

IN THE MATTER OF

NORTHWEST STUDIOS, INC., ALSO TRADING AS INTER-
STATE SALES COMPANY, AND FORMERLY TRADING
AS PACIFIC STUDIOS: CHARLES H. VAN SCOY,
MRS. MARJORIE VAN SCOY (REFERRED TO IN THE
COMPLAINT AS MRS. CHARLES H. VAN SCOY), AND
MRS. E. S. HOLM

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

Docket 4951. Complaint, Apr. 21, 1943—Decision, June 25, 1946

A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water color is a painting with pigments for which water, and not oil, is used as a solvent. A portrait, in its ordinary accepted meaning, is a picture or representation of a face; a likeness, particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

Where a corporation and two individuals who were its officers, principal stockholders, and directors and owned in part and controlled a collection agency operated for its account, engaged in competitive interstate sale and distribution of colored photographic enlargements and frames therefor, through teams or crews of sales representatives who, equipped with said corporation's identification cards and purported samples of the finished products and approved sales talks, solicited members of the public—

- (a) Represented to prospects that the portraits made from the photographs or snapshots selected by the agent as a guide for the "painting" or "hand-painted portrait" and to be returned with the finished "painting"—which in many cases possessed great sentimental value and could not be duplicated—would reproduce the type of work displayed in the salesmen's sample colored enlargements of selected photographs, done skillfully and with great care and detail;

When in fact the so-called "paintings" sold and distributed by them were greatly inferior in quality, workmanship, and appearance to such samples;

- (b) Represented through use of such words as "paintings" and "painted portraits" and "oil paintings" that the colored enlargement of the photograph or snapshot supplied by the customer would be a painting;

The facts being they were merely cheap, quickly made photographic enlargements, which were tinted or colored by the use of powdered pigments in solution sprayed by means of a mechanical air brush and compressed air, and cost at the most, some \$1.25 each;

- (c) Falsely represented that the "painting" was being sold as an "introductory offer" only; that only a limited number of "paintings" would be placed in a given locality; that the customer was being charged only for the time of the artist; that the "painting" was being offered at a reduced price and that in consideration of such fact the customer agreed that it was to be

"protected and exhibited"; or that it was being offered merely at a "special advertising price" or at the "cost of production";

- (d) Represented to prospective customers that a drawing contest would be held to decide who should be one of the few lucky persons in a particular locality to have "paintings" placed in their homes in connection with a "special advertising offer" and that the lucky drawer would be entitled to receive a \$20 "painting" free or a substantial discount on the price of a "painting," and, following the invariable drawing of a "lucky" coupon, entered into a contract under which, following initial payment of \$1.45 or so, the corporation agreed to make "one of our \$20 high-grade paintings, in the most pleasing size, in the Newest Octagonal Design, same as painting shown," or a \$5 credit was allowed following addition of said amount to the price of the "painting," or the total price was stated as \$3.95 with \$1.95 to be paid down and the balance when color instructions were obtained later;
- The facts being the prices for said so-called "paintings," "hand-painted portraits" or "oil paintings" were in excess of those prevailing for such products in the ordinary course of business; the enlarged photographs did not possess any such sales value as \$20 nor did they ever sell for any sum remotely approximating said amount; the so-called "lucky" certificates or coupons gave the holder no advantage whatsoever, and the procedure known to the trade as "the draw" was merely a deceptive sales scheme used to gain entry into a prospective customer's home and to obtain from him a photograph or snapshot, and thus initiate the sale of a picture and eventually a frame;
- (e) Pursued the policy in their initial contacts, when the customer was assured that he was under no further obligation, of making no mention of a frame for the "painting"—sale of which at an exorbitant price was the objective of the entire scheme—or of the fact that the "painting" would be octagonal in shape, with a convex or raised surface, or that it would be necessary later for the customer to place the "painting" in a frame in order to preserve it, and that owing to the unusual shape and design of the "painting" it would be impossible for the customer to obtain a frame therefor except from said corporation and at exorbitant prices asked by its said sales agents, and gave no hint that the corporation's profits in connection with the business involved were derived from the sale of frames;
- (f) Made use of such unwarranted and deceptive terms as "field artist," or "instructing artist" for the salesmen who delivered the so-called "sketch" of the "painting"—which was merely an uncolored rough proof of the enlarged photograph—and who mentioned the matter of the frame for the first time, and, if customer declined to buy a frame or objected to the price asked therefor, sought to force purchase of a frame through various types of duress and pressure, informing the customer that the Northwest Studios, Inc., had its professional record at stake, would not permit one of its pictures to become dirty or marred and that no pictures would be delivered without frames, and informed him for the first time that a frame for the "painting" could not be purchased from any other source, that the corporation made the only frame that would fit the "painting," and that the "painting" would not hold its color or be of any value without it, and called customer's attention to his alleged agreement to "protect" and "exhibit" the "painting" and to his obligation to buy a frame; and emphasized afore-

Complaint

42 F. T. C.

said representations through the invariable practice of delivering all "paintings" in frames;

- (g) Made it a practice, in the event the customer finally declined to buy a frame, to refuse to deliver the completed "painting" regardless of whether or not it had been paid for in full, and refused to return the treasured family photograph which had been borrowed for use in making the "painting" and notwithstanding their agreement to return it, as a result of which customers in numerous instances bought "paintings" they did not like or wish to buy, and frames at exorbitant prices, and paid said corporation sums they did not owe and for which they had not been given credit on its records; and, in connection with extended controversies over sales contracts and long delays in the delivery of orders, made it a practice to propose that, rather than go into litigation over the small amount due, they would settle for the payment of \$1 on the "painting" or \$3.50 for the "painting" and frame in addition to what the customer might already have paid;
- (h) Referred customers—of whom it was its practice to require an interest-bearing note on the completion of a "painting" or a "painting" and frame on which a balance was due—in the event of a controversy over its work or a frame, to the so-called "Interstate Finance Company" and gave them to understand that it was no longer connected with the matter and that they must take up all questions with said company, which was an innocent purchaser for value without notice;

The facts being that "Interstate Finance Company" was merely a trade name employed by it for the purpose of collecting sums allegedly due it, whereby it was enabled to avoid further responsibility in connection with its contract for the completion of a "painting" or the sale of a frame therefor, and whereby the purchaser found himself cut off from dealing with the original company with which he had contracted for a "painting" or frame and in a controversy with a fictitious collection agency holding an interest-bearing note against him;

With the effect of misleading and deceiving purchasers into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said products as a result of such belief, and of unfairly diverting trade to them from their competitors:

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

Mr. S. F. Rose for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Northwest Studios, Inc., a corporation, also trading as Interstate Sales Co., and formerly trading as Pacific Studios; Charles H. Van Scoy, individually, and as president and a director of Northwest Studios, Inc., Mrs. Charles H. Van Scoy, individually and as secretary and a director of Northwest

Complaint

Studios, Inc.; and Mrs. E. S. Holm, individually, and as treasurer and a director of Northwest Studios, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Northwest Studios, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Washington, having its principal office and place of business located at 6013A Phinney Avenue, Seattle, Wash., formerly located and doing business in said city at 1111 Columbia Street and 6034 Palatine Avenue.

Respondent Northwest Studios, Inc., hereinafter referred to as corporate respondent, for more than 5 years last past, operating from the above-stated addresses in the said city of Seattle, Wash., has been engaged in the sale and distribution of tinted or colored enlargements of photographs or snapshots and of frames therefor. Corporate respondent causes, and at all times mentioned herein has caused said products, when sold, to be transported from the State of Washington to the purchasers thereof located in various States of the United States other than the State of Washington, and in the District of Columbia. Corporate respondent maintains and at all times mentioned herein has maintained, a course of trade in said products in commerce, particularly in the States of Oregon, California, Utah, Arizona, New Mexico, Colorado, and Texas.

Respondent Charles H. Van Scoy is president and a director of Northwest Studios, Inc., with his present office and place of business located at 905 Pike Street, Seattle, Wash. His office and place of business was formerly, at various times, located at 6013A Phinney Avenue, 6034 Palatine Avenue, and 1111 Columbia Street, Seattle, Wash.

Respondent Mrs. Charles H. Van Scoy, is secretary and a director of Northwest Studios, Inc., with here present office and place of business located at 905 Pike Street, Seattle, Wash. Her office and place of business was formerly, at various times, located at 6013A Phinney Avenue, 6034 Palatine Avenue, and 1111 Columbia Street, Seattle, Wash.

Respondent Mrs. E. S. Holm, is treasurer and a director of Northwest Studios, Inc., with here present office and place of business located at 6013A Phinney Avenue, Seattle, Wash. Her office and place of business was formerly, at various times, located at 6034 Palatine Avenue and 1111 Columbia Street in the city of Seattle, Wash.

Complaint

42 F. T. C.

Said individual respondents own all of the capital stock of the Northwest Studios, Inc., and in conjunction and cooperation with each other they direct and control and have directed and controlled the business operations, activities, and policies of said corporate respondent Northwest Studios, Inc. The aforesaid respondents also own, and dominate and control Interstate Finance Co. which is operated for the account of Northwest Studios, Inc. Said Interstate Finance Co. serves as a collection agency for Northwest Studios, Inc., in collecting various balances alleged to be due from purchasers of pictures, and of frames therefor, as will be more fully hereinafter shown.

PAR. 2. In the course and conduct of the aforesaid business respondents have been and are now engaged in direct and substantial competition with various corporations, partnerships, and individuals engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements of photographs or snapshots and of frames therefor.

PAR. 3. In connection with the sale of corporate respondent's said colored photographic enlargements and frames therefor, sales agents or representatives employed and directed by respondents visit the homes of prospective customers in the cities, towns, and rural communities of various States of the United States. Under corporate respondent's sales plan said sales agents or representatives are and have been organized into teams or crews, each said team or crew working under the supervision and authority of corporate respondent. Teams or crews are and have been placed in the immediate charge of a crew manager or foreman, who keeps in constant touch with the daily activities of corporate respondent's said sales agents or representatives. Sales talks containing approved methods of approach and salesmanship, and convincing arguments, are employed by corporate respondent's said sales agents or representatives in contacting members of the public. Each said sales agent or representatives carries an identification card or credentials card or certificate or other document which is exhibited to prospective customers that are contacted showing said salesman or representative to be a duly qualified sales agent or sales representative of corporate respondent, and purchasers of corporate respondent's said colored enlargements and frames therefor are given to understand, and do understand, that they are contracting or dealing with the duly constituted agents of corporate respondent Northwest Studios, Inc.

Corporate respondent's said sales agents and representatives in soliciting orders carry, and exhibit, attractive samples of work that

is represented as typical of that done by corporate respondent. Said samples are attractively displayed. They have been reproduced in fact and built up from photographic subjects of highest photographic value. Colored enlargements of such selected photographs are skillfully done with great care and detail. Many of them closely resemble paintings done by hand. These attractive specimens in colored enlargements are exhibited by agents or representatives upon entering the home of a prospective customer. Respondent company, the sales agent represents, is prepared to duplicate or reproduce such type of work. If a customer is interested the customer is induced to permit the sales agent to inspect photographs or snapshots of some member of the family, living or dead. Many of such photographs or snapshots possess great sentimental value, are kept in family albums, and cannot possibly be duplicated. In numerous instances the member of the family represented by the photograph has been dead for many years. Finally, the sales agent selects a photograph or snapshot pronounced suitable or satisfactory for reproduction purposes. The photograph or snapshot so selected is represented as serving as a model or guide to the Studio's artist who, it is represented, will paint a portrait of the same or make a "painting" or "hand painted portrait" of it. From time to time the picture to be made is represented as an "oil painting." The photograph or snapshot borrowed from the customer, the agent states, is to be returned with the finished "painting."

In further connection with the sale of corporate respondent's said colored enlargements, sales agents of corporate respondent represent and have represented that the "painting" is being sold as an "introductory offer" only, that only a limited number of "paintings" will be placed in a given locality; that the customer is being charged only for the time of the artist; that the "painting" is being offered at a reduced price and that in consideration of such fact the customer agrees that it is to be "protected and exhibited." In other instances it is represented that the "painting" is being offered merely at a "special advertising price" or at the "cost of production."

PAR. 4. Upon contacting prospective customers, sales representatives of corporate respondent represent and have represented that a drawing contest will be held for the purpose of deciding who shall be one of the few lucky persons in a particular city or town to have corporate respondent place "paintings" in their homes in connection with a "special advertising offer." The agent or salesman in connection with said drawing produces a number of slips. It is represented that most of said slips are blanks but that a few are trade checks or certificates; that the customer is allowed two draws or trials; that if the customer

Complaint

42 F. T. C.

draws a blank he does not win but if fortunate enough to draw a winning check or certificate he will be entitled to receive a \$20 "painting" free, or a substantial discount on the price of a "painting." The prospective customer draws and finally and invariably wins a "lucky" coupon reading:

SPECIAL
Gold Certificate

This entitles holder to our special advertising offer.

