

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

Docket 8638. Complaint, Aug. 17, 1964—Decision, Nov. 30, 1964

Consent order requiring the Mountain City Tobacco Board of Trade, Inc., to
cease their planned common course of action to restrict competition in the
purchase and sale of burley tobacco in the Mountain City, Tenn., market, in

pursuance of which they prevented the erection and operation of new tobacco warehouses, prevented operators of auction warehouses from expanding their business, retained in themselves the selling time available in the Mountain City market and excluded others therefrom, and restricted the selling time allotted to new entrants.

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 each and all of the parties named in the caption hereof, and hereby made respondents herein, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said Act, (U.S.C., Title 15, Sec. 45) and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, the Commission hereby issues its complaint charging as follows:

PARAGRAPH 1. The following is a description of the respondents:

(1) Respondent, Mountain City Tobacco Board of Trade, Inc., hereinafter referred to as respondent Board, is a corporation duly organized under the laws of the State of Tennessee, with its principal office and place of business located in Mountain City, Tennessee. Membership in respondent Board is limited to those persons, firms, corporations, and associations engaged in or about to engage in business as a Burley sales tobacco warehouseman, buyer, or re-handler of Burley tobacco on the Mountain City Tobacco market.

There are nine auction warehouses presently operating on the Mountain City burley tobacco market, as follows:

- No. 1 Mountain City Burley Warehouse.
- No. 2 Mountain City Burley Warehouse.
- No. 3 Mountain City Burley Warehouse.
- No. 4 Mountain City Burley Warehouse.
- No. 5 Mountain City Burley Warehouse.
- No. 1 Rainbow Burley Warehouse.
- No. 2 Rainbow Burley Warehouse.
- No. 3 Rainbow Burley Warehouse.
- No. 4 Rainbow Burley Warehouse.

Membership in the Mountain City Tobacco Board of Trade, Inc., is divided into two categories; warehousemen and purchasers of burley tobacco other than warehousemen. Each warehouse or the person, firm, or corporation operating such warehouse is automatically a participating member and is entitled to one vote on matters coming before the respondent Board. Membership among purchasers of burley tobacco may be either participating or non-participating. Purchasers

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who are participating members are also entitled to one vote each. Firms composed of more than one individual constitute only one member and are accorded only one vote.

The following named individuals are now, or have been during the time mentioned herein, officers and/or members of respondent Board and, as such and individually, are named as respondents herein, and in that capacity have dominated, controlled and directed, and are now dominating, controlling, and directing the affairs of said respondent Board, including the policies and practices hereinafter set forth:

Jack Shoun, President
R. C. Coleman, Vice President
O. L. Coleman, Secretary and Treasurer

Although respondent Board was organized and chartered in 1962 with the announced and stated purpose of associating together those persons, firms and corporations interested in the buying, selling and handling of burley leaf tobacco on the Mountain City tobacco market, and its tobacco trade territory, and for the purpose of adopting and maintaining such reasonable rules, regulations and requirements as are necessary to promote the honest and efficient conduct of said tobacco business and build up the tobacco market and protect the interests of growers, planters, buyers and handlers of burley leaf tobacco on the Mountain City tobacco market, including the allocation of selling time to each tobacco auction warehouse operating on said market, it is now and has been since its organization a mere instrumentality or vehicle through which respondent members place into effect and carry out the illegal policies and practices as hereinafter set forth.

(2) Respondents R. C. Coleman, Sr., R. C. Coleman, Jr., Joseph Coleman, O. L. Coleman, and Mrs. Harriet Sikes are copartners in the R. C. Coleman Company, Tabor City, North Carolina. Said partnership is engaged in the business of operating tobacco auction warehouses, five of which are in Mountain City, Tennessee, and are commonly known, referred to and described as Mountain City Burley Warehouse Nos. 1, 2, 3, 4, and 5. Said respondents are members of the Mountain City Tobacco Board of Trade, Inc., and as such and individually are named as respondents herein.

PAR. 2. Burley tobacco produced in the States of Tennessee, North Carolina, and Virginia is brought by the growers thereof to the tobacco auction warehouses, operated and controlled by different members of respondent Board, where it is sold at auction to purchasers or agents or representatives thereof, who are also members of said respondent Board and who are, in a great many instances, engaged in the export

tobacco trade or in the domestic manufacture of tobacco products in States other than Tennessee. Said tobacco is shipped or otherwise transported by such purchasers from said State of Tennessee to other States within the United States and the District of Columbia and foreign countries. There has been, and now is, a constant current course of trade in commerce in said tobacco and tobacco products between and among the several States of the United States and the District of Columbia and with foreign countries.

