

Syllabus

IN THE MATTER OF

PHILIP BARR & CO., INC. ET AL.

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

Docket 5651. Complaint, Apr. 25, 1949—Decision, June 22, 1950

Where a corporation engaged in New York City, in buying, selling and distributing canned foods and vegetables, canned and barrelled olives and other food products; and two individuals, its officers and stockholders, who also, in order to further the practice below set out, carried on at the same location two businesses likewise thus engaged under assumed trade names and with fictitious addresses, and who made use of a fictitious name on correspondence and elsewhere;

In buying food products for their own account (as distinguished from their buying as brokers), in the course of which (1) they transmitted their own purchase orders directly to various sellers, by whom said products were invoiced and shipped to them for the account of said corporation or of said assumed trade names employed by them as above set forth; and (2) thereafter warehoused and insured said products against loss at their own expense and in their own name and for their own account, and (3) sold them at their own prices and terms and invoiced them to their customers in one of said names and otherwise assuming full credit risks and reaping a profit or sustaining a loss on each—

Received and accepted, directly or indirectly, on purchases of substantial quantities of food products made by them for their own account from sellers, who shipped the products from their respective States to them or to their customers, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof:

Held, That such receipt and acceptance of commissions, brokerage fees, etc., under the circumstances set forth, constituted violations of subsection (c) of section 2 of the Clayton Act as amended: and

Where said individuals, engaged in making numerous and large purchases of food products from sellers in other States, pursuant to which said products were shipped and transported to them or to their customers; in advertising their business in various trade publications and journals and otherwise—

Represented that "Associated Food Factors" was a group of long-established individual organizations, and included over 250 top wholesalers and chain grocers, super markets and hotel, restaurant and bakery supply houses which operated through one buying and distributing source for its several hundred members, had offices at 401 Broadway, New York City, and offered many advantages to simplify distribution for the packer and processor of foods;

The facts being that their activities conducted under the aforesaid trade name were not for the advantage of packers and processors but were conducted for the sole benefit and advantage of said individuals; said Associated Food

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Factors and its executive officers were not located as above set out, but at 105 Hudson Street, the same location as the aforesaid corporate brokerage business of said individuals, who used the Broadway address to prevent canners and packers from knowing that they were the sole owners of the business carried on under the aforesaid trade name—which they established in 1942—and were operating it in connection with their brokerage business; With effect of misleading and deceiving a substantial number of canners and packers as well as the purchasing public into the mistaken belief that such representations were true, and of thereby inducing a substantial number of them to sell to and purchase from said individuals the food products dealt in by them; and with capacity and tendency so to do:

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

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

Mr. Edward S. Ragsdale, *Mr. Cecil G. Miles*, and *Mr. Eldon P. Schrup* for the Commission.

COMPLAINT

Pursuant to the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, secs. 13 and 21), as amended by the Robinson-Patman Act, approved June 19, 1936; and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Philip Barr & Co., Inc., a corporation; Philip Francis Barr and Sylvia Barr, individually and as officers of said corporation; and Philip Francis Barr and Sylvia Barr, individually and doing business as or under the trade name of Associated Food Factors, and as S. Richter Co., all named and designated as parties respondents herein, have violated the provisions of said act as hereinafter particularized; 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:

COUNT I

PARAGRAPH 1. Respondent Philip Barr & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business presently located at 105 Hudson Street, New York, N. Y. The respondent corporation is now engaged and for a substantial period of time since June 19, 1936, has been engaged in the business of buying, selling, and distributing canned foods, canned vegetables, canned and barrelled olives, etc., all of which are hereinafter referred to as food products.

On said purchases, respondents receive and accept, directly or indirectly, from said sellers, from whom they purchase said food products for their own account, brokerage fees, commissions, or other compensation or allowances, or discounts in lieu thereof.

The respondents, in connection with such purchases, are direct buyers and, as such, are traders for profit, purchasing and reselling said food products for their own account and at their own prices and on their own terms, taking title thereto and assuming all the risks incident to ownership. The respondents, upon receipt of such food products from the various sellers, warehouse and insure said food products at their own expense and in their own name and for their own account against contingent loss or damage.

