

IN THE MATTER OF
GRAPHIC ARTS CLUB OF CHARLOTTE, INC. 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 4517. Complaint, June 6, 1941—Decision, Dec. 2, 1944

Where a membership corporation, the "active" or "regular" members of which included, with some three or four exceptions, all of the commercial printing concerns in Charlotte, N. C., and the "associate" members of which (with no voice in the conduct and operation of said "club") included those there engaged in engraving; various individuals who served as officers, directors, or executive secretary thereof; and its said active or regular members who were in substantial competition with one another and with other commercial printers in the sale and distribution of printing and printed materials in commerce except in so far as such competition had been restrained and suppressed as below described, and who in the conduct of their respective businesses made use of the loose-leaf "Franklin Printing Catalog" handbook, leased to subscribers on an annual rental basis, to assist printers in arriving at a price for a given job of printing, and in which, while the word "price" was not used, the figures quoted—"value," "economic value" and "correct value"—did in fact make allowance for a reasonable profit;

- (a) Took definite and cooperative action toward achieving, through the use of said catalog, uniformity in the prices to be charged by the members for printing, through resolutions agreeing on one of their number to act as an official "for giving out prices on ruling and binding because of the difficulty in figuring out these prices," making arrangement for bringing before the board "jobs requiring the meeting of out-of-town prices or unfriendly competitors' prices," and making use of their bulletins, prepared by the club's executive secretary and distributed among the members, for instructions for finding the price in particular cases, such as where the customer furnishes the stock;
- (b) Similarly agreed upon discounts to apply with respect to various situations, including work for the city and county and power company, and upon various terms and conditions of sale such as procedure in the event of standard forms held by the printer, the grading of all work by the ream, carton or four-carton price for the exact amount of stock to be used on the job and in accordance with the price as established by the local paper dealers, and limitations on the amount of advertising to be done by the printer in quoting for printing programs, and brokerage to dealer; and

Where said members, pursuant to and in furtherance of such agreements—

- (c) Filed their proposed bids and price quotations with the executive secretary of the club, by whom each one was checked against the catalog; and usually revised bids found not to be in conformity therewith under procedure by which all bids and quotations filed were available to all members; and
- (d) Frequently requested said executive secretary, who was more skilled in the use of said catalog than the members, to calculate prices on particular jobs, which were given to all members requesting the same;

With the result that through such means and filing, urged upon the members through the club bulletin and comment therein, general uniformity in prices was achieved; and

Where said club, its various officers and members, as above set forth,

(e) Thereby entered into and put into operation and effect an agreement, understanding, combination, and conspiracy to restrain, lessen, injure, and suppress competition in the sale and distribution of commercial printing and printed material in commerce among and between various states;

Tendency, capacity and effect of which understanding and conspiracy and of the acts and things done pursuant thereto as above set forth, had been and were unduly and unlawfully to restrain and suppress competition in the interstate sale and distribution of commercial printing and printed material, and unduly and unlawfully to restrict and restrain trade in such products in commerce as aforesaid:

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

As respects the contention of certain commercial printers, including, with three or four exceptions, all of those engaged in such business in the city herein concerned, that agreements entered into by them to establish and maintain uniform prices, discounts and other terms and conditions governing the sale of their products had to do only with sales made in said city and the county in which it is situated, and had no relation to out-of-state jobs: Where (1) documentary evidence, including the minutes of their membership corporation or "club," disclosed no distinction in the agreements between local and out-of-state sales and the entire record—aside from the oral testimony of some of them—indicated that the agreements were general in their scope and covered all work done by the members; (2) it was to the interest of the members to obtain the generally higher prices provided in the schedules of the printers' handbook made use of by them on out-of-state sales just as on local sales and they did in fact use said handbook on both classes of sales; (3) local non-member printers were told by certain members and officers that the purpose of the club was to regulate all sales both local and out-of-state; and (4) the executive secretary of the club advised the secretary of an out-of-state employing printers' association that if at any time confronted with the threat of competition from the city concerned they would be protected in every way upon being notified; the conclusion was reached that, while said commercial printers undoubtedly were concerned primarily with the regulation of local sales, which comprised by far the greater portion of sales, the agreements were not restricted thereto but were general in their scope and were so regarded by said sellers.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Cochran & McCleneghan, Roberson & Jones and McDougle & Ervin, of Charlotte, N. C., for respondents.

