

IN THE MATTER OF

MODERN MARKETING SERVICE, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF JUNE 19, 1936

Docket 3783. Complaint, May 6, 1939—Decision, Sept. 8, 1943

Where a purchasing corporation, owned by wholesale grocers in various parts of the United States, and which, following its organization—

- (1) Secured from one of its stockholders exclusive license to the latter's "Red and White" brand and label and to enter into franchise agreements whereby jobber licensees were granted exclusive right to sell "Red and White" goods, were required to purchase annually specified amount thereof, because stockholders of the corporation, and entered into arrangements with said wholesalers' "Red and White" retail grocer customers, who were authorized and obligated to sell and feature the "Red and White" goods; and
- (2) Acted as purchasing agent for its said jobber licensees, keeping them currently advised as to market conditions, etc., and rendering valuable advertising services including advertisements in periodicals of national circulation, the supplying of newspaper matrix service, and point of sale advertising such as handbills, window display bulletins, etc., and also the supplying of its "store development" or "field" service directed to promoting affiliation of retail grocery stores with the jobber licensees and assisting latter with respect to appearance, etc., of the "Red and White" retail stores—
 - (a) Received and accepted from sellers brokerage or commission on orders thus placed through it for its said stockholder buyers and licensees, as well as on their orders independently placed; and transmitted it to them in dividends and services, as aforesaid; and
 - (b) Received and accepted, and transmitted in dividends or otherwise, annual payments of \$30,000 made to it by a corporation subsequently created by certain of its former officers and key employees and by it licensed exclusively to carry on aforesaid purchasing and other activities; and

Where, to avoid inhibitions of the Robinson-Patman Price Discrimination Act, a corporation organized following enactment thereof and officered and owned by four individuals, former officers and key employees of aforesaid buyer-owned corporation, in conjunction with the moving spirit in the original organization thereof, and licensed to carry on exclusively the activities above described (excepting only the "store development" or "field" service, which said buyer-owned corporation continued to carry on—

- (c) Received and accepted from sellers brokerage or commission on orders thereafter placed through it by the stockholder buyers and licensees of aforesaid buyer-owned corporation, as well as on orders placed by them directly with the sellers, and transmitted same to such stockholder-buyers and licensees in the various services above described, and in the aforesaid \$30,000 paid annually to said buyer-owned corporation in consideration of its exclusive license therefrom; and

Where six corporations, wholesale grocers and stockholders in said buyer-owned corporation, along with other wholesale grocer and jobber licensee stockholders therein—

- (d) Received and accepted in the form of dividends and services, as hereinbefore indicated, from said buyer-owned corporation and from its aforesaid successor in most of former's purchasing and servicing activities, brokerage or commission on orders placed by said buyers through said purchasing agencies, and independently brokerage or commission on their purchases from numerous manufacturers and packers throughout the country; and Where some seven corporations, engaged in the sale throughout the country of foodstuffs and allied products, and typical members of a large class of manufacturers and processors similarly engaged—
- (e) Transmitted and paid to said buyer-owned corporation and its said corporate successor, brokerage fees or commission both upon the orders placed as aforesaid through said corporations and upon orders placed directly by said stockholders:

Held, That such transmission and payment of brokerage fees or commissions, and receipt and acceptance thereof as hereinabove set forth, constituted violations of Subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

As respects the activities of a corporation organized, following enactment of the Robinson-Patman Act, by four former officers and key employees of a buyer-owned corporation which had theretofore received and transmitted, in the form of dividends and services, brokerage or commission upon orders of its wholesale grocers and jobbers licensee stockholders with numerous manufacturers and sellers throughout the country: the conclusion was inescapable that said second concern was the agent not of the seller-manufacturers and packers but of the former corporation and its buyer-stockholders, where it appeared that later or second concern continued to carry on the purchasing and service activities of the former under a contract licensing it exclusively to carry on such activities under the "Red and White" brand and label theretofore controlled by said buyer corporation, through which contract rights said buyer-owned corporation benefitted by the payment of an annual license fee of \$30,000 and valuable market and advertising services, and termination of which contract rights would deprive the latter or second corporation of its source of income and virtually end its existence as a going business concern; so that contention that latter represented nothing more than a private business venture on the part of the five stockholders and that their activities constituted a legitimate brokerage business representing only the sellers with whom it had brokerage agreements, could not be accepted, its activities being primarily in the interest of said buyer-owned corporation and benefits accruing to the sellers being of an incidental nature.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. John T. Haslett and *Mr. John Darsey* for the Commission.

Mr. T. Hardy Todd, of Washington, D. C., and *Mr. John W. Ogren* and *Nicholson, Snyder, Chadwell & Fagerburg*, of Chicago, Ill., for Modern Marketing Service, Inc.

Dudley, Stowe & Sawyer, of Buffalo, N. Y., for Diamond Match Co.

Stearns & McBride, of Chicago, Ill., for Morton Salt Co.

Mr. William D. McKenzie and *Mr. James M. Best*, of Chicago, Ill., for Quaker Oats Co.

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Mr. Lawrence B. Murdock, of St. Louis, Mo., for Ralston-Purina Co.
Rosen, Kammer, Wolff & Farrar, of New Orleans, La., for Wesson Oil & Snowdrift Sales Co.

Fulbright, Crooker, Freeman & White, of Washington, D. C., for Standard Rice Co.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for The Procter & Gamble Distributing Co.

Mr. Seward R. Moore, of Minneapolis, Minn., for Nash-Finch Co.

O'Brian, Hellings, Ulsh & Morey, of Buffalo, N. Y., for S. M. Flickinger Co., Inc., Julliard Cockcroft Corp., Laurans Brothers, Inc., West Coast Grocery Co. and H. O. Wooten Grocery Co., and along with

Mr. T. Hardy Todd, of Washington, D. C., for Red and White Corp.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c), section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Modern Marketing Service, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 222 West North Bank Drive, Chicago, Ill.

PAR. 2. Respondent, Red and White Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 222 West North Bank Drive, Chicago, Ill.

PAR. 3. Respondent, Diamond Match Company, is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 30 Church Street, New York, N. Y.

Respondent, Morton Salt Co., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 208 West Washington Street, Chicago, Ill.

Respondent, Quaker Oats Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 141 West Jackson Street, Chicago, Ill.

