IN THE MATTER OF

LATHEM TIME RECORDER COMPANY ET AL.

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

Docket 5713. Complaint, Dec. 1, 1949—Decision, Feb. 6, 1953

Where a corporation and its three officers, who were engaged in manufacturing, servicing and repairing, and in the competitive interstate sale and distribution of, clocks and other time-recording instruments, including particularly watchman's clocks, and who, by virtue of the former business activities of the corporate president, were in possession of a list of 18,000 names or more in which was included information of every watchman's clock which had passed through their shop since 1919; and during a period in which said president's former partnership was agent for other manufacturers, competitively engaged;

In carrying on their corporate business since 1946, in the course of which they made such statements in circular letters as "We have not cleaned, oiled or adjusted your night watchman's clock within two years" * * * "may we send you a loan clock like yours, without rental charge, to use while yours can be sent here for inspection, oiling or repairs" * * * "we will appreciate hearing from you on the attached card. Please reply"—

(*a*) Represented falsely, directly and by implication, that they had previously cleaned, oiled and adjusted the watchman's clocks of all those to whom the aforesaid form letters were addressed;

(*b*) Represented falsely that they had kept a record of the dates on which such clocks were cleaned, oiled or adjusted; when they could not legitimately have done so;

(*c*) Represented falsely, through concealing or obscuring in many instances, the name of the manufacturer of the clock, possession of which they thus secured, and by placing their own name thereon, that they were the manufacturers of the clocks, and that they were successors or representatives of competitive watchman's clock manufacturers; and

(*d*) Represented through the statement "We will allow you a 20 percent discount on service work now" that the addressees of the said letters would receive a special discount if they sent their watchman's clocks to respondents for cleaning, oiling or repairing; the facts being the prices they charged were the usual and customary ones for such services;

With tendency and capacity to mislead and deceive a substantial portion of the owners and users of watchman's clocks made by respondents competitors, and of causing such owners and users to send such clocks to respondents for servicing; and with effect of placing them in a position, through thus deceptively obtaining possession of a clock made by a competitor, to point out to the owners the defects of the particular product and the claimed

superiority of their own, and thus to enhance the sale of their own product, whereby trade was unfairly diverted from their competitors:

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce, and unfair methods of competition therein.

Before *Mr. John W. Addison*, hearing examiner.
Mr. Joseph Callaway for the Commission.
Mr. Robert P. McLarty, of Atlanta, Ga., for respondents.

COMPLAINT [1]

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 Lathem Time Recorder Company, a corporation, and Louis P. Lathem, Sr., Louis P. Lathem, Jr., and Harrison G. Hooper, individuals, 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 Lathem Time Recorder Company is a corporation organized and doing business under and by virtue of the laws of the State of Georgia with its office and principal place of business located at No. 76 Third Street, N. W., Atlanta, Georgia.

The individual respondents Louis P. Lathem, Sr., Louis P. Lathem, Jr., and Harrison G. Hooper are respectively president-treasurer, vice president and secretary of the corporate respondent. These individual respondents also have their offices at No. 76 Third Street, N. W., Atlanta, Georgia, and at all times hereinafter mentioned formulated, directed and controlled the acts, policies and business affairs of the corporate respondent.

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[1] The complaint is published as amended by an order of the Commission dated May 26, 1950, as follows:

This matter coming before the Commission upon stipulation of counsel, which stipulation provides that subject to the approval of the Commission the complaint heretofore issued herein may be considered as amended by substituting the name "Lathem Time Recorder Company" for the name "Lathem Watchman's Clock Company" wherever same appears in the caption of the complaint and the body thereof; that this matter may proceed under the new caption; that all the respondents in the complaint as amended waive service and enter their appearance to the complaint as amended; and that the answer to the complaint as originally issued may be considered as answer to the complaint as amended, and the Commission having duly considered said stipulation and the record herein and being now fully advised in the premises:

It is ordered, That the complaint heretofore issued herein be amended by substituting the name "Lathem Time Recorder Company" for the name "Lathem Watchman's Clock Company" wherever same appears in the caption of the complaint and the body thereof and that this matter proceed under the new caption.

PAR. 2. Respondents are now, and have been for the past several years, engaged in the business of manufacturing, selling, servicing and repairing clocks and other time-recording instruments. Among the time-recording instruments manufactured, sold, serviced and repaired by respondent is what is known as a watchman's clock in which a single clock contains apparatus for recording the time of visiting several different stations or places. Respondents cause such clocks and time-recording devices when sold, serviced or repaired by them to be transported from their place of business in the State of Georgia to the purchasers or owners thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said business in commerce among and between the various States of the United States. Respondents' volume of said business in said commerce is substantial.

PAR. 3. Respondents are now, and have been at all times hereinafter mentioned, in substantial competition with other persons, firms and corporations likewise engaged in the manufacture, interstate sale, service and repair of watchmen's clocks.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their products and services, respondents have engaged in the following acts and practices:

(*a*) Respondents have sent many letters to users and owners of watchman's clocks manufactured by their competitors. Typical of the statements contained in such letters are the following:

We have not cleaned, oiled or adjusted your night watchman's clock within two years.

This expensive equipment will wear fast if allowed to run dry. No oil will last longer than two years in a watchclock.

May we send you a loan clock like yours, without rental charge, to use while yours can be sent here for inspection, oiling or repairs.

We will allow you a 20 percent discount on service work now.

If you have less than half a box of paper record dials let us send another box, don't run out.

We will appreciate hearing from you on the attached card. Please reply.

(*b*) When watchman's clocks manufactured by respondents' competitors were sent to respondents for cleaning, oiling, adjusting or repairs, respondents in many instances removed or mutilated labels, tags and other marks of identification of the manufacturers of such clocks, substituting their own in lieu thereof.

PAR. 5. Through the acts and practices above set forth respondents represented directly and by inference, that they had previously cleaned, oiled and adjusted watchman's clocks in the possession of all those to whom the above mentioned letters were addressed; that respondents had kept a record of the dates when such clocks were

cleaned, oiled or adjusted; that respondents were the manufacturers of watchman's clocks to which their marks of identification were attached; that respondents were successors to or representatives of competitive watchman's clock manufacturers and that the addressees of the said letters would receive a special discount on the price of respondent's services if watchman's clocks were sent to respondents for cleaning, oiling and adjusting without delay.

PAR. 6. The aforesaid statements and representations were false and misleading. In truth and in fact, respondents had not previously cleaned, oiled or adjusted any watchman's clocks in the possession of many of those to whom the above mentioned letter was sent. Respondents could not legitimately have had any record of the dates when such clocks were cleaned, oiled or adjusted. Respondents were not the manufacturers of the watchman's clocks to which they attached their marks of identification as above set forth. Respondents were not successors to or representatives of any competitive watchman's clock manufacturers. The prices charged by respondents for their services in cleaning, oiling and adjusting watchman's clocks, that were sent to them in response to the aforesaid letters, were the regular prices charged by respondents for such services.

PAR. 7. Among manufacturers of watchman's clocks the cleaning, oiling, adjusting and repairing of such clocks as they have sold is an important part of the business, in some instances accounting for approximately one-half the revenue of the manufacturer.

PAR. 8. The use by the respondents of the aforesaid unfair and deceptive acts and practices in connection with their business had had and now has the capacity and tendency to mislead and deceive a substantial portion of the owners and users of watchman's clocks made by respondents' competitors and has caused them to send such watchman's clocks to respondents for cleaning, oiling, adjusting and repairing and to purchase new watchman's clocks from respondents. As a result thereof, trade has been unfairly diverted from respondents' competitors.

PAR. 9. The above and foregoing practices of respondents are all to the prejudice and injury of the public and respondents' competitors and constitute unfair and deceptive acts and practices and unfair competition within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 1, 1949, issued and subsequently served its complaint in this proceeding upon Lathem Watch-

man's Clock Company, a corporation, and Louis P. Lathem, Sr., Louis P. Lathem, Jr., and Harrison G. Hooper, individually and as officers of Lathem Watchman's Clock Company, charging them with the use of unfair and deceptive acts and practices and unfair competition in commerce in violation of the provisions of said Act. Thereafter, on May 26, 1950, said complaint was amended, pursuant to a stipulation between counsel, by substituting the name "Lathem Time Recorder Company" for the name "Lathem Watchman's Clock Company" wherever same appears in the caption of the complaint or in the body thereof. After the issuance of said complaint and order amending same and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer thereto, testimony and other evidence, and proposed findings presented by counsel, and said hearing examiner, on September 6, 1951, filed his initial decision in which he ordered that the complaint be dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Within the time permitted by the Commission's Rules of Practice, counsel supporting the complaint filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record, including briefs and oral argument of counsel in support of and in opposition to said appeal; and the Commission, having entered its order granting said appeal and disposing of the exceptions to the hearing examiner's initial decision, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lathem Time Recorder Company is a corporation organized and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 76 Third Street, N. W., Atlanta, Georgia.

The individual respondents, Louis P. Lathem, Sr., Louis P. Lathem, Jr., and Harrison G. Hooper, are, respectively, president-treasurer, vice-president, and secretary of the said Lathem Time Recorder Com-

pany. These individual respondents also have their offices at 76 Third Street, N. W., Atlanta, Georgia, and at all times mentioned herein have formulated, directed, and controlled the acts, policies, and business affairs of said corporate respondent.

Respondents, in the course and conduct of their business, as hereinafter described, used the trade name "Lathem Watchman's Clock Company."

PAR. 2. Respondents are now, and have been for the past several years, engaged in the business of manufacturing, selling, servicing, and repairing clocks and other time-recording instruments. Among the time-recording instruments manufactured, sold, serviced, and repaired by respondents is what is known as a watchman's clock, in which a single clock contains apparatus for recording the time of visiting several different stations or places. Respondents cause such clocks and time-recording devices, when sold, serviced, or repaired by them, to be transported from their place of business in the State of Georgia to the purchasers or owners thereof located in the various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said business in commerce among and between the various States of the United States. Respondents' volume of said business in said commerce is substantial.

Respondents are now, and have been at all times herein mentioned, in substantial competition with other persons, firms, and corporations likewise engaged in the manufacture, interstate sale, service, and repair of watchman's clocks.

Although the acts and practices of the respondents hereinafter described were engaged in, principally, in connection with the servicing and repairing, and the soliciting of orders for the servicing and repairing, of watchman's clocks, the effect of such acts and practices has been to give the respondents an unfair advantage in the sale of new watchman's clocks, as well as an unfair advantage in obtaining the business of servicing and repairing such clocks.

PAR. 3. The individual respondent Louis P. Lathem, Sr., has been engaged in the business of selling, servicing, and repairing watchman's clocks since 1919, first as a member of a partnership with his father under the trade name of "Lathem Watchman's Clock Company" and since 1946 as an officer of respondent corporation, Lathem Time Recorder Company. The partnership was at times agent for other manufacturers of watchman's clocks who are at present competitors of respondents. For some of such concerns, respondents not only sold watchman's clocks but also serviced them. Among other watchman's clocks sold by the partnership were Detex Watchclocks

and Chicago Watchclocks. During the time that the partnership represented other concerns who are now competitors of respondents, they did not manufacture watchman's clocks, although they did sell a few under their own name in 1928, 1929, and the late 30's. During all of the period of time from 1919 until the present, a list has been kept with all pertinent information of every watchman's clock passing through the shop of first the partnership and since 1946, the shop of the corporate respondent. This list has been continuous since 1919 and now consists of 18,000 names or more.

Since the corporate respondent was organized in 1946 it has sent out at different times a form letter to all the names on the above-mentioned list and also to other concerns who respondents had reason to believe used watchman's clocks, whether or not such clocks had ever been in respondents' shop. Said form letter was as follows:

We have not cleaned, oiled or adjusted your night watchman's clock within two years.

This expensive equipment will wear fast if allowed to run dry. No oil will last longer than two years in a watchclock.

May we send you a loan clock like yours, without rental charge, to use while yours can be sent here for inspection, oiling or repairs.

We will allow you a 20% discount on service work now.

If you have less than half a box of paper record dials let us send another box, don't run out.

We will appreciate hearing from you on the attached card. Please reply.

The sentence "We will allow you a 20% discount on service work now" was omitted from form letters sent out after May 23, 1949.

Watchman's clocks manufactured by respondents' competitors sent to respondents for servicing or repairing have in many instances had the name of the manufacturer concealed or obscured when returned to the owners. In many instances, the time face dial bearing the name of the manufacturer has been covered with a time face dial bearing no name. In some instances the time face dial was mutilated and needed replacing, and in some instances it did not. In addition to obscuring the name of the maker on the time face dial, the name of the maker on the inside of the clock was obscured or concealed by reversing the plate bearing the name and address of the maker. On the blank side of such plate the respondents bradded a metal plate bearing the inscription:

FOR
PAPER RECORD DIALS—REPAIRS
Write or Wire
LATHEM WATCHMAN'S CLOCK CO.
76 Third St., N. W. Atlanta, Ga.

In some instances the metal plate bearing the inscription quoted above was bradded over the face of the plate bearing the name of the

maker, without reversing the plate but effectively concealing or obscuring the name of the maker. Also, in some instances, the respondents, before sending the clocks back to the owners, have bradded a metal plate bearing the inscription quoted above on the outside of the leather carrying pouch. In the case of one watchman's clock, in evidence, which had been serviced by the respondents, the name of the maker was obscured on the time face dial by covering it with a blank dial, although the original dial did not need replacing; the name of the maker was obscured in the back of the clock by reversing the plate and bradding on the metal plate bearing respondent's name; and also a decal was put in the back of the clock showing a date when the clock should be returned to respondents for cleaning. In addition to this, another metal plate of respondents similar to the one described above was bradded to the outside of the leather carrying pouch. On this clock and case when returned to the owner by respondents, the name and address of respondents appeared in three different places while the name of the maker was concealed or obscured in all places, except that the words "The Chicago" appeared in the back of the clock in a place where they were not likely to be seen by the owner of the clock.

PAR. 4. Through the acts and practices above set forth, respondents represented directly and by implication that they had previously cleaned, oiled, and adjusted the watchman's clocks in the possession of all those to whom the aforesaid form letters were addressed; that respondents had kept a record of the dates when such clocks were cleaned, oiled, or adjusted; that respondents were the manufacturers of watchmen's clocks to which their marks of identification were attached; that respondents were successors to or representatives of competitive watchman's clock manufacturers; and that the addressees of the said letters would receive a special discount on the price of respondents' services if their watchman's clocks were sent to respondents for cleaning, oiling, and adjusting without delay.

PAR. 5. The aforesaid statements and representations were misleading and deceptive. In truth and in fact, respondents had not previously cleaned, oiled, or adjusted any watchman's clocks in the possession of many of those to whom the said form letter was sent. Respondents could not legitimately have had any record of the dates when such clocks were cleaned, oiled, or adjusted. Respondents were not the manufacturers of the watchman's clocks to which they attached their marks of identification as above set forth. Respondents were not successors to or representatives of any competitive watchman's clock manufacturers. The prices charged by respondents for their servicing and cleaning, oiling, and adjusting watchman's clocks

that were sent to them in response to the aforesaid letters were the usual and customary prices charged by respondents for such services.

PAR. 6. Among manufacturers of watchman's clocks the cleaning, oiling, adjusting, and repairing of such clocks as they have sold is an important part of the business, in some instances accounting for approximately one-half the revenue of the manufacturer.

PAR. 7. The use by the respondents of the aforesaid unfair and deceptive acts and practices in connection with their business has had and now has the capacity and tendency to mislead and deceive a substantial portion of the owners and users of watchman's clocks made by respondents' competitors and has caused them to send such watchman's clocks to respondents for cleaning, oiling, adjusting, and repairing. The effect of the aforesaid acts and practices of the respondents is not limited, however, to an unfair advantage obtained by the respondents in the servicing and repairing of watchman's clocks. When the respondents get a watchman's clock manufactured by a competitor into their place of business for servicing as a result of the misleading and deceptive statements hereinabove described, they are in a position to point out, and have pointed out, to the owner of the clock the defects of this particular clock and the claimed superiority of their own watchman's clocks, and thus enhance the sale of their own such clocks. As a result of the aforesaid acts and practices, trade has been unfairly diverted from respondents' competitors.

CONCLUSION

The acts and practices of the respondents as hereinabove found are all to the prejudice and injury of the public and respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Lathem Time Recorder Company, a corporation, its officers, and the respondents Louis P. Lathem, Sr., Louis P. Lathem, Jr., and Harrison G. Hooper, individually and as officers of respondent corporation, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the sale or offering for sale, or servicing or repairing, or solicitation of orders for the servicing or repairing, of watchman's clocks or other time-recording devices in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or indirectly, that they or any of them have previously serviced or repaired any watchman's clock or other time-recording device which has not in fact been previously serviced or repaired by them or any of them.

(2) Representing, directly or indirectly, that they or any of them have a record of the date when any watchman's clock or other time-recording device, in the possession of another, was last serviced or repaired, when such is not a fact.

(3) Representing, directly or indirectly, that they or any of them are successors to or representatives of any manufacturer of watchman's clocks or other time-recording devices, when such is not a fact.

(4) Representing, directly or indirectly, that the price which is charged for servicing or repairing watchman's clocks or other time-recording devices is a special price, when in fact the price charged is that customarily and usually charged in the ordinary course of their business.

(5) Representing, directly or indirectly, that they or any of them are the manufacturers of any watchman's clock or other time-recording device which is not in fact manufactured by them or any of them.

