

Syllabus

IN THE MATTER OF

THE MILK AND ICE CREAM CAN INSTITUTE 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 4551. Complaint, July 31, 1941—Decision, Sept. 18, 1943

Where eight corporations, engaged in the manufacture and interstate sale and distribution of metal milk cans and also, with one exception, of ice cream cans, making about 95 percent of said products sold and distributed in the United States, and, prior to and but for the agreements, acts and practices below set out, in competition as to price;

Following their organization of The Milk and Ice Cream Can Institute by an individual engaged in promoting, organizing, and managing trade associations, and who was employed by them to operate said Institute as its "Commissioner" and only officer, and their agreement upon a so-called "Publicity Plan" providing for the supplying by each member to said "Commissioner" of daily reports of orders received, contracts entered into and releases made against previously reported contracts, etc., and monthly reports of the number and dollar value of cans shipped, by States and for export and for the daily and monthly consolidation and dissemination among members by said Commissioner of such information;

Acting by and through their said Institute and under the direction of said individual, cooperatively developed and maintained substantial uniformity of action among themselves with respect to fixing and maintaining uniform prices for products involved; and in pursuance thereof—

- (1) Continued a plan of freight equalization theretofore employed by them, under which purchasers sold their product f. o. b. factory, and purchaser, paying the freight, was credited upon the invoice for the difference between it and freight from location of the shipper's nearest competitor, whereby delivered cost of their products was the same regardless of from whom or from which producing point purchase was made, and with the result, in view of more or less uniform f. o. b. factory prices, of maintaining uniformity of delivered prices;
- (2) For the purpose of maintaining such freight equalization plan, adapted and agreed to use a common freight rate reporting service for use in quoting delivered prices and the invoicing of customers;
- (3) Agreed upon and adopted an elaborate reporting system, as above indicated, to assure maintenance of uniform prices by members, and which, through receipt and dissemination of daily reports of orders, as consolidated, permitted said Commissioner to supervise the members' price activities through calling to particular member's attention evidence of price violations as thereby developed;
- (4) In order to maintain uniform prices on the same types and patterns of milk and ice cream cans sold by them under various trade names and to determine whether or not such prices were adhered to, placed similar types or patterns of cans in particular classifications and assigned thereto a symbol letter which was used in making daily reports to said Commissioner, and by him in making consolidated reports to the members, and from which also the Commissioner and the members could immediately determine whether any price differences existed on said daily reports;

- (5) As a further means of eliminating price differences and to eliminate competition in the attractiveness of their products, eliminated models and styles of cans, and otherwise standardized their products independently of and beyond any requirements prescribed by Federal or State authorities, or the requirements of customers; and through the medium of their Institute and said Commissioner reported to one another any new designs or improvements as made;
- (6) In order to maintain uniformity of prices to various classes of customers and to determine and maintain also the applicable rate of discount, adopted a classification prepared by said Commissioner, defining jobbers and dealers and detailing the circumstances under which a customer might come within such classification, and adopted also a list of so-called "five-car" or more buyers and discount to be allowed them, prepared by him;
- (7) In response to suggestions made by said Commissioner and request for additional reports to eliminate "unfair practices"—which were, in fact, interferences with maintenance of uniform prices—adopted a recommendation that a recheck be made by the members of existing contracts and liabilities thereunder on the ground that they were exaggerated and involved the threat of the development of an unfair competitive situation;
- (8) Agreed, in response to a recommendation of said Commissioner for preventing sale of first-quality cans at lower prices by designating them as "seconds," that price differentials between firsts and seconds be large enough to secure a ready market for all second-quality cans, and that a definite minimum discount sufficiently large to discourage the practice of selling firsts as seconds be adopted, and instructed the Commissioner to procure a complete inventory of all seconds and other substandard cans; and agreed that all cans not sold as prime firsts should be sold as seconds and so marked, except for obsolete products, and that intention to dispose of latter should be reported at a meeting held prior to their sale;
- (9) As a further check upon price differentials, agreed to report allowances on claims made by the respective members, and discussed at various meetings compilations of such allowances as made up by the Commissioner; and
- (10) Agreed to accept his recommendation that identification of buyer was necessary in order to protect existing contracts;

With intent and effect of fixing prices for products involved which, except for short periods while adjustments were being made, were, as respects both f. o. b. and delivered prices, uniform and identical; and with effect of unduly restraining and suppressing competition in the sale and distribution of said products, and of depriving the public of the full benefit of competition in said commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did restrain and eliminate price competition in sale and distribution of products in question in commerce; placed in said corporations power to control and enhance prices; unreasonably restrained such commerce in said products; and constituted unfair acts and practices in commerce and unfair methods of competition therein.

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

Mr. Lynn C. Paulson and *Mr. Eugene W. Burr* for the Commission.
Covington, Burling, Rublee, Acheson & Shorb, of Washington,

D. C., for respondents generally, who were also represented, as follows:

Mr. Guy George Gabrielson, of New York City, for Atlantic Stamping Co., Keiner Williams Stamping Co. and Superior Metal Products Co.;

Mr. Alfred W. Craven, of Chicago, Ill., for The Creamery Package Manufacturing Co.;

Seibert & Riggs, of New York City, for Lalance & Grosjean Corp.;

Mr. William B. Paul, of Pittsburgh, Pa., for Sheet Metal Specialty Co.; and

Douglas, Armitage & Holloway, of New York City, for Solar-Sturges Manufacturing Co.

