

Syllabus

IN THE MATTER OF

TAG MANUFACTURERS INSTITUTE, FRANK H. BAXTER,
SECRETARY-TREASURER AND EXECUTIVE DIRECTOR
THEREOF, AND TAG CO. T AL.

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

Docket 4496. Complaint, May 2, 1941—Decision, May 19, 1947

Where some 29 corporations and 2 firms, engaged in the manufacture of "tag products"; i. e., tags, pin tickets, and like marking and pricing devices, universally used for marking purposes by manufacturers of consumer goods; selling and distributing about 95 percent of the tag products purchased and used in the United States, and, in competition with each other and with others except as below described; and who were members—and with the exception of four—had been members, since its organization in 1933, of their unincorporated association (secretary-treasurer and executive director of which was and had always been one B, engaged in promoting, organizing, and managing trade associations)—

Acting in cooperation with their said institute and said B, developed and maintained, by mutual understandings and agreements, substantial uniformity of action among themselves with respect to maintaining and fixing uniform prices for tags and tag products; and, as a part of said conspiracy—

- (1) Agreed upon and adopted an elaborate system of price reporting under a so-called open price plan of selling, and continued, after the National Industrial Recovery Act was declared unconstitutional, the price reporting plan which had had its inception in the industry's N. R. A. code of fair competition:
- (2) Acting under the auspices of their institute, in 1935, 1936, 1937, and 1940 entered into tag industry agreements between the members and said B (except for that of 1937 which was between the members), which provided for their filing with him of all price lists, invoices and other intimate details of their business, including price information and terms and conditions of sale, allowed him to inspect their books and records, and provided penalties for failure to file price lists and invoices within the period of time provided, usually, 24 hours after the becoming effective of a general price, or the allowance of a special price; and

Where said B, in accordance with said agreements—

- (3) Combined, under the 1935 agreement, the price information contained in the price lists, offers, and invoices filed with him, and promptly disseminated to all member subscribers thereto the lowest prices and most favorable terms and conditions of sale for all products of the industry or component elements thereof, and, under the 1936 agreement, with its more elaborate member reports, compiled and disseminated information as to all prices and terms of sale; and

Where said members—

- (4) Provided through their 1936 agreement for the filing with said B of all "general offers" to sell products of the industry immediately after prices, terms or conditions of sale constituting the general offer had become effective,

and in no event after noon of the business day following, and for the filing of offers made at different prices from the filed general offers and referred to as "discriminatory prices";

- (5) Defined, in their 1937 agreement, a "general" offer as an announcement to the trade generally, through customary channels, of a willingness to sell specified products at specified prices, terms, and conditions of sale, and a "restricted offer"—the "discriminatory price" theretofore referred to—as a price, term, or condition of sale more favorable to the purchaser than the "general offer"; and provided that "general offers" were to be mailed to the secretary not later than noon of the business day following their effective date, that any subscriber was free thus to announce his current or future price, that such announcements were subject to change without notice, and that there was no undertaking to adhere thereto;
- (6) Provided through said 1937 agreement for the election of an executive committee to act as a governing body with power to appoint a secretary and board of determination and to determine the manner and extent to which price information should be disseminated by the secretary, and elected the members of the executive committee of their institute, as members of the executive committee of said 1937 agreement; and

Where said committee, acting in a dual capacity as executive committee of said institute and as executive committee of said agreement—

- (7) Held meetings at which matters of pricing, price compilations, standardization, and dissemination of information were discussed and recommendations made for action by the members at their general meetings; and,

Where said B, who, prior to April 19, 1938, had immediately reported all offers, both to private concerns and to governmental agencies; following a meeting on said date of said executive committee which recommended such action—

- (8) Withheld dissemination of information with reference to quotations or bids until an order had been placed by a private concern or the bids opened by a governmental agency, at which time full information was disseminated, including quotations and bids of the unsuccessful, as well as the successful, bidders; and,

Where said members—

- (9) Provided through their 1940 agreement, the last and still effective one, that they should file with said B complete statements of their published list prices and terms, including policies regarding quantity differentials, trade classifications and discounts, credit terms, cash discounts, deferred and partial shipments, delivery terms, underruns and overruns, samples, overshipments, free goods, special services, rebates or concessions of whatever nature, and complete specifications of their products; that published list prices, terms or conditions of sale might be revised and that report of such revisions should be made to said B not later than the close of the business day following publication thereof; and that they mail on the effective date thereof, duplicates of every invoice or other memorandum of shipment, on delivery of the products, and all credit memoranda applicable thereto; and

Where said B, who was the sole authority in determining and assessing penalties under the 1935 and 1936 agreements, and whose findings and decisions were subject to review by the board of determination under the 1937 agreement and by a board of arbitration under the 1940 agreement (but which was not

fully established, with appeals, in practice, made to the entire industry at some general meeting)—

- (10) Caused periodic checks to be made of the books and records of the various members by a representative of his office, to determine if they were adhering to the published prices, and reported all deviations therefrom; instituted penalty proceedings from time to time, as a result of such investigation and also on complaints filed by various members; and, when violations were adjudged, assessed penalties in the amounts specified in the agreements, amounting, usually, to 10 percent of the amount involved in the particular transaction; and

Where said members—

- (11) Gave only lip service to provisions in the agreements for the distribution of information as to prices to public agencies, distributors, and consumers, or to any other interested party who might apply therefor and offer to pay the reasonable cost of compiling and distributing same, and to the provision in the 1940 agreement that each subscriber should notify purchasers from him of the availability of such information; and never adopted any practical plan whereby the same might be made available to buyers generally; insofar as evidence disclosed, developed no type of publicity to inform purchasers of the availability of information filed for a time with various offices of Dun and Bradstreet; and, insofar as a later notice on members' invoices advising that records of prices were open for inspection at B's New York office, failed to make the price information available to buyers located outside the New York area;
- (12) As an aid to their open price reporting, adopted standards for numerous essential tag materials, specifying minutely content, weight, thickness, and strength; standardizing sizes for shipping tags; specifying sizes and shapes for marking tags; and standardizing strings with respect to content, ply, weight, length, and strength;
- (13) Required that the members, when they used materials differing from the standards adopted, report such departures as a price difference in price elements; required suppliers to furnish detailed statements of tests of their materials, and made such reports available for use in investigation of violations of the agreement through failure to report departures from standard;
- (14) In order to render said plan more effective and permit a member immediately and definitely to determine the price at which another was selling any particular tag or tag product, classified the various tags and tag products, which included plain stock tags and made-to-order tags, under special designations incorporated in the price compilations designated by said B and used as a basis therefor; and

Where said B, with the assistance and cooperation of the members—

- (15) Built up in his office a general offer price book, based on the compilation and correlation of the price information filed with him, and disseminated through said book in the form of a loose leaf record, prices on plain stock shipping tags without strings, etc., but, principally, information relating to the price of the various elements entering into the manufacture of made-to-order tags; and included also a "Comparative stock designations" tabulation to identify with the special or official designation used therein, designation used by any member to describe a specific tag;