COMPLAINT

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

Complaint

39 F. T. C.

PARAGRAPH 1. Respondent, Graphic Arts Club of Charlotte, Inc., hereinafter referred to as the "respondent Club," is a membership corporation, organized and existing under the laws of the State of North Carolina and having its principal office and place of business located in Suite 310, Piedmont Building, Charlotte, N. C.

The respondent officers of the respondent Club are as follows:

President, Fred H. Plexico, % Standard Printing Co., 117 Garland Court, Charlotte, N. C.;

First vice president, Norman Foust, % Washburn Printing Co., Inc., 214 W. Morehead Street, Charlotte, N. C.;

Second vice president, Elliott Hall, % The News Publishing Co., Charlotte, N. C.;

Secretary, James Webb, % Rush Printing Co., 116 S. Church Street, Charlotte, N. C.;

Treasurer, William S. Wallace, % The R & W Printing Co., 124 W. Fourth Street, Charlotte, N. C.;

Executive secretary, Albert Stowe Blankenship, 310 Piedmont Building, Charlotte, N. C.

The control and management of the policies and actions of the respondent Club are vested in its board of directors which consists of the above-named respondent officers and four additional directors appointed by the president of the respondent Club for a term of two months each. The following respondents, in addition to the above-named respondent officers, have served as members of the board of directors at various times during the year 1940:

Alf Asten, % The Herald Press, Inc., 225 S. Church Street, Charlotte, N. C.

Banks R. Cates, % The Observer Printing House, Inc., Charlotte, N. C.

Steve Kokenas, % Mercury Press, Charlotte, N. C.

W. W. Kale, % Kale-Lawing, 229 S. Tryon Street, Charlotte, N. C.

Haines Lassiter, % Lassiter Press, Inc., Charlotte, N. C.

The membership of said respondent Club is composed of (1) "active" or "regular" members, to wit: individuals, firms or corporations, engaged in the business of commercial printing and having places of business located in Charlotte N. C., and (2) "associate" members, to wit: individuals, firms or corporations, engaged in business as engravers and having places of business located in Charlotte, N. C. The associate members do not have any voice in the conduct and operation of the respondent Club and are not named as respondents herein.

PAR. 2. Among the "active" or "regular" members of the said respondent Club are the following respondents:

Roy T. Barbee, an individual, doing business under the firm name and style of R. T. Barbee Co., located at 326 South Church Street, Charlotte, N. C.

F. William Cullingford, an individual, doing business under the firm name and style of Commercial Printing Service, located at 407 East Trade Street, Charlotte, N. C.

John Goines, A. C. Goines and Charles Goines, copartners, doing business under the firm name and style of Economy Printing Co., located at 824 N. Caldwell Street, Charlotte, N. C.

The Herald Press, Inc., a corporation, organized under the laws of the State of North Carolina having its principal place of business at 225 South Church Street, Charlotte, N. C.

Huneycutt Printing Co., Inc., a corporation, organized under the laws of the State of North Carolina having its principal place of business located at 122 South Church Street, Charlotte, N. C.

Ivey Printing Co., Inc., a corporation, organized under the laws of the State of North Carolina having its principal place of business located at 122 East Fourth Street, Charlotte, N. C.

Kale-Lawing, a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 227-9 South Tryon Street, Charlotte, N. C.

Lassiter Press, Inc., a corporation, organized under the laws of the State of North Carolina, having its principal place of business located in Charlotte, N. C.

The Observer Printing House, Inc., a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 204 West Second Street, Charlotte, N. C.

Pound and Moore Co., a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 213 South Tryon Street, Charlotte, N. C.

Fred H. Plexico, an individual, doing business under the firm name and style of R & W Printing Co., located at 124 West Fourth Street, Charlotte, N. C.

