

IN THE MATTER OF
NATIONAL RETAIL TEA & COFFEE MERCHANTS
ASSOCIATION, 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 4776. Complaint, June 25, 1942—Decision, Mar. 20, 1945

Where an association, the members of which consisted of about 170 "home service merchants" engaged in various States in the sale of tea, coffee, toilet preparations and other items of household use,—usually differing in package sizes and labels from those customarily sold in retail stores, and obtained from concerns which package such merchandise especially for "home service merchants"—to members of the consuming public, through salesmen or routemen who operated trucks and other vehicles from door to door, displayed samples of merchandise and of the premiums to be given with the purchase of certain quantities thereof and took orders for delivering then or at a later date; and members thereof; its secretary; and an individual, engaged as a home service merchant in New Orleans, and chairman of local group of home service merchants, members of said association, in said city—

Acted cooperatively to shut off competition considered objectionable by virtue of price cutting and failure to maintain suggested retail prices on assorted brands of the association and others, without distinction, in accordance with association policy, and to exercise control of prices at which "home service merchants" sold merchandise to the public, through persistently making known, directly and through their association, to suppliers of objectionable competitors, their opposition to latter's price cutting or other practices not in harmony with association policies, and requesting refusal by such suppliers of further sales thereto; and through use of their collective weight and influence secured the cooperation of the sources of supply patronized by them in preventing "price cutters" or competitors whom they considered otherwise objectionable, from securing supplies of merchandise from manufacturers and distributors who catered to the special needs of "home service merchants";

With the capacity, tendency and effect of hindering, lessening, and restraining competition among and between home service merchants, and of hindering and preventing home service merchants who were not members of said association from obtaining supplies of merchandise needed in their business, and of otherwise restraining and lessening competition in the sale and distribution of merchandise commonly handled by home service merchants, and thereby depriving the purchasing public of the benefits which normally flow from free competition among them:

Held, That such acts and practices were all to the prejudice of the public, and had a dangerous tendency to hinder, and did actually hinder and prevent, competition among and between such merchants, and their competitors and prospective competitors in the sale of tea, coffee, toilet preparations, household specialties, and other articles of merchandise; unreasonably restrained such commerce; and constituted unfair methods of competition in commerce.

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

Mr. Floyd O. Collins for the Commission.

Castle, Williams & McCarthy, of Chicago, Ill., for National Retail Tea & Coffee Merchants Ass'n, Inc., *Oliver J. Corbett* and *Mother Hubbard Products Co., Inc.*

Mr. Ernest J. Robin, of New Orleans, La., for Henry C. Kepler.

Henican, Bethea, James & Cleveland, of New Orleans, La., for Trico Coffee Co., Inc.

Wright & Livingston, of Newark, N. Y., for Commercial Laboratories, Inc.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cleveland, Ohio, for Procter & Gamble Distributing Co.

Miller, Mack & Fairchild, of Milwaukee, Wis., for West Bend Aluminum Co.

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 individuals and corporations named in the caption hereof, hereinafter 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, National Retail Tea & Coffee Merchants Association, Inc., hereinafter referred to as respondent association, is a membership corporation organized under the laws of the State of Illinois with its principal office and place of business located at 1441 Merchandise Mart in the city of Chicago, in said State. Said respondent association was organized in 1916 for the mutual benefit of its members, consisting of more than 200 corporations, individuals and partnerships known as home service merchants located throughout the several States of the United States, engaged in the sale of tea, coffee, household specialties, toilet preparations and other items of household merchandise to the consuming public on what is known as the home delivery and premium plan of merchandising, by which said products are sold and delivered to consumers located in various States of the United States by means of salesmen or routemen operating trucks and other vehicles from door-to-door or house-to-house, and who display samples of merchandise and premiums to be given with the purchase of certain quantities of merchandise and take orders for said merchandise to be delivered then or at a later date by said salesmen or routemen.

The said members of respondent association in the course and conduct of their respective businesses, purchase the products sold by them from manufacturers or wholesale distributors thereof, located throughout the several States of the United States in States other than those in which said members are doing business, causing said products when thus purchased, to be shipped in interstate commerce from the respective places of business of the manufacturers or wholesale distributors thereof to the said members.

The affairs of the respondent association are conducted by a board of directors of twelve members and a group of officers consisting of a president, vice president, second vice president, treasurer and secretary, all of whom are elected by the members of respondent association annually except the secretary, who is employed by the board of directors.