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Whereby computation of the price of the completed product was permitted and a member manufacturer enabled to know the price of other members for the same or a similar product, and any member could tell not only the number and identity of the members adhering to any particular price, term, or condition of sale, for any particular tag or component thereof, but, with reference to restricted, special or off list offers, could ascertain the extent to which any particular member was adhering to or deviating from its published prices or terms of sale, which, as published and distributed in said book were regarded by the members generally as constituting both their current and future prices until the filing with B of a revised schedule; and

Where said members—

(16) Required any member to file immediately with said B any special or restricted offers or sales off list price, for dissemination immediately to all the members on special forms or "pink sheets," together with full details;

Whereby publicity given to off-list sales among the members tended to restrain them from cutting prices and to cause them to maintain and adhere to their filed price lists; and all members were informed of the price activity of any particular member and placed in a position to take retaliatory action if unsatisfactory pricing policies were followed by him; and particularly so in view of the dominant position held in the industry by four of their number;

With the effect, as respects said open price reporting plan under the agreements and as above described, of establishing a substantial uniformity of prices for said products among members, of unduly restraining and suppressing competition in the sale and distribution of tags and tag products in commerce, and of depriving the public of the full benefit of competition therein:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of competitors of the members and of the public, and had a tendency to and did actually hinder and prevent price competition between and among such members in the sale and distribution of tag products and similar pricing devices in commerce, placed in them the power to control and enhance prices; unreasonably restrained commerce in said products; and constituted unfair methods of competition therein.

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

Mr. James M. Hammond and *Mr. Everette MacIntyre* for the Commission.

Wise, Corlett & Canfield, of New York City, and *Mr. Albert E. Sawyer*, of Washington, D. C., for respondents.

Feldman, Kittelle, Campbell & Ewing, of Washington, D. C., also for Dennison Manufacturing Co.

Mr. Edward Miller, of Denver, Colo., also for Rockmont Envelope Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in

the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Tag Manufacturers Institute, hereinafter referred to as respondent Institute, is a voluntary unincorporated association of manufacturers of tags, pin tickets, and similar marking and pricing devices, hereinafter referred to as tag products, organized in about the year 1935. It has its office and principal place of business at 370 Lexington Avenue, New York, N. Y.

All of the respondents named and described in paragraph 2 hereof are now, or have been during the time mentioned herein, members of said respondent Institute.

Respondent, Frank H. Baxter, hereinafter referred to as respondent Baxter, is an individual sometimes trading under the name and style of Frank H. Baxter Associates, and is named respondent herein individually and as secretary-treasurer and executive director of the respondent Tag Manufacturers Institute, with his office and principal place of business located at 370 Lexington Avenue, New York, N. Y.

PAR. 2. Respondent, Acme Tag Co., is a corporation organized and existing pursuant to the laws of the State of Minnesota, having its office and principal place of business at 2840 Fremont Avenue South, Minneapolis, Minn.

Respondent, Allen-Bailey Tag Co., Inc., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at Caledonia, N. Y.

Respondent, American Tag Co., is a corporation organized and existing pursuant to the laws of the State of Illinois. Its office and principal place of business is located at 6153 South State Street, Chicago, Ill.

Respondent, American Tag Co., of New Jersey, is a corporation organized and existing pursuant to the laws of the State of New Jersey. Its office and principal place of business is located at Newark, N. J.

Respondent, Atlas Tag Co., is a corporation organized and existing pursuant to the laws of the State of Wisconsin. Its office and principal place of business is located at Neenah, Wis.

Respondent, Badger Tag Co., Inc., is a corporation organized and existing pursuant to the laws of the State of Wisconsin. Its office and principal place of business is at Random Lake, Wis.

Respondent, A. C. Baldwin & Sons, is a corporation organized and existing pursuant to the laws of the State of Texas. Its office and

principal place of business is located at 209 West Eighth Street, Austin, Tex.

Respondent, Campbell Box & Tag Co., is a corporation organized and existing pursuant to the laws of the State of Indiana, having its office and principal place of business at South Bend, Ind.

Respondent, Central Tag Co., is a corporation organized and existing pursuant to the laws of the State of Illinois, having its office and principal place of business at 2715-2731 West Harrison Street, Chicago, Ill.

Respondent, Cupples-Hesse Envelope & Litho. Co., is a corporation organized and existing pursuant to the laws of the State of Missouri, having its office and principal place of business at 4175 Kings Highway, St. Louis, Mo.

Respondent, Dancyger Manufacturing Co., is a corporation organized and existing pursuant to the laws of the State of Ohio, having its office and principal place of business at 4707 Detroit Avenue, Cleveland, Ohio.

Respondent, the Denney Tag Co., Incorporated, is a corporation organized and existing pursuant to the laws of the State of Pennsylvania, having its office and principal place of business at 30 West Barnard Street, West Chester, Pa.

Respondent, Dennison Manufacturing Co., is a corporation organized and existing pursuant to the laws of the State of Massachusetts, having its office and principal place of business at Framingham, Mass.

Respondents, Howard W. Eastman and Julia Eastman, are copartners doing business under the firm name and style of Eastman Tag & Label Co. Their office and principal place of business is located at 548 Fourth Street, San Francisco, Calif.

Respondent, Ennis Tag & Printing Co., is a corporation organized and existing pursuant to the laws of the State of Texas, having its office and principal place of business at Ennis, Tex.

Respondent, Haywood Tag Co., is a corporation organized and existing pursuant to the laws of the State of Indiana and has its office and principal place of business at Lafayette, Ind.

Respondent, International Tag & Salesbook Co., is a corporation organized and existing pursuant to the laws of the State of Illinois, having its office and principal place of business at 319 North Whipple Street, Chicago, Ill.

Respondent, Keystone Tag Co., is a corporation organized and existing pursuant to the laws of the State of Pennsylvania, having its office and principal place of business at West Chester, Pa.

Respondent, A. Kimball Co., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at 307-309 West Broadway, New York, N. Y.

Respondent, Marion Manufacturing Co., is a corporation organized and existing pursuant to the laws of the State of Georgia, having its office and principal place of business at 467-475 Stephens Street SW., Atlanta, Ga.

Respondents, J. L. May, J. C. May, and Frank May, are copartners doing business under the firm name and style of J. L. May Co., having their office and principal place of business at 111 West Nineteenth Street, New York, N. Y.

Respondent, Michigan Tag Co., is a corporation organized and existing pursuant to the laws of the State of Michigan, having its office and principal place of business at Grand Rapids, Mich.

Respondent, Midwest Tag Co., is a corporation organized and existing pursuant to the laws of the State of Missouri, having its office and principal place of business at 35 Madison Street, St. Louis, Mo.

Respondent, the National Tag Co., is a corporation organized and existing pursuant to the laws of the State of Ohio, having its office and principal place of business at 332 South Patterson Boulevard, Dayton, Ohio.

Respondent, the Reyburn Manufacturing Co., Inc., is a corporation organized and existing pursuant to the laws of the State of Pennsylvania, having its office and principal place of business at Thirty-Second and Alleghany Avenue, Philadelphia, Pa.

Respondent, the Robinson Tag & Label Co., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at 460 West Thirty-Fourth Street, New York City.