NORTHWEST STUDIOS.

The customer is thereupon congratulated by the sales agent upon his good luck. Believing the representations of the agent to be true and that in drawing "lucky" he has thereby obtained a distinct financial advantage and has put himself in the position of obtaining something of great value "free" or at a greatly reduced cost, the customer thereupon proceeds to sign a contract whereby upon the initial payment of the sum of \$1.45 (or other approximate sum) respondent company agrees to make "one of our \$20 high-grade paintings, in the most pleasing size, in the newest octagonal design, same as painting shown." On occasion, in connection with the execution of contracts obtained through the use of the draw, an arbitrary sum of \$5 or more is added to the price of the painting and the credit for such sum is thereupon deducted on the face of the contract by reason of the customer's making a "lucky" draw. In other offers the total price of the painting is stated to be \$3.95, the sum of \$1.95 to be paid down, the balance to be paid when color instructions are obtained later. The customer is assured that this is a genuine offer and that he is under no further obligation. The agent represents here that before finishing the "painting" a "field artist" will call with a "sketch" of the "painting" and get full color particulars for finishing it.

PAR. 5. In their initial contacts with the customer corporate respondent's said sales agents pursue the policy of making no mention of a frame for the "painting" and, further, do not disclose to the customer that the "painting" to be made will be octagon in shape with a convex or raised surface. The information that it will be necessary later for the customer to place the "painting" in a frame in order to preserve it and that owing to the unusual shape and design of the "painting" it will be impossible for the customer to obtain a frame therefor except from corporate respondent and at exorbitant prices asked by corporate respondent's said sales agents, is carefully withheld from the unsuspecting customer. No hint is given by said sales agents that the profits obtained by corporate respondent in connection with its here-

indescribed business are derived from the sale of frames and that the real and ultimate purpose of corporate respondent's said sales agents in contacting the customer in any instance was and is to sell him a frame.

The second sales agent, designated by corporate respondent as a "field artist" or "instructing artist," later appears with an uncolored rough proof of the "painting" to be made, the same designated as a "sketch," and being in fact merely an enlarged, unfinished print or proof made by photographing the family picture or the snapshot that had theretofore been loaned to corporate respondent's sales agent by the customer.

The said second sales agent or "field artist" thereupon obtains instructions for the colors to be used in making the "painting" and endeavors to sell the customer a frame for the "painting." The matter of the frame is here mentioned usually for the first time. If the customer declines to buy a frame or objects to the price asked for a frame various types of duress and pressure are employed to force the purchase of a frame. The customer on occasion is informed that the Northwest Studios, Inc., has its professional record at stake and would not permit one of its pictures to become dirty or marred in any way; that absolutely no pictures will be delivered without frames. Where the customer has refused to purchase a frame on account of the matter of price, quality or design, the customer then, on various occasions, is informed by corporate respondent's sales agent, and for the first time, that a frame for the "painting" cannot be purchased from any source other than through respondent corporation; that corporate respondent manufactures the only frame that will fit the "painting," that the "painting" will not hold its color or be of any value unless it is framed. The attention of the customer is called to the customer's alleged "agreement" to "protect" and "exhibit" the "painting" and to the "obligation" of the customer to buy a frame. These representations are emphasized by the uniform practice of corporate respondent's sales agents to deliver all "paintings" in frames. In the event the customer finally refuses to buy a frame, respondents have made it a practice to refuse to deliver the completed "painting," regardless of whether or not it has been paid for in full, and have retained possession of and have refused and do refuse to return to the customer the treasured family photograph which had been borrowed for use in making the "painting." In numerous instances customers, in order to obtain the return of treasured family photographs have bought "paintings" they did not like or wish to buy, and frames at exorbitant prices, and have paid to corporate respondent sums

Complaint

42 F. T. C.

they did not owe and for which they had not been given credit on the records of corporate respondent. In connection with extended controversies over sales contracts and long delays in the delivery of orders respondent corporation has made it a practice to propose settlements to the effect that rather than go into litigation over the small amount due they will settle for the payment of an additional sum of \$1 on the "painting" or for the sum of \$3.50 for the "painting" and frame, this in addition to what the customer may already have paid thereon.

PAR. 6. Corporate respondent's said sales agents, in instances where a balance is due by the customer on a completed "painting" or on a "painting" and frame, require the customer to execute an interest-bearing note therefor in favor of Interstate Finance Co., 323 Vance Building, Seattle, Wash. In case of subsequent controversy between the customer and corporate respondent over the character or price of work done by corporate respondent or concerning a frame, the customer is referred to the Interstate Finance Co. for satisfaction. The customer is given to understand that corporate respondent is no longer interested in or connected with the matter and that the customer must take up all questions with Interstate Finance Co.

In truth and in fact, Northwest Studios, Inc., and Interstate Finance Co. are one and the same, the latter being merely a trade name employed by corporate respondent, using a different address, for the purpose of collecting sums allegedly due corporate respondent. Under said plan corporate respondent was and is enabled to avoid further responsibility in connection with its contract for the completion of a "painting" or the sale of a frame therefor, by referring the purchaser to the Interstate Finance Co., which fictitious company has had nothing to do with and plays no part in the production of the "painting" or the frame therefor. Said plan or arrangement enables and has enabled corporate respondent, the seller of the "painting" or frame, through the medium of a fictitious trade name, to remove itself from the situation, and the purchaser of such products finds himself cut off from dealing with the original company with which he had contracted for a "painting" or frame and in a controversy with a fictitious collection agency holding a note against him bearing interest.

PAR. 7. In truth and in fact, the various statements and representations made and used by corporate respondent or its sales agents, and the acts and practices employed by them in the sale and offering for sale of said products in the cities, towns, and communities of the

United States, were and are false, deceptive, and misleading in the following, among other, particulars:

(1) The so-called "paintings," "hand painted portraits," and "oil paintings" as sold by respondents are not paintings or painted portraits or oil paintings in any sense of the word, but on the contrary, are merely cheap, quickly made photographic enlargements, which are tinted or colored by the use of pastel or crayon, water color or other powdered pigments sprayed upon the photographic enlargement in solution through the use of a mechanical air brush and compressed air, and costing at the most, in the neighborhood of \$1.25 each.

(2) Said so-called "paintings," "hand painted portraits," or "oil paintings" are not and have not been sold at any "special advertising price," or as any "special advertising offer," nor for the "cost of production," nor at any "reduced price," nor to a "few lucky persons" in any given locality or community, but on the contrary the prices at which respondents sell and have sold the unframed, tinted or colored photographic enlargements are and have been in excess of and above the regular and customary prices for which said products are and were usually and customarily sold in the ordinary course of business. Said colored enlargements do not possess nor have they ever possessed any sales value of \$20 nor any sum remotely approximating \$20, nor have they ever been sold for \$20 or at any price approximating \$20.

(3) The so-called "paintings" sold and distributed by respondents are different from and greatly inferior in quality, workmanship, and appearance to the samples exhibited to customers by respondents' said sales agents when obtaining orders for said pictures or so-called "paintings."

(4) Purchasers do not understand and have not agreed, in connection with contracts, that treasured family photographs loaned by them are to be retained by respondents until payment of any sum alleged by respondents to be due them. In truth, purchasers are given to understand that the photographs they have loaned to respondents will be returned at the time the finished picture is delivered.

(5) Respondents conceal and have concealed from purchasers at the time the so-called "painting" is ordered the fact that the finished product will be delivered in a peculiar convex form, shape, and size and that it will be impossible for the customer thereafter to obtain a frame to fit said "painting" except from respondents and at prices fixed by them.

(6) Respondents conceal from purchasers the fact that respondents' activities and representations in obtaining contracts for alleged "paintings" are really employed to enable respondents to contact purchasers for the purpose and opportunity of selling them frames of

cheap and inferior quality at prices which are in excess of and far above the prices at which said frames usually and customarily sell in the ordinary course of business.

(7) Respondents' sales of frames are accomplished by coercive and oppressive acts, practices, and representations, among which are the retention of the original family photograph loaned by the customer, or the completed "painting," or both, until a frame is purchased by the customer.

(8) The so-called "field artist" making second contacts for respondents with customers is not an artist in the sense that such term is ordinarily understood by the consuming public, but on the contrary is nothing more than a delivery man or frame salesman operating for and on behalf of respondents. Respondents' so-called "sketch" is nothing more than a rough proof of a photographic enlargement that has not been retouched or finished in any manner.

(9) The so-called "lucky" certificates or coupons obtained by customers in connection with an alleged drawing contest conducted by respondents' sales agents in truth and in fact give the holder thereof no advantage whatsoever in price or otherwise, for practically all prospects thought to be acceptable financial risks are permitted to draw a "lucky" certificate or coupon. Said "lucky" draw does not win for the customer a \$20 "painting" or other priced "painting" "free," nor obtain for the customer any discount off the regular price of any "painting" or picture. In truth and in fact, all customers may purchase a "painting" or picture at the price used by respondents in making the so-called "special introductory offer," and this procedure which is known to the trade as "the draw," is merely a deceptive sales plan or scheme used to gain entry into a prospective customer's home and to obtain from him a photograph or snapshot, and thus initiate the sale of a picture, and eventually the sale of a frame.

(10) The so-called Interstate Finance Co., employing the address 323 Vance Building, Seattle, Wash., is not a bona fide business enterprise as indicated by its name, but, on the contrary, is merely a trade name employed by corporate respondent to obtain collection of sums alleged to be due it by customers in payment for pictures and frames. Said Interstate Finance Co. is not the bona fide holder for value of any note executed in its favor or endorsed to it by any customer. By having notes executed in favor of Interstate Finance Co., corporate respondent is enabled to subject customers to further harassment and pressure through threats of various kinds, and in the case of controversy or dispute involving the character or quality of work or the terms of a sales contract or regarding any balance alleged to be due,

corporate respondent is enabled to eliminate itself from the situation and the customer is confronted with a controversy with an alleged company or concern which has not agreed to make him a picture or to sell him a frame therefor.

PAR. 8. A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water color is a painting with pigments for which water, and not oil, is used as a solvent. A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 9. The use by respondents of the said false and misleading statements and representations in connection with the sale of their aforesaid products has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondents' said products into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of respondents' products as a result of such belief. The use by respondents of the aforesaid acts and practices has the further tendency and capacity to, and does unfairly divert trade to, respondents from their competitors likewise engaged in the sale and distribution of tinted or colored enlargements of photographs and of frames therefor, in commerce between and among the various States of the United States and in the District of Columbia, who truthfully represent their products. As a consequence thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. The aforesaid acts and practices as herein alleged are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 April 21, 1943, issued and thereafter served its complaint in this proceeding upon the respondents, Northwest Studios, Inc., a corporation, also trading as Interstate Sales Co., and formerly trading as Pacific Studios; Charles H. Van Scoy, individually and as president and a director of Northwest

Findings

42 F. T. C.

Studios, Inc.; Mrs. Marjorie Van Scoy (referred to in the complaint as Mrs. Charles H. Van Scoy) individually and as secretary and a director of Northwest Studios, Inc., and Mrs. E. S. Holm, individually and as treasurer and a director of Northwest Studios, Inc., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, the respondents Northwest Studios, Inc., Charles H. Van Scoy and Mrs. Marjorie Van Scoy filed their answer, in which answer they admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. (Respondent Mrs. E. S. Holm has not filed an answer and her present whereabouts are unknown.) Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and the answer thereto, 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 Northwest Studios, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Washington, having its principal office and place of business located at 6013A Phinney Avenue, Seattle, Wash., formerly located and doing business in said city at 1111 Columbia Street and 6034 Palatine Avenue.

Respondent Northwest Studios, Inc., hereinafter referred to as corporate respondent, for more than 5 years last past, operating from the above-stated addresses in said city of Seattle, Wash., has been engaged in the sale and distribution of tinted or colored enlargements of photographs or snapshots and of frames therefor. Corporate respondent causes, and at all times mentioned herein has caused, said products, when sold, to be transported from the State of Washington to the purchasers thereof located in various States of the United States other than the State of Washington, and in the District of Columbia. Corporate respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce, particularly in the States of Oregon, California, Utah, Arizona, New Mexico, Colorado, and Texas.