Samuel L. Rush, Sr., and James Webb, copartners, doing business under the firm name and style of Rush Printing Co., located at 116 S. Church Street, Charlotte, N. C.

Standard Printing Co., a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 117 Garland Court, Charlotte, N. C.

Washburn Printing Co. (or Washburn Printing Co., Inc.), a corporation, organized under the laws of the State of North Carolina, having its principal place of business located at 214 West Morehead Street, Charlotte, N. C.

The above-named respondents, hereinafter referred to as respondent members, all regular or active members of respondent Club, do not constitute the entire regular or active membership of said respondent Club, but are representative regular or active members thereof, and are named herein as respondents, individually, and as representatives of the entire active or regular membership of said respondent Club.

PAR. 3. Respondent, Stephen G. Roszell, an individual, formerly served as executive secretary of the respondent Club from March, 1940, to October, 1940, and is now located in Savannah, Ga.

PAR. 4. Respondent members are all, respectively, engaged in the business of commercial printing, and in the regular course and conduct of their respective businesses sell and distribute printed products, including stationery and forms, and other paper upon which printing and/or engraving have been effected, to the purchasers thereof, and in connection with said sales, ship and transport, or cause to be shipped and transported, said products in commerce, to the purchasers thereof, located in the various States of the United States other than the State of origin of said shipments.

All respondent members have maintained, and still maintain, a regular current of trade in said products in commerce between and among the various States of the United States.

PAR. 5. Respondent Club, and its respondent officers and directors, and respondent, Roszell, are not and were not, in their official capacities, engaged in commerce, but all aided, abetted, furthered, cooperated with, and were instrumentalities of, and parties to, some or all of the understandings, agreements, combinations and conspiracies hereinafter set out and actively cooperated and participated in the performance of some or all of the acts and practices done in pursuance thereto and in furtherance thereof.

PAR. 6. Respondent members, in the regular course and conduct of their respective businesses, have been and are in active and substantial competition with each other and with other commercial printers in the sale of printed products including stationery and forms, and other paper, upon which printing and/or engraving has been effected, to purchasers for shipment in commerce between and among the several States of the United States, except to the extent to which such competition has been restrained, lessened, injured and suppressed by the understandings, agreements, combinations and conspiracies, hereinafter set forth.

PAR. 7. Respondents, namely the said Club, hereinabove described, its officers, its former executive secretary Roszell, its directors and its active or regular members, named and included as respondents herein, during and in the period of more than three years last past have entered into, and thereafter carried out, understandings, agreements, combinations and conspiracies for the purpose of restricting, restraining, suppressing and eliminating competition and creating a monopoly in the sale of printed products including stationery and forms, and other paper, upon which printing and/or engraving has been effected, in trade and commerce between and among the several States of the United States.

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

1. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform prices for the sale of printed products, including stationery and forms, sold and distributed by respondent members.

2. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform discounts, and other terms and conditions, for the sale of printed products, including stationery and forms sold and distributed by respondent members.

3. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform prices for the sale by respondent members, of paper upon which printing and/or engraving has been effected.

4. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform discounts and other terms and conditions, for the sale by respondent members of paper upon which printing and/or engraving has been effected.

5. Respondents have used and are now using other methods and means designed to suppress and prevent competition and restrain and restrict the sale of printed products, including stationery and forms, and other paper, upon which printing and/or engraving has been effected, in said commerce.

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

PAR. 10. Said understandings, agreements, combinations and conspiracies and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting, restraining, hindering, and preventing price competition between and among the respondents in the sale of printed products, including stationery and forms, and other paper, upon which printing and/or engraving has been effected, in commerce within the intent and meaning of the Federal Trade Commission Act; of unduly and unlawfully restricting and restraining trade and commerce in said products in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly, in the sale of said products in said commerce; of placing in respondents the power to control and enhance prices; and of unreasonably restraining such commerce in said products.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 6, 1941, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing by the respondents of their answers to the complaint, testimony and other evidence in support of and in opposition to the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answers, testimony and other evidence, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); 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, Graphic Arts Club of Charlotte, Inc., hereinafter frequently referred to as the "respondent Club" or as "the Club," is a membership corporation, organized and existing under the laws of the State of North Carolina, with its office and place of business located in Suite 310, Piedmont Building, Charlotte, N. C.