Respondent, Oliver J. Corbett, for more than ten years has been and now is secretary of respondent association, and gives his full time to the business of the association for which he is paid a salary derived from the annual dues collected from the members, and other sources. Respondent, Corbett, performs the usual duties of a trade association secretary, en-

rolling members, organizing group and annual meetings of the members and the board of directors, which functions mostly through an executive committee. Among other things, respondent Corbett supervises the compilation and publication of two trade magazines, one of which, "The Te-cup," is the official organ of respondent association and regularly distributed to the members thereof, and which contains numerous advertisements of manufacturers of items of approved merchandise sold and distributed by the members of said association to the consuming public as hereinbefore described. The other trade magazine published by respondent, Corbett, is known as "Between Ourselves," and is sold to the members for distribution to the consuming public. Said publication contains advertisements of brands approved or owned by respondent association.

Respondent, Henry C. Kepler, is an individual, doing business under the style and firm name of Try-Me Coffee Mills, with his principal office and place of business located at 1014 France Street, New Orleans, La. Said respondent is a member of respondent association and is engaged in roasting, grinding and selling coffee, and also in the sale and distribution of household specialties as a home service merchant to purchasers and consumers thereof located in States other than the State of Louisiana.

The respondent, Trico Coffee Company, Inc., is a corporation, organized under the laws of the State of Louisiana with its principal office and place of business located at 1025 Felicity Street in the city of New Orleans, in said State. Said respondent is a member of respondent association and is engaged in the sale and distribution of tea, coffee and household specialties as a home service merchant to purchasers and consumers thereof located in States other than the State of Louisiana.

PAR. 2. Respondent, Commercial Laboratories, Inc., is a corporation, organized under the laws of the State of New York with its principal office and place of business located at Newark, in said State. Said respondent sells and distributes to home service merchants a line of toilet preparations and household specialties manufactured for it by C. H. Stuart and Company, of which it is a subsidiary.

Respondent, Mother Hubbard Products Company, Inc., is a corporation, organized under the laws of the State of Illinois, with its principal office and place of business located at 1222 West Madison Street, in the city of Chicago, in said State. Said respondent sometimes operates under the trade name of G. A. Goodrich and Company and manufactures, processes or packages a line of household specialties and other products which it sells and distributes to home service merchants.

Respondent, Procter & Gamble Distributing Company, is a corporation, organized under the laws of the State of Ohio, with its principal office and place of business located in the Gwynn Building in the city of Cincinnati, in said State. Said respondent is engaged in the distribution of a line of household specialties to home service merchants.

Respondent, West Bend Aluminum Company, is a corporation, organized under the laws of the State of Wisconsin, with its principal office and place of business located at West Bend, in said State. Said respondent is engaged in the manufacture of kitchen utensils and other household specialties, and in the sale of such products to home service merchants.

All the respondent corporations described in this paragraph regularly sell substantial quantities of their respective products to the members of respondent association, causing said products, when sold, to be transported from their respective places of business to the purchasers thereof located in

States other than the place of manufacture or sale, and there has been and is now a constant recurring course of interstate commerce in said products throughout the several States of the United States.

PAR. 3. For more than one year last past and continuing to the present time, said respondents have been and now are engaged in an understanding, combination and conspiracy to suppress competition and restrain trade in commerce in the sale and distribution of tea, coffee, household specialties, toilet preparations and other items of household merchandise. Pursuant to, and in the enforcement of said understanding, combination and conspiracy, said respondents have been and now are concertedly and cooperatively engaged in the following methods, acts and practices, to wit:

(a) Respondent, Corbett, and the respondent association have attempted to and have persuaded, coerced and induced home service merchants and their salesmen or routemen operating in various sections of the United States to conform to certain rules, practices and policies promulgated and recommended by respondent association for its members, providing, among other things, that competing home service merchants and their salesmen or routemen, in reselling tea, coffee, household specialties, toilet preparations and other items of merchandise, shall adhere to and maintain the prices fixed or recommended by the respondent association or the manufacturers or distributors thereof from whom such products or merchandise has been purchased;

(b) Respondents have attempted to and have prevented home service merchants and their salesmen or routemen who do not conform to the rules, practices and policies promulgated and recommended by respondent association, from obtaining tea, coffee, household specialties, toilet preparations and other items of merchandise necessary to the conduct of their business as home service merchants, either by refusing to sell or refraining from selling their products or merchandise to said home service merchants, or by persuading and coercing other manufacturers and distributors of such products or merchandise, to refrain from selling their products or merchandise to such home service merchants;

(c) Respondents have attempted to and have hindered and prevented former salesmen or routemen of members of respondent association from engaging in the business of home service merchants on their own account or as salesmen or routemen with other home service merchants by boycotting and blacklisting such former employees or the home service merchants by whom they are employed or from whom they purchase merchandise, and thus preventing them from obtaining tea, coffee, household specialties, toilet preparations and other items of merchandise required in the conduct of their business as home service merchants; and

(d) The respondents named in paragraph 2 hereof have cooperated with respondent association, its officers, directors and members in the enforcement of their said rules, practices and policies by refusing to sell and refraining from selling the said products manufactured and distributed by them to home service merchants or others upon request or demand of said officers, directors and members of respondent association.

