

IN THE MATTER OF

DIP NET SMELT FISHERMEN'S ASSOCIATION 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 5055. Complaint, Sept. 29, 1943—Decision, Oct. 8, 1945

Where an association of some seventy fishermen engaged in fishing for smelt in the waters of the Cowlitz River near the City of Kelso in the State of Washington—organized in 1940 for the purpose, among others, of obtaining higher prices for smelt fish—the members of which caught from two-thirds to three-fourths of the total smelt production of that area, and were generally better equipped than the “independents,” and through possession of power boats were in a position to fish in mid-stream for the supposedly better quality fish; together with three member individuals who constituted a committee in charge of its activities, and the individual members generally; engaged in interstate sale and distribution of such fish through three wholesalers, in substantial competition with one another and with others until such competition was restrained as below set forth—

Entered into and put into operation a combination and conspiracy to restrain and suppress competition in the production of smelt fish in the aforesaid area, and in the sale and distribution of such fish in commerce; and

Where said individuals, acting in concert in furtherance of such undertaking, and through their said association and its manager and former collector and later through its managing committee—with whom dealers placed their orders, instead of dealing direct with fishermen, as before, and who for a time allocated the proportion of the total to each—and

- (a) Ceased to work individually or in groups for certain dealers, but all worked together, adhered to the allotments made to each member, made no sales except through the association, and made deliveries of the fish thus sold to the respective purchasers, for which, after checking, settlement was collected from the dealers by said manager who made payment to each member for the quantity caught by him; and
- (b) Cooperatively fixed, at meetings from time to time, the price at which smelt fish were sold, with the knowledge of aforesaid wholesalers, who agreed to and did purchase fish regularly from the members at the prices so fixed, and through whom alone during the 1942 season outside dealers were able to make purchases; and

Where said association, in pursuance of aforesaid undertaking and following the close of the 1942 season and the taking over of said manager's duties by aforesaid managing committee—

- (c) Obtained, in 1943, a license as a wholesaler and proceeded to lease all of the dock facilities in that area for the exclusive use of itself and its members, including the docks, hoisting equipment, and warehouses owned by the said three wholesalers, paying to each wholesaler as a consideration for the lease a specified amount on each 50-pound box of smelt handled over the three docks, and itself bearing the expense of the dock's operation;

Whereby independent fishermen were seriously handicapped in the marketing of their fish, were deprived of access to the docks and had to sell their

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fish on the river banks, and their fish were exposed to the elements until they were loaded upon the motor trucks of the purchasers; and dealers had either to purchase from the association or send their trucks several miles up the river banks to purchase from independents; and

- (d) Continued, under its managing committee, to operate in substantially the same manner as it had operated under the individual manager, and under which prices were cooperatively fixed by the members, dealers wishing to purchase fish placed their orders with the association, etc. as aforesaid, with the exception that, after about the first week of the 1943 season when the demand exceeded the supply, the members of the association were no longer restricted as to the quantity of fish they might catch;

With the result that, while such agreements and concerted activities apparently enhanced and stabilized to some extent the prices of smelt fish from the beginning of the association in the 1941 season, after the first week or two of the 1943 season the price, fixed by them at \$2.05 per 50-pound box, remained at that exact figure throughout the entire season with no fluctuations as theretofore;

Tendency and capacity of which acts and practices was unduly to restrain, hinder, and lessen competition among the members, and between the members and other fishermen, in the production of smelt fish and in the sale thereof in commerce; and among said wholesalers, and between said wholesalers and other wholesalers, in the purchase and sale of smelt fish in commerce; and to create in said association, members, and wholesalers a monopoly in the sale in commerce of smelt fish produced in the aforesaid area, thereby placing in them the power to control and enhance the prices of such fish and deprive the public of the advantages which would result from free and open competition in the production and in the sale thereof in commerce:

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

Before *Mr. John W. Norwood*, trial examiner.

Mr. Everett F. Haycraft and *Mr. Lewis F. Depro* for the Commission.

Mr. J. C. McCoy, of Longview, Wash., for Dip Net Smelt Fishermen's Ass'n, *V. G. Davis*, *Kris Pedersen*, *C. W. Fisher*, *Walter Dixon*, *A. A. Fisher*, *Paul Plebuch*, and *Lloyd Dixon*.

Mr. G. A. Heikkila, of Portland, Ore., for *Olie Soleim*.