(6) Removing, mutilating, concealing, or obscuring the manufacturer's name on any watchman's clock or other time-recording device, serviced or repaired by them, except insofar as is necessary in the proper servicing or repairing of such watchman's clock or other time-recording device.

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

Commissioner Carretta not participating for the reason that oral argument was heard prior to his appointment to the Commission.

260133—55——6S

IN THE MATTER OF

RADIO TRAINING ASSOCIATION OF AMERICA ET AL.

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

Docket 5536. Complaint, Apr. 20, 1948—Decision, Feb. 11, 1953

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

(*a*) Represented that a person who completed their course was assured of proper preparation and ample training for a successful career as a technician in said fields and that the course embraced all the practical training necessary for success therein, including the obtaining and holding of high salaried positions in the two industries;

The facts being that their course, prior to July, 1947, consisted entirely of instruction in the theory of radio and television and included no practical training in the techniques of repair or construction, which cannot be acquired except by actual experience of working with radio and television sets in a shop or laboratory; and, while the corporation had added to its courses since then kits of practical materials and parts for use, as instructed, by its students to provide them with some measure of practical training, and the entire course had been extensively revised and improved since issuance of the complaint, its successful completion still would not qualify a student as an expert radio or television technician; provide him with all the preparation and practical training necessary for a successful career as such; or pave the way to the results claimed; and

(*b*) Falsely represented that they had a modernly equipped radio and television laboratory in Hollywood in which those students who satisfactorily completed their home study course could obtain at least two weeks or eighty hours of practical training and experience in television work, the expenses of which, including round-trip transportation from the student's home, and lodging while receiving said training in their laboratory, were all included in the original tuition fee;

The facts being that they furnished the purchasers of their course with nothing of value other than the home study course, together with aforesaid kits;

(*c*) Represented falsely through the use of the word "Association" in their corporate name that their enterprise was an organization composed of persons primarily interested in its activities from an educational standpoint; and

(*d*) Represented falsely that they had the endorsement of or some connection with the radio and television manufacturing and distributing industry and acted as a medium through which its experts were trained, through use of their corporate name, "Radio Training Association of America," together

with such statements as "training men for the radio industry for over 25 years," "We are seeking ambitious, mechanically inclined men—to learn Radio and Television, and prepare them for successful future careers as Certified Technicians," and, "Without obligating me advise how I can qualify for a Big Pay Job in the RADIO ELECTRONIC AND TELEVISION INDUSTRY," in form letters, cards and printed contracts distributed to prospective purchasers;

When in fact said enterprise was conducted solely for profit; and at no time had they had any connection with the radio or television industry;

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

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

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

Mr. R. P. Bellinger for the Commission.

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

COMPLAINT

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

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

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

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

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

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

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

. . . . . .RTA brings you the practical training necessary for success right into your own home.

Printed on cards to be returned to respondents: "Without obligating me advise how I can qualify for a Big Pay Job in the Radio Electronic and Television Industry."

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

You get Pratical Radio Shop "Know How."

Upon the student's completion of the Home Study portion of this training with a passing grade of seventy per cent, the student is given the privilege of securing a Postgraduate Course of two weeks, (not less than eighty shop hours) of

intensive and practical Shop and Laboratory training in the R. T. A. modern equipped laboratory.

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

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

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

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

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

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

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

PAR. 7. The statements, representations and implications made and caused to be made by respondents, including the usage of the word "Association" in the corporate name, as set forth herein have had and

now have the tendency and capacity to, and do, mislead and deceive many members of the purchasing public into the erroneous and mistaken belief that such statements, representations and implications are true, and because of such erroneous and mistaken belief cause a substantial portion of the public to purchase respondents' said courses of instruction.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 20, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondents' answer, testimony and other evidence in support of the allegations of the complaint and a stipulation as to certain facts entered into between counsel were introduced before a hearing examiner of the Commission, theretofore duly designated by it (no testimony or other evidence having been presented in opposition to the allegations of the complaint), and such testimony, stipulation and other evidence were duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony, stipulation and other evidence, the recommended decision of the hearing examiner and brief in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission, having duly considered the matter, made and issued on December 5, 1951, its findings as to the facts, conclusion and order to cease and desist.[1]

Upon consideration of a petition by respondent Radio-Television Training School (formerly named Radio Training Association of America) for modification of said order to cease and desist, the Commission, for the purpose of assisting it in determining the necessity of modifying its findings as to the facts, conclusion and order to cease and desist, reopened this proceeding for the reception of evidence as to certain questions of fact. Evidence as to such facts was presented by counsel for respondents before the hearing examiner previously designated herein by the Commission and such testimony and other evidence were duly filed in the office of the Commission.

[1] See 48 F. T. C. 501.

Thereafter, this matter came on for reconsideration by the Commission upon the entire record herein, including the petition of respondent Radio-Television Training School to modify the order to cease and desist, the answer thereto of counsel supporting the complaint, the additional testimony and other evidence and the report and recommendation of the hearing examiner; and the Commission, having reconsidered the matter and being of the opinion that the findings as to the facts and conclusion should be modified, makes this its modified findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Radio-Television Training School (formerly named Radio Training Association of America prior to the amendment of its corporate charter in 1949) is a California corporation, with its office and principal place of business at 5100 South Vermont, Los Angeles 37, California. Respondent Benjamin M. Klekner, whose present address is unknown, was president of respondent corporation and directed and controlled its advertising policies for several years immediately prior to April of 1949, at which time he severed all connection with the respondent corporation, all of his interest in respondent corporation being acquired by one Pearl B. Knight, not a respondent herein. Since October 6, 1950, all of the stock in respondent corporation has been owned by Pearl B. Knight and Bertram A. Knight, the latter being president and managing executive of respondent corporation. Bertram A. Knight is not a respondent herein.

Respondents Earl L. Kemp, Paul H. Thomsen and I. O'Connor are employees of the respondent corporation and have had no control or direction over the policies of the respondent corporation. The Commission is of the opinion, therefore, that the allegations of the complaint have not been sustained as to respondents Earl L. Kemp, Paul H. Thomsen and I. O'Connor and that the complaint should be dismissed as to them and the term "respondents" as used hereinafter does not include these individuals.

PAR. 2. Respondent corporation is now and for many years last past has been, and respondent Benjamin M. Klekner for several years immediately preceding April, 1949, was, engaged in the sale and distriubtion of a course of instruction for home study in the fields of radio and television. During the periods of time they were so engaged, each of the said respondents caused, and the respondent corporation now causes, the said course of instruction, when sold, to be transported from their places of business in the State of California to the purchasers thereof in the other States of the United States. Re-

spondent corporation maintains, and at all times mentioned herein has maintained, and respondent Benjamin M. Klekner at all times mentioned herein prior to April, 1949, did maintain a course of trade in said course of instruction, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business in commerce and for the purpose of enrolling prospective students and promoting the sale of their said course of instruction, respondents, by means of advertisements inserted in newspapers and magazines having general circulation in the United States and through the use of form letters distributed throughout the United States by means of the United States mails, have represented, directly and by implication, that one completing their course in radio and television is assured of proper preparation and ample training for a successful future career as a technician in said fields of science; that respondents' said course for home study embraces all the practical training necessary for success in said fields of science, and the satisfactory completion thereof properly equips one with the necessary qualifications to obtain and hold high-salaried positions in the radio and television industry and supplies him with adequate radio shop knowledge for a lucrative future in radio; that respondents have a modernly equipped radio and television laboratory in Hollywood, in which those students who satisfactorily complete respondents' home study course can obtain at least two weeks or eighty hours of practical training and experience in radio and television work, the expenses of which, including round-trip transportation from the student's home to Hollywood and lodging while receiving said practical training in respondents' laboratory, are all included in the original tuition fee agreed upon.

PAR. 4. The aforesaid representations are false and misleading.

Prior to July, 1947, respondents' course did not include any practical training in the techniques of radio or television repair or construction, but consisted entirely of instruction in the theory of radio and television. Such techniques cannot be acquired except by actual experience of working with radio and television sets in a shop or laboratory. Periodically since July, 1947, respondent corporation has added one at a time to its course of instruction, kits of practical materials and parts to be used by its students in accordance with instructions to provide them with some measure of practical training. Respondent corporation's present course of instruction now includes eleven of such kits, the latest, consisting of parts and instructions for the construction of a television receiver, having been added in May, 1950. The entire course has been extensively revised and improved since the issuance of the complaint herein.

However, even as presently constituted, successful completion of this course does not qualify a student as an expert radio or television technician, does not provide him with all of the preparation and practical training necessary for a successful career as a technician in said fields of science, does not equip him with the necessary qualifications to obtain and hold high-salaried positions in the radio and television industry and does not supply him with adequate radio shop knowledge for a lucrative future in radio. Respondents' course of instruction prior to the above-described revisions and additions was much less capable than the present course of providing the training and qualifications claimed for it by respondents in their advertising.

Respondents have never had and do not now have a radio or television laboratory in Hollywood or elsewhere and do not have any means of providing their students with laboratory experience in radio or television work. Respondents do not bear any expense in the transportation of purchasers of their course of instruction to Hollywood, nor do they furnish to the said purchasers anything of value other than a home study course of instruction in radio and television together with the materials, parts and equipment contained in the kits furnished as a part of said course.

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

During this same period of time, by the use of the corporate name "Radio Training Association," together with such statements as "Training Men for the Radio Industry for Over Twenty-five Years," "We are seeking ambitious, mechanically inclined men—to learn Radio and Television, and prepare them for successful future careers as Certified Technicians," and "Without obligating me advise how I can qualify for a Big Pay Job in the RADIO, ELECTRONIC AND TELEVISION INDUSTRY" contained in form letters, cards and printed contracts distributed to prospective purchasers of their said courses, respondents implied that they had the endorsement of or some connection with the radio and television manufacturing and distributing industry and that they acted as a medium through which the industry's radio and television experts were trained.

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

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

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondents' answer thereto, testimony and other evidence, including a stipulation of facts entered into by and between counsel for respondents and counsel in support of the complaint, introduced before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested), and the Commission, after having made its findings as to the facts and its conclusion that the respondents Radio-Television Training School (formerly named Radio Training Association of America), a corporation, and Benjamin M. Klekner, individually, have violated the provisions of the Federal Trade Commission Act, having on December 5, 1951, issued and subsequently served upon the respondents said findings as to the facts, conclusion, and its order to cease and desist; and

This proceeding having been reopened and additional evidence having been received to assist the Commission in its consideration of respondent corporation's petition to modify said order to cease and desist, and the Commission, after reconsideration of this matter on the basis of the present record, having made its modified findings as to the facts, and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Radio-Television Training School, a corporation, and its officers, agents, representatives and employees, and Benjamin M. Klekner, an individual, and his agents,

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

1. Advertising or representing, directly or by implication:

(*a*) That one completing said course in radio and television is assured of proper preparation and ample training for a successful future career as a technician in said fields of science.

(*b*) That said course embraces all practical training necessary for success in said fields of science.

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

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

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

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

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

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

It is further ordered, That the respondents Radio-Television Training School, a corporation, and Benjamin M. Klekner, an individual, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

TRICO PRODUCTS CORPORATION

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

Docket 6050. Complaint, Oct. 3, 1952—Decision, Feb. 12, 1953

Where a corporation engaged in the manufacture and interstate sale and distribution of vacuum-operated windshield wiper motors, arms, linkages, blades, and other automotive safety devices; which, by virtue of patent ownership, was, for all practical purposes, the only manufacturer of that type of windshield wiper motors in the United States during the period between 1922 and 1950; and which sold and distributed its products on an order basis to automobile manufacturers for use as original equipment;

In selling and distributing its products also for resale to 171 warehouse distributors of automotive parts and accessories for resale to general jobbers, specialty jobbers, and servcie distributors, for resale to automobile parts dealers, garages, and filling stations who sold at retail to the consuming public; in competition with others similarly engaged, as were many of its aforesaid customers and their customers, except as below set forth—

(*a*) Entered into franchise agreements for the resale of its replacement parts products with various warehouse distributors, whereby they agreed (1) to conform to and carry out its price policies, (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by it, (3) to carry out its price policies by entering into franchise agreements with their customers, and (4) to enforce said price policies by supervising the performance of the franchise agreements with their customers; and

(*b*) Sold its replacement parts products only to warehouse distributors who entered into the aforesaid franchise agreements; and

Where most of said warehouse distributors—

(*c*) Entered into franchise agreements with their customers on a form prepared and supplied by said corporation, which did not become effective until approved by it and had to be renewed each year, by the terms of which said customers agreed (1) to conform to and carry out said corporation's price policies, and (2) to offer and grant allowances on exchanges and trade-ins in accordance with the prices fixed by it; and

Where said corporation—

(*d*) Regularly issued and distributed to its warehouse distributors price lists and catalogs which contained prices, discounts, and trade-in allowances to which all said resellers of its products had agreed to conform, which in turn were distributed by its warehouse distributors to their customers;

With the result that it illegally fixed, controlled, and maintained the prices, terms and conditions at which its replacement parts products were resold at all levels of distribution:

Held, That such acts, practices, methods, and agreements, under the circumstances set forth, were all to the prejudice and injury of the public, had a tendency to unduly hinder competition and create a monopoly in it in the sale of said replacement parts products, and constituted unfair methods of competition in commerce.

Before *Mr. James A. Purcell*, hearing examiner.
Mr. Fletcher G. Cohn and *Mr. Paul H. LaRue* for the Commission.
Diebold & Millonzi, of Buffalo, N. Y., for respondent.

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 Trico Products Corporation, hereinafter referred to as respondent, has violated the provisions of section 5 of the said Federal Trade Commission 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 these respects as follows:

PARAGRAPH 1. Respondent, Trico Products Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 817 Washington Street, Buffalo 3, New York.

PAR. 2. Respondent is now, and since 1920 has been, engaged in the manufacture, distribution and sale of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices.

PAR. 3. By virtue of its ownership of patents covering the vacuum operated windshield wiper motor, respondent was the only manufacturer of that type of windshield wiper motor in the United States during the period between 1920 and 1950. Although respondent's patents expired in 1942, no competing vacuum operated windshield wiper motor appeared on the market until 1950.

PAR. 4. Respondent sells and distributes its products to automobile manufacturers for use as original equipment. Respondent does not contract with automobile manufacturers with respect to their purchases of its products, but, rather, sells such products to them on an order basis.

Respondent also sells and distributes its products for resale as replacement parts to approximately 171 warehouse distributors of automotive parts and accessories who in turn resell such products to approximately 2914 general jobbers, 163 specialty jobbers and 819 service distributors. The latter resell respondent's products to retail automo-

bile parts dealers, garages and filling stations who sell said products at retail to the consuming public.

PAR. 5. In the course and conduct of its business for many years last past, respondent has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships or causes to be shipped its products from the State in which they are manufactured to purchasers thereof located in other States and in the District of Columbia, and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 6. Except insofar as it has been affected, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it has been affected, many of respondent's customers, and many of their customers, are competitively engaged in the resale of respondent's products, some in commerce, in the various States where said customers respectively carry on their businesses.

PAR. 7. Respondent, as part of its business, is now entering into and, for many years last past, has entered into franchise agreements for the resale of its replacement parts products with various warehouse distributors of automotive parts and accessories whereby the latter agree, among other things: (1) to conform to and carry out respondent's price policies; (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by respondent; (3) to carry out respondent's price policies by entering into franchise agreements with their customers; and (4) to enforce said price policies by supervising the performance of the franchise agreements with their customers.

Respondent sells its replacement parts products only to those warehouses distributors who enter into and perform the aforesaid franchise agreements.

PAR. 8. Pursuant to and in furtherance of the requirements of their franchise agreements with respondent, said warehouse distributors enter into franchise agreements with their customers. The franchise agreements between respondent's warehouse distributors and their customers, which are executed on forms prepared and supplied by respondent, do not become effective until approved by respondent, and must be renewed each year. By the terms of said franchise agreements the customers of respondent's warehouse distributors agree, among other things: (1) to conform to and carry out respondent's price poli-

cies, and (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by respondent.

PAR. 9. Respondent regularly issues and distributes to its warehouse distributors price lists and catalogs which contain the prices, discounts and trade-in prices to be observed by them and all other resellers of its replacement parts products. Said price lists and catalogs are in turn distributed by respondent's warehouse distributors to their customers.

PAR. 10. By means of the aforesaid franchise agreements by and between respondent and its warehouse distributors and between said warehouse distributors and their customers, plus the requirements of respondent, together with the distribution of the aforesaid price lists and catalogs, respondent has illegally fixed, controlled and maintained the prices, terms and conditions at which its replacement parts products are resold at all levels of distribution.

PAR. 11. The acts, practices, methods and agreements of respondent, as hereinbefore alleged, are all to the prejudice of the public, have a dangerous tendency to unduly hinder competition and create a monopoly in respondent in the sale of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices for use as replacement parts and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 3, 1952, issued and subsequently served its complaint on the respondent in the caption hereof, charging it with the use of unfair methods of competition in violation of section 5 of said Act.

The respondent, 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 re-

[1] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" in said matter follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on February 12, 1953, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist; and subject to such condition, said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

It is accordingly ordered, That the respondent, Trico Products Corporation, shall, within sixty (60) days after service upon it of this notice and order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the consent settlement entered herein.

view 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 answer to said complaint, hereby:

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

2. Consents 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 respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law.

3. Agrees 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 has reason to believe are unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondent consents may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Trico Products Corporation, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 817 Washington Street, Buffalo 3, New York.

PAR. 2. Respondent is now, and since 1920 has been, engaged in the manufacture, distribution and sale of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices.

