

Syllabus

IN THE MATTER OF
AMERICAN STEEL AND WIRE COMPANY OF
NEW JERSEY, 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 4802. Complaint, Aug. 6, 1942—Decision, Apr. 20, 1945

Where (1) a corporation engaged in the manufacture and interstate sale and distribution of steel products, including wire and chain-link fencing, and the Philadelphia agent of its fence division, whose practice it was to keep informed concerning projects, particularly in his vicinity, which would require the use of his employer's steel products, obtaining specifications and calculating therefrom the cost of labor and materials, and in the case of large jobs involving special features requiring technical skill and complicated calculations, forwarding the proposed quotations or bids to his superiors for study before finally submitting them; (2) an individual trading as A-C Co., engaged at said city in the sale of wire and other metal fencing and his agent, in competition with the aforesaid corporation and others except insofar as said competition had been hindered, as below set forth; (3) a general contractor engaged in construction work at said city, and, during period concerned, engaged directly or through his two agents in negotiating with and buying products in question from said corporation and others in competition with it;

Following arrangements, during 1940, by the Navy with the Cramp Shipbuilding Company for the construction by the latter of naval vessels, under which the Navy assumed responsibility for the cost of the acquisition and installation of emergency plant facilities at the Cramp Shipyards, required to expedite the national defense program, with the understanding that the expenditure of the said funds for such work would be under the general supervision of, and subject to the approval of, Navy officials; the making of a contract by said corporation with said contractor, pursuant to which he was to undertake certain work in the rehabilitation of the shipbuilding yards of said company at Philadelphia; and following submission to said contractor—who was fully informed that the work to be done by him was in connection with a Navy contract and understood that he was required to obtain the approval of said Company of all costs incurred by him in the performance of his contract and was required to submit a minimum of three competitive bids on all work let to sub-contractors,—by aforesaid agent acting in behalf of the fence division of said corporation, of a bid to furnish and erect certain wire panels for the front of transformers for 59¢ per square foot—

Combined, agreed, and conspired to restrain, and suppress competition in the purchase and sale of the steel products in question in commerce by maintaining a false appearance of competition, and conveying to buyers and prospective buyers, including official awarding authorities of the United States Government, the impression that said corporation and the A-C Co. were rival bidders and competitors when, in fact, they were acting collusively in the submitting of bids; and

Where said contractor, in furtherance of aforesaid combination and conspiracy—

(1) Informed said corporate agent orally that the contract for the installation of said chain-link fencing was awarded to his corporation but asked another bid since he, said contractor, had secured but one other bid and wanted three; and,

Where said agent, in accordance with the request of said contractor's agent—

(2) Requested aforesaid agent of A-C Co. to submit a complimentary bid, prepared

Complaint

40 F. T. C.

and tendered such bid—well knowing that it was fictitious—to said agent of A. C. Co. for his signature, and mailed it to aforesaid contractor; and

Where said contractor—

- (3) Submitted to the Shipbuilding Company said three bids including that of aforesaid corporation, the higher bid of another concern, and the fictitious bid of A-C Co.; and
- (4) Following their approval by a Navy representative as evidence of competitive bids, mailed a written contract confirming said award for such chain-link fencing or wire panels, to aforesaid corporation, which accepted the same, completed installation of fencing as required thereby, and was paid therefor;

With the effect of depriving buyers and prospective buyers of metal fencing and other metal products, including contractors and subcontractors with the United States Government and the public in general, of the benefit of competition in commerce between and among said corporation and its fence division, and A-C Co. and others with whom they normally would be in competition in making bids and price quotations:

Held, That such acts, practices, methods, understandings, agreements, combination, and conspiracy of said corporation and individuals were all to the prejudice of the public and had a dangerous tendency to, and did actually, frustrate, hinder, suppress, lessen, restrain, and eliminate competition in the purchase and sale of metal fencing and other metal products in commerce; had the capacity and tendency to restrain unreasonably, and did restrain unreasonably, such commerce in said products; and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Everette MacIntyre and *Mr. V. W. Summers* for the Commission.

Squire, Sanders & Dempsey, of Cleveland, Ohio, for American Steel & Wire Co. of New Jersey and Cyclone Fence Co.

Duane, Morris & Heckscher, of Philadelphia, Pa., for Walter H. Cave.