When the respondents sell such food products, they invoice said food products to their customers in the name of Philip Barr & Co., Inc., Associated Food Factors, S. Richter Co., or otherwise, for their own account, and at prices and on terms they determine, assuming full and complete credit risk on such transactions, and either receive a profit or accept a loss thereon, as the case may be.

PAR. 5. Respondents named in the caption hereof, and each of them, for a substantial period of time since June 19, 1936, have made, and are now making, numerous and large purchases of food products from sellers located in States other than the State of New York where respondents are located, pursuant to which purchases, said food products were and are shipped and transported in commerce by the sellers thereof from the respective States in which they are located, across State lines, either to respondents or, pursuant to respondents' instructions and directions, to the respective purchasers to whom such products were and are sold by respondents.

PAR. 6. The respondents named in the caption hereof, and each of them, in connection with the purchase and sale of food products in commerce since June 19, 1936, as hereinabove alleged and described, have received and accepted, and are now receiving and accepting, either directly or indirectly, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof, from the various sellers from whom they purchase said food products in commerce for their own account for resale, in the manner and under the circumstances set out in the last three subparagraphs of Paragraph 4 above.

PAR. 7. The foregoing acts and practices of the respondents named in the caption hereof, and each of them, in receiving and accepting commissions, brokerage, or other compensation or allowances, or discounts in lieu thereof, from each of the various sellers in connection

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with said purchases of food products in commerce, are in violation of subsection (c) of the Clayton Act, as amended.

Pursuant to the provisions of the Federal Trade Commission Act (U. S. C. title 15, sec. 45) ; and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Philip Francis Barr and Sylvia Barr, individually and doing business as or under the trade name of Associated Food Factors, all named and designated as parties respondents herein, have violated the provisions of said act as hereinafter particularized; 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:

COUNT II

PARAGRAPH 1. Paragraph 2 of count I is hereby referred to, and by that reference, incorporated herein as fully and as completely as it would be if set forth herein verbatim.

PAR. 2. Respondents Philip Francis Barr and Sylvia Barr, individually and doing business as or under the trade name of Associated Food Factors in the course and conduct of their business in the purchase, sale, and distribution of their food products under said trade name, and for the purpose of inducing the purchase and sale of said food products, have made and have caused to be made various statements and representations concerning the nature and effectiveness of said business, by means of advertisements, letters, and by various other means.

Among and typical of the statements and representations so made are those disseminated in:

(a) The January 1, 1945, issue of The Canning Trade published in Baltimore, Md., as follows:

- A Establish a valuable post-war connection and get quicker, more
- F efficient distribution of your products through this growing association
- F of over 250 top wholesalers and chain grocers.

Trade-
Mark

SELL DIRECT to us in carload lots or less—one sale, one bill, one shipment. We can use all sizes and types of canned and dried FRUITS, VEGETABLES, FISH. Immediate cash or ration points. Give us details. Write, wire or telephone your best offer, collect.

Reference, Marine Midland or any N. Y. Bank.

ASSOCIATED FOOD FACTORS

Executive offices, 401 Broadway, New York 13, N. Y.

(b) The June 1944 issue of the Pennsylvania Packer published at York, Pa., as follows:

Associated Food Factors

Membership grows rapidly

The Associated Food Factors, located in New York City, offers many advantages to simplify distribution for the packer and processor of foods. This is a group of wholesale grocers, chains, super markets, hotel, restaurant and bakery supply houses, operating through one buying and distributing source for its several hundred members. These long-established individual organizations have the added advantage of combined warehousing and trucking facilities. They make it easier for the packer or processor to make one cash sale in volume, with a consequent saving of time and manpower.

