

IN THE MATTER OF

FERRO ENAMEL CORPORATION, PEMCO CORPORATION,
THE O. HOMMEL COMPANY, CHICAGO VITREOUS-
ENAMEL PRODUCT CO., INGRAM-RICHARDSON-MFG.
CO. OF INDIANA, INC., AND STEVENSON, JORDAN &
HARRISON, INC., AND HARRY L. MOODY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUB-
SEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS
AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5155. Complaint, Apr. 29, 1944—Decision, Feb. 26, 1946

Where five corporations engaged in the manufacture, compounding or smelting of chemicals used in the manufacture of porcelain enamel, popularly known as "frit," and in the interstate sale and distribution of said product to manufacturers and fabricators, for the making of such products as table tops, stove parts, refrigerators, etc.; selling about 96 percent of all the commercial "frit" made in the United States, and prior to and but for the acts and practices below set forth, in active and substantial competition with each other and with other members of the industry; together with a business management and engineering corporation which specialized in the management of trade associations, and a director thereof who was in charge of the activities of the aforesaid five corporations—

Engaged in a combination and conspiracy to hinder and suppress competition and to create and maintain in themselves a monopoly in the manufacture and interstate sale and distribution of said "frit," and pursuant thereto and acting in cooperation with each other—

- (a) Fixed minimum and identical prices f. o. b. their respective plants for the sale of various grades or coats of "frit" by means of a program or system of so-called freight equalization under which all manufacturers quoted and sold to purchasers at the same delivered cost as the manufacturer having the greatest freight advantage at any given destination, refusing to permit purchasers to take possession f. o. b. plant and provide their own transportation, and ignoring differences in costs of production, selling, and overhead;
- (b) Classified customers according to the total annual volume of "frit" purchased by each of them from all sources, and made identical delivered prices and discounts on all sales of said product to all customers according to such classification; and filed price lists containing the discounts on each grade or coat of said product to each class of customer, and information as to price and discount changes and new products put on the market by any one of said manufacturers, with said management information, which, along with said director, disseminated them among the aforesaid manufacturers, with the understanding that the manufacturers would maintain them;
- (c) Filed with said management corporation and its director copies of invoices and orders covering their sales of "frit," which contained the name of the purchaser, the quantity of each grade or coat sold, and the price and discount for each class of customer, and which disclosed whether filed prices and discounts were adhered to;

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- (d) Filed credit reports setting forth the names of the customers receiving credit and the credit limit allowed, with said management corporation and director who disseminated the information to other manufacturers in a composite credit report, with the understanding that any customer who was in arrears beyond a fixed credit limit could not purchase from any manufacturer on open account until he had paid up his account in arrears, and thereby prevented one manufacturer gaining a competitive advantage over any other by extending more favorable credit terms;
- (e) Filed "credit memoranda" disclosing the nature of credits given their respective customers for goods returned or other reasons, with said corporation and director who circulated such information among said manufacturers, disclosing thereby to competitors any deviations from filed prices by such means;
- (f) Filed monthly reports, gross and net, of shipments of "frit" to their customers, with said corporation and director, who disseminated among said manufacturers a composite statement of the total volume of shipments of "frit" during each month;
- (g) From time to time adopted practice of declining to sell "frit" on consignment, of declining to perform certain services for their customers, such as mounting the product on skids or pallets for carload shipments, of declining to give certain extra demonstrations of their product in the places of business of their customers, and of declining to make special inducements to take customers away from each other; and
- (h) From time to time held meetings under the auspices of said corporation and director at which the aforesaid acts and practices were discussed, including various reports from the said manufacturers, and also complaints with respect to the maintenance or observance by the said manufacturers of the practices hereinbefore mentioned; and

Where said management corporation and director—

- (i) Cooperated with and assisted the aforesaid corporations in the enforcement and observance of the foregoing acts, practices, and understanding by (1) disseminating monthly volume reports showing the industry's and each manufacturer's total volume in pounds and dollars, and percentages of each manufacturer in pounds and dollars for current month and year to date; monthly reports showing the industry's and each manufacturer's freight-equalization charges for the month and year to date; monthly reports in pounds and dollars showing the industry's and each manufacturer's volume by classification, grade, and type, and price per pound for the industry and for each manufacturer, and each manufacturer's percentage of the total industry volume and the percent of the average per pound price; and other periodical reports showing volume in pounds and dollars of each customer's purchases from the industry; and by (2) checking up on the manufacturers to determine whether or not they were living up to or maintaining the said acts, practices, and understandings, and reporting at said meetings or otherwise any deviations or violations thereof;

With the effect of actually hindering and preventing price competition among said manufacturers in the sale of "frit" in commerce; placing in the said manufacturers the power to control and enhance prices in said product; creating in them a monopoly in the sale of said product in commerce; and of unreasonably restraining commerce in said product;

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Held, That said combination and conspiracy, and said acts and practices performed pursuant thereto as above set forth, constituted unfair methods of competition in commerce; and

