90) days. This matter was discussed but no decision made, and it was recommended that it be brought up at our next meeting.

PAR. 36. Respondents, Mid-West Bottle Cap Co., Sealright Co., Inc., and Smith-Lee Co., Inc., allowed identical cash discounts of 2% and also allowed identical jobber discounts. American Seal-Kap Corporation allowed jobber discounts but since January 1, 1940, has allowed no cash discounts; respondent, Standard Cap & Seal Co., does not allow any discounts.

On December 21, 1937, respondent, American Seal-Kap Corporation, forwarded the following communication to respondent manager, George J. Lincoln, Jr., of the association:

We recently sold a bill of goods in the Chicago district to a jobber named Otto Hoy, and he has written back complaining about the method we use in figuring discount. It was our understanding that the jobber's discount was to be figured on the net amount of the invoice after deducting freight. But Mr. Hoy mentioned the fact that other manufacturers are not figuring discount in that manner, but are allowing him discount on the original amount of the invoice before deducting freight.

I think it would be a good idea to send a general letter to all manufacturers as to what the proper procedure for discount calculation is.

Manager Lincoln's response to the foregoing is in part as follows:

Replying to your letter of December 21st regarding the method of calculating cash discount, beg to advise that a good deal can be said on both sides of that question.

You realize that if you calculate as you suggest; namely, after freight is deducted, the manufacturer who has the lowest freight thereby allows the larger discount. From a theoretical standpoint, I agree with you 100%, but I will also tell you that from a practical standpoint the way most discounts are figured they are figured on the gross amount of the bill.

What I would suggest doing, with your permission, is to bring this matter up at our next association meeting, and discuss it at that time.

PAR. 37. The association on July 13, 1937, issued a memorandum to the respondent members as follows:

The Kleen-Cap Corporation, and Sealright Co., Inc., have filed with us the following revision in their jobber discount sheet schedule so that it reads as follows:

	Percent
For yearly contracts of less than 100,000.....	15
For yearly contracts of 100,000 to less than 250,000.....	15
For yearly contracts of 250,000 to less than 500,000.....	12
For yearly contracts of 500,000 to less than 1,000,000.....	10
For yearly contracts of 1,000,000 to less than 15,000,000.....	8
For yearly contracts of 15,000,000 and over.....	5

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The above manufacturers have also notified me that they are changing their contract terms to read that in the event of a price advance, the purchaser shall be given the privilege of buying his normal requirements at the current price for a period of two months from the date of the advance, instead of the three month period as at present. (Normal requirements shall be the same number of caps purchased by the purchaser during the two month period prior to the price advance.)

PAR. 38. The association, on January 30, 1939, instructed the respondent members to be prepared to discuss the trade practice of this industry "governing cash discount terms" "at our next meeting."

PAR. 39. Respondent, Cowdrey Products Co., Inc., on May 16, 1940, inquired of the respondent manager of the association, "If your association is planning to call a meeting in the near future to consider a general price increase to be adopted by all manufacturers." The respondent manager replied in part: "* * * we expect to have a closure meeting in the near future, and unquestionably some manufacturers would like to discuss costs." The manager then proceeded to remind the company that this was the manufacturers' individual problem.

PAR. 40. In October 1939, the association announced that:

An analysis of the recent Closure Rating Book gives the following figures:

140 dairies rated "S"
3,834 dairies rated "T" (less than 100,000 yearly)
1,122 dairies rated "U" (100,000 to less than 250,000)
391 dairies rated "V" (250,000 to less than 500,000)
287 dairies rated "W" (500,000 to less than a million)
240 dairies rated "X" (one million to less than five million)
28 dairies rated "Y" (five million to less than ten million)
1 dairy rated "Z"

TOTAL 8,043 Dairies in Closure Rating Book.

You will note that there are listed 140 dairies rated "S" or "National Buyers." The reason why the number is so large is that we have counted each national buyer unit using closures as a separate listing. For example, instead of counting National Dairy and its subsidiaries who use closures as one account, each subsidiary has been counted separately.

PAR. 41. The following are typical excerpts from communications sent by the association to respondent members in reference to sales policies, terms, and conditions in the sale of closure milk bottle caps

(a) In checking over your recent contracts we note that you entered a 250 M contract for the Meadowbrook Farm of Watertown, Massachusetts on October 8, 1935. According to our records this concern has only purchased a total of 132 M caps so far this year. This record would indicate that they are not entitled to a 250 M cap contract. May we therefore ask that you kindly forward substantiating evidence showing that they are users of 250 M caps a year.

(b) Under date of February 19 (1936) we wrote your company regarding the billings on several of your invoices. Under the same date we wrote regarding

several contracts which were not entered in accordance with the ratings as given in the Official Rating Book.

(c) Under date of September 18 (1936) you entered a 105 M cap contract for the Pine Bluff Dairy of Bethany, Connecticut. This concern is rated "T" in the rating book and accordingly is not entitled to buy against a 100 M cap contract. Kindly advise us as to why you felt it necessary to enter their contract on a 100 M basis.

