

IN THE MATTER OF
JAMES A. CLANCY, ET AL¹

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

Docket 4801. Complaint, Aug. 6, 1942—Decision, Oct. 21, 1944

Where (1) three individuals, namely, C, W, and D, severally engaged in the city herein concerned in the sale and distribution of building material (including metal partitions and doors, toilet partitions, elevator entrances and fire doors) and in competition between and among themselves and others except in so far as said competition had been restricted or forestalled by the common course of action below set forth; and (2) a general contractor engaged in said city in general contracting and construction work and in buying building materials, and his two employees and agents;

- Following arrangements by the Navy with a shipbuilding company under which said company was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the facilities at the latter's shipyards, to be expended under the general supervision of the Navy and subject to its approval, and (2) said shipbuilding company contracted with aforesaid general contractor for the reconstruction by him of certain office buildings and shipways on a cost-plus-a-fixed-fee basis with the understanding that in securing materials or services he would obtain competitive offers from as many as practicable but not less than two—or three where specified—reputable firms and award a contract to concern quoting the minimum price; bids to be opened by or in the presence of the Navy Supervisor of Shipbuilding or his representative and to be subject to his approval before award of the subcontract—
- Cooperated, combined, agreed and conspired through understandings together and with each other, during a period of some 15 months or more, to, and did, restrain and suppress competition in the purchase and sale of said building materials in commerce; and pursuant to and as a part of the said understanding, etc.—
- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between and among said C, W, D and other sellers of building materials in their submission of price quotations and bids to buyers and prospective buyers;
 - (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of such products, the representation that said C, W, D, and others were rival bidders and competitors, when in reality they were acting collusively between and among themselves;
 - (c) Avoided and prevented competition in the purchase and sale of building materials, and prevented consideration of genuinely competitive bids or price quotations by purchasers thereof; and
- Where aforesaid general contractor, acting directly and through his aforesaid two employees and agents—

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

- (d) Cooperated with C in the preparation and submission to him and to his said agents and employees of fictitious bids, for the furnishing of building material for his use in rehabilitating the aforesaid shipyards, and submitted such bids in turn to purchasing officials of said shipbuilding company and representatives of the Navy, Supervisor of Ships as genuinely competitive bids and price quotations; and

Where said C, on numerous occasions, with the knowledge and cooperation of said general contractor and his said employees and agents—

- (e) Secured printed stationery bearing the letterheads of the aforesaid W and D and other sellers of building materials and used them in the submission of fictitious bids to said general contractor and his said two agents, over the purported but false signatures of said W and said D and others, as written thereon by himself, specifying therein higher prices than those he submitted in each comparable instance over his own name in offering to furnish to said general contractor the same building materials specified in said fraudulent bids; and

Where said general contractor and his said agents and employees, in each of the number of instances where said C thus submitted to them different bids on stationery bearing the letterheads of said W, D, and others—

- (f) In turn submitted such false bids as and for genuine and competitive bids to officials of said shipbuilding company, and to representatives of the Navy Supervisor of Ships, who were misled and deceived into approving them as genuine and competitive; and—

Where said W and D—

- (g) Knowingly cooperated with C in his preparation and submission of fraudulent bids as aforesaid by furnishing him with stationery bearing their respective letterheads for his use in the preparation and submission of aforesaid bids;

With the result that said C enjoyed awards of numerous contracts for building materials by said general contractor, his employees and agents, with the approval of officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, secured through deception as aforesaid; and with the effect of depriving buyers and prospective buyers of building materials, including contractors and subcontractors of the United States Government, and the public in general, of the benefit of competition in commerce between and among said C, W, D, and others with whom they normally would be in competition in making bids and price quotations, and with tendency so to do:

Held, That such acts, practices, understandings and conspiracies, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did actually restrain and eliminate competition in the purchase and sale of building materials in commerce; had the capacity and tendency to and did unreasonably restrain such commerce in said products; had a dangerous tendency to create a monopoly in the purchase, sale and distribution of said products; and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Everett MacIntyre and Mr. V. W. Summers for the Commission.

McDevitt, Philips & Watters, of Philadelphia, Pa., for James A. Clancy.

Mr. James F. Masterson, of Philadelphia, Pa., for Charles F. Rohleder, Allen McLaine Ward and J. R. Baldrige, Jr.

