

Complaint

IN THE MATTER OF
BROOKLYN PAINT & WALLPAPER DEALERS
ASSOCIATION, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6224. Complaint, June 29, 1954—Decision, Dec. 2, 1954

Consent order requiring a trade association and its 182 member retailers of paint and wallpaper to cease concertedly classifying particular purchasers or groups of purchasers as legitimate or illegitimate, acting to induce suppliers to refrain from selling to disapproved dealers, and boycotting suppliers who disregarded their requests.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Everette MacIntyre for the Commission.

Proskauer, Rose, Goetz & Mendelsohn, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the said Act, the Federal Trade Commission, having reason to believe that the Brooklyn Paint & Wallpaper Dealers Association, Inc., its officers, Board of Governors and members, named or referred to in the caption hereof and hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Brooklyn Paint & Wallpaper Dealers Association, Inc., is an association of members organized and existing as a corporation under the laws of the State of New York, with its principal office and place of business located at 166 Montague Street, Brooklyn, New York. Sometimes hereinafter it will be referred to as respondent "Association." The membership of the said respondent Association is composed of approximately 182 individuals, partnerships and corporations located in the metropolitan area of New York, New York, and who are engaged in the distribution of paint and wallpaper and kindred lines of merchandise at retail. All members of respondent Association are hereby made respondents herein and sometimes hereinafter will be referred to as respondent "Members."

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Said respondent Association was organized for the ostensible purpose of promoting trade practices approved by them collectively. It also appears that one of the objects of respondent Association was to act for members collectively. The names and addresses of the officers are as follows:

Marvin Passick, President,
9504 Church Avenue,
Brooklyn, New York.
Maxwell M. Schames, Vice President,
477 Livonia Avenue,
Brooklyn, New York

Bernard Gladstone, Treasurer,
924 Broadway,
Woodmere, Long Island.
Sidney Beyer, Executive Secy.,
166 Montague Street,
Brooklyn, New York.

The names and addresses of the members of the Board of Governors of said respondent Association, who individually and as members of said Board are named as respondents herein, are as follows:

Max Brudner,
3411 Church Ave.,
Brooklyn, New York
Maxwell M. Schames,
477 Livonia Ave.,
Brooklyn, New York
Gerald H. Cobin,
60-02 Roosevelt Ave.,
Woodside, Long Island
Martin E. Erwich,
1806 Avenue U,
Brooklyn, New York
William A. Goldsmith,
275-A Reid Ave.,
Brooklyn, New York
Albert Lefland,
113-03 Queens Blvd.,
Forest Hills, L. I.
David Levine,
348 Central Ave.,
Lawrence, Long Island
Isadore Malacoff,
1764 Nostrand Ave.,
Brooklyn, New York

Mac Neier,
65-03 Grand Ave.,
Maspeth, Long Island
David Neiss,
1105 Coney Island Ave.,
Brooklyn, New York
Louis Padnick,
7215 New Utrecht Ave.,
Brooklyn, New York
Murray Rein,
5217 Church Ave.,
Brooklyn, New York
Samuel Resnick
84-29 Roosevelt Ave.,
Jackson Heights, New York
Charles Tyler,
409 Utica Ave.,
Brooklyn, New York
Louis Weinstein,
5022 Ft. Hamilton Parkway,
Brooklyn, New York
George Weston,
8503 Third Ave.,
Brooklyn, New York

The membership of respondent Association constitutes a class so numerous and changing as to make it impracticable to specify here the name of each present member. The following, among others, are members of respondent Association, are fairly representative of the

whole membership and are named as respondents herein in their individual dual capacities, in their capacities as members of respondent Association and as representatives of all members of respondent Association as a class, including those not herein specifically named:

Passick's Color Mart, 9504 Church Avenue, Brooklyn, New York	David Malacoff & Company, 1764 Nostrand Avenue, Brooklyn, New York
M. Schames & Son, 477 Livonia Avenue, Brooklyn, New York	Irmac Paint & Wallpaper Co., Inc., 65-03 Grand Avenue, Maspeth, Long Island
Gladstone & Sons, 924 Broadway, Woodmere, Long Island	Brooklyn Paint Supply Co., 1105 Coney Island Avenue, Brooklyn, New York
Embe Paint & Wallpaper Co., 3411 Church Avenue, Brooklyn, New York	Louis Padnick & Sons, Inc., 7215 New Utrecht Avenue, Brooklyn, New York
Paint Masters, Inc. 60-02 Roosevelt Avenue Woodside, Long Island	S. Rein & Son, 5217 Church Avenue, Brooklyn, New York
Arrow Paint Company, 1806 Avenue U, Brooklyn, New York	Resnick's, 84-29 Roosevelt Avenue, Jackson Heights, New York
Goldsmith Paint Supplies, 275-A Reid Avenue, Brooklyn, New York	Charles-Howard Wallpaper Co., 409 Utica Avenue, Brooklyn, New York
Nu-Mode Wallpaper Corp., 113-03 Queens Blvd., Forest Hills, L. I.	Atlantis Paint & Shellac Co., Inc., 5022 Ft. Hamilton Parkway, Brooklyn, New York
W & L Paint & Wallpaper Co., 348 Central Avenue, Lawrence, Long Island	Weston Paint & Wallpaper Co., 8503 Third Avenue, Brooklyn, New York

PAR. 2. The respondent Members of respondent Association, consisting of approximately 182 individuals, co-partnerships and corporations, are located in the metropolitan area of New York, New York, and are engaged in the business of selling, at retail, paint, wallpaper and kindred merchandise.