PAR. 4. Said understanding, combination, agreement and conspiracy and the acts done and performed, and being done and performed thereunder, and pursuant thereto, as hereinbefore described, have had and now have the effect of preventing corporations, partnerships and individuals from engaging in interstate commerce except upon conditions imposed by respondent Corbett and respondent association, and unlawfully restricting

Findings

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and restraining the movement of tea, coffee, household specialties, toilet preparations and other items of merchandise in commerce between and among the several States of the United States, and more particularly have had and now have the effect of restraining, restricting and lessening competition in commerce between and among the individuals, partnerships and corporations engaged as home service merchants in the business of selling tea, coffee, household specialties, toilet preparations and other items of merchandise from house-to-house; of restraining, diminishing, curtailing and suppressing competition among manufacturers and processors of household specialties, toilet preparations and other items of merchandise commonly sold by home service merchants; of preventing individuals, partnerships and corporations desiring to operate a business of selling tea, coffee, household specialties, toilet preparations and other items of merchandise from house-to-house from having an opportunity to do so; of injuring and destroying the business of selling tea, coffee, household specialties, toilet preparations and other items of merchandise from house-to-house; and of depriving the purchasing public of the benefits which normally flow from competition between and among persons, partnerships and corporations engaged as home service merchants in the business of selling said products from house-to-house.

PAR. 5. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented competition between and among respondents and between and among respondents and competitors and prospective competitors of respondents in the sale of tea, coffee, household specialties, toilet preparations and other items of merchandise in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce, and constitute unfair methods of competition in commerce within the 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 June 25, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of this complaint and the filing of answers thereto by certain respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before an examiner of the Commission theretofore duly designated by it, and said 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, answer, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, National Retail Tea & Coffee Merchants Association, Inc., (hereinafter frequently referred to as the associ-

tion) is a membership corporation, organized and existing under the laws of the State of Illinois, with its principal office and place of business located in the Merchandise Mart Building, Chicago, Ill. This association was organized in 1916 for the mutual benefit of its members and its membership consists of approximately 170 corporations, individuals, or partnerships located in various States of the United States and there engaged in the sale of tea, coffee, household specialties, toilet preparations, and other items of household use to members of the consuming public. Its members are known as "home service merchants" and sell to the consuming public on a home-delivery and premium plan of merchandising. Under this plan the merchandise distributed by such merchants is sold and delivered to consumers by salesmen or routemen operating trucks and other vehicles from door to door. These salesmen display samples of merchandise and of the premiums to be given with the purchase of certain quantities of merchandise and take orders for merchandise to be delivered then or at a later date by said salesmen. The affairs of the association are conducted by a board of directors and a group of officers consisting of a president, vice president, second vice president, treasurer, and secretary, all of whom are elected annually by members of the association, except the secretary, who is employed by the board of directors.

(b) Respondent, Oliver J. Corbett, is now, and for more than ten years last past has been, secretary of the National Retail Tea & Coffee Merchants Association, Inc. He devotes his full time to the business of said association, enrolling members, organizing group and annual meetings of members, and otherwise attending to the affairs of the association. He supervises the compilation and publication of two trade magazines, one of which "The Tecup" is the official organ of the association and is regularly distributed to the members thereof, and the other, known as "Between Ourselves," is sold to association members for distribution to members of the consuming public.

(c) Respondent, Henry C. Kepler, is an individual, trading as Try-Me Coffee Mills, with his principal office and place of business at 1016 France Street, New Orleans, La. He is a home service merchant, is a member of the National Retail Tea & Coffee Merchants Association, and is chairman of a local group of home service merchants in New Orleans, members of the association.

(d) Respondent, Trico Coffee Company, Inc., has its office and place of business at 1025 Felicity Street, New Orleans, La. It is a home service merchant and was a member of the National Retail Tea & Coffee Merchants Association during a portion of the time mentioned in the complaint.

(e) Respondent, Commercial Laboratories, Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal office and place of business in Newark, N. Y. It sells and distributes to home service merchants a line of toilet preparations and household specialties manufactured by its parent, C. H. Stuart & Company.

(f) Respondent, Mother Hubbard Products Company, Inc., is a corporation, organized and existing under the laws of the State of Illinois, with its principal office and place of business at 1222 West Madison Street, Chicago, Ill. It also operates under the trade name G. A. Goodrich Company and is engaged in the sale and distribution of a line of household specialties and other products to home service merchants.