Respondent Charles H. Van Scoy is president and a director of Northwest Studios, Inc., with his present office and place of business located at 905 Pike Street, Seattle, Wash. His office and place of

business was formerly, at various times, located at 6013A Phinney Avenue, 6034 Palatine Avenue, and 1111 Columbia Street, Seattle, Wash.

Respondent Mrs. Marjorie Van Scoy is secretary and a director of Northwest Studios, Inc., with her present office and place of business located at 905 Pike Street, Seattle, Wash. Her office and place of business was formerly, at various times, located at 6013A Phinney Avenue, 6034 Palatine Avenue, and 1111 Columbia Street, Seattle, Wash.

Respondent Mrs. E. S. Holm having filed no answer herein, and her present whereabouts being unknown, the term "respondents" as used hereinafter will not include this respondent unless the contrary is indicated.

Respondents Charles H. Van Scoy and Mrs. Marjorie Van Scoy are among the principal stockholders of Northwest Studios, Inc., and have participated actively in the direction and control of its operations, activities, and policies. The aforesaid respondents are also part owners of and dominate and control Interstate Finance Co., which is operated for the account of Northwest Studios, Inc. Said Interstate Finance Co., serves as a collection agency for Northwest Studios, Inc., in collecting various balances alleged to be due from purchasers of pictures, and of frames therefor, as will be more fully hereinafter shown.

PAR. 2. In the course and conduct of the aforesaid business, respondents have been, and are now, engaged in direct and substantial competition with various corporations, partnerships, and individuals engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tinted or colored enlargements of photographs or snapshots and of frames therefor.

PAR. 3. In connection with the sale of corporate respondent's said colored photographic enlargements and frames therefor, sales agents or representatives employed and directed by respondent visit the homes of prospective customers in the cities, towns, and rural communities of various States of the United States. Under corporate respondent's sales plan said sales agents or representatives are and have been organized into teams or crews, each said team or crew working under the supervision and authority of corporate respondent. Teams or crews are and have been placed in the immediate charge of a crew manager or foreman, who keeps in constant touch with the daily activities of corporate respondent's said sales agents or representatives. Sales talks containing approved methods of approach and salesman-

Findings

42 F. T. C.

ship, and convincing arguments, are employed by corporate respondent's said sales agents or representatives in contacting members of the public. Each said sales agent or representative carries an identification card or credentials card or certificate or other document which is exhibited to prospective customers that are contacted showing said salesman or representative to be a duly qualified sales agent or sales representative of corporate respondent, and purchasers of corporate respondent's said colored enlargements and frames therefor are given to understand, and do understand, that they are contracting or dealing with the duly constituted agents of corporate respondent Northwest Studios, Inc.

Corporate respondent's said sales agents and representatives, in soliciting orders, carry and exhibit attractive samples of work that are represented as typical of that done by corporate respondent. Said samples are attractively displayed. They have been reproduced in fact and built up from photographic subjects of highest photographic value. Colored enlargements of such selected photographs are skillfully done with great care and detail. Many of them closely resemble paintings done by hand. These attractive specimens in colored enlargements are exhibited by agents or representatives upon entering the home of a prospective customer. Respondent company, the sales agent represents, is prepared to duplicate or reproduce such type of work. If a customer is interested the customer is induced to permit the sales agent to inspect photographs or snapshots of some member of the family, living or dead. Many of such photographs or snapshots possess great sentimental value, are kept in family albums, and cannot possibly be duplicated. In numerous instances the member of the family represented by the photograph has been dead for many years. Finally, the sales agent selects a photograph or snapshot pronounced suitable or satisfactory for reproduction purposes. The photograph or snapshot so selected is represented as serving as a model or guide to the studio's artist who, it is represented, will paint a portrait of the same or make a "painting" or "hand painted portrait" of it. From time to time the picture to be made is represented as an "oil painting." The photograph or snapshot borrowed from the customer, the agent states, is to be returned with the finished "painting."

In further connection with the sale of corporate respondent's said colored enlargements, sales agents of corporate respondent represent and have represented that the "painting" is being sold as an "introductory offer" only; that only a limited number of "paintings" will be placed in a given locality; that the customer is being charged only for the time of the artist; that the "painting" is being offered at a reduced

Findings

price and that in consideration of such fact the customer agrees that it is to be "protected and exhibited." In other instances it is represented that the "painting" is being offered merely at a "special advertising price" or at the "cost of production."

PAR. 4. Upon contacting prospective customers, sales representatives of corporate respondent represented and have represented that a drawing contest will be held for the purpose of deciding who shall be one of the few lucky persons in a particular city or town to have corporate respondent place "paintings" in their homes in connection with a "special advertising offer." The agent or salesman, in connection with said drawing, produces a number of slips. It is represented that most of said slips are blanks but that a few are trade checks or certificates; that the customer is allowed two draws or trials; that if the customer draws a blank he does not win but if fortunate enough to draw a winning check or certificate he will be entitled to receive a \$20 "painting" free, or a substantial discount on the price of a "painting." The prospective customer draws and finally and invariably wins a "lucky" coupon reading:

SPECIAL

Gold Certificate

This entitles holder to our special advertising offer.

NORTHWEST STUDIOS.

The customer is thereupon congratulated by the sales agent upon his good luck. Believing the representations of the agent to be true and that in drawing "lucky" he has thereby obtained a distinct financial advantage and has put himself in the position of obtaining something of great value "free" or at a greatly reduced cost, the customer thereupon proceeds to sign a contract whereby upon the initial payment of the sum of \$1.45 (or other approximate sum) respondent company agrees to make "one of our \$20 high-grade paintings, in the most pleasing size, in the newest octagonal design, same as painting shown." On occasion, in connection with the execution of contracts obtained through the use of the draw, a arbitrary sum of \$5 or more is added to the price of the painting and the credit for such sum is thereupon deducted on the face of the contract by reason of the customer's making a "lucky" draw. In other offers the total price of the painting is stated to be \$3.95, the sum of \$1.95 to be paid down, the balance to be paid when color instructions are obtained later. The customer is assured that this is a genuine offer and that he is under no further obligation. The agent represents here that before finishing the "paint-

Findings

42 F. T. C.

ing" a "field artist" will call with a "sketch" of the "painting" and get full color particulars for finishing it.

PAR. 5. In their initial contacts with the customer corporate respondent's said sales agents pursue the policy of making no mention of a frame for the "painting" and further, do not disclose to the customer that the "painting" to be made will be octagon in shape with a convex or raised surface. The information that it will be necessary later for the customer to place the "painting" in a frame in order to preserve it and that owing to the unusual shape and design of the "painting" it will be impossible for the customer to obtain a frame therefor except from corporate respondent and at exorbitant prices asked by corporate respondent's said sales agents, is carefully withheld from the unsuspecting customer. No hint is given by said sales agents that the profits obtained by corporate respondent in connection with its herein described business are derived from the sale of frames and that the real and ultimate purpose of corporate respondent's said sales agents, in contacting the customer in any instance, was and is to sell him a frame.

The second sales agent, designated by corporate respondent as a "field artist" or "instructing artist," later appears with an uncolored rough proof of the "painting" to be made, the same designated as a "sketch," and being in fact merely an enlarged, unfinished print or proof made by photographing the family picture or the snapshot that had theretofore been loaned to corporate respondent's sales agent by the customer.

The said second sales agent or "field artist" thereupon obtains instructions for the colors to be used in making the "painting" and endeavors to sell the customer a frame for the "painting." The matter of the frame is here mentioned usually for the first time. If the customer declines to buy a frame or objects to the price asked for a frame, various types of duress and pressure are employed to force the purchase of a frame. The customer on occasion is informed that the Northwest Studios, Inc., has its professional record at stake and would not permit one of its pictures to become dirty or marred in any way; that absolutely no pictures will be delivered without frames. Where the customer has refused to purchase a frame on account of the matter of price, quality, or design, the customer then, on various occasions, is informed by corporate respondent's sales agent, and for the first time, that a frame for the "painting" cannot be purchased from any source other than through respondent corporation; that corporate respondent manufactures the only frame that will fit the "painting," that the "painting" will not hold its color or be of any

value unless it is framed. The attention of the customer is called to the customer's alleged "agreement" to "protect" and "exhibit" the "painting" and to the "obligation" of the customer to buy a frame. These representations are emphasized by the uniform practice of corporate respondent's sales agents to deliver all "paintings" in frames. In the event the customer finally refuses to buy a frame, respondents have made it a practice to refuse to deliver the completed "painting," regardless of whether or not it has been paid for in full, and have retained possession of and have refused and do refuse to return to the customer the treasured family photograph which had been borrowed for use in making the "painting." In numerous instances customers, in order to obtain the return of treasured family photographs have bought "paintings" they did not like or wish to buy, and frames at exorbitant prices, and have paid to corporate respondent sums they did not owe and for which they had not been given credit on the records of corporate respondent. In connection with extended controversies over sales contracts and long delays in the delivery of orders, respondent corporation has made it a practice to propose settlements to the effect that rather than go into litigation over the small amount due they will settle for the payment of an additional sum of \$1 on the "painting" or for the sum of \$3.50 for the "painting" and frame, this in addition to what the customer may already have paid thereon.

PAR. 6. Corporate respondent's said sales agents, in instances where a balance is due by customer on a completed "painting" or on a "painting" and frame, require the customer to execute an interest-bearing note therefore in favor of Interstate Finance Co., 323 Vance Building, Seattle, Wash. In case of subsequent controversy between the customer and corporate respondent over the character or price of work done by corporate respondent or concerning a frame, the customer is referred to the Interstate Finance Co. for satisfaction. The customer is given to understand that corporate respondent is no longer interested in nor connected with the matter and that the customer must take up all questions with Interstate Finance Co.

In truth and in fact, Northwest Studios, Inc., and Interstate Finance Co. are one and the same, the latter being merely a trade name employed by corporate respondent, using a different address, for the purpose of collecting sums allegedly due corporate respondent. Under said plan corporate respondent was and is enabled to avoid further responsibility in connection with its contract for the completion of a "painting" or the sale of a frame therefor, by referring the purchaser to the Interstate Finance Co., which fictitious company has had nothing

Findings

42 F. T. C.

to do with and plays no part in the production of the "painting" or the frame therefor. Said plan or arrangement enables and has enabled corporate respondent, the seller of the "painting" or frame, through the medium of a fictitious trade name, to remove itself from the situation, and the purchaser of such products finds himself cut off from dealing with the original company with which he had contracted for a "painting" or frame and in a controversy with a fictitious collection agency holding a note against him bearing interest.

PAR. 7. In truth and in fact, the various statements and representations made and used by corporate respondent or its sales agents, and the acts and practices employed by them in the sale and offering for sale of said products in the cities, towns, and communities of the United States, were and are false, deceptive, and misleading in the following, among other, particulars;

(1) The so-called "paintings," "hand-painted portraits" and "oil paintings," as sold by respondents, are not paintings or painted portraits or oil paintings in any sense of the word, but on the contrary are merely cheap, quickly made photographic enlargements, which are tinted or colored by the use of pastel or crayon, water color or other powdered pigments sprayed upon the photographic enlargement in solution through the use of a mechanical air brush and compressed air, and costing at the most, in the neighborhood of \$1.25 each.

(2) Said so-called "paintings," "hand-painted portraits" or "oil paintings" are not and have not been sold at any "special advertising price," or as any "special advertising offer," nor for the "cost of production," nor at any "reduced price," nor to a "few lucky persons" in any given locality or community, but on the contrary the prices at which respondents sell and have sold the unframed, tinted, or colored photographic enlargements are and have been in excess of and above the regular and customary prices for which said products are and were usually and customarily sold in the ordinary course of business. Said colored enlargements do not possess nor have they ever possessed any sales value of \$20 nor any sum remotely approximating \$20, nor have they ever been sold for \$20 or at any price approximating \$20.

(3) The so-called "paintings" sold and distributed by respondents are different from and greatly inferior in quality, workmanship, and appearance to the samples exhibited to customers by respondents' said sales agents when obtaining orders for said pictures or so-called "paintings."

(4) Purchasers do not understand and have not agreed, in connection with contracts, that treasured family photographs loaned by them are to be retained by respondents until payment of any sum alleged

by respondents to be due them. In truth, purchasers are given to understand that the photographs they have loaned to respondents will be returned at the time the finished picture is delivered.

(5) Respondents conceal and have concealed from purchasers at the time the so-called "painting" is ordered the fact that the finished product will be delivered in a peculiar convex form, shape, and size, and that it will be impossible for the customer thereafter to obtain a frame to fit said "painting" except from respondents and at prices fixed by them.