Respondent, Rockmont Envelope Co., is a corporation organized and existing pursuant to the laws of the State of Colorado, having its office and principal place of business at 750 Acoma Street, Denver, Colo.

Respondent, Salisbury Manufacturing Co., is a corporation organized and existing pursuant to the laws of the State of Rhode Island, having its office and principal place of business at 501 Roosevelt Avenue, Central Falls, R. I.

Respondent, the Standard Envelope Manufacturing Co., which sometimes operates under the unincorporated trade name of Sterling Tag Co., is a corporation organized and existing pursuant to the laws of the State of Ohio, having its office and principal place of business at 1600 East Thirtieth Street, Cleveland, Ohio.

Respondent, Tagcraft Corp., is a corporation organized and existing pursuant to the laws of the State of Pennsylvania, having its office and principal place of business at 142 South Christian Street, Lancaster, Pa.

Respondent, Waterbury Buckle Co., which sometimes operates under the unincorporated trade name of Waterbury Tag Co., is a corporation organized and existing under the laws of the State of Connecticut, having its office and principal place of business at Waterbury in said State.

PAR. 3. All of the respondents hereinbefore named, except respondent institute and respondent Baxter, are members of the respondent institute and are manufacturers of tags, pin tickets and like marking, and pricing devices, hereinafter referred to as tag products. Each of said corporate respondents, hereinafter referred to as respondent members, sells and distributes said tag products, universally used for marking purposes by manufacturers of consumer goods, to purchasers thereof located in States other than the State of manufacture, causing said tag products when sold to be transported by respondent members from their respective places of business, as hereinbefore set out, into and through the several States of the United States other than the State of origin of such shipments and into the District of Columbia. Said respondent members maintain, and at all times mentioned herein have maintained, a current of trade and commerce in said tag products between and among the various States of the United States and the District of Columbia.

PAR. 4. The aforesaid respondent members named in paragraph 2 hereof now constitute, and for a long time last past have constituted, a great majority of all manufacturers of said tag products, and sell and distribute a major portion of the total volume of said products produced, sold and used in the United States. Said respondent members were, prior to the formation of the unlawful combination as alleged in paragraph 5 hereof, in open competition among themselves as to price in the sale of said tag products in commerce between and among the several States of the United States and in the District of Columbia, and but for the acts and practices hereinafter alleged, said member respondents would have been at all times since the formation of the unlawful combination as alleged in paragraph 5 hereof, and would now be, in price competition one with another.

PAR. 5. Said respondent members acting directly and through their respective representatives and acting in cooperation with each other and with respondent institute and respondent Baxter, individually and as secretary-treasurer and executive director of the said respondent

institute, beginning more than 3 years ago, and continuing to the present date, have entered into and carried out an understanding, agreement, combination, and conspiracy to restrict, restrain, suppress, and eliminate price competition in the sale and distribution of said tag products in commerce between and among the several States of the United States.

Pursuant to, and for the purpose of carrying out and making said understanding, agreement, combination, and conspiracy effective, said respondents acting in cooperation with each other, and other persons not herein mentioned, have done and performed, among others, the following acts and practices:

(a) Agreed among themselves to fix, establish, and maintain, and pursuant to such agreement have fixed and maintained, and still fix and maintain, uniform prices, terms, and conditions of sale for said tag products sold by the respondent members as aforesaid;

(b) Held meetings of respondent members under the auspices of the respondent institute and under the direction of the respondent Baxter to devise methods of fixing, establishing, and maintaining uniform prices, terms, and conditions of sale of said tag products sold by the respondent members as aforesaid;

(c) Respondent members, under the auspices of the respondent Institute and in cooperation with respondent Baxter, entered into, subscribed to and carried out an agreement with each other known as the tag industry agreement, whereby it was agreed, among other things, that:

1. Each subscribing respondent member send promptly to respondent Baxter as secretary a complete statement of every "general offer" to sell said tag products, including those prices, terms and conditions of sale as have been made available for use in actual transactions;

2. Each subscribing respondent member send to respondent Baxter as Secretary a complete statement of every "restricted offer" to sell tag products, including prices, terms, or conditions of sale for such products more favorable to the purchaser than the "general offer" for the same or similar products, such statement to be mailed to the secretary not later than the end of the business day following the day on which such "restricted offer" is made;

3. Respondent, Baxter, disseminate the said information thus furnished by respondent members to all subscribing respondent members;

4. Each subscribing respondent member send to respondent Baxter as secretary duplicates of each and every invoice or other memorandum of shipment of tag products sold by such member, and duplicates of all credit memoranda covering rebates of any nature made by such

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member, such copy, of invoice to be mailed to the secretary not later than 5 days after the making thereof;

5. Respondent Baxter compile the information submitted in the aforesaid invoices and other memoranda in such a way as not to disclose the identity of any one subscriber or the names of any purchasers, and disseminate the same to all subscribing respondent members;

6. Each subscribing respondent member submit to a board appointed by respondent members, known as the determination board, all pertinent books, records, or other information in the possession of such subscribing respondent member and permit an examination by such board of such records for the purpose of determining whether or not said subscribing respondent member has complied with the rules and regulations of said tag industry agreement with respect to the furnishing of the foregoing information;

7. Said determination board announce its findings pursuant to such investigation; such findings to be accepted by the subscribing respondent members, and in the event any subscribing respondent member has breached any said rule or regulation, he is subject to certain specified fines and assessments and liquidated damages.

8. Each subscribing respondent member pay annually a sum not less than \$120 to the respondent Baxter as secretary for a fund known as the operating fund, and another sum of not less than \$200 into a fund known as the revolving fund, to provide funds from which operating and investigation expenses and into which fines and assessments are paid as incurred or as levied or assessed by said determination board.

(d) Used and engaged in other cooperative acts and practices in promoting, fixing, the establishment of, and carrying out of a uniform price program.

PAR. 6. The capacity, tendency, and effect of said understanding, agreement, combination, and conspiracy, and the acts and practices of the respondents, as set forth herein, are, and have been, to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress price competition in the sale of said tags, pin tickets and similar marking, and pricing devices herein referred to as tag products; to deprive the purchasing and consuming public of advantages in prices and other considerations which they would receive under normal, unobstructed and free competition in said products; to otherwise operate as a restraint of trade and a detriment and hindrance to the freedom of fair and legitimate competition in said products, and to obstruct the natural

flow of trade in said products in the channels of commerce among and between the several states of the United States.