Where the aforesaid corporations, engaged as above set forth—

- (j) Discriminated in price between different purchasers by selling "frit" to some at lower prices than to others, competitively engaged therewith in the interstate sale of products containing "frit," through classifying customers according to their annual dollar volume of purchases of "frit" from all sources, and granting discounts to each customer based upon such classification, in accordance with which purchases of \$5,000 a year entitled customers to no discount from list, purchases of \$5,000 to \$10,000 entitled him to 5 percent and those ranging from \$10,000 to \$20,000, from \$20,000 to \$29,000, from \$29,000 to \$40,000, and those over \$40,000, entitled him to discounts of 12½, 15, and 20 percent, respectively;

Effect of which discrimination in price had been, or might be, substantially to lessen competition in the line of commerce in which said respondents were engaged; to injure, destroy and prevent competition between and among them; to injure, destroy and prevent competition between their customers in the sale and distribution of products containing "frit" as a substantial component part; and to tend to create a monopoly in said commerce in various localities:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. James I. Rooney for the Commission.

Smith, Buchanan & Ingersoll, of Pittsburgh, Pa., for respondents generally.

Squire, Sanders & Dempsey, of Cleveland, Ohio, also for Ferro Enamel Corp.

Mr. James F. Duffy, of Chicago, Ill., also for Pemco Corp.

Wise, Corlett & Canfield, of Washington, D. C., for Stevenson, Jordan & Harrison, Inc.

COMPLAINT

Count I

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 Ferro Enamel Corp., Pemco Corp., The O. Hommel Co., a corporation, Chicago Vitreous Enamel Product Co., a corporation, Ingram-Richardson Mfg. Co. of Indiana, Inc., Stevenson, Jordan & Harrison, a corporation, and Harry L. Moody, an individual, hereinafter 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

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

PARAGRAPH 1. Respondent Ferro Enamel Corp, sometimes hereinafter referred to as respondent Ferro, is a corporation organized under the laws of the State of Ohio with its principal office and place of business located at 4150 East Fifty-sixth St. in the city of Cleveland in said State.

Respondent Pemco Corp., sometimes hereinafter referred to as Pemco, is a corporation organized under the laws of the State of Maryland with its principal office and place of business located at Eastern and Pemco Avenues in the city of Baltimore in said State. It is a successor to Porcelain Enamel & Manufacturing Co. of Baltimore.

Respondent The O. Hommel Co., sometimes hereinafter referred to as respondent Hommel, is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business located at Carnegie in said State.

Respondent Chicago Vitreous Enamel Product Co., sometimes hereinafter referred to as respondent Chicago Vitreous is a corporation organized under the laws of the State of Illinois with its principal office and place of business located at 1427 South Fifty-fifth Court in the city of Cicero in said State.

Respondent Ingram-Richardson Mfg. Co. of Indiana, Inc., sometimes hereinafter referred to as respondent Ing-Rich, of Indiana, is a corporation organized under the laws of the State of Indiana with its principal office and place of business located at Frankfort in said State.

PAR. 2. The respondent corporations named in paragraph 1 hereof, hereinafter referred to collectively as respondent manufacturers, are all engaged in manufacturing, compounding, or smelting of chemicals used in the manufacture of porcelain enamel, popularly known and sometimes hereinafter referred to as "frit" (which is the porcelain enamel in its raw state), and in the sale of said product to manufacturers and fabricators of porcelain enamel products, such as table tops, kitchen tables, drain boards, bath tub covers, also parts for stoves, refrigerators, store fixtures, wall coverings, and porcelain enamel signs, and cause said product, when so sold, to be shipped and transported from their respective places of business and factories in the States of Ohio, Maryland, Pennsylvania, Illinois, and Indiana, as aforesaid, to the purchasers thereof located in the several States of the United States other than the States of origin of the shipments. Said respondent manufacturers in the course and conduct of their said businesses manufacture and sell approximately 96 per cent of all the

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commercial "frit" manufactured and sold in the United States. Prior to the adoption of the practices hereinafter described, said respondent manufacturers were in active and substantial competition with each other and with other members of the industry in making and seeking to make sales of their said product in commerce between and among the several States of the United States and in the District of Columbia, and but for the practices hereinafter described such active and substantial competition would have continued until the present, and said respondent manufacturers would now be in active and substantial competition with each other and with other members of the industry.

PAR. 3. Respondent Stevenson, Jordan & Harrison, sometimes hereinafter referred to as respondent S. J. & H., is a corporation organized, existing and doing business under the laws of the State of New York, having its principal office and place of business located at 19 West Forty-fourth Street in the city of New York in said State. Said respondent is engaged in business management and business engineering, specializing in management of trade associations.

Respondent Harry L. Moody, at all times hereinafter mentioned was a director of respondent S. J. & H. in charge of the activities of the respondent manufacturers and is named as respondent herein individually and as director of respondent S. J. & H.