PAR. 3. By virtue of its ownership of patents covering the vacuum operated windshield wiper motor, respondent was for all practical purposes the only manufacturer of that type of windshield wiper motor in the United States during the period between 1922 and 1950. Although respondent's basic patent expired in 1942, for all practical purposes, no competing vacuum operated windshield wiper motor appeared on the market until 1950.

PAR. 4. Respondent sells and distributes its products to automobile manufacturers for use as original equipment. Respondent does not contract with automobile manufacturers with respect to their purchases of its products, but, rather, sells such products to them on an order basis.

Respondent also sells and distributes its products for resale as replacement parts to approximately 171 warehouse distributors of automotive parts and accesories who in turn resell such products to approximately 2914 general jobbers, 163 specialty jobbers and 819 service distributors. The latter resell respondent's products to retail automobile parts dealers, garages and filling stations who sell said products at retail to the consuming public.

PAR. 5. In the course and conduct of its business for many years last past, respondent has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships or causes to be shipped its products from the State in which they are manufactured to purchasers thereof located in other States and in the District of Columbia, and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 6. Except insofar as it has been affected, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar business in commerce.

Also, except insofar as it has been affected, many of respondent's customers, and many of their customers, are competitively engaged in the resale of respondent's products, some in commerce, in the various States where said customers respectively carry on their businesses.

PAR. 7. Respondent, as part of its business, entered into franchise agreements for the resale of its replacement parts products with various warehouse distributors of automotive parts and accessories whereby the latter agreed, among other things: (1) to conform to and carry out respondent's price policies; (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by respondent; (3) to carry out respondent's price policies by entering into franchise agreements with their customers; and (4) to enforce said price policies by supervising the performance of the franchise agreements with their customers.

Respondent sold its replacement parts products only to those warehouse distributors who entered into the aforesaid franchise agreements.

PAR. 8. Pursuant to and in furtherance of the requirements of their franchise agreements with respondent, most of said warehouse distributors entered into franchise agreements with their customers. The franchise agreements between respondent's warehouse distributors and their customers, which were executed on forms prepared and supplied by respondent, did not become effective until approved by

respondent, and had to be renewed each year. By the terms of said franchise agreements the customers of respondent's warehouse distributors agreed, among other things: (1) to conform to and carry out respondent's price policies, and (2) to offer and grant allowances on exchanges and trade-ins in accordance with prices fixed by respondent.

PAR. 9. Respondent regularly issues and distributes to its warehouse distributors price lists and catalogs containing the prices, discounts and trade-in prices, to which said distributors and all other resellers of its replacement parts products have agreed to conform. Said price lists and catalogs are in turn distributed by respondent's warehouse distributors to their customers.

PAR. 10. By means of the aforesaid franchise agreements by and between respondent and its warehouse distributors and between said warehouse distributors and their customers, plus the requirements of respondent, together with the distribution of the aforesaid price lists and catalogs, respondent illegally fixed, controlled and maintained the prices, terms and conditions at which its replacement parts products were resold at all levels of distribution.

CONCLUSION

The acts, practices, methods and agreements of respondent, as hereinbefore alleged, are all to the prejudice of the public, have a tendency to unduly hinder competition and create a monoply in respondent in the sale of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices for use as replacement parts and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Trico Products Corporation, its officers, agents, representatives, and employees, in or in connection with the offering for sale, sale or distribution in commerce between and among the several States of the United States and in the District of Columbia of vacuum operated windshield wiper motors, arms, linkages, blades and other automotive safety devices, do forthwith cease and desist from entering into, carrying out or continuing any agreement or understanding to do or perform any of the following things:

(1) Fix, establish or maintain prices, terms or conditions of sale in the resale of any of said products;

(2) Require, or attempt to require, any purchaser of any of said products to conform to, or comply with, any method of fixing, establishing or maintaining terms, prices or conditions of sale in the resale of said products;

Order

(3) Require, or attempting to require, any purchaser of any of said products to conform to, or comply with, any schedule or arrangement as to allowances on exchanges or trade-ins connected with, or related to, the resale of such products;

(4) Supervise or enforce, or attempt to supervise or enforce, by any means or methods the maintenance of any prices, terms or conditions of sale in the resale of any of said products.

Provided, however, That nothing herein contained shall be construed to prevent respondent from showing that any contract or agreement hereafter made, which is alleged to be in violation of this order, is permitted by the provisions of the Miller-Tydings Law (Public Law 314, 75th Congress, approved August 17, 1937) or of the McGuire Law (Public Law 542, 82nd Congress, Chapter 745, approved July 14, 1952).

Trico Products Corporation
TRICO PRODUCTS CORPORATION
By RUPERT WARREN,
Vice-Pres.

Dated: January 8, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 12th day of February, 1953, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.

Syllabus

IN THE MATTER OF

CHAIN INSTITUTE, INC. ET AL.

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

Docket 4878. Complaint, Oct. 9, 1945 [1]*—Decision, Feb. 16, 1953*

Where eighteen corporations which were engaged in the manufacture, sale, and distribution to wholesalers, dealers, and consumers, including the United States Government, of substantially all the welded chain, weldless chain, including sash and kindred chain, and tire chains produced in the United States, and were in competition with one another and with other members of the industry, except as noted below; along with their trade association or Institute organized in 1933; its Managing Director engaged as such since 1938 and employed by them for the purpose, among others, of stabilizing prices; and certain officers of said corporate manufacturers who were active in Institute affairs;

Entered into and carried out an understanding or conspiracy among themselves to restrain and suppress competition in the sale of chain and chain products; and in furtherance thereof, acting in concert with one or more of the others—

(*a*) Discussed and agreed upon present and future prices on chain and chain products at Institute meetings, exchanged price lists and prior information, and made use of said institute to promote and maintain adherence to the prices agreed upon; and employed said Managing Director to exhort the manufacturer members not to sell their products at less than their published prices;

(*b*) Took action to prevent sales at less than published list prices and discounts through inquiring among one another as to whether or why a particular sale or offer to sell had been made at less than the published price; and

(*c*) Took measures through their Institute to standardize and simplify their products, through committees of officers of the manufacturers and otherwise;

With the result that a situation was brought about where there was no difference between the chain made by different manufacturers so that a buyer would not pay more for the product of one than for that of another;

(*d*) Cooperatively and collectively engaged, through the Institute, an independent traffic consultant to compile a book of freight rates on welded chain from Pittsburgh to destinations throughout the United States, and to revise such compilation, for use in computing delivered prices in accordance with the manufacturers' practice of selling on a Pittsburgh basing-point basis, and sent copies to nonmember manufacturers so that all sellers might be

[1] Amended.

provided with common delivery charge factors to be included in their prices at various destinations, irrespective of the actual rate;

(*e*) Concertedly adopted and quoted as their own, prices identical with those announced by one of their number, the largest manufacturer of most types of chain involved, and followed such quotations for substantial periods of time; and changed their prices to conform to price lists received from said price leader, whose practice it was to forward price lists and discounts two or three days prior to their effective date to its jobber customers and to each of the other manufacturer members; and sent copies of their revised price lists to said price leader and, in many instances, to other manufacturers; and

Where said manufacturers, whose general practice was to quote and sell welded chain on the basis of the "Pittsburgh plus or single basing-point delivered-price" method or system; weldless chain on the basis of the "freight equalization delivered-price" system; and tire chains on the basis of the "zone-delivered price" system with freight allowance applicable only on certain minimum shipping quantity;

(*f*) With the knowledge that all the other manufacturers were doing likewise, quoted and sold chain and chain products at prices calculated in accordance with the method applicable to the particular products sold, as above indicated, and thereby made more effective the understanding and agreement between all of them;

With the result that they were able to achieve a high degree of price identity in quoting and selling different types of chain, including bids to the Procurement Division of the Treasury on tire chains and bids to the Navy on welded and weldless chain; and

Where certain of said producers, following the acquisition by the aforesaid price leader of ownership and control of certain patented inventions covering improvements on tire chains, generally referred to as "bar reinforced and anti-skid devices" and involving "bar reinforced" tire chains, and an arrangement for a partnership to act as manufacturer's representative in the sale of bar reinforced tire chains to the Federal Government subsequently extended to cover all types of tire chains—

(*g*) Entered into agreements with said price leader whereby, as licensee manufacturers, they were required to observe minimum prices and discounts specified by said leader in selling tire chains embodying the patented feature; and

(*h*) Agreed, with the assistance of said partnership, as to the prices which they bid, and which said partnership bid in its own name, to the Procurement Division of the Treasury Department for both bar reinforced and standard tire chains; preceding apportionment among the manufacturers participating in aforesaid arrangement of orders received by said partnership under contracts awarded to it;

With result that all users of each of the three systems of computing delivered prices were thus enabled to present to a prospective purchaser a condition of matched prices in which such purchaser was isolated and deprived of any choice on the basis of price; delivered prices did not reflect any of the differences in cost of raw materials, other items, or freight delivery from the places of manufacture to the purchasers' delivery points; and the prin-

ciples and forces of competition were prevented from determining the prices of each of the respondent manufacturers;

Tendency, capacity, and effect of which combination and conspiracy and acts and practices performed thereunder had been and might be to substantially lessen, hinder, and suppress competition among said manufacturers in the sale of chain and chain products in commerce; to prevent price competition among them in the sale of said products and deprive purchasers of the benefits of competition in price; to maintain artificial and monopolistic methods and prices in the sale and distribution of such products, and to create a monopoly in said manufacturers in their sale:

Held, That such acts and practices constituted unfair methods of competition and unfair acts and practices in commerce.

As respects Count II of the amended complaint which charged each of the manufacturing respondents with having discriminated in price in the sale of chain and chain products by selling to some purchasers at higher prices than to others, in violation of Subsec. (a) of Sec. 2 of the Clayton Act as amended, as a result of (a) the use of the delivered-price systems described in Count I and (b) the classification of customers to receive quantity, trade, and other discounts from quoted prices:

The Commission was of the opinion that the allegations with respect to use of the delivered-price systems did not clearly show that the alleged unlawful discriminations occurred as a result of differences made in the actual prices at which the products were sold, and that the allegations with respect to the granting of different quantity, trade, and other discounts to competing customers were not sustained; and that, therefore, Count II be dismissed as to all of the respondents.

With regard to the finding that the respondents discussed and agreed upon prices on the occasion of Institute meetings, and the respondents' contention that certain letters in evidence, written by an individual who was president of one of respondents from 1922 to the time of his death in September 1941, represented his company in the Institute for a number of years, attended its meetings and served on its committees, and wrote and otherwise communicated with other representatives of members concerning its action, were not entitled to evidentiary value by reason of the death of the writer before the proceeding began, and because there was credible evidence to show that he was prone to exaggeration and misstatement, and also because any inferences of price fixing which might be drawn therefrom were categorically refuted by the uncontradicted testimony of respondents' witnesses that there had never been any price fixing in the industry:

The discussions, understandings, and agreements indicated by the letters involved were for the most part corroborated by other evidence in the record, and the letters were entitled to, and were given, evidentiary value in connection with the aforesaid finding; and the Commission rejected said contention.

As respects respondents' contention that the aforesaid acts and practices of certain of the respondents in connection with bar reinforced tire chains were in no way related to and formed no part of the acts and practices engaged in by all the respondents, that it was therefore improper that such allegedly unrelated acts and practices should be considered in the instant proceeding, and that in view of the elimination of the price-fixing provisions

from the license agreements and termination of the arrangement with said partnership, no issue remained which had not become moot:

The Commission disagreed with such contentions, and with the hearing examiner's recommendation that the allegations of the amended complaint relating to the aforesaid license agreements and the arrangements with said partnership be dismissed as to all the respondents; it appearing, among other things, that respondent licensor, as testified, had attempted to keep the price on the bar reinforced tire chains about fifteen per cent higher than the prices on standard tire chains; that list prices on the latter were uniform and sales were generally made in accordance with such published list prices; and that in view of the superiority of the former, in order to maintain established uniform prices on standard chains, it was necessary that the prices on bar reinforced chains be fixed and maintained at a level substantially higher than that on standard chains; and that the conspiracy to fix and maintain the prices on bar reinforced chains consequently formed a necessary part of the overall conspiracy to fix and maintain prices on chain and chain products.

In the aforesaid connection, the facts that some of the respondents did not manufacture or sell bar reinforced tire chains and therefore did not participate in the conspiracy to fix and maintain prices on said particular type of chain did not constitute sufficient grounds for dismissal as to them of the charges in the amended complaint relating to such acts and practices, for the reasons that said acts and practices represented only one of the means by which the primary purpose of the overall combination and conspiracy was effectuated, and the arrangements with said partnership were made possible because of the combination between said respondent patentee and its licensees and because of the understandings and agreements between all as to the prices at which the standard chains would be offered and sold to the Government and to other purchasers, so that a cancellation of the price-fixing provisions in the license agreements and the termination of said partnership arrangements afforded no basis for exempting the described unlawful acts and practices with respect to bar reinforced tire chains from the prohibitions of an order to cease and desist.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Everette MacIntyre and *Mr. Karl E. Steinhauer* for the Commission.

Kittelle & Lamb, of Washington, D. C., for respondents generally, and along with—

Mr. Clarence M. Dinkins, of Washington, D. C., for Chain Institute, Inc. and George J. Campbell, Jr.;

Mr. Frederick S. Duncan, of New York City, for American Chain & Cable Co., Inc., St. Pierre Chain Corp. and Wm. D. Kirkpatrick;

Alvord & Alvord, of Washington, D. C., and *Reed, Smith, Shaw & McClay*, of Pittsburgh, Pa., for The McKay Co. and Frank A. Bond;

Ganger & Ganger, of Cleveland, Ohio, for Bridgeport Chain & Manufacturing Co., Cleveland Chain & Manufacturing Co., Round California Chain Co. and Seattle Chain & Mfg. Co.;

Chadbourne, Hunt, Jaeckel & Brown, of New York City, for Pyrene Manufacturing Co.;

Thompson, Hine & Flory, of Cleveland, Ohio, for Hodell Chain Co.;

Mr. Charles R. Fay, of Worcester, Mass., for St. Pierre Chain Corp.;

Sidley, Austin, Burgess & Smith, of Chicago, Ill., for S. G. Taylor Chain Co.;

Finck & Huber, of Buffalo, N. Y., for Columbus McKinnon Chain Corp.;

Mr. Frederick B. Gerber, of York, Pa., for Campbell Chain Co.;

Lawrence, Goldberg, Lawrence & Lewin, of Chicago, Ill., for Nixdorff-Krein Manufacturing Co., Peerless Chain Co., Dennis A. Merriman and Walter S. McCann;

Marsh, Day & Calhoun, of Bridgeport, Conn., for John M. Russell Manufacturing Co., Inc. and Turner & Seymour Manufacturing Co.; and

Cromelin & Townsend and *Mr. H. Stewart McDonald*, of Washington, D. C., for Shirley, Olcott & Nichols.

AMENDED COMPLAINT

This complaint is filed to obtain relief from respondents' activities because of their violations, jointly and severally, as hereinafter alleged in Count I herein, of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," commonly referred to as the Federal Trade Commission Act, as approved September 26, 1914, and amended March 21, 1938 (38 Stat. 717; 15 U. S. C. A. sec. 41; 52 Stat. 111), and because of their violations, as alleged in Count II herein, of Section 2 (a) of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly referred to as the "Clayton Act," as approved October 15, 1914, and amended June 19, 1936 (38 Stat. 730; 15 U. S. C. A. sec. 12, 49 Stat. 1526; 15 U. S. C. A. sec. 13, as amended).

COUNT I

THE CHARGE UNDER THE FEDERAL TRADE COMMISSION ACT

PARAGRAPH 1. Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and 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 in-

terest, hereby issues its amended complaint, stating its charges in that respect as follows:

NATURE OF CHARGES

PAR. 2. The charges as hereinafter set forth are to the effect that the respondents have combined and conspired to restrain trade and commerce in the sale of chain and chain parts among the several States of the United States, that they have been and are making effective such combination and conspiracy through cooperative and collective action between and among themselves and with others, and that each respondent engaged in the manufacture and sale of chain uses methods and practices to make the combination and conspiracy more effective.

DESCRIPTION OF RESPONDENTS

PAR. 3. (1) Respondent Chain Institute, Inc., a trade association (sometimes hereinafter referred to as Institute), is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 208 S. LaSalle Street, Chicago, Illinois.

(2) Respondent American Chain & Cable Company, Inc. (sometimes hereinafter referred to as American) is a corporation organized and existing under the laws of the State of New York, with its principal office at Bridgeport, Connecticut. Its general office is at 230 Park Avenue, New York, N. Y., and with a plant and office located at East Princess and Charles Streets, York, Pennsylvania.

(3) The respondent Bridgeport Chain & Manufacturing Company (sometimes hereinafter referred to as Bridgeport) is a Connecticut corporation with its principal office at 964 Crescent Avenue, Bridgeport, Connecticut.

(4) Respondent The McKay Company (sometimes hereinafter referred to as McKay) is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal offices located at McKay Building, Pittsburgh, Pennsylvania.

(5) Respondent Pyrene Manufacturing Company (sometimes hereinafter referred to as Pyrene) is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 560 Blmnt. Avenue, Newark, New Jersey.

(6) Respondent Hodell Chain Company (sometimes hereinafter referred to as Hodell) is a corporation organized and existing under the laws of the State of Ohio, with principal office located at 3924 Cooper, Cleveland, Ohio. Said respondent was organized in 1893 and until recently traded under the name and title Chain Products Company.