Respondent, Ralston-Purina Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with

its principal office and place of business located at 835 South Eighth Street, St. Louis, Mo.

Respondent, Wesson Oil and Snowdrift Sales Co., is a wholly owned subsidiary of the Wesson Oil & Snowdrift Co., Inc., a corporation, organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 1701 Canal Bank Building, New Orleans, La.

Respondent, Standard Rice Co., is a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Butler and Spring Streets, Houston, Tex.

Respondent, Procter & Gamble Co., is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at Gwynen Building, Cincinnati, Ohio.

The respondents in this paragraph named are hereinafter designated and referred to as "seller respondents." Said seller respondents and each of them are and since June 19, 1936, have been, engaged in the business of selling commodities, particularly foodstuffs, groceries, and allied products, to numerous buyers, including the buyer respondents hereinafter set out. Said seller respondents are fairly typical and representative members of a large group or class of manufacturers, processors and producers engaged in the common practice of selling a substantial portion of their commodities to buyers who purchase through respondent, Modern Marketing Service, Inc., as intermediary for buyers. Said group or class of sellers is comprised of a large number of such manufacturers, processors and producers, too numerous to be individually named herein as respondents or to be brought before the Commission in this proceeding without manifest inconvenience and delay.

PAR. 4. Respondent, S. M. Flickinger Co., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at Bailey Avenue and Clinton Street, Buffalo, N. Y.

Respondent, Julliard Cockcroft Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business at 170 West Lake Avenue, Watsonville, Calif.

Respondent, Laurans Brothers, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business at 5 Pearl Street, New Bedford, Mass.

Respondent, West Coast Grocery Co., is a corporation, organized and existing under and by virtue of the laws of the State of Washing-

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ton, with its principal office and place of business located at 1732 Pacific Avenue, Tacoma, Wash.

Respondent, H. O. Wooten Grocery Co., is a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located at the corner of First and Walnut Streets, Abilene, Tex.

Respondent, Nash-Finch Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 430 Oak Grove, Minneapolis, Minn.

The respondents in this paragraph named are hereinafter designated and referred to as "buyer respondents." Each of the said buyer respondents is engaged in the wholesale grocery business and is a stockholder of the respondent, Red and White Corporation. Said buyer respondents are named as parties respondent both individually and as representative of a group or class of a large number of wholesale grocery concerns, each of whom is likewise a stockholder in the Red and White Corporation.

PAR. 5. Respondent, Modern Marketing Service, Inc., is now and since the time of its incorporation and organization on or about October 1, 1936, has been engaged in the business of providing purchasing and other services for the buyer respondents named in paragraph 4 hereof.

In the course and conduct of its business, respondent, Modern Marketing Service, Inc., receives orders from the buyer respondents to purchase commodities for the buyer respondents named herein and transmits such orders as agent for said buyer respondents to the seller respondents and other sellers. As a result of the transmission of said orders by said buyers to respondent, Modern Marketing Service, Inc., the execution of same by said respondent, Modern Marketing Service, Inc., for and on behalf of said buyers, and the acceptance of said orders by said seller respondents and other sellers, goods, wares and merchandise, particularly foodstuffs, are by each of the said seller respondents and other sellers shipped from the State in which such merchandise is located at the time of sale into and through the various other States of the United States, directly, to each of said buyer respondents.

In the course of the buying and selling transactions hereinabove referred to resulting in the delivery of products from said seller respondents to the buyer respondents, said seller respondents, since June 19, 1936, have transmitted, paid and delivered, and do transmit, pay and deliver to the respondent, Modern Marketing Service, Inc., so-called brokerage fees or commissions, the same being percentages of the quoted sales prices agreed upon by the said seller respondents and the

respondent, Modern Marketing Service, Inc. Respondent, Modern Marketing Service, Inc., since June 19, 1936, has received and accepted and is receiving and accepting such so-called brokerage fees or commissions upon the purchases of the buyer respondents.

Approximately 98 percent of the gross income of respondent, Modern Marketing Service, Inc., is derived from so-called brokerage fees and commissions paid by the seller respondents and other sellers to the respondent, Modern Marketing Service, Inc., upon the purchases of the buyer respondents and other buyers in the manner and form hereinabove described.

Said respondent, Modern Marketing Service, Inc., was organized and incorporated by former officers of the respondent, Red and White Corporation, who resigned their positions as such officers with the respondent, Red and White Corporation, to form the respondent, Modern Marketing Service, Inc., for the purpose of having Modern Marketing Service, Inc., to act as the purchasing agent for the buyer respondents.

PAR. 6. Respondent, Red and White Corporation, was organized on or about December 27, 1927, and engaged in the business of providing purchasing and other services for the buyer respondents until October 1, 1936. Respondent, Red and White Corporation, in addition to providing the aforesaid services, furnished store front services through the buyer respondents for various customers of such buyer respondents as hereinafter set out.

In the course and conduct of its business, as aforesaid, prior to October 1, 1936, said respondent, Red and White Corporation, received orders to purchase commodities, particularly groceries and foodstuffs, from its various stockholders, consisting of wholesale grocery concerns, as aforesaid, a representative number of which are the buyer respondents, and transmitted such orders as the agent of said buyer respondents to the aforesaid seller respondents. As a result of such transmission of said orders, by such buyer respondents to respondent, Red and White Corporation, the execution of same by said respondent, Red and White Corporation, for and on behalf of said buyer respondents, and the acceptance of said orders by said seller respondents and other sellers, goods, wares and merchandise, particularly foodstuffs, were, by the above-named seller respondents, and other sellers, shipped from the State in which such merchandise was located at the time of sale, into and through the various States of the United States, directly, to said buyer respondents in the States of their respective locations as aforesaid.

The service furnished by the respondent, Red and White Corporation, other than the purchasing service hereinbefore described, are as follows:

The respondent, Red and White Corporation, furnished to the buyer respondents a service which consisted of keeping its stockholders advised, by bulletins and otherwise, of market conditions and prices of commodities offered for sale by the seller respondents and other sellers.

Respondent, Red and White Corporation, furnished to the buyer respondents a service which consisted of the preparation and distribution by the respondent, Red and White Corporation, of window display banners, placards, a matrix service for newspapers, weekly hand-bills under the title of "News Flashes" and also a monthly magazine published under the title of "Hy-Lites."