PAR. 4. Respondent manufacturers, acting in cooperation with each other and with respondent S. J. & H. and respondent Moody, for more than three years last past have been engaged in an understanding, agreement, combination, and conspiracy to hinder and suppress competition in the manufacture and interstate sale and distribution of "frit" or porcelain enamel in its raw state, to purchasers thereof; and to create and maintain a monopoly in the manufacture and interstate sale and distribution of said product in the said respondent manufacturers. Pursuant to said understanding, agreement, combination, conspiracy and in furtherance thereof, the respondents have acted in concert and in cooperation with each other or have followed a planned or prearranged common course of action in doing, among others, the following acts, practices and things:

(a) Respondent manufacturers have fixed minimum and indential prices f. o. b. their respective plants for the sale of various grades or coats of "frit" or porcelain enamel in its raw state, sold and distributed by them.

(b) For the purpose and with the effect of equalizing and making identical to any given purchaser at any given destination the delivered costs from all of respondent manufacturer's plants and of neutralizing the differences in freight costs from their respective plants as a

factor in price competition, respondent manufacturers have established and utilized a program or system of so-called freight equalization. Under such program or system each manufacturer having the greatest freight disadvantage with reference to any given destination is enabled to quote and sell to any purchaser at the same delivered cost as the manufacturer having the greatest freight advantage. The accomplishment of such purpose, effect, program, and system is conditioned upon each manufacturer reciprocally and in alternation adopting the equivalent of each other's f. o. b. plant price in their respective freight advantage territories, upon each manufacturer refusing to permit purchasers to take possession f. o. b. plant and provide their own transportation, and upon each ignoring differences in their respective costs of production, of selling, and of overhead. Said freight equalization program is in effect an undertaking by all respondent manufacturers to make no delivered price at any place that will preclude the most disadvantaged of their number from matching it.

(c) Respondent manufacturers have classified their respective customers according to the total annual volume of "frit" purchased by each of them from all sources and make identical delivered prices and discounts on all sales of said product to all such customers according to such classification.

(d) Respondent manufacturers file with the respondent S. J. & H. and respondent Moody price lists containing the quoted prices and discounts on each grade or coat of said product to each class of customer; and copies of invoices and orders covering the sales of their said product, each invoice to contain the name of the purchaser, the quantity sold of each grade and coat and the price and discount of same for each class of customer; and said respondent S. J. & H. and respondent Moody disseminate among the respondent manufacturers the prices and discounts so filed, with the understanding that respondent manufacturers will maintain the said prices and discounts and will notify said respondent S. J. & H. and respondent Moody of any changes in price or discount already in effect or new grades or coats of said product; and that said respondent S. J. & H. and respondent Moody will disseminate to the respondent manufacturers information as to price and discount changes and new products put on the market by any respondent manufacturer.

(e) Respondent manufacturers file with said respondent S. J. & H. and respondent Moody credit reports setting forth the names of the customers receiving credit and the credit limit allowed, said credit information being disseminated by said respondent S. J. & H. and

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respondent Moody to other respondent manufacturers in a composite credit report with the understanding that any customer who is in arrears beyond a fixed credit limit cannot purchase from any other respondent manufacturer on open account nor be sold by the respondent manufacturer to whom he is indebted on open account, but shall be required to purchase on a c. o. d. basis in the future until he has paid up his account in arrears.

(f) Respondent manufacturers file from time to time with respondent S. J. & H. and respondent Moody "credit memoranda" disclosing the nature of credit given their respective customers and respondent S. J. & H. and respondent Moody circulate among the respondent manufacturers a bulletin showing the information contained in said "credit memoranda" filed by respondent manufacturers.

(g) Respondent manufacturers file with respondent S. J. & H. and respondent Moody monthly reports of shipments of "frit" to their customers, both gross and net, and respondent S. J. & H. and respondent Moody disseminate among the respondent manufacturers a composite statement of the total volume of shipments of "frit" by the respondent manufacturers during each month.

(h) Respondent manufacturers have adopted the practice of declining to sell "frit" on consignment; and also of declining to perform certain services for their customers such as mounting the product on skids or pallet for carload shipments; also of declining to give certain extra demonstrations of their product in the places of business of their customers; also of declining to make special inducements to take customers away from each other.

(i) Respondent manufacturers from time to time hold and attend meetings in cooperation with each other and under the auspices of respondent S. J. & H. and respondent Moody, at which meetings the various acts and practices and things hereinbefore set forth are discussed, including various reports received by respondent S. J. & H. and respondent Moody from the respondent manufacturers, also complaints of respondent manufacturers with respect to the maintenance or nonobservance by respondent manufacturers of the acts, practices and understandings hereinbefore mentioned.

