

Syllabus

IN THE MATTER OF

SCIENTIFIC APPARATUS MAKERS OF AMERICA ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3092. Order, March 2, 1945

Modified order, in accordance with four decrees below referred to, in proceeding in question, in which original order issued on August 25, 1941, 33 F. T. C. 1130, and in which the Circuit Court of Appeals for the 7th Circuit, on February 29, 1944, in *Eugene Dietzgen Co. et al. v. Federal Trade Commission*, 142 F. (2d) 321, 38 F. T. C. 840, rendered its opinion, and on May 3, 1944 modified the same on denial of rehearing, and on May 22, 1944 entered four separate decrees by which the Commission's said order to cease and desist was, with respect to said petitioning respondent only, modified, affirmed, and enforced—

Requiring said petitioning respondents, and their officers, etc., to cease and desist from entering into or carrying out any understanding, etc., to restrict, restrain, monopolize, hinder or suppress competition in the sale and distribution in commerce of prepared tracing papers, tracing cloths, drawing tools, and various other articles used by surveyors, engineers, builders, the drafting profession and others, as in said order set out, by doing any of the acts or things therein specified; and from doing any of such acts or things pursuant to any such understanding, etc.; including among said acts, etc., thus prohibited, the fixing and maintaining of prices, and terms and conditions of sale, and the exchanging of information among themselves with respect to prices, etc., as therein set out; and

Requiring respondent association, the Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, its manager, etc., to cease and desist from aiding and assisting the members of respondent association in carrying out or engaging in any of the acts and practices theretofore set forth; and particularly through rules and regulations designed to prevent price deviations, and receipt and dissemination of price lists all as in said order in detail specified.

Mr. Everett F. Haycraft and *Mr. Reuben J. Martin* for the Commission. *Hewes, Prettyman, Awalt & Smiddy*, of Washington, D. C., for Scientific Apparatus Makers of America, *Carl S. Hallauer*, *R. E. Gillmor*, and *John M. Roberts*.

Gerdes & Montgomery, of New York City, for *Karl L. Keller* and *Keuffel & Esser Co.*

Mr. Howard P. Beckett, of Philadelphia, Pa., for Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, *Arthur L. Parker*, *Paul J. Bruning*, and *Frederick Post Co.*, and, along with—

Mr. Robert J. Holmes, of Boston, Mass., for *W. A. Berger*, and *Mayer, Magaziner & Brunswick*, of Philadelphia, Pa., for *Charles W. Speidel* and *Walter A. Kohn*.

Pam, Hurd & Reichmann, of Chicago, Ill., and *Mr. William E. Lamb*, of Washington, D. C., for *R. Fred Allin* and *Eugene Dietzgen Co.*

Mr. Thomas H. Fisher and *Mr. Arthur Fisher*, of Chicago, Ill., for *Huey Co.*, *Economy Blue Print Products, Inc.*, and *United States Blue Print Paper Co.*

Mr. Richard W. Thorington, of Philadelphia, Pa., for *Alphonse A. Brunner*, *Jacob H. Weil*, *Edwin H. Weil*, and *Manfred Krauskopf*.

Pope, Ballard & Loos, of Washington, D. C., for *The C. F. Pease Co.*

MODIFIED 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, the testimony and other evidence taken before duly appointed trial examiners of the Commission theretofore designated by it to serve in this proceeding, the report of the trial examiner thereon and the exceptions to said report, briefs filed herein by the Attorney for the Commission and attorneys for the respondents, and the oral arguments by the respective attorneys, and the Commission having made its findings as to the facts and its conclusion that respondents had violated the provisions of the Federal Trade Commission Act, and having entered an order to cease and desist herein on August 25, 1941; and

Thereafter the respondents, (1) Keuffel & Esser Company and Karl Keller, (2) Charles Bruning Company, Inc., The Frederick Post Company, Chas. W. Speidel & Company, J. H. Weil & Company, Paul J. Bruning, W. A. Berger, Arthur L. Parker; and the Charles Bruning Company, Inc., The Frederick Post Company and J. H. Weil & Company, as members of the Scientific Apparatus Makers of America, a corporate association; (3) The C. F. Pease Company; and (4) Eugene Dietzgen Company, filed in the United States Circuit Court of Appeals for the Seventh Circuit their four separate petitions for a review of the Commission's said order to cease and desist entered on August 25, 1941. Thereafter, the Circuit Court of Appeals for the Seventh Circuit entered four separate decrees by which the Commission's said order to cease and desist entered on August 25, 1941, was, with respect to the petitioning respondents only, modified, affirmed and enforced; and

It appearing to the Commission that of the respondents who filed their petitions for review of the Commission's said order to cease and desist with the Circuit Court of Appeals for the Seventh Circuit only one of said respondents, namely, Eugene Dietzgen Company, filed a petition for certiorari, which said petition was denied by the Supreme Court of the United States on October 9, 1944, and that the time for filing petitions for certiorari as to the remaining said petitioners expired on August 22, 1944; and

The Commission having considered the record herein issues this its modified order to cease and desist in accordance with the decrees of the United States Circuit Court of Appeals for the Seventh Circuit entered on May 22, 1944, as to those respondents who filed petitions for review before said Court:

It is ordered, That the respondents, Keuffel & Esser Company and Karl Keller, their officers, directors, representatives, agents and employees; Charles Bruning Company, Inc., The Frederick Post Company, Charles W. Speidel and Walter A. Kohn, trading as Chas. W. Speidel & Company, Jacob H. Weil, Edwin H. Weil and Manfred R. Krauskopf, trading as J. H. Weil & Company, Paul J. Bruning, W. A. Berger, Arthur L. Parker; and the Charles Bruning Company, Inc., The Frederick Post Company, and J. H. Weil & Company, as members of the Scientific Apparatus Makers of America, a corporate association, and their officers, directors, representatives, agents and employees; The C. F. Pease Company, its officers, directors, representatives, agents and employees; and Eugene Dietzgen Company, its officers, directors, representatives, agents and employees, forthwith cease and desist from:

