

Syllabus

IN THE MATTER OF
RADIO TRAINING ASSOCIATION OF AMERICA 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 5536. Complaint, Apr. 20, 1948—Decision, Dec. 5, 1951

Where a corporation and its president who were engaged in the interstate sale and distribution of a course of home study instruction in the fields of radio and television; in advertising in newspapers and magazines of general circulation and through form letters, directly and by implication—

- (a) Represented that a person who completed their course was assured of proper preparation and ample training for a successful career as a technician in said fields of science;
- (b) Represented that the course embraced all the practical training necessary for success in said fields, and that its satisfactory completion properly equipped one with the necessary qualifications to obtain and hold high salaried positions in the radio and television industries and supplied him with adequate radio shop knowledge for a lucrative future in radio; and
- (c) Represented that they had a modernly equipped radio and television laboratory in Hollywood in which those students who satisfactorily completed their home study course could obtain at least two weeks or eighty hours of practical training and experience in television work, the expenses of which, including round-trip transportation from the student's home, and lodging while receiving said training in their laboratory, were all included in the original tuition fee;

The facts being that their course consisted entirely of instruction in the theory of radio and television; the techniques referred to cannot be acquired except by actual experience in working with radio and television sets in a shop or laboratory, preferably under the supervision of a trained instructor, and without such practical training a person is not qualified for any technical position in the radio field; the best that a person could reasonably expect of such a course was that by its successful completion he would be somewhat better qualified to enter the trade as an apprentice than one who had had no practical training or experience in techniques and had not studied the theory of radio or television; and they had no laboratory nor any means of providing purchasers of their course with practical training or laboratory experience; and they bore no transportation and lodging expense and furnished their purchasers with nothing of value other than a home study course in theory;

- (d) Represented through the use of the word "Association" in their corporate name that their enterprise was an organization composed of persons primarily interested in its activities from an educational standpoint; and
- (e) Represented that they had the endorsement of or some connection with the radio and television manufacturing and distributing industry and acted as a medium through which its experts were trained, through use of their corporate name, "Radio Training Association of America," together with such statements as "training men for the radio industry for over 25 years," "We are seeking ambitious, mechanically inclined men—to learn Radio and

Complaint

48 F. T. C.

Television, and prepare them for successful future careers as Certified Technicians," and, "Without obligating me advise how I can qualify for a Big Pay Job in the RADIO ELECTRONIC AND TELEVISION INDUSTRY," in form letters, cards and printed contracts distributed to prospective purchasers;

When in fact said enterprise was conducted solely as a commercial business venture for profit; and at no time had they had the endorsement of or any connection with the radio or television industry or had they acted as a medium through which its experts were trained;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce its purchase of their said course of instruction:

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

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Murray A. Nadler, of Youngstown, Ohio, *Posner, Berge, Fox & Arent*, of Washington, D. C., and *Wolfson & Essey*, of Los Angeles, Calif., for respondents.

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 Radio Training Association of America, a corporation, and Benjamin M. Klekner, Earl L. Kemp, Paul H. Thomsen and I. O'Conner, individually and as officers of the Radio Training Association of America, hereinafter referred to as respondents, have violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Radio Training Association of America, is a California corporation, with its office and principal place of business located at 5620 Hollywood Boulevard, Hollywood, California. Respondents, Benjamin M. Klekner, Earl L. Kemp, Paul H. Thomsen, and I. O'Connor, are individuals and officers of the corporate respondent, Radio Training Association of America, and as such officers they are responsible for and control and formulate and have controlled and formulated the advertising policies of said corporate respondent, including the acts and practices hereinafter described. The business address of each of the said individual respondents is the same as that shown above for the corporate respondent.

Respondents are now, and for several years last past have been engaged in conducting a correspondence school, and in selling and distributing in commerce between and among the various States of the United States and in the District of Columbia courses of instruction for home study in the practice and theory of radio and television. They have caused and are causing printed courses of instruction in said subjects, when sold, to be transported from their place of business in the State of California to student enrollees, who are the purchasers thereof, at their respective addresses in other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said courses of instruction in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business in commerce as aforesaid, and for the purpose of enrolling prospective students and thereby promoting the sale of their said courses of instruction, respondents, through field agents, who personally approach their prospects, and also by means of advertisements inserted and caused by respondents to be inserted in newspapers and magazines having general circulations throughout the United States, and in pamphlets, leaflets, circulars, form letters and cards, printed contracts and other mediums, distributed through the United States mails, have made and are making numerous false, deceptive and misleading statements and representations with respect to the advantages and benefits which the purchasers of their said courses of instruction could expect to receive. Among and typical of such false and misleading statements and representations so used by the respondents are the following:

We are seeking ambitious, mechanically inclined men—to learn Radio and Television, and prepare them for successful future careers as Certified Technicians.