(7) Respondent St. Pierre Chain Corporation (sometimes hereinafter referred to as St. Pierre) is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office located in Worcester, Massachusetts.

(8) Respondent S. G. Taylor Chain Company (sometimes hereinafter referred to as Taylor) is a corporation organized and existing under the laws of the State of Illinois, with principal office located at 3 141st Street, Hammond, Indiana.

(9) Respondent Cleveland Chain & Manufacturing Company (sometimes hereinafter referred to as Cleveland) is a corporation organized and existing under the laws of the State of Ohio with principal office located at Broadway and Henry Streets, Garfield Heights, Cleveland, Ohio.

(10) The respondent Columbus McKinnon Chain Corporation (sometimes hereinafter referred to as Columbus) is a corporation organized and existing under the laws of the State of New York, with principal office located at Tonawanda, New York.

(11) Respondent International Chain & Manufacturing Company (sometimes hereinafter referred to as International) is a corporation organized and existing under the laws of the State of Pennsylvania, with principal office located at Norway and Elm, York, Pennsylvania.

(12) Respondent Nixdorff-Krein Manufacturing Company (sometimes hereinafter referred to as Nixdorff) is a corporation organized and existing under the laws of the State of Delaware, with principal office located at 900 Howard Street, St. Louis, Missouri.

(13) Respondent Peerless Chain Company (sometimes hereinafter referred to as Peerless) is a corporation organized and existing under the laws of the State of Minnesota, with its principal office located at Winona, Minnesota.

(14) Respondent Round California Chain Company (sometimes hereinafter referred to as Round) is a corporation organized and existing under the laws of the State of California, with its principal office located on Bay Shore Highway, South San Francisco, California.

(15) Respondent J. M. Russell Manufacturing Company (sometimes hereinafter referred to as Russell) is a corporation organized and existing under the laws of the State of Connecticut with its principal office located at Naugatuck, Connecticut.

(16) Respondent Seattle Chain & Mfg. Company (sometimes hereinafter referred to as Seattle) is a corporation organized and existing under the laws of the State of Washington, with principal office at 6921 East Marginal Way, Seattle, Washington.

(17) Respondent Turner & Seymour Manufacturing Company (sometimes hereinafter referred to as Turner) is a corporation organized and existing under the laws of the State of Connecticut with principal office at Torrington, Connecticut.

(18) Respondent Western Chain Products Company (sometimes hereinafter referred to as Western) is a corporation organized and existing under the laws of the State of Illinois, with its principal office located at 1807 West Belmont Avenue, Chicago, Illinois.

(19) Respondent Woodhouse Chain Works (sometimes hereinafter referred to as Woodhouse) is a corporation organized and existing under the laws of the State of New Jersey, with principal office at 251 Third Street, Trenton, New Jersey.

(20) Respondent Dennis A. Merriman, an individual (sometimes hereinafter referred to as Merriman), is Managing Director of Respondent Institute with office located at 208 South LaSalle Street, Chicago, Illinois.

(21) Respondent Walter S. McCann, an individual (sometimes hereinafter referred to as McCann), is Secretary and Treasurer of Respondent Institute with office located at 208 South LaSalle Street, Chicago, Illinois.

(22) Respondent Wm. D. Kirkpatrick, an individual (sometimes hereinafter referred to as Kirkpatrick), is Vice President of respondent American and President of Respondent Institute, with office located at the office of respondent American, York, Pennsylvania.

(23) Respondent Frank A. Bond, an individual (sometimes hereinafter referred to as Bond), is Executive Vice President and Secretary of respondent McKay and an official of Respondent Institute in dealing with freight rate matters, with office located at McKay Building, Pittsburgh, Pennsylvania.

(24) Respondent George J. Campbell, Jr., an individual (sometimes hereinafter referred to as Campbell) is President of respondent International and Vice President of Respondent Institute with offices located at the principal place of business of respondent International in York, Pennsylvania.

(25) Respondent Alfred Peter Shirley (sometimes hereinafter referred to as Shirley) is an individual, a resident of Mt. Vernon, Virginia, who is engaged as a Government contract broker and is a partner in the firm of Shirley, Olcott & Nichols, which maintains its offices in the Mills Building, Washington, D. C.

(26) Respondent Floyd B. Olcott (sometimes hereinafter referred to as Olcott) is an individual who resides at 7828 Orchid Street, N. W., Washington, D. C., who is engaged as a Government contract broker

and is a partner in the firm of Shirley, Olcott & Nichols, which maintains its offices in the Mills Building, Washington, D. C.

(27) Respondent Forrest C. Nichols (sometimes hereinafter referred to as Nichols) is an individual who resides at 4702 Quebec Place, Washington, D. C., who is engaged as a Government contract broker and is a partner in the firm of Shirley, Olcott & Nichols, which maintains its offices in the Mills Building, Washington, D. C.

Each of the respondents described in this Paragraph, subparagraphs (2) to (19), inclusive, sometimes hereinafter referred to as Respondent Members, is a member of Respondent Institute, named and described in subparagraph (1) of this Paragraph, and has for a number of years, through such membership and otherwise, directly participated in the cooperative and collective action of all of those named herein as respondents in the formation, putting into operation and making effective the methods, systems, practices and policies which are alleged herein to be unlawful.

Each of the individual respondents who are described in this Paragraph, subparagraph (20) to (27), inclusive, has, for a number of years, participated in the cooperative and collective action of all of those named herein as respondents in the formation, putting into operation and making effective the methods, systems, practices and policies which are alleged herein to be unlawful.

Description of the Industry and Business of Respondents

Par. 4. The products with which this proceeding is concerned are various types of steel, alloy-steel and other metallic chain and chain parts. The principal types of chain involved here are Welded Chain, Weldless Chain and Tire Chain.

Welded Chain is so designated because each link is closed and sealed through welding. It includes chain of various sizes and weights for many uses such as Anchor Chains, Log Chains, Tie Chains (for securing dairy cows at stanchions), Tie-Out Chains (for use in securing cows and other animals for grazing, etc.) and Trace Chains (for harnessing teams and for other argricultural uses).

Since the development of the art of electric welding, the Welded Chain Industry has used it for mass production of Welded Chain. It is this type or class of chain upon which chain manufacturers depend for their principal tonnage and business. In the trade, Welded Chain is also referred to as Commercial Chain and Pound Chain. It is priced by the manufacturers on a per pound basis.

Weldless Chain is made by bending chain wire into the form of links without the use of the welding process. Such chain is for the

most part light in weight and in general is used only where the stronger Welded Chain is not required.

Tire Chains are made by the welding process but are so linked as to form two line chains connected by cross chains spaced at equal distances so that they may be attached around the wheels of motorized equipment, including automobiles, trucks and farm tractors.

Welded and Weldless Chain as such are not patented articles but the manufacture and sale of Tire Chains was carried on under a patent monopoly of Respondent American until the patents expired in 1921. Since that date practically all of the chain manufacturers have produced and sold Tire Chains as unpatented goods. However, Respondent American, beginning in 1918, acquired patents on improvements in making Tire Chains. Respondent McKay subsequent to 1925, also acquired patents on improvements in the making of Tire Chains. The most important of the patents thus acquired by Respondents American and McKay in the manufacture of Tire Chains relate to the reinforcement of the tread links in the cross chains by adding to each such link additional metal at the wearing or contact point or surface in the form of a diagonally extending reinforcing anti-skid bar or other device. The relevancy and materiality to this proceeding of respondents' practices in their use of patent monopolies over such improvements in Tire Chains are hereinafter set forth at length in Paragraphs 6 and 7 of Count I hereof.

Respondent Members in the course and conduct of their business manufacture, sell and distribute practically all the Welded Chain, Weldless Chain and Tire Chains produced in the United States. The said Respondent Members sell such products at various points throughout the United States to wholesalers, dealers and consumers including the United States Government, and when sales are made Respondent Members have regularly shipped and do ship said products to the purchasers at points in the several States of the United States and the District of Columbia other than in the States of origin of the shipments. The term "commerce" as hereinafter used means "commerce" as defined in the Federal Trade Commission Act.

Prior to the adoption of the practices hereinafter described, said Respondent Members were in active and substantial competition with each other and with other members of the Chain Industry in making and seeking to make sales of their products in trade and commerce between and among the several States of the United States and in the District of Columbia; and except for the use of the acts, methods, practices and policies hereinafter described such active and substantial competition would have continued and said Respondent Members

would now be in active and substantial competition with each other and with other members of the industry.

OFFENSES CHARGED

PAR. 5. For more than eight years last past Respondents have maintained and now have in effect an unlawful combination (more fully hereinafter described in detail in the specifications of the purposes, acts and results accomplished pursuant thereto) between and among themselves and others not named herein as respondents to hinder, frustrate, suppress and eliminate competition in the manufacture, sale and distribution of chain and chain products, including Welded Chain, Weldless Chain and Tire Chains, in the course of the aforesaid commerce among and between the various States of the United States and in the District of Columbia.

The general purpose and result of the said combination are accomplished through cooperative and collective action in which respondents have engaged, continued and are now carrying out, in promoting a common course of action, mutual agreement, understanding and conspiracy to employ, and the actual employment of the acts, methods, systems, practices and policies described and set forth in Paragraphs 6, 7, 8, 9, 10 and 11 hereof and which are aided, abetted, encouraged and made more effective by participation of the respective respondents therein through their separate employment of the acts, methods, systems, practices and policies set forth in Paragraphs 8, 9, 10 and 11 hereof.

Pursuant to, in furtherance of, and as a part of the aforesaid combination, respondents have done and performed the following acts and things, and used the following methods, systems and practices:

(1) Respondent Members, acting among themselves and through and by means of Respondent Institute, its directors, officers and agents, including Respondents Merriman, McCann, Kirkpatrick, and Campbell, Jr., and on certain occasions through and by means of Respondents Shirley, Olcott and Nichols, and by other means and methods have entered into, engaged in and carried out, and are still engaged in and carrying out, understandings and agreements for the purpose and with the effect of substantially hindering, frustrating, suppressing and eliminating actual and potential competition as to price and otherwise in the sale and distribution of welded chain, weldless chain and tire chain in trade and commerce between and among the various States of the United States and in the District of Columbia.

(2) Respondent Members organized, have operated, and do now operate Respondent Institute as an incorporated trade association to

promote and serve the mutual interests of the Respondent Members, and now use it as an instrument or vehicle for their joint and cooperative purpose and action in hindering, frustrating, suppressing and eliminating competition in price and otherwise in the sale and distribution of chain and chain products in commerce among and between the various States and in the District of Columbia.

(3) Respondent Members employed Respondent Merriman on or about August 1, 1938, to serve them as a common agent to make more effective their suppression of price competition, and he has since that date served them as a common agent in the suppression of price competition and "stabilization of prices in the industry."

When Respondent Members were considering their employment of Respondent Merriman during July, 1938, one of their representatives, an official of Respondent International, who was charged with the task of interviewing said Merriman wrote one of his confederates:

"This is unusually confidential, and I wish you would keep it to yourselves, that we are figuring around for a new man to run the industry, something like a Judge Landis, or a moving picture boss, or something like that, that can hold the 'brothers' more in line than they have been in the past; * * * so that I think that things are moving in the right direction for the stabilization of prices in the industry. * * *."

(4) Respondent Members agreed to fix and maintain, and have fixed, maintained and made effective identical delivered price quotations, terms and conditions of sale for chain and chain products in the United States to dealers and distributors thereof and to other purchasers thereof, including the Procurement Division of the U. S. Treasury Department and other governmental agencies.

(5) Respondent Members have adopted and continued in effect by agreement, understanding, and concerted action among themselves, price fixing formulae whereby identical delivered price quotations and identical delivered costs for the sale of chain and chain products are fixed and maintained.

(6) Respondent Members agreed to adopt and have adopted and maintained systems of delivered price quotations and delivered costs designed to prevent and which do prevent reflection in such quotations and costs any of the differences in cost of raw materials, other items, or freight delivery from their respective places of manufacture to the places of business of the intending purchasers of chain and chain products. Said systems also prevent the creation of any advantage to many of said purchasers in delivered cost which would otherwise result because of proximity of such purchasers to the places of production and on the contrary result in discrimination against nearby customers.

(7) Respondent Members cooperatively and collectively make and announce price quotations in such a way that the delivered cost of their respective products to a purchaser is matched and made identically the same by all members regardless of which one of them may supply any purchaser or user and regardless from which of their producing plants the goods are purchased and shipped. Such results are obtained by said Respondent Members through the separate employment and use by each of pricing methods which for convenience here are referred to as basing point system or practice, freight equalization system or practice and zone system or practice, and more fully and particularly described in Paragraphs 8, 9, 10 and 11 hereof. Through the use of such systems and practices Respondent Members have prevented the principles and forces of competition from making and determining their respective price quotations.

(8) Respondent Members have cooperatively promoted adherence and do now cooperatively promote adherence to delivered prices announced under their so-called basing point system in their sale of welded chain, as aforesaid, and make such prices effective. They further obviate and preclude the exercise of independent and competitive will, judgment and action with regard to prices and price policies under said system by:

(*a*) providing themselves with a schedule or compilation of common pricing factors which respondents designate as "freight rate" factors and which they cause to be jointly prepared for them directly and through Respondent Institute by one Charles Donley, Pittsburgh, Pennsylvania, and others. Such schedule or compilation is for use by each of said Respondent Members in calculating and determining the freight factor in the delivered price quotations on Welded Chain as made by each to its respective customers. The compilation of "freight rate" factors thus cooperatively and collectively compiled and disseminated between and among Respondent Members is not intended to serve any need for freight rates for shipping purposes but is designed for their use in pricing as aforesaid and is so used. These freight factors are not the actual or official freight rates in many if not most instances but are used in each instance, regardless of routes and rates, between the points indicated in the compilation. They do not comprise an accurate or approximate showing of the actual freight rates applicable from the various points from which Respondent Members actually ship chain and chain products;

(*b*) filing and exchanging the intimate details of each other's business directly or indirectly with one another through the offices of Respondent Institute and otherwise. Information thus filed and exchanged between and among said respondents has included such inti-

mate details of each other's business as the names of certain of their respective customers, the prices paid to each member by such customers, and the volume of business placed in particular instances with each Respondent Member by such customers;

(9) Respondent Members, by agreement, have adopted and used a price leadership plan whereby Respondent American leads in the announcement and publication of price increases and decreases and as a part of the price leadership "plan," as agreed upon, such announcements and publications of Respondent American are adopted and followed by the other Respondent Members.

(10) Respondent Members have communicated between and among themselves and filed and exchanged with each other through correspondence, telegraph, telephone and otherwise, information concerning prices which have been quoted and charged by particular Respondent Members and information concerning future prices and price quotations to be charged by Respondent Members for chain and chain products.

(11) Respondent Members agreed to hold and have held meetings from time to time under the auspices and supervision of Respondent Institute, its officers, employees and agents, including Respondent Merriman, during the course of which and at other times Respondent Institute and its officers and other agents cooperated with and assisted said Respondent Members in furthering and carrying out the unlawful acts, practices and methods herein set forth.

(12) Respondent Merriman and other officials and agents of Respondent Institute have, from time to time during the course of meetings of members of Respondent Institute and at other times, communicated and discussed parts, current and future prices and price quotations with various Respondent Members and advised, instructed and pressed them with regard to what price quotations should be made on chain and chain products.

(13) Respondent Members, with the assistance of Respondent Merriman, agreed to adopt and have adopted and maintained a uniform method of determining the basic and additional discounts and the amount thereof to be granted by the respective Respondent Members to their respective purchasers of chain and chain products manufactured and sold as aforesaid by said Members.

(14) Respondent Members have agreed to increase and decrease and have simultaneously increased and at other times decreased the basic discounts and the amounts thereof at which said Members sell chain and chain products.

(15) Respondent Members agreed to enter into and have entered into written "jobbers sales agreements" and "dealers agreements"

pursuant to and under which the jobbers and dealers of the respective Respondent Members were required to maintain in their resale of chain and chain products the resale prices prescribed by said Members.

(16) Respondent Members, acting directly between and among themselves and through and by means of Respondent Institute, its directors, officers and agents, including Respondents Merriman, McCann, Kirkpatrick, and Campbell, Jr., and on some occasions through and by means of Respondents Shirley, Olcott and Nichols, have agreed to adopt and have adopted and maintained a classification of purchasers of chain and chain products, including tire chains, for the purpose of aiding Respondent Members and which has aided Respondent Members in establishing arbitrary "channels of distribution" through particular types of middlemen and the establishment of arbitrary and particular levels of discounts for each class of customer, so classified in respondents' "channels of distribution."

(17) Respondent Members, with the cooperation and assistance of Respondents Merriman, Shirley, Olcott and Nichols, fraudulently secured from officials of the Procurement Division of the United States Treasury Department approval of certain specifications of tire chains for the purpose and with the effect of aiding respondents in eliminating certain competitors and their price competition in the submission of bids on tire chains to the Federal Government.

(18) Respondent Members, prior to, during 1943 and thereafter, acted to obstruct production and sales of chain by persons and firms not under control of respondents, and thereby interfered with production of chain contracted for use in the war effort.