Associated Food Factors can make one purchase, preferably in carload lots, for all its members—pay cash for it against warehouse receipts or bill of lading—and distribute it to its members with maximum efficiency and minimum cost. This concern offers an important and convenient avenue of distribution for the East to the large and small packer alike, not only for staple items of food, but for the introduction of any new or unusual food item. Being alert, progressive and independently minded—they help to simplify the introduction of new items. That manufacturers recognize the value of this distribution is proven by the recent rapid growth of the Association.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented as follows:

(a) That the Associated Food Factors located in New York City offers many advantages to simplify distribution for the packer and processor of foods;

(b) That Associated Food Factors is located or maintains Executive offices at 401 Broadway, New York, N. Y.;

(c) That Associated Food Factors is a group of over 250 top wholesalers and chain growers, supermarkets, hotel, restaurant, and bakery supply houses operating through one buying and distributing source for its several hundred members;

(d) That its membership is composed of long established individual organizations.

PAR. 4. The statements and representations used and disseminated by respondents in the manner above described are false, misleading, and deceptive. In truth and in fact:

(a) Respondents' activities in the purchase, sale and distribution of food products were not for the advantage of packers and processors of food, but such activities were conducted for the sole benefit and advantage of respondents;

(b) That neither Associated Food Factors nor its executive offices are located at 401 Broadway but same are located and maintained at

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105 Hudson Street, New York, N. Y., the same location as their brokerage business, namely, Philip Barr & Co., Inc. The said Broadway address was used for the purpose of deceiving canners and packers by preventing them from knowing or suspecting that respondents Philip Francis Barr and Sylvia Barr were the sole owners of Associated Food Factors and were directing its purchasing, sales, and distribution policies, and operating said business in connection with their brokerage business.

(c) That said Associated Food Factors is not a group of over 250 top wholesalers and chain grocers, supermarkets, hotel, restaurant, and bakery supply houses operating through one buying and distributing source for its several hundred members. In fact it has no bona fide members at all, but said business was established in 1942 with respondents Philip Francis Barr and Sylvia Barr as sole owners, and was operated for their own advantage, in connection with their brokerage firm, Philip Barr & Co., Inc.;

(d) Associated Food Factors' membership is not composed of a single bona fide long established individual organization, but was established in 1942 with Philip Francis Barr and Sylvia Barr as sole owners, and operated for their own advantage and benefit in connection with their brokerage business.

PAR. 5. Respondents Philip Francis Barr and Sylvia Barr, individually and doing business as or under the trade name of Associated Food Factors, or otherwise, and each of them for a substantial period of time since June 1942, have and are now advertising in various trade publications and journals, such as Canners and Packers Magazines, letters, and by various other means, which advertisements were and are published and distributed in numerous States other than the State of New York where respondents and their business organizations are located. These respondents, and each of them, also have made and are now making numerous and large purchases of food products from sellers located in various States other than the State of New York where respondents are located, pursuant to which purchases, said food products were and are shipped and transported in commerce by the sellers thereof from the respective States in which they are located, across State lines, either to respondents or, pursuant to respondents' instructions and directions, to respondents' customers.

PAR. 6. The use by respondents Philip Francis Barr and Sylvia Barr of the foregoing false, misleading, and deceptive statements and representations, disseminated as aforesaid, has had and now has, the capacity and tendency to mislead and deceive, and does mislead and deceive, a substantial number of canners and packers, as well as the

purchasing public, into the mistaken and erroneous belief that all of such statements and representations are true, and have induced and now induce a substantial number of canners and packers, as well as members of the purchasing public, because of such mistaken and erroneous belief, to sell to, and purchase from respondents, such food products as they distribute in commerce, in connection with their business operations.