(g) Respondent, The Procter & Gamble Distributing Company, is a corporation, organized and existing under the laws of the State of Ohio,

with its principal office and place of business in the Gwynn Building, Cincinnati, Ohio. It is engaged, among other things, in the distribution of a line of soap products to home service merchants.

(h) Respondent, West Bend Aluminum Company, is a corporation, organized and existing under the laws of the State of Wisconsin, with its principal office and place of business in West Bend, Wis. Until Government control of aluminum required suspension of such use of aluminum, it was engaged, among other things, in the manufacture, sale, and distribution of kitchen utensils and other household specialties to home service merchants.

PAR. 2. Respondents, Commercial Laboratories, Inc., Mother Hubbard Products Company, Inc., The Procter & Gamble Distributing Company, and West Bend Aluminum Company, in the course and conduct of their respective businesses, cause, and have caused, their products, when sold, to be transported from their respective places of business to the purchasers thereof located in States other than the State in which their respective places of business are located, and maintain, and have maintained, a course of trade in their respective products in commerce among and between the several States of the United States. The members of the National Retail Tea & Coffee Merchants Association, Inc., in the course and conduct of their respective businesses as home service merchants, purchase the products of various manufacturers or distributors located in States other than the States in which their respective businesses are located, and cause such products, when thus purchased, to be shipped to them, across State lines, from the places of business of the manufacturers or distributors from whom such purchases are made.

PAR. 3. The merchandise distributed by "home service merchants" usually differs in package sizes and labels from that customarily sold in retail stores and readily available from many sources. Such special size and label merchandise is obtained from certain concerns that package it especially for "home service merchants." The association considered it desirable that members deal, insofar as possible, in merchandise on which the manufacturer or distributor suggested and cooperated in maintaining retail prices. This policy, as shown by the record, is indicated in the response made by the association to an inquiry from a member concerning certain products. On March 10, 1938, the Allison Coffee Company of Los Angeles, Calif., wrote the secretary of the association in part:

Do you know if the retail price given in the circulars is maintained as we are adverse to handling any item that is being "footballed" around (Comm. Ex. 10).

The reply made by the office of the secretary, Mr. Corbett, dated March 21, 1938, stated in part:

You may be sure that the retail price mentioned in the circular is maintained. Mr. Corbett accepts only those items on which a definite resale price is maintained (Comm. Ex. 11).

Some of the cooperation respecting price maintenance and opposition to price cutting in or out of the association membership is indicated by communications in the nature of complaints by association members. On November 17, 1938, a member, Rex Coffee & Tea Company of St. Louis, Mo., wrote the secretary of the association about the acceptance of a member without submitting his name to the local group concerned, and stated:

* * * We have reference to one party in particular whose name appeared on our list and from past experience we know him to be a "cutter" and one who does not adhere to prices which are asked to be kept. Kindly advise on this also (Comm. Ex. 15).

In replying to the Rex Coffee & Tea Company on November 21, 1938, Mr. Corbett said that they should be familiar with the procedure followed, which involved action on all applications for membership by the executive committee, and that:

* * * I should have appreciated your giving me the name of the party you have in mind so that I could check into the matter further and give you the name of the person who endorsed him for membership (Comm. Ex. 19-B).

In writing to Mr. Corbett on November 14, 1940, the Advance Aluminum Castings Corporation, in response to an inquiry made by Mr. Corbett on behalf of a member who had complained about the prices at which a retail store was selling the products of this manufacturer, explained that the retail store was handling a lower-priced line of their products than was the complaining member of the association, and stated in part:

We have been very careful in insisting that these established list prices be maintained, so that there would be no confliction between our department store and the tea and coffee trade (Comm. Ex. 25).

PAR. 4. (a) Action taken to shut off competition considered objectionable is shown in an incident involving one Alfred M. Lobre in New Orleans, La. Lobre had been employed as a salesman by Try-Me Coffee Mills, New Orleans, La., an association member. He left the employment of Try-Me; whereupon, on September 9, 1938, Try-Me wrote Commercial Laboratories, Inc., of Newark, N. Y., that Lobre, operating under the name of New Orleans Import Company or National Coffee Company, was attempting to take the customers he had formerly served away from Try-Me, and stated:

* * * I will appreciate very much if you will cooperate with me and not sell him any merchandise for the time being (Comm. Ex. 35).

Under date of September 16, 1938, Commercial Laboratories, Inc., replied to this request indicating that the New Orleans Import Company was an old, well-established concern and asking that Try-Me Coffee Mills check into the situation thoroughly, but stated:

* * * if this firm is not a legitimate merchandiser and is taking over your salesmen and attempting to do you harm we want to know about that, and we will also give you protection (Comm. Ex. 44).