Said respondent Members of respondent Association are now and have been, during all the times mentioned herein, in free, active and substantial competition with others engaged in the sale, at retail, of paint, wallpaper and kindred merchandise, except insofar as that competition has been hindered, lessened, restricted and eliminated by the acts, methods and practices hereinafter set forth. In that connection, respondent Members purchase for resale, paint, wallpaper and

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kindred merchandise directly from manufacturers or importers thereof located in various states, and said manufacturers of said products when so purchased from their respective places of business in other States, cause the same to be transported to said respondent Members or to consignees designated by respondent Members into States other than the State of manufacture or import. Competitors of respondent Members likewise engage in transactions in interstate commerce. Such commerce has been hindered and is being interfered with by respondents through the acts, methods, practices and policies hereinafter set forth. The respondent Members comprise a substantial part of the retailers engaged in such resale of paint, wallpaper and kindred merchandise in some areas of metropolitan New York, New York.

PAR. 3. Respondent Members of said respondent Association, acting in cooperation with each other and through and in cooperation with said respondent Association and its officers and Board of Governors, and each of them, during the period of time, to wit, from March, 1953, to the date of this complaint, have entered into and carried out a planned common course of action, understanding, agreement, combination and conspiracy among themselves and with and through respondent Association, its officers and Board of Governors, and others not parties respondent herein, to hinder and restrain competition in the interstate sale and distribution of paint, wallpaper and kindred lines of merchandise to retailers, and in turn, to hinder and suppress competition in the resale of such products at retail. Pursuant to, and as a part of said planned common course of action, understanding, agreement, combination and conspiracy, and in furtherance thereof, the respondents have acted in concert and in cooperation with each other in doing, among others, the following acts and things:

1. Urged all members of respondent Association to inquire of manufacturers and other suppliers of paint, wallpaper and kindred merchandise, whether such suppliers subscribed to the policy of restricting sales to "recognized" and "legitimate" paint and wallpaper dealers;
2. Used the offices of respondent Association to advise respondent Members that some manufacturers and suppliers of paint, wallpaper and kindred merchandise "are making no bones about selecting outlets other than the legitimate paint and wallpaper dealer," and urged such members to "CLOSE RANKS," "LET'S FACE IT!" and "WE FIGHT BACK—OR PERISH!";
3. Acted through the representatives of respondent Association in inducing manufacturers and suppliers of paint, wallpaper and kindred

merchandise to refrain from selling some retailers and to discontinue selling to a number of other retailers not classified by respondents as paint and wallpaper dealers.

4. Acted to boycott manufacturers and other suppliers of paint, wallpaper and kindred merchandise, who disregarded requests of respondents that such manufacturers discontinue sales to certain competitors of respondents.

PAR. 4. The results of said planned common course of action, understanding, agreement, combination, conspiracy, and the acts and things done thereunder and pursuant thereto by said respondents, as hereinbefore set forth, are contrary to public policy because of their dangerous tendency unduly to hinder competition or create a monopoly, and, therefore, constitute unfair acts and practices and unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated December 2, 1954, the initial decision in the instant matter of hearing examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint herein was issued by the Federal Trade Commission June 29, 1954, charging respondents with combination, conspiracy and agreement to boycott manufacturers and other suppliers of paint, wallpaper, and kindred merchandise who sold to competitors of respondents and to use other means to restrict such sales to respondents or to firms approved by them, in violation of Section 5 of the Federal Trade Commission Act. After service of the complaint upon respondents and the filing of answer thereto by them, counsel for respondents entered into a stipulation with counsel supporting the complaint for consent order. Said stipulation provides that respondents admit all the jurisdictional allegations set forth in the complaint and stipulate that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that respondents withdraw their answer to the complaint, expressly waive the filing of answer, a hearing before a hearing examiner, the making of findings of fact or con-

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clusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission and all further and other procedure before the hearing examiner and the Commission to which respondents may be entitled. Respondents further agree in said stipulation that the order hereinafter made shall have the same force and effect as if made after full hearing, presentation of evidence, and findings and conclusions thereon, that the complaint may be used in construing the terms of the order agreed upon and they specifically waive any and all right, power, or privilege and challenge or contest the validity of the order entered in accordance with this stipulation, and that the latter, together with the complaint, shall constitute the entire record herein. It is further provided that such stipulation is for settlement purposes only and constitutes no admission by respondents of any violation of law as charged in the complaint.