PAR. 3. (1) The Mountain City tobacco market is located in the northeasternmost part of Tennessee. Burley tobacco brought to the Mountain City market is classified as Type 31 by the United States Department of Agriculture and is grown principally in the following nine States: Virginia, North Carolina, Tennessee, Kentucky, Ohio, Indiana, Missouri, Illinois, and West Virginia.

The total annual sales of burley leaf tobacco throughout the United States has grown steadily over the years. In 1916 when there were 48 burley leaf tobacco markets in the United States, a total of 265,429,825 pounds of burley tobacco was sold at an average price of \$16.68 per cwt. In 1961, 61 burley leaf tobacco markets sold 605,026,343 pounds of burley tobacco at an average price of \$66.44 per cwt. The Mountain City tobacco market, which conducted its first sale in 1950, has increased its sales from 1,473,406 pounds at an average price of \$47.55 per cwt., to 6,636,110 pounds sold in 1962 for a total cash value of \$3,878,769 or \$58.45 per cwt.

Approximately one-half of the tobacco sold on the Mountain City market is furnished by farmers from Johnson County, Tennessee. To these farmers burley tobacco, which is the second most important cash crop in Tennessee, represents their principal source of cash income. Thus, the efficiency and timeliness of the marketing of this perishable commodity is of the utmost importance to a substantial number of farmers.

The marketing season for burley tobacco on the Mountain City market generally begins during the last week of November and closes in the early part of January the following year.

Prior to taking his tobacco to market, the farmer must get it in "high order." This is accomplished by a series of procedures which, briefly described, consist of ripening the tobacco in the field; hauling it to the curing barn where it is cured and later allowed to gather moisture for handling; moved to the pack barn for storage where the tobacco dries again so that it will not spoil; and then when the tobacco is ready for market, made pliable again for re-handling, then sorted and graded.

Once tobacco is in "order" it is a perishable commodity which may deteriorate in quality and value due to climatic and atmospheric conditions. Accordingly, it is necessary to have the tobacco sold quickly once it is brought and placed on the floors of various warehouses.

After tobacco is delivered to a warehouse, it is weighed and a ticket is prepared showing the grower's name, the serial number of the lot, and the number of pounds contained therein. The ticket also has blank spaces for inserting the name of the buyer, his private grade mark, the price paid per pound, and the grade mark to be inserted by the representative of the Secretary of the United States Department of Agriculture who acts under the provisions of Tobacco Inspection Act of 1935.

The foregoing completed, the warehouse begins a sale at the beginning of the first row or first pile. The sales group is composed on one side of the row of a man representing the warehouse who walks just ahead of the auctioneer and starts the bid on each pile of tobacco. This man is known as the "starter." The first bid is not a "firm" bid. Following the auctioneer is another representative of the warehouse called the "man in the hole." Actually, he is the sales manager of the warehouse who carries the bidding on up after the starting bid has been put on by the starter. Behind him are other buyers representing the various tobacco companies. (The Mountain City tobacco market is furnished with one set of buyers representing six tobacco and two re-drying companies.) A ticket marker is also in this group to mark the ticket when the tobacco is sold with the price it brought, the name of the purchaser, and the company grade which the purchaser calls out to him. On the other side of the row, there are buyers from the various other buying companies who follow the sales and such speculators as would like to attend the sale and bid on the tobacco. After the opening bid is put on the first pile of tobacco by the starter representing the warehouse, the auctioneer takes this figure up and begins to call or chant the bid and to accept bids from buyers on either side of the row or from the warehouse's "man in the hole." After the sale of each pile of tobacco, the ticket marker inserts the price the tobacco brought at the sale in the blank space provided on the ticket. This ticket also has the name of the warehouse, the name of the company buyer, and company grade. After the ticket marker makes these notations on the ticket, he drops it back on the pile of tobacco. If a farmer is dissatisfied with the last bid received for his tobacco, he then has the privilege of turning the ticket, which is rejection of the bid. This is done, ordinarily, by tearing off the name of the buyer or by folding the ticket or by just tearing the bottom part of it.