(6) Respondents conceal from purchasers the fact that respondents' activities and representations in obtaining contracts for alleged "paintings" are really employed to enable respondents to contact purchasers for the purpose and opportunity of selling them frames of cheap and inferior quality at prices which are in excess of and far above the prices at which said frames usually and customarily sell in the ordinary course of business.

(7) Respondents' sales of frames are accomplished by coercive and oppressive acts, practices, and representations, among which are the retention of the original family photograph loaned by the customer, or the completed "painting," or both, until a frame is purchased by the customer.

(8) The so-called "field artist" making second contacts for respondents with customers is not an artist in the sense that such term is ordinarily understood by the consuming public, but on the contrary is nothing more than a delivery man or frame salesman operating for and on behalf of respondents. Respondents' so-called "sketch" is nothing more than a rough proof of a photographic enlargement that has not been retouched or finished in any manner.

(9) The so-called "lucky" certificates or coupons obtained by customers in connection with an alleged drawing contest conducted by respondents' sales agents in truth and in fact give the holder thereof no advantage whatsoever in price or otherwise, for practically all prospects thought to be acceptable financial risks are permitted to draw a "lucky" certificate or coupon. Said "lucky" draw does not win for the customer a \$20 "painting" or other priced "painting" "free," not obtain for the customer any discount off the regular price of any "painting" or picture. In truth and in fact, all customers may purchase a "painting" or picture at the price used by respondents in making the so-called "special introductory offer" and this procedure, which is known to the trade as "the draw," is merely a deceptive sales plan or scheme used to gain entry into a prospective customer's home and to

obtain from him a photograph or snapshot, and thus initiate the sale of a picture, and eventually the sale of a frame.

(10) The so-called Interstate Finance Co. employing the address 323 Vance Building, Seattle, Wash., is not a bona fide business enterprise as indicated by its name, but on the contrary is merely a trade name employed by corporate respondent to obtain collection of sums alleged to be due it by customers in payment for pictures and frames. Said Interstate Finance Co. is not the bona fide holder for value of any note executed in its favor or endorsed to it by any customer. By having notes executed in favor of Interstate Finance Co. corporate respondent is enabled to subject customers to further harassment and pressure through threats of various kinds, and in the case of controversy or dispute involving the character or quality of work or the terms of a sales contract or regarding any balance alleged to be due corporate respondent is enabled to eliminate itself from the situation and the customer is confronted with a controversy with an alleged company or concern which has not agreed to make him a picture or to sell him a frame therefor.

PAR. 8. A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water-color is a painting with pigments for which water, and not oil, is used as a solvent. A portrait, in its ordinary accepted meaning, is a picture or representation of a face; a likeness particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 9. The use by respondents of the said false and misleading statements and representations in connection with the sale of their aforesaid products has a tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondents' said products into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of respondents' products as a result of such belief. The use by respondents of the aforesaid acts and practices has the further tendency and capacity to and does unfairly divert trade to respondents from their competitors likewise engaged in the sale and distribution of tinted or colored enlargements of photographs and of frames therefor, in commerce between and among the various States of the United States and in the District of Columbia, who truthfully represent their products. As a consequence thereof, substantial injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

Order

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, Northwest Studios, Inc., Charles H. Van Scoy, and Mrs. Marjorie Van Scoy, in which answer said respondents admit all of the material allegations of fact set forth in said complaint and state that they waive 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:

It is ordered, That respondent Northwest Studios, Inc., a corporation, also trading as Interstate Sales Co., or trading under any other name, and its officers, and respondents Charles H. Van Scoy and Mrs. Marjorie Van Scoy, individually and as officers and directors of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of photographs, including tinted or colored photographs and enlargements or miniatures thereof, do forthwith cease and desist from:

1. Using the terms "paintings," "hand-painted portraits," and "oil paintings," or any other term of similar import, to describe, designate, or refer to respondents' products; or otherwise representing, directly or by implication, that respondents' products are paintings.

2. Representing that pictures sold in the regular course of business at the usual and customary prices therefor are, or will be, sold only to a limited number of customers, or at a "special advertising price" or as a "special advertising offer," or for the "cost of production" or to "a few lucky persons," or representing in any manner that the purchaser is receiving an advantage in price or other consideration not ordinarily available.

3. Representing that the picture to be made and delivered will be a reproduction or duplicate of the sample displayed to the customer,

Order

42 F. T. C.

unless in fact the picture thereafter delivered is of the same quality, design, and workmanship as such sample.

4. Failing or refusing, in cases where a picture ordered has been completed and paid for, to deliver to the customer the completed picture and the original photograph or snapshot previously loaned by the customer for use in producing the picture.

5. Concealing from or failing to disclose to customers at the time pictures are ordered that the finished picture, when delivered, will be so shaped and designed that it can only be used in a specially designed, odd-style frame which can be purchased only from respondents at a price fixed by them.

6. Using the term "field artist," "instructing artist," or similar terms, to designate, describe, or refer to operators or salesmen delivering pictures or "sketches" of pictures, or selling frames.

7. Using a "draw," "draw contest," or so-called "lucky" blanks, trade checks, certificates or coupons, or any other device, plan, or scheme, or any prize contest or special introductory or advertising offer, so as to represent, indicate or imply that any customer will obtain a financial advantage thereby, or be entitled to receive any picture free or to receive a substantial discount or reduction in the price of any picture or pictures.

8. Representing that Interstate Finance Co. or any similar collection agency operated by or for respondents is an innocent purchaser for value without notice of notes for unpaid balances due on pictures or frames sold to the consuming public by respondents, or has in good faith discounted such notes or paid out any money or given anything of value in connection with the alleged purchase of said notes.

It is further ordered, That said 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.

It is further ordered, That this proceeding be, and it hereby is, dismissed as to respondent Mrs. E. S. Holm, without prejudice to the right of the Commission to institute further proceedings against said respondent.

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

JOSTEN MANUFACTURING CO. and DANIEL C. GAINNEY, WALTER H. GAINNEY, ALBERT L. SPERRY, and ADELBERT N. JOSTEN, individually and as directors of said corporation. Complaint, September 7, 1944. Order, January 4, 1946. (Docket 5214.)

Charge: Misrepresenting prices as "list" or "catalog" (or usual retail prices) in its price lists and catalogues, distributed generally (1) to dealers in unrelated products, and who do not stock its merchandise for resale, and (2) to groups of individuals, and individuals who buy for their own use; in connection with the manufacture and sale of medals, trophies, and classroom jewelry.

Record closed without prejudice, after answer, by the following order:

This matter coming on for consideration by the Commission upon request of respondents for dismissal of the complaint issued herein, without prejudice, and it appearing to the Commission that the respondents have expressed their intentions in writing, to be bound by the Trade Practice Conference Rules promulgated for the Catalog Jewelry and Giftware Industry on December 23, 1943, and have furnished satisfactory evidence of such intention, and the Commission having duly considered said request and the record herein, and being fully advised in the premises;

It is ordered, That the case growing out of the complaint herein, issued on September 7, 1944, be and the same hereby is, closed without prejudice to the right of the Commission to reopen the case and resume trial thereof in accordance with its regular procedure.

Mr. R. A. McQuat for the Commission.

Mr. Samuel Lord, of Owatonna, Minn., and *Dorsey, Colman, Barker, Scott & Barber*, of Minneapolis, Minn., for respondents.

IDENTIFICATION PLATE & MACHINE CO., INC., JOHN B. POLLARD and ROBERT C. FAIRBERG. Complaint, October 29, 1941. Order, February 1, 1946. (Docket 4620.)

Charge: Advertising falsely or misleadingly as to size of business and dealer being manufacturer; in connection with the manufacture and sale of name plates and in the sale of stamping machines.

Record closed without prejudice by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing to the Commission that the charter of the

corporate respondent has been dissolved since the issuance of the complaint and that the whereabouts of the individual respondents named in the complaint are unknown, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure.

Before *Mr. James A. Purcell*, trial examiner.

Mr. S. F. Rose for the Commission.

AMERICAN WAXED PAPER ASSOCIATION, various individuals as members of the Board of Governors of said association, and regular and irregular members of said association. Complaint, April 12, 1944. Order, February 13, 1946. (Docket 5149.)

Charge: Engaging in an understanding, agreement, combination and conspiracy on the part of respondents, and in planned or prearranged common course of action among themselves and with and through said respondent association, its officers and members of its Board of Governors to hinder and suppress competition in the manufacture and interstate sale and distribution of waxed paper and similar and kindred papers to purchasers thereof; to hinder and suppress competition between and among manufacturers of said waxed paper and similar and kindred paper in selling said products to the purchasers thereof; and to create and maintain a monopoly in the manufacture and interstate sale and distribution of said waxed paper and similar and kindred papers in the said regular members and irregular members of said respondent association and in said respondent Ohio Wax Paper Co.;

And pursuant thereto fixing minimum prices, maintaining identical delivered prices, maintaining an identical zoning system, and making use of various other restrictive acts, practices and concert of action as set out in detail in the complaint as reproduced in full as follows:

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 American Waxed Paper Association, its officers, members of its Board of Governors and members and Ohio Wax Paper Company, hereinafter referred to as respondents, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect

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

PARAGRAPH 1. Respondent American Waxed Paper Association, is an unincorporated trade association, with its principal and only office and place of business located at 1532 Lincoln-Liberty Building in the city of Philadelphia, within the State of Pennsylvania. The regular membership of said respondent American Waxed Paper Association is composed of approximately twenty individuals, partnerships and corporations who are located in the various States of the United States and who are engaged in the manufacture and distribution of waxed paper and similar papers in interstate commerce.

The said respondent American Waxed Paper Association was organized for the declared purpose, among others, of securing cooperation and united effort in all matters relating to the protection and promotion of the waxed paper industry; to promote mutual confidence among and between the manufacturers and consumers of waxed paper and waxed paper products; to develop standards of waxed paper, waxed paper products and raw materials used in their manufacture that will be recognized by the industry, the trade and the public; to develop trade customs, covering the manufacture and sale of waxed paper and waxed paper products that will be fair and reasonable for both the manufacturer and the buyer; to develop credit information; to establish a research department; to further the development and the use of waxed paper and waxed paper products; to develop arbitration methods as a means of settling disputes in the industry. Said respondent American Waxed Paper Association is hereinafter referred to for convenience as respondent Association.

Respondent George J. Lincoln, Jr., of 1532 Lincoln-Liberty Building, in the city of Philadelphia, in the State of Pennsylvania, who, in his individual capacity and in his capacity as an officer of said respondent Association, is named as respondent herein, is Secretary-Treasurer and Manager of respondent Association.

The names and addresses of the members of the Board of Governors of said respondent Association, who, in their individual capacities and as such members of said Board of Governors of said respondent Association, are named as respondents herein, are Donald A. Snyder, care of Menasha Products Company, Menasha, Wisconsin; L. O. Turner, care of Detroit Waxed Paper Company, 1721 Pleasant Avenue, River Rouge, Michigan; R. B. Donnelley, care of Central Waxed Paper Company, 5659 West Taylor Street, Chicago, Illinois; Leslie L. Jacobs, care of Pollock Paper & Box Company, Dallas, Texas; A. Southon, care of Kalamazoo Vegetable Parchment Company, Kalamazoo, Michigan; H. O. Nichols, care of Crown Williamette Paper Company,

Division of Crown Zellerbach Corporation, 122 East 42d Street, New York, New York; D. C. Hurlburt, care of Ben-Mont Papers, Inc., Bennington, Vermont; Van H. Wilshire, care of Specialty Papers Company, Dayton, Ohio; J. E. Edelstein, care of Rapinwax Paper Company, 150 26th Avenue SE., Minneapolis, Minnesota; Karl Zimmer, care of Zimmer Paper Products, 1450 East 20th Street, Indianapolis, Indiana.

PAR. 2. Respondent Badger Paper Mills, Inc., is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at Peshtigo, within the State of Wisconsin. Said respondent is engaged in the manufacture and sale of sulphite pulp and bleached sulphite paper.

Respondent Ben-Mont Papers, Inc. is a corporation organized and existing under the laws of the State of Vermont with its principal office and place of business located at Bennington, within said State of Vermont. Said respondent is engaged in the converting of paper into paper products, including gift wrapping papers and plain and printed waxed papers and the sale thereof.

Respondent Berst-Forster-Dixfield Company is a corporation organized and existing under the laws of the State of Maine and maintains its principal office and place of business at 155 East 44th Street, in the city of New York, within the State of New York. Said respondent is engaged in the manufacture and sale of wood, paper and pulp products, including various kinds of waxed papers.