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 association, corporations and individuals named herein and 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

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respect thereof would be in the public interest, hereby issues its complaint, stating its charges in such respect as follows.

PARAGRAPH 1. The respondent Dip Net Smelt Fishermen's Association, hereinafter referred to as the "association," is an unincorporated organization composed of fishermen and a few remaining members who are connected with the work of the association. The association's principal place of business is located at the city of Kelso, Wash.

Respondents V. G. Davis, Kris Pedersen, and C. W. Fisher are members of a "committee" of three, which committee is in entire charge of the business and affairs of the respondent association. They were preceded by a manager who had entire charge of the business and affairs of the association during the fishing season of 1940-41.

The members of respondent association consist of approximately eighty individuals, their number and identity varying from time to time, so that it is impracticable at any given time to name as respondents and bring before the Commission each and all the members without manifest delay, confusion and inconvenience. Therefore all members of the said association are also made respondents herein, as a class, and the Commission names and includes as respondents in this proceeding, both separately and as representatives of the whole class, the above mentioned members of the "committee" of the association, and the following named members of respondent association, to wit: Walter Dixon, A. A. Fisher, Paul Plebuch, and Lloyd Dixon.

Respondent Columbia River Smelt Corporation and respondent Cowlitz Smelt Company are corporations organized and existing under the laws of the State of Washington, with their principal place of business in the city of Kelso, Wash.

Respondent Olie Soleim is an individual doing business under the name of Central Smelt Company, with his principal place of business in the city of Kelso, Wash.

PAR. 2. The respondent Dip Net Smelt Fishermen's Association was organized in the winter of 1940 and has continued to exist for the purpose of binding together as members of the association, most of the fishermen engaged in fishing for smelt in the mid-stream of Cowlitz River at or near the city of Kelso, Wash., and of securing their concerted action for a common end.

The respondent members of said association have been since the latter part of the year 1940, and now are engaged in the business of fishing for and catching the greater portion of the better grade of smelt fish caught on said Cowlitz River. The male smelt, which

are the better grade of smelt fish, are caught by respondent members in the mid-stream of the Cowlitz River as distinguished from the poorer grade, or female smelt, which are caught near the shores of said river. The respondent members, acting through the respondent committee of the association, have been during said time, and now are, also engaged in the business of handling, selling, marketing and distributing the smelt fish caught by them as aforesaid. The respondent association was preceded by a so-called union that had as members most, if not all, of the present respondent members, which union was engaged in activities and practices similar to those of respondent association hereinafter set forth.

Respondents Columbia River Smelt Corporation, Cowlitz Smelt Company, and Olie Soleim, doing business under the name of Central Smelt Company, hereinafter sometimes referred to as "respondent wholesalers," are wholesalers and retailers of smelt fish, and have during all the times mentioned herein purchased from respondent members through the committee of the association all or the greater part of the smelt caught by said respondent members. At times, the said committee has sold the entire output of smelt caught by respondent members to respondent wholesalers, to the exclusion of others; at other times it has sold a portion of such output to other wholesalers.

PAR. 3. The manager of respondent association, and later, the respondent committee of the association, acting for and on behalf of the respondent members, and the respondent wholesalers, some of whom are members of the association, have acted at all times mentioned herein, and are now acting in close concert, agreement and cooperation in the business of selling, marketing, and distributing the smelt caught by respondent members, including the fixing of prices therefor, the limitation on the output thereof and the restraint of competition imposed on the sale thereof as hereinafter alleged.

PAR. 4. The respondent members operating through the association's respondent committee and through respondent wholesalers, and the respondent wholesalers sell large quantities of the smelt fish so caught in the State of Washington as aforesaid, to both wholesalers and retailers located in other States of the United States, and cause said smelt, when sold, to be transported from the State of Washington where it is caught, to purchasers thereof in various other States of the United States. Said respondents maintain, and at all times herein mentioned have maintained, a regular course of trade in their said smelt in commerce among and between the various States of the United States. Said respondents, in the course of their said business, are in substantial competition, except

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as such competition has been restrained or destroyed as hereinafter alleged, (a) with other corporations, partnerships, and individuals likewise engaged in offering for sale and selling smelt in said commerce; (b) with each other, and (c) with other fishermen likewise engaged in catching and selling smelt in commerce.

