

IN THE MATTER OF
AUBURN DIE COMPANY, 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 4921. Complaint, Mar. 2, 1943—Decision, Dec. 9, 1944

Where six corporations, four firms and an individual, engaged, in the New England states, in the manufacture and interstate sale and distribution of various types of steel cutting dies, which, used in the manufacture of shoes, are made in accordance with the specifications of each shoe manufacturing customer to conform with the particular shoe thereby made; doing an aggregate business of about \$500,000 annually, or about 35% of the total volume of cutting die business done in the New England States, and about 15% of such business done in the entire United States; in competition with one another and with others similarly engaged except insofar as such competition had been restrained and suppressed as below set forth;

Prior to the advent of the Office of Price Administration in 1942 which resulted in a change of the entire price structure, and to the current shortage of steel, in consequence of which they were unable to obtain their requirements for the manufacture of dies and shoe manufacturers were required to use the dies in their possession, with probability of few changes in shoe styles for the duration—

- (a) Entered into agreements and understandings as to sale prices and repair prices, both current and future, for dies made, sold and repaired by them, through discussing such prices at meetings of their unincorporated trade association, including base prices and specific charges for alterations, additions and repairs, and agreed to adhere to future prices thus determined; and
- (b) Republished copies of price lists containing the prices agreed upon, and later changed, as published by one member and disseminated among the others, and distributed the same to the trade, and made use thereof as a basis of quotations to customers, and generally adhered thereto;

Tendency, capacity, and effect of which agreement and conspiracy and of the acts and things done in furtherance thereof, as above set forth, had been and were unduly to restrain and suppress competition among the members in the sale and distribution of cutting dies in commerce and unduly to restrict and restrain trade therein as aforesaid:

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

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Thompson & Twomey, of Boston, Mass., for Auburn Die Co., Inc., and other respondents except as below set forth.

Goodwin, Procter & Hoar, of Boston, Mass., for Joseph E. Knox & Co., Inc.

Mr. Paul E. Nourie, of Manchester, N. H., for Axel Swanson and Raymond Duprey.

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 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, Auburn Die Co., Inc., is a corporation, organized and existing under the laws of the State of Maine, having its principal office and place of business at 22 Adams Street, Auburn, Maine.

Respondent, Androscoggin Die Co., Inc., is a corporation, organized and existing under the laws of the State of Maine, having its principal office and place of business at 11 Summer Street, Auburn, Maine.

Respondent, Joseph E. Knox & Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at 537 Broad Street, Lynn, Mass.

Respondents, John Hermanson, Stanley Leskiewicz and Joseph Toll, are copartners, doing business under the firm name and style of North Shore Cutting Die Co., having their principal office and place of business at 898 Broad Street, Lynn, Mass.

Respondents, Hyman Resnick, Henry April and Hyman Rosenblatt, are copartners, doing business under the firm name and style of Bay State Cutting Die Co., having their principal office and place of business at 380 Broad Street, Lynn, Mass.

Respondent, Boston Cutting Die Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at 190 Old Colony Avenue, Boston, Mass.

Respondents, Faustyn K. Jakiel and Richard B. Friend, are copartners, doing business under the firm name and style of State Die Co., having their principal office and place of business at Lincoln Street, Manchester, N. H.

Respondents, Axel Swanson and Raymond Duprey, are copartners, doing business under the firm name and style of Manchester Die Co., having their principal office and place of business at 134 Maple Street, Manchester, N. H.

Respondent, Vincent W. Burke, is an individual, doing business under the firm name and style of Bee Machine Co., having his principal office and place of business at 432 Union Street, Lynn, Mass.

Respondent, Brockton Cutting Die & Machine Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at Memorial Drive, Avon, Mass.

Respondent, Granite Dye Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, having its principal office and place of business at 18 Granite Street, Haverhill, Mass.

PAR. 2. Respondents are all, respectively, engaged in the business of manufacturing, selling and distributing steel dies used in the manufacture of shoes, for cutting leather into the various shaped and sized pieces form-

ing the component parts of a shoe. Said cutting dies are divided into hand-cutting dies and machine-cutting dies which are further divided into mallet dies, clicker dies, counter dies, machine handle tap dies, machine heel dies, etc. Each respondent, respectively; manufactures, sells and distributes one or more or all of the said various types of dies.

