

Syllabus

IN THE MATTER OF

AMERICAN SHUTTLE MANUFACTURERS' ASSOCIATION
ET AL.

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

Docket 5593. Complaint, Oct. 7, 1948—Decision, Apr. 6, 1949

Where 11 corporate and partnership concerns, which, as of January, 1947, included all but about 4 of the manufacturers in this country of shuttles—commodities specially constructed in a wide variety of sizes to customers' specifications for weaving cloth; made and sold about fifty percent of such products; were in competition except insofar as competition had been hindered as below set out; and were members of an association which they had created as successor to a much older organization, and which they made use of in furtherance of the unlawful acts and practices below set forth; Acting among themselves and through their said association, and beginning more than 10 years ago, continuously engaged in and carried out an unlawful understanding and conspiracy, with the intent and effect of eliminating competition in the interstate sale and distribution of said products; and pursuant thereto—

- (a) Concertedly established, fixed and maintained prices, discounts and extra charges to be applied by each in the sale and distribution of shuttles;
- (b) Agreed to and did from time to time hold meetings under the auspices and supervision of duly elected representatives and agents of their said association, at which they informed each other concerning the intimate details of the business of each, including prices to be quoted and charged in current and future sales transactions; and
- (c) Exchanged among themselves current and future quotations of prices, terms and conditions of sale offered to the trade;

Whereby they acquired a common understanding of what each was expected to do in the establishment and maintenance of prices and pricing policies, and there existed a tacit understanding among them that they would and should adhere to the price lists or quotations exchanged and discussed until different price lists and quotations were issued or exchanged;

Capacity, tendency and effect of which understanding, etc., and acts and practices performed pursuant thereto, were to substantially restrain and eliminate competition between and among them in the sale and distribution of said products in commerce; to unreasonably restrict and restrain trade and commerce therein; and to tend dangerously to create in them a monopoly in the sale and distribution of shuttles:

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

Mr. Paul R. Dixon for the Commission.

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Hale & Dorr, of Boston, Mass., for respondents generally, with the exception of—

Montgomery, McCracken, Walker & Rhoads, of Philadelphia, Pa., for James H. Billington Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, as amended, the Federal Trade Commission, having reason to believe that the individuals, partnership, corporations and association named in the caption hereof, and hereinafter described and referred to as respondents, have violated the provisions of section 5 of the said act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against each of said parties, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Shuttle Manufacturers Association, sometimes hereinafter referred to as respondent association, is an unincorporated voluntary trade association organized to promote the mutual interests of its members. It was organized in 1933. Its headquarters now are, and have been since his election to office on July 11, 1947, in the offices of its secretary, Mr. Edward Seibert, in care of Penn Reed & Harness Co., Allentown, Pa. The Association serves its members as an instrumentality or vehicle for joint and cooperative action among themselves. Its membership has included practically all manufacturers and sellers of shuttles located and doing business in this country, 11 of whom are named as respondents in the caption hereof. From time to time this membership has included others engaged in like pursuits.

PAR. 2. The manufacturers of shuttles named in the caption hereof as respondents, and sometimes hereinafter referred to as manufacturing respondents, are more fully described as follows:

(a) United States Bobbin & Shuttle Co. is a Rhode Island corporation, with its principal office and place of business located at Lawrence, Mass.

(b) Lowell Shuttle Co. is a Massachusetts corporation, with its principal office and place of business located at Lowell, Mass.

(c) The David Brown Co. is a Massachusetts corporation with its principal office and place of business located at Lawrence, Mass.

(d) New Bedford Shuttle Co. is a New Jersey corporation, with its principal office and place of business located at 871 Rockdale Avenue, New Bedford, Mass.

(e) Ruth Burchill Forrest is an individual, doing business as Penn Reed & Harness Co., with her principal office and place of business located at Allentown, Pa.

(f) Pavia Shuttle Co. is a New Jersey corporation, with its principal office and place of business located at 415 Auburn Street, Allentown, Pa.

(g) Watson-Williams Manufacturing Co. is a Massachusetts corporation, with its principal office and place of business located at Millbury, Mass.

(h) Edward F. Atkinson is an individual, doing business as Jacob Walder Co., with his principal office and place of business located at 20-22 California Avenue, Paterson, N. J.

(i) James H. Billington Co. is a Pennsylvania corporation with its principal office and place of business located at 1533 North Randolph Street, Philadelphia, Pa.