Mr. James F. Masterson, of Philadelphia, Pa., for Charles F. Rohleder, Allen McLaine Ward and J. R. Baldrige, Jr.

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 persons, partnerships and corporations named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against each of the said parties, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Steel and Wire Company of New Jersey, is a New Jersey corporation, trading under the name and style of American Steel and Wire Company, with its general offices and principal place of business located at Waukegan, Ill., with branch or district offices located at Hoboken, N. J., Newark, N. J., and 247 North Third Street, Philadelphia, Pa. It is engaged directly and through operating divisions, including its Cyclone Fence Company in the manufacture and sale of steel products including wire and chain link fencing.

Respondent, Walter H. Cave, is an individual, who is engaged in the

sale of wire and steel products, including chain link fencing as an agent of respondents, American Steel and Wire Company of New Jersey and Cyclone Fence Company with an office located at 247 North Third Street, Philadelphia, Pa.

Respondent, Paul W. Crawford, is an individual, trading as Adams-Crawford Company, engaged in the sale of wire and other metal fencing with office and principal place of business located at 310 North 4th Street, Philadelphia, Pa.

Respondent, A. F. Crawford, is an individual, engaged in the sale of wire and other metal fencing as an agent of Adams-Crawford Company, with office and principal place of business located at 310 North 4th Street, Philadelphia, Pa.

Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose residence address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint served as an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldrige, Jr., whose residence address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the period covered by the activities involved in the charges of this complaint, served as an employee and agent of respondent, Charles F. Rohleder.

PAR. 2. At all times hereinafter mentioned, respondent, Charles F. Rohleder, directly and through his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with and buying from respondents, American Steel and Wire Company of New Jersey, through one of its operating divisions the Cyclone Fence Company and others in competition with that concern, wire and other steel products, including fencing, which were shipped or caused to be shipped from many points located in States other than the State of Pennsylvania by respondent American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company, and others in competition with that concern to respondent, Charles F. Rohleder, or his agents at Cramp Shipbuilding Company shipyard, Richmond and Norris Streets, Philadelphia, Pa.

At all times hereinafter mentioned respondent, American Steel and Wire Company of New Jersey, and through its operating division the Cyclone Fence Company, has been engaged in the sale of steel products, including wire and chain link fencing and in so doing shipped and caused to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to numerous other points in other States.

At all times hereinafter mentioned respondent, Paul W. Crawford, an individual, trading as Adams-Crawford Company, has been engaged in the sale of wire and other metal fencing and in doing so shipped and caused to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and numerous other points in other States.

At all times hereinafter mentioned respondents, Walter H. Cave and A. F. Crawford, in the course of their employment with and in their capacities as agents of respondent, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company and Adams-

Complaint

40 F. T. C.

Crawford Company, respectively, have been engaged in the sale of steel products, including wire metal fencing and in so doing were instrumental in the shipping and causing to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to numerous other locations in other States.

PAR. 3. Respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company, Walter H. Cave, Paul W. Crawford and A. F. Crawford, are engaged in competition in the sale of wire and other metal products, including metal fencing between and among themselves and with others in making or seeking to make sales in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted or forestalled by the understanding, cooperation, concert or common course of action, confederation, combination, agreement or conspiracy, or the acts, things, practices, policies or methods done or carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. During 1940, as a part of its work in the Defense Program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Company, whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection agreed to arrange for the advancement of the necessary funds to rehabilitate the facilities of the said shipyards, including office buildings and shipways, with the understanding that the expenditure of the said funds for such work would be under the general supervision and subject to the approval of officials of the U. S. Navy Department. Thereupon, the said Cramp Shipbuilding Company contracted with respondent, Charles F. Rohleder, for the latter to construct certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that the said Rohleder in securing materials or services would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the materials, equipment or services as required at a reasonable cost, and to award contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals or bids were to be opened by, or in the presence of, the Supervisor of Ships, U. S. Navy, or his representative, and subject to his approval before award of the said contract for materials, equipment or services.

In connection with his aforesaid contract with Cramp Shipbuilding Company, respondent, Charles F. Rohleder, negotiated with, and made awards of contracts for the purchase directly and through agents of wire and other steel products, including fencing from respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company and Walter H. Cave.