PAR. 3. Cutting dies are custom made in that each die is manufactured in accordance with the specifications of each particular shoe manufacturing customer, to conform with the particular style, design and type of shoe to be manufactured. The different dies, therefore, have variations consisting of angle changes of the die shape and additions to the base die such as nicks, stabs, scallops, braces, slots, etc.

PAR. 4. The aggregate annual volume of business represented by the sale of the respondents, of cutting dies, amounts to approximately \$750,000 which amounts to approximately (a) 50 percent of the total volume of such business in the New England States where all the respondents are located, and (b) 25 percent of the total volume of such business in the entire United States.

PAR. 5. Respondents in the regular course and conduct of their respective businesses, as aforesaid, sells and distribute cutting dies 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 the respondents 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. 6. Respondents, in the regular course and conduct of their respective businesses, as aforesaid, except to the extent to which competition in the manufacture, sale and distribution of cutting dies has been restrained, lessened, injured and suppressed by the plans, undertakings, agreements, combinations and conspiracies, hereinafter referred to, have been, and are, in active and substantial competition with each other and with other manufacturers, sellers and/or distributors of cutting dies.

PAR. 7. On or about June 11, 1941, for the purpose, and with the intention, of restraining, lessening, injuring, suppressing and destroying competition in the manufacture, sale and distribution of cutting dies in trade and commerce between and among the several States of the United States, the respondents entered into, and thereafter executed, and are now executing, sundry common courses of action, plans, undertakings, agreements, combinations and conspiracies, pursuant to and in furtherance of which the said respondents have engaged in and performed, and are now engaging in and performing, the following acts and practices, to wit:

1. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform prices for the sale of cutting dies manufactured, sold and distributed by the respondents.

2. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform prices for base dies, of each type, of a maximum length and width and with a predetermined angle and number of nicks, stabs, etc.

3. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform charges for each variation in the angle of the die shape and additions to the base die; the ultimate sale price of each die to be

computed from the price of the base die plus the charges for each such variation and addition.

4. Respondents have agreed to fix and maintain, and have fixed and maintained, uniform charges for repairs to such cutting dies.

5. Respondents have published and disseminated common price lists which set forth the price for the base die of each type or class of die and the charges for each variation of the die angle and addition to the base die and the repair charges.

PAR. 8. The respondents, to more effectively perform, and to supervise the performance of, the foregoing acts and practices, have organized and banded themselves together in an unincorporated trade association commonly known as The Die Manufacturers' Association. At meetings of said Association the respondents discussed selling prices, current and future, for cutting dies manufactured, sold and distributed by the respondents; agreements and understandings were reached by the respondents with regard to such prices; the respondents agreed to, and did, adhere to future prices so determined in the sale of said cutting dies; complaints were received and discussed relative to violations of said agreements and additional promises were exacted from respondents, so complained against, that in the future such respondents would adhere to such agreements.

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

PAR. 10. Said common courses of action, plans, 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 respondents in the sale of cutting dies 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 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 common courses of action, plans, 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 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 March 2, 1943, 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, a hearing

was held before a trial examiner of the Commission theretofore duly designated by it, at which a stipulation of facts was entered into between the attorney for the Commission and the attorney for respondents, which provided that the statement of facts therein might be made a part of the record herein and might be taken as the facts in this proceeding in lieu of testimony in support of or in opposition to the complaint. The stipulation further provided that the Commission might proceed upon the pleadings and such statement of facts to make its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Subsequently, the matter regularly came on for final hearing before the Commission on the complaint, answers, and stipulation of facts; 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, Auburn Die Co., Inc., is a corporation, organized and existing under the laws of the State of Maine, with its principal office and place of business located at 22 Adams Street, Auburn, Maine.

Respondent, Androscoggin Die Co., Inc., is a corporation, organized and existing under the laws of the State of Maine, with its principal office and place of business located at 11 Summer Street, Auburn, Maine.

Respondent, Joseph E. Knox & Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 537 Broad Street, Lynn, Mass.

Respondents, John Hermanson, Stanley Leskiewicz, and Joseph Toll, are copartners, doing business under the firm name and style of North Shore Cutting Die Co., with their principal office and place of business located at 898 Broad Street, Lynn, Mass.

Respondents, Hyman Resnick, Henry April, and Hyman Rosenblatt, are copartners, doing business under the firm name and style of Bay State Cutting Die Co., with their principal office and place of business located at 380 Broad Street, Lynn, Mass.

Respondent, Boston Cutting Die Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 190 Old Colony Avenue, Boston, Mass.