PAR. 7. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among the respondents in the sale of tags, pin tickets, tag products, and similar marking and pricing devices, herein referred to as tag products in commerce within the intent and meaning of the Federal Trade Commission Act: have placed in respondents the power to control and enhance prices on said products; have unreasonably restrained such commerce in said products, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 2, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Tag Manufacturers Institute, an unincorporated trade association; Frank H. Baxter, individually and as secretary-treasurer and executive director of the Tag Manufacturers Institute; Acme Tag Co., a corporation; Allen-Bailey Tag Co., Inc., a corporation; American Tag Co., a corporation; American Tag Co. of New Jersey, a corporation; Atlas Tag Co., a corporation; Badger Tag Co., Inc., a corporation; A. C. Baldwin & Sons, a corporation; Campbell Box & Tag Co., a corporation; Central Tag Co., a corporation; Cupples-Hesse Envelope & Litho. Co., a corporation; Dancyger Manufacturing Co., a corporation; the Denney Tag Co., Inc., a corporation; Dennison Manufacturing Co., a corporation; Howard W. Eastman and Julia Eastman, copartners doing business under the firm name and style of Eastman Tag & Label Co.; Ennis Tag & Printing Co., a corporation; Haywood Tag Co., a corporation; International Tag & Salesbook Co., a corporation; Keystone Tag Co., a corporation; A. Kimball Co., a corporation; Marion Manufacturing Co., a corporation; J. L. May, J. C. May, and Frank May, copartners doing business under the firm name and style of J. L. May Co.; Michigan Tag Co., a corporation; Midwest Tag Co., a corporation; the National Tag Co., a corporation; the Reyburn Manufacturing Co., Inc., a corporation; the Robinson Tag & Label Co., a corporation; Rochmont Envelope Co., a corporation; Salisbury Manufacturing Co., a corporation; the Standard Envelope Manufacturing Co., a corporation, which sometimes operates

under the unincorporated trade name of Sterling Tag Co.; Tagcraft Corp., a corporation; and Waterbury Buckle Co., a corporation, which sometimes operates under the unincorporated trade name of Waterbury Tag Co.; charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony, and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers thereto, testimony, and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of and in opposition to the complaint, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Tag Manufacturers Institute, hereinafter referred to as "respondent institute," is an unincorporated association organized in 1933 by persons, partnerships, and corporations engaged in the manufacture and sale of tags, pin tickets, and like marking and pricing devices and has its office and principal place of business at 370 Lexington Avenue, New York, N. Y.

Respondent, Frank H. Baxter, is an individual doing business under the name of Frank H. Baxter Associates, with his office and principal place of business located at 370 Lexington Avenue, New York, N. Y. Said respondent is engaged in the business of promoting, organizing, and managing trade associations and was employed by the respondent institute and its members to carry on its work and to do and perform the acts and things which the members desired to have done and performed. Said respondent in general performed the function of secretary-treasurer and executive director for respondent institute and its members.

Respondent, Acme Tag Co., is a corporation organized and existing pursuant to the laws of the State of Minnesota, having its office and principal place of business at 2840 Fremont Avenue South, Minneapolis, Minn.

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Respondent, the National Tag Co., is a corporation organized and existing pursuant to the laws of the State of Ohio, having its office and principal place of business at 332 South Patterson Boulevard, Dayton, Ohio.

Respondent, the Reyburn Manufacturing Co., Inc., is a corporation organized and existing pursuant to the laws of the State of Pennsyl-

vania, having its office and principal place of business at Thirty-second and Alleghany Avenue, Philadelphia, Pa.

Respondent, the Robinson Tag & Label Co., is a corporation organized and existing pursuant to the laws of the State of New York, having its office and principal place of business at 460 West Thirty-fourth Street, New York City.

Respondent, Rockmont Envelope Co., is a corporation organized and existing pursuant to the laws of the State of Colorado, having its office and principal place of business at 750 Acoma Street, Denver, Colo.

Respondent, Salisbury Manufacturing Co., is a corporation organized and existing pursuant to the laws of the State of Rhode Island, having its office and principal place of business at 501 Roosevelt Avenue, Central Falls, R. I.

Respondent, the Standard Envelope Manufacturing Co., which sometimes operates under the unincorporated trade name of Sterling Tag Co., is a corporation organized and existing pursuant to the laws of the State of Ohio, having its office and principal place of business at 1600 East Thirtieth Street, Cleveland, Ohio.

Respondent, Tagcraft Corp., is a corporation organized and existing pursuant to the laws of the State of Pennsylvania, having its office and principal place of business at 142 South Christian Street, Lancaster, Pa.

Respondent, Waterbury Buckle Co., which sometimes operates under the unincorporated trade name of Waterbury Tag Co., is a corporation organized and existing under the laws of the State of Connecticut, having its office and principal place of business at Waterbury in said State.

The aforesaid respondents are, and have been, members of respondent institute since its organization in 1933 except respondents Badger Tag Co., Inc., which became a member in 1939 or 1940; A. C. Baldwin & Sons, which became a member February 4, 1939; Rockmont Envelope Co., which became a member June 21, 1938; and the Standard Envelope Manufacturing Co., which became a member October 25, 1937.

PAR. 2. All of the respondents hereinbefore named, except respondent institute and respondent Frank H. Baxter, are members of the respondent institute and are manufacturers of tags, pin tickets, and like marking and pricing devices, hereinafter referred to as "tag products." Each of said respondents, hereinafter referred to as "respondent members," sells and distributes said tag products, universally used

for marking purposes by manufacturers of consumer goods, to purchasers thereof located in States other than the State of manufacture, causing said tag products, when sold, to be transported by respondent members from their respective places of business into and through the several States of the United States other than the State of origin of such shipments. Said respondent members maintain, and at all times mentioned herein have maintained, a course of trade in said tag products in commerce among and between the various States of the United States.

PAR. 3. The aforesaid respondent members sell and distribute approximately 95 percent of the tag products purchased and used in the United States and, in so doing, are, and were, in competition with each other and with others who manufacture tag products and sell and ship them in commerce between and among the various States of the United States except as such competition has been restrained, lessened, or eliminated as hereinafter described.

PAR. 4. The respondent, Tag Manufacturers Institute, was organized in 1933, and all of the respondents named herein except as above noted became members at the time of said organization. The respondent institute has operated continuously since its organization until the present time. The presidency of the institute rotates among the members, but the active management of its affairs is exercised by the secretary-treasurer, subject to the executive committee and the action of the general meeting. The respondent, Frank H. Baxter, has at all times since the organization of said respondent institute acted as secretary-treasurer and executive director of said respondent institute.

PAR. 5. The respondent members, acting in cooperation with respondent institute and respondent, Frank H. Baxter, have, by mutual understandings and agreements, cooperatively developed and maintained substantial uniformity of action among themselves with respect to maintaining and fixing uniform prices for tags and tag products. Each of the various practices adopted by the respondent members in cooperation with the respondent institute and respondent Frank H. Baxter, which are hereinafter more fully described, constitutes a part and parcel of a combination and conspiracy entered into by said respondent members to fix and maintain uniform prices for tags and tag products.

PAR. 6. The respondent members agreed upon and adopted an elaborate system of price reporting under a so-called open price plan of selling to assure the maintenance of uniform prices by the various respondent members. This price-reporting plan had its inception in

the code of fair competition for the tag industry, entered into during the time that the National Industrial Recovery Act was in effect.

After the National Industrial Recovery Act was declared unconstitutional by the United States Supreme Court, the respondent members continued said open price-reporting plan by means of a series of tag industry agreements. The purpose of these agreements was to keep in force and effect the open price-reporting plan originally adopted under the National Industrial Recovery Act. This is indicated by the following statement appearing in a general letter written to the members of respondent institute by respondent Frank H. Baxter as executive director of respondent institute on June 13, 1935:

Please understand that the Tag Code Open Price Policy is not in force as such. Individual price reporting is still permissible however and we expect it will take organized form very shortly under the Liquidated Damage Agreement.