After tobacco is purchased at auction, it is either removed from the warehouse floor and shipped to the re-drying plants of the purchaser in its green state or hauled to local re-drying plants and subsequently shipped to the tobacco manufacturer for further processing.

(2) The successful operation of a tobacco auction warehouse is dependent upon receiving a portion of the total selling time allocated to a tobacco auction market. Auctioning time, or selling time, on the Mountain City market is allocated according to the rules and regulations of the Burley Auction Warehouse Association, Mount Sterling, Kentucky. This voluntary association annually sets the length of the selling day and the opening and closing dates for the pre-Christmas selling season. The length of the selling day for the Mountain City Tobacco Board of Trade was set at 3½ hours for the 1962-63 season. During each hour of auction, the Burley Auction Warehouse Association has set a maximum figure of 360 baskets to be sold per hour, thus allowing the Mountain City tobacco market a sale of 1,260 baskets per day. If the Mountain City Tobacco Board of Trade elects, however, it may sell on a poundage basis rather than a basket basis. The permissible poundage for 3½ hours selling time is 302,400 pounds in lieu of the 1,260 baskets, and since the Mountain City market has a low average pounds per basket, the Mountain City Board of Trade has elected to sell on the poundage basis.

The distribution of the selling time to the warehouses on the Mountain City Board of Trade and similarly the allocation of pounds to be sold by these various warehouses is determined according to the rules and regulations of respondent Board.

Under the regulations in effect in this market, the allotted selling time to each warehouse is based on a combination of the floor space system and performance system. Under such system the percentage of the total selling time allocated to the market is in turn allocated to each warehouse according to the percentage of floor space such warehouse bears to the entire warehouse floor space on the market except as modified and restricted as hereinafter set forth.

PAR. 4. Said respondent Board acting under and through the direction, control and authority of its officers, as well as certain of its warehouse members, has in the past and now continues to conduct and exercise control over the operations of the Mountain City tobacco auction market under certain bylaws, rules and regulations, prescribed, approved and promulgated by said respondent Board, which bylaws, rules and regulations, among other things, allot, apportion, regulate, and adjust the selling time among the said auction warehouses. Furthermore, said respondent Board passes upon applications for mem-

bership and imposes fines and penalties for violations of its bylaws, rules and regulations; and at all times herein mentioned, the Mountain City tobacco market has been dominated and controlled and is now under the domination and control of respondent Board and certain of its warehouse members.

The authority of said respondent Board is respected, accepted and adhered to, by the buyers, agents and representatives of the principal tobacco manufacturing companies, and by the independent buyers and speculators whose presence is necessary for a successful tobacco auction sale. Consequently, it is virtually impossible for any firm, person or corporation to engage in the tobacco business, other than as a producer or grower, in the Mountain City tobacco market, without first having been admitted into membership in respondent Board and becoming obligated to adhere to and abide by the bylaws, rules and regulations promulgated and prescribed by said respondent Board.

PAR. 5. The respondents named herein are in competition with other members of respondent Board in the purchase, sale and handling of tobacco through the facilities owned, leased or operated by certain of them for the purpose of conducting auction sales of the burley leaf tobacco brought to the market and placed on the various auction warehouse floors for sale by the growers as described in Paragraphs Two and Three herein, and in the buying and selling of such tobacco for export to foreign countries or for domestic use in the manufacture of cigarettes and other tobacco products for sale and distribution in various States in the United States and in the District of Columbia and for export to certain foreign countries, except insofar as their said competition has been hindered, lessened or restrained, or potential competition among them, and with others, forestalled, prevented, hindered and suppressed by the unfair acts, practices, methods and policies of said respondents as hereinafter set forth.

PAR. 6. Respondents, acting between and among themselves and also through and by means of respondent Board, for a number of years last passed, and particularly since about 1962, and continuing to the present time, have, by means of a planned common course of action among themselves, conspired or combined to adopt, carry out, and maintain, and did adopt, carry out and maintain, in commerce between and among the several States of the United States and in the District of Columbia and with foreign countries, an undue and unreasonable hindrance, restriction, suppression or prevention of the establishment and operation of market facilities and market opportunities and competition in the purchase and sale of burley leaf tobacco on the Mountain City tobacco market. Furthermore, member respond-

ents, acting between and among themselves have caused the Mountain City Tobacco Board of Trade, Inc., to be incorporated and used as a medium or instrumentality solely for the purpose or with the intent of perpetuating their dominance and control of the auctioning of tobacco on the Mountain City market, and, in fact, said dominance and control has been perpetuated by virtue of said respondents adopting, as sole incorporators and participants at the first meeting of the Mountain City Tobacco Board of Trade, restrictive and unreasonable bylaws as hereinafter set forth.