In addition to the above-described services, said respondent, Red and White Corporation pursued a practice and policy of serving the buyer respondents by attempting to stimulate and increase the sales of said buyer respondents by causing to be organized various local groups of retail grocery stores in approximately 35 States of the United States who became affiliated with and who cooperated with said respondent, Red and White Corporation; by using respondent's name "Red and White" on their stores in connection with the sale and distribution of foodstuffs and other commodities purchased from buyer respondents; by using certain specified services furnished by the respondent, Red and White Corporation and by instructing and assisting the said retailers in the use of said combined services, uniform display posters, suggested store arrangements and various sundry centralized sales plans and various other ways.

The cost of the services, as performed by the respondent, Red and White Corporation prior to October 1, 1936, in the manner hereinabove described, was defrayed from funds derived from so-called brokerage fees paid by the seller respondents and other sellers upon purchases of the buyer respondents.

PAR. 7. On or about October 1, 1936, said respondent, Red and White Corporation entered into a contract with the respondent, Modern Marketing Service, Inc., whereby the brands, trade marks and labels owned or controlled by the respondent, Red and White Corporation were leased to the respondent, Modern Marketing Service, Inc. Pertinent provisions of said contract are as follows:

LICENSE AGREEMENT .

THIS AGREEMENT made in duplicate October 1, 1936, by and between RED & WHITE CORPORATION, a corporation organized and existing under and by virtue of the laws of the state of New York, and having its principal office in the city of Buffalo, New York, (hereinafter referred to as the Licensor), party of the first part, and MODERN MARKETING SERVICE, INC., a corporation organized and existing under and by virtue of the laws of the state of Illinois

and having its principal office in the city of Chicago, Illinois, (hereinafter referred to as the Licensee) party of the second part.

WITNESSETH, That

WHEREAS, the Licensor owns or controls as Licensee various brands, trade names and trade marks known and used in the grocery business throughout the United States, and the good will associated therewith, which brands, trade names and trade marks, together with specification of the Licensor's ownership, or control thereof, are set forth in Schedule A annexed hereto; and

WHEREAS, said ownership and control of said brands, trade names and trade marks are subject to various existing contracts between the Licensor and its stockholders and/or others; and

WHEREAS, the licensee is engaged in the general grocery brokerage business throughout the United States and desires the right, privilege and authority to use and deal in said brands, trade names and trade marks subject to said existing contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sum of One Dollar (\$1.00) by each party to the other in hand paid, receipt whereof is hereby acknowledged, and other good and valuable considerations, the parties hereto hereby mutually covenant and agree as follows:

1. The Licensee for the period of one year from the date hereof shall have the exclusive right, privilege and authority throughout the United States to use and deal in, with jobbers or wholesalers, the brands, trade names and trade marks which are owned or controlled by the Licensor as aforesaid and which are set forth in a certain schedule marked Schedule A, annexed hereto and made a part hereof, and to sublicense manufacturers to pack, ship and sell to jobbers or wholesalers goods and merchandise bearing said brands, trade names and trade marks, subject, however, to any and all existing contracts between the Licensor and its stockholders and/or others relative to said brands, trade names and trade marks.

2. In consideration thereof, the Licensee has paid to the Licensor the sum of Thirty Thousand Dollars (\$30,000.00), receipt whereof is hereby acknowledged.

3. While this agreement shall be in effect, the Licensor shall not license any other person, firm, association or corporation similarly to use or deal in said brands, trade names and trade marks, or similarly to sublicense thereunder; provided, however, that nothing in this agreement shall prohibit the Licensor from selling its capital stock or from acquiring new stockholders, and all benefits, reservations, rights and privileges inuring to the benefit of or belonging to the present stockholders of the Licensor, in or by the terms of this agreement, shall also at all times inure to the benefit of and belong to such new stockholders.

4. At any time, for distribution only in the territories allotted to them severally in their respective existing contracts with Red & White Corporation:

- (a) Stockholders of the Licensor may affix said brands, trade names and trade marks to unbranded seasonal canned goods purchased by them from or through sources other than the Licensee, and to goods manufactured by themselves, subject, however, to all terms, conditions and limitations contained in said existing contracts; and

- (b) H. A. Marr Grocery Company, one of the stockholders of the Licensor, may also affix said brands, trade names and trade marks to unbranded manufactured goods purchased by it from or through sources other than the Licensee.

5. The Licensee, at all times, shall furnish labels bearing said brands, trade names and trade marks to stockholders of the Licensor upon their request, in

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accordance with paragraph 4 hereinabove, and at cost, plus a handling charge of 15%.

6. The Licensee shall require that said brands, trade names or trade marks be used only on products of equal quality to those specified in Schedule A annexed hereto.

7. The license herein granted shall extend for the period of one year from October 1, 1938, and shall be renewed for successive yearly periods upon terms and conditions to be agreed upon mutually, unless either party shall, before September 1 of any year, give written notice to the President of the other party of its intention to terminate the license at the end of such yearly period.

Pursuant to its obligation under the hereinabove described lease the respondent, Modern Marketing Service, Inc., has performed the same services for and on behalf of the buyer respondents which were performed for the buyer respondents by the respondent, Red and White Corporation, prior to October 1, except as follows:

Respondent, Red and White Corporation, since October 1, 1936, has continued to perform the store front services for the buyer respondents which it performed for said buyer respondents prior to October 1, 1936.

The cost of the store front services as performed by the respondent, Red and White Corporation subsequent to October 1, 1936, is defrayed from the \$30,000 income received by the respondent, Red and White Corporation pursuant to the aforesaid leasing agreement which \$30,000 has its origin in the so-called brokerage fees and commissions received by the respondent, Modern Marketing Service, Inc., upon purchases of the buyer respondents.

The cost of the services, as hereinbefore described, as performed by the respondent, Modern Marketing Service, Inc., pursuant to its obligation under the hereinabove described lease, is now and has been paid from funds derived from so-called brokerage fees paid by the seller respondents and other sellers to the respondent, Modern Marketing Service, Inc., upon the purchases of the buyer respondents.