The following respondents are or have been officers of the Club:

Fred H. Plexico, president, % Standard Printing Co., 117 Garland Court, Charlotte, N. C.

Norman Foust, First vice president, % Washburn Printing Co., Inc., 214 West Morehead Street, Charlotte, N. C.

Elliott Hall, Second vice president, % The News Publishing Co., Charlotte, N. C.

James Webb, secretary, % Rush Printing Co., 116 South Church Street, Charlotte, N. C.

William S. Wallace, treasurer, % The R & W Printing Co., 124 West Fourth Street, Charlotte, N. C.

Albert Stowe Blankenship, executive secretary, 310 Piedmont Building, Charlotte, N. C.

Respondent, Stephen G. Roszell, who preceded respondent, Blankenship, as executive secretary of the Club, is now deceased.

The control and management of the policies and activities of the Club were formerly vested in its board of directors, which consisted of the individual respondents named above and four additional directors appointed by the president of the Club for a term of two months each. The following respondents, in addition to the individuals named above, have at various times served as members of the board of directors:

Alf Asten, % The Herald Press, Inc., 225 South Church Street, Charlotte, N. C.

Banks R. Cates, now deceased.

Steve Kokenas, % Mercury Press, Charlotte, N. C.

W. W. Kale, % Kale-Lawing, 229 South Tryon Street, Charlotte, N. C.

Haines Lassiter, % Lassiter Press, Inc., Charlotte, N. C.

At the present time the Club does not have a board of directors.

The membership of the club is composed of (1) "active" or "regular" members, to wit: individuals, firms, and corporations engaged in the business of commercial printing and having places of business located in Charlotte, N. C.; and (2) "associate" members, to wit: individuals, firms, and corporations engaged in the business of engraving and having places of business located in Charlotte. The associate members have no voice in the conduct and operation of the Club, and are not joined as respondents in this proceeding.

PAR. 2. The following respondents, hereinafter frequently referred to as "respondent members" or as "members," are or have been active or regular members of the Club:

Roy T. Barbee, an individual, trading as R. T. Barbee Co., with his place of business located at 326 South Church Street, Charlotte, N. C.

F. William Cullingford, an individual, trading as Commercial Printing Service, with his place of business located at 407 East Trade Street, Charlotte, N. C.

John Goines, A. C. Goines, and Charles Goines, copartners, doing business under the firm name Economy Printing Co., with their place of business located at 824 North Caldwell Street, Charlotte, N. C.

The Herald Press, Inc., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 225 South Church Street, Charlotte, N. C.

Huneycutt Printing Co., Inc., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 122 South Church Street, Charlotte, N. C.

Ivey Printing Co., Inc., formerly a corporation, organized under the laws of the State of North Carolina, with its place of business located at 122 East Fourth Street, Charlotte, N. C. This corporation was dissolved on April 3, 1941.

Kale-Lawing, a corporation, organized under the laws of the State of North Carolina, with its place of business located at 227-229 South Tryon Street, Charlotte, N. C.

Lassiter Press, Inc., a corporation, organized under the laws of the State of North Carolina, with its place of business located in Charlotte, N. C.

The Observer Printing House, Inc., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 204 West Second Street, Charlotte, N. C.

Pound and Moore Co., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 213 South Tryon Street, Charlotte, N. C.

Fred H. Plexico, an individual, trading as R & W Printing Co., with his place of business located at 124 West Fourth Street, Charlotte, N. C.

James Webb, an individual, trading as Rush Printing Co., with his place of business located at 116 South Church Street, Charlotte, N. C. Respondent, Samuel L. Rush, Sr., formerly, a copartner, with respondent Webb, in this business is now deceased.

Standard Printing Co., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 117 Garland Court, Charlotte, N. C.

Washburn Printing Co., a corporation, organized under the laws of the State of North Carolina, with its place of business located at 214 West Morehead Street, Charlotte, N. C.