(j) Mrs. Vaughn S. Hall, Annie L. Storms, Sarah A. Roe, Mary S. Warburton, Albert H. Moorehead, John Hall, Abram T. Hall, and James Warburton are copartners, doing business as I. A. Hall & Co., with their principal office and place of business located at 24-36 Hamilton Avenue, Paterson, N. J.

(k) Steel Heddle Manufacturing Co. is a Pennsylvania corporation with its principal office and place of business located at 2110 West Allegheny Avenue, Philadelphia, Pa. It conducts its manufacture of shuttles at its southern shuttle division plant, which is located at Greenville, S. C., from which it makes sales of shuttles and related products in interstate commerce.

PAR. 3. Manufacturing respondents in the regular course of their business in the sale of shuttles, caused the same to be shipped and transported from the various points of production in certain respective States through and into other States of the United States. They are in competition among themselves and resell such products to customers except insofar as such competition has been hindered, frustrated, lessened, restricted, restrained, or eliminated as hereinafter alleged. Respondent Association is not engaged in commerce but is engaged in aiding and cooperating with manufacturing respondents in carrying out said unlawful methods as alleged herein, which directly and substantially affect competition among its members.

PAR. 4. The commodity with which this proceeding is concerned is a shuttle. It is specially constructed in a wide variety of sizes from well-seasoned dogwood and persimmon blocks, to customer specifications for use in the weaving of cloth. It is therefore an important item in commerce and trade. Said respondent manufacturers manu-

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facture a substantial and important part of all replacement shuttles produced in the United States.

PAR. 5. In 1890 the American Shuttle Co., with its principal office and place of business then located at Boston, Mass., was organized by the New England shuttle manufacturers. This company, until dissolved some time about 1924, operated as an Association for the benefit of shuttle manufacturers. Its membership consisted, among others, of several of the respondent manufacturers named herein or their predecessors. Member manufacturers were required to submit to it their sales records, production schedules, discount schedules and all price information, which in turn was conveyed to other members of the Company. Members who were found selling shuttles at less than their filed prices were required to pay a fine to the Company and such fine was prorated at stated periods to other members.

Thereafter respondents, herein named, organized the respondent Association and continued to exchange confidential price information more specifically set forth and alleged in paragraph six below.

PAR. 6. For more than 10 years last past and continuing to the present time, respondents, in cooperation between and among themselves, have maintained a combination to hinder, frustrate, suppress, lessen, restrain, and eliminate competition in the sale and distribution of shuttles.

Pursuant to, and in furtherance of the aforesaid combination, respondents, in cooperation between and among themselves, have:

(1) Agreed to fix and maintain, and have fixed and maintained prices, discounts and extra charges to be applied in the sale and distribution of shuttles;

(2) Agreed to hold and have held meetings, from time to time, under the auspices and supervision of duly elected representatives and agents of respondent Association, during the course of which, respondent manufacturers advised and informed each other concerning the intimate details of the business of each, including prices to be quoted and charged on current and future sales transactions by each of the manufacturing respondents. Through this exchange of information, all were informed and had a common understanding of the prices and pricing policies expected to be used by each;

(3) Manufacturing respondents exchanged among themselves current and future quotations of prices, terms and conditions of sale offered to the trade. Through this exchange of information, all were informed and had a common understanding of the prices and pricing policies expected to be used by each.

PAR. 7. When the manufacturing respondents acquired, as hereinbefore alleged, a common understanding of what each was expected to do in the establishment and maintenance of prices and pricing policies, there existed under such circumstances an agreement, understanding or meeting of the minds of the manufacturing respondents that they would and should adhere to the price lists or price quotations exchanged and discussed, as hereinbefore alleged, until and unless other and different price lists and quotations were issued and exchanged.

PAR. 8. The acts, practices, methods, agreement and combination of the respondents, as hereinbefore alleged, are all to the prejudice of the public; have a dangerous tendency to, and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the sale of shuttles in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said shuttles; have a dangerous tendency to create in respondents a monopoly in the sale and distribution of such shuttles and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 7, 1948, issued and subsequently served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. On November 12, 1948, the respondents filed their joint answer to said complaint, in which they admitted, with certain exceptions, all of the material allegations of fact set forth therein, waived all hearings as to said facts, and consented that the Commission may, without the taking of evidence and without further procedure, make its findings as to the facts, including inferences which it may draw from the facts admitted, and issue and serve upon the respondents an order to cease and desist from the acts, practices, and methods alleged in the complaint to be in violation of law.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, a stipulation of facts supplementing said answer entered into by and