In view of the provisions of the stipulation for consent order as outlined above, it appears that respondents' request to withdraw their answer to the complaint should be granted, and that such action, together with the issuance of the order agreed upon in said stipulation, will resolve all of the issues arising by reason of the complaint and respondents' answer thereto, will appropriately dispose of this proceeding and will adequately safeguard the public interest to the same extent as could be accomplished by trial.

Accordingly, the hearing examiner, grants respondents' request to withdraw their answer, accepts, as in the public interest, the stipulation for consent order agreed upon by all counsel, directs that the same be filed, and in consonance with the terms thereof issues the following order:

ORDER

It is ordered, That the respondents, Brooklyn Paint & Wallpaper Dealers Association, Inc., a membership corporation, its officers: Marvin Passick, President, Maxwell M. Schames, Vice President, Bernard Gladstone, Treasurer, and Sidney Beyer, Executive Secretary, individually and as officers of said respondent, Brooklyn Paint & Wallpaper Dealers Association, Inc., the members of the Board of Governors of Brooklyn Paint & Wallpaper Dealers Association, Inc.: Maxwell M. Schames, Max Brudner, Gerald H. Cobin, Martin E. Erwich, William A. Goldsmith, Albert Lefland, David Levine, Isadore Malacoff, Mac Neier, David Neiss, Louis Padnick, Murray Rein, Samuel Resnick, Charles Tyler, Louis Weinstein and George Weston, individually and as members of said Board of Governors, the members of Brooklyn Paint & Wallpaper Dealers Association, Inc., and Passick's Color Mart, M. Schames & Son, Gladstone & Sons,

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Embe Paint & Wallpaper Co., Paint Masters, Inc., Arrow Paint Company, Goldsmith Paint Supplies, Nu-Mode Wallpaper Corp., W & L Paint & Wallpaper Co., David Malacoff & Company, Irmac Paint Co., Inc., Brooklyn Paint Supply Co., Louis Padnick & Sons, Inc., S. Rein & Son, Resnick's, Charles-Howard Wallpapers Co., Atlantis Paint & Shellac Co., Inc., and Weston Paint & Wallpaper Co., directly or indirectly, individually and as representatives of all members of Brooklyn Paint & Wallpaper Dealers Association, Inc., in connection with the purchase or sale or with or in connection with the offer to purchase or sell or distribute paint, wallpaper and kindred merchandise 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 in a planned common course of action, understanding, agreement or conspiracy between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts, practices or things:

1. Acting to classify any particular purchaser or group of purchasers as legitimate paint and wallpaper dealers for the purpose or with the effect of classifying other purchasers as illegitimate paint and wallpaper dealers;
2. Requesting a manufacturer, or other supplier, to refrain from selling or offering to sell or making available, for purchase, to any purchaser, paint, wallpaper or kindred merchandise;
3. Acting in any manner or through any method or means to boycott any manufacturer or supplier of paint, wallpaper or kindred merchandise;
4. Utilizing the offices of any representative in any association or any other agency to do or perform or to aid or abet in doing or performing anything prohibited by any provision of this order.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein 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 the order to cease and desist [as required by said declaratory decision and order of December 2, 1954].

Commissioner Mason concurs on the basis of his own opinion that the phrase "members herein" embodied in the order to cease and desist and the phrase "respondents herein" embodied in the order to file report of compliance, impose no individual civil liability upon any person, who, even though a member of a class sued, neither was served with the complaint nor consented to the order.

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IN THE MATTER OF
BOND VACUUM STORES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6209—Complaint, May 27, 1954—Decision, Dec. 9, 1954

Consent order requiring a concern in Washington, D. C., to cease advertising falsely that certain vacuum cleaners and sewing machines were offered for sale when such offers were not bona fide, that it operated stores in principal cities, gave big trade-in allowances on customers' old merchandise, and furnished a five-year guarantee on its reconditioned Singer sewing machines; to cease representing fictitious prices as the customary prices of their merchandise; and to cease charging customers a "recording fee" when it did not record its sales contracts but retained the money thus collected for its own use.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. Michael J. Vitale for the Commission.

Kamerow & Kamerow, 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 Bond Vacuum Stores, Inc., a Delaware corporation, and Albert Hyatt, Philip Morris, Harold Stengel and Julius Langsner, individually and as officers of said corporation, 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 Bond Vacuum Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 610 Ninth Street, Northwest, Washington, D. C. Respondents Albert Hyatt, Philip Morris, Harold Stengel and Julius Langsner are individuals and president, vice-president-treasurer, vice president and secretary, respectively, of the corporate respondent. These individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.