PAR. 7. The acts and practices of the respondents, Philip Francis Barr and Sylvia Barr, individually, and trading as Associated Food Factors, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), and pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 25, 1949, issued and thereafter served upon the respondents named in the caption hereof its complaint in this proceeding, charging said respondents with having violated subsection (c) of section 2 of said Clayton Act, as amended, and with the use of unfair and deceptive acts and practices in commerce in violation of section 5 of the Federal Trade Commission Act. The respondents' answer to said complaint having been filed on June 16, 1949, certain testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. At a hearing before the trial examiner, held on December 6, 1949, the respondents requested and were granted permission to withdraw their original answer to the complaint and to file in lieu thereof a substitute answer in which they admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts, and said substitute answer was accordingly received and filed. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint of the Commission, the respondents' substitute answer thereto, the testimony and other evidence, and the trial examiner's recommended decision and certain exceptions thereto

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(which exceptions have been separately considered and disposed of); 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 Philip Barr & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 105 Hudson Street, New York, N. Y. Said respondent is now, and for a substantial period of time since June 19, 1936, it has been, engaged in the business of buying, selling, and distributing canned foods, canned vegetables, canned and barrelled olives, and other foods, all of which are hereinafter referred to collectively as food products.

Respondent Philip Barr & Co., Inc., is a successor to and continuation of Philip Barr & Co., which was established some time prior to June 19, 1936, and was incorporated in January 1942; with S. Richter as president and Philip Francis Barr as secretary and treasurer. S. Richter is in fact respondent Sylvia Barr, Richter being her maiden name.

Respondents Philip Francis Barr and Sylvia Barr are individuals who own all or substantially all of the capital stock of respondent Philip Barr & Co., Inc., and from the time said Philip Barr & Co., Inc., was incorporated in January 1942 these individuals have held various official positions in said corporation, such as president, secretary, and treasurer. In such official positions respondents Philip Francis Barr and Sylvia Barr have exercised, and still exercise, complete or substantial authority and control over the business conducted by the corporation Philip Barr & Co., Inc., including the direction of its purchasing, sales and distribution policies.

PAR. 2. Respondents Philip Francis Barr and Sylvia Barr are also engaged in business under the trade name of Associated Food Factors, which trade name was registered in June 1942. This business since June 1942 has been, and is now, conducted at 105 Hudson Street, New York, N. Y., the same location as that of respondent Philip Barr & Co., Inc., although the respondents have indicated on letterheads, invoices, etc., that said Associated Food Factors was and is located at 401 Broadway, New York, N. Y.

In the conduct of the aforesaid business, respondents Philip Francis Barr and Sylvia Barr, for a substantial period of time since June 19, 1936, have been, and they are now, engaged in the purchase and in the sale and distribution of canned foods, canned vegetables, canned and barrelled olives, etc., all of which are hereinafter referred to collectively as food products. The business was organized and established so as to enable respondents Philip Francis Barr and Sylvia Barr, acting through respondent Philip Barr & Co., Inc., to purchase food products for their own account for resale and to receive on such purchases brokerage payments, while leading some food packers, canners, and others to believe that the purchases were being made for or in behalf of some account other than their own. One of the practices employed to carry out this purpose has been the use, in numerous instances, of the fictitious name "S. Andrews" instead of the respondents' real names of Philip Francis Barr and Sylvia Barr on correspondence and elsewhere in connection with the operation of the business.

PAR. 3. Respondents Philip Francis Barr and Sylvia Barr are also in business under the trade name of S. Richter Co., and are engaged under such name in the purchase and in the sale and distribution of food products. This business was organized and established in September 1944 at 105 Hudson Street, New York, N. Y., the same location as that of respondent Philip Barr & Co., Inc., where it is still located. Like the business conducted under the name of Associated Food Factors, this business was also established to enable respondents Philip Francis Barr and Sylvia Barr, acting through respondent Philip Barr & Co., Inc., to purchase food products for their own account for resale and to receive on such purchases brokerage payments, while leading some food packers, food canners, and others to believe that the purchases were being made for or in behalf of some account other than their own.

In connection with the operation of this business, respondents Philip Francis Barr and Sylvia Barr have represented to canners, packers, and others, by appropriate indications on invoices, orders, etc., that the S. Richter Co. was located at 98 North Moore Street, New York, N. Y., instead of at its true location of 105 Hudson Street.