The respondents named in this paragraph do not constitute the entire active or regular membership of the Club but are representative of such membership and are joined in this proceeding both individually and as representative of the entire active or regular membership of the Club. With some three or four exceptions, all of the commercial printing concerns in Charlotte are active members of the Club.

PAR. 3. In the course and conduct of their respective businesses the respondent members sell and distribute their printing and printed material to purchasers thereof located in various States of the United States other than North Carolina, and cause such products, when sold, to be transported from their respective places of business in North Carolina across State lines to such purchasers.

PAR. 4. The respondent members are in substantial competition with one another and with other commercial printers in the sale and distribution of printing and printed material in commerce among and between various States of the United States, except insofar as such competition has been restrained, lessened, injured, and suppressed as a result of the acts and practices hereinafter described.

PAR. 5. The respondent Club was organized in the latter part of 1939, and was incorporated in March, 1940. The ostensible purposes of the Club, as set forth in its constitution, were as follows:

Section 1. To effect a thorough noncommercial, non-profit-sharing organization of the employing printers and those engaged in the allied industries in the city of Charlotte, North Carolina, into a trade association in order that the printing and allied industries thereof may be improved in every proper and lawful manner.

Section 2. To promote the welfare of the printing industry and allied trades.

Section 3. To improve the conditions of the printers individually and collectively, and their service to the public.

Section 4. To encourage fraternal spirit among its members and resist encroachments upon their common rights.

Section 5. To secure uniform and united action in their common interests.

Section 6. To develop better methods of management and more highly trained personnel, and more ethical relations among themselves and with others, through collective and cooperative efforts (Comm. Ex. 2, pp. 3-4).¹

PAR. 6. There is in rather general use among the commercial printers in the United States a handbook known as the "Franklin Printing Catalog," which is published by a publishing house in Salt Lake City, Utah. The book is in loose-leaf form and is kept down to date by the publisher through the issuance from time to time of new pages and sections. It is not sold outright by the publisher but is leased to subscribers on an annual rental basis.

The purpose of the handbook is to assist printers in arriving at the price at which a given job of printing can be produced and sold profitably. One familiar with the book and reasonably skilled in its use can ascertain from it the price at which almost any printing job should be quoted. For example, one section of the book is entitled "Envelopes," and a printer desiring to bid or quote a price on a given quantity of envelopes of a designated grade can by consulting that section of the Franklin Catalog ascertain the price at which the job should be quoted. Other sections of the catalog deal with numerous other items, such as "Unruled Stationery," "Society and Wedding Stationery," "Tickets," "Blotters," "Legal Blanks," "Blank Books," etc.

While the catalog does not use the word "price" to refer to the figures quoted (such terms as "value," "economic value," and "correct value" being used instead), it appears that the figures do in fact make allowance for what is considered a reasonable profit on each job. On page 7 of Section F of the catalog (Comm. Ex. 29) appears the following:

Profits—No specific amount of profit or margin is indicated (nor will same be supplied upon request) for work done at the values in the Schedules. Costs vary in the same plant from month to month. One merchant may make a net profit at an established price on an article, while others would lose money. The same is true of printing. Conducted efficiently, a fair net (not gross) profit ought to be made by any plant at the values indicated in the Franklin Printing Catalog, but such a profit is not guaranteed. Under no circumstances will a statement be made as to the amount of profit. That depends upon the plant, regardless of size or location.

All of the respondent members use the catalog, and while their testimony generally was to the effect that the catalog was used by them merely as a guide in figuring "costs," the record taken as a whole establishes that they regarded the schedules in the catalog as indicating the actual prices which should be charged for printing.

¹Exhibits not published.

PAR. 7. Shortly after the Club was organized, the respondents took definite and cooperative action toward achieving, through the use of the Franklin Catalog, uniformity in the prices to be charged by the members for printing. The minutes of a meeting held on November 15, 1939, contain the following recitals:

Mr. Cates moves that we organize permanently on a basis of Franklin and abide by Franklin, which is a national guide and recognized by the majority of printers in the United States of America. This motion passed unanimously.

