

Syllabus

IN THE MATTER OF

UTAH WHOLESALE GROCERY, SYMNS-UTAH GROCER
COMPANY, ZIONS WHOLESALE GROCERY, AND JOHN
SCOWCROFT & SONS COMPANY

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

Docket 4643. Complaint, Nov. 25, 1941—Decision, Oct. 28, 1944

Where four wholesale grocers, engaged in the State of Utah in the interstate purchase and sale of groceries and other articles, doing about ninety per cent of the wholesale grocery business, in competition with others similarly engaged in Salt Lake City and in the trade territory of Utah, southern Idaho, southeastern Wyoming and eastern Nevada—

Agreed and conspired among themselves and with others to create and maintain a monopoly in the wholesale grocery business in aforesaid territory and, in connection therewith, undertook to drive out competitors and forestall potential competition; and in so doing—

- (a) Threatened to, and did, boycott manufacturers and jobbers for selling merchandise to their said competitors, and, upon learning of such sales, through threats and coercion caused said manufacturers and jobbers to divert the shipments in transit to others and thereby prevent the purchasers from obtaining their merchandise; and
- (b) Upon learning of cases where competitors had obtained groceries from manufacturers and jobbers, through concerted action among themselves and the manufacturers and jobbers, reduced the prices of such commodities to a point where said competitors could not sell them except at a loss;

Capacity, tendency and effect of which agreement and conspiracy, and aforesaid acts and practices, were to hinder and prevent dealers from obtaining merchandise; lessen and suppress competition; drive out competitors and forestall potential competition in the purchase, sale and distribution of merchandise at wholesale in the territory described; deprive the purchaser and consuming public of the advantages which they enjoy under normal and unobstructed or free and fair competition, in price, service, and other considerations in industry concerned; and otherwise operate as a restraint of trade and obstruction to the natural flow thereof into the channels of commerce:

Held, That such acts, practices and methods, under the circumstances set forth, were all to the prejudice of competitors and the public; had a dangerous tendency to and did actually hinder and prevent competition in the wholesale purchase, sale and distribution of groceries and other commodities; unreasonably restrained such commerce; had a dangerous tendency to create in said wholesale grocers a monopoly in the sale of said products; and constituted unfair methods of competition in commerce.

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

Mr. Everett F. Haycraft and *Mr. Floyd O. Collins* for the Commission.

Mr. Louis H. Callister, of Salt Lake City, Utah, for Utah Wholesale Grocery, and, along with *Judd, Ray, Quinney & Nebeker*, of Salt Lake City, Utah, for Symns-Utah Grocer Co., who also represented Zion's Wholesale Grocery.

Thatcher & Young, of Ogden, Utah, for John Scowcroft & Sons Co.

Complaint

39 F. T. C.

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

PARAGRAPH 1. Respondent, Utah Wholesale Grocery, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 344 West Temple, Salt Lake City, Utah.

Respondent, Symns-Utah Grocer Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 331 West Second South, Salt Lake City, Utah.

Respondent, Zion's Wholesale Grocery, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 40 South Second West, Salt Lake City, Utah.

Respondent, John Scowcroft & Sons Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at Ogden, Utah.

PAR. 2. All of the respondents herein named are now and have been for a number of years last past engaged in buying and selling at wholesale groceries and other articles generally bought and sold by persons or firms engaged in the wholesale grocery business, and in the course and conduct of their business have bought groceries and other articles from sellers located at points outside of the State of Utah and have caused said groceries and other articles to be shipped to them from said points located outside of the State of Utah to their places of business located in the State of Utah.

The respondents, in the course and conduct of their business, sell groceries and other articles to purchasers located outside of the State of Utah and have caused said groceries and other articles to be shipped to the purchasers thereof. The business done by the respondents in the territory hereinafter described constitutes about ninety percent of the wholesale grocery business done in said territory.

PAR. 3. There are now and have been for a number of years last past other corporations and firms and persons engaged in buying and selling groceries and other articles generally bought and sold by persons engaged in the wholesale grocery business in Salt Lake City and in the territory of Utah, southern Idaho, southwestern Wyoming, and eastern Nevada. Among such corporations are the Associated Food Stores, Inc., Market Wholesale Company, and Pacific Fruit & Produce Company, and with such corporations and firms and persons the respondents have been in active and substantial competition.

PAR. 4. Respondents prior to June 1940 agreed and conspired with themselves and with other persons to create and maintain a monopoly in

the wholesale grocery business in the territory hereinabove described and in carrying out said agreement and conspiracy respondents have undertaken to drive out competitors and to forestall potential competition and in so doing have engaged in and performed among others, the following methods and practices:

(a) Respondents have threatened to boycott and have boycotted manufacturers and jobbers for selling merchandise to respondents' said competitors.