Respondents, Faustyn K. Jakiel and Richard B. Friend, are copartners doing business under the firm name and style of State Die Co., with their principal office and place of business located on Lincoln Street, Manchester, N. H.

Respondents, Axel Swanson and Raymond Duprey, are copartners, doing business under the firm name and style of Manchester Die Co., with their principal office and place of business located at 134 Maple Street, Manchester, N. H.

Respondent, Vincent W. Burke, is an individual, doing business under

the firm name and style of Bee Machine Co., with his principal office and place of business located at 432 Union Street, Lynn, Mass.

Respondent, Brockton Cutting Die & Machine Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located on Memorial Drive, Avon, Mass.

Respondent, Granite Die Co., Inc., is a corporation, organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 18 Granite Street, Haverhill, Mass.

PAR. 2. The respondents are engaged, respectively, in the business of manufacturing, selling, and distributing steel dies used in the manufacture of shoes, such dies being used specifically in the cutting of pieces of leather into the various shapes and sizes required to form the component parts of a shoe. Cutting dies are divided into two general classes: hand-cutting dies and machine-cutting dies, and the latter class is further divided into mallet dies, clicker dies, counter dies, machine handle tap dies, machine heel dies, etc. Each of the respondents manufactures, sells, and distributes one or more of these various types of dies.

Cutting dies are custom-made, in that each die is manufactured in accordance with the specifications of each shoe manufacturing customer to conform with the particular style, design, and type of shoe to be manufactured. The different dies therefore have variations consisting of angle changes of the die shape and additions to the base die such as nicks, stabs, scallops, braces, slots, etc. The price of a die in a particular classification is computed by taking the base price applied to such a die of a maximum length and width and with predetermined angle and number of nicks or notches, and adding to such base price the charge for changing the angle and for additional nicks, slots, braces, etc.

The aggregate volume of business done by the respondents is approximately \$500,000.000 annually, which represents approximately 35 per cent of the total volume of cutting die business done in the New England States, where all of the respondents are located, and approximately 15 per cent of the total volume of such business done in the entire United States.

PAR. 3. In the regular course and conduct of their respective businesses the respondents cause their products, when sold, to be shipped and transported to the purchasers thereof, located in various States of the United States other than the States in which such shipments originate. All of the respondents maintain and have maintained a regular current of trade in their products in commerce among and between the various States of the United States.

PAR. 4. Respondents are and have been in active and substantial competition with one another and with other persons, firms, and corporations engaged in the sale and distribution of cutting dies in commerce among and between the various States of the United States, except insofar as such competition has been restrained, lessened, injured, and suppressed by the acts and practices hereinafter described.

PAR. 5. In or prior to June, 1941, the respondents organized an unincorporated trade association commonly known as the Die Manufacturers Association. At meetings of the association the respondents, all of whom were members, discussed sale prices and repair prices, both current and future, for dies manufactured, sold, and repaired by them. Agreements

and understandings were thus reached by the respondents with respect to such prices, and respondents agreed to adhere to future prices so determined.

PAR. 6. At a meeting of the respondents held in June, 1941, they agreed on base prices and also on specific charges for alterations, additions, and repairs. Thereafter, a list containing the prices agreed upon was published by one of the members, and duplicate or mimeographed copies thereof were sent to each of the other respondents. The prices in the June list were changed at a subsequent meeting of the respondents, and a new price list was published by a member and disseminated among the other respondents, this action being taken in November, 1941. When the respondents received their copies of the adopted price list, they republished the list and distributed it to the trade. Respondents used this common price list as a basis of quotations to their customers and generally adhered to the list, although there were some variations. The advent of the Office of Price Administration in 1942 resulted in a change of the entire price structure.

PAR. 7. Membership in the association was voluntary, and members could and did withdraw at will. Respondent, Joseph E. Knox & Co., Inc., withdrew from the association in September, 1942. Respondents, Axel Swanson and Raymond Duprey (Manchester Die Co.), withdrew on January 25, 1943.

PAR. 8. At the present time the respondents, because of the shortage of steel, are unable to obtain their full requirements of steel for the manufacture of dies. In consequence, there will likely be few changes in the styles of shoes for the duration of the war. Manufacturers of shoes are now required to use the dies in their possession and to keep them in good repair because of the inability of manufacturers of dies to obtain their customary requirements of steel.