Directly or indirectly, jointly or severally, entering into or carrying out

any understanding, agreement, arrangement, combination or conspiracy, with each other or with any other person or persons, association or corporation, to restrict, restrain, monopolize, or to hinder or suppress, competition in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of prepared tracing papers, tracing cloths, blueprint papers and cloths, other reproduction papers and cloths, profile and cross-section papers and cloths in sheets and rolls, coordinate papers—graph sheets (except rolled sheets) for engineering and drafting purposes, field books for engineers, drawing instruments, drawing tools (scales, triangles, T-squares, curves), drawing machines, blueprinting machines and equipment, drawing boards and tables, filing cabinets for drawings and blueprints, lettering devices and lettering pens for the drafting profession, slide rules, planimeters and integrators, surveying instruments, surveying barometers, forestry instruments such as tree calipers, hypsometers, increment borers, current meters and water-stage registers, rods and poles for surveyors' use, tapes, chains and plumb bobs, *by doing any of the following acts or things, and from doing any of the following acts or things pursuant to* any such understanding, agreement, arrangement, combination or conspiracy:

1. Fixing and maintaining, or agreeing to fix and maintain the prices at which said products will be sold by them.

2. Fixing and maintaining, or agreeing to fix and maintain the terms and conditions, including the classification of customers, freight allowances and duration of and optional clauses in contracts, in connection with any sales by them of their said products.

3. Exchanging information among themselves with regard to the prices, discounts, terms and conditions of sale to be submitted by them when bids for their products are requested, and submitting or agreeing to submit identical, or substantially identical, bids on said products when requests for bids have been received.

4. Filing with respondent Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, price lists including discounts, terms and conditions at which they will sell their products, for dissemination by said respondent Association among its members.

5. Agreeing not to sell their said products at a price less, or a discount greater, or on terms and conditions more favorable to the purchaser than those contained in any of the price lists filed with respondent Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, or agreeing not to sell said products at a price less or discount greater than or on terms and conditions of sale more favorable to the purchaser than those contained in the price list published by the seller.

It is further ordered, That respondent association, Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, Arthur L. Parker, its manager and his successors, Karl Keller, Paul J. Bruning, R. Fred Allin, and W. A. Berger, members of its executive committee and their successors, forthwith cease and desist from, directly or indirectly, jointly or severally, aiding and assisting the members of said respondent association in carrying out or engaging in any of the acts and practices hereinbefore set forth, and from performing any service or function in the furtherance of said acts and practices, and particularly from—

1. Adopting any rule or regulation designed or intended to prevent any deviation on the part of the members of said respondent Association from the prices, discounts and terms fixed and agreed upon by them, as hereinbefore set forth.

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2. Receiving from the individual members of said respondent association price lists, including discounts, terms and conditions of sale, and disseminating such information among said respondent association members.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents, Scientific Apparatus Makers of America, its officers and directors, and respondents, Carl S. Hallauer, R. E. Gillmor and John M. Roberts, the evidence being insufficient to establish the charges of the complaint with respect to these respondents.

It is further ordered, That the respondents shall, within 60 days after the service upon them of a copy 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
WEBSTER UNIVERSITYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5171. Complaint, June 2, 1944—Decision, Mar. 6, 1945*

Where a corporation engaged in the competitive interstate sale and distribution of correspondence courses of study and instruction with office and principal place of business in Atlanta, Georgia, incorporated under the laws of South Dakota and Delaware and which had been incorporated originally under the laws of Georgia and also the District of Columbia, under charters which had expired—

(a) Represented through statements in catalogs, letterheads, leaflets, circulars and other advertising material that it was an educational institution of higher learning, having adequate buildings, equipment and facilities for appropriate instruction in the arts and sciences and learned professions, including law, medicine and theology, and that it had a competent faculty of learned persons who were engaged in the instruction of resident students as well as nonresident students by correspondence, and that the academic degree indicated after the name of each faculty member in its catalog and other advertising material represented high scholastic attainment, and was obtained through appropriate study and instruction at an accredited institution of higher learning;

The facts being that it was a correspondence school conducted by its president from his law office, consisting of three small rooms in an office building in the aforesaid city; its faculty had long consisted of said individual and members of his immediate family, who had not qualified as instructors in a university by completing appropriate courses of study and instruction at an accredited institution of higher learning, and the other members of his faculty, whose names were set forth in its catalogues were individuals residing in various states who were engaged in professions and occupations other than teaching, many of whom had never resided in or visited the State of Georgia and some of whom had died; and in most instances the degrees appended to the names of faculty members in his catalogues were not conferred by any accredited institution of higher learning in recognition of scholastic attainment, but were conferred upon them by him, or by institutions of like character, without adequate study or instruction;

(b) Represented as aforesaid that its said courses of instruction were adequate to give students high scholastic standing; and that his said professional courses were adequate to equip students to practice the learned professions; and that students pursuing such courses earned credits and, upon their completion, were granted degrees that were recognized and accepted by accredited institutions of higher learning and by duly established accrediting agencies;

The facts being that said courses consisted of multigraphed lessons and text books on the subjects purported to be taught, and questionnaires; in a number of instances, the president furnished the answers to the questions or references to the book and page where they could be found; said materials and methods were wholly inadequate to qualify any student to receive credits or a degree recognized or accepted by accredited educational institutions or by duly established accrediting agencies; and such credits and degrees were not so recognized or accepted; and the professional courses given by him were wholly insufficient to enable the student to engage in a profession;