PAR. 6. Respondent American, originally known as Weed Chain Tire Grip Company, was the original manufacturer of tire chains in this country and until about 1921 it enjoyed a patent monopoly in the manufacture and sale of tire chains by virtue of its ownership or control of the following patents: Parsons No. 723,299, March 24, 1903, and Weed No. 768,495, August 23, 1904. Despite the fact that Respondent American was engaged in active litigation from 1904 to 1913 relative to the aforesaid controlling patents on tire chains, it was the dominating factor in the tire chain business. However, in 1921, when the aforesaid patents expired, other chain companies entered upon the manufacture and sale of tire chains but Respondent American remained a dominant factor in the manufacture and sale of tire chains and continued to be recognized and accepted by its competitors, through mutual understanding, as the price leader in the industry.

Toward the end of the 1920's Respondent American acquired ownership or control over patented inventions covering improvements in

tire chains. The improvements are generally described as bar reinforcements and anti-skid devices. Some such improvements are covered by letters patent Beckwith No. 1,536,556, May 5, 1925; Reyburn No. 1,696,255, December 25, 1928; and Conner No. 2,180,101, November 14, 1939. Other patents controlled by Respondent American cover several forms of reinforced anti-skid links for tire chains. There are no patents applicable to tire chains as such.

The aforesaid anti-skid reinforced links are made a part of the tread members in the cross chains of tire chains with the reinforcements usually in the form of a diagonally extending bar or other such device on the contact points of the tread member links which are the points subjected to the greatest wear. Although other tire chain manufacturers were engaged in the manufacture and sale of tire chains not embodying the aforesaid patented inventions held by Respondent American, the latter brought at least one such competitor into litigation under allegations that it was infringing its patents. The company which was thus involved in such litigation with Respondent American was Respondent McKay which had been marketing a type of reinforced chain having the trade name "Multi-Grip."

Pursuant to, in furtherance of, and to make more effective the unlawful combination described in Paragraph 5 hereof, Respondent American and Respondent McKay settled the aforesaid suit by agreement in September, 1935.

Pursuant to, in furtherance of, and to make more effective the unlawful combination described in Paragraph 5 hereof, Respondent American and Respondent McKay also entered into written agreements on September 26, 1935, pursuant to the terms of which Respondent American adopted the subterfuge of a so-called "license" to Respondent McKay to make and sell unpatented tire chains embodying the anti-skid reinforcement features of the aforesaid Beckwith, Reyburn, Conner and other patents held by Respondent American. These agreements also provided for Respondent McKay's purchase of cross chains containing the tread links embodying anti-skid reinforcement features controlled under the aforesaid patents owned by Respondent American. The agreements also stipulated that Respondent McKay in its sale of unpatented tire chains containing the patented cross chains or tread member links embodying the anti-skid reinforcement features under the aforesaid patents, should not sell such tire chains at any price except that specified by Respondent American. The agreements also provided for payment of a royalty by the so-called "licensee" to be used and expended for the benefit not only of the so-called "licensor" but also of the "licensee" through advertisement and promotion of the sale of the tire chains which contained the patented anti-skid bar

reinforcing devices in tread links. The agreements had a provision by which Respondent McKay could at its election terminate the same by written notice and in the instance of Respondent McKay such election was exercised on February 6, 1939. However, Respondent McKay has not discontinued its cooperative action with Respondent American and the other Respondent Members in their joint, concerted and effective action to maintain fixed prices at which unpatented tire chains are offered for sale and sold by the said Respondent Members throughout the United States.

On October 7, 1935, Respondents American, Pyrene and Hodell (then trading under the name and style of Chain Products Company) executed written agreements similar in form and substance to the aforesaid agreements which were executed by Respondent American and Respondent McKay on September 26, 1935. Subsequently thereto, namely on May 19, 1939, Respondent St. Pierre and on July 12, 1939, Respondent S. G. Taylor, executed with Respondent American written agreements similar to the one executed by Respondents American and McKay on September 26, 1935. The aforesaid written agreements which were executed by Respondents American, Hodell, Pyrene, St. Pierre and S. G. Taylor have not been terminated.

Pursuant to the terms and provisions of the aforesaaid written agreements the Respondent Members who purport to be "licensees" thereunder have adhered to and made effective the price schedules on unpatented tire chains as announced and published by Respondent American.

Both prior to the execution of the aforesaid written agreements and subsequent thereto, representatives of the purported "licensor" Respondent American and "licensee" Respondents McKay, Hodell, St. Pierre, Pyrene and S. G. Taylor and representatives of other Respondent Members, during the course of meetings and at other times have communicated with each other and conferred concerning the prices which were to be announced as well as those which had been announced by Respondent American, the purported "licensor," under the aforesaid written agreements. During the course of such meetings, communications and conferences, such representatives arrived at understandings and agreements between and among themselves concerning the prices that should be and were announced by Respondent American pursuant to the terms and provisions of the aforesaid written agreements, all for the purpose and with the effect of eliminating price competition between and among Respondent Members in their sale of unpatented tire chains.

Despite the provision in the aforesaid written agreements whereby Respondent American purported to "license" the aforesaid Respondent Members to make and sell the aforesaid anti-skid bar reinforced

tire chains the said Respondent Members as "licensees" simply took advantage of certain provisions contained in the said written agreements whereby they purchased all parts of tire chains which contained the aforesaid patented anti-skid bar reinforced features from Respondent American at factory cost plus 10%. They then used such parts in the manufacture of unpatented tire chains which they then offered for sale and sold at the specified prices which had been agreed upon in the aforesaid written agreements and otherwise by representatives of the Respondent Members, including the aforesaid "licensor" and "licensees."

Respondent Members did not intend at any time that the aforesaid written "license" agreements should operate as genuine license agreements pursuant to which the "licensees" would make and sell the aforesaid anti-skid bar reinforced tread member links. On the contrary they sought to use and did use such purported written "license" agreements as a subterfuge and device to conceal from and deceive the public and government officials into believing that the said written agreements were licenses to make and sell products of a patented invention whereas in fact Respondent Members never intended that the "licensees" should make, nor they made, the patented articles as provided for in the said written agreements. They have been used only as the fulcrum for unlawful price fixing agreements pursuant to the terms and provisions of which the "licensees" were more firmly bound to maintain prices on unpatented tire chains as fixed by the combination of Respondents set forth in Paragraph 5 hereof. Said written agreements have also served Respondent Members as a device and scheme whereby resale prices were fixed and maintained on tire chains made by the aforesaid purported "licensees" who only purchased from Respondent American the aforesaid anti-skid bar reinforced tread member links for use in the manufacture and sale of unpatented tire chains.

PAR. 7. Pursuant to, in furtherance of and to make more effective the unlawful combination which is set forth in Paragraphs 5 and 6 hereof, Respondent Members American, McKay, Pyrene and Hodell entered into an agreement during 1937 with Respondents Shirley, Olcott and Nichols, copartners trading under the firm name Shirley, Olcott and Nichols (sometimes hereinafter referred to merely as Respondent Shirley) pursuant to the terms and provisions of which it was arranged and agreed for the latter to serve the said Respondent Members as their common agent in seeking to sell tire chains for them to the Federal Government through its various agencies in Washington, D. C.

The aforesaid agreement between and among the aforesaid Members and Respondent Shirley was performed, carried out and made

effective after collaborations and conferences between and among their representatives where it was arranged for Respondent American to instruct Respondent Shirley to serve as a common agent for all of the said Respondent Members in submitting bids to agencies of the Federal Government in the name of Respondent Shirley but on the behalf and for the benefit of the said Respondent Members for the sale of tire chains of all types, including those with the aforesaid patented anti-skid bar reinforced factors and those without such features, to the Federal Government at such prices as were prescribed by Respondent American after its collaborations and agreements with representatives of the other said Respondent Members, as previously alleged herein.

Respondent Shirley then proceeded in accordance with such instructions during 1937, 1938, 1939, 1940, 1941 and 1942, to submit bids to the Federal Government in his name on tire chains at prices previously agreed upon between and among Respondent Members and Respondent Shirley and which were named and specified by Respondent American. In accordance with agreements and prearrangements which Respondent American and Respondent Shirley had with other Respondent Members, as aforesaid, he allocated to each of said Respondent Members on equal shares the revenue secured from all contracts for tire chains which were awarded to him by the Federal Government pursuant to such bids. He also allocated equally among said Respondent Members the freight costs involved in the shipment of such tire chains to the Federal Government under such contracts in accordance with agreements that he and representatives of said Respondent Members had previously reached.

On certain occasions when Respondent Shirley thus submitted bids under seal to the Federal Government in his own name but for the benefit of each of the said Respondent Members at prices specified by Respondent American said Members also submitted bids under their own name under seal to the Federal Government, usually identically the same prices bid by said Respondent Shirley but on certain other occasions at previously agreed upon differences therefrom. In many such instances where bids were thus tied or made identical by prior agreements of Respondent Members and Respondent Shirley the officials of the Federal Government under the laws requiring them to secure competitive bids and to make award to the lowest bidder were compelled to make award by lot to Respondent Shirley or one of the said Respondent Members which had submitted such tie bids.

In particular instances where bidders other than said Respondent Members and Respondent Shirley submitted bids which were lower than the one collusive bid at fixed prices as submitted in the names of

certain of the Respondent Members and Respondent Shirley, then Respondent American advised Respondent Shirley, with respect to future bidding, not to worry about such low bidders "as they will be controlled." In bidding subsequent to such advice from Respondent American to Respondent Shirley, competition with Respondents by such other low bidders lessened in quality and quantity.

Through the aforesaid methods, policy and practice of bidding Respondent Shirley and said Respondent Members were enabled to and did present to the United States Government and its purchasing agencies an appearance of competition when in fact all of their bids were fixed and agreed upon prior to their submission by cooperative and collective action between and among their representatives. Through that procedure the United States Government was denied the benefit of competition to which it was entitled under the laws which require that its purchasing officials secure competitive bids on such occasions and make awards to the lowest bidder.

PAR. 8. Each Respondent Member for the purpose and with the result of making more effective the matching of price quotations and the consequent hindrance, frustration, suppression and elimination of price competition through the unlawful combination alleged in Paragraph 5 hereof, with the knowledge that each other Respondent Member simultaneously does likewise, generally refrains from quoting f. o. b. its place of production or shipment prices that are independent of and unrelated to the basing point, freight equalization, and zone systems or pricing practices, more fully described in Paragraphs 9, 10 and 11 hereof.

Each Respondent Member, with the knowledge that each other Respondent Member simultaneously does likewise, uses the basing point, freight equalization and zone delivered pricing practices and systems hereinafter more fully described in Paragraphs 9, 10 and 11 hereof, for the purpose and with the effect of keeping other Respondent Members informed as to what its prices are to be and of matching its quotations of delivered prices or delivered costs with those of other Respondent Members as made to any intending purchaser. Each Respondent Member thereby assists each other Member in maintaining a situation whereby purchasers are unable to find any difference or advantage in price in the delivered price or delivered cost quotations of all Respondent Members. Each Respondent Member uses the aforesaid basing point, freight equalization and zone delivered pricing practices and systems for the purpose and with the result of making more effective the hindrance, frustration and suppression of competition alleged in Paragraph 5 hereof.

PAR. 9. *Basing Point Pricing System*: Each Respondent Member in arriving at the sums or amounts quoted in its published price lists relating to Welded Chain provides that the delivered cost to any intending purchaser or user at the latter's destination shall be the figure or sum resulting from the use of a formula composed of a basing price plus freight from a single basing point (Pittsburgh, Pennsylvania) to the destination of such purchaser or user irrespective of whether shipment is to be made or is made from such basing point or another location from which other and different freight rates actually apply.

Each Respondent Member uses and specifies in its price lists relating to Welded Chain, the same base point and the same base price for such base point used that is used and specified by other Respondent Members. The result is that when the same base prices of each Respondent Member are so used as factors in the formula of base price plus the same freight factor from the base point to a purchaser's destination, their quoted delivered cost or price on Welded Chain to any intending purchaser or user at his destination is exactly matched and made identical by all Respondent Members at any given time.

Said Respondent Members produce Welded Chain and ship same to their respective customers from numerous points other than the point used, as aforesaid, as a basing point.

Each Respondent Member, in its use of the aforesaid basing point practice, notwithstanding differences in the actual freight rates from its place of business and manufacture to the different locations of its different customers with lower rates applying to those nearby than to those more distantly located, habitually and systematically demands, charges, accepts and receives as an inherent and necessary incident to the said basing point practice of delivered price quotations, larger sums and amounts for products of equal quality and quantity from its customers located at or near its place of business or manufacture than from other customers located at greater distances. Such nearby customers are thereby required to pay more, and the more distant customers to pay less, to each Respondent Member for Welded Chain than would be the case if the forces of competition made and determined the prices at which Respondent Members sell chain and chain products.

Each Respondent Member, as aforesaid, uses said basing point pricing practice as a device by which it not only suppresses price competition and deprives its nearby customers of price advantages which they would, under competitive conditions, enjoy by reason of their proximity to points of production, but also as an inherent and necessary incident to the operation of the aforesaid basing point method of

pricing, unfairly discriminates against its nearby customers in favor of those more distantly located.

PAR. 10. *Freight Equalization Pricing System:* Each Respondent Member, in arriving at the sums or amounts quoted in its published price lists relating to Weldless Chain, provides that the delivered costs to any intending purchaser or user at the latter's destination shall be the figure or sum resulting from the use or application of a formula of an f. o. b. factory price quotation plus whatever freight factor is necessary to exactly equalize or match the sum of a base price at four specified basing points, namely, f. o. b. York, Pennsylvania; Cleveland, Ohio; Cincinnati, Ohio; or Bridgeport, Connecticut, plus freight therefrom to the buyers' destination as announced by it or other of the Respondent Members in such manner, form and substance as to enable, and which does enable, all Respondent Members to match their delivered costs on Weldless Chain as quoted by them to any intending purchaser or used at his destination at any given point of time.

Said Respondent Members produce Weldless Chain and ship same to their respective customers from points other than the points named as aforesaid as f. o. b. points from which freight is equalized and delivered costs matched.

Each Respondent Member, in its use of the aforesaid freight equalization pricing practice, notwithstanding differences in the actual freight rates from its place of business and manufacture to the different locations of its different customers with lower rates applying to those nearby than to those more distantly located, habitually and systematically demands, charges, accepts and receives as an inherent and necessary incident to the said freight equalization practice of price quotations, larger sums and amounts for products of the same quality and quantity from its customers located at or near its place of business and manufacture than from other customers located at greater distances. Such nearby customers are thereby required to pay more, and its more distant customers to pay less, to such Respondent Member for Weldless Chain and chain products than would be the case were its price quotations determined by the forces of competition.

Each Respondent Member as aforesaid uses said freight equalization pricing practice as a device by which it not only suppresses price competition and deprives its nearby customers of price advantages which otherwise they would naturally enjoy by reason of their proximity to places of production, but also discriminates against such nearby customers in favor of those more distantly located.

PAR. 11. *Zone Pricing System*: Each Respondent Member in arriving at the sums or amounts quoted in its published price lists relat-

ing to Tire Chains provides that the *delivered* cost of tire chains to any intending purchaser or user at the latter's destination shall be identically the same *delivered* cost quoted to all other purchasers or users in the United States wherever located, irrespective of the fact that some such intending purchasers and users are located at or near such Respondent Member's place of manufacture and shipment and other purchasers and users are located thousands of miles away; also irrespective of the fact that the cost of shipping tire chains from its place of manufacture ranges from zero, with respect to those customers who take delivery at its place of manufacture, to an amount equal to a substantial part of the net price realized from the delivered price of Tire Chains sold to customers located at distances of 1,000 miles or more from the place of manufacture.

Each Respondent Member uses the aforesaid zone pricing practice in order that it and other Respondent Members might match, and through its use they are enabled to match, the delivered cost quoted by each of the others to any intending purchaser or user of Tire Chains at any destination at a given time.

Each Respondent Member, through the use of the aforesaid zone pricing practice, notwithstanding differences in the actual freight rates from its place of business and manufacture to the different locations of its different customers with lower rates applying to those nearby than to those more distantly located, habitually systematically demands, charges, accepts and receives as a necessary incident to the aforesaid zone pricing practice of delivered price quotations, larger sums and amounts for products of equal quality and quantity from its respective customers located at or near its place of business or manufacture, than from other customers located at greater distances. Such nearby customers are thereby required to pay more, and the more distant customers to pay less, to it for Tire Chains than would otherwise be the case if the forces of competition made and determined the price quotations of each such Respondent Member.

Each Respondent Member as aforesaid uses said zone pricing practice as a device by which it not only suppresses price competition and deprives its nearby customers of price advantages which otherwise they would naturally enjoy by reason of their proximity to points of production, but as a necessary incident to said zone pricing practice discriminates against its nearby customers in favor of other customers more distantly located.

PAR. 12. The inherent and necessary effect of the adoption and maintenance by the Respondent Members of the delivered price systems described and alleged in Paragraphs 8, 9, 10 and 11 herein includes all and singularly the following, to wit:

(1) The elimination of price competition between Respondent Members in the sale of chain and chain products at locations adjacent to each of the several places of fabrication of said products;

(2) Substantial lessening of competition among Respondent Members in all parts of the United States by virtue of each Respondent Member voluntarily and reciprocaly surrendering and canceling the inherent advantage it has over its competitors within the market area nearer freight-wise to its factory than to a factory of a competitor in consideration of a similar surrender and cancellation by each of the other Respondent Members;

(3) The levying of an additional financial burden in varying arbitrary sums for the sole purpose of reimbursing Respondent Members for concessions voluntarily made by them to some of their customers in the accomplishment of Respondents' unlawful purpose to destroy price competition in the sale of chain and chain products in commerce and to create for the said Respondent Members a monopoly therein and thereof;

(4) The fixing and control by Respondents' concurrent action of an arbitrary substantial portion of the total cost of the product to any and every purchaser upon a basis having no relation to total cost of production, sales and transportation;

(5) The maintenance of monopolistic unfair and oppressive discrimination against purchasers of chain and chain products in large areas of the United States by depriving such purchasers of the advantage in cost otherwise accruing to them from their proximity to the factories of Respondent Members;

(6) The levying upon nearby purchasers of chain and chain products increases in net prices of such products over what said net prices on such products to such customers would have been if said prices had been fixed by competition among Respondents, such increases in net prices being approximately equal to decreases in net prices afforded by Respondents to distantly located customers. Each Respondent Member thus Compels its nearby customers to pay not only the actual freight rates on the products purchased by them respectively, but also in effect compels such purchasers to pay portions of the cost of transportation of said products to other purchasers distantly located from the factory of such Respondent Member.