PAR. 8. Upon the execution of the aforesaid contract, said respondent, Modern Marketing Service, Inc., took over the existing lease for the premises occupied by Red and White Corporation and notified all seller respondents who had previously dealt with the respondent, Red and White Corporation that said Modern Marketing Service, Inc., had become the lessee of the brands, trade marks and labels formerly owned and controlled by the respondent, Red and White Corporation and desired to be appointed as broker for such sellers' products. When directed or requested by the respondent, Modern Marketing Service, Inc., such sellers caused products purchased by the buyer respondents through the respondent, Modern Marketing Service, Inc., as inter-

mediary for said buyer respondents, to be labeled with the brands and trade marks of which Modern Marketing Service, Inc., is the lessee.

PAR. 9. In all of the buying and selling transactions hereinabove referred to, the so-called brokerage fees or commissions are paid and transmitted by the seller respondents and other sellers to and accepted and received by the respondent, Modern Marketing Service, Inc., upon the purchases of the buyer respondents, while the said respondent, Modern Marketing Service, Inc., is acting in fact for and on behalf of buyer respondents, for which said so-called brokerage fees or commissions no services whatsoever have been rendered or are now being rendered in connection with such purchases for or to said seller respondents and other sellers by respondent, Modern Marketing Service, Inc.

The so-called brokerage fees and commissions paid by the seller respondents and other sellers to respondent, Modern Marketing Service, Inc., as intermediary, upon the purchases of the buyer respondents are transmitted to and accepted and received by the buyer respondents in the form of services performed by the respondents, Modern Marketing Service, Inc., and Red and White Corporation for and on behalf of said buyer respondents.

PAR. 10. The transmission and payment of said so-called brokerage fees or commissions by the seller respondents and others to the respondent, Modern Marketing Service, Inc., upon the purchases of buyer respondents, and the receipt and acceptance thereof by the respondents, Modern Marketing Service, Inc., Red and White Corporation and the buyer respondents, in the manner and under the circumstances hereinabove set forth, is in violation of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by section 1 of the act of Congress entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on May 6, 1939, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with the violation of the provisions of paragraph (c) of section 2 of the

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said act, as amended. After the issuance of the complaint and the filing by respondents of their answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission and in opposition thereto by the attorneys for certain of the respondents, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answers, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Modern Marketing Service, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 222 West North Bank Drive, Chicago, Ill.

PAR. 2. Respondent, Red and White Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 180 Niagara Frontier Food Terminal, Buffalo, N. Y.

PAR. 3. Respondent, The Diamond Match Co., (referred to in the complaint as Diamond Match Co.), is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 30 Church Street, New York, N. Y.

Respondent, Morton Salt Co., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 208 West Washington Street, Chicago, Ill.

Respondent, The Quaker Oats Co. (referred to in the complaint as Quaker Oats Co.), is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 141 West Jackson Boulevard, Chicago, Ill.

Respondent, Ralston Purina Co. (referred to in the complaint as Ralston-Purina Co.), is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 835 South Eighth Street, St. Louis, Mo.

Respondent, Wesson Oil & Snowdrift Sales Co. (referred to in the complaint as Wesson Oil and Snowdrift Sales Co.), is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, and is a wholly owned subsidiary of the Wesson Oil & Snowdrift Co., Inc (referred to in the complaint as Wesson Oil and Snowdrift Co., Inc.), a corporation, organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 1701 Canal Bank Building, New Orleans, La.

Respondent, Standard Rice Co., Inc. (referred to in the complaint as Standard Rice Co.), is a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Butler and Spring Streets, Houston, Tex.

Respondent, The Procter & Gamble Distributing Co. (referred to in the complaint as Procter & Gamble), is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in the Gwynne Building, Cincinnati, Ohio.

The respondents named in this paragraph are hereinafter referred to as the "seller respondents." They are now and since June 19, 1936, have been engaged in the business of selling various commodities, particularly foodstuffs and allied products, to numerous buyers, including the buyer respondents hereinafter designated. Such seller respondents are fairly typical and representative members of a large group or class of manufacturers, processors, and producers engaged in selling a substantial portion of their products to the buyer respondents. Such group or class of sellers comprises a large number of such manufacturers, processors, and producers, too numerous to be individually joined in this proceeding as respondents.

PAR. 4. Respondent, S. M. Flickinger Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at Bailey Avenue and Clinton Street, Buffalo, N. Y.

Respondent, Julliard Cockcroft Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located at 170 West Lake Avenue, Watsonville, Calif.

Respondent, Laurans Brothers, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 5 Pearl Street, New Bedford, Mass.

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Respondent, West Coast Grocery Co., is a corporation, organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1732 Pacific Avenue, Tacoma, Wash.

Respondent, H. O. Wooten Grocery Co., is a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located at the corner of First and Walnut Streets, Abilene, Tex.

Respondent, Nash-Finch Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 430 Oak Grove Street, Minneapolis, Minn.

The respondents named in this paragraph are hereinafter referred to as the "buyer respondents." Each of these buyer respondents is engaged in the wholesale grocery business and is a stockholder of respondent, Red and White Corporation. Such buyer respondents are fairly typical and representative members of a large group or class of wholesale grocery concerns, each of whom is a stockholder of respondent, Red and White Corporation.

PAR. 5. In the course and conduct of their business the seller respondents cause and since June 19, 1936, have caused their respective products, when sold to the buyer respondents as hereinafter set forth, to be transported from various States of the United States to such purchasers at their respective locations in various States of the United States other than those in which such shipments originate. There is and since June 19, 1936, has been a current of trade between the seller respondents and the buyer respondents in such products in commerce among and between the various States of the United States.

PAR. 6. Respondent, Red and White Corporation, was organized in December 1927, by a group of wholesale grocers. Originally the authorized capital of the Corporation was \$50,000, representing 500 shares of a par value of \$100 each, but subsequently the capital was increased to \$100,000, representing 1,000 shares of the same par value. The entire capital stock of the Corporation has at all times been owned by wholesale grocers exclusively. There are now some 40-odd stockholders, among whom are the buyer respondents named in this proceeding. These wholesale grocery concerns are located at various points throughout the United States.