(b) In cases where manufacturers and jobbers have sold merchandise to respondents' said competitors, respondents, upon learning of said sales, have through threats and coercion caused said manufacturers and jobbers, while the merchandise so sold was in transit, to divert the shipment to persons other than the purchasers and thereby prevent the purchasers from obtaining the merchandise so purchased.

(c) In cases where competitors have obtained groceries from manufacturers and jobbers, respondents, upon learning of the purchase, have, through concerted action between themselves and the manufacturers and jobbers, reduced the prices of such commodities to a point where their competitors could not sell such commodities so purchased except at a financial loss.

PAR. 5. The capacity, tendency and effect of the agreement and conspiracy and the acts and practices of the respondents, as hereinabove alleged, are and have been to hinder and prevent dealers from obtaining merchandise; to lessen and suppress competition; and to drive out competitors and forestall potential competition in the purchase, sale and distribution of merchandise at wholesale in the territory hereinabove described; and to deprive the purchaser and consuming public of the advantages of price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said industry; and to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade, and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States.

PAR. 6. The acts and practices of the respondents, as herein alleged, are all to the prejudice of competitors of respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the purchase, sale and distribution of groceries and other commodities sold at wholesale in commerce within the intent and meaning of Section 4 of the Federal Trade Commission Act; have unreasonably restrained such commerce in the purchase, sale and distribution of groceries and other commodities at wholesale; and have a dangerous tendency to create in respondents a monopoly in the sale of said products; and constitute unfair methods of competition 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 November 25, 1941, 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 in commerce in violation of the provisions of Section 5 of the said act. After the issuance of the complaint and the filing of the respondents' answers, the Commission by orders entered herein granted requests made by the respondents for permission to withdraw the answers theretofore filed and to substitute therefor answers admitting all of the material allegations of fact in the complaint and waiving all intervening procedure and further hearing as to the facts, which substitute answers were duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and the 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. Respondents, Utah Wholesale Grocery, Symns-Utah Grocer Co., and Zion's Wholesale Grocery, are all corporations, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with their respective home offices and principal places of business located in Salt Lake City in said State; and respondent, John Scowcroft & Sons Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at Ogden, Utah.

PAR. 2. All of the respondents have for a number of years last past engaged in buying and selling, at wholesale, groceries and other articles generally bought and sold by persons or firms engaged in the wholesale grocery business, and in the course and conduct of their respective businesses have bought groceries and other articles from sellers located at points outside of the State of Utah, and have caused such groceries and other articles to be shipped to them from said points located outside of the State of Utah to their respective places of business located in the State of Utah. The respondents also sell groceries and other articles to purchasers located outside of the State of Utah, and have caused such groceries and other articles to be shipped to the purchasers thereof. The business done by the respondents in the territory hereinafter described constitutes about ninety percent (90%) of the wholesale grocery business done in said territory.

PAR. 3. There are now and have been for a number of years last past other corporations and firms and persons engaged in buying and selling groceries and other articles generally bought and sold by persons engaged in the wholesale grocery business in Salt Lake City and in the territory of Utah, southern Idaho, southwestern Wyoming, and eastern Nevada. Among such corporations are the Associated Food Stores, Inc., Market Wholesale Co., and Pacific Fruit & Produce Co., and with such corporations and firms and persons the respondents have been in active and substantial competition.

PAR. 4. Respondents, prior to June, 1940, agreed and conspired among themselves and with other persons to create and maintain a monopoly in the wholesale grocery business in the territory hereinabove described, and

in carrying out said agreement and conspiracy respondents have undertaken to drive out competitors and to forestall potential competition, and in so doing have engaged in and performed, among others, the following methods and practices:

(a) Respondents have threatened to boycott and have boycotted manufacturers and jobbers for selling merchandise to respondents' said competitors.

(b) In cases where manufacturers and jobbers have sold merchandise to respondents' said competitors, respondents upon learning of said sales have, through threats and coercion, caused said manufacturers and jobbers, while the merchandise so sold was in transit, to divert the shipment to persons other than the purchasers and thereby prevent the purchasers from obtaining the merchandise so purchased.

(c) In cases where competitors have obtained groceries from manufacturers and jobbers, respondents upon learning of the purchases have, through concerted action among themselves and the manufacturers and jobbers, reduced the prices of such commodities to a point where their competitors could not sell such commodities so purchased except at a financial loss.