(j) The respondent S. J. & H. and respondent Moody cooperate with and assist said respondent manufacturers in the enforcement and observance of the foregoing acts, practices and understandings by disseminating monthly volume reports showing the industry and each respondent manufacturer's total volume in pounds and dollars and percentages of each manufacturer in pounds and dollars for current month and year to date; monthly report showing industry and

each respondent manufacturer's freight equalization charges for the month and year to date; monthly reports in pounds and dollars showing the industry and each respondent manufacturer's volume by classification, grade, and type, and price per pound for the industry and for each respondent manufacturer and each manufacturer's percentage of the total industry volume and the percent of the average per pound price; other periodical reports showing volume in pounds and dollars of each customer's purchasers from the industry and by checking up on the respondent manufacturers to determine whether or not they are living up to or maintaining the said acts, practices and understandings and reporting at said meetings or otherwise to the respondent manufacturers any deviations therefrom or violations thereof to the end that said acts, practices and understandings shall be uniformly and universally observed by the respondent manufacturers.

PAR. 5. The acts, practices, and things performed by 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 respondent manufacturers in the sale of "frit," porcelain enamel in its raw state, in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondent manufacturers the power to control and enhance prices in said product; have created in the respondent manufacturers a monopoly in the sale of said product in such commerce; have unreasonably restrained such commerce in said product; and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

Count II

The Federal Trade Commission having reason to believe that Ferro Enamel Corp., Permo Corp., The O. Hommel Co., a corporation, Chicago Vitreous Enamel Product Co., a corporation, Ingram-Richardson Manufacturing Co. of Indiana, Inc., hereinbefore referred to as respondent manufacturers, have violated and are now violating the provisions of section 2 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act (U. S. C. title 15, sec. 13) hereby issues this its complaint against said respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. For its charges in this paragraph of this count, said Commission relies upon the matters and things set out in paragraph

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1 of count I of this complaint to the same extent and as though the allegations of said paragraph of said count I were set out in full herein and said paragraph 1 of said count I is therefore incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. For its charges in this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 2 of count I of this complaint to the same extent and as though the allegations of said paragraph of said count I were set out in full herein and said paragraph 2 of said count I is therefore incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges in this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 3 of count I of this complaint to the same extent and as though the allegations of said paragraph of said count I were set out in full herein and said paragraph 3 of said count I is therefore incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. In the course and conduct of their said businesses as described in paragraphs 1 and 2 of count I of this complaint, said respondent manufacturers have been for more than three years last past and are now discriminating in price between different purchasers buying "frit," porcelain enamel in its raw state, by selling their said product to some of their customers at lower prices than they sell said product of like grade and quality to other of their customers, many of which customers are competitively engaged one with another throughout the several States of the United States, in the sale of manufactured and fabricated products containing said "frit" as an important and substantial part thereof. The respondents during the said period of time have engaged in the following discriminatory practices and methods in determining the prices at which they sell their said product to their said customers:

1. Respondent manufacturers classify their customers according to the annual dollar volume of purchases of "frit" from all sources and grant discounts to each customer based upon such classification.

2. Respondent manufacturers furnish respondent S. J. & H. and respondent Moody with regular periodical reports of annual dollar volume of sales of said product to their respective customers and respondent S. J. & H. and respondent Moody disseminate among respondent manufacturers a volume report containing a summary of all sales of said product by all respondent manufacturers each month.

3. Respondent manufacturers utilize the said customer volume reports disseminated by the respondent S. J. & H. and respondent Moody

to determine the classification of any customer and the amount of discount to be allowed from list prices, said classification being adjusted from time to time in accordance with said customer volume report.

4. Pursuant to such classification and determination the respondent manufacturers have, during said period of time, followed and maintained the following schedule of discounts from list prices based on total purchases from all sources:

Classification	Amount of purchases	Discount
		<i>Percent</i>
A-----	\$5,000 per year-----	Base
B-----	\$5,000 to \$10,000-----	5
C-----	\$10,000 to \$20,000-----	10
D-----	\$20,000 to \$29,000-----	12½
E-----	\$29,000 to \$40,000-----	15
F-----	Over \$40,000-----	20

PAR. 5. The effect of the said discriminations in price mentioned in paragraph 4 hereof has been or may be substantially to lessen competition in the line of commerce in which said respondents are engaged and to injure, destroy, and prevent competition between and among the said respondents and to injure, destroy, and prevent competition between the customers of said respondents in the sale and distribution of products containing said "frit" as a substantial component part and has been and may be to tend to create a monopoly in said commerce in the various localities or trade areas in the United States in which said respondents and their customers are engaged in the sale and distribution of said product.

PAR. 6. The foregoing acts and practices of respondents are violations of subsection 2 (a) of section 1 of the said act of Congress approved June 1, 1936, entitled "an Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes" approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for Other Purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on April 29, 1944, 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 the Federal Trade Commission Act and charging all of said respondents except Stevenson, Jordan & Harrison, Inc., and Harry L. Moody with violation of the provisions of subsection (a) of section 2 of the said Clayton Act as amended. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted respondents' motions for permission to withdraw their original answers and to substitute therefor answers admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts and waiving the filing of the trial examiner's report upon the evidence, which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers; 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 Ferro Enamel Corp., sometimes hereinafter referred to as Ferro, is a corporation organized under the laws of the State of Ohio, with its principal office and place of business located at 4150 East Fifty-sixth St., Cleveland, Ohio.