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 association, persons, partnerships, and corporations named in the caption hereof, and hereinafter referred to as respondents, have violated the provisions of the Federal Trade Commission act, and it appearing to the Commission that a proceeding by it would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Milk and Ice Cream Can Institute, hereinafter referred to as respondent Institute, is an unincorporated association, with its office located in the Keith Building, Cleveland, Ohio. It now includes or has included at one time or another as its members practically all of the manufacturers of milk and ice cream cans located in the United States, and more particularly all of the corporations named as respondents herein. It was organized in or about April 1930, by persons, partnerships, and corporations engaged in the manufacture and sale of milk and ice cream cans, some of which are its present members. It has since its organization constituted, and does now constitute, a vehicle or implement for the promotion of the mutual interest of its members.

Respondents, D. S. Hunter, W. Bentley Thomas, Frederick W. Donohoe, and Harry A. Sieck, are partners, doing business as D. S. Hunter & Associates. They are engaged in the business of promoting, organizing, and managing trade associations and are employed by respondent Institute and its members to carry on its work and do and perform the acts and things which the member corporations desire to have done and performed. They supervise meetings held by the members under the auspices of the respondent Institute, recommend

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activities, collect and disseminate information, serve as chairman of committees to perform special functions and, in general, perform the function of executive secretaries for respondent Institute and its members. They have their office and principal place of business in the Keith Building, Cleveland, Ohio. For convenience, respondents, D. S. Hunter, W. Bentley Thomas, Frederick W. Donohoe and Harry A. Sieck, will hereinafter be referred to as respondent, D. S. Hunter & Associates.

Respondent, Atlantic Stamping Co., is a New York corporation, having its office and principal place of business at 156-180 Ames Street, Rochester, N. Y.

Respondent, Buhl Stamping Co., is a Michigan corporation, having its principal place of business at 2730 Scotten Avenue, Detroit, Mich.

Respondent, The Creamery Package Manufacturing Co., is an Illinois corporation, having its office and principal place of business at 1243 West Washington Boulevard, Chicago, Ill.

Respondent, Geuder, Paeschke & Frey Co., is a Wisconsin corporation, having its office and principal place of business at West St. Paul Avenue and North Fifteenth Street, Milwaukee, Wis.

Respondent, Keiner Williams Stamping Co., is a New York corporation, having its office and principal place of business at 8746 One Hundred and Twenty-third Street, Richmond Hill, L. I., N. Y.

Respondent, Solar-Sturges Manufacturing Co., is an Illinois corporation, having its office and principal place of business at Melrose Park, Ill.

Respondent, Superior Metal Products Co., is a Delaware corporation, having its office and principal place of business at 509 Front Street, St. Paul, Minn.

Respondent, Lalance & Grosjean Corporation, is a New York corporation, having its office and principal place of business at Woodhaven, L. I., N. Y.

Respondent, Sheet Metal Specialty Co., is a West Virginia corporation, having a main office and principal place of business at Third and Liberty Streets, Pittsburgh, Pa.

The aforesaid respondents, Atlantic Stamping Co., Buhl Stamping Co., The Creamery Package Manufacturing Co., Geuder, Paschke & Frey Co., Keiner Williams Stamping Co., Solar-Sturges Manufacturing Co., Superior Metal Products Co., Lalance & Grosjean Corporation, and Sheet Metal Specialty Co., for convenience, will hereinafter be referred to as respondent corporations.

PAR. 2. Respondent corporations are engaged in the manufacture, sale, and distribution of metal containers known as milk and ice cream

cans. These are used primarily for the handling and shipping of milk and ice cream. Farmers, dairies, and dealers in milk and dairy products use milk cans for transporting milk and cream from farms and dairies to creameries and dairy stations, and for various and sundry purposes. Ice cream cans are commonly used to transport and distribute ice cream. Vendors of ice cream make use of ice cream cans in drug stores and soda fountains for storing and keeping ice cream before and during the time it is being scooped out and sold. Respondent corporations sell annually approximately 1,000,000 milk and ice cream cans, the value of which ranges between 3 and 3½ million dollars.

PAR. 3. Respondent corporations in the regular course and conduct of their business sell and ship, or cause to be sold and shipped milk and ice cream cans to members of the purchasing public located in States other than the States in which they, the respondents, are located and have during all of the time referred to herein carried on and engaged in, and do now carry on and engage in "commerce" (as commerce is defined in the Federal Trade Commission Act) among and between the various States of the United States and the District of Columbia in milk and ice cream cans.

Respondent Institute has at all times mentioned herein cooperated with, assisted and served as an implement or vehicle for the promotion of the mutual interests of respondent corporations.

Respondent, D. S. Hunter & Associates, has during much, if not all, of the time referred to herein cooperated with, assisted, and aided, and does now cooperate with, assist, and aid respondent Institute and respondent corporations in the establishment and carrying out of the acts, practices, and methods mentioned and referred to in this complaint.