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between counsel for the respondents and counsel in support of the complaint, and a motion proposing disposition of the case filed by counsel in support of the complaint; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent American Shuttle Manufacturers' Association, hereinafter sometimes referred to as "respondent association," is an unincorporated voluntary trade association, with its headquarters in the office of its secretary, Edward Siebert, in care of Penn Reed & Harness Co., Allentown, Pa. Said respondent was organized in 1933 to promote the mutual interests of its members, and since that time has served its members as an instrumentality or vehicle for joint and cooperative action among themselves. The membership of the association consists of manufacturers and sellers of shuttles located in various States of the United States, and as of January 1947 included 11 out of a total of about 15 shuttle manufacturers in the country. All of said 11 manufacturers except two, namely, U. S. Bobbin & Shuttle Co. and Jas. H. Billington Co., both of which withdrew in 1948, are still members of the association. From time to time the membership of the association has also included others engaged in the manufacture of shuttles.

The respondent association is not itself engaged in commerce, but, prior to January 1947, it was engaged in aiding and cooperating with the other respondents named in paragraph two hereof in carrying out the unlawful acts and practices hereinafter found which have directly and substantially affected competition among its members.

PAR. 2. (a) Respondent U. S. Bobbin & Shuttle Co. (named in the complaint as United States Bobbin & Shuttle Co.) is a Rhode Island corporation, with its principal office and place of business located at Lawrence, Mass.

(b) Respondent Lowell Shuttle Co. is a Massachusetts corporation, with its principal office and place of business located at Lowell, Mass.

(c) Respondent The David Brown Co. is a Massachusetts corporation, with its principal office and place of business located at Lawrence, Mass.

(d) Respondent New Bedford Shuttle Co. is a New Jersey corporation, with its principal office and place of business located at 871 Rockdale Avenue, New Bedford, Mass.

(e) Respondent Ruth Burchill Forrest is an individual, doing business as Penn Reed & Harness Co., with her principal office and place of business located at Allentown, Pa.

(f) Respondent The Pavia Shuttle Co. (named in the complaint as Pavia Shuttle Co.) is a New Jersey corporation, with its principal office and place of business located at 415 Auburn Street, Allentown, Pa.

(g) Respondent Watson-Williams Manufacturing Co. is a Massachusetts corporation, with its principal office and place of business located at Millbury, Mass.

(h) Respondent Edward F. Atkinson is an individual, doing business as Jacob Walder Co., with his principal office and place of business located at 20-22 California Avenue, Paterson, N. J.

(i) Respondent Jas. H. Billington Co. (named in the complaint as James H. Billington Co.) is a Pennsylvania corporation, with its principal office and place of business located at 1533 North Randolph Street, Philadelphia, Pa.

(j) Respondent Mrs. Vaughn S. Hall, Annie L. Storms, Sarah A. Roe, Mary S. Warburton, Albert H. Morehead, John Hall, Abram T. Hall, and James Warburton are copartners, doing business as I. A. Hall & Co., with their principal office and place of business located at 24-36 Hamilton Avenue, Paterson, N. J.

(k) Respondent Steel Heddle Manufacturing Co. is a Pennsylvania corporation, with its principal office and place of business located at 2110 West Allegheny Avenue, Philadelphia, Pa. It conducts its manufacture of shuttles at its Southern Shuttle Division Plant, which is located at Greenville, S. C., from which it makes sales of shuttles and related products in interstate commerce.

All of the respondents named in subparagraphs (a) to (k) inclusive, hereinafter sometimes collectively referred to as respondent manufacturers, are engaged in the manufacture and in the sale and distribution of shuttles, and prior to January 1947 all of said respondent manufacturers were members of the respondent association. The record discloses that U. S. Bobbin & Shuttle Co. withdrew from the association as of June 10, 1948, and that Jas. H. Billington Co. withdrew therefrom as of July 14, 1948.

PAR. 3. In the course and conduct of their respective businesses, the respondent manufacturers cause their products, when sold, to be shipped from their respective places of business to the purchasers thereof located in various States of the United States other than the States of origin of such shipments. Said respondent manufacturers

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maintain a constant course of trade in said products in commerce among and between the various States of the United States.