(b) Respondent Pemco Corp., sometimes hereinafter referred to as Pemco, is a corporation organized under the laws of the State of Maryland, with its principal office and place of business located at Eastern and Pemco Avenues, Baltimore, Md. It is a successor to Porcelain Enamel & Manufacturing Co. of Baltimore.

(c) Respondent The O. Hommel Co., sometimes hereinafter referred to as Hommel, is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business located at Carnegie, Pa.

(d) Respondent Chicago Vitreous Enamel Product Co., sometimes hereinafter referred to as Chicago Vitreous, is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located at 1427 South Fifty-fifth Ct., Cicero, Ill.

(e) Respondent Ingram-Richardson Manufacturing Co. of Indiana, Inc., sometimes hereinafter referred to as Ing-Rich, is a corporation organized under the laws of the State of Indiana, with its principal office and place of business located at Frankfort, Ind.

(f) Respondent Stevenson, Jordan & Harrison, Inc., sometimes hereinafter referred to as S. J. & H., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 19 West Forty-fourth St., New York, N. Y. Said respondent is engaged in business management and business engineering, specializing in management of trade associations.

(g) Respondent Harry L. Moody, at all times hereinafter mentioned, was a director of respondent S. J. & H. in charge of the activities of the respondent manufacturers named in subparagraphs (a) to (e), inclusive, of this paragraph and is named as respondent herein individually and as director of respondent S. J. & H.

PAR. 2. The respondent corporations named in subparagraphs (a) to (e), inclusive, of paragraph 1 hereof, hereinafter frequently referred to collectively as respondent manufacturers, are all engaged in the manufacturing, compounding, or smelting of chemicals used in the manufacture of porcelain enamel, popularly known and sometimes hereinafter referred to as "frit" (which is porcelain enamel in its raw state), and in the sale of said product to manufacturers and fabricators of porcelain enamel products such as table tops, kitchen tables, drain boards, bathtub covers, parts for stoves, refrigerators, store fixtures, wall coverings, and porcelain enamel signs. Respondent manufacturers cause said product, when so sold, to be shipped and transported from their respective places of business and factories in the States of Ohio, Maryland, Pennsylvania, Illinois, and Indiana, as aforesaid, to the purchasers thereof located in the several States of the United States other than the States of origin of the shipments.

PAR. 3. In the course and conduct of their said businesses, the respondent manufacturers produce and sell approximately 96 percent of all the commercial "frit" manufactured and sold in the United States. Prior to the adoption of the practices hereinafter described, said respondent manufacturers were in active and substantial competition with each other and with other members of the industry in making and seeking to make sales of their said product in commerce between and among the several States of the United States and in the District of Columbia, and but for the practices hereinafter described such active and substantial competition would have continued until the present and said respondent manufacturers would now be in active and substantial competition with each other and with other members of the industry.

PAR. 4. (a) Respondent manufacturers, acting in cooperation with each other and with respondents S. J. & H. and Moody, for more than

3 years last past have been engaged in an understanding, agreement, combination, and conspiracy to hinder and suppress competition in the manufacture and interstate sale and distribution of "frit" to purchasers thereof and to create and maintain in themselves a monopoly in the manufacture and interstate sale and distribution of said "frit." Pursuant to said understanding, agreement, combination, and conspiracy, and in furtherance thereof, the respondents have acted in concert and in cooperation with each other or have followed a planned or prearranged common course of action in doing, among others, the acts, practices, and things hereinafter set forth.

(b) Respondent manufacturers have fixed minimum and identical prices, f. o. b. their respective plants, for the sale of various grades or coats of "frit" sold and distributed by them.

(c) For the purpose and with the effect of equalizing and making identical to any given purchaser at any given destination the delivered costs from all of respondent manufacturers' plants and of neutralizing the differences in freight costs from their respective plants as a factor in price competition, respondent manufacturers have established and utilized a program or system of so-called freight equalization. Under such program or system each manufacturer having the greatest freight disadvantage with reference to any given destination is enabled to quote and sell to any purchaser at the same delivered cost as the manufacturer having the greatest freight advantage. The accomplishment of such purpose, effect, program, and system is conditioned upon each manufacturer reciprocally and in alternation adopting the equivalent of the f. o. b. plant price of the manufacturer in whose freight-advantage territory the sale is made, upon each manufacturer refusing to permit purchasers to take possession f. o. b. plant and provide their own transportation, and upon each manufacturer ignoring differences in his costs of production, of selling, and of overhead. Said freight-equalization program is, in effect, an undertaking by all respondent manufacturers to make no delivered price at any place that will preclude the most disadvantaged of their number from matching it.