PAR. 4. For more than 4 years last past, and continuing to the present time, respondents have maintained an unlawful combination among and between themselves to suppress, hinder, lessen, and restrain competition in the manufacture, sale, and distribution of milk and ice cream cans in the course of their aforesaid commerce among and between the various States.

Pursuant to and in furtherance of the aforesaid combination:

1. Respondent corporations have cooperatively made and announced prices, and do cooperatively make and announce prices in such a way that the delivered cost of their products to a purchaser is the same regardless from whom purchase is made or from which producing point the goods purchased are shipped by the employment of what, for convenience, may be referred to as a "freight equalization plan." Under this said "freight equalization plan" each of the re-

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spondent corporations announces its prices on a basis whereby the delivered cost to the customer at any given destination is to be determined by applying the rule or formula—delivered cost equals lowest combination of “basing point” price plus freight. Each respondent recognizes his own point of production and each and every other point at which any one of the respondent corporations produces as a “basing point,” and makes the rule or formula aforesaid apply by inserting in its price announcement the following, or some such terminology:

All prices are for cans with the marking f. o. b. (city of origin)—freight equalized with all rail freight with nearest manufacturing competitor's original point of shipment on shipments of 100 lbs. or more. Equalization Points: Milk Cans—New York, N. Y., Rochester, N. Y., Follansbee, W. Va., Chicago, Ill., Milwaukee Wis., St. Paul, Minn.; Ice Cream Cans—New York, N. Y., Follansbee, W. Va., Chicago, Ill., Milwaukee, Wis., St. Paul, Minn.

2. Respondent corporations have cooperatively promoted adherence and do cooperatively promote adherence to prices announced under the so-called “freight equalization plan,” as aforesaid, make it effective, and further obviate and exclude the exercise of independent will with regard to prices and price policies by

(a) Providing themselves with a schedule of freight rate factors, which they themselves prepare or cause to be prepared for use by each of them in the preparation of bills to customers for goods sold. The compilation of freight rate factors cooperatively compiled by and disseminated to themselves is not intended to serve their needs for freight rates for shipping purposes, but is intended for use as aforesaid and is so used. These freight rate factors are not necessarily actual or official freight rates.

(b) Exchanging the intimate details of each sale directly or indirectly with one another. Each of the corporate respondents files a daily report with respondent Institute setting forth date of any order taken or sale made, customer's name, customer's address, customer's business, quantity involved, type and description of cans sold, including the number of covers, extras involved, deductions made or allowed, unit price of cans, including extras and deductions, discounts, terms, freight rate per cwt. allowed to equalize with any point, name of the point with which freight was equalized, destination and if the sale or order was a release on contract, date of the contract. Each of the corporate respondents also reports to respondent Institute the details of contracts entered into. Through respondent Institute the information filed with it is disseminated to respondent corporations in reports in meetings, by personal contacts made by its officers and employees and otherwise. Under this system

of exchanging information enough information about each sales transaction becomes known to each of the corporate respondents about each other's sales transactions to cause each of them to refrain from departing, in the execution of sales either by way of the equalization allowances or by an allowance of any other kind, from the prices, terms and conditions of sale cooperatively made and announced.

(c) Supervising and maintaining a systematic check upon each other concerning allowances made to purchasers for defective or damaged cans for the purpose of curtailing and eliminating the granting of allowances, and of making their policies regarding allowances uniform between and amongst them. This they do, and have done, by exchanging through respondent Institute details of all claims for allowances received and made and discussing and agreeing upon policies with respect to allowances through respondent Institute and otherwise.

3. Respondent corporations have entered into and carried out and do enter into and carry out agreements and understandings fixing and establishing discounts and other terms and conditions of sale to be offered, made and used by them.

4. Respondent corporations, by mutual agreement and understanding, eliminate models and styles of cans, change the designs of cans and otherwise standardize their products independently of and beyond any requirements for standardization prescribed by the Federal or State Governments, or any commissions or authorities thereof, for the purpose of eliminating competition in the attractiveness of their products to buyers, and furthering their aforesaid common purpose to lessen, suppress, hinder and restrain competition.

5. Respondent corporations, through the respondent Institute and by means of meetings, conferences, and interchanges between themselves, deliver to one another in advance, or during the production of new models and improvements on models and styles of milk and ice cream cans all of the pertinent information concerning the same, and otherwise cooperatively promote uniformity of design and pattern in their products and restrain each other from competitively seeking to excel one another in the development and improvement of their products.

6. Respondent, D. S. Hunter & Associates, has at all times mentioned herein cooperated with respondent corporations and respondent Institute in the activities, practices, and methods aforesaid; has helped to carry out the same; has recommended and devised other ways and means of accomplishing the common purpose of the combination as aforesaid; and has at all times contributed to the establishment and maintenance of the aforesaid combination.

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7. Respondent Institute has served as a vehicle or implement for the carrying out and furtherance of respondent corporations' joint purposes and plans, and has at all times mentioned or referred to herein contributed actively and systematically to accomplishment of the purposes and effect of the aforesaid combination.