PAR. 7. The principal incorporator of the Corporation was S. M. Flickinger of Buffalo, N. Y., who had for many years been engaged in the wholesale grocery business in Buffalo and whose business had enjoyed marked success. Mr. Flickinger's business concern was the S. M. Flickinger Company, Inc., one of the buyer respondents, of which

Mr. Flickinger was president. In connection with and as a part of the operation of his business, Mr. Flickinger had originated and developed a private brand of foodstuffs and allied products known as the "Red and White" brand. These commodities were obtained by the Flickinger Company from various manufacturers and packers, but were always packed and marketed under the Red and White label.

To further the sale of Red and White goods, the Flickinger Co. entered into arrangements with retail grocers under which such retailers became Red and White stores. These retail grocery stores were not owned by the Flickinger Company but they were required to meet and maintain certain standards with respect to appearance, service, etc. The retailer was not required to deal in Red and White goods exclusively but he was expected to place a sign on the front of his store indicating that it was a Red and White store, and was also expected to place sales emphasis on Red and White products.

PAR. 8. Upon the organization of the Red and White Corporation in 1927, Mr. Flickinger became its president, in which office he continued until his death in 1939. Immediately upon its organization the Corporation proceeded to obtain from the Flickinger Co. an exclusive license for 99 years to the Red and White brand, and to enter into license or franchise agreements with wholesale grocers or jobbers under which such jobbers were granted the exclusive right to sell Red and White products within designated territories. These jobbers purchased capital stock in the Red and White Corporation, usually in the amount of 15 shares each. One of the conditions of the license agreement was that the jobber was required to purchase annually a specified minimum amount of Red and White goods, such purchases to be made through Red and White Corporation. Upon obtaining such license agreements the respective jobbers proceeded to enter into arrangements with retail grocery stores under the plan described above.

PAR. 9. The primary function of Red and White Corporation was that of a purchasing agent for the jobber licensees. It entered into working agreements with numerous manufacturers and packers throughout the United States, including the seller respondents named herein, under which such manufacturers and packers agreed to pack commodities under Red and White labels and to pay to Red and White Corporation brokerage at specified rates upon all sales to the Red and White jobbers. The Red and White jobbers sent their orders to Red and White Corporation, and the corporation in turn transmitted the orders to the sellers. In numerous instances, orders were sent by the jobbers to Red and White Corporation in which no seller was speci-

fied. In such cases, Red and White Corporation inserted the name of the seller to which it desired the order to go, and sent the order on to such seller. Occasionally, orders were placed with the sellers by the jobbers direct instead of through Red and White Corporation, but the corporation received brokerage from the seller on these orders in the same manner as on purchases made through the Corporation. All shipments were made direct to the jobber, and all billings and settlements therefor were likewise handled between seller and jobber direct. During the early part of 1936, Red and White Corporation had working agreements of this kind with some 400 sellers located in some 31 States of the United States.

PAR. 10. In connection with its purchasing activities, Red and White Corporation provided its jobber licensees with market service, keeping them currently advised as to market conditions, prices, etc. This information was usually supplied through bulletins and market letters. When a seller with whom Red and White Corporation had a working agreement revised its prices, the change was promptly made known by Red and White Corporation to the jobbers.

PAR. 11. Red and White Corporation also rendered valuable advertising services to its jobber licensees. These services included, among others, the insertion of advertisements in periodicals having national circulation; the supplying of a newspaper matrix service to the jobbers; and the preparation and issuance of illustrated publications (tabloids), handbills, window display bulletins and cards, as well as window streamers and banners, and cards for display on the counters of the Red and White retail stores. Some of this advertising material was forwarded by Red and White Corporation to the jobber licensees and some of it was, through arrangement with the jobbers, sent direct to the Red and White retail stores. All of the advertising was for the purpose of publicizing goods bearing the Red and White label and obtaining increased consumer acceptance of such goods.

The advertising was paid for in two ways, first through a charge made by Red and White Corporation against the jobber licensees, this charge being at the rate of \$1 for each Red and White retail store with which the jobber licensee dealt. Some of the jobbers appear to have borne the entire charge themselves while others obtained reimbursement for at least a portion of the amount from their affiliated stores. The second way in which the advertising was paid for was through the allocation by Red and White Corporation of cash allowances to its jobbers to be used for local newspaper advertising.

PAR. 12. By far the major portion of Red and White Corporation's income consisted of brokerage received by it on purchases made by its jobber licensees. For the fiscal year ending November 30, 1935,

the total revenue of the Corporation was \$363,209.81, of which \$327,966.03 was brokerage. The advertising allowance paid over to the jobber licensees during this period was \$253,901.06. For the fiscal year ending November 30, 1936, the Corporation's total revenue was \$443,800.37, of which \$340,092.94 was brokerage. During this period the amount paid over by the corporation to its jobber licensees for advertising purposes was the same as the amount of brokerage received, that is, \$340,092.94. The corporation customarily paid to its stockholders (jobber licensees) an annual dividend of 5 percent.

PAR. 13. A further activity of Red and White Corporation was known as its "store development" or "field" service. This consisted of promoting the affiliation of retail grocery stores with the jobber licensees, and the giving of assistance and advice to jobbers with respect to the appearance, arrangement, equipment, etc., of Red and White retail stores, and with respect to bookkeeping and credit systems for the retail stores. The cost of this service came out of the corporation's general fund.

PAR. 14. Upon the passage of the Robinson-Patman Act, which became effective on June 19, 1936, it became evident to the officers and directors of the Red and White Corporation that the corporation, being buyer owned, could not continue to collect brokerage from sellers on purchases made by the stockholders of the corporation. The secretary-treasurer and general manager of the corporation was Mr. Asa Strause, and a number of discussions or conferences were held between Mr. Strause and Mr. Flickinger, the president of the corporation, in an effort to determine what action might be taken. Mr. Strause had conceived the idea that a new corporation might be organized by himself and certain other individuals connected with Red and White Corporation, and that the new corporation might take over the Red and White brands under a licensing agreement. This proposal met with Mr. Flickinger's approval and, after further conferences between the two and between Mr. Flickinger and the directors of Red and White Corporation, an agreement was consummated.