During the next few years the growth of Radio and Television will be tremendous, and along with this growth there will be vast new job opportunities for trained men.

... R. T. A. brings you the practical training necessary for success right into your own home.

Printed on cards to be returned to respondents:

Without obligating me advise how I can qualify for a Big Pay Job in the Radio Electronic and Television Industry.

URGENT NEED for alert men and women to train for NEW BIG-PAY developments in RADIO-TELEVISION.

You get Practical Radio Shop "Know How."

Upon the student's completion of the Home Study portion of this training with a passing grade of seventy percent, the student is given the privilege

Complaint

48 F. T. C.

of securing a Postgraduate Course of two weeks, (not less than eighty shop hours) of intensive and practical Shop and Laboratory training in the R. T. A. modern equipped laboratory.

The tuition fee charged by the R. T. A. includes round-trip bus transportation (within the continental limits of the U. S. A.), from the bus station nearest the student's residence. It also includes the cost of the student's room, at a place designated by the R. T. A., during the student's attendance while taking the Shop and Laboratory training.

The RADIO TRAINING ASSOCIATION OF AMERICA Plan enables you to become a CERTIFIED RADIO AND TELEVISION TECHNICIAN. . . . If you want us to, we can so arrange your RADIO TRAINING ASSOCIATION OF AMERICA training so that you will be brought to our shop and laboratory in Hollywood, California, . . . where you will be given the opportunity to work with the modern radio and television equipment and your expenses, such as your round-trip transportation from your home and your lodging while attending the training in the laboratory are all a part of our plan.

PAR. 3. Through the use of the statements and representations hereinabove set forth, and many others of similar import and effect, respondents represent, directly and by implication, that one completing their courses in radio and television is assured of proper preparation and ample training for a successful future career as a technician in said fields of science; that respondents' said courses for home study embrace all the practical training necessary for success in said fields of science, and the satisfactory completion thereof properly equips one with the necessary qualifications to obtain and hold high salaried positions in the radio and television industry, and supplies him with adequate radio shop knowledge for a lucrative future in radio; that respondents have a modernly equipped radio and television laboratory in Hollywood, in which those students who satisfactorily complete their home study courses can obtain at least two weeks or eighty hours of practical training and experience in radio and television work, the expenses of which, including round-trip transportation from the student's home to Hollywood and lodging while receiving said practical training in respondents' laboratory, are all included in the original tuition fee agreed upon.

PAR. 4. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' courses in radio and television are not sufficient to properly prepare and train one as a technician in said trades, and respondents' home study courses do not qualify a person to take a job as a technician, and the best that a student of such courses can reasonably expect is to be somewhat better qualified to enter the trade as an apprentice than one who has not received any practical training or experience or who has not studied the theory of such sciences; respondents' courses for home study not only do not embrace all the practical training neces-

sary for success in the radio and television trades, but do not include any practical training whatever in said fields, and merely instruct the student in the theory of said subjects, and the completion of said courses does not properly equip one with the necessary qualifications to obtain and hold a high-salaried position in the radio and television industry, nor does it equip him with adequate radio shop knowledge, nor with any practical experience to assure a lucrative future career in the radio field; at the time said representations were made respondents did not have, and do not now have, a radio and television laboratory in Hollywood or elsewhere, and respondents have no means of securing to students practical training or laboratory experience for any period of time in radio and television work, and respondents do not bear any expense in the transportation of students to or from Hollywood, nor for lodging in Hollywood, and the student never sees Hollywood unless he does so at his own expense.

PAR. 5. Respondents' use of the word "Association" in the corporate name of their business is deceptive and misleading, in that such usage implies that said enterprise is an organization composed of persons engaged, from an educational standpoint, in giving training in the mechanics and science of radio and television engineering, and as such has the endorsement of or some connection with the radio manufacturing and distributing industry, and that respondents' said enterprise is the medium through which the industry's radio and television experts are trained and secured. Such usage of the word "Association" is made particularly deceptive and misleading in said respects when coupled with displays by respondents' field representatives to prospective students of letters and certain printed matter furnished by respondents, some of the letters bearing the letterheads of various electrical instrument and equipment manufacturers and radio distributors, some of the other literature carrying the heading, "Chart Showing Progress and Possibilities for a Member of the Radio Training Association of America," and such statements as "Join the Association," and "Hook up with a Great Industry."