* * *

Mr. Wallace moves that we quote Franklin, less 20%, as a *minimum*, and all past transgressions are forgotten and forgiven. Mr. Banks Cates seconded this motion, and it was carried unanimously (Comm. Ex. 26-E).

In the minutes of a meeting held on November 29, 1939, the following appears:

BINDING AND RULING: Mr. Madagan of the Carolina Ruling and Binding Co. has agreed to act as official for giving out prices on ruling and binding because of the difficulty in figuring out these prices. The group agreed that this was satisfactory to them (Comm. Ex. 26-G).

The minutes of a meeting held on February 14, 1940, contain the following:

Motion was made by Mr. Hall that jobs requiring the meeting of out-of-town prices or unfriendly competitor's prices be brought before the board and under no circumstance could a member be permitted to meet prices in town of an unfriendly competitor. Motion seconded by Bill Wallace and carried (Comm. Ex. 26-N).

The minutes of a meeting held on March 18, 1940, contain the following:

Motion was made by Mr. John Fletcher that we go on straight Franklin beginning March 20, 1940.

Amendment was made to this by Mr. Faust that it take effective (sic) at the opening of business March 19 since it had been arranged and everyone was notified and agreed to it that it be so.

Amendment was accepted by Mr. Fletcher and both the motion and amendment were seconded by Mr. Asten and passed unanimously (Comm. Ex. 26-R).

From time to time, bulletins are prepared by the executive secretary of the Club and distributed among the members. In one of these bulletins, dated April 1, 1940, the following appeared:

To find the price of work done where the customer furnished the stock, first find the cost of the stock supplied and then deduct it from the price of the job as shown in your Franklin Catalog. For instance: Two thousand class A letterheads printed on 20 pound Hammermill is shown to be \$11.85. From this amount deduct the cost of one ream of the paper—20 pounds at 15 cents—\$3.00, and the correct price for printing will be found to be \$8.85. This price includes the profit that the Catalog provides on all work for the printer and to which you are duly entitled (Comm. Ex. 6).

Not only does this statement furnish further evidence of the respondents' agreement to make their prices and quotations uniform, but it also

shows that the Club members regarded the figures given in the Franklin Catalog as indicating the actual *prices* to be charged for printing and not merely the cost of a given job to the printer.

Discounts as well as prices were agreed upon. In the minutes of the March 18, 1940, meeting, the following appears:

Motion was made by Mr. Hall that will apply to *advertising agents* only:

That we adopt a standard discount of 15% from Franklin when the form is properly classified.

Mr. Wallace seconded and it was passed unanimously (Comm. Ex. 26-R).

In the minutes of a meeting held on July 17, 1940, the following appears:

Acting upon the report of the Executive Secretary as to his findings regarding all work done for the city, county, and the Duke Power Company, it was decided to base all quotations for these accounts at 20% off the Franklin List dating Monday, July 22, 1940 as a starting date (Comm. Ex. 26-Z-39).

The bulletin dated April 1, 1940, contained, under the heading "New Rulings," the following:

At the regular meeting held on Monday, April 1st, the following recommendations from the Executive Committee were read and acted upon as follows:

* * *

That on all quotations made a fixed rate of discount for payments shall be offered as 2 per cent ten days, thirty days net and that in no case shall a greater discount be offered as a sales' inducement. Carried (Comm. Ex. 6).

In addition to their agreements respecting prices and discounts, the respondents entered into other agreements relating to various terms and conditions of sale. The bulletin of April 1, 1940, contained under the heading "Some Club Rulings," the following:

Your attention is called to the following rules as formerly made and recorded in the minutes of the Club:

All jobs shall be quoted on according to their classification in the Franklin Catalog and that no reduction shall be made because of standing forms held by the printer. If it's a class B or C form originally it remains the same on all subsequent orders.

All work shall be graded by the ream, carton or four-carton price for the exact amount of stock to be used on the job and in accordance with the price as established by the local paper dealers. No one is permitted to base a quotation at a lower grade because placing mill-orders or volume orders and stocking paper at a lower cost.

Sulphite papers at the present market price must be graded as 10 cents, which covers the grade from 8 cents to 10½ cents. See section 37, page 5, in your Catalog (Comm. Ex. 6).