Respondent Crown Zellerbach Corporation is a corporation organized and existing under the laws of the State of Nevada with its principal office and place of business located at 343 Sansome Street, in the city of San Francisco, within the State of California. Said respondent is engaged in the manufacture and sale of various kinds of paper, including newsprint, kraft and sulphite wrapping and bag papers, tissues, kraft board, waxed paper, etc. The waxed paper business of said respondent is conducted under the fictitious trade name Western Waxed Paper Company.

Dixie Waxed Paper Company, Inc. is a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business located at South Polk Street and Sante Fe Railroad in the city of Dallas, within the State of Texas. Said respondent is engaged in the manufacture and sale of waxed paper and waxed glassine bags.

Respondent Kalamazoo Vegetable Parchment Company is a corporation organized and existing under the laws of the State of Michigan, with its principal office and place of business located at Kalamazoo within the said State of Michigan. Said respondent is engaged in the manufacture and sale of vegetable parchment, waxed, oiled,

grease-proof, and other special papers used in the protection of foods, tobaccos, etc.

Respondent Marathon Paper Mills Company is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at Menasha within the said State of Wisconsin. Said respondent is engaged in the manufacture and sale of paper and paper specialties, including waxed paper, which said waxed paper business is conducted under the name of Menasha Products Company.

Respondent Mid-West Wax Paper Company is a corporation organized and existing under the laws of the State of Iowa with its principal office and place of business located at Fort Madison, within the said State of Iowa. Said respondent is engaged in the manufacture and sale of waxed paper and printed bread wrappers.

Respondent Nashua Gummed and Coated Paper Company is a corporation organized and existing under the laws of the State of Massachusetts with its principal office and place of business located at 44 Franklin Street, Nashua, New Hampshire. Said respondent is engaged in the manufacture and sale of paper specialties, including the manufacture of printed bread wrappers.

Respondent Pacific Waxed Paper Company is a corporation organized and existing under the laws of the State of Washington, with its principal office and place of business located at 1505 Sixth Avenue in the city of Seattle, within said State of Washington. Said respondent is engaged in the manufacture and sale of waxed paper; including printed wrappers of various kinds.

Respondent Paterson Parchment Paper Company is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at Bristol, within the State of Pennsylvania. Said respondent is engaged in the manufacture and sale of paper, including vegetable parchment paper.

Respondent Pollock Paper & Box Company is a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business located at 2236 South Lamar Street, in the city of Dallas, within said State of Texas. Said respondent is engaged in the manufacture and sale of waxed paper and paper boxes.

Respondent Rapinwax Paper Company is a corporation organized and existing under the laws of the State of Minnesota, with its principal office and place of business located at 150 Twenty-Sixth Avenue, S. E., in the city of Minneapolis, within said State of Minnesota.

Respondent Riegel Paper Corporation is a corporation organized and existing under the laws of the State of New Jersey, with its prin-

principal office and place of business located at 342 Madison Avenue, in the city of New York, within the State of New York. Said respondent is engaged in the manufacture and sale of paper specialties.

Respondent Southern Paper Company, Ltd., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 531-537 Tchoupitoulas Street, in the city of New Orleans, within the State of Louisiana. Said respondent is engaged in the manufacture and sale of paper and paper products, including waxed paper.

Respondent The Specialty Papers Company is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 802 Miami Chapel Road, in the City of Dayton, within said State of Ohio. Said respondent is engaged in the manufacture and sale of plain and printed waxed paper.

Respondent Waxide Paper Company is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 20th and Trace Streets, in the city of Kansas City, within said State of Missouri.

Respondent West Carrollton Parchment Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at West Carrollton, within the State of Ohio. Said respondent is engaged in the manufacture and sale of vegetable parchment paper and of waxed paper.

Respondents Karl R. Zimmer and Lorena H. Zimmer are individuals and are partners trading and doing business under the name of Zimmer Paper Products Company, with its principal office and place of business located at 1450 E. 20th Street, in the city of Indianapolis, within the State of Indiana.

All of the above respondents named in this paragraph are regular dues-paying members of said respondent Association and have cooperated in its various activities. Said respondents are hereinafter for convenience designated as regular members.

PAR. 3. Respondent American Tissue Mills is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office and place of business located at 12 Crescent Street, in the city of Holyoke, within the said State of Massachusetts.

Respondent Central Waxed Paper Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 5659 West Taylor Street, in the city of Chicago, within said State of Illinois.

The respondent The Hamersley Manufacturing Company is a corporation organized and existing under the laws of the State of New

Jersey, with its principal office and place of business located at 100 River Drive in Garfield, within the said State of New Jersey.

The respondent the Henle Wax Paper Manufacturing Company, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 1428 Longfellow Avenue, in the Bronx, within the State of New York.

Respondent Newark Paraffine & Parchment Paper Company is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 50 Jelliff Avenue in the city of Newark, within the said State of New Jersey.

All of the said respondents herein mentioned are engaged in the manufacture and sale of paper and paper products, including waxed papers. Said respondents have from time to time and irregularly paid dues to said respondent Association and are known as irregular dues-paying members of said respondent Association. Said respondents have also irregularly been represented at meetings of said respondent Association and have cooperated with said respondent Association in its activities. Said respondents are hereinafter, for convenience, designated as irregular members.

PAR. 4. Respondent Ohio Wax Paper Company is a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business located at 780 Frebis Avenue in the city of Columbus, within said State of Ohio. Said respondent is engaged in the manufacture and sale of waxed paper and printed bread wrappers.

Said respondent was a member of said respondent Association up to July 1941, and has cooperated and now cooperates in the various activities of said Association and its members.

PAR. 5. The aforesaid regular dues-paying members and irregular dues-paying members of said respondent Association and said Ohio Wax Paper Company, hereinabove named in Paragraphs Two, Three and Four are located in various States of the United States and are engaged in the manufacture and distribution and sale of paper and various paper products, including both plain and printed waxed paper, to purchasers thereof located in States other than the State in which said respective respondents are located. Said respondents cause said products, when so sold, to be transported from their respective places of business through the several States of the United States to the purchasers thereof located at various points in the several States of the United States other than the State of origin of such shipments and in the District of Columbia. There has

been and now is a course of interstate trade and commerce in said products in and through the several States of the United States between the members of said respondent Association and said Ohio Wax Paper Company and purchasers of said products located throughout the several States of the United States and in the District of Columbia. Said respondents, as hereinbefore named in Paragraphs Two, Three and Four hereof, are now, and have been during all of the times mentioned herein, engaged in active and substantial competition with other manufacturers and sellers of waxed paper in seeking to make and making sales of their respective products in interstate commerce throughout the several States and in the District of Columbia save and except to the extent to which such competition has been restrained, lessened, injured and suppressed by the understandings, agreements, combinations and conspiracies hereinafter set forth, and but for the facts hereinafter alleged would now be in free, active, open and substantial competition with each other.

PAR. 6. Respondent regular and irregular members of said respondent Association, acting in cooperation with each other and with respondent Ohio Wax Paper Company, and through and in cooperation with said respondent Association, its officers and Board of Governors, and each of them, during the period of time, to wit, from prior to December 1936 to the date of this complaint, have engaged in an understanding, agreement, combination, conspiracy and in planned or prearranged common course of action among themselves and with and through said respondent Association, its officers and members of its Board of Governors to hinder and suppress competition in the manufacture and interstate sale and distribution of waxed paper and similar and kindred papers to purchasers thereof; to hinder and suppress competition between and among manufacturers of said waxed paper and similar and kindred paper in selling said products to the purchasers thereof; and to create and maintain a monopoly in the manufacture and interstate sale and distribution of said waxed paper and similar and kindred papers in the said regular members and irregular members of said respondent Association and in said respondent Ohio Wax Paper Company.

PAR. 7. Pursuant to said understanding, agreement, combination, conspiracy and planned or prearranged common course of action above alleged, and in furtherance thereof, the respondents have acted in concert and in cooperation with each other to do and in doing the following, among other, acts and things:

- (a) Respondent manufacturers have fixed minimum prices for the sale of the various types of waxed paper sold and distributed by them;
- (b) Respondent manufacturers have maintained identical delivered

prices for the sale of the various types of waxed paper sold and distributed by them;

(c) Respondent members and respondent Ohio Wax Paper Company have adopted and maintained an identical zoning system by means of which the United States is divided into zones or districts, and said respondents have established and maintained with each other fixed identical delivered prices for the various types of waxed paper, using Zone or District No. 1 as the base, with stated differentials for the other zones or districts, with the result that the delivered price of each article is the same to all purchasers located in each respective zone or district regardless of the location in the particular zone or district of said purchaser and regardless of the location of the particular respondent making said sale to said purchaser;

(d) Respondent Association has promulgated and compiled so-called trade customs and practices in the form of rules and regulations dealing with the allocation and classification of grades, gradings, quotations and sales, special provisions for certain grades and other so-called trade customs, including a pricing guide containing a map dividing the United States into the zones or districts aforementioned which are used to establish price differentials to be charged in each zone; also so-called unfair methods of competition and forms or methods of reporting statistics and forms and methods for price filing; and said respondent manufacturers have generally adopted and used said rules and regulations in the conduct of their said respective businesses and in carrying out and performing the acts and things hereinabove alleged;

(e) Respondent manufacturers have fixed and maintained uniform discounts and terms in the sale of the various types of waxed paper sold and distributed by them;

(f) Respondent manufacturers have charged simultaneously the prices and discounts at which they sell the various types of waxed paper;

(g) Respondent manufacturers have agreed to file with the respondent Association copies of invoices and orders covering their sales of the various types of waxed paper, each invoice to contain the name of the purchaser, the quantity sold and the price, and have actually filed said invoices with respondent Association; agreed to file and have actually filed with the respondent Association their price lists for the various types of waxed paper; agreed that they would not change or deviate from such filed prices until new and different prices were so filed by them; agreed that the respondent Association could, and it did, disseminate prices so filed with said respondent Association to all other members of said respondent Association in

some instances, and to all members of classification groups of members in other instances;

(h) Respondent manufacturers have furnished the respondent Association with lists of bakeries under contract with said respondent manufacturers for the sale and delivery of various types of bread wrappers;

(i) Respondent Association has from time to time issued "Official Codes of Roll Wrappers" for the use of said respondent manufacturers which said official codes classified and codified the bread wrappers used by said bakeries;

(j) Respondent manufacturers agreed to abide by and did abide by said "Official Codes of Roll Wrappers" in determining the prices at which said respondents would sell to various bakery purchasers;

(k) Respondent Association, at the direction of its Board of Governors, has from time to time purchased the equipment of bankrupt concerns and resold said equipment to its membership for the purpose of preventing the use of said equipment in the production of waxed paper by others in competition with the membership of said respondent Association and so that any further production of waxed paper by means of or by the use of said equipment would be subject to the understandings, agreements, combinations, conspiracies and planned or prearranged common courses of action herein set forth;

(l) Respondent Association has sought to and has maintained compliance by the respondent members and respondent Ohio Wax Paper Company with the rules, trade practices, agreements, understandings, conspiracies and planned or prearranged common courses of action hereinbefore set forth by the means of exhortations, moral persuasion, threats, personal contact by the respondent secretary, the investigation of complaints and by other coercive means;

(m) The respective respondent manufacturers systematically and habitually discriminated in price among their respective customers in order to accomplish their purpose of establishing and maintaining their zoning plan of identical delivered costs to be paid by all purchasers of a given class within each zone, regardless of the differing costs of delivery from each respondent manufacturer to any given destination and regardless of the differing costs of delivery by any given manufacturer to various destinations within the various zones. Such discrimination consisted of systematically charging and collecting from purchasers located nearer freightwise to the respective plants of the respective respondent manufacturers, higher amounts per unit of product than from purchasers located farther freightwise from such plants, after making due allowance for differences in costs of delivery. Such discrimination is inherent in respondents' planned or prearranged common course of action with reference to said zoning system of identical delivered prices.

PAR. 8. The capacity, tendency, and results of said understandings, agreements, combination, conspiracies, and planned or prearranged common courses of action and the acts and things done thereunder and pursuant thereto by said respondents, as hereinbefore set forth, have been and now are to unduly and unlawfully restrict, restrain, hinder, and prevent price competition between and among said respondents in the sale of the various types of waxed paper in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act; to unduly and unlawfully restrict and restrain trade and commerce in said waxed paper; to eliminate competition in the manufacture and sale of said waxed paper with the resulting tendency and capacity of creating a monopoly in the manufacture and sale of said waxed paper products in commerce in said respondent members of said respondent Association and the respondent Ohio Wax Paper Company; to place in the respondents the power to control and to enhance prices of said waxed paper and to unreasonably restrain interstate commerce in said waxed paper products.