8. Respondents have adopted and used in cooperation other methods and means to effectuate their common purpose and design to suppress, hinder and lessen competition between themselves and between them and their competitors, in the production, sale, and distribution of milk and ice cream cans.

PAR. 5. The said combination, and the doing and performing of the acts and things, and the use of the methods set forth in the preceding paragraphs hereof tend to have, have had and now have, the effect of depriving the public of the full benefits of competition in commerce between respondent corporations, and between respondent corporations and their competitors; of enhancing prices for milk and ice cream cans; of causing wasteful cross-shipping of milk and ice cream cans; of depriving purchasers located nearby a producing point of any price benefit from such proximity; of requiring various customers of each of the respondent corporations to pay it different prices for the same type of milk and ice cream cans; of preventing the fullest development of new types, models, and designs of milk and ice cream cans; of causing to be discontinued many models and types of milk and ice cream cans which are in demand by purchasers, prospective purchasers, and users of milk and ice cream cans; and of generally restraining trade in commerce in milk and ice cream cans between the several states of the United States and the District of Columbia.

PAR. 6. The aforesaid acts and practices and methods of respondents as herein alleged are all to the prejudice of the public; they have a substantial and dangerous tendency to hinder, lessen, restrict, and restrain, and actually have unduly, directly and substantially, hindered, restricted, and restrained, competition in interstate commerce in milk and ice cream cans. The said acts and practices and methods constitute unfair acts and practices and 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 July 31, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, The Milk and Ice Cream Can Institute, an unincorporated associa-

tion; D. S. Hunter, W. Bentley Thomas, Frederick W. Donohoe, and Harry A. Sieck, copartners, doing business as D. S. Hunter & Associates; Atlantic Stamping Co., a corporation; Buhl Stamping Co., a corporation; The Creamery Package Manufacturing Co., a corporation; Gueder, Paeschke & Frey Co., a corporation; Keiner Williams Stamping Co., a corporation; Lalance & Grosjean Corporation, a corporation; Sheet Metal Specialty Co., a corporation; Solar-Sturges Manufacturing Co., a corporation; and Superior Metal Products Co., a corporation, charging them with the use of unfair acts and practices and unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of and in opposition to the complaint, and oral argument of counsel; 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, The Milk and Ice Cream Can Institute, hereinafter referred to as respondent Institute, is an unincorporated association, organized in 1930 by persons, partnerships, and corporations, engaged in the manufacture and sale of metal milk and ice cream cans, and has its principal office in the Keith Building, Cleveland, Ohio.

Respondent, D. S. Hunter, is an individual, doing business as D. S. Hunter & Associates. The respondents, W. Bentley Thomas, Frederick W. Donohoe, and Harry A. Sieck are, or have been, employees of the respondent, D. S. Hunter. Said respondent, D. S. Hunter, doing business as D. S. Hunter & Associates, maintains his office and principal place of business in the Keith Building, Cleveland, Ohio. Said respondent is engaged in the business of promoting, organizing, and managing trade associations and was employed by the respondent Institute and its members to carry on its work and to do and perform the acts and things which the member corporations desired to

have done and performed. Said respondent supervised meetings held by the members under auspices of respondent Institute, recommended activities, collected and disseminated information, served as chairman of committees to perform special functions, and in general performed the function of executive secretary for respondent Institute and its members.

Respondent, Atlantic Stamping Co., is a New York corporation, having its office and principal place of business at 156-180 Ames Street, Rochester, N. Y.

Respondent, Buhl Stamping Co., is a Michigan corporation, having its principal place of business at 2730 Scotten Avenue, Detroit, Mich.

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Respondent, Solar-Sturges Manufacturing Co., is an Illinois corporation, having its office and principal place of business at Melrose Park, Ill.

Respondent, Superior Metal Products Co., is a Delaware corporation, having its office and principal place of business at 509 Front Street, St. Paul, Minn.

Respondent, Lalance & Grosjean Corporation, is a New York corporation, having its office and principal place of business at Woodhaven, L. I., N. Y. This respondent was a member of said respondent Institute from August 8, 1933, until May 13, 1937. There is no substantial evidence in the record that this respondent participated in the acts and practices hereinafter described.

Respondent, Sheet Metal Specialty Co., is a West Virginia corporation, having its office and principal place of business at Third and Liberty Streets, Pittsburgh, Pa.

The aforesaid corporate respondents, Atlantic Stamping Co., Buhl Stamping Co., The Creamery Package Manufacturing Co., Geuder, Paeschke & Frey Co., Keiner Williams Stamping Co., Solar-Sturges Manufacturing Co., Superior Metal Products Co., and Sheet Metal Specialty Co., are, and have been, members of respondent Institute since its organization in 1930. For convenience, the above-named respondents, except Lalance & Grosjean Corporation, will hereinafter be referred to as respondent members.