PAR. 5. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, the respondents have, through understanding together and with each other, cooperated, confederated, combined, agreed and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of wire and other steel products, including fencing, in "commerce" (as "commerce" is defined in the Federal Trade Commission Act, in which sense it is hereinafter used) and have in fact, through such under-

standing, cooperation, confederation, combination, agreement and conspiracy, frustrated, hindered, restrained and suppressed competition in the purchase and sale of wire and other steel products, including fencing.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement and conspiracy the aforesaid respondents have done and performed and used, among other acts, things, practices, policies and methods, the following:

1. Promoted, established, carried out and continued a practice of maintaining a false appearance of competition between and among respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company and Adams-Crawford Company, and other sellers of wire and other steel products, including fencing, in their submission of price quotations and bids to buyers and prospective buyers;

2. Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of wire and other steel products, including fencing, representations that said respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company and Adams-Crawford Company, were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids;

3. Avoided and prevented competition in the purchase and sale of wire and other steel products, including fencing;

4. Prevented consideration of genuinely competitive bids or price quotations by purchasers of said commodities;

5. On numerous occasions, the exact numbers and dates of which are unknown to the Commission, respondent, Charles F. Rohleder, acting directly and through his agents, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., cooperated with respondents, American Steel and Wire Company of New Jersey, its division the Cyclone Fence Company, Walter H. Cave, Paul W. Crawford, Adams-Crawford Company and A. F. Crawford, in the preparation and submission to said respondent, Charles F. Rohleder, his agents and employees, respondents, Allen McLaine Ward and J. R. Baldrige, Jr., sham, false, fictitious, fraudulent and noncompetitive bids and price quotations for the furnishing of wire and other steel products, including fencing, for said Rohleder's use in rehabilitating the facilities of the Cramp Shipbuilding yards, Richmond and Norris Streets, Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent and noncompetitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Company and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations.

6. On occasion the exact number and dates of which are unknown to the Commission, respondent Walter H. Cave, acting as an individual and in his capacity as an employee and agent of respondent American Steel and Wire Company of New Jersey, and its division the Cyclone Fence Company, with the knowledge and cooperation of respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr., secured from respondent, A. F. Crawford, sham, false, fictitious, fraudulent and noncompetitive bids for the furnishing of wire and other steel products, including fencing, on the stationery bearing the letterheads of Adams-Crawford Company, in which different higher and noncompetitive bids or price quotations on said

Complaint

40 F. T. C.

products were included than said respondent, Walter H. Cave, specified on each comparable occasion in a bid on the stationery bearing the letter-head and over the name of respondents, American Steel and Wire Company of New Jersey and its division the Cyclone Fence Company, and then proceeded on each such occasion to submit such sham, false, fictitious, fraudulent and noncompetitive bid of respondents, Adams-Crawford Company and A. F. Crawford, along with the bid of respondents, American Steel and Wire Company of New Jersey, and its division the Cyclone Fence Company, prepared as aforesaid to respondent, Charles F. Rohleder, and his agents and employees, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr. Thereupon in each of the said instances where said respondent, Walter H. Cave, thus submitted said sham, false, fictitious, fraudulent and noncompetitive bids for the furnishing of wire and other steel products, including fencing, to respondent, Charles F. Rohleder, his employees and agents, including respondents, Allen McLaine Ward and J. R. Baldrige, Jr., such bids were in turn submitted by said Charles F. Rohleder, his said employees and agents, as and for genuine and competitive bids to officials of Cramp Shipbuilding Company and to representatives of the Supervisor of Ships of the U.S. Navy, who were, through the appearance of such bids, misled, and deceived into considering and approving them as genuine and competitive.

7. Respondent, A. F. Crawford, acting individually, and in his capacity as an employee and agent of respondent, Paul W. Crawford, an individual, trading as Adams-Crawford Company, wilfully and knowingly cooperated with respondent, Walter H. Cave, individually, and in his capacity as an employee and agent of respondents, American Steel and Wire Company of New Jersey, and its division the Cyclone Fence Company, in the preparation and submission of the aforesaid sham, false, fictitious, fraudulent and noncompetitive bids as aforesaid.