PAR. 9. The acts and practices of said respondents, as herein alleged, are all to the prejudice of competitors of said respondents and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the manufacture and sale of waxed paper and similar and kindred papers in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act; have unreasonably restrained such commerce in waxed paper and similar and kindred lines of paper and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Dismissed without prejudice, after answers, by the following order:

This matter coming on to be heard upon the motion filed by counsel for respondents that the Commission dismiss the complaint herein, and the Commission having duly considered the said motion and the record herein, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.¹

Mr. Reuben J. Martin for the Commission.

Thompson, Knight, Harris, Wright & Weisberg, of Dallas, Tex., and *Stinson, Mag, Thomson, McEvers & Fizzell*, of Kansas City, Mo.,

¹ Said motion to dismiss recites in substance—

(1) That in 1940 the Commission investigated the respondent American Waxed Paper Association and the members thereof and that in 1941, with the knowledge of the Commission, which made material in its possession pertaining to said Association and members available to representatives of the Antitrust Division of the Department of Justice, said Department began such an investigation;

(2) That the Commission thereafter discontinued its activities in the matter, following conferences between the two establishments, and that on January 7, 1942, the Grand Jury for the E. D. of Pa., as a result of the Department's investigation and the presentation of the matter to it, returned an indictment against said Association, all of its members,

for the members of the Board of Governors, various regular members and irregular dues-paying members of the American Waxed Paper Association, and Ohio Wax Paper Co.; with whom also appeared—

Lines, Spooner & Quarles, of Milwaukee, Wis., for Donald A. Snyder and Marathon Paper Mills Co.;

Stearns, Sharpe & Stapleton, of Kalamazoo, Mich., for A. Southon and Kalamazoo Vegetable Parchment Co.;

Mr. Philip S. Ehrlich, of San Francisco, Calif., for H. O. Nichols and Crown Zellerbach Corp.;

Cowden, Cowden & Crew, of Dayton, Ohio, for Van H. Wilshire and the Specialty Papers Co.;

Mr. J. C. Muse, Jr., of Dallas, Tex., for Dixie Waxed Paper Co., Inc.;

Orr, Hall, Williams & Baxter, of Philadelphia, Pa., for Paterson Parchment Paper Co.;

Parker & Parker, of New Orleans, La., for Southern Paper Co., Ltd.;

some of its former members, and the officers of the Association, charging the existence of a conspiracy to fix and maintain prices for waxed paper products, hinder and suppress competition in the interstate manufacture and sale thereof, and create and maintain an unlawful monopoly in the manufacture and interstate sale and distribution thereof;

(3) That, following extended negotiations between attorneys representing the Association and various respondents, and the Department, and in view of the various difficulties set forth, including the large number of defendants scattered throughout the country, and loss of time and expense involved, it was agreed that about 105 defendants, without admitting violation of law—which they denied—should enter pleas of *nolo contendere* and pay certain fines assessed; that no injunction should be obtained; that there should be no further proceedings by the Government against them because of the matters set out in the indictment, unless in case of subsequent violation of the law; and that the defendants might destroy the papers which the Government would return to them; that it was also agreed that the employment of George J. Lincoln, Jr. (a respondent in the Commission's complaint) as secretary of respondent Association should be terminated and said Association dissolved;

(4) That as a result of such understandings the attorneys representing the defendants promptly advised them thereof; that they must not thereafter violate the law because there would be a second proceeding with even greater penalties; that defendants fully complied with their part of the agreement and on June 26, 1942, entered pleas of *nolo contendere*, following which a consent judgment was entered assessing certain fines against defendants which were promptly paid by them; and that immediately thereafter said Lincoln was discharged as secretary of said Association, and the Association was dissolved and has not been in existence since; and that, in due course, the said papers were destroyed;

(5) That at the time of said consent judgment the Emergency Price Control Act of 1942 was in effect, and the defendants in the said criminal proceeding (the respondents herein), were subject to the general maximum price regulations and Regulation No. 129, promulgated by the Office of Price Administration, affecting waxed paper products; that the purpose of said Regulation No. 129 was to freeze prices, terms, conditions, etc.; and that the said defendants and respondents, since the entry of said consent judgment, and in accordance with the requests of said Office of Price Administration (including the later new Regulation 307, which effectually reduced the price of waxed paper to the consumer below prices in existence in 1942) have been conducting their businesses under the regulations of said Office and have not been guilty of any of the violations of law set out in the complaint in question;

(6) That all of the allegations contained in the complaint of the Commission, issued on April 12, 1944, are in substance the same as those in the indictment upon which the consent judgment was entered; that the allegations in the complaint are predicated solely upon investigation made by the Commission in 1940; and that the Commission was evidently not informed of the fact that almost two years prior to the filing of its complaint

Coolidge, Becker & Wall, of Dayton, Ohio, for West Carrollton Parchment Co.;

Roemler & Chamberlin, of Indianapolis, Ind., for Zimmer Paper Products Co.; and

Mr. Philip O'Brien, of Holyoke, Mass., for American Tissue Mills.

Mr. Joseph J. Brown, of Philadelphia, Pa., for George J. Lincoln, Jr. and Ben-Mont Papers, Inc.

Butzel, Levin & Winston, of Detroit, Mich., for L. O. Turner.

Feldman, Kittelle, Campbell & Ewing, of Washington, D. C., for Berst-Forster-Dixfield Co.

Nutter, McLennen & Fish, of Boston, Mass., for Nashua Gummed & Coated Paper Co.

Prince & Loeb, of New York City, for the Henle Wax Paper Manufacturing Co., Inc.

Olvany, Eisner & Donnelly, of New York City, for Newark Parafine & Parchment Paper Co.

NATIONAL PAPERBOARD ASSOCIATION, ITS OFFICERS AND MEMBERS.
Complaint, July 26, 1945. Order, February 13, 1946.² (Docket 5359.)

Charge: Entering into an unlawful and wrongful understanding,

said respondent Lincoln's connection with the Association had been ended, and the latter dissolved, and all its activities discontinued;

(7) That said complaint was brought in error and without knowledge of the agreement between the Department of Justice and the respondents herein, and of the fact that said agreement had been scrupulously carried out by them; that, as aforesaid, respondents have not been guilty of the violations of law alleged in the complaint, nor any facts presented to the Commission indicating the contrary;

(8) That defendants in the criminal proceeding (respondents herein relied upon the agreement with the Department of Justice that the matter was closed; that in view of the facts hereinbefore indicated it was reasonable for them to conclude that there would be no further proceedings against them by the Commission by reasons of transactions which antedated the consent judgment; and that the agreements in question relied upon by the respondents and their counsel should be supported by the Commission in the interests of public policy and good conscience; and

(9) That there is no reason for the Commission to believe that since such consent judgment (in 1942) there has been any violation of the law over which it has jurisdiction, or that further prosecution of the matter is to the interest of the public; that further proceeding under the complaint would be inequitable because respondents have already been penalized "by one arm of the Government for alleged violations on the same facts as those set forth in the complaint"; and that violations of law prior to 1942¹ if any, have been corrected and cured;

Wherefore, in view of the facts as above indicated, respondents, citing various authorities in support of their position, among other things "respectfully pray that the complaint be dismissed."

² The Commission on August 21, 1945, issued an order striking Malcolm K. Whyte's name as a party respondent and denying request to strike the name of H. S. Adler, as follows:

This matter coming on to be heard by the Commission upon the request of Malcolm K. Whyte that his name and the name of H. S. Adler be stricken as parties respondent in this proceeding and the Commission having considered said request and the record herein and now being fully advised in the premises;

It is ordered, That the name of Malcolm K. Whyte as a party in this proceeding be, and the same hereby is, stricken and the complaint as to said Malcolm K. Whyte is hereby dismissed.

It is further ordered, That the request that H. S. Adler's name be stricken as a party respondent be, and the same hereby is, denied.

agreement, combination and conspiracy to stabilize prices, eliminate and suppress competition in price and otherwise in the sale of paper-board, paper boxes and other paper materials and other articles made of paper and paperboard; to eliminate competition in production; to restrict and apportion production and to monopolize in themselves the manufacture, sale and distribution of said products; through use of the so called Becker plan, involving a program of mill buying as tied in with the purchasing manufacturer's "historical or rated position," as set out in the complaint in question as reproduced in full as follows, to wit:

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the individuals, firms and corporations named in the caption hereof and hereinafter described and referred to as respondents, have been and are now using unfair methods of competition and unfair acts and practices in commerce as "commerce" is defined in the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Paperboard Association, hereinafter referred to as respondent Association, is a membership corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 80 East Jackson Boulevard, Chicago, Illinois.

The membership of respondent Association constitutes a class so numerous and changing as to make it impracticable to specifically name each individual member. The respondents named and described in Paragraph Two hereof are fairly representative of the whole membership of respondent Association and are named as respondents herein in their individual capacities and as members of respondent Association and as representatives of all members of respondent Association as a class, including those members not specifically named herein who are also thus made parties respondents to this proceeding.

Respondent Frederick G. Becker is an individual whose address is 80 East Jackson Boulevard, Chicago, Illinois. Said Frederick G. Becker is made a party respondent to this proceeding in his individual capacity and as executive manager of respondent Association and as president of respondent Frederick G. Becker, Inc.

Respondent Frederick G. Becker, Inc., hereinafter referred to as respondent Becker Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with

its home office and principal place of business located at 224 South Michigan Avenue, Chicago, Illinois.

The officers of said respondent Becker corporation are Frederick G. Becker, president; Malcolm K. Whyte, vice president, and H. S. Adler, secretary-treasurer. Said officers are made parties respondents hereto as individuals and as officers of respondent Becker Corporation.

PAR. 2. Respondent Robert Gair Company, Inc., hereinafter referred to as Robert Gair Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 155 East 44th Street, New York, New York. Said respondent is a member of respondent Association and a subscriber to the hereinafter described Becker Plan.

Respondent Mead Corporation is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office located at Chillicothe, Ohio. Said respondent is a member of respondent Association and a subscriber to the hereinafter described Becker Plan.

Respondent International Paper Company is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 220 East 42nd Street, New York, New York. Respondent is a member of respondent Association.

Respondent Mac Sim Bar Paper Company is a corporation, organized and existing under and by virtue of the laws of the State of Michigan, with its home office and principal place of business located at Otsego, Michigan. Said respondent is a member of respondent Association.

Respondent Hinde and Dauch Paper Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its home office and principal place of business located at Sandusky, Ohio. Respondent is a member of respondent Association and a subscriber to the hereinafter described Becker Plan.

Respondent Morris Paper Mills is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its home office and principal place of business located at 135 South La Salle Street, Chicago, Illinois. Respondent is a member of respondent Association and a subscriber to the hereinafter described Becker Plan.

Respondent Container Corporation of America, hereinafter referred to as respondent Container Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 111 West Washington Street, Chicago, Illinois. Said respondent is a member

of respondent Association and a subscriber to the hereinafter described Becker Plan.

Respondent The Eddy Paper Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 919 North Michigan Avenue, Chicago, Illinois. Respondent is a member of respondent Association and a subscriber to the hereinafter described Becker Plan.

Respondent Schmidt & Ault Paper Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at York, Pennsylvania. Respondent is a member of respondent Association and a subscriber to the hereinafter described Becker Plan.

Respondent United Paperboard Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 285 Madison Avenue, New York, New York. Respondent is a member of respondent Association and a subscriber to the hereinafter described Becker Plan.

Respondent Continental Paper Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at Ridgefield Park, New Jersey. Respondent is a member of respondent Association and a subscriber to the hereinafter described Becker Plan.

Respondent Chesapeake Corporation of Virginia, hereinafter referred to as Chesapeake Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its home office and principal place of business located at West Point, Virginia. Respondent is a member of respondent Association and a subscriber to the hereinafter described Becker Plan.

PAR. 3. Respondent manufacturers named in Paragraph Two hereof and the other members of the respondent Association who are not specifically named herein are now and have been for a number of years last past engaged in the manufacture, sale and distribution in commerce of paperboard, paper boxes and other paper materials, and other articles made of paper and paperboard. Said respondents have, for a number of years past, carried on a constant course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia, in that they, and each of them, in delivering said products when sales are made, ship or cause said products to be transported across State lines to the purchaser's place of business.

PAR. 4. Said respondents were, before the unlawful understand-

ing, agreement, combination and conspiracy hereinafter described, in active and substantial competition with one another and with others in the manufacture, sale and distribution of paperboard, paper boxes and other paper materials and other articles made of paper and paperboard, and are now in such competition with others and, except for said understanding, agreement, combination and conspiracy, respondents would now be in such competition with one another.