PAR. 6. In truth and in fact respondents' said enterprise is not an organization composed of persons engaged in or interested, from an educational standpoint, in imparting scientific training, but respondents' organization is conducted solely as a commercial business venture for profit; it neither has the endorsement of nor any connection with the radio manufacturing and distributing industry, and is not a medium through which the industry's radio and television experts are trained and secured.

PAR. 7. The statements, representations and implications made and caused to be made by respondents, including the usage of the word

Findings

48 F. T. C.

"Association" in the corporate name, as set forth herein have had and now have the tendency and capacity to, and do, mislead and deceive many members of the purchasing public into the erroneous and mistaken belief that such statements, representations and implications are true, and because of such erroneous and mistaken belief cause a substantial portion of the public to purchase respondents' said courses of instruction.

PAR. 8. The aforesaid acts and practices of respondents, 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 the Federal Trade Commission Act, the Federal Trade Commission on April 20, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondents' answer, testimony and other evidence in support of the allegations of the complaint and a stipulation as to certain facts entered into between counsel were introduced before a hearing examiner of the Commission, theretofore duly designated by it (no testimony or other evidence having been presented in opposition to the allegations of the complaint), and such testimony, stipulation and other evidence were duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony, stipulation and other evidence, the recommended decision of the hearing examiner and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); 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 Radio-Television Training School (formerly named Radio Training Association of America prior to the amendment of its corporate charter in 1949) is a California corporation, with its office and principal place of business at 5100 South Vermont, Los Angeles 37, California. Respondent Benjamin M. Klek-

ner, whose present address is unknown, was president of respondent corporation and directed and controlled its advertising policies for several years immediately prior to April of 1949, at which time he severed all connection with the respondent corporation. Respondents Earl L. Kemp, Paul H. Thomsen and I. O'Connor are employees of the respondent corporation and have had no control or direction over the policies of the respondent corporation. The Commission is of the opinion, therefore, that the allegations of the complaint have not been sustained as to respondents Earl L. Kemp, Paul H. Thomsen and I. O'Connor and that the complaint should be dismissed as to them as individuals, and the term "respondents" as used hereinafter does not include these individuals.

PAR. 2. Respondent corporation is now and during the six years last past has been, and respondent Benjamin M. Klekner for several years immediately preceeding April 1949, was, engaged in the sale and distribution of a course of instruction for home study in the fields of radio and television. During the periods of time they were so engaged, each of the said respondents caused, and the respondent corporation now causes, the said course of instruction, when sold, to be transported from their place of business in the State of California to the purchasers thereof in the other States of the United States. Respondent corporation maintains, and at all times mentioned herein has maintained, and respondent Benjamin M. Klekner at all times mentioned herein prior to April 1949 did maintain, a course of trade in said course of instruction, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business in commerce and for the purpose of enrolling prospective students and promoting the sale of their said course of instruction, respondents, by means of advertisements inserted in newspapers and magazines having general circulation in the United States and through the use of form letters distributed throughout the United States by means of the United States mails, have represented, directly and by implication, that one completing their course in radio and television is assured of proper preparation and ample training for a successful future career as a technician in said fields of science; that respondents, said course for home study embraces all the practical training necessary for success in said fields of science, and the satisfactory completion thereof properly equips one with the necessary qualifications to obtain and hold high-salaried positions in the radio and television industry and supplies him with adequate radio shop knowledge for a lucrative future in radio; that respondents have a modernly equipped radio and television laboratory in Hollywood, in which those students who satisfactorily

complete respondents' home study course can obtain at least two weeks or eighty hours of practical training and experience in radio and television work, the expenses of which, including round-trip transportation from the student's home to Hollywood and lodging while receiving said practical training in respondents' laboratory, are all included in the original tuition fee agreed upon.

PAR. 4. The aforesaid representations are false and misleading. In fact, respondents' course does not include any practical training in the techniques of radio or television repair or construction, but consists entirely of instruction in the theory of radio and television. Such techniques cannot be acquired except by actual experience of working with radio and television sets in a shop or laboratory, preferably under the supervision of a trained instructor. Without such practical training in shop techniques a person is not qualified for any technical position in the radio field. Respondents' course of instruction, therefore, does not qualify a person for a position as a radio or television technician or repairman, nor does it equip a person with the necessary qualifications to obtain or hold any high-salaried position in the radio or television industry. The best that a purchaser can reasonably expect of such a course is that by successfully completing it he will be somewhat better qualified to enter the trade as an apprentice than one who has had no practical training or experience in radio or television techniques and has not studied radio and television theory.