8. Respondent, Walter H. Cave, acting as an individual, and in his capacity as an employee and agent of respondents, American Steel and Wire Company of New Jersey, and its division the Cyclone Fence Company, participated in the preparation and submission of the aforesaid sham, false, fictitious, fraudulent and noncompetitive bids or price quotations for the purpose and with the result of deceiving and misleading officials of Cramp Shipbuilding Company and representatives of the Supervisor of Ships, U.S. Navy, into believing, considering and approving the aforesaid bids and price quotations as independent, truthful, genuine and competitive bids for the furnishing of wire and other steel products, including fencing.

9. As a result of the aforesaid bidding practice, respondents, American Steel and Wire Company of New Jersey, and its division, the Cyclone Fence Company, profited by securing awards of contracts for wire and other steel products, including fencing, from respondent, Charles F. Rohleder.

PAR. 6. The doing and performing of the acts and things and the use of methods set forth in the preceding paragraphs hereof tend to have and have had the effect of depriving buyers and prospective buyers of supplies and equipment, including contractors and sub-contractors with the United States Government, and the public in general, of the benefit of competition in commerce between and among respondents American Steel and Wire Company of New Jersey, its division, the Cyclone Fence Company, and Adams-Crawford Company, and others with whom they normally would be in competition in making bids and price quotations.

PAR. 7. The acts, practices, methods, agreements and combination of the respondents, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the purchase and sale of wire and steel products, including fencing, in commerce within the intent and meaning of the Federal Trade Commission Act; and the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale and distribution of such products, and constitute unfair methods of competition and unfair and deceptive acts and practices 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 August 6, 1942, issued and subsequently served its complaint upon the respondents, American Steel and Wire Company of New Jersey, a corporation; Walter H. Cave, individually, and as agent of Cyclone Fence Company and American Steel and Wire Company of New Jersey; Paul W. Crawford, an individual, trading as Adams-Crawford Company; A. F. Crawford, individually, and as an agent of Adams-Crawford Company, Charles F. Rohleder; Allen McLaine Ward, individually, and as an agent of Charles F. Rohleder; and J. R. Baldrige, Jr., individually, and as an agent of Charles F. Rohleder, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, the respondents, Paul W. Crawford, A. F. Crawford, Charles F. Rohleder, Allen McLaine Ward, and J. R. Baldrige, Jr., withdrew their original answers and filed in lieu thereof substitute answers admitting all the material allegations set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, hearings were held in this matter, at which time testimony and other evidence in support of, and in opposition to, the allegations of said complaint as to the respondents, American Steel and Wire Company of New Jersey, a corporation, and Walter H. Cave, an individual, were introduced before a trial 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers and substitute answers thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument 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. Respondent, American Steel and Wire Company of New Jersey, is a New Jersey corporation, trading under the name and

Findings

40 F. T. C.

style of American Steel and Wire Company, with its general offices and principal place of business located in the Rockefeller Building, Cleveland, Ohio. On or about January 22, 1941, said respondent acquired all of the manufacturing property and assets formerly owned by an affiliated company, namely, the Cyclone Fence Company, an Illinois corporation, now dissolved. Said respondent, American Steel and Wire Company, has since January 19, 1941, engaged directly in the manufacture and in the sale and distribution of steel products, including wire and chain-link fencing, through an operating division, styled "Cyclone Fence Division," in commerce among and between the various States of the United States. The Cyclone Fence Division of respondent, American Steel and Wire Company, has manufacturing plants located at Waukegan, Ill., at Cleveland, Ohio, and elsewhere and has a warehouse and district sales office at Newark, N. J., and a branch sales office at 247 North Third Street, Philadelphia, Pa. In the aforesaid plants of its Cyclone Fence Division at Waukegan, Ill., and Cleveland, Ohio, are manufactured steel and other metal products, including wire and chain-link fencing, which it sells in commerce between and among the various States of the United States in competition with other manufacturers and dealers in said products.

Respondent, Walter H. Cave, is an individual, who is engaged in the sale of wire and steel products, including chain-link fencing, as an agent of the Cyclone Fence Division of respondent, American Steel and Wire Company, with his office located at 247 North Third Street, Philadelphia, Pa.

Respondent, Paul W. Crawford, is an individual, trading as Adams-Crawford Company, engaged in the sale of wire and other metal fencing, with his office and principal place of business located at 310 North Fourth Street, Philadelphia, Pa.