PAR. 2. Respondent members are now, and were, engaged in the manufacture, sale, and distribution of metal containers known as milk cans, and, with the exception of respondent, Atlantic Stamping Co., they were also engaged in the manufacture, sale, and distribution of metal containers known as ice cream cans. Said respondent members manufacture approximately 95 percent of the metal milk and ice cream cans sold and distributed in the United States. These cans are used primarily for the handling and shipping of milk and ice cream. Farmers, dairies, and dealers in milk and dairy products use said milk cans for transporting milk and cream from farms and dairies to creameries and dairy stations, and for various and sundry purposes. Ice cream cans are commonly used to transport and distribute ice cream. Said respondent members sell annually approximately one million milk and ice cream cans, the value of which ranges between three million and three million and a half dollars.

PAR. 3. In the course and conduct of their businesses, the respondent members cause said milk and ice cream cans, when sold by them, to be transported from their respective places of business to the various purchasers thereof located in the various States of the United States other than the States in which their respective shipments originate. Said respondent members maintain, and at all times mentioned herein have maintained, a course of trade in said milk and ice cream cans in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. Prior to 1930 said respondent members were in competition as to price with one another in the sale and distribution of milk and ice cream cans in commerce among and between the various States of the United States and in the District of Columbia, and would now be in free and open competition with one another in said commerce but for the agreements, practices, and methods as hereinafter set forth.

PAR. 5. On April 15, 1930, the respondent members held a meeting at Chicago, Ill., at which it was agreed to form an organization to be known as The Milk and Ice Cream Can Institute, with respondent, D. S. Hunter as commissioner, to be operated under a definite declaration of purpose to be prepared by said D. S. Hunter and to be adopted at the next meeting. It was further agreed that a budget be raised by assessing members in accordance with their relative volumes of business. It was further agreed that each member would sign a pledge obligating itself to furnish complete and accurate statistical information and to pay its proportionate share of its cost of the organization and to live up to the code of trade practice for the period of 1 year.

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Subsequent thereto, at a meeting held on May 13, 1930, the respondent members adopted a formal declaration of purpose and bylaws and agreed upon a so-called "Publicity Plan," to be operated through and by means of said The Milk and Ice Cream Can Institute under the supervision and direction of the respondent, D. S. Hunter, as commissioner, and as the only officer of the respondent Institute. At this meeting it was agreed that meetings of the members of the Institute be held once a month thereafter; and that all the members report to the commissioner all contracts then in force and which may be entered into from time to time thereafter, and report to the commissioner at the close of each business day all orders received that day, all contracts entered into that day, and all releases made that day against contracts previously reported; and, in addition to said daily reports, to forward each month a monthly report showing the total number of milk and ice cream cans shipped into each State and for export during the month, together with figures showing the value in dollars of such shipments of milk and ice cream cans. It was further agreed that the commissioner furnish members a consolidated report, in unidentified form, of all open or current orders and of releases against contracts previously reported and, in addition thereto, a consolidated monthly report embodying in compiled form, but without identification, all information received on monthly reports from members. At said meeting, forms of daily and monthly reports by members and consolidated reports by the commissioner were approved, and thereafter said respondent members reported daily and monthly to respondent D. S. Hunter as commissioner of said respondent Institute. The daily reports for metal milk cans forwarded to the commissioner show the date of order; customer's name, address, and business; quantity; capacity in quarts; description; covers; extras; deductions; unit price, including extras and deductions; discounts; terms; "freight rate per hundredweight added to deliver"; "freight rate per hundredweight allowed to equalize with (give point)"; and destination. The daily reports for ice cream cans were similar to the daily report for milk cans except that "construction" appears instead of "description" and "cartons" instead of "covers."

Respondent, D. S. Hunter, as commissioner of said respondent Institute, during all the times mentioned herein has sent to the respondent members a consolidated daily report on milk cans and ice cream cans, prepared from the information given in the daily reports of said respondent members. The information sent to the respondent members on the consolidated daily report, is the same as the information received by the Institute in said daily reports, except that the names of the members reporting and the customers' names and addresses are

not given in the consolidated daily report, and the destination is given by territory.

The monthly reports forwarded by the respondent members to the respondent Institute show the quantity, capacity, and description of the cans shipped during the month, the unfilled orders as of the last date of shipment for which the report is made, shipments of milk cans by States and for export, and the respondent member's volume of business for the month in dollars, average daily productive capacity, and percentage of capacity during the month. Based on these monthly reports, the Institute prepared and sent to the respondent members monthly reports on shipments, consolidating the information given in the monthly reports without revealing names. In addition to the above consolidated reports, the respondent, D. S. Hunter, as commissioner, has sent to respondent members, at irregular intervals, reports showing sales of milk and ice cream cans in units and dollars monthly over a period of several years. These reports contain the total sales of the membership as a whole and do not identify any of the members. There is also an annual report showing distribution of milk and ice cream cans by States and the total number of each size and style of milk and ice cream cans sold.

PAR. 6. The respondent members, acting by and through the respondent, The Milk and Ice Cream Can Institute, and under the direction of respondent, D. S. Hunter, have by mutual understandings and agreements, cooperatively developed and maintained substantial uniformity of action among themselves with respect to maintaining and fixing uniform prices for metal milk and ice cream cans. Each of the various practices adopted by the respondent members through the respondent Institute and under the direction of respondent, D. S. Hunter, which are hereinafter more fully described, constitutes a part and parcel of a combination and conspiracy entered into by said respondent members to fix and maintain uniform prices for milk and ice cream cans.