Respondents do not have a radio or television laboratory in Hollywood or elsewhere, nor do they have any means of providing to the purchasers of their course of instruction practical training or laboratory experience in radio or television work. Respondents do not bear any expense in the transportation of purchasers of their course of instruction to Hollywood, nor do they furnish to the said purchasers anything of value other than a home study course of instruction in the theory of radio and television.

PAR. 5. For several years prior to 1949, respondents, by the use of the word "Association" in the corporate name of their business, implied that said enterprise was an organization composed of persons primarily interested in its activities from an educational standpoint.

During this same period of time, by the use of the corporate name "Radio Training Association of America," together with such statements as "Training Men for the Radio Industry for Over Twenty-five Years," "We are seeking ambitious, mechanically inclined men—to learn Radio and Television, and prepare them for successful future careers as Certified Technicians," and "Without obligating me advise how I can qualify for a Big Pay Job in the RADIO, ELECTRONIC, AND TELEVISION INDUSTRY" contained in form letters, cards,

501

Order

and printed contracts distributed to prospective purchasers of their said courses, respondents implied that they had the endorsement of or some connection with the radio and television manufacturing and distributing industry and that they acted as a medium through which the industry's radio and television experts were trained.

PAR. 6. In fact respondents' said enterprise is now and at all times mentioned herein has been conducted solely as a commercial business venture for profit; at no time has it had the endorsement of or any connection with the radio or television industry, and at no time has it acted as a medium through which the industry's radio and television experts are trained.

PAR. 7. The use by respondents of the false and misleading representations as hereinbefore set forth, including the use of the word "Association" in the corporate name, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true, and has had the tendency and capacity to cause such portion of the public to purchase respondent's said course of instruction because of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondents, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondents' answer thereto, testimony and other evidence, including a stipulation of facts entered into by and between counsel for respondents and counsel in support of the complaint, introduced before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents Radio-Television Training School, a corporation, and Benjamin M. Klekner, individually, have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Radio-Television Training School, a corporation, and its officers, agents, representatives, and em-

Order

48 F. T. C.

ployees, and Benjamin M. Klekner, an individual, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a course of instruction for home study in the fields of radio or television, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That said course is capable of training radio or television technicians or repairmen.

(b) That any practical training is provided to purchasers of said course.

(c) That persons who complete said course are qualified thereby to hold high-salaried positions in the radio or television industry.

(d) That laboratory or shop equipment is available for the use of purchasers of said course.

(e) That any purchaser of said course will receive anything of value other than a home study course of instruction.

(f) That said course is endorsed by or that respondents' business has any connection with any of the members of the radio or television industry.

2. Using the word "Association," or any other word or words of similar meaning, as a part of the trade or corporate name under which the respondents conduct their business; or otherwise representing, directly or by implication, that respondents' business is anything other than a commercial business venture operated for profit.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondents Earl L. Kemp, Paul H. Thomsen, and I. O'Connor, without prejudice, however, to the right of the Commission to issue a new complaint or take such further or other action against such respondents at any time in the future as may be warranted by the then existing circumstances.

It is further ordered, That the respondents Radio-Television Training School, a corporation, and Benjamin M. Klekner, an individual, shall, within sixty (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.

Syllabus

IN THE MATTER OF
MIDDLE ATLANTIC DISTRIBUTORS, INC., 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 5634. Complaint, Jan. 18, 1949—Decision, Dec. 7, 1951

Where a corporation and its president, who owned all its capital stock, engaged in selling at wholesale to retailers in the District of Columbia certain brands of whiskies and other alcoholic beverages and exclusive distributor in said District for products made by Hiram Walker, Inc.;

Following the adoption of a policy of establishing, maintaining and enforcing uniform minimum resale prices at which said products were to be advertised and sold by its many retail customers, as communicated to them in letters and price lists; and in pursuance of said policy which included the declared intention of terminating all business relationships with any dealer, who sold below said listed prices—

- (a) Solicited and, with few exceptions, secured the agreement and cooperation of its said customers in maintaining the uniform minimum resale prices specified by it; and