PAR. 15. Pursuant to this agreement, respondent, Modern Marketing Service, Inc., was organized in September 1936, the stockholders being Mr. Strause, Mr. Leo T. Bushey, Mr. Herbert T. Webb, Mr. H. J. Wright, and Mr. George O. Morea, all of whom were connected with Red and White Corporation. The new corporation was capitalized at \$10,000, representing 100 shares of the par value of \$100 each. Of these 100 shares, Mr. Strause purchased and still owns 51 shares, Mr. Bushey 13 shares, Mr. Webb 12 shares, Mr. Wright 12 shares, and Mr. Morea 12 shares.

PAR. 16. Upon the formation of the new corporation, all of these individuals resigned from their positions with Red and White Cor-

poration. Mr. Strause was elected president of the new company. Mr. Bushey had been connected with Red and White Corporation in the capacity of a "merchandise man," and he became secretary-treasurer of the new company and divisional manager of its central zone or division. Mr. Webb had been serving as advertising manager of Red and White Corporation, and was employed by the new company in the same capacity. He was also elected vice president of the new company. Mr. Wright had been serving as manager of the San Francisco branch of Red and White Corporation, and was designated manager of the same branch of Modern Marketing Service, Inc. Mr. Morea had been manager of the Buffalo branch office of Red and White Corporation, and was made manager of the same branch of Modern Marketing Service, Inc. He was also made vice president of the new corporation.

PAR. 17. Arrangements were worked out whereby Modern Marketing Service, Inc., took over the office space in Chicago which had been occupied by Red and White Corporation, the latter moving to smaller offices in the same building. The new corporation also took over some 20 of the 24 employees of Red and White Corporation in Chicago, and purchased most of the office furniture and equipment. Similar arrangements were made with respect to personnel, office space, and furniture in the Buffalo and San Francisco offices of Red and White Corporation.

PAR. 18. On October 1, 1936, Red and White Corporation and Modern Marketing Service, Inc., entered into a written agreement whereby the brands, trade-marks, and labels owned or controlled by Red and White Corporation were leased to Modern Marketing Service, Inc. In addition to the Red and White brands, a number of other brands owned or controlled by Red and White Corporation were included in the agreement, such as "Blue and White," "Green and White," "Flav-R-Jell," "Servus," etc., but for convenience, all of the brands covered by the agreement will be referred to as "Red and White brands." The pertinent provisions of the agreement were as follows:

LICENSE AGREEMENT

THIS AGREEMENT made in duplicate October 1, 1936, by and between RED & WHITE CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of New York, and having its principal office in the city of Buffalo, New York, (hereinafter referred to as the Licensor), party of the first part, and MODERN MARKETING SERVICE, INC., a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its principal office in the city of Chicago, Illinois, (hereinafter referred to as the Licensee), party of the second part.

WITNESSETH, That

WHEREAS, the Licensor owns or controls as Licensee various brands, trade names and trade marks known and used in the grocery business throughout the United States, and the good will associated therewith, which brands, trade names and trade marks, together with specification of the Licensor's ownership or control thereof, are set forth in Schedule A annexed hereto; and

WHEREAS, said ownership and control of said brands, trade names and trade marks are subject to various existing contracts between the Licensor and its stockholders and/or others; and

WHEREAS, the Licensee is engaged in the general grocery brokerage business throughout the United States and desires the right, privilege and authority to use and deal in said brands, trade names and trade marks subject to said existing contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sum of One Dollar (\$1.00) by each party to the other in hand paid, receipt whereof is hereby acknowledged, and other good and valuable considerations, the parties hereto hereby mutually covenant and agree as follows:

1. The Licensee for the period of one year from the date hereof shall have the exclusive right, privilege and authority throughout the United States to use and deal in, with jobbers or wholesalers, the brands, trade names and trade marks which are owned or controlled by the Licensor as aforesaid and which are set forth in a certain schedule marked Schedule A, annexed hereto and made a part hereof, and to sublicense manufacturers to pack, ship and sell to jobbers or wholesalers goods and merchandise bearing said brands, trade names and trade marks, subject, however, to any and all existing contracts between the Licensor and its stockholders and/or others relative to said brands, trade names and trade marks.

2. In consideration thereof, the Licensee has paid to the Licensor the sum of Thirty Thousand Dollars (\$30,000.00) receipt whereof is hereby acknowledged.

3. While this agreement shall be in effect, the Licensor shall not license any other person, firm, association or corporation similarly to use or deal in said brands, trade names and trade marks, or similarly to sublicense thereunder; provided, however, that nothing in this agreement shall prohibit the Licensor from selling its capital stock or from acquiring new stockholders, and all benefits, reservations, rights and privileges inuring to the benefit of or belonging to the present stockholders of the Licensor, in or by the terms of this agreement, shall also at all times inure to the benefit of and belong to such new stockholders.

4. At any time, for distribution only in the territories allotted to them severally in their respective existing contracts with Red & White Corporation:

(a) Stockholders of the Licensor may affix said brands, trade names and trade marks to unbranded seasonal canned goods purchased by them from or through sources other than the Licensee, and to goods manufactured by themselves, subject, however, to all terms, conditions and limitations contained in said existing contracts; and

(b) H. A. Marr Grocery Company, one of the stockholders of the Licensor, may also affix said brands, trade names and trade marks to unbranded manufactured goods purchased by it from or through sources other than the Licensee.

5. The Licensee, at all times, shall furnish labels bearing said brands, trade names and trade marks to stockholders of the Licensor upon their request, in accordance with paragraph 4 hereinabove, and at cost, plus a handling charge of 15%.

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6. The Licensee shall require that said brands, trade names or trade marks be used only on products of equal quality to those specified in Schedule A annexed hereto.

7. The License herein granted shall extend for the period of one year from October 1, 1936, and shall be renewed for successive yearly periods upon terms and conditions to be agreed upon mutually, unless either party shall before September 1 of any year, give written notice to the President of the other party of its intention to terminate the license at the end of such yearly period. (Commission's Exhibit No. 36.)

PAR. 19. On the same date, October 1, 1936, Modern Marketing Service, Inc., also entered into a similar agreement with a corporation known as Kitchen Products, Inc., a wholly owned subsidiary of Red and White Corporation, under which certain brands owned or controlled by Kitchen Products, Inc., were leased to Modern Marketing Service, Inc. The term "Red and White brands," as used herein, includes these brands covered by this agreement as well as those covered by the agreement between Modern Marketing Service, Inc., and Red and White Corporation.