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 persons, partnerships and corporations named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, James A. Clancy, with office and principal place of business located in the Harrison Building, Philadelphia, Pa., is an individual, engaged in the sale and distribution of building materials, which term, whenever used in this complaint includes but is not limited to metal partitions and doors, toilet partitions, elevator entrances and fire doors; and in carrying on such business said respondent ships and caused to be shipped said products from locations in States other than the State of Pennsylvania to locations in Pennsylvania including the city of Philadelphia, and to other points in other States

Respondent, M. A. Webster, is an individual, whose office and principal place of business is at his residence at 3827 Oak Road, Philadelphia, Pa. At all times hereinafter mentioned said respondent has been engaged in the sale and distribution of building materials and in carrying on such business he ships and causes to be shipped said products from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

Respondent, Joseph R. Duffy, is an individual, trading as J. R. Duffy Manufacturing Company, with office and principal place of business at 201 Architects Building, Philadelphia, Pa., engaged in the sale and distribution of building materials, and in carrying on such business he ships and causes to be shipped said products from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

Respondent, Charles F. Rohleder, is an individual, with office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa., engaged in general contracting and construction work and in buying building materials and in so doing he ships and causes said products to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including Philadelphia, Pa., and to other points in other States.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., and respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., are individuals, who during the period covered by the activities involved in the charges in this complaint, served as employees and agents of respondent, Charles F. Rohleder, and in such capacities they shipped, caused to be shipped, or were instrumental in others shipping, building materials from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

PAR. 2. Respondents, James A. Clancy, M. A. Webster, Joseph R. Duffy, and others not named herein as respondents, engaged in the purchase and sale of building materials in Pennsylvania and adjoining States, have been and are in competition between and among themselves and with one or more other purchasers and sellers of said products in making or seeking to make sales of such products in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy, or the acts, things, practices, policies, or methods done in carrying on in pursuance thereto or in furtherance thereof as hereinafter set forth.

PAR. 3. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyard, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost plus a fixed fee basis with the understanding that the said Rohleder in securing materials or services would obtain competitive offers from as many as practicable but not less than two (not less than three were specified) reputable firms in a position to provide the material, equipment, or services as required at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, U. S. Navy, or his representative, and subject to his approval before award of the subcontract for materials or services.

In connection with his aforesaid contract with the Cramp Shipbuilding Co., respondent, Charles F. Rohleder, negotiated with and made awards of contracts directly and through agents to respondent, James A. Clancy, for the purpose of building materials.

PAR. 4. Throughout a period of time beginning on or about the first day of October, 1940, and continuing thereafter until subsequent to January 1, 1942, the respondents have, through understandings together and with each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of building materials in "commerce" (as "Commerce" is defined in the Federal Trade Commission Act and in which sense it is used herein) and have in fact through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, restrained, and suppressed competition in the purchase and sale of building materials.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other things, acts, practices, policies, and methods, the following:

1. Promoted, established, carried out and continued a practice of maintaining a false appearance of competition between and among respondents, James A. Clancy, M. A. Webster, Joseph R. Duffy, and other sellers of building materials in their submission of price quotations and bids to buyers and prospective buyers.

2. Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of building materials, the representation that said respondents, James A. Clancy, M. A. Webster, Joseph R. Duffy, and others were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids.

3. Avoided and prevented competition in the purchase and sale of building materials.

4. Prevented consideration of genuinely competitive bids or price quotations by purchasers of said products.

5. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, Charles F. Rohleder, acting directly and through his agents, respondent, Allen McLaine Ward and J. R. Baldridge, Jr., cooperated with respondent, James A. Clancy, in the preparation and submission to said respondent, Charles F. Rohleder, his agents and employees, respondent, Allen McLaine Ward and J. R. Baldridge, Jr., sham, false, fictitious, fraudulent and noncompetitive bids and price quotations for the furnishing of building materials for the said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co.'s shipyards, Norris and Richmond Streets, Philadelphia, Pa., and said Rohleder submitted such sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, United States Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

6. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondent, James A. Clancy, with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldridge, Jr., secured printed stationery bearing the letterheads of respondent, M. A. Webster, and respondent, Joseph R. Duffy, trading as J. R. Duffy Manufacturing Co., and of other sellers of building materials, and used the same in the submission of sham, false, fictitious, fraudulent and noncompetitive bids and price quotations to said respondent, Charles F. Rohleder, and his agents and employees, respondents, Allen McLaine Ward and J. R. Baldridge, Jr., over the purported but false signatures of respondent, M. A. Webster, and respondent, Joseph R. Duffy, and others as written thereon by respondent, James A. Clancy. The prices specified in such bids were different from, higher than and noncompetitive with the bid and price quotation submitted in each comparable instance by respondent, James A. Clancy, over his own name, offering to furnish to said respondent, Charles F. Rohleder, the same building materials as specified in the said sham, false, fictitious, fraudulent and noncompetitive bids. Thereupon, in each of the number of instances where respondent, James A. Clancy, thus submitted to respondent, Charles F. Rohleder, his agents and employees, including respondents, Allen McLaine Ward and J. R. Bald-

ridge, Jr., different bids on stationery bearing the letterheads of respondent, M. A. Webster, respondent, Joseph R. Duffy, trading as J. R. Duffy Manufacturing Co., and others, such bids, although known to be false, were in turn submitted by respondent, Charles F. Rohleder, his agents and employees, including respondents, Allen McLaine Ward and J. R. Baldridge, Jr., as and for genuine and competitive bids on such building materials to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, who were through the appearance of such bids misled and deceived into considering and approving them as genuine and competitive.

7. Respondents, M. A. Webster and Joseph R. Duffy, have knowingly cooperated with respondent, James A. Clancy, in his preparation and submission of sham, false, fictitious, fraudulent and noncompetitive bids and price quotations on building materials as aforesaid in furnishing him with stationery bearing their respective letterheads for his use in the preparation and submission of such sham, false, fictitious, fraudulent and noncompetitive bids.

8. Respondent, James A. Clancy, as a result of the submission of the aforesaid sham, false, fictitious, fraudulent and noncompetitive bids enjoyed awards of numerous contracts for building materials to him by said Charles F. Rohleder, his employees and agents, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 5. The aforesaid understandings, agreements, combination, and conspiracy, 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, and have had, the effect of depriving buyers and prospective buyers of building materials including contractors and subcontractors of the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents, James A. Clancy, M. A. Webster, Joseph R. Duffy, and others with whom they normally would be in competition in making bids and price quotations.

PAR. 6. The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents as hereinbefore alleged are all to the prejudice of the public, have a dangerous tendency to, and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of building materials which includes but is not limited to metal partitions and doors, toilet partitions, elevator entrances and fire doors, in commerce within the intent and meaning of the Federal Trade Commission Act and have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products, have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such products, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 6, 1942, issued and subsequently

served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted the requests of respondents for permission to withdraw their answers and to substitute therefor answers admitting all of the material allegations of fact set forth in the said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute admission answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers; 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. (a) Respondent, James A. Clancy, is an individual, with his office and principal place of business located in the Harrison Building, Philadelphia, Pa. He is engaged in the sale and distribution of building materials, which term, whenever used hereinafter, includes but is not limited to metal partitions and doors, toilet partitions, elevator entrances, and fire doors. In the conduct of said business respondent ships said products and causes them to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

(b) Respondent, Maurice A. Webster, (referred to in the complaint as M. A. Webster), is an individual, whose office and principal place of business is at his residence at 3827 Oak Road, Philadelphia, Pa. At all times hereinafter mentioned said respondent has been engaged in the sale and distribution of building materials and in the conduct of said business he ships said products and causes them to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

(c) Respondent, Joseph R. Duffy, is an individual, trading as J. R. Duffy Manufacturing Co., with his office and principal place of business at 201 Architects Building, Philadelphia, Pa. He is engaged in the sale and distribution of building materials, and in the conduct of said business he ships said products and causes them to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

(d) Respondent, Charles F. Rohleder, is an individual, with his office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa. He is engaged in general contracting and construction work and in buying building materials, and in the course of said business he ships said products and causes them to be shipped from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

(e) Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., and respondent, J. R. Baldridge, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., are individuals who, during the period covered by the activities hereinafter specified, served as employees and agents of respondent, Charles F. Rohleder. Acting in said capacities, they shipped, caused to be shipped, or were instrumental in having others ship building materials from locations in States other than the State of Pennsylvania to locations in Pennsylvania, including the city of Philadelphia, and to other points in other States.