Respondent, A. F. Crawford, is an individual, engaged in the sale of wire and other metal fencing as an agent of Adams-Crawford Company, with his office and principal place of business located at 310 North Fourth Street, Philadelphia, Pa.

Respondent, Charles F. Rohleder, is an individual, engaged in general contracting and construction work, with his office and principal place of business located at 2134 Cherry Street, Philadelphia, Pa.

Respondent, Allen McLaine Ward, whose resident address is 7415 Bingham Street, Philadelphia, Pa., is an individual, who during the times mentioned herein, was an employee and agent of respondent, Charles F. Rohleder.

Respondent, J. R. Baldrige, Jr., whose resident address is 111 East Cliveden Avenue, Philadelphia, Pa., is an individual, who during the times mentioned herein, was an employee and agent of respondent, Charles F. Rohleder.

PAR. 2. During all the times hereinafter mentioned, respondent, Charles F. Rohleder, directly or through his agents respondents, Allen McLaine Ward and J. R. Baldrige, Jr., has been engaged in negotiating with, and buying from, respondent, American Steel and Wire Company, through one of its operating divisions,—Cyclone Fence Company,—and others in competition with that concern, wire and other steel products, including fencing, which were, as a result of such negotiations, shipped or caused to be shipped from many points located in States other than the State of Pennsylvania to respondent, Charles F. Rohleder, or his agents at Philadelphia, Pa.

At all times hereinafter mentioned, respondent, American Steel and Wire Company, through its operating division, the Cyclone Fence Company, has been engaged in the sale of steel products, including wire and chain-link fencing, and, in so doing, shipped and caused to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to numerous other points in other States.

At all times hereinafter mentioned, respondent, Paul W. Crawford, an individual, trading as Adams-Crawford Company, has been engaged in the sale of wire and other metal fencing and, in doing so, shipped and caused to be shipped such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and numerous other points in other States.

At all times hereinafter mentioned, respondents, Walter H. Cave and A. F. Crawford, in the course of their employment with, and in their capacities as agents of respondents, American Steel and Wire Company and Adams-Crawford Company, respectively, have been engaged in the sale of steel products, including wire and metal fencing, and, in so doing, were instrumental in shipping and causing to be shipped, such products from locations in States other than the State of Pennsylvania to Philadelphia, Pa., and to numerous other locations in other States.

PAR. 3. Respondents, American Steel and Wire Company, Walter H. Cave, Paul W. Crawford, and A. F. Crawford, have been, and are, engaged in competition in the sale of wire and other metal products, including metal fencing, between and among themselves and with others in making, or seeking to make, sales of such products in commerce as "commerce" is defined in the Federal Trade Commission Act between and among the various States of the United States except insofar as said competition has been hindered, lessened, restricted, or forestalled by the understanding, cooperation, concert or common course of action, confederation, combination, agreement, or conspiracy or the acts, things, practices, policies, or methods done or carried on in pursuance thereto or in furtherance thereof as hereinafter set forth.

PAR. 4. Respondent, Walter H. Cave, for several years prior to January 22, 1941, was employed by the Cyclone Fence Company, as sales engineer, to sell said steel products and installations thereof, and since that date has been employed by the Cyclone Fence Division of respondent, American Steel and Wire Company, in the same capacity. In serving the Cyclone Fence Company and respondent, American Steel and Wire Company, during the aforesaid periods, it was his practice to keep himself informed concerning the undertaking of projects, particularly in the vicinity of Philadelphia, Pa., which would likely require the use by any purchaser of steel products manufactured by his employers, including installations of wire and chain-link fencing. Where specifications therefor were made available, he obtained such specifications and from the latter calculated the cost of labor and materials necessary. Only in large jobs involving special features requiring technical skill and complicated calculations would respondent, Walter H. Cave, forward the proposed quotations or bids to superior officials for study before finally submitting them.

PAR. 5. In connection with certain contracts for the furnishing of materials and the installation thereof to rehabilitate the shipyards of the Cramp Shipbuilding Company in furtherance of the defense program of the United States, the respondents have combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and

sale of steel products, including wire and chain-link fencing, in commerce among and between the various States of the United States by maintaining a false appearance of competition between the American Steel and Wire Company and the Adams-Crawford Company and other sellers and conveying to buyers and prospective buyers, including official awarding authorities of the United States Government, that the American Steel and Wire Company and the Adams-Crawford Company were rival bidders and competitors when, in fact, they were acting collusively between and among themselves in submitting such bids.