Except in so far as competition between and among said respondent manufacturers has been hindered, frustrated, lessened, restricted, restrained or eliminated by the understanding, agreement, combination or conspiracy, and the acts, things, practices and methods done and carried out pursuant thereto and in furtherance thereof, as hereinafter found, each of said respondent manufacturers has been and is in competition with one or more of the other respondent manufacturers in seeking to sell and selling its products in commerce.

PAR. 4. Shuttles, the commodity with which this proceeding is concerned, are specially constructed in a wide variety of sizes from well-seasoned dogwood and persimmon blocks to customers' specifications for use in the weaving of cloth. They are therefore an important item of commerce and trade. The respondent manufacturers named in Paragraph Two hereof manufacture and sell approximately 50 percent of all such products produced and sold in the United States.

PAR. 5. In 1890 an organization known as the American Shuttle Company was formed by the New England shuttle manufacturers, and during its existence this company maintained its principal office and place of business in Boston, Mass. From the date of its creation until its dissolution sometime about 1924, the American Shuttle Co., the membership of which included four of the respondent manufacturers, or their predecessors, operated as an association for the benefit of shuttle manufacturers. After dissolution of the American Shuttle Co., the respondent manufacturers organized the respondent American Shuttle Manufacturers' Association, and for a number of years said respondent manufacturers made use of the facilities of said association for actively advising, assisting and cooperating with each other in furtherance of the unlawful acts, practices and things more specifically set forth in paragraph six hereof.

PAR. 6. More than 10 years ago the respondent manufacturers, acting between and among themselves and through and by means of the respondent association and its officers, representatives and employees, entered into, and at all times thereafter prior to January 1947 they continuously engaged in and carried out a wrongful and unlawful understanding, agreement, combination and conspiracy for the purpose and with the effect of hindering, frustrating, suppressing, lessening, restraining and eliminating competition in the sale and distribution of shuttles in trade and commerce between and among the various States of the United States. Pursuant to and in furtherance of said understanding, agreement, combination and conspiracy, the respond-

ent manufacturers, acting in cooperation with each other in the manner and by the methods herein set forth, did and performed the following acts, practices and things:

(a) they concertedly established, fixed, and maintained prices, discounts, and extra charges to be applied by each of them in the sale and distribution of shuttles;

(b) they agreed to hold and from time to time did hold meetings under the auspices and supervision of duly elected representatives and agents of the respondent association, during the course of which they advised and informed each other concerning the intimate details of the business of each, including prices to be quoted and charged in current and future sales transactions by each of said respondent manufacturers. Through this exchange of information all of said respondents were informed and had a common understanding of the prices and pricing policies expected to be used by each;

(c) they exchanged among themselves current and future quotations of prices, terms, and conditions of sale offered to the trade; and through this exchange of information all of said respondents were informed and had a common understanding of the prices and pricing policies expected to be used by each.

PAR. 7 As a result of the aforesaid acts and practices, the respondent manufacturers, acting in the manner and by the methods stated, acquired a common understanding of what each was expected to do in the establishment and maintenance of prices and pricing policies, and there existed under such circumstances a tacit agreement, understanding, or meeting of the minds among said respondent manufacturers that they would and should adhere to the price lists or price quotations exchanged and discussed as stated in Paragraph Six until and unless other and different price lists and quotations were issued and exchanged.

PAR. 8. The capacity, tendency, and effect of the understanding, agreement, combination, and conspiracy entered into and carried out by the respondents named herein, as stated above, and the acts and practices done and performed pursuant thereto and in furtherance thereof, as set out in the preceding paragraphs, have been to substantially lessen, restrict, restrain, suppress and eliminate competition between and among the respondent manufacturers in the sale and distribution of shuttles in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act; to unreasonably restrict and restrain trade and commerce in such products; and have had a dangerous tendency to create in the respondent manufacturers a monopoly in the sale and distribution of shuttles.