PAR. 5. The capacity, tendency, and effect of the agreement and conspiracy and the acts and practices of the respondents, as hereinabove set forth, are and have been to hinder and prevent dealers from obtaining merchandise; to lessen and suppress competition; to drive out competitors and forestall potential competition in the purchase, sale, and distribution of merchandise at wholesale in the territory hereinabove described; to deprive the purchaser and consuming public of the advantages of price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said industry; and otherwise to operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade, and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of competitors of respondents and of the public; have a dangerous tendency to hinder and prevent and have actually hindered and prevented competition in the purchase, sale, and distribution of groceries and other commodities sold at wholesale in commerce, as "commerce" is defined in the Federal Trade Commission Act; have unreasonably restrained such commerce in the purchase, sale, and distribution of groceries and other commodities at wholesale; have a dangerous tendency to create in respondents a monopoly in the sale of said products; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondents, Utah Wholesale Grocery, Symns-Utah Grocer Co., Zion's Wholesale Grocery, and John Scowcroft & Sons Co., corporations, and their officers, representatives, agents, and employees, in connection with the purchase or sale of merchandise 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, agreement, understanding, combination, or conspiracy between or among any two or more of the respondents, or between any one or more of the respondents and others not parties to this proceeding, to do or perform any of the following acts or things:

1. Boycotting or threatening to boycott manufacturers or jobbers for selling merchandise to any of respondents' competitors or to any potential competitor of respondents.

2. Through threats and coercion, causing manufacturers or jobbers who have sold merchandise to respondents' competitors to divert shipments of such merchandise to persons other than the purchasers thereof.

3. Reducing prices on such merchandise as is bought and sold both by respondents and their competitors with the purpose or effect of causing such competitors to sustain a loss on such merchandise.

4. Engaging in any act or practice substantially similar to those set out in this order with the purpose or effect of lessening, hindering, restraining, or preventing competition in the purchase or sale of merchandise in the trade territory in which the respondents operate.

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.

Syllabus

IN THE MATTER OF
CHARLES DEER AND JACK DEER, TRADING AS SAVOY
MANUFACTURING COMPANY

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

Docket 4763. Complaint, May 21, 1942—Decision, Nov. 1, 1944

Where two individuals who were engaged in the interstate sale and distribution of various household furnishings and articles, including electrical appliances, carpet sweepers, cutlery, blankets, comforters, bedspreads, lamps, tableware, chinaware, luggage and furniture, and who represented themselves as "Manufacturers and Distributors of Quality Merchandise for Concessionaires, Indoor and Outdoor Carnivals, Fairs, Bazaars, Parks, Celebrations, Amusement Resorts, Bridge Prizes, Premium Users, etc.," and had printed on their letterheads "Let US help solve your bingo-bridge and carnival problems, We have the experience"—

- (a) On request supplied to customers, including churches, lodges, clubs and other groups, their "Club Plan," for use in selling and distributing merchandise bought from them to members of the purchasing public, consisting of (1) their catalog which, entitled "Savoy's Super-De-Luxe Merchandise Club of Quality," illustrated the various articles offered by them and stated the terms on which any of them could be obtained through the operation of said "Club Plan," and (2) membership cards for use under the plan by which each member agreed to pay a specified amount, consisting usually of 25¢ a week for 26 weeks, the member whose number was drawn each week received one of the articles described in the catalog—retail value of each of which was about \$6.50—for the amount thus far paid by him, and all other members who had made their payments received also one of aforesaid articles for the entire amount thus paid in; and
- (b) On request sold or furnished along with merchandise sold to customers, as aforesaid, paraphernalia for its distribution to the purchasing public through the use of the game of "bingo," and in some instances furnished the merchandise on consignment, accompanied by said paraphernalia for purchasers' use and return after its employment, by means of which that one of the player participants—each of whom received a number of markers and a card on which appeared numbers in rows, and each of whom, when the game was conducted for profit, paid for the privilege of participation—who first had in a straight line on his card five numbers, as disclosed by the counters drawn from the box, and called by the person conducting the game, won the prize; and

Thereby supplied to and placed the means of conducting lotteries in the sales of their merchandise, in the hands of the organizations which purchased and distributed it to the purchasing public in accordance with the aforesaid sales plans, involving game of chance or sale of chance to procure article at much less than its normal retail price, contrary to an established public policy of the United States and in competition with others who do not use methods involving chance or otherwise contrary to public policy;

With tendency and capacity to divert trade in commerce to said individuals from their aforesaid competitors who do not use equivalent sales plans; and

- (c) Represented through inclusion of the word "Manufacturing" in their trade name and through statements on their letterheads "Manufacturers and Distributors" of