PAR. 7. Pursuant to, and in furtherance and effectuation of, the aforesaid planned common course of action, the respondents have done and performed the following things:

(1) They have adopted bylaws to discourage or prevent, or for the purpose or with the intent or effect of discouraging and preventing firms, persons, and corporations from erecting, building or operating any new tobacco auction warehouses in or near the Mountain City tobacco market area;

(2) They have adopted bylaws to discourage or prevent, or for the purpose or with the intent or effect of discouraging and preventing firms, persons, and corporations now engaged in the business of operating tobacco auction warehouses in the Mountain City tobacco market from expanding their present tobacco auction warehouse facilities therein;

(3) Respondent members of respondent Board have formulated and adopted bylaws for the allocation of selling time to the warehouse members of respondent Board for the purpose or with the intent or effect to retain in themselves and for their own advantage and to the exclusion of others such selling time as is made available to the warehouses in this market;

(4) Respondent members of respondent Board have formulated, agreed upon and passed bylaws which restrict the selling time allocated to new warehouse entrants on the Mountain City tobacco market for said entrants first year on the market;

(5) Respondent members of respondent Board have formulated, agreed upon and passed bylaws which limit the gain or loss of selling time allotted after the first year of operation to new entrants on the Mountain City tobacco market to 8% with the intent or effect of perpetuating the restrictions on new entrants described herein;

(6) Respondent members have formed and organized respondent Board and have adopted the bylaws as hereinbefore set forth for the purpose or with the intent of hindering, restraining, or otherwise discouraging competitors from entering into the sale of burley leaf to

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bacco on the Mountain City tobacco market and with the intent of hindering, restraining or otherwise discouraging competition with those competitors who have entered the Mountain City tobacco market for the sale or auction of burley tobacco on said market.

PAR. 8. Each of said respondents named herein has directly or indirectly participated in, approved, or adopted the aforesaid bylaws and planned course of action and the acts and practices done in furtherance of and pursuant thereto.

PAR. 9. The aforesaid planned common course of action, together with the acts and practices of respondents as hereinbefore alleged, each and all operated to prevent a substantial volume of tobacco from being sold or purchased by persons, firms and corporations who sought to compete in the market operations of the Mountain City tobacco market, and thereby unduly and unreasonably hindered, restricted, suppressed and prevented competition in the sale and purchase of tobacco at auction on the Mountain City tobacco market. Among the specific effects in this respect are the following:

(1) Persons, firms and corporations seeking to erect, expand and use tobacco warehouse facilities in market operations on the Mountain City tobacco market, and persons, firms and corporations desiring to enter the Mountain City tobacco market as competitors in the tobacco auction warehouse business have been discouraged, forestalled or hindered from so doing by bylaws which prevent such potential auction warehouse competitors from receiving sufficient selling time to permit them the opportunity to compete successfully.

(2) Farmers whose farms are located in the area normally serviced by the Mountain City tobacco market have been and are being deprived of the privilege of selling their tobacco at the warehouse of their choice as a result of the unlawful, unreasonable and arbitrary acts and practices of respondents and respondent Board.

(3) Farmers offering tobacco for sale at auction on the Mountain City tobacco market have been compelled, because of the unreasonable allocation of selling time to competitive warehouses on the Mountain City tobacco market by said respondent Board, to sell such tobacco as has been placed in said competitors' warehouses privately to said competitors' warehousemen thus depriving them of the benefit of such higher prices they may have received from competitive auction bidding.

(4) Respondents, through the unilateral adoption of the Mountain City Tobacco Board of Trade, Inc., By-Laws, have used respondent Board as an instrumentality or medium through which they have attempted to restrain competition and have in effect restrained compe-

tition in the business of operating tobacco auction warehouses in the Mountain City tobacco market by restricting, hindering and interfering with the operation of new warehouse entrants on said market through the adoption and passage of discriminatory, unreasonable and unlawful bylaws, rules and regulations.