PAR. 7. The tag industry agreements were adopted under the auspices of respondent Tag Manufacturers Institute and were in the form of agreements between the respondent members and respondent, Frank H. Baxter, who was, at all times mentioned herein, secretary-treasurer and executive director of the respondent institute. All of the signatories or subscribers to the various tag industry agreements have at all times been members of the respondent institute, and all of the respondent members have been parties to said tag industry agreements except for the periods of time hereinafter noted. The various tag industry agreements were as follows:

1. Tag industry agreement of 1935, also known as voluntary code agreement between tag manufacturers and Frank H. Baxter. This agreement was entered into on June 5, 1935, and became effective on August 14, 1935, and continued in force until September 22, 1936. This agreement was executed by all of the respondent members except A. C. Baldwin & Sons, Rockmont Envelope Co., Midwest Tag Co., and the Standard Envelope Manufacturing Co.

2. Tag industry agreement of 1936. This agreement was between the respondent members and respondent Frank H. Baxter. It became effective September 22, 1936, and continued in force until January 15, 1938, and was signed by all the respondent members except A. C. Baldwin & Sons, Rockmont Envelope Co., Midwest Tag Co., and the Standard Envelope Manufacturing Co.

3. Tag industry agreement of 1937. This agreement was entered into by and between the respondent members, who were designated as "subscribers." It provided for election of an executive committee,

which in turn appointed respondent Frank H. Baxter secretary-treasurer, with substantially the same duties as he performed under the previous agreements. This agreement became effective January 15, 1938, and continued in force until November 25, 1940, and was executed by all of the respondent members.

4. Tag industry agreement of 1940. This was an agreement between the respondent members and respondent Frank H. Baxter, trading as Frank H. Baxter Associates. This agreement became effective November 25, 1940, and continued and was in force and effect at the time of final hearing in this proceeding. This agreement was executed by all of the respondent members.

PAR. 8. All of the tag industry agreements provided for the filing with the respondent, Frank H. Baxter, by the respondent members of all price lists, invoices, and other intimate details of their business, including price information and terms and conditions of sale. The respondent, Frank H. Baxter, in turn, promptly and immediately disseminated this information to all of the respondent members who were subscribers to the various agreements. All of said agreements allowed to the said respondent, Frank H. Baxter, the right to inspect the books and records of the individual respondent members and provided for certain penalties for failure to file price lists or invoices with the respondent, Frank H. Baxter, within the period of time provided for by said agreements, the usual time limitation being within 24 hours after a general price became effective or after a special price had been allowed.

During the time that the tag industry agreement of 1935 was in force and effect, the respondent, Baxter, combined the price information contained in the price lists, offers, and invoices filed with him and promptly disseminated to all the respondent members who were subscribers to said agreement the lowest prices and most favorable terms and conditions of sale for all products of the industry or the component elements thereof.

With the adoption of the 1936 tag industry agreement the reports to the respondent members by the respondent, Frank H. Baxter, became more elaborate, and instead of disseminating the lowest prices and most favorable terms, the respondent, Frank H. Baxter, compiled and disseminated information as to all prices and terms of sale.

PAR. 9. The tag industry agreement of 1936 provided for the filing with respondent, Frank H. Baxter, of all general offers to sell products of the industry immediately after prices, terms, or conditions of sale constituting the general offer had become effective and in no event after noon of the business day following the effective date of such

general offer. Other offers of sale or sales made at prices different from the filed general offers were referred to in this agreement as a "discriminatory price" and it provided that such discriminatory price be filed immediately after becoming effective or not later than noon of the next business day.

The term "discriminatory price" was abandoned in the tag industry agreement of 1937 and, instead, this agreement referred to "general" and "restricted" offers. In this agreement a general offer was defined as an announcement to the trade generally, through customary channels, of a willingness to sell specified tags or tag products at specified prices, terms, and conditions of sale. Such general offers were to be mailed to the secretary not later than noon of the next business day following their effective date. The making of such general offer available for use in actual transactions was considered the effective date. A "restricted offer" was defined by said agreement to be a price, term, or condition of sale which is in any way more favorable to the purchaser to whom extended than the subscriber's general offer for the same or similar products or components.

The tag industry agreement of 1937 further provided that nothing therein contained should prevent any subscriber from announcing, through the agency of the secretary, his current or intended future price, provided that such announcements were plainly subject to change without prior notice and that there was no undertaking, expressed, or implied, to adhere to same.

PAR. 10. The tag industry agreement of 1937 differed from the other tag industry agreements in that it was an agreement entered into by and between the respondent members, who were designated as "subscribers." This agreement provided for the election of an executive committee, which acted as the governing body, with power to appoint a secretary and board of determination and to determine the manner and extent to which price information should be disseminated by the secretary. The respondent members, as subscribers to the tag industry agreement of 1937, elected the members of the executive committee of respondent institute as the executive committee of the tag industry agreement of 1937. This committee held meetings from time to time, at which it acted in a dual capacity as executive committee of respondent institute and as executive committee under the tag industry agreement. At such meetings, matters of pricing, price compilations, standardization, and dissemination of information were discussed and recommendations made for action by the members at the general meetings of the respondent Institute and the tag industry agreement subscribers. These general meetings were in many instances held in

the form of joint meetings, and in some instances the subscribers' meetings were held immediately following the general meeting of the respondent institute. All references to action taken by the executive committee hereinafter made will be to the executive committee acting in the dual capacity described above unless otherwise noted.

PAR. 11. Prior to April 19, 1938, all offers, both to private concerns and to governmental agencies, were immediately reported by respondent Frank H. Baxter to respondent members. At a meeting held on April 19, 1938, the executive committee recommended that all quotations, both to private concerns and governmental agencies, be filed with the secretary of the tag industry agreement within 24 hours after they had been transmitted but that the secretary should not disseminate this information to the members until advised, in the case of a private contract, that the matter had been closed and an order placed, or, in the case of quotations or bids to governmental agencies, 24 hours after the time announced for the opening of the sealed bids.

Pursuant to this action, respondent, Frank H. Baxter, withheld dissemination of information with reference to quotations or bids until an order had been placed by a private concern or the bids opened by a governmental agency. At that time full information as to bids and quotations was disseminated, including the quotations and bids of the unsuccessful, as well as the successful, bidders.

PAR. 12. The tag industry agreement of 1940 provided that the respondent members file with respondent, Frank H. Baxter, trading as Frank H. Baxter Associates, complete statements of their published list prices and terms, including policies regarding quantity differentials, trade classifications and discounts, credit terms, cash discounts, deferred and partial shipments, delivery terms, overruns and under-runs, samples, overshipments, free goods, special services, rebates or concessions of whatsoever nature, and complete specifications of their products. The agreement further provided that published list prices, terms, or conditions of sale might be revised and that report of such revision should be made to the Associates not later than the close of the business day following publication thereof. In addition, the respondent members, as subscribers to said agreement, were required, on the effective date thereof, to mail to Frank H. Baxter Associates duplicates of every invoice or other memorandum of shipment, on delivery of the products, and all credit memoranda applicable thereto. The respondent members were required to mail such duplicate invoices not later than the close of the business day following that on which the originals were mailed to their addressees.