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CONCLUSION

The acts and practices of the respondents as herein found were all to the prejudice and injury of the public and of competitors of the respondent manufacturers and constituted unfair methods of competition in commerce and unfair 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, the joint answer of the respondents, in which answer said respondents admit, with certain exceptions, all of the material allegations of fact set forth in the complaint and state that they waive all intervening procedure and further hearings as to said facts, and a stipulation of facts supplementing the answer, entered into by and between counsel for the respondents and counsel in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the corporate respondents U. S. Bobbin & Shuttle Co., Lowell Shuttle Co., The David Brown Co., New Bedford Shuttle Co., The Pavia Shuttle Co., Watson-Williams Manufacturing Co., Jas. H. Billington Co., and Steel Heddle Manufacturing Co., and their officers, and Ruth Burchill Forrest, individually and doing business as Penn Reed & Harness Co., Edward F. Atkinson, individually and doing business as Jacob Walder Co., and Mrs. Vaughn S. Hall, Annie L. Storms, Sarah A. Roe, Mary S. Warburton, Albert H. Morehead, John Hall, Abram T. Hall and James Warburton, individually and as copartners doing business as I. A. Hall & Co., and said respective respondents' agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of shuttles, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common course of action, understanding, agreement, combination or conspiracy between or 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, practices or things:

(1) Establishing, fixing or maintaining prices, terms, or conditions of sale, for said products, or adhering to or promising to adhere to any price, terms or conditions of sale so established, fixed or maintained.

(2) Holding or participating in any meeting, discussion or exchange of information among themselves, or under the auspices of the American Shuttle Manufacturers' Association, or any of its officers or employees, or any other medium or central agency, for the purpose of discussing or with the effect of planning or devising methods of fixing, establishing or maintaining prices, terms or conditions of sale for said products.

(3) Exchanging, distributing or relaying among themselves, or any of them, or through the American Shuttle Manufacturers' Association, or any of its officers or employees, or any other medium or central agency, price lists or other information showing current or future prices, terms or conditions of sale for said products, or other information concerning prices, terms or conditions of sale to be charged or offered by any respondent manufacturer in any future sales transaction.

(4) Formulating or putting into operation any other plan or practice which has the purpose or the tendency or effect of fixing prices for the products manufactured by the respondent manufacturers or of otherwise restricting, restraining, or eliminating competition in the sale and distribution of such products.

(5) Employing or utilizing the American Shuttle Manufacturers' Association, or any of its officers or employees, or any other medium or central agency, as an instrumentality, vehicle or aid in performing or doing any of the acts or practices prohibited by this order.

It is further ordered, That the respondent, American Shuttle Manufacturers' Association, and its officers, agents, representatives, and employees, do forthwith cease and desist from knowingly aiding, assisting, advising, or cooperating with the aforesaid respondents, or any of them, in performing any of the acts or practices or doing any of the things prohibited in the paragraphs numbered (1) to (5), inclusive, of this order.

It is further ordered, That each of the respondents shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
RITTER BROTHERS, INC.

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

Docket 5341. Complaint, June 26, 1945—Decision, May 3, 1949

The phrase "Blue Ribbon"—as respects the charge that, as used in the instant case, it represents or implies that the products concerned have been awarded a trophy or prize in a competitive contest, and the opposing contention that it has no significance other than to impute quality or merit to the product thus designated—is not, in the view of the Commission, misleading if used alone and unaccompanied by other words suggestive of such a contest or award for excellence in such connection, such as "trophy" or "champion"; but is misleading, it appears, when accompanied by such words.

Where a corporation engaged in the manufacture and interstate sale and distribution of fur garments made of mink, principally; in advertising in magazines and newspapers, and also on labels attached to garments, directly or by implication—

- (a) Falsely represented that the garments in question were made of peltries obtained from wild or trapped minks, when in fact they, or some of them, were made of peltries obtained from ranch minks;
- (b) Falsely represented that the peltries used in said garments were obtained from minks of registered championship stock, which were trophy or prize winners;

The facts being that said minks were not trophy or prize winners such as those to which, as best specimens, prizes or trophies are awarded at contests or exhibits held by associations of mink farm operators; and while the garments and the peltries composing them were registered by it by number for identification purposes in its office, the minks themselves were not of registered stock; and,

- (c) Represented that its trade mark was registered in the United States Patent Office through depictions of so-called "blue ribbon trophy" with the legend beneath "TRADE MARK REG. IN U. S. AND CANADA", and legend on label attached to some of the garments "REGISTERED BLUE RIBBON MINK", etc., bearing a blue ribbon rosette resembling a contest premium with a medal affixed containing the words "BLUE RIBBON TROPHY REGISTERED", etc.;

The facts being that while registered in the State of New York and in Canada, its said trade-mark was not registered in the United States Patent Office; With tendency and capacity to mislead a substantial number of dealers and members of the consuming public with respect to its products, and thereby cause purchase thereof; and with effect of placing in the hands of dealers