PAR. 9. The Commission finds from the facts set forth above, as well as others disclosed by the record, that the respondents have entered into and put into operation and effect an agreement, understanding, combination, and conspiracy to restrain, lessen, injure, and suppress price competition in the sale and distribution of cutting dies in commerce among and between the various States of the United States.

PAR. 10. The tendency, capacity, and effect of the agreement, understanding, combination, and conspiracy entered into by the respondents, and of the acts and things done pursuant thereto and in furtherance thereof, as set forth herein, have been and are unduly to restrain, lessen, injure, and suppress competition among the respondents in the sale and distribution of their products in commerce among and between the various States of the United States, and unduly 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 the respondents, and a stipulation of facts entered into between the attorney for the Commission and the attorneys for the respondents; 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, Auburn Die Co., Inc., a corporation; Androscoggin Die Co., Inc., a corporation; Joseph E. Knox & Co., Inc., a corporation; John Hermanson, Stanley Leskiewicz, and Joseph Toll, individually, and as copartners, trading as North Shore Cutting Die Co.; Hyman Resnick, Henry April, and Hyman Rosenblatt, individually, and as copartners, trading as Bay State Cutting Die Co.; Boston Cutting Die Co., Inc., a corporation; Faustyn K. Jakiel and Richard B. Friend, individually, and as copartners, trading as State Die Co.; Axel Swanson and Raymond Duprey, individually, and as copartners, trading as Manchester Die Co.; Vincent W. Burke, individually, and trading as Bee Machine Co.; Brockton Cutting Die & Machine Co., Inc., a corporation; and Granite Die Co., Inc., 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 cutting dies 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 for cutting dies, or adhering to or maintaining prices so fixed or established.
2. Fixing or establishing uniform prices for base dies, or uniform prices or charges for variations, alterations, or additions to such dies, or adhering to or maintaining any prices or charges so fixed or established.
3. Fixing or establishing uniform charges for repairs to cutting dies, or adhering to or maintaining charges so fixed or established.
4. Publishing, disseminating, or using common price lists.
5. Entering into discussions at meetings with the purpose or effect of establishing or maintaining uniform prices or charges for cutting dies or repairs thereto.
6. 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 or charges for cutting dies or repairs thereto.

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

IN THE MATTER OF
AGRICULTURAL INSECTICIDE & FUNGICIDE
ASSOCIATION ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 4145. Order, December 14, 1944

Order, pursuant to provisions of Section 5 (b) of the Federal Trade Commission Act, in proceeding in question; in which (1) the original order issued on July 24, 1942, in Agricultural Insecticide and Fungicide Assn., et al, Docket 4145, 35 F.T.C. 201; (2) the Circuit Court of Appeals for the Second Circuit, on December 23, 1943 in *Phelps Dodge Refining Corp. et al. v. Federal Trade Commission*, 139 F. (2d) 393, 37 F.T.C. 828, unconditionally affirmed the Commission's order as to the six petitioning corporate respondents and reversed it as to petitioner Demmon, and thereafter on February 21, 1944 entered decrees in accordance with stipulation entered into by the Commission with the petitioning respondents only; and (3) the Commission on June 8, 1944, pursuant to the provisions of Sec. 5 (i), and in accordance with the decrees above referred to, modified, as to said petitioning respondents only, said order—which required respondents therein enjoined, in connection with offer, etc., in commerce, of agricultural insecticides, fungicides, and related chemicals and items for similar usage, to cease and desist from entering into, continuing, directing, instigating, or cooperating in, “any common course of action,” mutual agreement, etc., to fix, establish or maintain prices, whether on a delivered basis or otherwise, etc., or to make use of the various other practices as there specified so that as to aforesaid respondents, the above quoted words were changed to read “cooperating in any agreed or planned common course of action”; and (4) dismissed the complaint as to respondent Demmon;

Modifying similarly as to the other respondents joined in said original order, the aforesaid language so as to read, as applied to them also, “cooperating in any agreed or planned common course of action”; and

Ratifying and confirming in all other respects save as thus modified the original cease and desist order entered on July 24, 1942.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto of the several respondents, and certain stipulations of fact, and respondents having expressly waived all intervening procedure and hearing as to the facts and consented that the Commission may, without any further intervening procedure, make and enter its findings as to the facts, its conclusion based thereon, and its order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, entered its cease and desist order herein on July 24, 1942. Thereafter, the respondents, Phelps-Dodge Refining Corporation, Tennessee Corporation, American Cyanamid & Chemical Corporation, John Powell & Co., Inc.,