While the tag industry agreement of 1940 made no reference to general and restricted offers the information required of the respondent members was sufficient to permit respondent, Frank H. Baxter, to make the necessary compilations and to report all particulars in the same manner as provided by the preceding agreement.

PAR. 13. All of the tag industry agreements provided for penalties, of not to exceed ten percent of the transaction involved, to be assessed against a respondent member for failure to file any price list, invoice, or restricted offer within the time provided for in said agreements. The respondent, Frank H. Baxter, or his duly authorized representatives were given access to the books and records of all the respondent members subscribing to the various agreements. During the operation of the latter agreements the respondent, Frank H. Baxter, caused periodic checks to be made of the books and records of the various respondent members by a representative of his office to determine if they were adhering to the published prices and reporting all deviations therefrom. Penalty proceedings were instituted, from time to time, by the respondent, Frank H. Baxter, as a result of such investigation of the books and records and also on complaints filed by various respondent members.

Under the tag industry agreements of 1935 and 1936 the respondent, Frank H. Baxter, was the sole authority in determining and assessing penalties. He decided all issues of violation arising from complaints made by himself and by subscribers and made findings of fact and decisions based upon his investigations. When violations were adjudged, said respondent, Frank H. Baxter, assessed the penalties in the amounts specified in the agreements, which usually amounted to 10 percent of the amount involved in the particular transaction. Under the tag industry agreement of 1937 the findings and decisions of respondent, Frank H. Baxter, were subject to review by a board of determination. The tag industry agreement of 1940 provided for review of the findings and decisions of respondent, Frank H. Baxter, by a board of arbitration. This board, however, was not fully established and, in practice, appeals from decisions of respondent, Frank H. Baxter, were made to the entire industry at some general meeting.

PAR. 14. All of the tag industry agreements provided for the distribution of information as to prices to such public agencies, distributors, and consumers or to any other interested party who might apply therefor and offer to pay the reasonable cost of compiling and distributing same. The 1940 agreement further provided that each subscriber should notify purchasers from him of the availability of

this information. In practice the respondent members gave only lip service to this provision and never adopted any practical plan whereby this information might be made available to buyers generally.

The attitude of respondent members is indicated by statement appearing in minutes of the meeting of the executive committee held March 23 and 24, 1937, which reads in part as follows:

It has been well known that we have, for almost 2 years now, disseminated to members of the industry who have not signed the agreement, the same information that we have disseminated to signers. This has been done in an attitude of cooperation during which the nonsigners could have ample opportunity to judge as to the merits of that agreement. The tag industry agreement, of course, makes no provision for such dissemination. The agreement does provide an opportunity for a truly interested party to obtain the information by offering to pay a reasonable cost of the same, but "reasonable cost" for a tag manufacturer appears to be complete compliance with the agreement. That is the opinion of the institute counsel and it was the spirit of the members present at the meeting that the party of the second part should insist upon such compliance.

There is no evidence that prior to the 1937 agreement any information as to prices was ever made available to purchasers or consumers or that they were ever advised that such information was available. At a meeting of the executive committee held May 20 and 21, 1937, the respondent, Frank H. Baxter, as executive director of the respondent institute, was instructed to communicate with Dun & Bradstreet for the purpose of having it act as public depository for the price-filing information issued. This action of the executive committee was later approved at a joint general meeting of the Tag Manufacturers Institute and the signers of the tag industry agreement held in June 1937.

At a meeting of a subscribers' committee of the tag industry agreement held November 4, 1937, the type of publicity regarding use of Dun & Bradstreet offices as public depositories for agency compilations was referred to the committee on procedure for further study and report.

At about this time, or shortly prior thereto, compilations of prices were furnished to the regional offices of Dun & Bradstreet located at St. Louis, Mo.; Philadelphia, Pa.; Chicago, Ill.; Cleveland, Ohio; New York, N. Y.; Boston, Mass.; Atlanta, Ga.; Dallas, Tex.; Washington, D. C.; and San Francisco, Calif. These compilations remained on file at these offices for approximately 2 years. However, while these compilations were available for inspection by interested parties at these various offices, there is no evidence that any type of publicity was developed to inform purchasers or consumers of the availability of this information and no evidence as to the extent, if any, that it was used by such purchasers.

At about the time the 1940 tag industry agreement was adopted, the filing of compilations with Dun & Bradstreet was discontinued and the respondent members adopted instead the use of a statement on their respective invoices reading as follows:

In common with most tag manufacturers, we file up-to-date records of tag prices with Frank H. Baxter Associates, 370 Lexington Avenue, New York City, where they are open for inspection.

Pursuant to this action the respondent, Frank H. Baxter, kept a compilation of prices available in his office at New York City for examination by any interested party. While the record indicates that this compilation may have been occasionally examined by purchasers, this plan served no useful purpose for purchasers and consumers located outside the New York area and could not be considered as making this price information available to buyers generally.

PAR. 15. The tags sold by the respondent members fall roughly into two classes: plain stock tags and made-to-order tags. The plain stock tags were made from a variety of materials, which varied in constituent fiber, thickness, strength, and color. They were also sold in various sizes, quantities, and shapes as shipping tags, marking tags, cotton tags, pin tickets, metal-rim tags, and others.

The made-to-order tags are those which have been processed by printing, stringing, numbering, attaching wires, stapling, pasting, patching, punching, supplying deadlocks, gumming, and the like. Each of the special features had its variations of quality and process, which represented differences in cost. In order to determine the total price for made-to-order tags it was necessary to add to the price of plain stock tags the various additional features specified in the made-to-order tag. Statement of total price for made-to-order tags was not regarded by respondents as giving sufficient information to furnish a definite basis for price and value comparisons and was therefore of little or no value in reflecting market or price conditions.

PAR. 16. In the course of reporting or disseminating price and other information under the various tag industry agreements, the respondent, Frank H. Baxter, with the assistance and cooperation of the respondent members, created a very ingenious system of compiling, correlating, and reporting, to each of the respondent members, the price information filed by them with him. This system included the building up in the office of respondent, Frank H. Baxter, under his direction and supervision, of a general-offer price book, which said respondent then disseminated to each of the respondent members and which they in turn used in making up, calculating, and determining their respective price quotations. This general-offer price book was

in the form of a loose-leaf record so that pages containing new data, prepared by respondent, Frank H. Baxter, could be substituted or inserted from time to time.

PAR. 17. In the compilation of the general-offer price book, the respondent, Frank H. Baxter, was materially assisted by the standardization of the component parts of tags and tag products developed and adopted under the auspices of the respondent institute. Standardization problems on both old and new products were taken up at various meetings of respondent Institute and its committees, where discussions were held and action taken thereon. A number of committees were established to deal with the problems of standardization, the principal of which was the technical committee of the respondent institute. There were also other special committees appointed to deal with special problems and specific classes of tags.