PAR. 6. During 1940, as a part of its work in the defense program of the United States of America, the Navy Department arranged with Cramp Shipbuilding Company, shipyards of which are located at Richmond and Norris Streets, Philadelphia, Pa., for the latter to undertake the construction of naval vessels, and in that connection Cramp Shipbuilding Company entered into a contract with the United States of America, dated October 29, 1940, entitled, "Supplemental Contract for Acquisition and Installation of Emergency Plant Facilities Required to Expedite the National Defense Program, NOd 1550." Pursuant to the terms of this contract, the United States Government, through its Navy Department, assumed responsibility and liability for the cost of the acquisition and installation of emergency plant facilities at the Cramp Shipyards, which were required to expedite the national defense program, with the understanding that the expenditure of the said funds for such work would be under the general supervision of, and subject to the approval of, officials of the United States Navy Department.

PAR. 7. On December 31, 1940, the Cramp Shipbuilding Company entered into a contract with respondent, Charles F. Rohleder, whereby said respondent undertook to perform certain work in the rehabilitation of the shipbuilding yards of the Cramp Shipbuilding Company located at Richmond and Norris Streets, Philadelphia, Pa., which rehabilitation was then being performed by the Cramp Shipbuilding Company under its contract with the Navy Department of October 29, 1940.

During the period from December 1940 through March 1941 respondent, Charles F. Rohleder, employed respondent, J. R. Baldrige, Jr., as his agent, to enter into contracts for the installation of materials under respondent, Charles F. Rohleder's contract of December 31, 1940, with the Cramp Shipbuilding Company for part of the work in connection with the rehabilitation of said shipyards.

In an effort to protect the interests of the Navy Department, the Supervisor of Ships, United States Navy Department, through a duly constituted representative, namely, Lieutenant C. B. S. Bishop, in accordance with a previously announced policy of the Navy Department, visited the Cramp Shipbuilding Company of Philadelphia, Pa., on or about October 28, 1940, and informed H. P. Rust, plant engineer for the Cramp Shipbuilding Company, who had been designated by that company to review and to generally supervise purchasing of supplies, that none of the contracts and subcontracts for the acquisition and rehabilitation of plant facilities should be awarded without competitive bidding, for the same and that a minimum of 3 bids would have to be obtained if at all possible.

Respondent, Charles F. Rohleder, was fully informed that the work to be done by him under his contract was in connection with a contract between the Navy Department and the Cramp Shipbuilding Company, which is further indicated by Exhibit 1, entitled "Specifications—General

Conditions," attached to, and made a part of, the contract of December 31, 1940, between respondent, Charles F. Rohleder, and Cramp Shipbuilding Company, which contains the following statement:

"2. Inspection. The work under this contract is let under a supplemental contract No. NOD-1550 between owner and Navy Department and is subject thereto."

It was further understood by the respondent, Charles F. Rohleder, that he was required to obtain the approval of the Cramp Shipbuilding Company of all costs incurred by him in the performance of his contract and that he was required to submit a minimum of 3 competitive bids on all work let to subcontractors.

PAR. 8. On March 13, 1941, respondent, Walter H. Cave, in his capacity as a sales engineer, and acting on behalf of the Cyclone Fence Division of respondent, American Steel and Wire Company, submitted a bid to respondent, Charles F. Rohleder, to furnish, deliver, and erect certain wire panels for the front of transformers, as per plans and specifications, for the sum of 59 cents per square foot, or a total price of \$991.20. On or about March 12, 1941, Howard Zehr, as representative of the Chain Link Fence Company of Pennsylvania, submitted an oral bid upon the same specifications at 60 cents per square foot, or a total of \$1,008. Said bid was later reduced to writing and submitted to respondent, Charles F. Rohleder, under date of March 14, 1941.