PAR. 7. For several years prior to the organization of the respondent Institute, the respondent members followed a plan of freight equalization on shipments of one hundred pounds or more, under which milk and ice cream cans were sold f. o. b. factory with freight equalized with the nearest manufacturing competitor's point of shipment. Under this plan it was the customary procedure for the purchaser to pay the freight and the shipper would then credit the purchaser upon invoice for the difference in freight between the shipper's point of location and the location of the competitor of such shipper located nearest to such purchaser.

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The respondent members, acting by and through the respondent Institute and under the direction of respondent, D. S. Hunter, have, by mutual understandings and agreements, continued and maintained the plan of equalization of freight hereinabove described. By this means the delivered cost of their products to a purchaser was the same, regardless from whom purchase was made or from which producing point the goods purchased were shipped.

The freight-equalization plan adopted and continued by the respondent members was not used by them on a competitive basis when reaching into a competitor's territory, since its use was solely to match competitor's prices. The f. o. b.-factory price remained more or less uniform among the respondent members and the use of the freight-equalization plan served only to maintain uniformity of delivered prices.

PAR. 8. For the purpose of arriving at and maintaining a uniform basis of equalization, with resulting uniformity in delivered prices, the respondent members adopted and agreed to use a common freight-rate reporting service for use in quoting delivered prices and invoicing customers.

The respondent, D. S. Hunter, at various times suggested and discussed with the respondent members the use of a freight reporting service, to be purchased by the members or by the respondent Institute for the use of the members. At a meeting held on January 12, 1932, the respondent members were informed that a table of rates prepared from information furnished by the traffic departments of the various members indicated that either some special rates were in effect from certain points to certain points or that one or more of the traffic men furnishing the information had made errors, and at the following meeting, held on February 9, 1932, the respondent, D. S. Hunter, discussed with the members the freight-rate service supplied by the Climax Traffic Bureau.

As a result of this discussion and in an apparent effort to arrive at some common basis for equalization of freight, the Traffic Committee entered into negotiations with the Climax Traffic Bureau, with the result that a contract was entered into with the Climax Traffic Bureau to deliver an initial number of 350 freight-rate books to the Institute for distribution to its members. The freight rates contained in such freight-rate books were to cover the rates from the separate shipping points of the respondent members to various designated points supplied by the respondent, D. S. Hunter. The purpose of purchasing 350 of such freight-rate books was stated to be so that salesmen and representatives of the various respondent members could carry such books to permit them to quote delivered prices to

customers upon request. Such books were likewise used for invoicing purposes in crediting the freight charges over and above the freight rate from the nearest manufacturing competitor.

The freight-rate books furnished by the Climax Traffic Bureau contained nothing more than the rates above specified and did not give any information as to routing, but presumably were the lowest rates between two given points. In making shipments and determining routing of shipments it was necessary for the traffic departments of the various respondent members to refer to and use other traffic information or route books, leaving the use of the Climax freight-rate books, in most cases, solely to quotation of delivered prices and crediting freight equalization on invoicing customers.

PAR. 9. The respondent members agreed upon and adopted an elaborate reporting system, as hereinbefore described, to assure the maintenance of uniform prices by the various respondent members. This system included the daily reporting of all orders received to the respondent Institute, which information was immediately distributed to all the respondent members through a consolidated daily report prepared and distributed by respondent, D. S. Hunter, as commissioner of said Institute. This reporting system was adopted at the instance of said respondent, D. S. Hunter, and was designed to and did permit said respondent, D. S. Hunter, to supervise the price activities of the respondent members; and he would from time to time, upon evidence or suspicion of variation in price as developed from various reports, call such deviation or possible deviation to the attention of the members as a whole, and from time to time requested said members to review their data to determine if the discrepancies were due to errors in compilation.

PAR. 10. In order to maintain uniform* prices on the same types and patterns of milk and ice cream cans sold by the respondent members under various trade names, and for the purpose of determining whether or not such prices were maintained or adhered to, similar types or patterns of cans were placed in particular classifications and given a symbol letter which was subsequently used in making daily reports to the commissioner and by the commissioner in making consolidated daily reports to the respondent members. By means of the symbol letters, the respondent, D. S. Hunter, as commissioner, could immediately determine any price differences which might appear on the daily reports sent in by any of the respondent members, and the respondent members, by examination of the consolidated daily report issued by the commissioner, could immediately determine whether any price differences existed.

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PAR. 11. As a further means of establishing a basis upon which price differences might be eliminated, and for the purpose of eliminating competition in the attractiveness of their products to buyers, the respondent members since the organization of the respondent Institute have, by mutual agreement and understanding, eliminated models and styles of cans, changed the design of cans, and have otherwise standardized their products independently of and beyond any requirements for standardization prescribed by Federal or State Governments or any commissions or authorities thereof, or the requirements of customers.