As a result, standards for numerous essential tag materials were adopted by respondent members so as to render the price information supplied to, and disseminated by respondent, Frank H. Baxter, definite within the range of small tolerances. Materials were specified minutely with respect to content, weight, thickness, and strength. Sizes were standardized for shipping tags and sizes and shape specified for marking tags. Strings were standardized with respect to content, ply, weight, length, and strength.

The effect of such standardization activities is indicated by statement appearing in the minutes of the general meeting of the Tag Manufacturers Institute held on June 9, 1939, in which it was stated :

The first accomplishment that Mr. Dennison stressed was that of standardization of materials in the tag industry. * * * The aid to open price reporting that standardization of materials has given was impressed upon the meeting.

PAR. 18. When respondent members used materials which differed from the standards adopted by them in cooperation with respondent institute beyond the tolerance percentages provided, they were required to report such departures as a price difference in price elements. Suppliers were required to furnish detailed statements of tests of their materials, and these reports were made available for use in investigation of violations of the agreement through failure to report departures from standard.

PAR. 19. In order to render the open price-reporting plan adopted by the respondent members more effective and to permit a respondent member to immediately and definitely determine the price at which another respondent member was selling any particular tag or tag product, the respondent members, by mutual agreement and understanding, act-

ing in cooperation with respondent institute and its various committees, classified the various tags and tag products under special designations. These special or standard designations were incorporated in the price compilations disseminated by the respondent, Frank H. Baxter, and were used as a basis for his compilations. Many of the respondent members continued to use their own designations for various grades of tags. In order to identify such tags with the special or standard designations used in the price compilations, the respondent, Frank H. Baxter, published a tabulation designated "comparative stock designations" as part of his price compilation or general-offer price book, by which a designation used by any respondent member to describe a specific tag could be identified with the special or official designation in the price compilation or general-offer price book, used by the respondent, Frank H. Baxter, in disseminating price information to the various respondent members.

PAR. 20. The prices of each of the respondent members which were contained in the general-offer price book distributed by respondent, Frank H. Baxter, were the prices at which said respondent members were offering and selling their tags and tag products to the trade generally, and were so considered by the respondent members, and constituted both the current and future prices of said respondent members. When filed with respondent, Frank H. Baxter, these prices became and remained the prices for tags and tag products of the respondent member so filing, until revised by notice to respondent, Frank H. Baxter, and the filing with him of a revised schedule. These general prices usually remained on file without change for several months and sometimes for a year or more.

PAR. 21. The only prices on completed tags, as such, disseminated by the respondent, Frank H. Baxter, by said general-offer price book were those relating to plain stock shipping tags without strings, wires, fasteners, or printing. Such tags constituted only a small portion of the tags and tag products sold by the industry. The principal information in said general-offer price books related to the price of the various elements entering into the manufacture of completed made-to-order tags. The combination of the prices for the different elements entering into the manufacture of the completed tag permitted computation of the price of the completed tag and permitted a respondent member manufacturing a large variety of tags to know the price of other respondent members for the same or similar tag by reference to the price information compiled and disseminated by respondent, Frank H. Baxter. By reference to the data and tabulations supplied

by the respondent, Frank H. Baxter, in said general-offer price book, any respondent member could tell the number and identity of respondent members adhering to any particular price, term, or condition of sale for any particular tag or component thereof. By reference to the data disseminated by respondent, Frank H. Baxter, with reference to restricted special or off-list offers, any respondent member could ascertain the extent to which any particular respondent member was adhering to, or deviating from, its published prices or terms of sale.

PAR. 22. Variations of the price quotations of any respondent member from its price list on file with respondent, Frank H. Baxter, were considered as "restricted" or "special" offers or sales off list price. Such variations were usually price quotations made on a particular job or piece of business and applicable to that particular instance only. The respondent members were required to immediately file such special prices with respondent, Frank H. Baxter, who in turn immediately disseminated this information to all of the respondent members on special forms, sometimes referred to as "pink sheets." This report or pink sheet served to inform all the respondent members that a special price had been allowed, with the identity of the tag or tag product, full details of the price, the name of the seller, and general location of the buyer.

PAR. 23. The special prices or off-list sales made by the respondent members amounted to approximately 25 percent of the total business. In many of these sales the differences in price and nature of sale were such as to be inconsequential and not of general interest. A respondent member in filing an off-list or restricted offer with respondent, Frank H. Baxter, for dissemination by him was in effect serving notice upon the respondent members competing with him that this was an unusual act and limited in nature and that he was not, in general, varying from his filed price list. Only to the extent that a respondent member repeated such off-list sales did such action affect the general price structure. Consequently, the publicity given to off-list sales among respondent members tended to restrain them from cutting prices and to cause them to maintain and adhere to their filed price lists as published in the general-offer price book. Such publicity also informed all of the respondent members of the price activity of any particular member and placed the respondent members in a position to take retaliatory action if unsatisfactory pricing policies were followed by any particular respondent. This was all the more effective in view of the dominant position held in the tag industry

by the respondent members Dennison Manufacturing Co., the Reymann Manufacturing Co., Inc., the Denney Tag Co., Inc., and American Tag Co.

PAR. 24. The effect of the operation of the open price-reporting plan under the agreements and in the manner hereinabove described has resulted in a substantial uniformity of prices for tags and tag products among the respondent members.

Such uniformity of prices is clearly indicated by examination of the prices, terms, and conditions of sale set out in the general-offer price books issued by the respondent, Frank H. Baxter. In addition, a study was made by I. Chance Buchanan, who was called as a witness for the Commission in this proceeding. This witness studied and compared the offers of each of the respondent members for a selected test period and made a comparison of the prices reflected in the compilation set forth in the general-offer price books issued by the respondent, Frank H. Baxter, showing compilations of prices, terms, and conditions of sale as of May 12, 1939, and as of August 27, 1940. In making this study the witness prepared a series of tabulations showing the results of his investigation. Summarizing the results shown by these tabulations, it appears that at the beginning of the test period, May 12, 1939, the compilation reflected 96.8 percent uniformity and at the end of the period, August 27, 1940, the compilation reflected 97.5 percent uniformity of general-offer filed prices among the respondent members.

PAR. 25. The aforesaid understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof as hereinabove found, have had, and do have, the effect of unduly lessening, restricting, restraining, and suppressing competition in the sale and distribution of tags and tag products in commerce among and between the several States of the United States, and of depriving the public of the full benefit of competition in said commerce between and among the respondent members and between them and their competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of competitors of respondents and of the public and have a tendency to and have actually hindered and prevented price competition between and among the respondents in the sale and distribution of tags, pin tickets, tag products, and similar marking and