PAR. 13. The combination and the acts, practices, methods, policies, agreements and understandings of the Respondents as hereinbefore alleged, all and singularly, are unfair and to the prejudice of the public; deprive the public of the benefit of competition; are discriminatory against some buyers and users of chain and chain products; have a dangerous tendency to and have actually hindered, frustrated,

suppressed and eliminated competition in the sale of chain and chain products in commerce within the intent and meaning of the Federal Trade Commission Act; have the tendency and capacity to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in Respondents a monopoly in the sale and distribution of such products and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

THE CHARGE UNDER THE CLAYTON ACT

PARAGRAPH 1. Pursuant to the provisions of Section 2 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, as amended by an Act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, the Commission, having reason to believe that the parties hereinafter specifically named and more particularly described as Respondents in this Count II, sometimes hereinafter referred to as Respondent Members and included among those named as Respondents in the caption hereof, have violated and are violating the provisions of said Act of Congress as so amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its amended complaint, stating its charges in such respect as follows:

NATURE OF CHARGES

PAR. 2. The charges hereinafter contained in this Count II are that each of the Respondent Members has been and is now unlawfully discriminating as between its customers in the prices it charges, demands, accepts and receives in connection with the sale of chain and chain products in commerce.

Description of Respondents; Definitions and Explanations of Terms; Description and History of Industry and the Commerce of Respondents

PARS. 3 and 4. As Paragraphs 3 and 4 of this Count II, the Commission incorporates Paragraphs 3 and 4, inclusive of Count I of this amended complaint to precisely the same extent and effect as if each and all of them were set forth in full and repeated verbatim in this

Count II, except the definition of the term "commerce." The term "commerce," as hereinafter used, means "commerce" as defined and set forth in the Clayton Act.

OFFENSES CHARGED

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several States of the United States and in the District of Columbia, each of the Respondent Members, American, Bridgeport, McKay, Pyrene, Hodell, St. Pierre, Taylor, Cleveland, Columbus, International, Nixdorff, Peerless, Round, Russell, Seattle, Turner, Western and Woodhouse has been and is now in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quantity sold for use, consumption or resale within the several States of the United States and the District of Columbia in that each of the respondents has been and is now systematically selling such commodities to many purchasers at a price higher than the price at which commodities of like grade and quantity are sold by it to other purchasers and users.

PAR. 6. Each of the respondents uses a delivered pricing system and practice for determining, calculating, making up, using, announcing, publishing and distributing its quotations and offers to its respective customers in selling them chain and chain products in commerce. Each of the respondents in using its said delivered pricing system for quoting its delivered prices and in making sales of chain and chain products in commerce in accordance and in connection therewith, discriminates as between its customers in net prices realized on chain and chain products of like grade and quantity. The discriminations by each said respondent thus effected are systematic and result, in part, because of its failure to "make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered" and are discriminatory to such an extent that the net prices paid by customers located at or near its factory door in many instances amount to much more than the net prices realized by such respondent on chain and chain products of like grade and quantity sold to its customers located hundreds of miles away. The systematic discriminations in net prices thus effected by each of the respondents against nearby customers and in favor of its more distantly located customers are inherent in the use of the aforesaid delivered pricing system of each of the respondents. There are also involved in said system Matched delivered price quotations or offers as made by all respondents to any given customer, so that such cus-

tomer in considering or accepting any of such offers is denied the opportunity ordinarily afforded under price competition to bargain with one Respondent Member against another.

PAR. 7. Each of the Respondent Members engaged in the sale of welded chain and chain products practices the systematic regional discriminations in the sale of such products as alleged in the immediately preceding Paragraph 6 of this Count II pursuant to and in accordance with its practice of making on such products varying quotations on a delivered basis calculated by arbitrarily using a base price f. o. b. Pittsburgh plus charges for freight from Pittsburgh as though shipments were to be made therefrom to each of the various destinations although actually these shipments are regularly made from other locations, the points of production, from which different freight charges actually apply.

Each of the Respondent Members engaged in the sale of weldless chain and chain products practices the systematic regional discriminations in the sale of such products as alleged in the immediately preceding Paragraph 6 of this Count II pursuant to and in accordance with its practice of making on such products varying quotations on a delivered basis calculated by arbitrarily using a base price f. o. b. each of a number of base points plus charges for freight from such basing points as though shipments were to be made therefrom to each of the various destinations. The governing basing point in any given case is that where the combination of the applicable base price plus the said calculated charge for freight is not as high as the combination of some other base price plus the calculated charge for freight. In numerous instances actual shipments of such products are not made from the base point used in making the aforesaid calculation of the costs of the products delivered to the purchaser at destination. On the contrary, actual shipments are regularly made to many destinations from production points from which different freight charges actually apply.

PAR. 8. Each of the said respondents has been and is now classifying its customers to receive from it quantity, trade and other discounts from quoted prices so that by virtue of such classifications and action pursuant thereto, each such respondent charges, demands, accepts and receives higher prices in connection with sales of chain and chain products in commerce from some of its customers than from others, even though they are competitively engaged with the customers who pay such lower prices.

PAR. 9. Each of the said respondents practices the aforesaid systematic, regional and other discriminations in price for the purpose and with the effect of enabling all the respondents to exactly Match

their delivered price offers to sell chain and chain products of like grade and quantity in commerce to any given prospective purchaser at any given destination and to maintain such matched offers.

Effects of Price Discriminations Practiced by Respondents

PAR. 10. The inherent and necessary effect of the practice by the Respondent Members of the discriminations described and alleged in Paragraphs 5, 6, 7 and 8 of this Count II herein includes all and singularly the following, to wit:

(1) The elimination of price competition between Respondent Members in the sale of chain and chain products at locations adjacent to each of the several places of fabrication of said products;

(2) Substantial lessening of competition among Respondent Members in all parts of the United States by virtue of each Respondent Member voluntarily and reciprocally surrendering and canceling the inherent advantage it has over its competitors within the market area nearer freight-wise to its factory than to a factory of a competitor in consideration of a similar surrender and cancellation by each of the other Respondent Members;

(3) The levying of an additional financial burden in varying arbitrary sums for the sole purpose of reimbursing Respondent Members for concessions voluntarily made by them to some of their customers in the accomplishment of Respondents' unlawful purpose to destroy price competition in the sale of chain and chain products in commerce and to create for the said Respondent Members a monopoly therein and thereof;

(4) The fixing and control by Respondents' concurrent action of an arbitrary substantial portion of the total cost of the product to any and every purchaser upon a basis having no relation to the combined cost of production, sales and transportation;

(5) The maintenance of monopolistic, unfair, and oppressive discrimination against purchasers of chain and chain products in large areas of the United States by depriving such purchasers of the advantage in cost which would otherwise accrue to them from their proximity to the factories of Respondent Members;

(6) The levying upon nearby purchasers of chain and chain products of increases in net prices of such products over what said net prices to such customers would have been if fixed by competition among Respondents, such increases in net prices being approximately equal to decreases in net prices afforded by Respondents to distantly located customers. Each Respondent Member thus compels its nearby customers to pay not only the actual freight rates on the products purchased by them respectively, but also in effect compels such purchasers

to pay portions of the cost of transportation of said products to other purchasers distantly located from the factory of such Respondent Member.

PAR. 11. Further effects of the said discriminations in price made by said Respondent Members as alleged and described in Paragraphs 5, 6, 7 and 8 of this Count II herein may be substantially to lessen competition between the buyers of said chain and chain products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from Respondent Members are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices as well as to lessen competition in the lines of commerce in which respondents are engaged.

CONCLUSION

PAR. 12. The aforesaid acts of each of the said respondents constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U. S. C. A., Sec. 13, as amended).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on October 9, 1945, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption hereof, charging them in Count I thereof with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act and charging certain of them in Count II thereof with discriminations in price in violation of the provisions of subsection (a) of Section 2 of the said Clayton Act as amended, in the sale of chain ad chain products, said amended complaint being issued in the place of and instead of the complaint against the same respondents issued on December 22, 1942.

After the issuance of the said amended complaint and the filing of respondents' answers thereto, testimony and other evidence in sup-

port of and in opposition to the allegations of said amended complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, testimony and other evidence, recommended decision of the hearing examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral arguments of opposing counsel; and the Commission, having duly considered the matter and having entered its order disposing of the exceptions to the recommended decision of the hearing examiner and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (1) Respondent Chain Institute, Inc., a trade association (sometimes hereinafter referred to as "Institute"), is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 208 South La Salle Street, Chicago, Illinois. It was first organized in June 1933.

(2) Respondent American Chain & Cable Company, Inc. (sometimes hereinafter referred to as "American") is a corporation organized and existing under the laws of the State of New York, with its principal office at Bridgeport, Connecticut, and its general office at 230 Park Avenue, New York, New York. Said respondent manufactures and sells welded, weldless, and tire chain. It has a plant located at East Princess and Charles Streets, York, Pennsylvania, where it manufactures welded, weldless, and tire chain and a plant at Braddock, Pennsylvania, where it manufactures welded chain. Respondent American joined the Chain Institute in June 1933 and continuously since that time has been a member of the said Institute.

(3) Respondent Bridgeport Chain & Manufacturing Company (sometimes hereinafter referred to as "Bridgeport") is a Connecticut corporation, with its principal office and plant at 964 Crescent Avenue, Bridgeport, Connecticut. It manufactures and sells weldless chain and also sells welded and tire chain.

(4) Respondent The McKay Company (sometimes hereinafter referred to as "McKay") is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office located at McKay Building, Pittsburgh, Pennsylvania. Said respondent manufactures and sells welded, weldless, and tire chain. It has a plant at

York, Pennsylvania, where it manufactures welded, weldless, and tire chain, and a plant at McKees Rocks, Pennsylvania, where it manufactures welded chain. Respondent McKay joined the respondent Institute in June 1933 and continuously since that time has been a member of the said Institute.

(5) Respondent Pyrene Manufacturing Company (sometimes hereinafter referred to as "Pyrene") is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 560 Blmnt. Avenue, Newark, New Jersey, and plant at Empire Street, Newark, New Jersey. During the period covered by the amended complaint it manufactured and sold tire chain. This respondent sold its tire chain manufacturing facilities to The Newark Chain Company as of April 30, 1948. Respondent Pyrene joined the respondent Institute in June 1933 and was continuously a member of said Institute during the period covered by the amended complaint.

(6) Respondent Hodell Chain Company (sometimes hereinafter referred to as "Hodell") is a corporation organized and existing under the laws of the State of Ohio, with its principal office located at 3924 Cooper Avenue, Cleveland, Ohio. Said respondent was organized in 1893 and, until July 1, 1936, traded under the name and title "Chain Products Company." Prior to using this name, said respondent was known as the Cleveland Galvanizing Company. Said respondent has a plant in Cleveland, Ohio. It manufactures and sells welded, weldless, and tire chain. Said respondent joined the respondent Institute in 1935, and resigned therefrom in 1939.

(7) Respondent St. Pierre Chain Corporation (sometimes hereinafter referred to as "St. Pierre") is a corporation organized and existing under the laws of the State of Massachusetts, with its principal office and plant located in Worcester, Massachusetts. It manufactures and sells tire chain. Said respondent joined the respondent Institute in June 1933 and continuously since that time has been a member of said Institute.

(8) Respondent S. G. Taylor Chain Company (sometimes hereinafter referred to as "Taylor") is a corporation organized and existing under the laws of the State of Illinois, with its principal office located at 3–141st Street, Hammond, Indiana, and plant in Hammond, Indiana. It manufactures and sells welded and tire chain and also sells weldless chain. Said respondent joined respondent Institute in June 1933 and continuously since that time has been a member of said Institute.

(9) Respondent Cleveland Chain & Manufacturing Company (sometimes hereinafter referred to as "Cleveland") is a corporation organized and existing under the laws of the State of Ohio, with prin-

cipal office and plant located at Broadway and Henry Streets, Garfield Heights, Cleveland, Ohio. It manufactures and sells welded, weldless, and tire chain. Said respondent joined the respondent Institute in June 1933 and continuously since that time has been a member of said Institute.

(10) Respondent Columbus McKinnon Chain Corporation (sometimes hereinafter referred to as "Columbus McKinnon") is a corporation organized and existing under the laws of the State of New York, with principal office and plant located at Tonawanda, New York. It manufactures and sells welded and tire chain and also sells weldless chain. Said respondent joined the respondent Institute in June 1933 and continuously since that time has been a member of said Institute.

(11) Respondent Campbell Chain Company (formerly International Chain & Manufacturing Company, and sometimes hereinafter referred to as "International") is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and plant located at Norway and Elm, York, Pennsylvania. It manufactures and sells welded, weldless, and tire chain. Said respondent joined the respondent Institute in June 1933, resigned therefrom on June 17, 1939, rejoined on June 15, 1940, and continuously since the latter date has been a member of said Institute.

(12) Respondent Nixdorff-Krein Manufacturing Company (sometimes hereinafter referred to as "Nixdorff-Krein") is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 900 Howard Street, St. Louis, Missouri, and plant at St. Louis, Missouri. It manufactures and sells welded and tire chain and also sells weldless chain. Said respondent joined the respondent Institute in June 1933 and continuously since that time has been a member of said Institute.

(13) Respondent Peerless Chain Company (sometimes hereinafter referred to as "Peerless") is a corporation organized and existing under the laws of the State of Minnesota, with its principal office and plant located at Winona, Minnesota. It manufactures and sells welded, weldless, and tire chain. Said respondent began to manufacture weldless chain in 1941; prior to that time it sold weldless chain manufactured by others. Said respondent joined the respondent Institute in July 1933 and continuously since that time has been a member of said Institute.

(14) Respondent Round California Chain Company (sometimes hereinafter referred to as "Round California") is a corporation organized and existing under the laws of the State of California, with its principal office and plant located on Bay Shore Highway, South

San Francisco, California. It manufactures and sells welded chain and also sells weldless and tire chain.

(15) Respondent The John M. Russell Manufacturing Company, Inc. (named in the complaint as J. M. Russell Manufacturing Company, and sometimes hereinafter referred to as "Russell") is a corporation organized and existing under the laws of the State of Connecticut, with its principal office and plant located at Naugatuck, Connecticut. It manufactures and sells the type of weldless chain known as sash and kindred chain. Said respondent joined the Sash and Kindred Chain Group of respondent Institute in July 1933 and continuously since that time has been a member of the said Group of said Institute.

(16) Respondent Seattle Chain & Mfg. Company (sometimes hereinafter referred to as "Seattle") is a corporation organized and existing under the laws of the State of Washington, with principal office and plant at 6921 East Marginal Way, Seattle, Washington. It manufactures and sells welded chain and also sells weldless and tire chain.

(17) Respondent Turner & Seymour Manufacturing Company (sometimes hereinafter referred to as "Turner & Seymour") is a corporation organized and existing under the laws of the State of Connecticut, with principal office and plant at Torrington, Connecticut. It manufactures and sells the type of weldless chain known as sash and kindred chain. Said respondent joined the Sash and Kindred Group of said respondent Institute in July 1933 and continuously since that time has been a member of said Group of said Institute.

(18) Respondent Western Chain Products Company (sometimes hereinafter referred to as "Western") is a corporation organized and existing under the laws of the State of Illinois, with its principal office and plant located at 1807 West Belmont Avenue, Chicago, Illinois. It manufactures and sells welded, weldless, and tire chain. Said respondent began the manufacture of weldless chain in 1945; prior to that time it sold weldless chain manufactured by others. Said respondent joined the respondent Institute in July 1933 and continuously since that time has been a member of said Institute.

(19) Respondent Woodhouse Chain Works (sometimes hereinafter referred to as "Woodhouse") is a corporation organized and existing under the laws of the State of New Jersey, with principal office and plant at 251 Third Street, Trenton, New Jersey. It manufactures and sells welded chain and also sells weldless and tire chain. Said respondent joined respondent Institute in June 1933 and continuously since that time has been a member of said Institute. Respondent Woodhouse was purchased by respondent Cleveland in 1947.

(20) Respondent Dennis A. Merriman, an individual (sometimes hereinafter referred to as "Merriman") has been managing director of respondent Institute since August 1, 1938, with office located at 208 South La Salle Street, Chicago, Illinois.

(21) Respondent Walter S. McCann, an individual (sometimes hereinafter referred to as "McCann"), was secretary and treasurer of respondent Institute during part of the period covered by the amended complaint, with office located at 208 South La Salle Street, Chicago, Illinois. Respondent McCann died on May 19, 1945. As hereinafter used, the term "respondents" does not include McCann.