PAR. 5. Since the winter of 1940 and continuing to and at the present time, the respondent members through their manager and later through the respondent committee of the association and through the respondent wholesalers, and the respondent wholesalers, in the course of their business of catching, selling, marketing, and distributing said smelt in commerce as aforesaid, have maintained among themselves a combination and conspiracy to pursue and they have pursued an agreed and planned common and concerted course of action to adopt, fix, and adhere to certain monopolistic prices, practices and policies among various States of the United States. Among such monopolistic practices and policies are:

1. Limiting the total amount of smelt to be caught by the respondent members of the association, and allocating to each such member the precise amount of smelt fish to be caught by him and limiting his catch to such amount;
2. Fixing and maintaining the price which the respondent members are to receive for the smelt they catch; fixing and maintaining the price which the respondent wholesalers and other wholesalers are to pay for said smelt, and fixing and maintaining the price which the respondent wholesalers are to charge retailers for said smelt;
3. Binding the manager, and later the committee of respondent association to sell at times the entire output of smelt fish caught by respondent members, exclusively to respondent wholesalers;
4. Binding the manager, and later the committee of respondent association to sell at various times the entire output of smelt fish caught by respondent members to wholesalers only, to the exclusion of retailers and other dealers and consumers;
5. Binding the respondent wholesalers to purchase all of their smelt requirements from said manager or later, from respondent committee of the association;
6. Causing the respondent members through the respondent association's manager and later through the respondent committee, to take over from respondent wholesalers, the warehouse, dock, and slip owned by each of said respondent wholesalers, respectively, for the sole and exclusive handling of smelt caught by respondent members, such warehouses, docks, and slips being the only ones available for the handling of smelt caught on the Cowlitz River, and to pay to

each of respondent wholesalers a specified amount per box for all smelt handled through all of said warehouses, docks, and slips, regardless of the amount, if any, handled through any one of said warehouses, docks, and slips.

PAR. 6. Among the effects of the said monopolistic practices and policies alleged in the preceding paragraph are the following:

1. The curtailment of the supply of smelt fish which would otherwise be available as food for public consumption, and the destruction of competition among the respondent member fishermen in the amount of smelt they catch for such public consumption;

2. The destruction of price competition, (a) among respondent members of the association in the sale of their smelt; (b) between the respondent wholesalers and other wholesalers in the price they pay for said smelt, and (c) among the retailers in the price they pay respondent wholesalers for smelt.

3. The creation at times of a monopoly in respondent wholesalers in the sale of the greater portion of the better grade of smelt fish caught on the Cowlitz River.

4. The complete exclusion at all times of retailers from the purchase of smelt from the manager, and later, from the respondent committee of the association.

5. The elimination of all possible competition between the respondent wholesalers and other wholesalers and dealers in purchasing smelt from other sources than that supplied by respondent members and the suppression of competition which the respondent committee of the association would otherwise have to meet in selling its smelt were respondent wholesalers not required to purchase all of their requirements from the respondent committee.

6. The almost complete suppression of competition between the respondent members and other fishermen on the Cowlitz River who might and would be able to compete successfully with respondent members in catching and selling smelt were it not for their inability to secure warehouse, dock, and slip facilities for handling their smelt. The monopolization of such facilities by respondent members, acting through the respondent committee of the association, and the exclusion of respondents' competitors therefrom is effectuated regardless of the fact that one or more of such warehouses, docks, and slips may remain idle, or may be operated at less than full capacity in handling the catch of respondent members.

The above mentioned monopolistic practices and policies have a tendency to and do substantially increase the cost of food in the form of prices which the public is required to pay for smelt fish sold in commerce as aforesaid.

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PAR. 7. Each of the respondents herein named has directly or through the agency of respondent association taken an active part in all the activities herein set out.

PAR. 8. The acts and practices of the respondents as hereinabove alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of smelt fish in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have tended to create in the respondents a monopoly in the sale of smelt fish from the Cowlitz River in such commerce; have unreasonably restrained such commerce in smelt fish, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 29, 1943, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing by certain of the respondents of their answers to the complaint, testimony and other evidence in support of and in opposition to the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answers, testimony and other evidence, report of the trial examiner and the exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dip Net Smelt Fishermen's Association, frequently referred to hereinafter as "respondent association" or as "the association," is an association composed of fishermen engaged in fishing for smelt fish in the waters of the Cowlitz River at or near the city of Kelso in the State of Washington.