PAR. 2. Respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, and others not named herein as respondents, are engaged in the purchase and sale of building materials in Pennsylvania and adjoining States. They have been, and are, in competition between and among themselves and with one or more other purchasers and sellers of said products in making or seeking to make sales of such products in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the cooperation, concert or common course of action, understanding, confederation, combination, agreement, or conspiracy hereinafter set forth, or the acts or things done or practices, policies, or methods followed pursuant thereto or in furtherance thereof as hereinafter set forth.

PAR. 3. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Company, whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities at the said shipyards, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. contracted with respondent, Charles F. Rohleder, for the latter to reconstruct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder, in securing materials or services, would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the materials, equipment, or services as required, at a reasonable cost, and to award a contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Shipbuilding, United States Navy, or his representative, and were to be subject to his approval before award of the subcontract for materials or services.

In connection with his aforesaid contract with the Cramp Shipbuilding Co., respondent, Charles F. Rohleder, directly and through agents, negotiated with and made awards of contracts to respondent, James A. Clancy, for the purchase of building materials.

PAR. 4. Throughout a period of time beginning on or about the first day of October 1940 and continuing thereafter until subsequent to January 1, 1942, the respondents have, through understandings, together and with

each other, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and sale of building materials in commerce, as "commerce" is defined in the Federal Trade Commission Act (in which sense the term is used herein), and have in fact, through such cooperation, confederation, combination, agreement, and conspiracy, frustrated, restrained, and suppressed competition in the purchase and sale of building materials.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done, performed, and used, among other things, the following acts, practices, policies, and methods:

(a) Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, and other sellers of building materials in their submission of price quotations and bids to buyers and prospective buyers.

(b) Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government and others involved in the purchase of building materials, the representation that said respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, and others, were rival bidders and competitors, when in reality they were acting collusively between and among themselves in preparing and submitting bids.

(c) Avoided and prevented competition in the purchase and sale of building materials.

(d) Prevented consideration of genuinely competitive bids or price quotations by purchasers of said products.

(e) On numerous occasions respondent, Charles F. Rohleder, acting directly and through his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., cooperated with respondent, James A. Clancy, in the preparation and submission to said Charles F. Rohleder, his agents and employees, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations for the furnishing of building materials for the said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding Co.'s shipyards in Philadelphia, Pa., and said Rohleder submitted such sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations, in turn, to purchasing officials of the Cramp Shipbuilding Co., and representatives of the Supervisor of Ships, United States Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

(f) On numerous occasions respondent, James A. Clancy, with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr., secured printed stationery bearing the letterheads of respondent, Maurice A. Webster, and respondent, Joseph R. Duffy, trading as J. R. Duffy Manufacturing Co., and of other sellers of building materials, and used the same in the submission of sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations to said Charles F. Rohleder, and his agents and employees, Allen McLaine Ward and J. R. Baldrige, Jr., over the purported but false signatures of Maurice A. Webster and Joseph R. Duffy, and others, as written thereon by respondent, James A. Clancy. The prices specified in such bids were different

from, higher than, and noncompetitive with the bid and price quotation submitted in each comparable instance by respondent, James A. Clancy, over his own name in offering to furnish to said Charles F. Rohleder, the same building materials as specified in the said sham, false, fictitious, fraudulent, and noncompetitive bids. Thereupon, in each of the number of instances where James A. Clancy thus submitted to Charles F. Rohleder, his agents and employees, including Allen McLaine Ward and J. R. Baldridge, Jr., different bids on stationery bearing the letterheads of Maurice A. Webster, Joseph R. Duffy, trading as J. R. Duffy manufacturing Co., and others, such bids, although known to be false, were in turn submitted as and for genuine and competitive bids on such building materials by Charles F. Rohleder, his agents and employees, including Allen McLaine Ward and J. R. Baldridge, Jr., to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships, U. S. Navy, who, through the appearance of such bids, were misled and deceived into considering and approving them as genuine and competitive.

(g) Respondents, Maurice A. Webster and Joseph R. Duffy, have knowingly cooperated with respondent, James A. Clancy, in his preparation and submission of sham, false, fictitious, fraudulent, and noncompetitive bids and price quotations on building materials, as aforesaid, by furnishing him with stationery bearing their respective letterheads for his use in the preparation and submission of such sham, false, fictitious, fraudulent, and noncompetitive bids.