(22) Respondent Wm. D. Kirkpatrick, an individual (sometimes hereinafter referred to as "Kirkpatrick"), is vice-president of respondent American, and from 1942 to 1944 was president of respondent Institute. Since June 1938 he has represented respondent American in its membership in respondent Institute, and as such representative of respondent American has attended meetings of representatives of other members, and in that capacity served on committees of respondent Institute, wrote and otherwise communicated with other representatives of members of respondent Institute concerning action of the Institute, its officials, and members.

(23) Respondent Frank A. Bond, an individual (sometimes hereinafter referred to as "Bond"), is executive vice-president and secretary of respondent McKay, with office located at McKay Building, Pittsburgh, Pennsylvania. Since 1933 he has represented respondent McKay in its membership in respondent Institute, and as such representative of McKay has attended meetings of representatives of other members, and in that capacity served on committees of respondent Institute, wrote and otherwise communicated with other representatives of members of respondent Institute concerning action of the Institute, its officials, and members. He has continuously since June 1933 served as chairman of the Traffic Committee of said Institute in dealing with freight rate matters.

(24) Respondent George J. Campbell, Jr., an individual (sometimes hereinafter referred to as "Campbell"), is, and has been since September 1941, president of respondent International, with offices located at the principal place of business of respondent International in York, Pennsylvania. From November 1942 to November 1944 he served as vice-president of respondent Institute. Since September 1941 he has represented respondent International in its membership in respondent Institute and as such representative of respondent International has attended meetings of representatives of other members, and in that capacity served on committees of respondent Institute and wrote and otherwise communicated with other representatives of members of re-

spondent Institute concerning action of the Institute, its officials, and members. George J. Campbell, Sr., was president of respondent International from 1922 to September 9, 1941, when he died. From June 19, 1933, to June 17, 1939, and from June 15, 1940, to September 9, 1941, he represented respondent International in its membership in respondent Institute, and as such representative of respondent International attended meetings of representatives of other members and in that capacity served on committees of respondent Institute and wrote and otherwise communicated with other representatives of members of respondent Institute concerning action of the Institute, its officials, and members.

(25) Respondent Alfred Peter Shirley, an individual (sometimes hereinafter referred to as "Shirley") was, during the period covered by the amended complaint, an engineer and manufacturers' sales representative and was a partner in the firm of Shirley, Olcott & Nichols, with offices in the Mills Building, Washington, D. C. Respondent Shirley died on September 14, 1951.

(26) Respondent Floyd B. Olcott (somtimes hereinafter referred to as "Olcott") is an individual residing at 7828 Orchid St., N. W., Washington, D. C., who is an engineer and manufacturers' sales representative and was a partner in the firm of Shirley, Olcott & Nichols, which maintained its offices in the Mills Building, Washington, D. C.

(27) Respondent Forrest C. Nichols (sometimes hereinafter referred to as "Nichols") is an individual residing at 4702 Quebec Place, Washington, D. C., who is an engineer and manufacturers' sales representative and was a partner in the firm of Shirley, Olcott & Nichols, which maintained its offices in the Mills Building, Washington, D. C.

As hereinabove stated, respondent Shirley died on September 14, 1951. The partnership of Shirley, Olcott & Nichols was terminated on September 15, 1951. The arrangements between certain of the respondent manufacturers and Shirley, Olcott & Nichols relating to the sale of tire chain to the United States Government, all as described hereinafter, were terminated prior to the issuance of the original complaint herein. It does not appear that there is any likelihood that the arrangements may be resumed. The Commission is of the opinion that, under the circumstances, the amended complaint should be dismissed as to the respondents Shirley, Olcott, and Nichols. As hereinafter used, the term "respondents" does not include respondents Shirley, Olcott, and Nichols.

Respondents Cleveland, Seattle, Round California, and Bridgeport are affiliated through common ownership of the controlling capital stock of each of said respective corporations. L. D. Cull is chairman of the board of directors of each of said four corporations.

Through his representation of respondent Cleveland and its membership in respondent Institute, he also represented Seattle, Round California, and Bridgeport, and their interests, at meetings of members of the respondent Institute and in other activities of the Institute. Each of these affiliated companies (now also including respondent Woodhouse) in addition to its own products merchandises products of the others, and there are actual transactions of purchase and sale between them.

Each of the respondents described in this paragraph, subparagraphs (2) to (19), inclusive, sometimes hereinafter referred to as respondent manufacturers, was, during the period covered by the amended complaint, engaged in the manufacture and sale of chain and chain products. The respondent Institute, described in subparagraph (1), and the individual respondents described in subparagraphs (20), (22), (23), and (24) have participated in the cooperative and collective action of all the respondents herein in the formation of and putting into operation and making effective the methods, systems, practices, and policies hereinafter described.

PAR. 2. Respondent manufacturers produce various types of steel, alloy-steel, and other metallic chain and chain parts. The principal types of chain involved are welded chain, weldless chain, and tire chain.

Welded chain is so designated because each link is closed and sealed through welding. It includes chain of various sizes and weights for many uses, such as anchor chains, log chains, tie chains (for securing dairy cows at stanchions), tie-out chains (for use in securing cows and other animals for grazing, etc.), and trace chains (for harnessing teams and for other agricultural uses). Since the development of the art of electric welding the welded chain industry has used it for the mass production of welded chain. In the trade, most welded chain is also referred to as commercial chain and pound chain. Such welded chain is priced by the manufacturer on a per pound basis.

Weldless chain is for the most part light in weight and, in general, is used where the stronger chain is not required. Weldless chain is classified by the trade into two principal types: (1) Ordinary weldless chain, which is made by bending wire into the form of links and knotting, rather than welding; this type of weldless chain is used as cow ties, porch swing chain, well chain, dog leads, animal trap chains, and for many other purposes; (2) sash and kindred chain, which is made by stamping or cutting the links from flat metal strip stock; this type of weldless chain is used as window sash chains, transom chains, ships' telegraph chain, and for many other purposes.

Tire chains are made by the welding process, but are so linked as to form two line chains connected by cross chains at equal distances so that they may be attached around the wheels of motorized equipment, including automobiles, trucks, and farm tractors. In the early days, side chains were weldless and cross chains were welded, but now side chains are welded also. Tire chain is sold to a different class of customers than either welded or weldless chain.

Respondent manufacturers in the course and conduct of their business manufacture, sell, and distribute substantially all the welded chain, weldless chain, including sash and kindred chain, and tire chain produced in the United States. There are some manufacturers of these products who are not members of respondent Institute and who are not respondents in this proceeding. One witness estimated that the manufacturers who are not members of the Institute produce 15 percent of all the chain and chain products produced in the United States. The respondent manufacturers sell such products at various points throughout the United States to wholesalers, dealers, and consumers, including the United States Government, and when sales are made, respondent manufacturers have regularly shipped, and do ship, said products to the purchasers at points in the several States of the United States and the District of Columbia other than in the States of origin of the shipment. They are engaged in commerce, in selling and shipping said products, within the meaning of the term "commerce" as defined in the Federal Trade Commission Act.

The respondent manufacturers were, and are, in active competition with one another and with other members of the chain industry in making and seeking to make sales of their products in trade and commerce between and among the several States of the United States and in the District of Columbia, except to the extent that such competition has been restrained, lessened, or destroyed as hereinafter set forth.

PAR. 3. Welded chain has been generally quoted and sold on the basis of delivered prices computed by adding to a basic price f. o. b. manufacturers' or sellers' plant an amount equal to the rail freight applicable to the particular shipment from Pittsburgh, Pennsylvania, to the point of delivery, irrespective of the point from which shipment was made. Such method of computing delivered prices is sometimes referred to as the "Pittsburgh plus," or single basing point delivered-price method or system. Under this method or system of pricing and selling the cost to a buyer was the seller's f. o. b. plant price plus an amount equal to the rail freight from Pittsburgh to the buyer's destination. In instances where the seller shipped welded chain freight

collect, the buyer paid the carrier the actual amount of the freight from the seller's shipping point to the buyer's destination, but an adjustment was made on the invoice for the difference between the actual freight paid and the rail freight from Pittsburgh to the buyer's delivery point. If the seller prepaid the freight, the seller collected from the buyer an amount equal to the rail freight from Pittsburgh to the buyer's delivery point. Consequently, in instances where the actual freight from the seller's shipping point to the buyer's delivery point was less than the rail freight from Pittsburgh to the buyer's delivery point, the seller collected the difference. Such excess amount collected by the seller is sometimes referred to as "phantom freight." When the actual freight from the seller's shipping point to the buyer's delivery point was greater than the rail freight would have been had the shipment been made from Pittsburgh, the seller absorbed the excess delivery charges.

Since the issuance of the original complaint herein, certain of the respondents have ceased using this method of pricing and selling. Respondent Taylor, since June 1945, has sold welded chain f. o. b. its factory at Hammond, Indiana, equalizing freight with Pittsburgh. Since the early part of 1947 it has also equalized freight with Winona, Minnesota. Respondent Peerless began selling welded chain f. o. b. its factory at Winona, Minnesota, in the early part of 1947. Another variation from the described method of pricing and selling has occurred in the case of sales of welded chain by respondents Seattle and Round California which are located on the West Coast. These two respondents have published the same base or list prices on welded chain as the eastern manufacturers. The cost to a buyer, however, was the base price plus an amount equal to the carload freight rate from Pittsburgh to the Pacific Coast and an amount to cover the cost of handling the chain, cutting it up into pieces as ordered and shipping it to various distribution points along the Pacific Coast. For example, this additional charge in 1947 was $1.70 per hundred pounds. This was computed by adding to the carload freight rate from Pittsburgh ($1.47 per hundred pounds) a charge of 23 cents per hundred pounds to cover the cost of handling, cutting and distribution.

During the period covered by the amended complaint respondents American, Cleveland, Bridgeport, Round California, Seattle, Woodhouse, Columbus-McKinnon, Hodell, International, McKay, Nixdorff-Krein, Peerless, Taylor, and Western sold welded chain at prices calculated pursuant to and in accordance with the "Pittsburgh plus," or single basing point delivered-price method or system described hereinabove.

PAR. 4. Weldless chain has been generally quoted and sold on the basis of delivered prices computed by adding to a basic price f. o. b. the seller's plant an amount equal to the rail freight applicable to a particular shipment to the point of delivery from either York, Pennsylvania, Cleveland, Ohio, Cincinnati, Ohio, or Bridgeport, Connecticut, whichever point is located closest freightwise to the point of delivery, irrespective of the point from which shipment was actually made. Such method of computing delivered prices is sometimes referred to as the freight equalization delivered-price method or system. Under this method or system of pricing and selling the cost to a buyer was the seller's f. o. b. plant price plus freight from the nearest freight equalization point. In instances where the seller shipped weldless chain freight collect, the buyer paid the carrier the actual amount of the freight charges from the seller's shipping point to the buyer's delivery point. If the buyer's delivery point was nearer freightwise to one of the freight equalization points than to the seller's shipping point, the buyer was given credit on the invoice for the amount of the difference. The four equalization points named were not used indiscriminately as equalization points on all types of weldless chain, but were used only with respect to the prices of particular types of weldless chain as were manufactured at the particular equalization point in question. For example, the published discount sheets of respondent American show that on a majority of the weldless chain items freight was equalized with Cleveland, Ohio, and Bridgeport, Connecticut. On a number of items freight was equalized with those two points and also with Cincinnati, Ohio, and on one item, furnace chain, freight was equalized not only with the three points named, but also with Holland, Michigan, where furnace chain is manufactured by the Holland Furnace Company (not a respondent in this proceeding).

The principal manufacturers of weldless chain are located in York, Pennsylvania; Cleveland, Ohio; Cincinnati, Ohio; and Bridgeport, Connecticut. Approximately 75 percent of the weldless chain sold in the United States is manufactured at these four places. The Cincinnati Pump Company (not a respondent in this proceeding), is located in Cincinnati, Ohio, which fact accounts for Cincinnati having been used as a freight equalization point on the types of chain manufactured by that company and by certain of the respondent manufacturers. Respondent Peerless began manufacturing weldless chain in 1941 and has a very small production capacity. It sells such weldless chain f. o. b. its factory in Winona, Minnesota. Respondent Western began to manufacture weldless chain in 1945 and since that

time has sold such chain f. o. b. Chicago, where its plant is located, equalizing with other points of manufacture.

Respondents Peerless and Western, prior to the dates they began to manufacture weldless chain, and the respondents Nixdorff-Krein, Taylor, Round California, Seattle, Columbus-McKinnon, and Woodhouse purchased their requirements of weldless chain from manufacturers on the basis of f. o. b. the closest manufacturing plant to their places of business. In pricing the weldless chain so purchased for resale, these respondents, except Columbus McKinnon, used the same freight equalization points as did the respondents which manufactured and sold weldless chain. For example, respondent Western's purchases of weldless chain from manufacturers were on an f. o. b. Cleveland basis—Cleveland being the closest equalization point to Chicago. Thus, Western paid the manufacturer's f. o. b. plant price plus freight from Cleveland to Chicago regardless of where the shipment originated, less a "courtesy" discount. Western then resold such chain on an f. o. b. Cleveland basis (or f. o. b. one of the other equalization points if closer than Cleveland to the buyer's delivery point). Respondent Columbus McKinnon's price lists on weldless chain state that freight was equalized with various points. There is evidence in the record, however, that respondent Columbus McKinnon resold weldless chain, purchased by it, f. o. b. its plant at Tonowanda, New York, and on isolated occasions, f. o. b. Pittsburgh. Its sales of weldless chain amounted to less than one-half of one percent of its total chain sales.

During the period covered by the amended complaint respondents American, Cleveland, Bridgeport, Round California, Seattle, Woodhouse, Hodell, International McKay, Nixdorff-Krein, Peerless, Russell, Taylor, Turner & Seymour and Western sold weldless chain at prices calculated pursuant to and in accordance with the freight equalization delivered-price method or system described hereinabove.

PAR. 5. Tire chains have been generally quoted and sold on the basis of f. o. b. mill prices of so many dollars and cents per pair, with full freight allowed from the seller's place of shipment to the buyer's delivery point. Such method of computing delivered prices is sometimes referred to as the zone delivered-price method or system. On shipments where the buyer paid the carrier for the freight charges, allowances were generally made on the invoices for the amount of freight paid. The freight allowance was applicable only on certain minimum shipping quantity, which has generally been the same for the majority of the respondents selling tire chains.

During the period covered by the amended complaint respondents American, Cleveland, Bridgeport, Round California, Seattle, Wood-

house, Columbus McKinnon, Hodell, International, McKay, Nixdorff-Krein, Peerless, Pyrene, St. Pierre, Taylor, and Western sold tire chains at prices calculated pursuant to and in accordance with the zone delivered-price method or system described hereinabove.

PAR. 6. The respondent Institute was organized in June, 1933, by respondents American, McKay, Pyrene, St. Pierre, Taylor, Cleveland, Columbus McKinnon, International, Nixdorff-Krein, and Woodhouse. The respondents have operated, and now operate, the Institute to promote and serve their mutual interest. Among the activities carried on by the respondents through the respondent Institute were the exchange of general information on market conditions, exchange of information on labor conditions, cooperative advertising, attempting to secure a tariff on chain products to meet foreign competition, carrying on of a statistical program, and other activities, as described hereinbelow.

(*a*) The minutes of formal meetings of the Institute do not show that present and future prices on chain and chain products were discussed at such meetings. Such minutes do show, however, that the respondent members formally adopted a program of checking on prices charged in past and closed transactions, and that costs on products of the industry were discussed. There is substantial evidence in the record that present and future prices on chain and chain products were discussed and agreed upon on the occasion of Institute meetings and that the Institute was used as a means for promoting and maintaining adherence to the prices agreed upon.

The nature of some of the discussions had on the occasion of Institute meetings with respect to prices is indicated by the following excerpts from the testimony of respondent Bond.

A. Well, frankly, you know how you do at these meetings. You hear a lot of tripe and a lot of crap and red tape which they put through, and they put on a lot of rigamarole and put you on these committees doing a lot of different things. A lot of it, too, has been very constructive and I have been very active, and I spent a lot of time doing things I thought beneficial not only to my company but to the industry as a whole and of benefit ultimately for the good of the country as a whole.

But, after we get rid of a lot of this stuff, maybe while we are at lunch or adjourning for a drink or something, then we start talking. Maybe somebody will say to you, "You so-and-so Son of a B., what did you do down at Bill Jones'?" And you will say, "What did I do?" Well, he'd say, "You give them some extras." And then somebody calls somebody a liar and so forth, and then maybe he would say, "Well, I have got the evidence that you did, and you are a liar," and then you would get into a fight with this fellow, and first thing you know, somebody else would come up and listen to the conversation, and then there would be six of them there, and they would be picking on you—I don't mean picking on me, but picking on these price cutters, you understand.

So, well, maybe by that time they had had three or four drinks and the thing begins to get a little tougher, and the drinks loosen up some tongues—of course, I don't think, you understand now, gentlemen, therefore I was always in perfect control of my vocal chords, and I have a marvelous vocabulary, I can assure you, when it comes to calling names, and it has been tested by every member of the Institute, and when I call a guy a dirty, low kind of a so-and-so price cutter, he knows he has been called a price cutter (Laughter).

I will be frank, and if you want to crucify me, I will add this: I would tell him further that if he didn't stop these damn price cuttings, I would show him how to cut prices, and many times I did cut them, and when I cut a price, and if it was your price I was cutting, take it from me, brother, you knew your price had been cut.