Try-Me Coffee Mills replied on September 16, 1938, in more detail to Commercial Laboratories, Inc., and stated:

I have the cooperation of all the firms I am now doing business with and certainly will appreciate it if you will cooperate with me (Comm. Ex. 36).

Commercial Laboratories, Inc., replied on September 22, 1938, expressed appreciation for the explanation of what had occurred, stated that it had filled one order for the New Orleans Import Company (National Coffee Company) but:

Under the circumstances, if they place any more orders with us we will refuse to sell them unless they cut off their unfair tactics (Comm. Ex. 45).

At this point Try-Me took steps to prevent Lobre from becoming a member of the association. On September 19, 1938, it advised the association that the New Orleans Import Company had gone into the retail tea and coffee business as National Coffee Company, had employed one of its salesmen named Alfred Lobre who was soliciting his former customers for the new concern, and that probably an application would be made for membership in the association. He stated in part:

They are not living up to our rules by employing my salesman and I understand from Mr. Riley that they are after a couple of his men and under these circumstances if their application is presented I would appreciate if you will cancel same (Comm. Ex. 37).

To this the secretary of the association, Mr. Corbett, replied on September 22, 1938, stating in part:

We certainly will not admit anyone to membership employing the tactics of the New Orleans Import Company. If you find that they are using any merchandise that is packed for members of the Association you will render me a great favor by reporting this so that I can take it up with the manufacturers (Comm. Ex. 14).

Apparently Commercial Laboratories, Inc., wanted information about the Lobre situation from another source, and on November 15, 1938, wrote to Trico Coffee Company setting out in detail what had occurred between it and Try-Me concerning the New Orleans Import Company, asking for an impartial opinion, and saying in part:

We, of course, want to be fair to all parties and to protect "fair trade practices," and we wrote Mr. Kepler accordingly (Comm. Ex. 46-A).

Trico Coffee Company, Inc., replied to Commercial Laboratories on November 17, 1938, in some detail and concluded by stating:

If you can legally refuse, or fail to sell them, it would be to our mutual advantage ultimately. Please understand that we are in no way involved, or interested in the situation as it stands today. We are writing along these lines because it may affect us in the future, either through the N. O. Import Company or through such men as Mr. Lobre going into business for themselves (Comm. Ex. 58).

Try-Me evidently decided that more pressure was needed on Commercial Laboratories, Inc., and on November 17, 1938, wrote the secretary of the association, stating in part:

Referring to your letter of September 22, you asked me to report to you any Company that would ship the New Orleans Import Co., operating under the name of The National Coffee Co.

The Commercial Laboratories has made one shipment before Mr. Lobre left my employ, and they promised that they would not ship any more at that time, but they are now trying to secure an additional order and I believe that they may consider selling them if they do not hear from you (Comm. Ex. 39).

On November 21, 1938, the secretary of the association, Mr. Corbett, replied to the above request, stating:

In accordance with your letter of November 17th, we have written to Commercial Laboratories, Inc., in regard to Mr. Lobre.

Enclosed is a copy of our letter and we feel sure that you may count on Mr. Wingard's cooperation in this matter (Comm. Ex. 17).

Mr. Corbett's letter to Commercial Laboratories, Inc., reads:

Mr. Henry C. Kepler of the Try-Me Coffee Mills, New Orleans, Louisiana, reports that Mr. Lobre left his employ in order to engage in his own business. Mr. Lobre's methods of doing business are not in accordance with our ethics and he is not eligible for membership in our Association.

We should very much appreciate your investigating this man should he attempt to order merchandise from you.

Your cooperation in this matter will be greatly appreciated (Comm. Ex. 16).

On November 21, 1938, Commercial Laboratories, Inc., replied to Mr. Corbett concerning the New Orleans matter and stated in part:

We are protecting the interests of all of the Dealers in that vicinity against this party. If occasion ever arises, you may assure any Dealer that they will get full cooperation from us against price-cutters and other unfair Trade Practices from unscrupulous dealers (Comm. Ex. 47).

(b) Another aspect of the Lobre situation arose the following year. On September 20, 1939, Mr. Corbett wrote an association member in New Orleans the Trico Coffee Company, Inc., as follows:

Thanks so much for your suggestion that we write to Mr. Alfred L. Lobre, 932 Lizardi Street, New Orleans, Louisiana.

An application blank and letter regarding the Association have gone forward to Mr. Lobre today (Comm. Ex. 20).

Apparently an application was received from Mr. Lobre, and on November 6, 1939, Mr. Corbett wrote Try-Me Coffee Mills in part as follows:

Would appreciate your mailing us a formal letter of protest against the application for membership in the Association, of Alfred L. Lobre, 900 Lizardi Street, New Orleans.

This is necessary in order that the matter may be presented to the Executive Committee when they meet here in Chicago on January 11th (Comm. Ex. 21).