(d) Respondent manufacturers have classified their respective customers according to the total annual volume of "frit" purchased by each of them from all sources and make identical delivered prices and discounts on all sales of said product to all their customers according to such classification.

(e) Respondent manufacturers file with S. J. & H. and Moody price lists containing the quoted prices and discounts on each grade or coat of said product to each class of customer. S. J. & H. and Moody disseminate among the respondent manufacturers the prices

and discounts so filed, with the understanding that respondent manufacturers will maintain the said prices and discounts and will notify S. J. & H. and Moody of any changes in price or discount already in effect or of new grades or coats of said product and that S. J. & H. and Moody will disseminate to the respondent manufacturers information as to price and discount changes and new products put on the market by any respondent manufacturer. Respondent manufacturers also file with S. J. & H. and Moody copies of invoices and orders covering their sales of "frit," each invoice containing the name of the purchaser, the quantity of each grade or coat sold, and the price and discount on same for each class of customer. Such invoices and orders disclose to the common agent of said manufacturers whether filed prices and discounts are adhered to by the reporting manufacturers.

(f) Respondent manufacturers file with S. J. & H. and Moody credit reports setting forth the names of the customers receiving credit and the credit limit allowed, said credit information being disseminated by S. J. & H. and Moody to other respondent manufacturers in a composite credit report with the understanding that any customer who is in arrears beyond a fixed credit limit cannot purchase from any other respondent manufacturer on open account nor be sold by the respondent manufacturer to whom he is indebted on open account but shall be required to purchase on a c. o. d. basis in the future until he has paid up his account in arrears, thereby preventing one manufacturer gaining a competitive advantage over any other manufacturer by extending more favorable credit terms to prospective purchasers.

(g) Respondent manufacturers file from time to time with S. J. & H. and Moody "credit memoranda" disclosing the nature of credits given their respective customers for goods returned or other reasons, and S. J. & H. and Moody circulate among the respondent manufacturers a bulletin showing the information contained in said "credit memoranda" filed by respondent manufacturers, thus disclosing to competitors any deviations from filed prices by such means.

(h) Respondent manufacturers file with S. J. & H. and Moody monthly reports, gross and net, of shipments of "frit" to their customers, and S. J. & H. and Moody disseminate among the respondent manufacturers a composite statement of the total volume of shipments of "frit" by the respondent manufacturers during each month.

(i) Respondent manufacturers have adopted the practices of declining to sell "frit" on consignment, of declining to perform certain services for their customers such as mounting the product on skids or pallet for carload shipments, of declining to give certain extra dem-

onstrations of their product in the places of business of their customers, and of declining to make special inducements to take customers away from each other.

(j) Respondent manufacturers from time to time hold and attend meetings in cooperation with each other and under the auspices of S. J. & H. and Moody, at which meetings the various acts and practices and things hereinbefore set forth are discussed, including various reports received by S. J. & H. and Moody from the respondent manufacturers, also complaints of respondent manufacturers with respect to the maintenance or nonobservance by respondent manufacturers of acts, practices, and understandings hereinbefore mentioned.

(k) The respondents S. J. & H. and Moody cooperate with and assist said respondent manufacturers in the enforcement and observance of the foregoing acts, practices, and understandings by disseminating monthly volume reports showing the industry's and each respondent manufacturer's total volume in pounds and dollars and percentages of each manufacturer in pounds and dollars for current month and year to date; monthly reports showing the industry's and each respondent manufacturer's freight-equalization charges for the month and year to date; monthly reports in pounds and dollars showing the industry's and each respondent manufacturer's volume by classification, grade, and type, and price per pound for the industry and for each respondent manufacturer and each manufacturer's percentage of the total industry volume and the percent of the average per pound price; and other periodical reports showing volume in pounds and dollars of each customer's purchases from the industry; and by checking upon the respondent manufacturers to determine whether or not they are living up to or maintaining the said acts, practices, and understandings, and reporting at said meetings or otherwise to the respondent manufacturers any deviations therefrom or violations thereof to the end that said acts, practices, and understandings shall be uniformly and universally observed by the respondent manufacturers.

PAR. 5. (a) In the course and conduct of their aforesaid businesses, the respondent manufacturers Ferro Enamel Corp., Pemco Corp., The O. Hommel Co., Chicago Vitreous Enamel Product Co., and Ingram-Richardson Mfg. Co. of Indiana, Inc., for more than 3 years last past have been, and are now, discriminating in price between different purchasers buying "frit" by selling their said product to some of their customers at lower prices than they sell said product of like grade and quality to other of their customers, and many of said customers are competitively engaged one with another throughout the several States

of the United States, in the sale of manufactured and fabricated products containing said "frit" as an important and substantial part thereof. The said respondents, during the said period of time, have engaged in the discriminatory practices and methods hereinafter set forth in determining the prices at which they sell their said product to their said customers.