Under the heading "New Rulings," the bulletin contained the following:

* * * on quotations for printing programs the printer shall not agree to advertise therein for a greater amount than \$5.00 on any job selling for less than \$100.00 and not more than \$3.00 additional on each succeeding \$100.00. Carried (Comm. Ex. 6).

The minutes of the November 29, 1939, meeting contain the following:

It was discussed and agreed upon that standing forms were to be treated as new jobs and no reduction was to be made on the price (Comm. Ex. 26-G).

The minutes of a meeting held on January 2, 1940, contain the following:

Motion was made by A. C. Goines that we deal with brokers, provided that they sell on the same basis that we do. Seconded by Norman Faust and passed unanimously (Comm. Ex. 26-I).

PAR. 8. Pursuant to and in furtherance of these agreements, the respondent members filed with the executive secretary of the Club their proposed bids and price quotations. The executive secretary checked each bid or quotation against the Franklin Catalog, and if it was found not to be in conformity therewith, the member was so informed, and the bid or quotation was usually revised by the member so as to make it conform with the catalog. All bids and quotations filed were available to all members of the Club. The Executive Secretary, being more skilled in the use of the Franklin Catalog than the members, was frequently requested by them to calculate prices on particular jobs, and the figure arrived at by him was given to all members requesting such information. Through these means, general uniformity in prices was achieved.

Under the heading "File Your Quotations," the Club bulletin for November, 1940, contained the following:

There has been recently a surprising absence of unduly low price quoting. But in those few cases where someone has been wrong the error could almost always have been avoided if the offending party had filed his quotation with the secretary.

No one is perfect. You may make an error in figuring the simplest job. If you file your price any error will most likely be caught in time to correct it. If you do not file and your price is too high you are the loser. If your price is too low you are not only hurting yourself but you are being unfair to your competitors who have quoted correctly. So, if for no other reason, it would pay to file your prices to protect yourself against errors (Comm. Ex. 17).

PAR. 9. The respondents do not seriously deny that they entered into agreements to establish and maintain uniform prices, discounts, and other terms and conditions governing the sale of their products, but they insist that such agreements had to do only with sales made in the city of Charlotte and the county in which Charlotte is situated, that the agreements had no relation to out-of-State jobs. The documentary evidence in the record, however, including the minutes of the Club meetings and the bulletins issued by the Club, discloses that no distinction was made in the agreements between local and out-of-State sales. Aside from the oral testimony of some of the respondents, the entire record indicates that the agreements were general in their scope and covered all work done by the members.

The schedules in the Franklin Catalog being generally higher than the prices which the members had theretofore been getting for their work, it was to the interest of the members to obtain catalog prices on out-of-State sales just as on local sales, and the evidence shows that they did in fact use the catalog on both classes of sales. Moreover, the testimony of certain printers in Charlotte who are not members of the Club is to the effect that when they were solicited to join the Club they were told by certain members and officers that the purpose of the Club was to regulate all sales, both local and out-of-State.

Also of significance, as indicating that respondents did not regard their activities as being of an entirely local nature, is the following statement made by the executive secretary of the Club in a letter addressed to the Secretary of the Augusta Employing Printers' Association in Augusta, Ga.:

* * * if you are at any time confronted with the threat of Charlotte competition I ask that you rest assure (sic) that your notice, sent to this office, will be protected in every way (Comm. Ex. 39).

While the respondents undoubtedly were concerned primarily with the regulation of local sales, this being due to the fact that by far the greater portion of their sales were of that character, the Commission is of the opinion that the agreements were not restricted to such sales but were general in their scope and were so regarded by the respondents.

PAR. 10. The Commission therefore finds that the respondents have entered into and put into operation and effect an agreement, understanding, combination, and conspiracy to restrain, lessen, injure, and suppress competition in the sale and distribution of commercial printing and printed material in commerce among and between various States of the United States.