To which Try-Me replied under date of December 9, 1939, stating in part:

Enclosed you will find the formal letter of protest, you asked for. Thank you for letting me know of this. Hoping you and the Board members will see my point of view in this matter (Comm. Ex. 40).

The basis for objection as disclosed in the letter of protest from Try-Me includes the following:

This man being a former employee of mine is going over his former routes, cutting prices, and doing everything unethical to gain the customers (Comm. Ex. 41).

PAR. 5. (a) Action taken to eliminate or restrain competition and prevent price cutting is shown in the case of the J. J. Sbisá Coffee Company. On February 3, 1941, the secretary of the association, Mr. Corbett, wrote identical letters to respondents, Mother Hubbard Products Company,

Inc. (trading as G. A. Goodrich Company), Commercial Laboratories, Inc., The Procter & Gamble Distributing Company, and West Bend Aluminum Company which read as follows:

There is a situation which exists in the city of New Orleans, of which I am confident you are not aware. The purpose of this letter is to acquaint you with the facts in the matter.

The following business houses in New Orleans:

J. J. Sbisa
Dittmann Coffee Company
Liberty Coffee Company
Binder Coffee Company

have been purchasing merchandise from your good concern and have been underselling other merchants using similar merchandise from your company.

Knowing the fine reputation your firm has for fair dealings with the members of the Association, I am sure that you will not tolerate this situation.

I do want you to know that this is not a letter of protest from the members of the Association, or from the New Orleans Group—It is just a friendly letter from me, prompted by the knowledge of the fine business practices of your good company and the feeling that you would want to know of this condition.

If there is any further information that you require, I shall be very happy to supply it. I shall appreciate hearing from you with reference to this matter (Comm. Ex. 26).

(b) The course of events which followed in the case of Commercial Laboratories, Inc., was its response on February 5, 1941, advising that it had done business with only one of the four concerns named, J. J. Sbisa, and was surprised to learn that he was an offender. The letter continued:

Fortunately, our Mr. MacClennan is on his way to New Orleans at the present time and will be there the latter part of this month. I am sending him your letter and asking him to talk with Mr. Sbisa and try to straighten the matter out. If Mr. Sbisa will not fall in line and work with the other merchants down there, we will certainly discontinue selling him as we want to give the legitimate Tea and Coffee Route Merchants proper protection and cooperation.

I am very grateful to you for calling this situation to my attention, and if you ever hear of any other cases around the country please let me know at once (Comm. Ex. 50).

This was followed by a letter of February 18, 1941, from Mr. MacClennan to the president of Commercial Laboratories, Inc., reading in part:

* * * Have checked up on this Sbisa—what he does is buys mdse. then talks to men working for other companys, points out to them where they can make the long profit if they go in for themselves and buy their coffee from him (That's where he cleans up). He sells our stuff at cost or less to start them off.

If we sell him we cannot sell Watkins Martinson Kepler & McBeuth.

West Bend has cut him out. I think we should too. Loose his orders or something (Comm. Ex. 51).

Commercial Laboratories, Inc., then wrote J. J. Sbisa Coffee Company on March 6, 1941, stating:

It has been brought to our attention that you have been using unfair trade practices in the handling of our merchandise and under the circumstances, we will be unable to ship you anything more.

We understand that you have been underselling other Route Merchants who are handling our products as well as using other unethical methods. We have a reputation for fair dealing with all Route Merchants and we can not tolerate such practices (Comm. Ex. 65).

Evidently Sbisa replied to the above letter, because Commercial Laboratories on March 17, 1941, wrote him:

I have your letter of March 11th and do not want to get into any controversy over the matter in question.

It is my suggestion that you join your local Association. Just who is at the head of it, I do not know.

I feel sure that if you worked in cooperation with the other Tea men with whom you are in competition, that there would be no further trouble (Comm. Ex. 66).

And on July 9, 1941, Commercial Laboratories, Inc., wrote J. J. Sbisa Coffee Company:

Your letter of June 19th was duly received but has been unanswered because the writer has been out of town and it has been awaiting his attention.

Regret to advise that we cannot fill your order at this time (Comm. Ex. 72).

(c) In the case of Mother Hubbard Products Company (G. A. Goodrich Company) the association's letter of February 3, 1941, set out in subparagraph (a) above was followed by a reply dated February 4, 1941, reading:

Glad to receive your letter of February 3rd. Enclosed is a copy of a letter I have written to the Sbisa Coffee Company. We don't sell the other three companies mentioned in your letter.

Any further suggestions you have will be greatly appreciated, for I surely expect to cooperate in every way possible. * * * (Comm. Ex. 54).