PAR. 20. These license agreements originally covered a period of only 1 year after October 1, 1936. On October 1, 1937, however, they were renewed for a period of three years; and since their expiration on October 1, 1940, have been renewed from year to year and are still in effect. Modern Marketing Service, Inc., has paid to Red and White Corporation each year the consideration of \$30,000 stipulated in the agreement with Red and White Corporation, which consideration covers both agreements.

PAR. 21. Upon the execution of the license agreements, Modern Marketing Service, Inc., advised the manufacturers with whom Red and White Corporation had working agreements that it had acquired the brand names and labels of Red and White Corporation. Working agreements similar to those which had existed between Red and White Corporation and the manufacturers were entered into between Modern Marketing Service, Inc., and the manufacturers, including the seller respondents, under which the manufacturers agreed to pay to Modern Marketing Service, Inc., brokerage at specified rates upon all purchases made by the jobber licensees of Red and White Corporation. Since about October 1, 1936, Modern Marketing Service, Inc., has rendered for the jobber licensees substantially the same purchasing service as was formerly rendered for them by Red and White Corporation. The jobbers, including the buyer respondents, have placed their orders through Modern Marketing Service, Inc., and Modern Marketing Service, Inc., has received brokerage from the sellers on all such orders.

PAR. 22. The market service formerly rendered the Red and White jobbers by Red and White Corporation has been carried on by Modern

Marketing Service, Inc., in substantially the same manner. Likewise, the advertising service formerly rendered the jobbers by Red and White Corporation has been continued by Modern Marketing Service, Inc., in substantially the same manner and through the same advertising manager. In addition to the other advertising services rendered by it to the jobbers, Modern Marketing Service, Inc., has made allocations of funds to the Red and White jobbers for use in local or point-of-sale advertising, including local newspaper advertising. This portion of the advertising program was begun in the spring of 1937 and continued until about May 1939, when it was discontinued. It appears that the reason for discontinuing this part of the program was that Modern Marketing Service, Inc., felt it necessary to conserve its resources for the defense of the present proceeding.

During the period beginning December 1, 1936, and ending November 30, 1937, the amount of these allowances paid out by Modern Marketing Service, Inc., to the jobbers to cover point-of-sale advertising was \$135,712.85. During the next year, from December 1, 1937, to November 30, 1938, the amount of the allowances was \$110,653.94. For the period beginning December 1, 1938, and ending in May, 1939 (at which time the allowances were discontinued), the amount was \$53,175.26.

PAR. 23. Practically the only service rendered by Red and White Corporation to its jobber licensees which has not been assumed by Modern Marketing Service, Inc., is that known as store development or field service, outlined in paragraph 13 hereof. Red and White Corporation has continued to perform this service for the jobber, the cost thereof being borne out of the corporation's general fund, a large part of which is represented by the annual license fee of \$30,000 paid to the corporation by Modern Marketing Service, Inc.

PAR. 24. The cost of the market and advertising services rendered the jobber licensees by Modern Marketing Service, Inc., as well as the annual license fee of \$30,000 paid Red and White Corporation, has been borne out of the corporation's general fund, the major portion of which has represented brokerage received by the corporation from sellers on purchases of the jobber licensees. For the period beginning December 1, 1936, and ending November 30, 1937, Modern Marketing Service, Inc., had a total income of \$432,969.12, of which 74.06 percent or \$320,658.56 was brokerage. For the period beginning December 1, 1937, and ending November 30, 1938, the corporation's gross income was \$426,756.46, of which 70.40 percent or \$299,810.11 represented brokerage. For the period beginning December 1, 1938, and ending November 30, 1939, the gross income of the corporation was \$321,967.76, of which 94 percent or \$302,219.29 represented brokerage.

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PAR. 25. It is urged by Modern Marketing Service, Inc., that the corporation is in no way subject to the direction or control of Red and White Corporation or its jobber licensees, that the organization and operation of Modern Marketing Service, Inc., represent nothing more than a private business venture on the part of Mr. Strause and the four other individuals who own the corporation's entire capital stock, that upon the passage of the Robinson-Patman Act these five individuals saw an opportunity to go into business for themselves and capitalize upon their connection with Red and White Corporation and their knowledge of the Red and White plan of merchandising, that the activities of the corporation constitute a legitimate brokerage business, and that the corporation represents only the sellers with whom it has brokerage agreements and not Red and White Corporation or the Red and White jobber licensees. In support of this position Modern Marketing Service, Inc., points out, among other things, a number of instances disclosed by the record in which the corporation rendered certain services to sellers, such as advertising and placing particular sales emphasis on certain commodities at the request of the sellers of such commodities.

The Commission is of the opinion, however, that viewing the record as a whole, the conclusion is inescapable that Modern Marketing Service, Inc., is the agent not of the manufacturers and packers, but of Red and White Corporation and its stockholders, who receive, through the payment of the annual license fee of \$30,000 and through substantial and valuable market and advertising services, a large part of the brokerage fees and commissions paid to Modern Marketing Service, Inc., by the sellers. The circumstances under which Modern Marketing Service, Inc., was organized and entered upon its activities, the close similarity between its plan or method of operation and that of Red and White Corporation, the assumption by it almost in toto of the various functions of Red and White Corporation, and the license agreement between Red and White Corporation and Modern Marketing Service, Inc., all negative the theory that Modern Marketing Service, Inc., is the agent of the sellers and is not subject to the control of Red and White Corporation and its stockholders, the jobber licensees.

While some of the activities of Modern Marketing Service, Inc., have undoubtedly resulted in certain benefits to the sellers, the activities of the corporation, considered in their entirety, are primarily in the interest of Red and White Corporation and the jobber licensees, and any benefits accruing to the sellers are of an incidental nature.

Of paramount importance, in the opinion of the Commission, is the license agreement between Modern Marketing Service, Inc., and Red and White Corporation, under which, as heretofore shown, Modern

Marketing Service, Inc., is given the exclusive right to deal in the Red and White brands and to sublicense manufacturers to pack and sell merchandise under such brands. Modern Marketing Service, Inc., has no customers other than the Red and White jobber licensees, and the license is indispensable to the continuance of its business operations. Through the simple device of canceling or declining to renew the license agreement, Red and White Corporation could deprive Modern Marketing Service, Inc., of its source of income and virtually terminate its existence as a going business concern. This fact alone, in the opinion of the Commission, demonstrates that Modern Marketing Service, Inc., is subject to the control of Red and White Corporation and its stockholders, the jobber licensees.