PAR. 5. The respondents named herein occupy a dominant position in the manufacture, sale and distribution of paperboard, paper boxes, paper materials and other articles made of paper and paperboard. Said respondents enjoy more than 90% of the business in said industry. The extent of their business is such that they are in a position to control the manufacture of said products and price and terms and conditions of sale of said products in commerce as herein described.

PAR. 6. Respondent Association, respondent Becker Corporation and the individual respondents, as such, are not engaged in the manufacture, sale and distribution of paperboard, paper boxes and other paper materials and other articles made of paperboard and paper, but they, and each of them, aided and abetted the formation of, and have actively participated in, the carrying out of the understanding, agreement, combination and conspiracy herein described.

PAR. 7. Some time prior to the year 1935, the respondent manufacturers specifically named herein, respondent Association, the members of respondent Association and the individual respondents named herein, entered into an unlawful and wrongful understanding, agreement, combination and conspiracy to stabilize prices, eliminate and suppress competition in price and otherwise in the sale of paperboard, paper boxes and other paper materials and other articles made of paper and paperboard; to eliminate competition in production; to restrict an apportioned production and to monopolize in themselves the manufacture, sale and distribution of said products.

To effectuate and carry out said understanding, agreement, combination and conspiracy, respondents did, among others, the following acts and things:

1. Respondents agreed upon, promulgated and carried on a program of compiling and reporting statistics. Under said program, each respondent manufacturer prepares and at fixed intervals furnishes the respondent Association with reports showing the activities of their respective plants. Said reports contain, among other, the following information:

- (1) Type of product manufactured.

- (2) Amount of plant production by day, week, month and year.

- (3) Number and amount of orders by weeks.
- (4) Number and amount of filled orders by weeks.
- (5) Number and amount of unfilled orders by weeks.
- (6) Prices asked and prices received for products sold.
- (7) Raw materials on hand.
- (8) Finished products on hand.
- (9) Hours operated.
- (10) Plant capacity, etc.

After said reports are received, the Association's auditors and statisticians combine and analyze said reports and prepare maps, charts, summaries and other data which the Association distributes to its members and uses at Association meetings for discussions and for the information of the members. Such maps, charts and summaries, among other things, show with reference to the industry as a whole:

(1) Prices received and prices asked, including high, low and average prices.

- (2) Type of industry production.
- (3) Amount of industry production.
- (4) Number and amount of orders by weeks.
- (5) Number and amount of filled orders by weeks.
- (6) Number and amount of unfilled orders by weeks.
- (7) Raw materials on hand.
- (8) Finished products on hand.
- (9) Hours operated.
- (10) Plant capacity.

(11) Relative position of each individual mill with reference to production, etc.

2. Respondents have agreed upon and have promulgated a production quota system. In working out said system and putting it into operation, respondents worked out the producing capacity and actual production of each individual mill compared with that of the industry as a whole. There were three steps in this operation, namely, the "Inch Hour Rating," the "Inch Hour Production" and the "Historical or Rated Position" of each individual plant. The "Inch Hour Rating" was determined by multiplying the normal number of working days per week by the number of hours in a day and then the result was multiplied by the width (inches) of the last dryer in each plant. The "Inch Hour Production" was determined by dividing the total production of the individual mill by the number of hours operated. The "Historical or Rated Position" of each member of the industry is expressed in percentage. This percentage is a mathematical computation obtained by adding together the actual production of each member mill for a stated period and dividing the tonnage so found by the total tonnage produced by the whole industry for a like period.

The first period to be used by respondents was that from January 1, 1930, to December 31, 1933.

Through the use of the reports the Association makes from the compilation and analysis of the statistics supplied by the members of the industry, the individual members maintain their "Historical or Rated Position" by regulating their rate of production to accord with such "position."

3. Respondents formulated and put into effect a plan of mill buying, commonly known in the industry as the "Becker Plan." To put into effect and carry out said plan, the respondent Frederick G. Becker, Inc., was incorporated. After the incorporation of the respondent Becker Corporation, it and twenty members of the respondent Association and other members of the industry who were not then members of the Association entered into contracts embodying the principal details of the Becker Plan. Said contracts were renewed and revised from time to time and are in part:

"1. The Manufacturer hereby employs the Corporation and the Corporation hereby enters into the employ of the Manufacturer, upon the terms and conditions hereinafter set forth.

"2. The Manufacturer hereby agrees to pay the Corporation funds as follows:

"(a) 75¢ for each ton of paperboard manufactured by the Manufacturer during the 39-month period commencing with the twenty-ninth day of September, 1934. Payments are to be made to the Corporation within five (5) days after receipt of statement sent by the Corporation to the Manufacturer covering either the four (4) or five (5) week period ending on the nearest date to the close of each calendar month.

"(b) \$2.00 for each ton of paperboard manufactured by the Manufacturer (in addition to said 75¢ per ton set forth above) for any tons of paperboard manufactured by the Manufacturer while running in excess of the average running time of the paperboard industry are to be computed in the same manner that such computations are now being made by the National Paperboard Association.

"(c) \$2.00 for each ton of paperboard manufactured by the Manufacturer (in addition to any payments under (a) and (b) above) for any tons of paperboard manufactured by the Manufacturer in excess of its proportionate tonnage position in the paperboard industry, but only to the extent that the said excess tonnage is produced while running beyond the average running time of the paperboard industry. The proportionate tonnage position of the Manufacturer, based on its present properties, is established for the purpose of this agreement at ----% of the total tonnage produced in the paperboard industry.

"3. The obligations under provisions (b) and (c) shall commence as of December 29, 1934 and shall continue for a period of three (3) years thereafter. Payments due under said provisions are to be determined for the four (4) or five (5) week period ending on the nearest date to the close of each calendar month and are to be paid over to the Corporation within five (5) days after receipt of statement setting forth the amount due hereunder. At the close of each calendar year, after annual audit of the statistics and reports of the Manufacturer the computation of the tons run in excess of the average running time of the industry or in excess of said proportionate tonnage position each as above described, shall be recomputed for said year and refund by or additional payment to the Corporation shall be made but without interest.

"4. The Corporation shall make the computations required by 2 (a), (b) and (c) hereof; and except as hereinafter in paragraph numbered 5 provided, the statistics and reports furnished by the National Paperboard Association shall be the basis for such computations. In the said computations the tonnage produced by the Manufacturer shall include that of any of its subsidiaries or affiliates whether now or hereafter existing.

"For the purpose of computation under 2 (b) and (c) above the 'Paperboard Industry' shall not include those plants commonly known as 'kraft' mills.

"The billings of the Corporation are in each case to be deemed prima facie correct and payment is initially to be made in accordance therewith, notwithstanding the existence of any dispute as to the correctness of the statistics and reports furnished.

"5. The Manufacturer agrees to furnish currently statistics and reports to the National Paperboard Association, or if requested by the Corporation, to the Corporation or to any agency designated by the Corporation, so as to enable the above computations to be made. The Corporation shall have the right to adopt the audits of the National Paperboard Association or of any other agency designated by it or to make its own audit of the statistics and reports submitted. In the event that the Manufacturer shall not be satisfied with the statistics and reports utilized and the computations made by the Corporation in determining the Industry statistics required under 2 (b) and (c) above, then the Corporation shall, on the Manufacturer's written request and at the expense of the Manufacturer, employ any one of the following firms of Certified Public Accountants, to wit:

Arthur Andersen & Company
Price, Waterhouse & Company
Haskins and Sells
Peat, Marwick, Mitchell & Company

Such firms of Certified Public Accountants shall make such examination of the reports, statistics and computations in dispute as it may deem necessary for proper determination of the dispute, and its determination shall be final and conclusive on the parties hereto. It is understood, however, that all statistics and reports of the Manufacturer, after having been submitted by it and finally audited and corrected by the auditors of the National Paperboard Association or designated agent of the Corporation, shall not be subject to reaudit by the Certified Public Accountants as set forth, but shall be conclusive on the parties hereto.

"6. The Corporation shall divide the payments received under 2 (a), (b), and (c) above, as follows:

"(a) 90% of the payments made by the Manufacturer shall be received and held by the Corporation in trust for the benefit of the Manufacturer. Said fund shall be segregated from the general funds of the Corporation and deposited with similar funds held for the benefit of others under agreements with the Corporation similar to this agreement, with such identification as the Manufacturer may require, in a depository or depositories approved by the Manufacturer. Upon the order of the Manufacturer, the Corporation may invest such funds held for its benefit in certificates of deposit of such depository or depositories or in securities of the United States Government. The net returns upon the funds so invested shall be credited to the account of the Manufacturer and be held in trust for its benefit. The Corporation agrees for the benefit and protection of the Manufacturer as its interest may appear to carry an adequate fidelity bond or bonds in one or more surety companies in good standing doing a national business, upon any officers or agents thereof having the right to give orders with respect to or to draw checks or drafts on said account, or having access to the securities held for the benefit of the Manufacturer.

"(b) Subject to the provisions of Paragraph 3 hereof, 10% of the payments shall belong to the Corporation and constitute full compensation for the services rendered hereunder.

"7. The payments above specified are to continue for the periods above set forth and terminate with the period ending December 31, 1937. The funds remaining to the Manufacturer's credit in the fund held for its benefit shall, however, be retained by the Corporation, unless expended in the manner hereinafter provided, for a period of two years beyond December 31, 1937, at which time the said fund as it then exists shall be returned to the Manufacturer.

"8. The fund so held in trust for the Manufacturer may, upon its written request, be expended for the acquisition by purchase or lease of now existing paperboard producing properties and/or machines acquired subsequent to the date hereof and/or for the payment of car-

rying charges required by the agreements covering such acquisitions. All acquisitions by the Manufacturer, payments for which are to be made from said fund, shall be made with the approval of the Corporation and through its agency. To avoid conflict in making other acquisitions, the Manufacturer agrees to notify the Corporation before opening any negotiations therefor either directly or through any agency other than the Corporation, and shall not enter into any such contemplated negotiation, in event the Corporation notifies it that it is actively interested in a proposed acquisition of the same property.

"9. Neither the Manufacturer nor the aforesaid trust fund shall be liable for any of the expenses of the Corporation, nor shall the Manufacturer be liable to the Corporation for the Payment of any sums other than those specified in paragraph 2 hereof, whether for services or otherwise. The Corporation shall have no right or power to make any commitments or incur any liabilities on behalf of the Manufacturer with respect to purchases, leases, or otherwise, except only on its specific approval.

"10. The Corporation agrees that it will for the five-year period above specified investigate and report on paperboard producing properties, furnish to the Manufacturer available data in connection therewith, negotiate for and act as agent for acquisitions which the undersigned may desire to make, hold, invest, and expend the funds as above set forth, and render the statistical and advisory service incidental thereto. The Corporation shall give the Manufacturer appropriate receipts for all moneys paid hereunder, and will have an audit of its affairs made, at least annually, by one of the above firms of Certified Public Accountants.

"11. This agreement shall be binding upon and inure to the benefit of the successors and assigns of both parties."

Where a manufacturer bought a mill, the "Historical or Rated Position" of the purchased mill was added to the "Historical or Rated Position" of the purchaser, thereby increasing the purchaser's "Historical or Rated Position." Where a mill was sold, the "Historical or Rated Position" of the seller was decreased in the amount of the "Historical or Rated Position" of the mill so sold.

PAR. 8. Said understanding, agreement, combination and conspiracy, and the things done thereunder and pursuant thereto and in furtherance thereof, had and now have the tendency and effect of stabilizing prices on paperboard; have a tendency to, and have unduly restricted, restrained, eliminated and suppressed competition in price and otherwise in the sale and distribution of said products in interstate commerce; have restrained, regulated, limited and apportioned the production of said products; have restricted and restrained interstate trade and commerce in said products and have a dangerous tend-

ency and the capacity to create in respondents a monopoly of the manufacture, sale and distribution of said products in commerce among and between the various States of the United States and in the District of Columbia, and of placing in said respondents the power to control and enhance prices and of further restricting and restraining commerce in said products.

Said understanding, agreement, combination and conspiracy and the acts and practices of respondents pursuant thereto and in furtherance thereof, as above alleged, constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Dismissed without prejudice, after answer, by the following order:

This matter coming on to be heard upon the petition and motion filed November 27, 1945, by counsel for respondents that the Commission dismiss the complaint herein, and the Commission having duly considered the said petition and motion and the record herein, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.³

Mr. Floyd O. Collins for the Commission.