(b) Respondent manufacturers classify their customers according to the annual dollar volume of purchases of "frit" from all sources and grant discounts to each customer based upon such classification. This is accomplished by each respondent manufacturer furnishing S. J. & H. and Moody with regular periodical reports of annual dollar volume of sales of said product to their respective customers and S. J. & H. and Moody disseminate among respondent manufacturers a volume report containing a summary of all sales of said product by all respondent manufacturers each month. The respondent manufacturers utilize such customer volume reports to determine the classification of any customer and the amount of discount to be allowed from list prices, said classification being adjusted from time to time in accordance with said customer volume report, and pursuant thereto the respondent manufacturers have, during said period of time, followed and maintained a schedule of discounts from list prices based on total purchases from all sources, as follows:

Classification	Amount of purchases	Discount
		<i>Percent</i>
A-----	\$5,000 per year-----	Base
B-----	\$5,000 to \$10,000-----	5
C-----	\$10,000 to \$20,000-----	10
D-----	\$20,000 to \$29,000-----	12½
E-----	\$29,000 to \$40,000-----	15
F-----	Over \$40,000-----	20

PAR. 6. The Commission finds that the combination and conspiracy maintained by the respondents and the acts and practices of respondents pursuant thereto and in connection therewith, as hereinabove found, have actually hindered and prevented price competition between and among respondent manufacturers in the sale of "frit" in commerce, within the intent and meaning of the Federal Trade Commission Act; have placed in the respondent manufacturers the power to control and enhance prices in said product; have created in respondent manufacturers a monopoly in the sale of said product in such commerce; have unreasonably restrained such commerce in said product; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

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PAR. 7. The Commission finds the effect of the discriminations in price set out in paragraph 5 hereof has been, or may be, substantially to lessen competition in the line of commerce in which said respondents are engaged; to injure, destroy, and prevent competition between and among said respondents; to injure, destroy, and prevent competition between the customers of said respondents in the sale and distribution of products containing said "frit" as a substantial component part; and tends to create a monopoly in said commerce in the various localities or trade areas in the United States in which said respondents and their customers are engaged in the sale and distribution of said product.

CONCLUSION

The aforesaid combination, and the acts and practices of respondents pursuant thereto and in connection therewith, as hereinabove found, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act; and the discriminations in price by respondent manufacturers, as hereinabove set out, constitute violations of subsection (a) of section 2 of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answers of the several respondents admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 and that each of the respondents except Stevenson, Jordan & Harrison, Inc., and Harry L. Moody has violated subsection (a) of section 2 of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act approved June 19, 1936 (the Robinson-Patman Act).

It is ordered that the corporate respondents Ferro Enamel Corp., Pemco Corp., The O. Hommel Co., Chicago Vitreous Enamel Product Co., and Ingram-Richardson Manufacturing Co. of Indiana, Inc.,

their respective officers, agents, representatives, and employees, in or in connection with the offering for sale, sale, and distribution of "frit" 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 acts or practices:

1. Establishing, fixing, or maintaining prices, discounts, or terms and conditions of sale for "frit," or adhering to or promising to adhere to prices, discounts, or terms and conditions of sale so fixed or established.

2. Quoting or selling "frit" at prices calculated or determined pursuant to or in accordance with any plan or system of equalizing freight with competitors which results in identical delivered prices at any given destination by respondents quoting or selling at such destination, or which prevents purchasers from finding any advantage in price in dealing with one or more of respondents as against any of the other respondents; or quoting or selling "frit" pursuant to or in accordance with any other plan or system which has the aforesaid results.

3. Establishing or maintaining any classification of customers, or any method or formula for classifying customers, used or to be used in determining prices, discounts, or terms and conditions of sale to customers.

4. Exchanging, directly or through Stevenson, Jordan & Harrison, Inc., Harry L. Moody, or any agency or clearing house, price and discount lists or other records showing current prices, discounts, terms and conditions of sale for the purchase or with the effect of restraining competition in the offering for sale or sale of "frit."

5. Adhering, or promising to adhere, to filed or published prices, discounts, or terms and conditions of sale for "frit" pending the filing or publication of changes in such prices, discounts, or terms and conditions of sale.

6. Filing with Stevenson, Jordan & Harrison, Inc., Harry L. Moody, or any agency, copies of invoices and orders covering sales of "frit" and showing the details of such transactions in a manner used or useful in ascertaining whether respondents have adhered to filed or published prices, discounts, or terms and conditions of sale.

7. Fixing or determining the amount of credit which will be extended to any purchaser; or exchanging, directly or through Stevenson,

Jordan & Harrison, Inc., Harry L. Moody, or any agency or clearing house, credit information, with the purpose or effect of fixing or determining the credit allowed any customer, or the terms upon which credit may be allowed any customer.

8. Exchanging, directly or through Stevenson, Jordan & Harrison, Inc., Harry L. Moody, or any agency or clearing house, copies of credit memoranda issued to purchasers, used or useful in disclosing variations from filed or published prices.