CONCLUSION

The transmission and payment of the aforesaid brokerage fees or commissions by the seller respondents to respondent, Modern Marketing Service, Inc., upon the purchases of the buyer respondents, and the receipt and acceptance thereof by respondents, Modern Marketing Service, Inc., Red and White Corporation, and the buyer respondents, in the manner and under the circumstances herein described, is violative of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman 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, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C., Sec. 13).

1. *It is ordered*, That respondents, S. M. Flickinger Co., Inc., Julius and Ethel Cockerill Corporation, Laurans Brothers, Inc., West Coast Grocery Co., H. O. Wooten Grocery Co., and Nash-Finch Co., corporations (hereinafter referred to as buyer respondents), and their officers, agents, representatives, and employees, in connection with the purchase by such respondents of commodities in commerce, as "commerce" is defined in said Clayton Act, as amended, do forthwith cease

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and desist from receiving or accepting from the sellers of such commodities, directly or indirectly, any brokerage fee, commission, or other compensation, or any allowance or discount in lieu thereof; and from receiving or accepting from respondent, Red and White Corporation or respondent, Modern Marketing Service, Inc., any brokerage fee, commission, or other compensation, or any allowance or discount in lieu thereof, theretofore received or accepted by said last-named respondents from such sellers, either in the form of money or credits, or in the form of services or benefits provided or furnished by said last-named respondents through or by means of the use or expenditure of any such brokerage fee, commission, compensation, allowance, or discount.

2. *It is further ordered*, That respondents, The Diamond Match Co., Morton Salt Co., The Quaker Oats Co., Ralston Purina Co., Weson Oil & Snowdrift Sales Co., Standard Rice Co., Inc., and The Procter & Gamble Distributing Co., corporations, and their officers, agents, representatives, and employees, in connection with the sale of commodities in commerce, as "commerce" is defined in said Clayton Act, as amended, to any of the buyer respondents named in paragraph 1 hereof, or to any other stockholder or jobber licensee of respondent, Red and White Corporation, do forthwith cease and desist from paying or granting, directly or indirectly, to any of such purchasers, or to respondent, Modern Marketing Service, Inc., or respondent, Red and White Corporation, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof.

3. *It is further ordered*, That respondent, Modern Marketing Service, Inc., a corporation, and its officers, agents, representatives, and employees, in connection with the purchase of commodities in commerce, as "commerce" is defined in said Clayton Act, as amended, by any of the buyer respondents named in paragraph 1 hereof, or by any other stockholder or jobber licensee of respondent, Red and White Corporation, do forthwith cease and desist from receiving or accepting, directly or indirectly, from the sellers of such commodities, any brokerage fee, commission, or other compensation, or any allowance or discount in lieu thereof; and from paying, transmitting, or delivering any such fee, commission, compensation, allowance or discount to such purchasers or to respondent, Red and White Corporation, either in the form of money or credits, or in the form of services or benefits provided or furnished by respondent, Modern Marketing Service, Inc., to respondent, Red and White Corporation, or to such purchasers through or by means of the use or expenditure of any such brokerage fee, commission, compensation, allowance, or discount.

✓ 4. *It is further ordered*, That respondent, Red and White Corporation, a corporation, and its officers, agents, representatives, and employers, in connection with the purchase of commodities in commerce, as "commerce" is defined in said Clayton Act, as amended, by any of the buyer respondents named in paragraph 1 hereof, or by any other stockholder or jobber licensee of respondent, Red and White Corporation, do forthwith cease and desist from receiving or accepting from the sellers of such commodities, or from respondent, Modern Marketing Service, Inc., any brokerage fee, commission, or other compensation on such purchases, or any allowance or discount in lieu thereof; and from paying, transmitting, or delivering any such fee, commission, compensation, allowance, or discount to such purchasers, either in the form of money or credits, or in the form of services or benefits provided or furnished by respondent, Red and White Corporation, to such purchasers through or by means of the use or expenditure of any such brokerage fee, commission, compensation, allowance, or discount.

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

IN THE MATTER OF
JULIUS FLORSHEIM, TRADING UNDER THE NAME
COLUMBIA RESEARCH COMPANY

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

Docket 4867. Complaint, Nov. 6, 1942—Decision, Sept. 13, 1943

Where an individual, engaged in interstate sale and distribution of envelopes and printed matter for use by creditors and collection agencies in obtaining information concerning debtors, including notices which, for use in contacting the debtor either direct or through some other person, respectively represented that addressee was a beneficiary of a trust fund and that additional information was required, or that the person concerned was such a beneficiary and that addressee was requested to furnish information as to his identity and, in case of both, requested, in questionnaire attached, name of debtor, residence, names of parents and employer, employer's address, name of bank and personal references;

Making use of a scheme under which (1) said individual assigned purchaser of said printed matter a code number for insertion in the blank provided, whereby the former was enabled to identify his customers; (2) purchaser inserted name of person concerning whom information was sought in notice, and inserted notice in stamped envelope addressed to such person or, as aforesaid, to another, and included within said envelope—bearing upon upper left-hand corner said individual's trade name of Columbia Research Company and Los Angeles address—a stamped return envelope thus addressed, and sent the whole for mailing to said individual; and (3) latter sent replies received or pertinent information therefrom, to the proper customers, and to each of persons concerning whom desired information had been received, one cent, along with advice that such was the entire sum deposited for payment in his trust fund—

Falsely represented thereby, and placed in the hands of his customers means of falsely representing, that persons concerning whom information was sought had an interest in trust funds of more than trivial value held by such Columbia Research Co., and that information sought through said questionnaires was to identify beneficiaries; when in fact there were no such funds, and information was sought solely to assist in locating delinquent debtors and collecting delinquent accounts;

With capacity and tendency to mislead and deceive persons to whom said notices and questionnaires were sent, into the mistaken belief that such representations were true, and, by reason thereof, to induce them to give information which they would not otherwise have supplied:

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

Before *Mr. James A. Purcell*, trial examiner.
Mr. Randolph W. Branch for the Commission.