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pricing devices in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in said products; and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of the respondents, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Tag Manufacturers Institute, an unincorporated association, and its officers, directors, agents, and employees; and Frank H. Baxter, individually and as an officer of Tag Manufacturers Institute, and his representatives, agents, and employees; and Acme Tag Co., a corporation, Allen-Bailey Tag Co., Inc., a corporation, American Tag Co., a corporation, American Tag Co. of New Jersey, a corporation, Atlas Tag Co., a corporation, Badger Tag Co., Inc., a corporation, A. C. Baldwin & Sons, a corporation, Campbell Box & Tag Co., a corporation, Central Tag Co., a corporation, Cupples-Hesse Envelope & Litho. Co., a corporation, Dancyger Manufacturing Co., a corporation, the Denney Tag Co., Inc., a corporation, Dennison Manufacturing Co., a corporation, Ennis Tag & Printing Co., a corporation, Haywood Tag Co., a corporation, International Tag & Salesbook Co., a corporation, Keystone Tag Co., a corporation, A. Kimball Co., a corporation, Marion Manufacturing Co., a corporation, Michigan Tag Co., a corporation, Midwest Tag Co., a corporation, the National Tag Co., a corporation, the Reyburn Manufacturing Co., Inc., a corporation, the Robinson Tag & Label Co., a corporation, Rockmont Envelope Co., a corporation, Salisbury Manufacturing Co., a corporation, the Standard Envelope Manufacturing Co., a corporation, which sometimes operates under the unincorporated trade name of Sterling Tag Co., Tagcraft Corp., a corporation, and Waterbury Buckle Co., a corporation, which sometimes operates under the unin-

corporated trade name of Waterbury Tag Co., and their respective officers, agents, representatives, and employees; and Howard W. Eastman and Julia Eastman, copartners trading as Eastman Tag & Label Co., and J. L. May, J. C. May, and Frank May, copartners trading as J. L. May Co., and their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of tags, pin tickets, and other similar marking and pricing devices, hereinafter referred to as "tag products," in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining prices, terms, or conditions of sale for tags or tag products or adhering to, or promising to adhere to, the prices, terms, or conditions of sale so fixed.

2. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of the respondent Tag Manufacturers Institute, respondent, Frank H. Baxter, or any other medium or agency for the purpose of discussing or devising methods of fixing, establishing, or maintaining prices, terms, or conditions of sale for tags or tag products.

3. Expressly or impliedly subscribing to, or carrying out, any past, presently existing, or new agreement to establish, maintain, or continue any plan for the purpose or with the effect of informing or advising any of the manufacturing respondents or any other manufacturer of tags or tag products as to the price, terms, or conditions of sale at or upon which any manufacturing respondent or other seller of tags or tag products expects to make a sale or sales of tags or tag products.

4. Exchanging, distributing, or relaying among the manufacturing respondents, or any of them, or through respondent tag manufacturers institute, respondent, Frank H. Baxter, or through any other medium or central agency, information as to current prices for the purpose or with the effect of fixing or maintaining prices, terms, or conditions of sale for tags or tag products.

5. Exchanging, distributing, or relaying among the manufacturing respondents or any of them, or through respondent Tag Manufacturers Institute, respondent, Frank H. Baxter, or through any other medium

or central agency, information concerning prices charged particular customers or information concerning sales or shipments of tags or tag products when the identity of the manufacturer, seller, or purchaser can be determined or disclosed through such information and which has the capacity or tendency of aiding in securing compliance with the prices, terms, or conditions of sale as announced by any one or more of the manufacturing respondents.

6. Collectively investigating, reviewing, considering, or acting upon, either directly or through respondent Tag Manufacturers Institute, respondent, Frank H. Baxter, or any other medium or central agency, the act of any seller of tags in making a sale at prices, terms, or conditions of sale different from those announced, exchanged, or relayed by such seller to other respondents directly, through respondent, Frank H. Baxter, or otherwise.

7. Taking any action for the purpose or with the effect of penalizing in any way, through the assessment or collection of liquidated damages or the imposition of any other penalty upon or against any seller of tags or tag products for failure to file with or exchange among respondents, directly or through respondent, Tag Manufacturers Institute, respondent, Frank H. Baxter, or any other medium or central agency, information concerning prices, terms, or conditions of sale expected to be charged by such seller or information concerning prices which such seller has charged or is currently charging any one of its customers.

8. Taking any action having the purpose, capacity, or tendency to aid in securing on the part of any seller of tags or tag products compliance with its announced prices, terms, or conditions of sale.

9. Formulating, establishing, putting into operation, continuing, or using in any way any "open price reporting plan" or any price reporting plan which has the tendency or the effect of depriving the public of any benefit of competition in price between and among the manufacturing respondents or between any of them and any other manufacturer or seller of tags or tag products.

10. Authorizing or permitting the examination of the books or other records of the manufacturing respondents by any agent of respondent Tag Manufacturers Institute, respondent, Frank H. Baxter, or by any agent of the respondents, or any of them, so as to permit or make possible a collective or cooperative consideration or comparison through any common agent of the prices, terms, or conditions of sale at which the respective manufacturing respondents have made sales, are currently making sales, or expect to make sales.

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11. Employing or utilizing respondent, Frank H. Baxter, respondent, Tag Manufacturers Institute, or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts or practices prohibited by this order.

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

Commissioner Mason not participating.

IN THE MATTER OF

WILLIAM A. WICKLAND AND MYNDALL CAIN WICKLAND,
DOING BUSINESS AS THE MYNDALL CAIN HOUSE OF
BEAUTYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5466. Complaint, Oct. 10, 1946—Decision, May 19, 1947*

Where two partners engaged in the interstate sale and distribution of their "Myndall Cain" line of cosmetic products; through advertisements in pamphlets, circulars, newspapers and periodicals, and by radio continuities, directly and by implication—

- (a) Falsely represented that use of their "Gardenia Cleansing Oil" was a natural way to complexion loveliness; that it would enrich and revitalize the skin; that all lovely women with beautiful young complexions used beauty oils and that only their said cleansing oil could give the user thereof clear, transparent beauty; and that they had brought to America a new method of using beauty oils, use of which would cleanse and enrich the user's complexion; and
- (b) Falsely represented that said product was composed of richly blended oils which were as near the skin's natural secretions as scientists can produce and that it replaced the natural oils in the skin whenever they are absent therefrom, irrespective of the cause; that the product was an outstanding scientific triumph or achievement and that all other methods of cleansing a person's skin were old fashioned; that it would relieve sallowness and eliminate large pores, penetrate deeply into the skin, flush away all dirt and foreign matter in the skin, bring deep pore purity to the user's skin, and that a single treatment would make the complexion clearer;
- (c) Falsely represented that their "Nu-Rich-ing Oil" was composed of ingredients which are a new discovery in cosmetics and that its use would nourish the skin; that the skin would absorb it; that it penetrated to the third layer of the skin tissue and replenished the parched skin cells with nourishment and protected the skin against drying and parching under all conditions; that it was rich in honey, would replenish the natural oils in the skin and act as a natural refreshment to the skin; and that its use would eliminate wrinkles and give the skin new life and color;
- (d) Falsely represented that their "Facial Oil" relieved crinkling and fine lines in the skin, was a natural way to care for the skin, and penetrated into and was absorbed by it; that use thereof would eliminate sallowness and relieve dryness and flakiness of the skin, give it new life and color and a smooth texture, and that only their said product and their "Nu-Rich-ing Oil" could achieve these results; and
- (e) Falsely represented that said product was made from rare, precious oils and that Myndall Cain discovered the formula therefor while studying in the beauty centers of Europe and America; that it was like a doctor's prescription and was as effective as a doctor's prescription would be for any given skin condition for any particular individual, and was effective even with the