An example of such standardization, over and above requirements, was the activity of respondent members in standardizing the gage and weight of their milk and ice cream cans. Through the efforts of the committee on standards, a standard for the maximum gages of the various types and sizes of cans was submitted and adopted by the respondent members. At a meeting held June 14, 1932, the respondent, D. S. Hunter, as commissioner, called attention to the desirability, in the work of standardization, of eliminating if possible some styles and sizes of milk and ice cream cans, especially those for which there was a small demand, and also that consideration should be given to standardizing the weight, as well as the gages, of the various styles and sizes of cans. The commissioner was instructed to communicate with members to determine what lines of cans could be eliminated. Subsequent thereto, at a meeting held on July 12, 1932, the committee on standards submitted a table of standardization of various styles and sizes of cans by weight, and on motion made, seconded, and carried, this recommendation by the committee on standards was adopted by the respondent members. Subsequent to that time, the committee on standards had made various recommendations with reference to gages and weights of milk and ice cream cans which were adopted by the respondent members.

As new designs or improvements were made on cans, these were reported to all the respondent members direct or to the commissioner, who in turn reported to all the respondent members. At a meeting held on January 23, 1940, respondent, D. S. Hunter, as commissioner, pointed out that all members, when they make improvements or develop some new construction in their equipment, should either furnish a sketch of the item or a sample to the other respondent members.

PAR. 12. In order to maintain uniformity of prices to various classes of customers, and for the purpose of determining and maintaining the applicable rate of discount, the respondent, D. S. Hunter,

as commissioner, at a meeting on September 11, 1931, submitted definitions of jobbers and dealers, detailing the circumstances under which a customer might come within that classification. Such classification was accepted and adopted by the respondent members.

In addition, the respondent members agreed upon a list of so-called five-car or more buyers and discounts to be allowed such buyers. The respondent, D. S. Hunter, prepared a list of such five-car buyers from the reports submitted to him, which list was agreed upon and adopted by the respondent members, and from time to time said respondent members made additions thereto and deletions therefrom. This so-called list of five-car buyers was continued until about 1932.

PAR. 13. From time to time the respondent, D. S. Hunter, made suggestions to the respondent members and requested additional reports from them for the purpose of eliminating so-called unfair practices which were in fact interferences with the maintenance of uniform prices.

At the time the Institute was organized, it was provided that all the respondent members file with the commissioner a report of outstanding contracts and the extent to which such members were obligated to make deliveries on such contracts. In making his report, after examination of the reports of members with reference to existing contracts, the commissioner informed the members that he considered the figures given him on estimated obligations to be exaggerated and that if such amounts were delivered under the old contracts an unfair competitive situation would develop, and recommended that a recheck be made of existing contracts and liabilities thereunder by the members, which recommendation was adopted.

At a meeting of the Institute on January 13, 1931, the respondent, D. S. Hunter, as commissioner, called the attention of the respondent members to the sale of "seconds" and recommended that action be taken to set up a plan of handling seconds which would eliminate their being used to create unfair competition—in other words, to prevent the sale of first-quality cans at lower prices by designating them as seconds. The commissioner was instructed to tabulate a record of the sale of seconds during the previous 6 months. Subsequent thereto, at a meeting on July 13, 1931, said respondent, D. S. Hunter, as commissioner, called attention to some variations which he had noticed in the discounts being allowed by different members in making sales of seconds and that the differentiation was so small in some cases as to suggest that firsts were being sold as seconds, and recommended that a definite minimum discount be adopted sufficiently large to discourage this practice. It was agreed by respondent mem-

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bers at this meeting that price differentials between firsts and seconds be large enough to secure a ready market for all second-quality cans.

The commissioner was instructed to procure a complete inventory of all seconds, obsolete patterns, and misbranded and other substandard cans at factories, in branches, or in warehouses. Upon consideration of this compilation at a meeting held on April 10, 1932, it was agreed by respondent members that all cans not sold as prime firsts, with the exception of obsolete cans, should be sold as seconds and marked as such, and that in the disposal of obsolete cans the intention to dispose of them should be reported at a meeting held prior to their sale.

As a further check upon possible price differentials, it was agreed by respondent members to report allowances on claims made by the respective respondent members, setting out claims made and disposition by the respondent members. Compilations of these allowances were made from time to time by the respondent, D. S. Hunter, as commissioner, and discussed at various meetings.

At a meeting held on August 12, 1931, the commissioner called attention to the necessity of not interfering with existing contracts and that, in order to secure such protection, identification of the buyer was necessary, and recommended that the contract reporting form be so changed as to include the buyer's name and address in the future. The respondent members agreed to accept this recommendation.

PAR. 14. The Commission further finds that the agreements and understandings entered into by the respondent members by and through the respondent Institute and respondent, D. S. Hunter, as commissioner, have had the purpose and effect of fixing prices for milk cans and ice cream cans. In fact, with the exception of short periods of time while adjustments in prices were being made, the prices charged by the respective respondent members, both f. o. b. and delivered, have been uniform and identical.