PAR. 11. The tendency, capacity, and effect of the agreement, understanding, combination, and conspiracy entered into among the respondents and of the acts and things done pursuant thereto and in furtherance thereof, as set forth herein, have been and are unduly and unlawfully to restrain, lessen, injure, and suppress competition among the respondents in the sale and distribution of commercial printing and printed material in commerce among and between various States of the United States, and unduly and unlawfully to restrict and restrain trade in such products in commerce as aforesaid.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); 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 respondent, Graphic Arts Club of Charlotte, Inc., a membership corporation, and its present and future members; and respondents, Fred H. Plexico, Norman Foust, Elliott Hall, James Webb, William S. Wallace, Albert Stowe Blankenship, Alf Asten, Steve Kokenas, W. W. Kale, and Haines Lassiter, individually, and as officers and directors of said corporation; and respondents, Roy T. Barbee, individually, and trading as R. T. Barbee Co.; F. William Cullingford, individually, and trading as Commercial Printing Service; John Goines, A. C. Goines, and Charles Goines, individually, and as copartners, trading as Economy Printing Co.; The Herald Press, Inc., a corporation; Huneycutt Printing Co., Inc., a corporation; Kale-Lawing, a corporation; Lassiter Press, Inc., a corporation; The Observer Printing House, Inc., a corporation; Pound and Moore Co., a corporation; Fred H. Plexico, individually, and trading as R & W Printing Co.; James Webb, individually, and trading as Rush Printing Co.; Standard Printing Co., a corporation; and Washburn Printing Co., a corporation; and respondents' respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of commercial printing and printed material 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 said respondents, or between any one or more of said respondents and others not parties to this proceeding, to do or perform any of the following acts or things:

1. Fixing or establishing uniform prices, or adhering to or maintaining prices so fixed or established.
2. Quoting prices or making bids in accordance with or predicated upon figures or schedules given in the publication known as the "Franklin Printing Catalog," or any similar publication.
3. Filing with respondent Club or any officer thereof, or with any other agency, proposed price quotations or bids, or otherwise exchanging information as to prices to be quoted or bids to be made.
4. Fixing or establishing uniform discounts or other terms or conditions of sale, or adhering to or maintaining discounts, terms or conditions of sale so fixed or established.
5. Engaging in any act or practice substantially similar to those set out in this order with the purpose or effect of establishing or maintaining uniform prices, discounts, terms or conditions of sale.

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

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondents Ivey Printing Co., Inc., Banks R. Cates, Samuel L. Rush, Sr., and Stephen G. Roszell.

IN THE MATTER OF
FRAERING BROKERAGE COMPANY, INC.

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

Docket 4823. Complaint, Aug. 26, 1942—Decision, Dec. 5, 1944

Where a corporation engaged principally as a jobber in buying and reselling in its own name and for its own account various canned foods, dried fruit, canned fish and other miscellaneous merchandise, and, to a minor extent, in acting as a broker of such products—

Received and accepted, in connection with the interstate purchase of said various products, in its own behalf and for its own account for resale, brokerage fees or allowances and discounts in lieu thereof in substantial amounts from numerous sellers, in many ways, including (1) purchases at prices lower than those at which commodities of like grade and quality were sold by the sellers to other purchasers, (2) the obtaining of the commodities at prices lower than those at which they were sold to other purchasers, by an amount which reflected all, or a part, of the brokerage fees currently being paid by such sellers to brokers for the sale of such commodities in behalf of such sellers, (3) the making of deductions in lieu of brokerage from the invoices of certain sellers, on payment of such invoices, and (4) the receiving from certain sellers of monthly rebate checks representing their customary brokerage fees:

Held, That said receipt and acceptance by it of brokerage fees, or allowances and discounts in lieu thereof, under the circumstances above set forth, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Robert A. Ainsworth, Jr., of New Orleans, La., and *Mr. William P. Smith*, of Washington, D. C., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent, Fraering Brokerage Co., Inc., is a corporation, organized and existing under the laws of the State of Louisiana, with its principal office and place of business located at 423 South Front Street, New Orleans, La. Respondent was organized, as stated in its corporate charter, for the purpose of buying and selling merchandise for its own account, as well as to buy and sell merchandise on a brokerage or commission basis for the accounts of others. Respondent operates two branch