PAR. 4. The respondents hereinabove named, and each of them, for a substantial period of time since June 19, 1936, have been, and are now, engaged in the business of buying, selling, and distributing food products by two separate and distinct methods, namely: (1) as brokers, which phase of the respondents' business activities was not challenged by the complaint in this proceeding, and (2) as buyers of food prod-

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ucts for their own account who, in connection with their purchases, receive or accept direct or indirect brokerage payments, which phase of the respondents' business activities was challenged by the complaint herein.

The respondents' business involving the purchase of food products for their own account may be described in general as follows. The respondents transmit directly to the various sellers with whom they deal their own purchase orders for food products. Such sellers invoice and ship the food products so ordered to the respondents for the account of Philip Barr & Co., Inc., Associated Food Factors or S. Richter Co., and the respondents, in connection with such purchases, are direct buyers, taking title to the food products so purchased and assuming all of the risks incident to ownership thereof. The respondents, upon receipt of such food products from the various sellers, warehouse and insure said food products against contingent loss or damage at their own expense and in their own names and for their own account, and when they sell the products they do so at prices and on terms of sale which they alone determine, and thereafter invoice the products to their customers in the name of Philip Barr & Co., Inc., Associated Food Factors, S. Richter Co., and otherwise. In all such transactions the respondents assume full and complete credit risks in connection therewith, and they reap a profit or sustain a loss on each transaction, as the case may be. On said purchases, however, the respondents receive and accept from the sellers of the food products so purchased brokerage fees, commissions, or other compensation, or allowances or discounts in lieu thereof.

PAR. 5. In the manner and under the circumstances aforesaid, the respondents, and each of them, for a substantial period of time since June 19, 1936, have made, and are now making, numerous and large purchases of food products from sellers located in States other than the State of New York, where the respondents are located. Pursuant to such purchases, the food products so purchased have been and are shipped and transported in commerce by the sellers thereof from the respective States in which they are located, across State lines, either to the respondents or, pursuant to the respondents' instructions and directions, to the respective purchasers to whom such products were and are sold by the respondents.

The Commission therefore finds that the respondents, and each of them, since June 19, 1936, have purchased, and are now purchasing, from various sellers, for their own account, in interstate transactions, substantial quantities of food products. In connection with such purchases the respondents have received and accepted, and they are now

receiving and accepting, either directly or indirectly, from the various sellers, commissions, brokerage fees, or other compensation, or allowances or discounts in lieu thereof.

PAR. 6. In the course and conduct of their business carried on under the name of Associated Food Factors, respondents Philip Francis Barr and Sylvia Barr have made, and are now making, numerous and large purchases of food products from sellers located in various States other than the State of New York, pursuant to which purchases such food products were and are shipped and transported in commerce by the sellers thereof from the respective States in which they are located, across State lines, either to the respondents or, pursuant to respondents' instructions and directions, to the respondents' customers. These respondents, for a substantial period of time since June 1942, also have been and are now advertising their business in various trade publications and journals by the use of letters and by various other means, which advertisements have been and are published and distributed in numerous States other than the State of New York where the respondents and their business organizations are located.

PAR. 7. In certain of the advertisements referred to in paragraph 6, and for the purpose of inducing the purchase and sale of their food products, respondents Philip Francis Barr and Sylvia Barr have made, and have caused to be made, various statements and representations concerning the nature and effectiveness of their business. Among and typical of the statements and representations so made are those disseminated in the January 1, 1945, issue of the Canning Trade published in Baltimore, Md., as follows:

A Establish a valuable postwar connection and get quicker, more efficient
F distribution of your products through this growing association of over 250
F top wholesalers and chain grocers.

Trade- SELL DIRECT to us in carload lots or less—one sale, one
Mark bill, one shipment. We can use all sizes and types of canned
and dried FRUITS, VEGETABLES, FISH. Immediate cash
or ration points. Give us details. Write, wire or telephone
your best offer, collect.

Reference, Marine Midland or any N. Y. Bank.