On the same date the G. A. Goodrich Company wrote the J. J. Sbisa Coffee Company referring to their previous business relations and its relations with home service merchants generally, saying:

These companies are spread over the entire United States, and it has become a custom that they get practically the same prices for these various products. In turn, it has become a part of our protection to keep these prices all in line as nearly as possible.

This letter explained that in cases where cooperation was withheld the purchaser would have to furnish his own labels or cartons to avoid direct competition, set out the products Sbisa was buying and the suggested retail prices for them, and stated:

Now, I am giving this to you as a matter of record, and hope that you will be able to send us your reply in a favorable way, for we have enjoyed doing business with you and hope that we can continue under conditions outlined above (Comm. Ex. 67-A, B).

G. A. Goodrich Company also sent a copy of the above letter to Try-Me Coffee Mills, advising that concern that it did not sell to Dittmann, Liberty, or Binder. On February 7, 1941, Sbisa replied to G. A. Goodrich Company, setting out the list of its products handled and the prices obtained therefor, observing that all his prices except on one product were in line, and continued:

We also serve a few small operators for resale, with the understanding that the above prices may be maintained.

I don't know who made this unjust complaint, but can assure you that we are for maintained prices.

I am willing to abide by any retail list you submit; provided every other operator in New Orleans does the same (Resp. Ex. 10).

(d) In the case of West Bend Aluminum Company the letter of the association set out in subparagraph (a) above was followed by a reply to Mr. Corbett dated February 4, 1941, reading:

I have your letter of February 3 regarding the activities on the part of some of the New Orleans coffee accounts in the maintenance of the resale prices on our products. I have checked our files, and find that the quantity of merchandise that they have purchased from us is indeed very small, and certainly will not justify our permitting them to continue cutting prices.

I am writing our New Orleans representative and am asking him to take the necessary steps at once to straighten out this situation. Thanks for calling it to our attention (Comm. Ex. 3).

On the same day West Bend Aluminum Company wrote its New Orleans representative, advising of the receipt of the letter from the National Retail Tea & Coffee Merchants Association regarding the cutting of prices by purchasers named in the letter, and stated:

I suggest you call on them, make sure that they know what our retail prices are, and tell them that these prices must be retained or else we can make no further shipment to them (Comm. Ex. 4).

To which West Bend's New Orleans representative replied on February 26, 1941, as follows:

Henry Kepler, local chairman of the National Retail Tea and Coffee Men's Assn. tells me that the above company is purchasing misc. articles sold by association members and they are reselling these articles to small coffee men who cut prices and are disturbing the local market. The members of the NRTCMA have requested the cooperation of manufacturers from whom they buy, asking that Sbisa not be sold and all manufacturers have consented to this cooperation.

I pledged our support and should orders be received from Sbisa, I suggest that we withhold shipment so as not to antagonize the members of the NRTCMA (Comm. Ex. 5).

This letter bears a notation "take off mailing list" approved by the manager of the jobbing division of West Bend Aluminum Company. The record shows that at about this time West Bend began to decline orders generally because aluminum was not available for the manufacture of kitchen utensils.

(e) In the case of The Procter & Gamble Distributing Company the association letter set out in subparagraph (a) above was followed on February 4, 1941, by a reply from Procter & Gamble stating:

Mr. Bouché has referred your letter of the 3rd to me for attention.

I expect to be in Chicago later this month and will talk this matter over with you. I am sure we can straighten out things in the right way (Comm. Ex. 28).

On May 30, 1941, J. J. Sbisa Coffee Company sent an order for merchandise to The Procter & Gamble Distributing Company. On June 6,

1941, Sbisa received a form letter from The Procter & Gamble Distributing Company advising of a vacation close-down of factories and suggesting the purchase of enough stock to carry through the shut-down period. To this Sbisa responded under date of June 9, 1941, with an order for merchandise and called attention to his previous order which had not been acknowledged or shipped. On June 19, 1941, Sbisa inquired by registered mail when shipment of his pending orders might be anticipated, and under date of June 26, 1941, The Procter & Gamble Distributing Company advised Sbisa:

We acknowledge your registered letter of June 19th addressed to our representative Mr. R. P. Hoen, who has referred the matter to us for handling.

You did not receive any acknowledgement of your letter of June 9 because we are not in a position to make shipment to you. The letter we sent you under date of June 6 to which you referred was a mimeographed notice sent to all accounts sold at one time or another to let them know that our factories would not be in production from July 3 through July 18 due to employee vacations.

We found your name was still included in our list of accounts but have since removed your name from our mailing list so that there will be no misunderstanding in the future (Comm. Ex. 64).