Respondents V. G. Davis, Kris Pedersen, and C. W. Fisher are members of the association and also constitute a "committee" of the association which is in active charge of the association's affairs and business activities.

Respondents Walter Dixon, A. A. Fisher, Paul Plebuch, and Lloyd Dixon are members of the association and are joined as respondents in this proceeding both as individuals and as representatives of all of the members, who are made respondents herein as a class. The members of the association are frequently referred to hereinafter as "respondent members" or as "members."

PAR. 2. Respondent Columbia River Smelt Corporation is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in the city of Kelso, Wash.

Respondent Cowlitz Smelt Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located in the city of Kelso, Wash.

Respondent Olie Soleim is an individual doing business under the name Central Smelt Company, with his principal office and place of business located in the city of Kelso, Wash.

The three respondents named in this paragraph, hereinafter frequently referred to as "respondent wholesalers," are engaged in the sale and distribution of smelt fish.

PAR. 3. Each of the respondent wholesalers sells large quantities of smelt fish to purchasers located in various States of the United States other than the State of Washington, and causes such fish, when sold, to be transported from its place of business in the State of Washington to such purchasers at their respective locations. The respondent association and its members regularly sell and deliver to the respondent wholesalers the fish sold by such wholesalers in interstate commerce, such fish being supplied by the association and its members with the knowledge and intention that such fish will immediately be sold and distributed in such commerce. The association and its members also sell smelt fish directly to purchasers located in States other than the State of Washington, such fish being delivered to such purchasers in Kelso, Wash., and being then immediately transported by such purchasers to their respective locations in other States. All of the respondents maintain and have maintained a regular course and current of trade in smelt fish in commerce among and between various States of the United States.

PAR. 4. The respondents are and have been in substantial competition with one another, and with other individuals, partnerships,

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and corporations engaged in the sale and distribution of smelt fish in commerce among and between various States of the United States, except insofar as such competition has been restrained, hindered, and lessened as a result of the acts and practices hereinafter set forth.

PAR. 5. The respondent association was organized by a group of the respondent members at a meeting held in the latter part of December, 1940. The purposes of the organization were to obtain higher prices for the smelt fish caught by the members, promote better cooperation generally among the members, and eliminate as much as possible the "outsiders" (fishermen not connected with the organization). It was also felt by the members that they had not in all cases received from dealers to whom they had sold full payment for the fish delivered, and in order to correct this situation the members decided to employ a manager or "central man." The principal duty of the manager during the 1941 fishing season was to act as a collector for the members and see to it that dealers purchasing fish from the members made proper settlement therefor. For his compensation the manager received a specified amount on each 50-pound box of fish sold and delivered by the members. At the beginning of the 1941 fishing season this compensation was six cents per box, but it was later reduced to three cents per box, after a decline in the price of fish. The fishing season for smelt usually begins in January of each year and ends in April.

PAR. 6. Prior to the 1941 season the respondent members had operated individually or in small groups, catching fish for certain dealers with whom they had connections, and this arrangement continued through the 1941 season. During the 1942 season, however, the various individuals and small groups merged, and the association became a more cohesive and much stronger organization. The members no longer worked individually or in groups for certain dealers, but all worked together. The same individual continued as manager for the association, but he was now much more than a mere collector for the members. Dealers wishing to purchase smelt no longer dealt with the individual fisherman but placed their orders with the manager, and the manager allocated to each fisherman the proportion of the total quantity of fish which he was to catch. In this way the total quantity of fish caught was restricted to the quantity for which orders had already been received, and the quantity caught by each fisherman was likewise limited. These allotments were adhered to by the members, each limiting his catch to the specific quantity allocated to him by the manager. The fish were delivered by the members to the respective purchasers, and the manager of the association checked the deliveries, collected from the

dealer the purchase price of the fish, and then made settlement with the members, paying each for the quantity caught by him. The members made no sales except through the association.

PAR. 7. The prices at which the fish were sold were cooperatively fixed by the members, who held meetings from time to time for that purpose. The respondent wholesalers had knowledge of these price fixing activities and agreed to, and did, purchase fish regularly from the members at the prices so fixed. In fact, representatives of two of the respondent wholesalers, Columbia River Smelt Corporation and Cowlitz Smelt Company, were themselves fishermen and members of the association and attended the meetings. The other respondent wholesaler, Olie Soleim, was not a member of the association but appears to have attended some of the earlier meetings. During the 1941 season, seven other members of the association were dealers as well as fishermen, but after that season these seven discontinued their activities as dealers and devoted their efforts exclusively to fishing. Throughout the 1941 season, the association sold to ten dealers only, these being the three respondent wholesalers and the other seven dealers referred to above. During the 1942 season, the association sold to the three respondent wholesalers only. Any outside dealers wishing to obtain fish from the association or its members bought from or through dealers in one of these groups.