ASSOCIATED FOOD FACTORS

Executive offices, 401 Broadway, New York 13, N. Y.

and in the June 1944 issue of the Pennsylvania Packer published at York, Pa., as follows:

Associated Food Factors
Membership Grows Rapidly

The Associated Food Factors, located in New York City, offers many advantages to simplify distribution for the packer and processor of foods. This is

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a group of wholesale grocers, chains, supermarkets, hotel, restaurant and bakery supply houses, operating through one buying and distributing source for its several hundred members. These long established individual organizations have the added advantage of combined warehousing and trucking facilities. They make it easier for the packer or processor to make one cash sale in volume, with a consequent saving of time and manpower.

Associated Food Factors can make one purchase, preferably in carload lots, for all its members—pay cash for it against warehouse receipts or bill of lading—and distribute it to its members with maximum efficiency and minimum cost. This concern offers an important and convenient avenue of distribution for the East to the large and small packer alike, not only for staple items of food, but for the introduction of any new or unusual food item. Being alert, progressive and independently minded—they help to simplify the introduction of new items. That manufacturers recognize the value of this distribution is proven by the recent rapid growth of the Association.

PAR. 8. Through the use of the foregoing statements and representations, and others similar thereto, respondents Philip Francis Barr and Sylvia Barr have represented, among other things, the following:

(a) That Associated Food Factors, located in New York City, offers many advantages to simplify distribution for the packer and processor of foods;

(b) That Associated Food Factors is located or maintains executive offices at 401 Broadway, New York, N. Y.;

(c) That Associated Food Factors is a group of over 250 top wholesalers and chain grocers, supermarkets, hotel, restaurant, and bakery supply houses operating through one buying and distributing source for its several hundred members;

(d) That the membership of Associated Food Factors consists of a group of long-established individual organizations.

PAR. 9. In truth and in fact, respondents' activities conducted under the trade name of Associated Food Factors are not for the advantage of packers and processors of food, but such activities are conducted for the sole benefit and advantage of the respondents. Neither Associated Food Factors nor its executive offices are located at 401 Broadway, but they are located and maintained at 105 Hudson Street, New York, N. Y., the same location as the respondents' brokerage business, namely, Philip Barr & Co., Inc. The Broadway address was and is used for the purpose of deceiving canners and packers, by preventing them from knowing or suspecting that respondents Philip Francis Barr and Sylvia Barr are the sole owners of the business carried on under the trade name of Associated Food Factors and are directing its purchasing, sales, and distribution policies and operating said business in connection with their brokerage business. The busi-

ness carried on under the trade name of Associated Food Factors is not a group of over 250 top wholesalers and chain grocers, supermarkets, hotel, restaurant, and bakery supply houses operating through one buying and distributing source for its several hundred members. In fact it has no bona fide members at all, but said business was established in 1942 with respondents Philip Francis Barr and Sylvia Barr as the sole owners, and it was and is operated for their own advantage in connection with their brokerage firm, Philip Barr & Co., Inc. Contrary to the representations of respondents Philip Francis Barr and Sylvia Barr, Associated Food Factors' membership is not composed of a single bona fide long-established individual organization.

The Commission therefore finds that the aforesaid representations of respondents Philip Francis Barr and Sylvia Barr concerning the nature and effectiveness of their business conducted under the trade name of Associated Food Factors have been and are false, misleading and deceptive.

PAR. 10. The use by respondents Philip Francis Barr and Sylvia Barr of the foregoing false, misleading, and deceptive statements and representations, disseminated as aforesaid, has had, and now has, the capacity and tendency to mislead and deceive, and does mislead and deceive, a substantial number of canners and packers, as well as the purchasing public, into the mistaken and erroneous belief that such statements and representations are true, and have induced, and now induce, a substantial number of canners and packers, as well as the purchasing public, because of such mistaken and erroneous belief, to sell to and purchase from the respondents such food products as they distribute in commerce in the conduct of their business operations.