Where said corporation, in taking such further steps as necessary to full effectiveness, and acting through its representatives—

- (b) Maintained a constant check on the prices at which its said products were offered by its customers, told them that they had been and would be “shopped,” and requested at least one of them to report any instances of competitor retailers selling said products at less than its minimum resale prices;
- (c) Visited retailer customers discovered, in a few instances, selling or offering its products at less than its said minimum prices and urged them to cease so doing, with the result that three did change their prices and continued to maintain the prices established;
- (d) Cut off the source of supply of the few dealers who declined or failed to cooperate in maintaining the desired prices;
- (e) Informed a retailer price cutter, prior to the announcement of its said policy, that if he did not maintain resale prices he would not be permitted to purchase further any of said products thereafter, discontinued filling his orders, and in the subsequent month and following a further visit and assurance “that if he would maintain” said prices it would resume selling to him, did so resume following his agreement to do so; and following its later discovery that said dealer was again selling at less than its said fixed prices, again cut off its supply;

With the result that its many retailer customers advertised and sold its said products in accordance with the minimum resale prices thus announced and established by it;

Effect of which acts and practices was to suppress competition among retailers in said District in the sale of said products; to cause them to sell at the prices fixed by it and to prevent them from selling at such lower prices as they might deem adequate and warranted by their respective selling costs

Complaint

48 F. T. C.

and trade conditions generally; and to deprive purchasers of the advantage in price which they would otherwise obtain from free and uncontrolled competition among retailers in the sale of said products and from a natural and unobstructed flow of commerce therein:

Held, That such acts and practices of said corporation and individual, under the circumstances set forth, were all to the prejudice and injury of the public; had a dangerous tendency to hinder and suppress and did hinder and suppress competition between and among retailers selling said products in said District; and constituted unfair and deceptive acts and practices in commerce and unfair methods of competition therein.

In said proceeding it was the opinion of the Commission that the activities of said corporation exceeded what was lawfully permissible; that its conduct embraced considerably more than the mere exercise of its right to inform and make known to its dealer customers that it desired its fixed resale prices adhered to, and would discontinue selling to any dealer who disregarded its policy in this regard; and it was the conclusion of the Commission that the conduct of said corporation, particularly in connection with that of its salesmen in exerting pressure on dealers to abide by the specified prices, and reporting to it the names of dealers who did not do so, resulted in the securing of assurances and understandings from its retail customers that they would abide by its fixed resale prices and that, as a result, competition between retailers was suppressed and eliminated, and consumers in said District were deprived of the benefit of price competition based on cost, efficiency, and service.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Paul R. Dixon and *Mr. James S. Kelaher* for the Commission.

Mr. William R. Lichtenberg, of Washington, D. C., for respondents.

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 respondents named in the caption hereof, and more particularly described hereinafter, 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, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Middle Atlantic Distributors, Inc., sometimes hereinafter in this complaint referred to as respondent corporation, is a Delaware corporation with its principal office and place of business located at 1125 Second Street NW., Washington, District of Columbia. It is now, and has been for more than one year last past, engaged in the wholesale business of selling to dealers, in the District of Columbia, certain brands of whiskies and alcoholic beverages sold to it by manufacturers and their agents located in various

States and shipped in commerce to it through various States of the United States.

Respondents Paul H. Coughlin, Murdoch J. Finlayson, and William R. Lichtenberg are individuals and the legal address of each of said respondents is 1125 Second Street NW., Washington, District of Columbia. Respondent Paul H. Coughlin owns all of the capital stock of respondent Middle Atlantic Distributors, Inc., and serves as president and director of this respondent corporation. Respondent Murdoch J. Finlayson serves as vice president and director of respondent corporation and respondent William R. Lichtenberg serves as secretary and director of this respondent corporation. Said individual respondents control, direct, and manage the business policies and operations of respondent Middle Atlantic Distributors, Inc.

PAR. 2. Respondent Middle Atlantic Distributors, Inc., in the course and conduct of its aforesaid business, in order to fix, stabilize, and make uniform the resale prices of its said whiskies and alcoholic beverages, adopted, established, and has maintained a system or policy of merchandising whereby it fixed specified, standard, and uniform resale prices at which said products should be resold by retail dealers, and solicited and secured the active support and cooperation of said retail dealers in the maintenance of said resale prices, and in order to carry out and make effective said system or policy, said respondent has entered into unlawful agreements and understandings with retail dealers purporting to bind said retail dealers to the maintenance of said retail prices, and solicited and obtained their cooperation in the maintenance of such prices. Pursuant to such understandings and agreements, this respondent has undertaken to prevent, and has prevented, retail dealers from selling said products at prices less than the said minimum resale prices fixed by respondent corporation as aforesaid.