PAR. 8. The membership of the association comprises some seventy fishermen. While this number represents only about one-half of all of the smelt fishermen on the Cowlitz River in 1941 and 1942 and only about one-fourth of the total number in 1943, the members of the association produce some two-thirds to three-fourths of the total smelt production in that area. This is due in part to the fact that, generally speaking, the fishermen outside the association, commonly referred to as "independents," are not so well equipped as the association members. The independents customarily fish from small, hand-propelled skiffs and near the banks of the river, while most of the members have power boats some twenty-five to thirty feet in length and fish usually in mid-stream where the fish are thought to be of better quality. Independents are admitted to membership in the association only after the members have satisfied themselves as to the sufficiency of the applicant's equipment and his ability as a fisherman.

PAR. 9. At the close of the 1942 season, the individual who had acted as manager for the association severed his connection with the organization, and thereafter the affairs of the association were conducted by a managing committee composed of respondents V. G. Davis, Kris Pedersen, and C. W. Fisher. In 1943 the association ob-

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tained a license as a wholesaler and proceeded to lease, for the exclusive use of itself and its members, the docks, hoisting equipment, and warehouses owned by the three respondent wholesalers, which facilities comprised all of the dock facilities in that area. As a consideration for the lease, the association paid to each of the respondent wholesalers a specified amount on each 50-pound box of smelt handled over the three docks, respondent Columbia River Smelt Corporation receiving five cents per box, respondent Cowlitz Smelt Company five cents, and respondent Olie Soleim seven cents. Soleim received the larger amount because it was felt that he had a larger investment and that his equipment was more expensive to maintain between fishing seasons. Each of the three wholesalers received the stipulated amount on each box handled by the association over any one of the three docks, that is, each box of fish was charged with seventeen cents, which was distributed among the three wholesalers as set forth above. The expense of operating the docks was borne by the association.

PAR. 10. The association continued to operate under its managing committee in substantially the same manner as it had operated under the individual manager. Prices were cooperatively fixed by the members. Dealers wishing to purchase fish placed their orders with the association, and the association collected for the fish delivered, retaining from the purchase price the amount required to pay the seventeen cents per box wharfage charge to the respondent wholesalers and the other expenses of the association, and paying over the balance to the members. All fish sold were delivered to the purchaser at one of the three docks leased by the association. The respondent wholesalers purchased all or practically all of their requirements from the association, and each received the five cents or seven cents per box on its own purchases as well as on fish sold by the association to other purchasers. After about the first week of the 1943 season, the members of the association were no longer restricted as to the quantity of fish they might catch. The demand for smelt exceeded the supply, and the members were free to catch all they could.

PAR. 11. As a result of the taking over by the association of all of the dock facilities available for the handling of smelt in that area, the independent fishermen were seriously handicapped in the marketing of their fish. Being deprived of access to the docks, they had to sell their fish on the river banks, and the fish were exposed to the elements during the period between the time when they were unloaded on the banks and the time when they were sold and loaded upon the motor trucks of the purchasers. Dealers wishing to pur-

chase smelt had to either purchase from the association or send their trucks several miles up the river banks in order to purchase from independents.

PAR. 12. The agreements and concerted activities of the respondents appear to have enhanced and stabilized to some extent at least the prices of smelt fish from the beginning of the association in the 1941 season, but their effect appears most clearly in the 1943 season. After the first week or two of that season, the price was fixed by respondents at \$2.05 per 50-pound box, and it remained at that exact figure throughout the entire season, there being no fluctuations as in previous seasons.

PAR. 13. The Commission finds that the respondents have entered into and put into operation and effect a combination and conspiracy to restrain, hinder, lessen, and suppress competition in the production of smelt fish in the aforesaid area, and in the sale and distribution of such fish in commerce among and between various States of the United States. Each of the respondents has acted in concert and cooperation with one or more of the other respondents in doing the acts and things herein set forth in furtherance of such combination and conspiracy.