(d) I have just been reviewing about 10 or 12 of your recently filed contracts, and almost all of them you have taken at the one million price. Now in doing this you have given this one million contract to dairies that up to the present moment are using annually not over 200 M caps as they are not bottling over 200 M bottles a year. Now, by no stretch of the imagination do we believe that these accounts are going to increase their business to that extent. The effect of this is that it gives very little meaning to your published price, and also personally I think it is unfair to the man who does really live up to his contract with you.

This may give you some temporary advantage but over the long term I think you yourself will be quite embarrassed by this discrimination. (October 4, 1937.)

(e) We would like to call your attention to your contract with the W. A. Ross Dairy of Belmont, Massachusetts. You are selling them on the one million basis whereas this dairy at no time in the past three years has ever used a million caps. As a matter of fact their annual requirements run from 660 M.

We, therefore, ask if you cannot put this account on the proper basis in accordance with your own published price.

(f) In the past few months I have talked with you at various occasions regarding sales or quotations made by your company that are not in accordance with your published prices, and your answer invariably is that yes that is a fact and that you are straightening out this situation. During all this time your competitors have been at disadvantage because you have not been selling in accordance with your announced price and trade practices. I feel that the matter has now come to such a head that you will either have to sell in accordance with your own published price or announce that you do not intend to do so.

(g) We have again checked the purchasers of the subject concerns, on both closure and disc caps, and find that they are entitled to a "W" (500 M) rating on closures due to the fact that they are now going to use closure caps exclusively.

We will grant this rating in the next edition of the Supplement as of February 1, 1940.

(h) We have checked the shipments of the above dairy as requested in your letter of February 26 (1940) and find that they amounted to 100M caps during the twelve months.

From the above record we feel that the subject concern is correctly listed as a "U" buyer and therefore should be sold on that basis.

(i) In further reply to your letter (of October 9, 1940) about the Linden Dairy Farms, Linden, New Jersey, I beg to advise that we are not going to grant any change of rating to this account as their purchases do not warrant it, and according to the rules laid down for us by the Association, we cannot anticipate their purchases and can only grant a rating after the record warrants it.

(j) Replying to your question as to whether or not National Buyers received the minimum price on spot orders, beg to advise that from a practical standpoint I should say that they do. However, I do think it is also a fact that manufac-

turers are very careful to secure contracts from the branches that they are serving.

PAR. 42. The Commission finds from the acts and practices hereinabove described and the circumstances herein set forth that the respondents entered into agreements and combinations to file with respondent association price lists for closure milk bottle caps and to abide by such filed prices until new and different prices were filed by them (which filed prices were disseminated to all members of the respondent association), and to fix and maintain certain uniform discounts on the part of certain respondents, uniform contract terms, uniform trade practices and other conditions for the sale and distribution in commerce of closure milk bottle caps. Pursuant to said agreements and combinations, the respondent association and its representatives have rated and classified over 7,800 dairies located throughout the United States according to the number of closure caps used annually. Said ratings and classifications have been distributed among the respondent manufacturers, who agreed to adhere and did adhere to said ratings in determining contract prices at which dairies should be sold. To make more effective the operation and carrying out of said agreements and combinations, respondent manufacturers filed with the respondent association price lists, copies of invoices containing names of purchasers, quantities purchased, and prices therefor, and copies of contracts and conditions of sale. These data filed by the respondent manufacturers were checked by the representatives of the respondent association in accordance with the policy and practice of said association to police the industry and thus to determine whether the respondent manufacturers observed and carried out the aforementioned agreements and combinations. As a result of the effectiveness of the operations of said agreements and combinations, competition among the respondent manufacturers in the sale of closure milk bottle caps in commerce was restrained and prevented.

PAR. 43. As hereinbefore stated, respondents, Aluminum Seal Co., Crown Cork & Seal Co., Inc., Sanitary Metal Cap Corporation, and Universal Seal Cap Corporation, did not join in the stipulation as to the facts which was executed by the other respondents herein. Aluminum Seal Co. formerly manufactured so-called closure caps from aluminum foil; however, the company is not now engaged in the manufacture of these aluminum closure caps. These aluminum caps were a distinctive kind of cap and differed from the caps made by the other respondents. Crown Cork & Seal Co., Inc., never furnished invoices to the association; its caps are also a distinctive kind of cap and not similar to the caps manufactured by the other respondents. Universal Seal Cap Corporation and Sanitary Metal Cap Corporation, are both in

bankruptcy and have ceased doing business as manufacturers of closure caps.