PAR. 9. In furtherance of the combination and conspiracy hereinabove described, the respondent, Charles F. Rohleder, during the negotiations for the above-mentioned bids informed respondent, Walter H. Cave, orally that said contract for the installation of said chain-link fencing was awarded to respondent, American Steel and Wire Company, but that respondent, Charles F. Rohleder, had secured but one other bid and that he wanted three bids and asked respondent, Walter H. Cave, if it would be possible for him to get respondent, Charles F. Rohleder, another bid on said specifications. Thereupon, respondent, Walter H. Cave, in accordance with the request of respondent, J. R. Baldrige, Jr., requested respondent, A. F. Crawford, an agent of respondent, Paul W. Crawford, trading as Adams-Crawford Company, to submit a complimentary bid on said project, which he did. At the time, respondent, A. F. Crawford, understood that respondent, J. R. Baldrige, Jr., had already awarded the contract orally to the Cyclone Fence Division of respondent, American Steel and Wire Company, but that respondent, Rohleder, wanted to secure another bid. Both respondents, Walter H. Cave and A. F. Crawford, well knew that the bid of the Adams-Crawford Company was a complimentary and fictitious bid, obtained for the accommodation of respondent, Charles F. Rohleder. Respondent, Walter H. Cave, conveyed said bid to the office of the respondent, American Steel and Wire Company, at 247 North Third Street, Philadelphia, Pa., where he typed it. Thereafter, he returned it to the said A. F. Crawford, who signed it and mailed it to the respondent, Charles F. Rohleder, dated March 14, 1941. On March 14, 1941, respondent, Charles F. Rohleder, submitted the bids of the American Steel and Wire Company, the Chain Link Fence Company, and the Adams-Crawford Company to the Cramp Shipbuilding Company for approval. The bids so submitted were considered and approved by a representative of the Supervisor of Subcontracts, United States Navy Department, as evidence of competitive bids, offers, and proposals by the parties named therein for furnishing the chain-link fencing or wire panels

specified, The said respondent, Charles F. Rohleder, then mailed a written contract dated March 14, 1941, to the Cyclone Fence Division of respondent, American Steel and Wire Company, confirming said award for the aforesaid chain-link fencing or wire panels, which written contract was accepted by the respondent, American Steel and Wire Company, on March 24, 1941. This contract was subsequently reduced by partial cancellation to \$554.60. The chain-link fencing for the installation covered by said contract was shipped by the Cyclone Fence Division of the respondent, American Steel and Wire Company, from Waverly, N. J., to the Cramp Shipbuilding Company yards at Philadelphia, Pa. Respondent, American Steel and Wire Company, on or about June 20, 1941, completed the installation of said fencing, and final payment was received on August 13, 1941.

PAR. 10. At all times from March 1941 through November 1941 T. C. Sykes, was branch sales manager, of the Philadelphia branch sales office of the Cyclone Fence Division of respondent, American Steel and Wire Company, and the immediate superior of respondent, Walter H. Cave, to whom said respondent reported. At all times from March 1941 through November 1941, S. W. Burr, was district sales manager, of the Newark, N. J. district sales office of the Cyclone Fence Division of respondent, American Steel and Wire Company, and the immediate superior of the said, T. C. Sykes, to whom said T. C. Sykes reported. It was stipulated in this proceeding that if T. C. Sykes and S. W. Burr were called to testify they would state that respondent, Walter H. Cave, did not tell them or, to their knowledge, any other official of respondent, American Steel and Wire Company, of his action in procuring the complimentary and fictitious bid in March 1941; that they had not told him to procure or cause such fictitious bid to be filed; and had no knowledge of the filing of such complimentary and fictitious bid until November 1941.

PAR. 11. The Commission further finds that the transactions hereinabove described came within that class of matters wherein the respondent, Walter H. Cave, was authorized by the respondent, American Steel and Wire Company, to calculate the cost of labor and materials necessary and to submit bids without first obtaining the approval of any of his superior officers and that in accordance with such authority, the respondent, Walter H. Cave, did submit said bid, dated March 13, 1941, over his signature as representative of respondent, American Steel and Wire Company, and the contract arising out of the bid so submitted was subsequently accepted by the respondent, American Steel and Wire Company, and performed by it. The procuring by the respondent, Walter H. Cave, of a complimentary and fictitious bid executed by the Adams-Crawford Company for submission to the respondent, Charles F. Rohleder, was in furtherance of the business of respondent, American Steel and Wire Company, in obtaining said contract for the sale and installation of chain-link fencing.