PAR. 15. The aforesaid understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove found, have had, and do have, the effect of unduly lessening, restricting, restraining, and suppressing competition in the sale and distribution of milk and ice cream cans in commerce among and between the several States of the United States and of depriving the public of the full benefit of competition in said commerce between and among the respondent members and between them and their competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered, suppressed, lessened, restrained, and eliminated price competition in the sale and distribution of metal milk and ice cream cans in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in milk and ice cream cans; and constitute unfair acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of the respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; 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 the respondents, The Milk and Ice Cream Can Institute, an unincorporated association; Atlantic Stamping Co., a corporation; Buhl Stamping Co., a corporation; The Creamery Package Manufacturing Co., a corporation; Geuder, Paeschke & Frey Co., a corporation; Keiner Williams Stamping Co., a corporation; Sheet Metal Specialty Co., a corporation; Solar-Sturges Manufacturing Co., a corporation; and Superior Metal Products Co., a corporation, and their respective officers, agents, representatives, and employees, and respondent, D. S. Hunter, individually, and trading as D. S. Hunter & Associates, and his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of metal milk and ice cream cans in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and

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others not parties hereto, to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining prices for metal milk or ice cream cans, or adhering to or promising to adhere to the prices so fixed.

2. Exchanging, distributing, or relaying among respondent members, or any of them, or through respondent, The Milk and Ice Cream Can Institute, or respondent, D. S. Hunter, or through any other medium or central agency, information as to current prices, for the purpose or with the effect of fixing or maintaining prices for metal milk or ice cream cans.

3. Quoting or selling metal milk or ice cream cans pursuant to or in accordance with any plan or system involving equalization of freight with competitors which results in the establishment and maintenance among respondent members or any two or more of them of uniform delivered prices to any given destination or which prevents purchasers from finding any advantage in price in dealing with one or more of the respondent members against any of the other respondent members; or quoting or selling metal milk or ice cream cans pursuant to or in accordance with any other plan or system which has the aforesaid results.

4. Using in common any freight-rate reporting service as a factor in fixing or maintaining the prices of metal milk or ice cream cans through any freight-equalization plan or any similar plan or system.

5. Formulating, establishing, putting into operation, continuing, or using in any way any price reporting plan which has the purpose or effect of depriving the public of any benefit of competition in price between and among the respondent members or between any of them and any other manufacturer or seller of metal milk or ice cream cans.

6. Determining or attempting to determine by any means, either directly or indirectly, which purchasers shall be recognized as jobbers, wholesalers, dealers, or consumers and thus entitled to certain price differentials in the purchase of metal milk and ice cream cans for the purpose or with the effect of fixing or maintaining uniform prices for various classifications of customers.

7. Formulating or putting into operation any other practice or plan which has the purpose or effect of fixing or maintaining prices for metal milk or ice cream cans; or employing or utilizing any of the acts or practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of metal milk or ice cream cans.

8. Employing or utilizing respondent, D. S. Hunter, or respondent, The Milk and Ice Cream Can Institute, or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts or practices prohibited by this order.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to W. Bentley Thomas, Frederick W. Donohoe, Harry A. Sieck, and Lalance & Grosjean Corporation, a corporation.

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

IN THE MATTER OF

GLADYS H. PEISER

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5012. Complaint, July 20, 1943—Decision, Sept. 21, 1943*

Where an individual, engaged in interstate sale and distribution of form letters and envelopes for use of creditors and collection agencies in obtaining information concerning debtors, and which, calling for such information as the address and employer of the person concerning whom information was desired, and employer's address, set forth under name "Globe Inheritance Bureau" such matter as "Searchers for Title Companies," "Unknown and Missing Heirs Located," "Estate Counsellors," "Representatives in Principal Cities," and such statements as "We have been requested to contact the above party and our files indicate that you may be able to assist us"; "Can you supply us with any information, or refer us to some relative or friend who can assist us?"; "The matter about which we are inquiring is of utmost importance to this party and your early reply will be appreciated"; "Please fill in the questions below and return same to us in the enclosed envelope";

Making use of a scheme under which purchaser-customers inserted in said form letters names and last known addresses of persons concerning whom information was sought, placed them in stamped envelopes addressed to persons believed to have desired information, together with reply envelopes addressed to said "Globe Inheritance Bureau," at 401 Land Title Building, Philadelphia, Pa., and deposited them in the mails or returned them to said individual, who received and sent to customers, identified by means of code numbers, such form letters as were filled out and returned by recipients—

- (a) Falsely represented, and placed in the hands of her customers means of falsely representing, directly and by implication, to those from whom information was sought, that "Globe Inheritance Bureau" had representatives in principal cities, acted as counsellor to those in charge of estates, was engaged in the business of locating heirs to estates or to interests therein, and of acting as an examiner or searcher for title insurance companies, and that the persons concerning whom information was sought had or might have interests in estates or lands which would be of financial benefit to them; and
- (b) Falsely represented, through use of name "Globe Inheritance Bureau," that her said business bore some relation to estates and to the rights and interests of heirs thereto; when in fact said name was merely a disguise for the true nature of said business, and the sole purpose of the letters and envelopes was to facilitate collection of alleged delinquent accounts by her customers;

With effect of misleading and deceiving many persons to whom said letters were sent into the mistaken belief that said statements were true, thereby inducing them to give information which they would not otherwise have supplied, and in many instances to incur expense for postage in connection therewith: