

IN THE MATTER OF
AMERICAN SURGICAL TRADE ASSOCIATION ET AL.

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

Docket 5979. Complaint, Apr. 24, 1952—Decision, Oct. 16, 1952

Where (I) the members of the unincorporated trade association, "ASTA", who were manufacturers, importers and distributors of and dealers in surgical instruments, supplies and equipment, and handled over one-half of the annual \$300,000,000 trade involved; and as such members enjoyed among member and non-member manufacturers and among purchasers the preference which their association sought to create through advertising and other ways; and (II) the members of "MSTA", a second association composed of some 56 manufacturers, wholesalers and importers of the aforesaid products, of whom about 50 manufacturers were members also of the aforesaid ASTA; engaged in substantial competition with one another and with others except as below described;

Acted together through and by means of their said and other predecessor associations, to restrain and eliminate competition in the manufacture, sale and distribution of products concerned and attempted to monopolize and control trade in commerce; and

Where the members of said "ASTA", pursuant to such purpose—

- (a) Denied membership to dealers for such competitive reasons as a belief among their membership that there were enough dealers in the territory of the dealer applicant, and applicant's failure to adhere to published prices or the fact that an applicant, otherwise qualified, was also engaged in another business; and by failing to act on certain applications for membership within a reasonable time, publishing in the by-laws of their association ostensible standards for membership, while in practice imposing others; and by publicly grading and differentiating the members from non-members arbitrarily, to the advantage of the former;
- (b) Attempted to and did divert trade from non-members to themselves by establishing and maintaining a reciprocal arrangement preferring one another over non-members through use of preferential listings, denying the latter full access to advertising, and other means;
- (c) Attempted to and did promote resale price maintenance and uniformity in terms and conditions of sale by filing complaints as to price cutting with one another through their association; by recommending for their common usage publication by respondent manufacturers of price lists in accordance with the form devised and promulgated by themselves through said ASTA; and by dividing themselves into districts so that all those who were in immediate competition with one another were in a given district and discussing prices, terms and conditions of sale and problems of resale price maintenance at district meetings; and

Where the members of said "MSTA"—

- (d) Attempted to and did prevent manufacturers from selling to dealers who had not been approved by MSTA; and

Where the members, generally, of said associations—

- (e) Sought to, and did, prevent dealers and manufacturers from engaging in trade and commerce by legal and proper methods of their own choosing which were not acceptable to said members as a group; and

Where associate members of ASTA—

- (f) Participated in its activities in a limited way through the payment of dues; With the result that said acts and practices hindered, lessened, and restrained competition in the sale of surgical instruments, supplies and equipment; and had a dangerous tendency unduly so to hinder such competition; to the prejudice of competitors of members and that of the public:

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

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Lynn C. Paulson, *Mr. Joseph J. Gercke* and *Mr. T. Harold Scott* for the Commission.

Johnston, Thompson, Raymond & Mayer, of Chicago, Ill., for American Surgical Trade Association, its officers and various members.

Cahill, Gordon, Zachry & Reindel, of New York City, for Manufacturers Surgical Trade Association, its officers and various members.

Mr. Charles F. Hough, of Chicago, Ill., for American Hospital Supply Co.

Mr. F. J. Zugehoer, of Wilmington, Del., and *Covington & Burling*, of Washington, D. C., for E. I. DuPont de Nemours & Co., Inc.

Eichenbaum, Walther, Scott & Miller, of Little Rock, Ark., for various members of the American Surgical Trade Association.

Hotz & Hotz, of Omaha, Nebr., for Seiler Surgical Co., Inc.

Quinn & Quinn, of Providence, R. I., for Smith-Holden, Inc.

Snyder, Chadwell & Fagerburg, of Chicago, Ill., for The Abbott Laboratories.

Satterlee, Warfield & Stephens, of New York City, for American Cystoscope Makers, Inc.

Mr. Rodgers Donaldson and *Mr. J. Belden Sly*, of Southbridge, Mass., for American Optical Co.

Dammann, Roche & Goldberg, of New York City, for American Safety Razor Corp.

Rogers, Hoge & Hills, of New York City, for Ames Co., Inc., and George A. Breon & Co.

Appearances

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Ropes, Gray, Best, Coolidge & Rugg, of Boston, Mass., for The Kendall Co.

Nixon, Hargrave, Devans & Dey, of Rochester, N. Y., for Bausch & Lomb Optical Co. and Taylor Instrument Companies.

Miller, Canfield, Paddock & Stone, of Detroit, Mich., for Parke, Davis & Co.

Mr. Alex Elson, of Chicago, Ill., for Beck-Lee Corp.

Kane, Dalsimer & Kane, of New York City, for Becton, Dickinson & Co.

Saul, Ewing, Remick & Saul, of Philadelphia, Pa., for J. Bishop & Co. Platinum Works.

Mr. Isaac W. Digges, of New York City, for Bristol Laboratories, Inc.

Mr. W. Horace Hepburn, Jr., of Philadelphia, Pa., for F. A. Davis Co.

Coleman & Jackson, of Norwich, N. Y., for Eaton Laboratories, Inc.

Leon, Weill & Mahony, of New York City, for Empire State Thermometer Co., Inc.

Fuller, Harrington & Seney, of Toledo, Ohio, for Glasco Products Co.

Mr. Karl Huber, of Newark, N. J., for Hanovia Chemical & Mfg. Co. and National Electric Instrument Co., Inc.

Thompson, Hine & Flory, of Cleveland, Ohio, for The Henkel-Clauss Co.

Mr. Meyer Cohen, of New York City, for Holland-Rantos Co., Inc.

Mr. Kenneth Perry, of New Brunswick, N. J., for Johnson & Johnson.

Ballard, Spahr, Andrews & Ingersoll, of Philadelphia, Pa., for Lea & Febiger.

Evans, Bayard & Frick, of Philadelphia, Pa., for J. B. Lippincott Co.

Wood, Molloy, France & Tully, of New York City, for Maltbie Laboratories, Inc.

Jones, Woodward & Miles, of Bristol, Va., for The S. E. Massengill Co.

Hughes, Hubbard, Blair & Reed, of New York City, for Merck & Co., Inc.

Morgan, Lewis & Bockius, of Philadelphia, Pa., for The National Drug Co.

Widaman & Widaman, of Warsaw, Ind., for Orthopedic Equipment Co.

Drinker, Biddle & Reath, of Philadelphia, Pa., for The George P. Pilling & Sons Co.

Anderson, Gilbert, Wolfert, Allen & Bierman, of St. Louis, Mo., for Professional Specialities, Inc. and Shampaine Co.

Mr. Charles H. Resnick and *Mr. Paul T. Hannah*, of Waltham, Mass., and *Jackson & Walker*, of Washington, D. C., for Raytheon Manufacturing Co.

Buck & Perkins, of Baltimore, Md., for The Williams & Wilkins Co.

Magavern, Magavern, Lowe & Gorman, of Buffalo, N. Y., for Hard Manufacturing Co.

Mr. Francis L. VanDusen, of Philadelphia, Pa., for Penn Surgical Mfg. Co., Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (52 Stat. 111; 15 U. S. C. A. Sec. 45) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the American Surgical Trade Association, the Manufacturers Surgical Trade Association, their officers, directors and members, referred to hereinafter as respondents, have violated the provisions of section 5 of said Act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Surgical Trade Association, hereinafter referred to as ASTA, is an incorporated trade association organized and existing by virtue of the laws of the State of Delaware, with its principal offices and place of business at 176 West Adams Street, Chicago 2, Illinois. It has approximately four hundred members, consisting of manufacturers, distributors and dealers. Most of the manufacturers who are members of ASTA are also members of Manufacturers Surgical Trade Association. The individuals, partnerships, corporations and trusts who are members of ASTA are located at various places throughout the various States of the United States, territories of the United States and foreign countries. Members of ASTA are engaged as manufacturers, importers, distributors and dealers in the manufacture, sale and distribution of surgical instruments, supplies and equipment for physicians and hospitals.

The officers and directors of said respondent ASTA who are named respondents herein, both in their capacities as officers and directors of said respondent ASTA, and as individuals, are as follows:

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Henry G. Shaw, president, % Shaw Supply Co., Inc., 755 Market Street, Tacoma 3, Wash.

Robert E. Anderson, Jr., vice president, % Powers & Anderson, Inc., 2 South 5th Street, Richmond 3, Va.

William D. West, treasurer, % The G. A. Ingram Company, 444 Woodward Avenue, Detroit 1, Mich.

J. Carroll Rutledge, general chairman, % E. H. McClure Co., 1919 Pacific Avenue, Dallas, Tex.

Homer G. Klene, secretary, % American Surgical Trade Association, 176 West Adams Street, Chicago 3, Ill.

The membership of said respondent ASTA constitutes a class so numerous and changing as to make it impracticable to set forth the names of all of them in this complaint. All of the members of ASTA are hereby named respondents herein. The following concerns are representative of all of the members of ASTA:

A. S. Aloe Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, with offices and principal place of business located at 1831 Olive Street, St. Louis 3, Missouri.

American Hospital Supply Corporation, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with offices and principal place of business located at 2020 Ridge Avenue, Evanston, Illinois.

Anderson Surgical Supply Co., a corporation organized and existing under and by virtue of the laws of the State of Florida, with offices and principal place of business located at 40-42 West Duval Street, P. O. Box No. 1700, Jacksonville 1, Florida.

McKesson & Robbins, Inc., a corporation organized and existing under and by virtue of the laws of the State of Maryland, with offices and principal place of business located at 1708 First Avenue, Birmingham 3, Alabama.

Edward Weck & Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 135 Johnson Street, Brooklyn 1, New York.

Cochrane Physicians Supplies, Inc., a corporation, organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 133 East 58th Street, New York 22, New York.

Powell & Powell Surgical Co., a corporation, organized and existing under and by virtue of the laws of the State of New York, with offices

and principal place of business located at 75th Street and Third Avenue, Brooklyn 9, New York.

Manhattan Surgical Instrument Company, a corporation, organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 402 West 23d Street, New York 11, New York.

United Surgical Supplies Co., a corporation organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 160 East 56th Street, New York 22, New York.

Bard-Parker Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, with its offices and principal place of business located in Danbury, Connecticut.

J. Sklar Mfg. Co., a corporation organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 38-04 Woodside Avenue, Long Island City 4, New York.

Beck-Lee Corp., a corporation organized and existing under and by virtue of the laws of the State of Illinois, with offices and principal place of business located at 630 West Jackson Boulevard, Chicago 6, Illinois.

Johnson & Johnson, a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with offices and principal place of business located at New Brunswick, New Jersey.

MacGregor Instrument Co., a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, with offices and principal place of business located at 1448 Highland Avenue, Needham 92, Massachusetts.

Welch-Allyn, Inc., a corporation, organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business at 3 North Green Street, Auburn, New York.

Becton, Dickinson & Company, a corporation, organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located in Rutherford, New Jersey.

Merck & Co., Inc., a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with offices and principal place of business located at Rahway, New Jersey.

The B. F. Goodrich Co., a corporation organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 1247 South High Street, Akron 11, Ohio.

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E. I. DuPont de Nemours & Co., Inc., a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with offices and principal place of business located at Wilmington, Delaware.

Respondent Manufacturers Surgical Trade Association, hereinafter referred to as MSTA, is a voluntary unincorporated trade association, with its principal offices and place of business located in Danbury, Connecticut. The membership of MSTA consists of approximately fifty-six manufacturers, wholesalers and importers of surgical instruments, supplies and equipment for physicians and hospitals.

The officers of said respondent MSTA who are named respondents herein, both in their capacities as officers of said respondent MSTA and as individuals, are as follows:

John MacGregor, president, % MacGregor Instrument Co., Needham 92, Mass.

Bernard M. Hanafin, first vice president, % N. A. Baum Co., Inc., 460 West 34th Street, New York, N. Y.

Howell G. Evans, second vice president, % Hamilton Manufacturing Co., Two Rivers, Wis.

Morgan Parker, secretary, Bard-Parker Co., Danbury, Conn.

Frank E. Chesterman, Jr., treasurer, Chesterman-Leeland Co., 406 Memphis Street, Philadelphia 25, Pa.

The membership of respondent MSTA constitutes a class so numerous and changing as to make it impracticable to set forth the names of all of them in this complaint. All members of MSTA are made respondents herein. The following corporations are members of MSTA and are named as representative of the entire membership. The state of incorporation and location of the offices and principal place of business of each of these respondents has hereinabove been set forth:

Bard-Parker Co., Inc., a corporation,

J. Sklar Mfg. Co., a corporation.

Johnson & Johnson, a corporation,

MacGregor Instrument Co., a corporation,

Welch-Allyn, Inc., a corporation, and

Becton, Dickinson & Co., a corporation.

PAR. 2. Respondent dealers, distributors, manufacturers and importers are dealers in and distributors, manufacturers and importers of surgical instruments, supplies and equipment for the use of physicians and hospitals. Surgical instruments, supplies and equipment for the use of physicians and hospitals are varied and extensive. Included in the items manufactured and sold in trade and commerce

in this industry are items commonly used by physicians and hospitals. Scalpels, anaesthetics, hypodermic needles, bandages, X-Ray apparatus, hospital beds and diagnostic equipment are examples of the items involved. The total volume of trade in this industry exceeds one hundred million dollars annually, approximately 90 percent of which is handled by members of ASTA. Curtailment of imports during the days of World War I led to the development of the manufacture of these items in the United States.

Prior to World War I there existed a Wholesale Surgical Trade Association of America. The name of that Association was changed after World War I to the present name of Manufacturers Surgical Trade Association.

PAR. 3. Most of the respondent dealer members of ASTA purchase for resale surgical instruments, supplies and equipment directly from manufacturers or importers thereof located in various States, and said manufacturers ship said products, when so purchased, from their respective places of business in such other States to said dealer members or to consignees designated by said dealer members into States other than the State of manufacture or import. The respondent members of respondent MSTTA, who also comprise a substantial part of the membership of ASTA, are engaged in the business of selling and distributing surgical instruments, supplies and equipment to customers located in States other than the State in which said respective members are located. As a result of the aforesaid transactions, there has been and is now a pattern and course of interstate commerce in said products between the said respondent members of said respondents ASTA and MSTTA and the purchasers of surgical instruments, supplies and equipment located throughout the several States of the United States.

PAR. 4. Respondent ASTA is a well known and well advertised Association. It employs a full-time paid secretary. One of its activities is the publication of a trade journal called The ASTA Journal. This publication is issued monthly. It is distributed to all members of the Association. The Association sells advertising space in this publication.

By virtue of a number of circumstances, including action on the part of Association members to that end, there exists a preference on the part of purchasers and prospective purchasers, physicians and hospitals for members of ASTA as dealers and manufacturers of the instruments, supplies and equipment they purchase. There also exists on the part of manufacturers of surgical goods, some of whom are members of ASTA and some of whom are not members, a preference for members of ASTA as dealers and distributors of their products.

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Among the ways respondents, through ASTA, seek to create a preference for members of ASTA is that of the publication of pamphlets and other literature for distribution to purchasers and prospective purchasers, physicians and hospitals, containing such statements and declarations, among others, as the following:

The American Surgical Trade Association is made up of the leading distributors and manufacturers of instruments, supplies and equipment for physicians and hospitals. In its own field it fills a need fully as important as does the American Medical Association for physicians or the American Hospital Association for hospitals.

And,

How do you distinguish the good distributor from the others who solicit your patronage? The surest way to protect yourself and your patients when purchasing health supplies and equipment is by relying on those distributors and manufacturers who are affiliated with the American Surgical Trade Association.

PAR. 5. Said respondent members of respondents ASTA and MSTA are in substantial competition with one another and with other members of the industry in the manufacture, sale and distribution of the aforesaid products in interstate commerce, except insofar as that competition has been hindered, lessened, restricted and eliminated by the unfair methods and practices hereinafter set forth.

PAR. 6. For many years last past, and continuing to the present time, the respondents hereinbefore described, other than respondents ASTA and MSTA, have acted together in combination, through and by means of respondents ASTA and MSTA and other unnamed predecessor associations, to limit, restrain, suppress and eliminate competition between and among themselves and others in the manufacture, sale and distribution of instruments, supplies and equipment for physicians and hospitals, and have attempted to monopolize and control trade in commerce in said instruments, supplies and equipment for physicians and hospitals.

Pursuant to and in furtherance of the aforesaid cooperative action and combination, respondents have engaged in, done and performed the following acts, practices, methods and things:

(a) Respondent members of respondent ASTA have restricted and are restricting membership in respondent ASTA in such a manner as to deny membership to dealers in surgical instruments, supplies and equipment for physicians and hospitals, for such reasons, among others (and by such devices) as that (1) the membership in ASTA, or some one or more members of it, believe or believes that there are enough dealers in the territory in which an applicant is located; (2) that an applicant will not adhere to published prices; (3) that an applicant is engaged in another business as well as being a dealer in

surgical instruments, supplies and equipment for physicians and hospitals; and (4) that an applicant is engaged in joint buying for the account or accounts of doctors, hospitals and other groups of purchasers; (5) of failing to accept or reject certain applications for membership within a reasonable time; (6) of publishing in the By-Laws of said respondent ASTA the standards ostensibly to be met by applicants who apply for membership in respondent ASTA, and, in practice, imposing other and unreasonable standards of admission; and publicly have graded and differentiated such members from non-members arbitrarily to the advantage of members and the disadvantage of non-members.

(b) Respondent members of respondent ASTA attempt to and do divert trade from non-members to themselves by establishing and maintaining a reciprocal arrangement whereby they grant a preference to one another over non-members through the use of preferential listings and by denying full access to advertising and by other means.

(c) Respondent members of ASTA attempt to and have promoted resale price maintenance and uniformity in terms and conditions of sale in a number of ways, such as filing complaints with one another through ASTA as to price cutting; recommending for their common usage the publication by respondent manufacturers of price lists in accordance with a form devised and promulgated for the announcement of prices, terms and conditions of sale, prepared and promulgated by themselves through ASTA; dividing themselves into districts so that all of those who are in immediate competition with one another are in a given district, and entering into and carrying on discussions of prices, terms and conditions of sale and problems of resale price maintenance at district meetings.

(d) Respondent members of respondent MSTA have attempted to and have prevented manufacturers from selling to dealers who have not been approved as dealers by respondent MSTA.

(e) Respondents have sought to and have prevented dealers and manufacturers from carrying on legal and proper courses of action, and engaging in trade and commerce, by legal and proper methods of their own choosing which are not acceptable to respondents as a group.

PAR. 7. The acts and practices of respondents as herein alleged have had, and do have, the effect of hindering, lessening and restraining competition in the sale of surgical instruments, supplies and equipment for physicians and hospitals; have had and do have, a dangerous tendency unduly to hinder competition or to create in respondent members of ASTA and MSTA a monopoly in the sale and distribu-

tion of surgical supplies and equipment; are all to the prejudice of competitors of respondent members of said respondent ASTA and MSTA and to the public; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 24, 1952, issued and subsequently served its complaint on the respondents named in the complaint, charging them with the use of unfair methods of competition and/or unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answers to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion and order to cease and desist, specifically refrain from admitting or denying that they are engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist,

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on October 16, 1952 and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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Findings

all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent American Surgical Trade Association, hereinafter referred to as ASTA, is an incorporated trade association organized and existing by virtue of the laws of the State of Delaware, with its principal offices and place of business at 176 West Adams Street, Chicago 2, Illinois. It has approximately four hundred members, consisting of manufacturers, distributors and dealers. Approximately 50 of the manufacturers who are members of ASTA are also members of Manufacturers Surgical Trade Association. The individuals, partnerships, corporations and trusts who are members of ASTA are located at various places throughout the various States of the United States, territories of the United States and foreign countries. Members of ASTA are engaged as manufacturers, importers, distributors and dealers in the manufacture, sale and distribution of surgical instruments, supplies and equipment for physicians and hospitals.

The officers and directors of said respondent ASTA who are named respondents, both in their capacities as officers and directors of said respondent ASTA, and as individuals, as of the date of the complaint were as follows:

Henry G. Shaw, president, % Shaw Supply Co., Inc., 755 Market Street, Tacoma 3, Wash.

Robert E. Anderson, Jr., vice president, % Powers & Anderson, Inc., 2 South 5th Street, Richmond 3, Va.

William D. West, treasurer, % The G. A. Ingram Co., 4444 Woodward Avenue, Detroit 1, Mich.

J. Carroll Rutledge, general chairman, % E. H. McClure Co., 1919 Pacific Avenue, Dallas, Tex.

Homer G. Klene, secretary, % American Surgical Trade Association, 175 West Adams Street, Chicago 3, Ill.

The membership of said respondent ASTA constitutes a class so numerous and changing as to make it impracticable to set forth the names of all of them. All of the members of ASTA were named respondents herein. The following concerns were named as representative of all of the members of ASTA.

A. S. Aloe Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, with offices and principal place of business located at 1831 Olive Street, St. Louis 3, Missouri.

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American Hospital Supply Corporation, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with offices and principal place of business located at 2020 Ridge Avenue, Evanston, Illinois.

Anderson Surgical Supply Co., a corporation organized and existing under and by virtue of the laws of the State of Florida, with offices and principal place of business located at 40-42 West Duval Street, P. O. Box No. 1700, Jacksonville 1, Florida.

McKesson & Robbins, Inc., a corporation organized and existing under and by virtue of the laws of the State of Maryland, through its Surgical and Laboratory Supply Department of its Birmingham Division, with offices and principal place of business located at 1708 First Avenue, Birmingham 3, Alabama.

Edward Weck & Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 135 Johnson Street, Brooklyn 1, New York.

Cochrane Physicians Supplies, Inc., a corporation, organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 133 East 58th Street, New York 22, New York.

Powell & Powell Surgical Co., a corporation, organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 75th Street, and Third Avenue, Brooklyn 9, New York.

Manhattan Surgical Instrument Company, a corporation, organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 402 West 23d Street, New York 11, New York.

United Surgical Supplies Co., a corporation organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 160 East 56th Street, New York 22, New York.

Bard-Parker Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located in Danbury, Connecticut.

J. Sklar Mfg. Co., a corporation organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 38-04 Woodside Avenue, Long Island City 4, New York.

Beck-Lee Corp., a corporation organized and existing under and by virtue of the laws of the State of Illinois, with offices and principal

place of business located at 630 West Jackson Boulevard, Chicago 6, Illinois.

Johnson & Johnson, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with offices and principal place of business located at New Brunswick, New Jersey.

MacGregor Instrument Co., a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, with offices and principal place of business located at 1448 Highland Avenue, Needham 92, Massachusetts.

Welch-Allyn, Inc., a corporation, organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business at 3 North Green Street, Auburn, New York.

Beckton, Dickinson & Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with offices and principal place of business located in Rutherford, New Jersey.

The B. F. Goodrich Co., a corporation organized and existing under and by virtue of the laws of the State of New York, with offices and principal place of business located at 1247 South High Street, Akron 11, Ohio.

E. I. du Pont de Nemours & Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, with offices and principal place of business located at Wilmington, Delaware.

Respondent Manufacturers Surgical Trade Association, hereinafter referred to as MSTA, is a voluntary unincorporated trade association, with an office at 342 Madison Avenue, New York, New York. The membership of MSTA consists of approximately fifty-six manufacturers, wholesalers and importers of surgical instruments, supplies and equipment for physicians and hospitals.

The officers of said respondent MSTA who are named respondents, both in their capacities as officers of said respondent MSTA and as individuals, as of the date of the complaint, were as follows:

B. M. Hanafin, president, W. A. Baum Co., Inc., 460 West 34th Street, New York, N. Y.

V. A. Noel, first vice president, Ritter Company, Inc., Rochester 3, N. Y.

W. M. Griffith, second vice president, Taylor Instrument Companies, Rochester 1, N. Y.

Morgan Parker, secretary, Bard-Parker Co., Inc., Danbury, Conn.

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R. F. Simons, treasurer, Ethicon Suture Laboratories, New Brunswick, N. J.

The membership of respondent MSTTA constitutes a class so numerous and changing as to make it impracticable to set forth the names of all of them herein. All members of MSTTA were made respondents. The following corporations are members of the MSTTA and are named as representative of the entire membership. The state of incorporation and location of the offices and principal place of business of each of these respondents has hereinabove been set forth:

Bard-Parker Company, Inc., a corporation,
J. Sklar Mfg. Co., a corporation,
Johnston & Johnston, a corporation,
MacGregor Instrument Co., a corporation,
Welch-Allyn, Inc., a corporation, and
Beckton, Dickinson & Company, a corporation.

PAR. 2. Respondent dealers, distributors, manufacturers, and importers are dealers in and distributors, manufacturers and importers of surgical instruments, supplies and equipment for the use of physicians and hospitals. Surgical instruments, supplies and equipment for the use of physicians and hospitals are varied and extensive. Included in the items manufactured and sold in trade and commerce in this industry are items commonly used by physicians and hospitals. Scalpels, anaesthetics, hypodermic needles, bandages, X-ray apparatus, hospital beds and diagnostic equipment are examples of the items involved. The total volume of trade in this industry exceeds \$300,000,000 annually, of which one-half is handled by members of ASTA. Curtailment of imports during the days of World War I led to the development of the manufacture of these items in the United States.

Prior to World War I there existed a Wholesale Surgical Trade Association of America. The name of that Association was changed after World War I to the present name of Manufacturers Surgical Trade Association.

PAR. 3. Most of the respondent dealer members of ASTA purchase for resale surgical instruments, supplies and equipment directly from manufacturers or importers thereof located in various States, and said manufacturers ship said products, when so purchased, from their respective places of business in such other States to said dealer members or to consignees designated by said dealer members into States other than the State of manufacture or import. The respondent members of respondent MSTTA, who also comprise a part of the membership of ASTA, are engaged in the business of selling and distributing surgical instruments, supplies and equipment to customers located in

States other than the State in which said respective members are located. As a result of the aforesaid transactions, there has been and is now a pattern and course of interstate commerce in said products between the said respondent members of said respondents ASTA and MSTA and the purchasers of surgical instruments, supplies and equipment located throughout the several States of the United States.

PAR. 4. Respondent ASTA is a well known and well advertised Association. It employs a full-time paid secretary. One of its activities is the publication of a trade journal called The ASTA Journal. This publication is issued monthly. It is distributed to all members of the Association. The Association sells advertising space in this publication.

By virtue of a number of circumstances, including action on the part of Association members to that end, there exists a preference on the part of purchasers and prospective purchasers, physicians and hospitals for members of ASTA as dealers and manufacturers of the instruments, supplies and equipment they purchase. There also exists on the part of manufacturers of surgical goods, some of whom are members of ASTA and some of whom are not members, a preference for members of ASTA as dealers and distributors of their products.

Among the ways respondents, through ASTA, seek to create a preference for members of ASTA is that of the publication of pamphlets and other literature for distribution to purchasers and prospective purchasers, physicians and hospitals, containing such statements and declarations, among others, as the following:

The American Surgical Trade Association is made up of the leading distributors and manufacturers of instruments, supplies and equipment for physicians and hospitals. In its own field it fills a need fully as important as does the American Medical Association for physicians or the American Hospital Association for hospitals.

And,

How do you distinguish the good distributor from the others who solicit your patronage? The surest way to protect yourself and your patients when purchasing health supplies and equipment is by relying on those distributors and manufacturers who are affiliated with the American Surgical Trade Association.

PAR. 5. Said respondent members of respondents ASTA and MSTA are in substantial competition with one another and with other members of the industry in the manufacture, sale and distribution of the aforesaid products in interstate commerce, except insofar as that competition has been hindered, lessened, restricted and eliminated by the unfair methods and practices hereinafter set forth.

PAR. 6. For many years last past, and continuing to the date of filing the complaint, the respondents hereinbefore described, other

than respondents ASTA and MSTA, have acted together in combination, through and by means of respondents ASTA and MSTA and other unnamed predecessor associations, to limit, restrain, suppress and eliminate competition between and among themselves and others in the manufacture, sale and distribution of instruments, supplies and equipment for physicians and hospitals, and have attempted to monopolize and control trade in commerce in said instruments, supplies and equipment for physicians and hospitals, as follows:

(a) Respondent members of respondent ASTA have restricted, and at the time of the filing of the complaint were restricting, membership in respondent ASTA by denying membership to dealers in surgical instruments, supplies and equipment for physicians and hospitals, for such competitive reasons, among others (and by such devices), as that (1) the membership in ASTA, or some one or more members of it, believe or believes that there are enough dealers in the territory in which an applicant is located; (2) that an applicant will not adhere to published prices; (3) that an applicant otherwise qualified is engaged in another business as well as being a dealer in surgical instruments, supplies and equipment for physicians and hospitals; (4) of failing to accept or reject certain applications for membership in ASTA within a reasonable time; (5) of publishing in the By-Laws of said respondent ASTA the standards ostensibly to be met by applicants who apply for membership in respondent ASTA and, in practice, imposing other standards of admission; and publicly have graded and differentiated such members from non-members arbitrarily to the advantage of members and the disadvantage of non-members.

(b) Respondent members of respondent ASTA attempt to and do divert trade from non-members to themselves by establishing and maintaining a reciprocal arrangement whereby they grant a preference to one another over non-members through the use of preferential listings and by denying full access to advertising and by other means.

(c) Respondent members of ASTA attempt to and have promoted resale price maintenance and uniformity in terms and conditions of sale by filing complaints with one another through ASTA as to price cutting; recommending for their common usage the publication by respondent manufacturers of price lists in accordance with a form devised and promulgated for the announcement of prices, terms and conditions of sale, prepared and promulgated by themselves through ASTA; dividing themselves into districts so that all of those who are in immediate competition with one another are in a given district, and entering into and carrying on discussions of prices, terms and conditions of sale and problems of resale price maintenance at district meetings.

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(d) Respondent members of respondent MSTA have attempted to and have prevented manufacturers from selling to dealers who have not been approved as dealers by respondent MSTA.

(e) Respondents have sought to and have prevented dealers and manufacturers from carrying on legal and proper courses of action, and engaging in trade and commerce, by legal and proper methods of their own choosing which are not acceptable to respondents as a group.

(f) Certain associate members of ASTA have participated in the activities of ASTA in a limited way, e. g., payment of dues.

PAR. 7. The acts and practices of respondents as herein found have had, and do have, the effect of hindering, lessening and restraining competition in the sale of surgical instruments, supplies and equipment for physicians and hospitals; have had and do have a dangerous tendency unduly to hinder competition in the sale and distribution of surgical supplies and equipment; all to the prejudice of competitors of respondent members of said respondent ASTA and MSTA and to the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, American Surgical Trade Association, its officers, individually and as officers of said respondent, American Surgical Trade Association, its agents, representatives and employees, and its members, present and future, and Manufacturers Surgical Trade Association, its officers, individually and as officers of said respondent Manufacturers Surgical Trade Association, its agents, representatives and employees, and its members, present and future, directly or indirectly, in connection with the offering for sale, sale or distribution of surgical instruments, supplies and equipment in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing any planned common course of action, understanding, agreement or conspiracy between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts, practices and things:

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(a) Restricting membership in respondent ASTA by denying membership to dealers in instruments, supplies and equipment for physicians and hospitals for competitive reasons as, for example, (1) that the membership in respondent ASTA or some one or more members of it believes or believe that there are enough dealers in the territory in which an applicant is located; (2) that an applicant will not adhere to published prices; (3) that an applicant otherwise qualified is engaged in another business, as well as being a dealer in instruments, supplies and equipment for physicians and hospitals; or for reasons which depart from ASTA's then published or accepted standards governing admission of new members.

(b) Failing to accept or reject applications for membership in ASTA within a reasonable time.

(c) Publishing in the By-Laws of respondent ASTA the standards ostensibly to be met by applicants who apply for membership and, in practice, imposing other standards of admission.

(d) Attempting to divert or diverting trade from non-members to themselves by establishing and maintaining a reciprocal arrangement between manufacturers and dealers whereby, in buying and selling, they grant a preference because of membership to one another over non-members; educating or persuading buyers or sellers not to deal with non-members of ASTA because they are non-members, or by denying full access to advertising space in The ASTA Journal to non-members on an equal basis with members.

(e) Attempting to promote or promoting resale price maintenance or uniformity in terms and conditions of sale between and among themselves by filing complaints with one another through ASTA as to price cutting; or discussing or making recommendations through ASTA as to price lists, terms, conditions of sale, or resale policies of manufacturers other than with respect to physical size, shape and punching of the paper.

(f) Attempting to prevent or preventing manufacturers from selling to dealers who have not been approved as dealers by respondent MSTA.

(g) Restricting or preventing dealers and manufacturers from carrying on legal courses of action and engaging in trade and commerce by legal methods of their own choosing which are not acceptable to respondents as a group.

II

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission

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a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

III

It is further ordered, That American Hospital Supply Corporation, E. I. Dupont de Nemours & Co., Inc., Eaton Laboratories, Inc., Holland-Rantos Company, F. A. Davis Company, United States Truss Company, Manhattan Surgical Instrument Company, Smith-Holden, Inc., John Sexton & Company, Henkel-Clauss Company, Wm. S. Merrell Company, Lea & Febiger, J. B. Lippincott Company, The Williams & Wilkins Company, Medical Economics, Inc., and Modern Medicine are hereby dismissed from this proceeding.

AMERICAN SURGICAL TRADE ASSOCIATION,
ITS OFFICERS AND MEMBERS.

By its attorney:

EDWARD R. JOHNSTON,
(Signed) Edward H. Hatton.

MANUFACTURERS SURGICAL TRADE ASSOCIATION,
ITS OFFICERS AND MEMBERS.

By its attorney:

CAHILL, GORDON, ZACHRY & REINDEL,
(Signed) By JERROLD G. VAN CISE.
BECTON-DICKENSON & Co.,
By KANE, DALSIMER & KANE,
DANIEL H. KANE.

AUGUST 19, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 16th day of October 1952.

IN THE MATTER OF
SHEFFIELD SILVER COMPANY

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

Docket 4000. Complaint, Jan. 26, 1940—Decision, Oct. 22, 1952

Due to the special skill of its artisans and the standards of quality set by the City of Sheffield, England, silver-plated ware there manufactured has an established reputation for excellence in the United States, and has made said city known as a place of manufacture of silverware and especially silver-plated hollow ware of a high quality.

There is a definite preference on the part of a substantial portion of the purchasing public for silver-plated ware of English manufacture, and certain marks, imprinted on silver made in Sheffield, since 1773, which are designated as hallmarks and include among others the crown, a head, and, periodically, the letter "S", have become associated in the minds of substantial numbers of said public with silverware of English origin, and in the case of some members thereof, with silverware made in the aforesaid city, and there is knowledge among members of the purchasing public in this country that Sheffield is an important source of silverware and silver-plated ware of English manufacture, and also knowledge of such ware, which is frequently designated as "Sheffield Silver."

As respects the sale at retail of products unidentified with the manufacturer thereof, there is a retail custom of informing inquiring prospective purchasers as to the name of the manufacturer of the product but not, barring exceptional further inquiry, as to the location thereof.

Where a corporation engaged in New York City in the manufacture of silver-plated hollow ware and in the interstate sale and distribution thereof to retailers throughout the United States—

- (a) Prominently displayed in its catalogues, on its letters and invoices, and on labels affixed to the cartons in which its said products were packed and shipped, its corporate name in which were included the words "Sheffield Silver";
- (b) Imprinted upon the back of its silver-plated hollow ware and in its catalogues marks which comprised impressions of the crown and a head, with the letter "S" in immediate conjunction with one another, and simulated the genuine hallmarks imprinted on sterling silverware made in Sheffield;

Whereby said name was brought to the attention of a substantial portion of the purchasing public, and there was created in the minds of said public a false impression that the ware was made in Sheffield or elsewhere in England;

Tendency and capacity of which practices, individually and collectively, were to mislead and deceive purchasers of its silver-plated ware in the aforesaid