Whyte, Hirschboeck & Minahan, of Milwaukee, Wis., and *Mr. W. B. Turner*, of Dayton, Ohio, for National Paperboard Association, and various officers and members thereof; with whom also appeared—

Bell, Boyd & Marshall, of Chicago, Ill., for Container Corporation of America.

Breed, Abbott & Morgan, of New York City, for United Paperboard Co.

³ Said petition and motion set forth in substance, on facts "believed to be undisputed" and "already within the knowledge of the Commission,"

That the issues raised by the complaint have been the subject of a thorough investigation and study by the Department of Justice, on two separate occasions, namely, (1) following the return of a so-called presentment dated August 15, 1939 by a Grand Jury of the United States District Court for the Southern District of New York, as a result of which the Becker Corporation made changes in the form of contract between it and its subscribers, suggested by the Department, and the Department's Antitrust Division, in a letter of October 9, 1940, advised it, after examination thereof, that no action was required by the Department, and, following the completion of its full investigation, determined that no legal action, civil or criminal, was required, and so advised said Becker Corporation, "in a letter of October 26, 1940, stating, however, in both letters—reproduced in connection with respondents' answer—that it proposed to keep itself advised of the activities of the respondents; and (2) in 1942, when the Department, again by its Antitrust Division, made a further and elaborate investigation and study "of the affairs, records and transaction of respondents, National Paperboard Association and Becker Corporation, at the conclusion of which "investigations it was again determined that no legal action, civil or criminal, was required against such respondents;"

That it is believed that "the complaint herein relates to the identical matters covered by such previous investigations of the Department of Justice," and that "it is believed that the investigations of the Commission did not disclose any transactions, practices or methods of doing business that had not been considered and passed upon by the Department of Justice in its prior investigations;"

That "it is believed that the investigation of the Commission discloses no practice or other substantial matter complained of, whether statistical or whether relating to the

L. & C. HARDTMUTH, INC., and KOH-I-NOOR PENCIL CO., INC. Complaint, December 11, 1942.⁴ Order, February 15, 1946. (Docket 4875.)

Charge: Misbranding or mislabeling and advertising falsely or misleadingly as to product made with some foreign ingredient being domestic, in connection with the manufacture and sale of lead pencils and copying pencils.

Record closed without prejudice, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the motion of respondents for dismissal of the complaint issued herein, and it appearing to the Commission that the respondents have expressed their intention, in writing, to be bound by the Trade Practice Conference Rules promulgated for the Wood Cased Lead Pencil Industry on June 29, 1945, and have furnished satisfactory evidence of such intention, and the Commission having duly considered said motion, and the record herein, and being fully advised in the premises;

It is ordered, That this proceeding be, and the same hereby is, closed without prejudice to the right of the Commission to institute further proceedings in the matter.⁵

Before *Mr. Randolph Preston*, trial examiner.

Mr. William L. Pencke for the Commission.

Frazer, Myers & Manley, of New York City, and *Mr. Nelson B. Gaskill* and *Mr. Charles W. Mander*, of Washington, D. C., for respondents.

VELODENT PRODUCTS MANUFACTURING CO., INC. Complaint, February 4, 1942. Order, March 19, 1946. (Docket 4694.)

Charge: Misbranding or mislabeling as to composition of product; in connection with the manufacture and sale of respondent's "Velvo-Smooth Palm and Olive Oil Brushless Shaving Cream."

Record closed without prejudice, after answer and trial, by the following order:

affairs of the Becker Corporation, as having taken place later than six years prior to the issuance of the complaint herein" (on July 26, 1945);

That "to continue the within proceeding will:

(a) Impose upon respondents burdensome expenditures of time and money to re-examine and try issues long since moot, and which already have been heretofore twice passed upon by the Antitrust Division and determined to require no action;

(b) Impose upon the Commission the burden of devoting its staff and facilities to a proceeding which properly belongs, if anywhere, under the jurisdiction of the Department of Justice;

Wherefore, respondents move,

1. That an oral hearing be granted upon this petition on a day certain to be fixed as soon as practicable.

2. That the within proceedings be dismissed, and if the Commission so desire, without prejudice to the right of the Commission to reinstitute the said proceeding if it shall hereafter be deemed advisable so to do."

⁴ The Commission on January 14, 1943, issued order granting respondents' motion to strike and amending complaint.

⁵ Having been of counsel, Commissioner Mason did not participate in this action.

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume trial thereof in accordance with its regular procedure.

Commissioner Freer not participating.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Samuel J. Ernstoff, of New York City, for respondent.

STEWART-WARNER CORP. Complaint, September 21, 1944. Order, March 27, 1946. (Docket 5219.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results and comparative merits; in connection with the processing and sale of respondent's "Alemite" lubricants.

Dismissed without prejudice, after answer and trial, by the following order:

This proceeding having been heard by the Federal Trade Commission upon the complaint, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission therefore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the matter and being now fully advised in the premises:

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should the facts so warrant.

Before *Mr. George Biddle*, trial examiner.

Mr. R. A. McQuat for the Commission.

Mr. William W. Miller and *Winston, Strawn & Shaw*, of Chicago, Ill., for respondent.

P. BALLANTINE & SONS. Complaint, July 14, 1944. Order, March 29, 1946. (Docket 5187.)

Charge: Acquisition of stock of competitor in violation of Section 7 of the Clayton Act; in connection with the manufacture and sale of malt beverages, as set forth in the complaint, as reproduced in full as follows, to wit:

Complaint

The Federal Trade Commission, having reason to believe that P. Ballantine & Sons, hereinafter called respondent, has violated and

is now violating the provisions of Section 7 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), hereby issues this its complaint against said respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent P. Ballantine & Sons is a corporation organized under the laws of the State of New Jersey with its principal office and place of business located at 57 Freeman Street, in the city of Newark in said State. Said corporation had an authorized and issued capital as of March 31, 1943, of 105,120 shares of common stock having a par value of \$50 per share. Said corporation also owned and possessed assets as of March 31, 1943, totaling \$13,368,015.

PAR. 2. Respondent was established in 1840 and incorporated under the laws of the State of New Jersey in June 28, 1883, and since that time has been, and now is, engaged in the manufacture of malt beverages sold to retail and wholesale distributors throughout the United States but chiefly in the States of New York, New Jersey, Massachusetts, Connecticut and Pennsylvania. Said respondent maintains a brewery in Newark, New Jersey, with an annual capacity of 2,200,000 barrels and branch wholesale agencies in New York, New York; Albany, New York; Providence, R. I.; New Haven, Conn.; Hicksville, L. I., and Washington, D. C. Respondent also sells to independent wholesale distributors located in Philadelphia, Pa.; Boston, Mass. and Miami, Florida. Respondent causes said products, when sold, to be transported from its said brewery or branch wholesale agencies to purchasers thereof located in States other than the State in which said respondent has its brewery and wholesale agencies, and there is now and has been for more than one year last past a constant recurring current of trade and commerce in said products between and among the various States and territories of the United States and in the District of Columbia.

Said respondent in the course and conduct of its said business was for more than one year prior to June 1943, the largest manufacturer of malt beverages in the northeastern part of the United States and one of the most important manufacturers of malt beverages in the United States. During the year ended June 30, 1943, the said respondent sold approximately 61,500,000 gallons of ale and beer or approximately 2 million barrels. It was in competition with other manufacturers of malt beverages including the Christian Feigenspan Brewing Company of Newark, New Jersey.

PAR. 3. The Christian Feigenspan Brewing Company is a corporation organized under the laws of the State of New Jersey in April,

1933. Prior to June, 1943, it owned and operated a brewing plant in the city of Newark, State of New Jersey, in close proximity to that owned and operated by said respondent, with an annual capacity of approximately 600,000 barrels. Said corporation was in active competition with the said respondent in the manufacture and sale in interstate commerce of beer and ale products sold under the "Feigenspan" and "P. O. N." brands. Its total sales of said products for the fiscal year ending March 31, 1943, amounted to approximately 500,000 barrels with a total net sales of approximately \$5,500,000. It sold its products chiefly in the States of New Jersey, New York, Connecticut and Massachusetts maintaining branch wholesale distributing agencies bearing the Feigenspan name and trade-mark in Newark, New Jersey; Long Island City, New York; New Haven, Connecticut, and Boston, Massachusetts. It also sold substantial quantities of such products to wholesale distributors located in Reading, Pa.; Auburn, Maine; Providence, R. I.; Petersburg, Virginia, and New Market, New Hampshire. Said Christian Feigenspan Brewing Company as of June 30, 1943, had an authorized, issued and outstanding capitalization of 30,000 shares, no par value, being carried on its books in the value of \$3,296,512.71. Said corporation possessed assets as of March 31, 1943, amounting to \$6,118,443.54. Said Christian Feigenspan Brewing Company prior to June, 1943, owned and operated two subsidiary corporations as sales agents, namely the Christian Feigenspan Brewing Company of Massachusetts, located at Boston, Mass., and New Haven Brewing Company of New Haven, Connecticut. Said corporation also owned or controlled the capital stock of the Dobler Brewing Company, Inc., a New York corporation operating a brewery in Albany, New York, and Joseph Hensler Brewing Company, a New Jersey corporation operating a brewery in Newark, New Jersey.

PAR. 4. Between the dates of June 4, 1943, and July 21, 1943, said respondent acquired for a consideration of \$5,020,000 in cash, and now owns all of the issued and outstanding capital stock of the said Christian Feigenspan Brewing Company. Since July 21, 1943, said respondent has taken over the assets and business of said subsidiary corporations, said Christian Feigenspan Brewing Company of Massachusetts and the New Haven Brewing Company of New Haven, Connecticut, which said corporations have been dissolved; and said respondent has disposed of all the capital stock of the said Dobler Brewing Company, Inc. and Joseph Hensler Brewing Company theretofore owned or controlled by said Christian Feigenspan Brewing Company.

Said respondent has also discontinued the use of all Feigenspan brands and has closed all the distributing agencies of the Christian

Feigenspan Brewing Company, which is now engaged in the manufacture of malt beverages sold by said respondent under its own brand and trade names.

PAR. 5. The acquisition by said respondent of the capital stock of the Christian Feigenspan Brewing Company as hereinbefore set out was contrary to law in violation of Section 7 of the said Clayton Act, and the effect of such acquisition of said stock may be, has been, and is,

(a) To substantially lessen competition in interstate commerce between said Christian Feigenspan Brewing Company and said respondent;

(b) To restrain interstate commerce in the sale of malt beverages including beer and ale in certain sections and communities of the United States, particularly those States in New England and on the Atlantic Coast; and

(c) To tend to create a monopoly in said respondent in said territory in the sale and distribution of malt beverages including beer and ale.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the motion of the respondent to dismiss the complaint herein, and the Commission having duly considered said motion and the record herein and being now fully advised in the premises:

It is ordered, That said motion be, and it hereby is, granted; and that the complaint herein be, and it hereby is, dismissed.⁶

Commissioner Davis not participating.

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

Mr. Everett F. Haycraft, *Mr. Reuben J. Martin*, and *Mr. Lewis F. Depro* for the Commission.

White & Case, of New York City, for respondent.

⁶ Said motion requested the Commission to dismiss the proceeding upon the ground that it was without jurisdiction to issue any order under the provisions of Section 7, "for the reason that the respondent no longer holds the stock of the Ballantine Brewing Company (formerly Christian Feigenspan Brewing Company) alleged to have been acquired by respondent in violation of said section of said Act and that the assets of Ballantine Brewing Company (formerly Christian Feigenspan Brewing Company) have been transferred to respondent and Ballantine Brewing Company has been dissolved," and asked that the Commission set a date for hearing and grant opportunity for oral argument and submission of a brief in support of the motion.

Affidavit of one of the attorneys of respondent, attached to the motion, set forth the facts with respect to the acquisition of the assets of the acquired corporation, included a statement with respect to the number of competitors of respondent in the areas where the respondent sold its products, and attached to the affidavit photostatic copies of the exhibits submitted by the respondent.

As a legal basis for the motion, reference was made to the decision of the United States Supreme Court in the cases of *Arrow-Hart & Hegeman Electric Company v. Federal Trade Commission*, 291 U. S. 587; *Federal Trade Commission v. Eastman Kodak Company*, 274 U. S. 619; *Federal Trade Commission v. Western Meat Company*, 272 U. S. 554; *Schenley Distillers Corporation*, Federal Trade Commission Docket No. 3150; matter of *Laird & Co.*, 22 F. T. C. 915; and *Vanadium Alloys Steel Co.*, Docket No. 1694.

Answer of Commission's attorney suggested that inasmuch as respondent had accomplished the complete acquisition of the business of the company, acquisition of stock of which