In further carrying out and making effective said system or policy, respondent corporation instituted and does presently carry out the following acts:

1. Since February 24, 1948, advertising or sale of said products by its retail dealers is permitted only at the fixed resale prices;
2. Since February 24, 1948, respondent corporation has refused to sell said products to retail dealers who refused to agree to carry out its said system of advertising and selling of said products at its fixed resale prices;
3. Respondent corporation maintains a constant check on its retail dealers through its salesmen who are instructed to report any violation of its fixed resale prices;

Findings

48 F. T. C.

4. Since February 24, 1948, respondent corporation has refused to sell said products to former customers who refused to sell at its fixed resale prices.

PAR. 3. The direct effect of the above alleged acts and practices done by respondent Middle Atlantic Distributors, Inc., has been to suppress competition among retail dealers in the sale of said products; to cause said retail dealers to sell said products at the prices fixed and established by said respondent; and to prevent them, and each of them, from selling said products sold by respondent corporation at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending to unduly hinder and suppress competition in the resale of said products in the District of Columbia, and in violation 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 January 18, 1949, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with having violated Section 5 of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony was introduced in opposition to the allegations of the complaint. Thereafter this proceeding regularly came on for final consideration by the Commission upon the complaint, answer thereto, testimony and other evidence in support of the allegations of the complaint, recommended decision of the trial examiner and exceptions thereto filed by counsel supporting the complaint, and briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the trial examiner's recommended decision, 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 Middle Atlantic Distributors, Inc., is a Delaware corporation, with its principal office and place of business located at 1125 Second Street, N. W., Washington, D. C.

Respondent Paul H. Coughlin is president and a director, and owns all of the capital stock of said corporate respondent. He controls, directs, and manages the business policies and operations of the corporate respondent and is responsible for the acts and practices of the corporate respondent hereinafter set forth.

Respondent Murdoch J. Finlayson, during the period covered by the complaint, was vice president and a director of said corporate respondent. Respondent Finlayson died on August 16, 1951, after the hearings in this matter were completed. The complaint will be dismissed as to him.

Respondent William R. Lichtenberg is secretary and a director of the corporate respondent. The record herein fails to establish that respondent Lichtenberg has participated actively in the control, direction, or management of the corporate respondent, or that he has any substantial connection with the business other than as its legal counsel. The Commission is therefore of the opinion that the complaint should be dismissed as to respondent Lichtenberg.

PAR. 2. Respondent Middle Atlantic Distributors, Inc., is now, and for more than one year last past has been, engaged in the wholesale business of selling to retail dealers in the District of Columbia certain brands of whiskies and other alcoholic beverages and is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent Middle Atlantic Distributors, Inc., is the exclusive distributor in the District of Columbia for products manufactured by Hiram Walker, Inc. In the course and conduct of its business said corporate respondent, on June 17, 1947, sent the following letter to all of its 388 retail dealer customers in the District of Columbia:

No changes have taken place in the policies of Middle Atlantic Distributors, Inc. We still believe, strongly, that it is desirable and in the best interests of the retail trade to place the emphasis on sound merchandising principles rather than resorting to vicious and destructive competition based on price alone whereby the true values of brands may be destroyed along with the individuals who support such unsound practices.

Restating our policy we desire that the retail trade continue in the future to sell all brands distributed by us at our suggested resale prices which allows the trade the customary 33 $\frac{1}{3}$ %, less 10% on case sales.

Secondly: We are not opposed to retailers advertising Hiram Walker and Associated brands provided they are advertised at our suggested resale prices.

Findings

48 F. T. C.

Our suggested resale prices for Hiram Walker's and associated lines represent honest and sound consumer values based on the high quality of the brands, in addition to a reasonable profit to those engaged in their distribution to the consumer.

A heavy schedule of advertising is to be released immediately in the Times-Herald, Post, and News, on Canadian Club, Hiram Walker's DeLuxe Bourbon, Hiram Walker's Imperial, and Hiram Walker's Gin. Therefore we do not wish to have the purpose and effect of this advertising campaign nullified by the inconsiderate treatment of any retailer who thinks that his interests may be served by advertising them for less.

The basis of a sound and secure relationship for the future consists of a proper degree of cooperation between us and we propose to extend our best efforts in the promotion of these principles.

As Steinmetz once said: "Cooperation is not a sentiment. It is an economic necessity."

On February 20, 1948, said corporate respondent sent the following letter to all of its 388 retail dealer customers in the District of Columbia:

You are hereby advised that effective Tuesday, February 24th, 1948 we will not sell our products to any retailer who sells them below the prices stated in the list attached. There is to be no reduction to the consumer on case purchases.

Advertising of the brands is permitted only at the prices stated.

The resale prices of these brands represent genuine values to the consumer—plus a fair margin of profit to you at the present market level.

Experience in this industry has clearly demonstrated that the best interests of the retailer are served when the emphasis is placed on sound merchandising principles rather than vicious and destructive price competition whereby the true values of brands are destroyed along with the individuals who engage in such practices.

Therefore—if a retailer sells or advertises these brands in violation of the policy as outlined, we shall terminate all business relationships with him immediately.

No employee of this company has authority to vary or alter this policy. All communications concerning it can be acted upon only by the undersigned.

Enclosed with the letter of February 20, 1948, was a price list setting forth the resale (consumer) prices of the various Hiram Walker products. Subsequently, on November 29, 1948, and December 8, 1948, the corporate respondent sent to all of its retail dealer customers in the District of Columbia notice of price changes on specified items of said products, each such notice containing the following statement:

... if a retailer sells or advertises this product in violation of our policy as outlined to you in our letter of Feb. 20, 1948, we shall terminate all business relationships with him immediately.

The corporate respondent did thus institute, inaugurate, and adopt a system or policy, in merchandising the aforesaid products, of establishing, maintaining, and enforcing uniform minimum resale prices

at which said products were to be advertised and sold by its retail dealer customers.

PAR. 4. The corporate respondent, in pursuance of the aforesaid system or policy, solicited the agreement and cooperation of its retail dealer customers in maintaining the uniform minimum resale prices specified by it on said products, and with few exceptions thus secured the agreement and cooperation sought. The corporate respondent was so successful in this respect that few additional actions on its part were necessary to make the resale prices specified fully effective. However, to the extent necessary to full effectiveness, the corporate respondent did take further and additional steps. In order to keep itself informed concerning continued adherence to the minimum resale prices specified, it maintained a constant check on the prices at which said products were offered by its retail dealer customers; such customers were told by representatives of the corporate respondent that they had been and would be "shopped"; and at least one such dealer was requested by a representative of the corporate respondent to report any instances of competitors of said dealer selling said products at less than the uniform minimum resale prices established. In the few instances where retail dealer customers were discovered selling or offering for sale said products at less than the uniform minimum resale prices fixed, they were visited by representatives of the corporate respondent and urged to cease selling or offering for sale said products at less than such prices. Three of such retail dealer customers who were visited by representatives of the corporate respondent soon after February 20, 1948, did change their prices on some of said products either in the presence of such representatives or shortly after their visit, and these dealers have continued to maintain the uniform minimum resale prices established. The few dealers who declined or failed to cooperate by maintaining the uniform minimum resale prices designated were cut off from their source of supply of said products in that the corporate respondent refused to sell to them, and such respondent was the exclusive distributor of such products in the District of Columbia. One of the corporate respondent's retail dealers who was so cut off was visited by representatives of the corporate respondent prior to the date of the issuance of the aforesaid letter of June 17, 1947, and informed that if he did not maintain the fixed uniform minimum resale prices, he would not be permitted to purchase any more of said products. Said retail dealer did not at that time agree to maintain such prices, and in July 1947 the corporate respondent stopped filling any of said dealer's orders. In August 1947 said dealer was again visited by representatives of the corporate respondent, at

Findings

48 F. T. C.

which time he was told that if he would maintain the fixed uniform minimum resale prices, the corporate respondent would resume selling to him. Said dealer agreed to maintain such prices and the corporate respondent resumed selling to him. Later, however, the corporate respondent discovered that said dealer was selling said products at less than the fixed uniform minimum resale prices, and his source of supply for said products was again cut off by the corporate respondent.

As a result of the corporate respondent's system or policy instituted, adopted, and enforced as aforesaid, more than 380 retail dealer customers of the corporate respondent have, since receipt of the corporate respondent's letter of February 20, 1948, sold said products in accordance with the policy stated in said letter, and all advertisements of said products by such dealers have also been in accordance with such policy.