(5) Respondents have acquired control of such a nature and to such an extent over the purchase and sale of tobacco in the Mountain City tobacco market that it threatens to create, and has created in certain respects, through the instrumentality of respondent Board, a monopoly in the business of buying and selling burley tobacco on the Mountain City tobacco market.

PAR. 10. The effect of the aforesaid planned common course of action and the acts and practices carried out by respondents pursuant thereto, both individually and collectively, and the adoption and implementation of the Mountain City Tobacco Board of Trade By-Laws, as hereinbefore alleged, are contrary to public policy; have a dangerous tendency to hinder and suppress and have actually hindered and suppressed competition and restrained trade between respondents and others in the purchase, sale, and distribution of tobacco and tobacco products in commerce, as "commerce" is defined in the Federal Trade Commission Act; have a dangerous tendency to create in said respondents a monopoly in the auction sale of tobacco on the Mountain City tobacco market; and have unreasonably restrained such commerce in the said tobacco and tobacco products and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on August 17, 1964, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion thereafter filed that in the circumstances presented the public interest would be served by waiver here of the provision of Section 2.4(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes

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only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Mountain City Tobacco Board of Trade, Inc., is a corporation organized, existing and doing business under the laws of the State of Tennessee, with its principal office and place of business located in Mountain City, Tennessee.

Respondents, Jack Shoun, R. C. Coleman, Sr. and O. L. Coleman, are, or were during the time mentioned in the Commission's complaint, officers of said corporation. The address of respondent Jack Shoun is Mountain City, Tennessee and the address of respondents R. C. Coleman, Sr. and O. L. Coleman is Tabor City, North Carolina.

Respondents, R. C. Coleman, Sr., R. C. Coleman, Jr., Joseph Coleman, O. L. Coleman and Mrs. Harriett Sikes are copartners trading under the name and style of R. C. Coleman Company and Mountain City Burley Warehouses and all are members of the Mountain City Tobacco Board of Trade, Inc. Their address is Tabor City, North Carolina.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents, Mountain City Tobacco Board of Trade, Inc., a corporation, and Jack Shoun, president, R. C. Coleman, Sr., vice president, O. L. Coleman, secretary and treasurer, individually and as officers of said corporation; and R. C. Coleman, Sr., R. C. Coleman, Jr., Joseph Coleman, O. L. Coleman, and Mrs. Harriett Sikes, as copartners trading under the name and style of R. C. Coleman Company and Mountain City Burley Warehouses; and all of the above-named persons as members and as representatives of warehouse members of Mountain City Tobacco Board of Trade, Inc., individually and as officers, directly or through any corporate or other device, in connection with the procuring, purchasing, offering to purchase, selling or offering for sale, burley leaf tobacco, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from devising, adopting, using, adhering to, maintain-

ing or cooperating in the carrying out of any plan, system, method, policy, act or practice, in the form of any agreement, understanding, or bylaw, rule or regulation, which:

1. Allots or causes to be allotted, selling time to a new entrant's warehouse space on the Mountain City tobacco market on any basis or in any manner (a) which fails to give full credit to the size and capacity of a new entrant's first unit of suitable and available warehouse space, and (b) which fails to give reasonable credit to the size and capacity of a new entrant's suitable and available warehouse space in excess of the first unit;

2. Limits the possible gain or loss in selling time allotted to any warehouse on the Mountain City tobacco market for any one selling season to 8%, of the selling time allotted to such warehouse for the preceding selling season;

3. Allots or causes to be allotted any selling time on any basis or in any manner which includes warehouse space that is not suitable and available during the selling season for the sale of tobacco at auction in the Mountain City tobacco market;

4. Has the purpose or the effect of foreclosing or preventing a new entrant warehouse on the Mountain City tobacco market, or any other warehouse doing business on that market, from competing therein; or

5. Places in effect or carries out any act, practice, policy or method, prohibited by any provision or part of this order, through respondent Board or any other instrumentality, agent, agency, medium or representative.

It is further 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 this order.

IN THE MATTER OF

BLAIRMOOR KNITWEAR CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket C-861. Complaint, Dec. 2, 1964—Decision, Dec. 2, 1964

Consent order requiring manufacturers and importers of wool products located