9. Refusing or declining to sell "frit" upon a consignment basis; or, refusing or declining to pack or prepare "frit" in a specified way for shipment to customers; or refusing or declining to demonstrate a product to their customers; or otherwise refusing or declining to grant a competitive inducement as a means of securing or retaining or seeking to secure or retain customers.

10. Exchanging, directly or through Stevenson, Jordan & Harrison, Inc., Harry L. Moody, or any agency or clearing house, data concerning "frit" which discloses to any manufacturing respondent the volume of sales made by, the freight equalization charges paid or allowed by, or the average price received by, any other individual manufacturing respondent, for the purpose or with the effect of hindering or restraining competition in the sale and distribution of "frit."

11. Holding or participating in any meeting, discussion, or exchange of information between or among themselves or under the auspices of Stevenson, Jordan & Harrison, Inc., Harry L. Moody, or any other medium or agency, for the purpose or with the effect of reaching any understanding concerning the prices to be charged for "frit" or the maintenance of any of the practices prohibited by this order.

It is further ordered, That respondents Stevenson, Jordan & Harrison, Inc., a corporation, its officers, and Harry L. Moody, individually and as a director of Stevenson, Jordan & Harrison, Inc., their respective agents, representatives, and employees, do forthwith cease and desist from doing or performing any of the things forbidden in the preceding paragraphs of this order, or aiding, assisting, or co-operating in the performance thereof.

It is further ordered, That the corporate respondents Ferro Enamel Corp., Pemco Corp., The O. Hommel Co., Chicago Vitreous Enamel Product Co., and Ingram-Richardson Manufacturing Co. of Indiana, Inc., their respective officers, agents, representatives, and employees, in or in connection with the sale or distribution of "frit" in commerce

as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Directly or indirectly discriminating in price between different purchasers of "frit" of like grade and quality in the manner and degree set forth in the volume discount schedule shown in paragraph 5 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

2. Directly or indirectly discriminating in price in any other manner between purchasers of "frit" of like grade and quality, when such discriminations substantially equal or exceed any of the discriminations shown in the volume discount schedule set forth in paragraph 5 of the findings as to the facts herein.

3. Otherwise discriminating in price between purchasers of "frit" of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in any line of commerce or to injure, destroy, or prevent competition with any person who either grants or receives the benefit of such discrimination; provided, that this shall not prevent price differences which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which said "frit" is to such purchasers sold or delivered, and provided further, that this shall not prevent respondents from showing that any lower price to any purchaser was made in good faith to meet an equally low price of a competitor.

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
**CHESTER D. FRENCH, DOING BUSINESS AS FRENCO
LABORATORIES**

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

Docket 4885. Complaint, Jan. 6, 1943—Decision, Feb. 27, 1946

Where an individual engaged in the interstate sale of certain preparations which were known and designated as "Pap-Tabs," "Py-O-Ten," and "Pap-Tea," principal ingredient of the first two of which was papain, a drug derived from the juice of the fruit of the papaya tree, while last named product was the dried, cured, ground and blended papaya leaves; through statements in advertisements disseminated by radio continuities and by other means in commerce—

- (a) Represented that said "Pep-Tabs" digested food in the stomach and was the complete answer to all digestive needs; healed and soothed the stomach; would prevent and was a complete remedy for all stomach and digestive disorders and distress; was an adequate remedy for sea, car, and air sickness; that there was nothing known in the field of chemistry that would digest food in the stomach as rapidly as papain; and that said preparation prevented putrefaction of food and formation of gas in the digestive system and alleviated the pain and discomfort produced by a gas condition in the intestinal tract; and that the use of bicarbonate of soda in treating distress caused by gas and indigestion results in ulcers, cancers, and perforations of the stomach walls;

The facts being said "Pep-Tabs" had no significant therapeutic value in excess of affording temporary relief from gastric hyperacidity; other drugs and materials well known in chemistry act much more quickly as a digestant in the stomach than papain; and the other aforesaid representations were similarly false and misleading;

- (b) Represented falsely that food treated with "Py-O-Ten" was easily digested and that said preparation had a healing effect on sore and irritated spots in the stomach and intestines; and that its use on meats stopped bleeding and shrinkage in the process of cooking, thus preserving all food values, including all vitamins; that coffee contains substantial quantities of fatty acids which cause indigestion, and the use of this product neutralized all such fatty acid and prevented indigestion caused by acid reaction; that all vegetables were more digestible when prepared therewith; that starches in raw form are practically indigestible to many persons and produce toxic poisons when taken into the stomach; that starch in an unchanged form produces excessive fat; that the human digestive system is unable to combat excessive starch, and introduction of excessive starch into the system results in indigestion, gas, heartburn, and sour stomach and develops in the digestive system a fermenting process which defeats the action of digestive juices; and that said preparation rendered starches readily digestible;
- (c) Represented falsely that the use of said preparation in cooking vegetables would reduce the cooking time to one-half of the ordinary time, and that vegetables so prepared might be eaten by all without digestive distress or disturbances, and would be twice as nourishing as otherwise;