CONCLUSION

The understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as herein found, are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented competition between and among respondents in the sale of closure milk bottle caps within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in closure milk bottle caps; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into between counsel representing all the respondents except Aluminum Seal Co., Crown Cork & Seal Co., Inc., Sanitary Metal Cap Corporation, and Universal Seal Cap Corporation, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents joining in said stipulation findings as to the facts and conclusion based thereon, and an order disposing of the proceeding; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents, National Association of Sanitary Milk Bottle Closure Manufacturers; Stanley Dennis as chairman and George J. Lincoln, Jr., as manager of said association; Daniel A. Mackin, Harvey M. Smith, and Jarvis Williams, Jr., as members of the executive committee of said association; and American Seal-Kap Corporation, Cowdrey Products Co., Inc., Mid-West Bottle Cap Co., Sealright Co., Inc., Smith-Lee Co., Inc., and Standard Cap & Seal Corporation, and respondents' agents, representatives, and employees, in connection with the offering for sale, and distribution of closure milk bottle caps in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into or carrying out, or aiding or abetting the carrying out of any agreement, understanding, combination, conspiracy, or concert of action between or among any two or more of said respondents, with

or without the cooperation of others not parties hereto, for the purpose or with the capacity, tendency, or effect of restricting, restraining, monopolizing, or eliminating competition in the sale in commerce of said closure milk bottle caps, and from doing any of the following acts or things pursuant thereto:

1. Fixing or maintaining uniform discounts, contract terms, or other conditions for the sale of closure milk bottle caps.

2. Fixing or maintaining quantity prices or price differentials on quantity purchases based upon quantities purchased from all sources as fixed or determined by dairy rating books or other similar devices.

3. Consulting or communicating in any manner with the respondent association, or any of its officials, for the purpose of obtaining consent or agreement relative to prices at which closure milk bottle caps shall be sold.

4. Limiting the quantity of closure milk bottle caps which jobber customers or dairy customers may contract for or purchase from respondent manufacturers.

5. Preventing the sale of closure milk bottle caps to cooperative buying agencies and confining the sale of such products exclusively to jobbers and dairy consumers.

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

7. Filing with the respondent association or with any other medium or central agency, price lists or other information showing current or future prices, terms, or conditions of sale for closure milk bottle caps, with the agreement or understanding, or upon the condition, that such price lists or other information shall not be changed or deviated from until new and different price lists or other information showing current or future prices, terms, or conditions of sale are so filed by respondent manufacturers.

8. Compiling, publishing, or distributing an "Annual Requirement Record" or other similar device for the use of respondent manufacturers, which rates or classifies dairies according to the total number of closure milk bottle caps used annually; provided, however, that nothing herein contained shall be construed to prevent respondents or any of them, from compiling, publishing, or distributing for the use of respondent manufacturers and others, such information as to the annual closure milk bottle cap requirements of respective dairies as may enable each manufacturer to check or determine the propriety of any order or contract which may be received by it, if and when such

information is not used for the purpose or with the effect of establishing corresponding ratings or classifications of dairies, or corresponding price differentials, that are uniform among respondents.

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

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.

It is further ordered, That this proceeding be, and it hereby is, dismissed as to respondents, Aluminum Seal Co., Crown Cork & Seal Co., Inc., Sanitary Metal Cap Corporation, and Universal Seal Cap Corporation.

IN THE MATTER OF

FRANK B. MORAN, DOING BUSINESS AS MAGNETIC RAY
COMPANY AND MAGNETIC RAY CLINIC¹COMPLAINT, MODIFIED FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4164. Complaint, June 19, 1940—Decision, June 8, 1943*

Where an individual engaged in the manufacture and interstate sale and distribution of his "Magnetic Ray" electrical device, which was a low-frequency coreless solenoid producing a magnetic field of the same frequency as that of the electric circuit into which it was plugged; producing heat approximately equal to a 40-watt bulb, and claimed efficiency of which, in treatment of various disorders and diseases, was entirely dependent upon the magnetic field produced thereby; by means of newspapers, periodicals, circulars, leaflets, pamphlets and other advertising media—

- (a) Represented that the use of said device constituted a cure or remedy and a competent and effective treatment for numerous diseases and disorders, including rheumatism, eczema, diabetes, Bright's disease, arthritis, asthma, indigestion, constipation, hemorrhoids, varicose veins, ulcers, goiter, high blood pressure, paralysis, headaches, neuralgia, insomnia, neuritis, sciatica, anemia, catarrh, bronchitis, heart diseases, obesity, low blood pressure, epilepsy, lumbago, impotence, menstrual troubles, catarrhal deafness, colds, sinus troubles, tuberculosis, and tumors; and
- (b) Represented that said "Magnetic Ray" exceeded electricity, light, heat, X-rays, radium rays, violet and ultra-violet rays in therapeutic value, and that the use of his said device stimulated a normal and healthful functioning of the various organs and glands of the body, equalized the circulation, relieving congestion or lack of blood supply in any part of the body, produced marked relaxation, relieved pain and muscular and nervous tension, and stimulated rapid increase in the oxidation and elimination of accumulated poisons, thereby removing the condition of autotoxemia;

The facts being that the device in question, or the magnetic field produced thereby, had no effect upon the body or any living organism, or therapeutic value in the treatment of any disease or disorder, did not exceed electricity or the other named rays in therapeutic value, and did not accomplish the other results claimed;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false representations were true, and of inducing it, because of said belief, to purchase his said device:

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

As respects the therapeutic value of a so-called "magnetic ray" electrical device, which was a low-frequency coreless solenoid producing a magnetic field of the same frequency as that of the electric circuit into which it was

¹ Findings as to the facts and order to cease and desist issued by the Commission on December 23, 1941 (not published), were vacated and set aside and case was reopened for taking of testimony on May 27, 1942. (See 34 F. T. C. 1538.)