PAR. 12. The aforesaid understandings, agreements, combination, and conspiracy and the performing of the acts and things and the use of the methods hereinabove set forth, tend to have, and have had, the effect of depriving buyers and prospective buyers of metal fencing and other metal products, including contractors and subcontractors with the United States Government and the public in general of the benefit of competition in commerce between and among respondents, American Steel and Wire Company, its division the Cyclone Fence Company, and Adams-Crawford Company and others, with whom they normally would be in competition in making bids and price quotations.

CONCLUSION

The acts, practices, methods, understandings, agreements, combination, and conspiracy of the respondents as hereinabove set forth are all to the prejudice of the public and have a dangerous tendency to, and have actually, frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of metal fencing and other metal products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and 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, answers of the respondents, American Steel and Wire Company of New Jersey, a corporation, and Walter H. Cave, and substitute answers of the remaining respondents, in which substitute answers the several respondents admit all material allegations set forth in said complaint and waive all intervening procedure and further hearings as to the facts, and also upon testimony and other evidence taken in support of the allegations of said complaint and in opposition thereto as to the respondents, American Steel and Wire Company of New Jersey, a corporation, and Walter H. Cave, before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, American Steel and Wire Company of New Jersey, a corporation, and its officers; and Walter H. Cave, individually, and as agent of American Steel and Wire Company of New Jersey; Paul W. Crawford, an individual, trading as Adams-Crawford Company; A. F. Crawford, individually, and as agent of Adams-Crawford Company; Charles F. Rohleder, an individual; Allen McLaine Ward, individually, and as agent of Charles F. Rohleder; and J. R. Baldridge, Jr., individually, and as agent of Charles F. Rohleder, and their respective representatives, agents, and employees in connection with the offering for sale, sale, and distribution of steel products, including wire and chain-link fencing, 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 the said respondents or between any one or more of said respondents and any other person, partnership, or corporation not a party hereto to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers or to any official or awarding authority of any federal agency or to anyone contracting with such agency or to anyone acting for, or on behalf of, such agency or for, or on behalf of, any contractor with such agency, any repre-

sentation that any two or more apparent sellers are rival bidders or competitors when, in reality, they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or noncompetitive bids or price quotations to any buyer or prospective buyer or to any federal agency or anyone acting for, or on its behalf, or for, or on behalf of, any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with, or assisting in interfering with, the procurement or consideration of genuinely competitive bids or competitive bids or price quotations by any federal agency or any official agent or awarding authority of such agency or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose, or with the effect, of maintaining or presenting a false appearance of competition between or among any of the respondents or other sellers in the submission of price quotations or bids to buyers or prospective buyers.

5. Arranging, or attempting to arrange, for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

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.

Complaint

IN THE MATTER OF

KODIZE PROCESS CORPORATION, AND MAX WRIGHT
TRADING AS KODIZE SALES CORPORATION

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

Docket 5206. Complaint, Aug. 26, 1944—Decision, Apr. 21, 1945

Where a corporation and the individual who was its vice president and general manager, engaged in the manufacture and interstate sale and distribution of their "Kodize" product, which was designed for use, when mixed with water as a treatment for soft coal, and consisted largely of common salt and a very small amount of coloring matter; through statements in circulars, leaflets and other advertising matter—

- (a) Represented and implied falsely that the use of their product "Kodize" in treating or processing soft or bituminous coal resulted in a 25% to 45% saving in coal, labor, and electricity, a reduction in soot and smoke, and increased efficiency with improved combustion; and
- (b) Represented falsely that their product "Kodize" was a secret formula for treating or processing coal, and that said formula had been patented and copyrighted; and, Where said individual, engaged in the sale and distribution of the product "Kodize" made by aforesaid corporation—
- (c) Represented and implied, through use of word "Corporation" in the trade name used by him, that such business was owned and operated by a corporation, when in fact it was individually owned by him;

With result that many members of the public dealt with him as being a legally organized and existing corporation, such as a substantial portion of the purchasing public prefers to do business with, as assuring, in its belief, greater stability and financial responsibility; by reason, among other things, of the provisions of law and the regulations concerning the organization and operation of corporations;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that the aforesaid misleading representations were true, and thereby into purchase of substantial quantities of their said product:

Held, That said acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. B. G. Wilson for the Commission.

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 Kodize Process Corporation, a corporation, and Max Wright, an individual, trading as Kodize Sales Corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kodize Process Corporation, is a corporation, organized, existing and doing business under and by virtue of the