(h) Respondent, James A. Clancy, as a result of the submission of the aforesaid sham, false, fictitious, fraudulent, and noncompetitive bids, enjoyed awards of numerous contracts for building materials by said Charles F. Rohleder, his employees and agents, with the approval of officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, United States Navy, secured through deception as aforesaid.

PAR. 5. The aforesaid understandings, agreements, combination, and conspiracy, 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, and have had, the effect of depriving buyers and prospective buyers of building materials, including contractors and subcontractors of the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, and others with whom they normally would be in competition in making bids and price quotations.

CONCLUSION

The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents, as hereinbefore found, are all to the prejudice of the public; have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of building materials, which includes but is not limited to metal partitions and doors, toilet partitions, elevator entrances, and fire doors, in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce

in said products; have a dangerous tendency to create a monopoly in the purchase, sale, and distribution of such products; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answers of the respondents, in which answers respondents admit all of the material allegations set forth in said complaint and waive all intervening procedure and further hearings as to the facts, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondents, James A. Clancy, Maurice A. Webster, Joseph R. Duffy, Charles F. Rohleder, Allen McLaine Ward, individually, and as an agent of Charles F. Rohleder, and J. R. Baldridge, Jr., individually, and as an agent of Charles F. Rohleder, their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of building materials, including metal partitions and doors, toilet partitions, elevator entrances, and fire doors, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of the said respondents or between any one or more of the said respondents and any other person, partnership, or corporation not a party hereto, to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of such agency or for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or noncompetitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyers or prospective buyer.

4. Promoting, establishing, carrying out or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among any of the respondents or other sellers in the submission of price quotations or bids to buyers or prospective buyers.

Order

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

It is further ordered, That the respondents shall, within 60 days after the 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

RUCKER'S IMPERIAL BREEDING FARM, INC., FAMOUS
POULTRY FARMS, INC., HILLVIEW POULTRY FARMS,
INC., AND ROSS R. SALMONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5117. Complaint, Jan. 12, 1944—Decision, Oct. 21, 1944¹*

"United States Record of Performance" poultry improvement plan embraces records of egg production, body weight made on the breeder's premises under official supervision, and similar records made at officially conducted egg-laying contests when such records are passed upon by the official state inspector or official state supervisor and when the individual birds meet other United States Record of Performance requirements, and a United States Record of Performance breeder is understood by members of the poultry industry to be one operating a poultry-breeding plant under the official state agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture—

Where a corporation engaged in the interstate sale and distribution of baby chicks, and an individual, who controlled its acts and practices—along with those, in whole or in part, of two other similarly engaged corporations, prior to their dissolution; and the aforesaid two corporations; acting in conjunction and cooperation, each with the other, in carrying out the acts and practices below set forth; through statements in advertisements in newspapers and trade journals, and folders, pamphlets, circulars and other advertising matter, directly and by implication—

- (a) Represented that 100 baby chicks would be given free to certain prospective customers chosen by them as persons with whom they desired to place a flock of chickens for advertising or display purposes and that said offer of free chicks was limited to one person in each neighborhood; and
 - (b) Represented that the chicks supplied to the purchasing public were hatched from eggs produced at hatcheries operated by them, and that they were United States Record of Performance poultry breeders and operated poultry plants under the supervision of the United States Record of Performance agency in Iowa and Missouri;
- . The facts being said chicks were not given free as represented, but delivery thereof was contingent upon a purchase of other chicks by the recipient, and in certain cases their customers received a lesser number of so-called free chicks than ordered, with the explanation that the lesser number of chicks delivered was of a better grade or quality than ordered; offer of so-called free chicks was not limited to certain prospective customers chosen by them as persons with whom they desired to place a flock of chicks for advertising or display purposes and was not limited to one person in each neighborhood, or otherwise limited; a large majority of the chicks supplied to the purchasing public were hatched from eggs produced on farms on which they supplied the breeding stock from their own trapnest breeding farms; and they were not United States Record of Performance poultry breeders and did not operate poultry-breeding plants under the supervision of an official for the

¹ Order published as modified on Dec. 21, 1944.