PAR. 6. It is contended that the association activities described related to brands said to be owned by the association, "Our Brand" and "Home Service Brand," but the record shows that no such distinction was made and that manufacturers', distributors', or any other brands were comprehended. It is also apparent from the record, and the Commission finds, that the association and its members sought by cooperative action among themselves to exercise control over prices at which "home service merchants" resold merchandise to the public and used their collective weight and influence to secure the cooperation of the sources of supply patronized by them in preventing "price cutters" or other competitors they considered objectionable from securing supplies of merchandise from manufacturers and distributors catering to the special needs of "home service merchants." The cooperation, understandings, and agreements among respondents herein and the acts and things done pursuant thereto, as heretofore set out, have had, and have, the capacity, tendency, and effect of hindering, lessening, and restraining competition among and between home service merchants, and of hindering and preventing home service merchants who are not members of respondent association from obtaining supplies of merchandise needed in their business, and otherwise restraining and lessening competition in the sale and distribution of tea, coffee, toilet preparations, household specialties, and other items of merchandise commonly handled by home service merchants, thus depriving the purchasing public of the benefits which normally flow from free competition among home service merchants.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice of the public, have a dangerous tendency to hinder, and have actually hindered and prevented, competition among and between respondents and competitors and prospective competitors of respondents in the sale of tea, coffee, toilet preparations, household specialties, and other articles of merchandise, have unreasonably restrained such commerce, and constitute unfair methods of competition in commerce within the meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of certain respondents, testimony and other evidence taken before an examiner of the Commission, theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and the oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, National Retail Tea & Coffee Merchants Association, Inc., a corporation, its officers, directors, and members; respondent, Oliver J. Corbett, an individual; and respondent, Henry C. Kepler, an individual, trading as Try-Me Coffee Mills, or under any other name; their respective agents, representatives, and employees, in connection with the movement of commodities 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, understanding, agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following things:

1. Induce, persuade, or coerce any manufacturer or distributor of merchandise to discontinue selling or refuse to sell his products to any competitor of respondents, or of any of them.

2. Carry on between themselves or with others communications having the purpose, tendency, or effect of inducing, persuading, or coercing manufacturers or distributors of merchandise to discontinue selling or refuse to sell such merchandise to any competitor of respondents, or of any of them.

3. Use any scheme or device whatsoever to hinder, obstruct, or prevent any competitor of respondents, or of any of them, from freely purchasing and obtaining the commodities usually handled by such competitor in the course of its business; or to prevent any individual, partnership, or corporation from entering into or continuing or becoming associated with a business in competition with respondents, or any of them.

It is further ordered, That nothing herein contained shall be construed to prevent the lawful use by respondents of any trade marks or brands actually owned by them.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to Trico Coffee Company, Inc., in its individual capacity, Commercial Laboratories, Inc., Mother Hubbard Products Company, Inc., The Procter & Gamble Distributing Company, and West Bend Aluminum Company without prejudice to the right of the Commission to reopen the matter and resume trial thereof should the public interest require such action.

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

Complaint

IN THE MATTER OF

JOSEPH O. MAGGIONI, JOSEPH S. CAFIERO AND MAD-
ELINE CAFIERO, DOING BUSINESS AS L. P. MAGGIONI
& COMPANY

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

Docket 5129. Complaint, Feb. 5, 1944—Decision, Mar. 20, 1945

Where three partners engaged in packing and canning fish, oysters, shrimp and clams, and in the marketing, sale and distribution of said sea food products under their own brands and also under private or buyers' brands; selling (1) through a large number of legitimate intermediaries who acted as their agents and were paid commissions or brokerage fees; and (2) direct to a few buyers who were paid, directly or indirectly, commissions or brokerage fees on their own purchases of such sea food products—

Paid or granted, directly or indirectly, commissions, brokerage or other compensation in lieu thereof, to buyers of a substantial portion of their said sea food products in other States:

Held, That such paying and granting, directly or indirectly, of commissions, brokerage or other compensation in lieu thereof, to buyers of said sea food products on their own purchases, and the acts and practices of said partners in promoting sales of sea food products by such payments to buyers, were in violation of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Abrahams, Bouhan, Atkinson & Lawrence, of Savannah, Ga., for respondents.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are 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. Respondents, Joseph O. Maggioni, Joseph S. Cafiero and Madeline Cafiero, are partners, doing business as L. P. Maggioni & Company, having their principal office and place of business located at 401 West Bay Street, Savannah, Ga.

PAR. 2. The respondents are now engaged, and for many years prior hereto have engaged, in the business of packing and canning fish, oysters, shrimp and clams (all of which are hereinafter called "Sea Food Products") and in the marketing, sale and distribution of such sea food products in its own name and for its own account for resale.

The respondents sell and distribute their sea food products through two separate and distinct methods: (1) through a large number of legitimate intermediaries who act as their agents in negotiating the sale of sea food