PAR. 14. The combination and conspiracy entered into by the respondents, and the acts and things done pursuant thereto and in furtherance thereof, as set forth herein, have the tendency and capacity: unduly to restrain, hinder, and lessen competition among the respondent members, and between the respondent members and other fishermen, in the production of smelt fish and in the sale thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act; unduly to restrain, hinder, and lessen competition among the respondent wholesalers, and between the respondent wholesalers and other wholesalers, in the purchase and sale of smelt fish in such commerce; and to create in the respondents a monopoly in the sale in such commerce of smelt fish produced in the aforesaid area, thereby placing in respondents the power to control and enhance the prices of such fish and deprive the public of the advantages which would result from free and open competition in the production of such fish and in the sale thereof in commerce as aforesaid.

CONCLUSION

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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of certain of the respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner and the exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Dip Net Smelt Fishermen's Association and all of its members; and respondents V. G. Davis, Kris Pedersen, and C. W. Fisher, members of the managing committee of said association; and respondents Walter Dixon, A. A. Fisher, Paul Plebuch, and Lloyd Dixon, individually and as members of said association; and respondents Columbia River Smelt Corporation, a corporation, Cowlitz Smelt Company, a corporation, and Olie Soleim, individually and trading as Central Smelt Company, these three respondents being hereinafter referred to as "the respondent wholesalers"; and the respondents' respective officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fish in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties to this proceeding, to do or perform any of the following acts or things:

1. Limiting or restricting the total quantity of fish to be caught by the members of the respondent association, or the quantity to be caught by any individual member of said association.

2. Fixing or establishing uniform prices for fish caught by the members of said association, or adhering to or maintaining any prices so fixed or established.

3. Entering into or continuing in effect any agreement whereby the docks or warehouses of the respondent wholesalers are leased to the respondent association or any of its members, or entering into or continuing in effect any other agreement or arrangement whereby the respondent association or its members are enabled to monopolize the dock or warehouse facilities available in Kelso, Wash., for the handling of fish.

Provided, however, that this order shall not be construed so as to impair any right of the respondent association and its members to organize and act in the manner and to the extent provided for by the Act of Congress authorizing associations of producers of aquatic products, approved June 25, 1934 (48 Stat. 1213-1214; 15 U.S.C., Sec. 521-522).

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

IN THE MATTER OF
JOHN B. STETSON COMPANY

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

Docket 5172. Complaint, June 3, 1944—Decision, Oct. 8, 1945

Where the largest producer and distributor of men's hats, selling its products to several thousand retailers throughout the United States under its own name and brand names denoting style and price range—such as "Play Boy," "Sportlite," "Medalist," "Stratoliner," "Premier," "Royal," "Imperial," "Sovereign," etc., the retail prices of which ranged from \$5.00 to \$150.00—

- (a) Discriminated in price by selling such hats to some of its customers at higher prices than it sold them to their competitors through granting discriminatory additions to its legal trade discount of 2 percent ranging from 2 percent to 7 percent, and, later, 8 percent, under 3 consecutive so-called "cumulative quantity" discount schedules, depending on annual total purchases ranging, in the last, from \$5,000 to over \$200,000;
- (b) Discriminated in price between competing purchasers by making lower prices on hats to some based upon the total quantity or volume sold and delivered to all of their separate branches or outlets, although separate delivery was made to such branches, when such total amounted to certain required minima during the fiscal year, without regard to the quantity delivered to the respective branches;

Effect of which various discriminations in price had been or might be substantially to lessen competition in the line of commerce concerned and to injure, destroy, or prevent competition between purchasers receiving the benefit of said discriminatory prices and those from whom they were withheld:

Held, That such discriminations in price constituted violations of subsection (a) of Section 2 of the Clayton Act as amended; and

Where aforesaid corporation—

- (c) Made cash payments or allowances to favored customers, including operators of chains and branches, for advertising, display and other promotional activities, without making available on proportional equal terms, or on any terms, to competing customers thereof, able and willing to furnish the same kind of services, and such allowances, payment of which it did not make known to its customers generally:

Held, That such granting to favored customers of advertising allowances without making such allowances available to competing customers on proportionally equal terms constituted violation of subsection (d) of Section 2 of the Clayton Act as amended.

Mr. A. H. Forkner for the Commission.

Saul, Ewing, Remick & Harrison, of Philadelphia, Pa., for respondent.