PAR. 5. The direct effect of the acts and practices of the corporate respondent as hereinabove found has been to suppress competition among retail dealers in the District of Columbia in the sale of said products; to cause said retail dealers to sell said products at the prices fixed by the corporate respondent and to prevent them from selling said products at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally; and to deprive purchasers of said products of the advantage in price which they would otherwise obtain from free and uncontrolled competition among retail dealers in the sale of said products and from a natural and unobstructed flow of commerce in said products. It is the opinion of the Commission that the activities of Middle Atlantic Distributors, Inc., exceeded what is lawfully permissible; that its conduct embraced considerably more than the mere exercise of its right to inform and make known to its dealer customers that it desired its fixed resale prices adhered to, and to inform and make known to said dealers that it would discontinue selling to any dealer who disregarded its policy in this regard. It is the conclusion of the Commission that the conduct of Middle Atlantic Distributors, Inc., and particularly its conduct in connection with the conduct of its salesmen in exerting pressure on dealers to abide by the specified prices and the practice of said salesmen in reporting to Middle Atlantic Distributors the names of dealers who did not adhere to its specified prices, resulted in the securing of assurances and understandings from its retail customers that they would abide by Middle Atlantic Distributors' fixed resale prices and that, as a result thereof, competition between dealers in said products was suppressed and eliminated, and consumers in the District of Columbia were deprived of the benefit of price competition based on cost, efficiency, and service.

511

Order

CONCLUSION

The acts and practices of the corporate respondent, Middle Atlantic Distributors, Inc., and of the individual respondent Paul H. Coughlin acting by and through the corporate respondent, as hereinabove found, are all to the prejudice and injury of the public; have a dangerous tendency to hinder and suppress, and have actually hindered and suppressed, competition between and among the retail dealers in the District of Columbia selling said products; and constitute unfair and deceptive acts and practices in commerce and 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, the answer of the respondents, testimony and other evidence in support of the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it (no testimony having been introduced in opposition to the allegations of the complaint), recommended decision of the trial examiner and exceptions thereto, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents Middle Atlantic Distributors, Inc., and Paul H. Coughlin have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Middle Atlantic Distributors, Inc., a corporation, its officers, and the respondent Paul H. Coughlin, individually and as an officer of said corporate respondent, and said respondents' respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of whiskies or other alcoholic beverages in the District of Columbia, do forthwith cease and desist from:

(1) Entering into or enforcing any agreement or understanding, verbal or written, with any retail dealer or other distributor concerning the price at which any said products are to be resold by such retail dealer or other distributor.

(2) Obtaining or attempting to obtain from any retail dealer or other distributor, as a condition precedent to the sale of said products to such retailer dealer or other distributor, any agreement, understanding, or promise concerning the price at which any of said products are to be resold by such retail dealer or other distributor.

Order

48 F. T. C.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to respondents Murdoch J. Finlayson and William R. Lichtenberg.

It is further ordered, That the respondents Middle Atlantic Distributors, Inc., and Paul H. Coughlin shall, within sixty (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.

Complaint

IN THE MATTER OF

IOWA FIBRE PRODUCTS, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5845. Complaint, Feb. 2, 1951—Decision, Dec. 7, 1951

Where a corporation engaged in the manufacture, sale and distribution of a carrying case in which there was incorporated a cushion containing a robe designated "Cush-N-Robe"; and the two officers who controlled and directed its operation; in advertising its said products prior to August, 1950, through circulars and other advertising media—

- (a) Represented directly and by implication, through use of the term "100% wool", that said cushion top coverings and robes were composed solely of "wool" as generally understood by the purchasing public, namely, unreclaimed woolen fibers; notwithstanding the fact that many of them contained a substantial portion of reclaimed woolen fibers;

With tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous belief that such representations were true, and of thereby causing their purchase of said product:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce; and

Where said corporation and individuals—

- (b) Misbranded many of said "Cush-N-Robes" in violation of the Wool Products Labeling Act in that there was set forth in many cases upon the labels affixed thereto the words "100% wool robe" and "the Cush-N-Robe has a top covering of the same material as the robe inside" when in fact said top coverings and robes were not composed entirely of "wool" but contained a substantial amount of "reused wool" as those terms are defined by said Act; and
- (c) Further misbranded said articles in that said labels did not show the percentage of the total fiber weight of "wool" and "reused wool", exclusive of ornamentation not exceeding five per cent:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

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

Mr. Jesse D. Kash for the Commission.

Abramson & Myers, of Des Moines, Ia., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the