CONCLUSION

The receipt and acceptance, by the respondents herein, of commissions, brokerage fees, or other compensation, or allowances or discounts in lieu thereof, under the circumstances and in the manner set forth in paragraphs 4 and 5 hereof, constitute violations by each and all of said respondents of subsection (c) of section 2 of the Clayton Act, as amended; and the acts and practices of the respondents Philip Francis Barr and Sylvia Barr, as found in paragraphs 2, 6, 7, 8, and 9, inclusive, in addition, are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' substitute answer thereto, in which answer the respondents, for the purposes of the proceeding, admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts, and certain testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, and the trial examiner's recommended decision and exceptions thereto; and the Commission, having disposed of the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents, Philip Barr & Co., Inc., a corporation, and Philip Francis Barr and Sylvia Barr, individually and as officers of said corporation, have violated the provisions of subsection (c) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., sec. 13), and its conclusion that the respondents Philip Francis Barr and Sylvia Barr have, in addition, violated the provisions of section 5 of the Federal Trade Commission Act:

It is ordered, That the respondents, Philip Barr & Co., Inc., a corporation, and its officers, and Philip Francis Barr and Sylvia Barr, individually and as officers of said corporation and trading as Associated Food Factors and as S. Richter Co., or trading under any other name or trade designation, and said respondents' respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products or other merchandise in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase made for any of said respondents' own accounts.

It is further ordered, That the respondents, Philip Francis Barr and Sylvia Barr, individually and trading as Associated Food Factors, or trading under any other name or trade designation, and said respondent agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering to purchase, purchase, offering for sale, sale or distribution in commerce, as

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"commerce" is defined in the Federal Trade Commission Act, of food products or other merchandise, do forthwith cease and desist from:

(1) Representing, directly or by implication, that said respondents' individual firm is an organization composed of a group of wholesalers and chain grocers, super markets, hotel, restaurant, and bakery supply houses, or any other concerns; or that such firm operates through one buying or distributing source for any group of business establishments.

(2) Representing, directly or by implication, that said respondents' individual firm offers to packers or processors of food products, or of any other commodities, any distributional advantages which may result from sales to buying groups.

(3) Using in advertising, on stationery, or elsewhere, any false address or feigned signature, or otherwise misrepresenting the address, status or identity of said respondents' business, for the purpose or with the effect of deceiving packers or processors of food products or others with whom such respondents deal.

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

IN THE MATTER OF
LEO LICHTENSTEIN ET AL. TRADING AS HARLICH MAN-
UFACTURING CO. AND LOOMIS MANUFACTURING CO.

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

Docket 4879. Complaint, Nov. 18, 1943¹—Decision, June 30, 1950

Where three individuals engaged in the interstate sale and distribution of a variety of push cards and punch boards, which ranged in size from 10 to 100 disks, and from 50 to 10,000 holes, respectively, were arranged with and without depictions of specific articles of merchandise and instructions, blank spaces therefor, or cut-outs, or made to order, and were designed for use by retail dealers in the sale and distribution of merchandise to the public through schemes whereby the purchasers who selected by chance certain numbers or legends concealed in the card or board, became entitled to designated articles of merchandise at no additional cost, and others received nothing further for their money other than the privilege of making a play, or, in some cases, merchandise of much less value than that above referred to—

- (a) Sold and distributed such push cards and punch boards to manufacturers, jobbers, and wholesale dealers in candy, cigarettes, cigarette lighters, cigarette chests, knives, novelties, and other articles of merchandise, who made up assortments thereof, and sold them to retailers, by whom they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan; and

Where said individuals, engaged also in selling and distributing to dealers cigarette chests or boxes, including assortments packed for use of a similar lottery scheme in sales to the purchasing public, typical assortment consisting of a chest and cigarettes, and a punch board for use in sale and distribution thereof under a plan whereby the purchaser who secured by chance a certain number received the chest packed with cigarettes, and other specified numbers entitled the purchasers to a package of cigarettes, the value of which exceeded the five cents paid, others receiving nothing for their money—

- (b) Sold such assortments thus packed and assembled to dealers and retailers, by whom they were directly or indirectly exposed and sold to the purchasing public through the use of said punch boards and in accordance with the aforesaid sales plan; and

Thereby supplied to and placed in the hands of others, through such assortments as above described and through those assembled by the purchasers of their punch boards and push cards, the means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government;

¹ Amended.