I could go on and on and on—but I want to say that when any two businessmen get together, whether it is a Chain Institute meeting or a Bible class meeting, if they happen to belong to the same industry, just as soon as the prayers have been said, they start talking about the conditions in the industry, and it is bound definitely to gravitate, that talk, to the price structure in the industry. What else is there to talk about? And, a guy like me that doesn't drink or get high and go to the bar—why, of course I had to defend myself in some other fashion than getting drunk and forgetting it—is there anything else you want me to tell you now?

Q. Is that the general sum and substance of these conversations that would be had?

A. Well, the ones off the record would be largely that, unless there were periods when there wasn't any particular price cutting, then they would go out and play golf and be gentlemen and have a good time; go up to Hershey, Pennsylvania, for instance, where they had ball games, and that kind of stuff. (R. 1096–8.)

The activities of the respondents through the Institute and on the occasion of Institute meetings with respect to prices are indicated by numerous exhibits in the record. Excerpts from some of such exhibits are set out below.

On August 20, 1937, George J. Campbell, Sr., now deceased, formerly president of International, wrote Mr. Reinicker of the John K. Wilson Company, a customer of International, stating in part:

These [There] has been so much cutting of all types of chain and tire chains, etc., that the writer has about made up his mind to withdraw from any price situation whatever with anyone and go my own way. This means, of course, a general dropping of everything to practically cost and maybe we can secure something here and there and be just as well off. In other words, every year on the tire chain, the McKay Company, Cleveland, or one of these other fellows go after my customers and we have to meet the price at a very low discount and then we are held off from quoting the nice jobbing business that McKay, American, and the other fellows get at the high prices, so I have warned them for three years now if it happens this year I would withdraw from any price situation whatever and go right after the business of all the jobbers at any price that I see fit to make. We have made up our minds on this and have already sent word to some of our salesmen as to just how far they can go and that matter I will also take up with you for the few customers that Jack has sold, so as to put them in the right light. (Comm. Ex. 320.)

On November 22, 1937, George J. Campbell, Sr., wrote Mr. Reinicker, in part:

Just returned from the meeting in New York and nothing was mentioned about trace chains and tire chains took up most of the time.

* * * * * * *

The few minutes left to talk things over was the matter of Pound Chain prices. It was acknowledged by those in attendance that the price of Pound Chain for the last month or so anyway has been on a basis of 33⅓ —10 percent, f. o. b. Pittsburgh.

The understanding left was that we should drift along for another month and not to make any public price of 33⅓ —10 percent but everybody I think left the room with a note in the back of their head that hereafter the price of pound chain is 33⅓ —10 percent. You can notify your men to accept any Pound Chain business offered to them on the basis of 33⅓ —10 percent, f. o. b. Pittsburgh, from the present list. (Comm. Ex. 323.)

The minutes of a meeting of the Institute held in New York on November 18–19, 1937, presumably the meeting referred to in the above excerpt, contain no reference to the discussion had as to prices on pound chain. Such minutes do show, however, that the members present unanimously adopted a program of checking on past and closed transactions. Respondents American, Cleveland (and associated companies), Columbus McKinnon, Hodell, International, McKay, Nixdorff-Krein, St. Pierre, Taylor, Western, and Woodhouse were represented at that particular meeting.

On March 11, 1938, George J. Campbell, Sr., wrote Mr. Reinicker concerning a meeting of the Institute held in Pittsburgh on March 8, 1938, stating in part:

We had a very interesting and serious meeting again in Pittsburgh. A new sheet will be out on Trace Chains any day, and I believe it will be on a basis of $64.00 for 7–8–2 traces, less 20 percent, with confidential 10 percent, f. o. b. Pittsburgh, Pa.

Pound Chain—same as heretofore—33⅓ percent, with confidential 10 percent. (Comm. Ex. 353.)

On April 4, 1938, George J. Campbell, Sr., wrote John K. Wilson, of the John K. Wilson Company, concerning a meeting of the Institute held in Washington, D. C., on April 1, 1938, stating in part:

Nothing was changed at the meeting. The price on trace chains you have, and the price on pound chain is supposed to be 33⅓ percent and the 10 percent confidential. (Comm. Ex. 352.)

On April 18, 1938, W. C. Perkins, manager of the Pittsburgh sales office of respondent American, wrote A. P. Van Schaick, now deceased, formerly general sales manager of American, in part:

Now as to the matter of price on traces, the old list price of $57.50 less 20–10 percent seemed to be prevalent, so that no competitor evidently attached much importance to the statement you made at the Institute meeting here in Pitts-

burgh as to what we would do if the 64¢ list price and the agreed discount were not maintained. * * *

You will recall my unfavorable reaction to the program that was set up here March 9th, and I predicted it would be shot all to pieces and no effort to maintain it within thirty days. It did not take that long, and I am convinced some of our competitors were anxious to have the agreed program announced simply to give them a little more margin to chisel on. (Comm. Ex. 84–B.)

On November 14, 1938, respondent Kirkpatrick, vice-president of American, wrote W. C. Perkins, manager of the Pittsburgh sales office of American, in part:

I am not sure I told you that on Thursday and Friday of this week we will have a Chain Institute meeting. Of course, you know how we have been fighting for price stabilization and perhaps you will run into some irregularities where you will see positive evidence of price weakening. If you have any definite information will you kindly get it to me prior to this meeting. * * * (Comm. Ex. 91.)

On December 22, 1938, George J. Campbell, Sr., wrote John K. Wilson, in part:

Have just returned from the Chicago meeting and sorry to state that thru the stubbornness of American Chain Company, the prices of chain still stands "status-quo" the same as what you have sent out in your letters. They are still crying about that letter you sent out, stating that they lost thousands of dollars by meeting those prices, especially the $2.75 on the Inco chain.

* * *

We also were advised at the meeting that the reason American Chain Company, and in fact a couple of the others, did not want to advance the prices at the present time [was] because they thought the market should be better stabilized, as they heard that there was an extra 5% out in several places. (Comm. Ex. 340.)

On August 7, 1939, W. C. Perkins sent a telegram to J. B. Taylor, representative of respondent American in Dallas, Texas, stating in part:

COMPLAINT HAS BEEN MADE TO HEADQUARTERS BY OTHER CHAIN MANUFACTURERS THAT YOU ARE BROADCASTING DISCOUNT OF THIRTY THREE AND THIRD AND THREE TENS ON POUND CHAIN WHICH THEY CLAIM IS UPSETTING THE MARKET AND BRINGING COMPLAINTS FROM THEIR CUSTOMERS TO WHOM THEY HAVE NOT GIVEN THIS DISCOUNT. (Comm. Ex. 71).

L. D. Cull, an official of respondents Cleveland, Bridgeport, Seattle, Round California, and Woodhouse, wrote W. D. Kirkpatrick on December 6, 1939, in part:

I quite agree with you that there is a big possibility that we will drift very rapidly into what George Campbell has predicted. In fact I have reason to know that the present jobber set-up on tire chains is likely to be undermined considerably by those on the outside if we who are members of the Institute invite the spread of the 'small-pox' which has invaded the so-called gyp trade, by using unbranded chains at comparable prices. Our company has lost a lot of

gyp business by not meeting the situation in that field and therefore realize how it feels to have chunks of business get away, but are willing to go a long way in a constructive program to both prevent the spread of the disease and also cure it, where it now exists.

You recall the saying, "the poor we will always have with us"—in the same way there will always be the price cutter. But if we can steer the program right I am sure by ignoring the very small portion of the business thus taken, we will find a handsome return on the rest of it when we balance our books at the end of the year.

Of course some of us can go along for many, many years even on the basis of the past year, but what's the use of using skimmed milk when we might be having cream? Personally, I think Don's enthusiasm could be used to mighty good advantage. What do you say, Kirk? (Comm. Ex. 178.)

On July 15, 1940, George J. Campbell, Sr., wrote Hamilton Hart, Knoxville, Tennessee, in part:

Might state, Ham, that the writer attended a meeting a certain meeting, this past week and I feel sure there will be no further drop in the price of chain but would not be surprised if there was an advance shortly on some of the lines. (Comm. Ex. 330.)

Also, on July 15, 1940, George J. Campbell, Sr., wrote John K. Wilson, in part:

Jack, very, very confidentially and, for heaven's sakes, do not give it out, there is probably going to be a raise in the price of pound chain and other lines of chain now very, very shortly. It will not be a great raise in the price from the regular printed discount but, it will be a tremendous increase from the 10–10–10 percent on pound chain that we are now giving out and I think, Jack, that you will find when these new prices are given out, they are going to be held just as firmly as the trace chain prices and also I think the Hodell people are about through with any cut prices on any line of chain. (Comm. Ex. 332).

The respondents contend that the letters in evidence written by George J. Campbell, Sr., from which a number of the above excerpts are taken, are not entitled to evidentiary value since the writer of the letters died before this proceeding began; since there is credible evidence in the record by which the writer is shown to have been prone to exaggeration and misstatements; and since any inferences of price fixing which might be drawn from such letters were categorically refuted by the uncontradicted testimony of respondents' witnesses that there has never been any price fixing in the chain industry. The Commission rejects these contentions. The letters are entitled to, and were given, evidentiary value in connection with the finding that the respondents discussed and agreed upon prices on the occasion of Institute meetings. The discussions, understandings and agreements indicated by such letters are, for the most part, corroborated by other evidence in the record. For example, two of the above excerpts are from letters written by George J. Campbell, Sr., on July 15, 1940. The quoted excerpts clearly support an inference that an agreement had been

reached at a meeting of the Institute to increase the price of pound chain and other lines of chain shortly. Additional facts which were considered in this connection are that a meeting of the Institute was held in Cleveland, Ohio, on July 10–11, 1940, at which Mr. Campbell represented respondent International. Respondents American, Cleveland (and associated companies), Columbus McKinnon, McKay, Nixdorff-Krein, Peerless, Pyrene, Taylor, and Western were also represented at such meeting. Respondent American announced an increase in price on certain items of welded chain as of July 22, 1940. Increases identical with those announced by American were reflected in the price list of Columbus McKinnon, dated July 22, 1940, of Cleveland, Bridgeport, Seattle, Round California and Nixdorff-Krein dated July 23, 1940 of International, Western and Woodhouse dated July 25, 1940, of McKay dated July 26, 1940, and of Hodell and Taylor dated July 29, 1940.

(*b*) Respondent Merriman was employed as managing director of the Chain Institute on or about August 1, 1938, and has served in that capacity since that date. Prior to the employment of respondent Merriman, and especially during the years of 1932, 1933, 1936, and 1938, which were years of business depression in the Chain Industry, the respondent manufacturers were not adhering to their announced or published prices in connection with many sales. The respondents desired that prices be stabilized, and among the duties which Merriman was expected to perform, and did perform, was that of exhorting the respondent manufacturers not to sell their products at less than their published prices. A committee of the Institute, composed of W. D. Kirkpatrick, vice-president of American, George J. Campbell, Sr., president of International, and D. S. Brisbin, vice-president of Columbus McKinnon, contacted Merriman with a view to retaining him to serve the Institute. On July 1, 1938, George J. Campbell, Sr., wrote H. G. Reinicker, of John K. Wilson Company, in part:

> This is unusually confidential, and wish you would keep it to yourselves, that we are figuring around on a new man to run the industry, something like a Judge Landis, or a moving picture boss, or something like that, that can hold the "brothers" more in line than they have been in the past; and we have left the matter to a committee, of which I am one of the members, to decide between two very good men; so that I think that things are moving in the right direction for the stabilization of prices in the industry. They are all pretty well sick of the present situation, with no business and low prices. (Comm. Ex. 357.)

Again, on July 11, 1938, George J. Campbell, Sr., wrote H. G. Reinicker, in part:

> * * * Confidentially, Harry, I am going out with a committe of two other men from the larger manufacturers, and one of which is—in fact, it is American Chain and Columbus-McKinnon—Mr. Kirkpatrick and Mr. Brisbin—to get in

touch with Dennis Merryman [sic], who was let out of the American Steel & Wire Company a short while ago, to see if we can get him, or persuade him, to act as the "Judge Landis" of the Chain Industry.

I hesitate to do anything now, after having been placed on this committee, and am going out to Chicago to see this fellow, until I have a talk with him to see if we can persuade him to take the job; and also, if we can persuade him to act a little sharp on any such practices as is now going on in the industry. This means, of course, if it goes through, that I will have to live up to the regular prices, but I think we can afford to do that now, rather than have all these tens and fives and make no profit after we get the business * * * (Comm. Ex. 349.)

At a meeting of the Institute held on July 28–29, 1938, at which respondents American, Cleveland (and associated companies), Columbus McKinnon, Hodell, International, McKay, Nixdorff-Krein, Pyrene, St. Pierre, Turner & Seymour, and Western were represented, the above-named committee was authorized to conclude arrangements with Merriman for his employment at a starting salary of $6,000 per year, effective August 1, 1938. Prior to his employment by the Institute, Merriman had been vice-president and general manager of a large steel fabricating company, from which position he had been retired, and in which position he had frequent contact with jobbers in the same field as the chain manufacturers sell. Merriman had strong personal views concerning adherence by sellers to their published prices, which views were known to the members of the Institute prior to his employment. In an address to the members of the Institute prior to his employment, he said among other things:

We know that agreements on prices are contrary to law. Personally, I never did believe in price agreements because there are at least half-a-dozen ways in which any agreement can be broken—and, in the final analysis, the question is one of—

Good faith among the various concerns engaged in the Industry;

Good faith on the part of the individual members of the firms;

Recognition of the principle—"Live and Let Live;"

Acknowledgement of the fact that price competition is just like water, which will always seek its own level—either up or down.

There is a foolish notion existing in some quarters (and among those who are, in their own estimation, past-masters on how to conduct any and every form of business), but the fact is these people just don't know the first thing about merchandising. Rarely will any first class Manufacturer deliberately cut a price on his product of equal quality with those of competitors. It has been done, but it is the exception rather than the rule. (Comm. Ex. 225–I.)

There is testimony in the record to the effect that respondent Merriman had no function, control, or authority in connection with the prices of chain and chain products. Nevertheless, inquiries and complaints as to price cutting made to Merriman by members of the Institute were investigated by him, at least to the extent of asking the

member accused of having sold at less than the published price whether that was true and then reporting whatever reply he received to the member making inquiry or registering the complaint. For example, on August 4, 1939, J. E. Seitz of respondent American wrote W. C. Perkins, manager of the Pittsburgh sales office of respondent American, as follows:

Merriman has called my attention to the fact that Jack Taylor is broadcasting a discount of 33⅓–10–10–10 percent in Oklahoma and Texas. He is not confining this to our loyal customers but apparently is quoting it to everyone 'irregardless.' This means that people who have not been loyal to us during the past are reporting it back to their present source of supply.

Merriman suggested that I call your attention to this as they are looking for leadership rather than to break the market. He has a report that Tru-Test will meet this price if it is continued to be quoted, and Biddle are also reporting on it, so it will probably be done very shortly and then we are going to be blamed for putting this discount in effect generally. (Comm. Ex. 72.)

Mr. Perkins answered the above letter on August 7, 1939, as follows:

I have your letter of the 4th inst. regarding reputed activity of Jack Taylor in quoting price on Pound Chain.

I get very much fed up on the "holier than thou" attitude of some of our competitors who have been quoting 33⅓–10–10–10 percent all along on Pound Chain and have not hesitated to give this price to our customers who never buy anything from them.

The complaints to D. A. M. look to me like a smoke screen to hide some culprit's irregularities. I am just as anxious as anyone to see this price stabilized, and we have not now, as has heretofore been the case, made this price until after we found others were quoting it.

I have telegraphed Jack as per attached copy of wire, and will pass his reply and explanation to you as soon as received. I am quoting telegraph reply of even date from Jack Taylor as follows:

"Retel price pound chain working under impression this price general however will be governed per wire have not quoted other than regular accounts except few cases larger accounts who already had price stop some have five percent beyond from competition please advise position regards regular oil field supply houses." (Comm. Ex. 70.)

On August 8, 1939, J. E. Seitz wrote Merriman as follows:

After our conversation last week concerning operation in Oklahoma and Texas I contacted Perkins and he in turn got in touch with Jack Taylor. We have his statement that he was advised in numerous places of the discount of 33⅓–10–10–10 percent having been quoted before he even thought of quoting same, or was authorized to meet this price.

Naturally after these reports were passed along he was given authority to meet the price and, to our good customers, authorized to quote this discount. In fact, we have heard of a discount of 5 percent beyond the discount referred to above. It has been quite evident from reports we have had that others have not refrained from quoting our friends this discount of 33⅓–10–10–10 percent, even to people who have not been buying at all from them. As you know we have

adhered to our published price more religiously than anyone else but we cannot sit idly by and lose all of our customers.

Instructions have been issued that this special discount is not to be quoted promiscuously. (Comm. Ex. 69.)

On June 29, 1939, Merriman wrote George J. Campbell, Sr., president of respondent International, as follows:

Your letter of the 28th concerning the price Hodell is making on tie out chains. I have not had this information from any other source, but I am not questioning the correctness of your report. Neither do I know anything about an extra 10 percent on pound chain. It is my belief that the pound chain market is being pretty well maintained. I have said many times over that to expect one hundred per cent perfect situations would be foolish. Anybody who wants to quote any price they please on pound chain, or any other chain has that privilege, for there is no obligation to do otherwise, except that all manufacturers have an obligation not to discriminate between customers in the same competitive fields.

Your letter indicates that you are meeting Hodell's prices wherever they are reported, and whatever they might be, and if that is going to be your policy it seems to me somebody else will feel disposed to meet your prices, and some fourth manufacturer will be disposed to meet the prices of the third, and there you have the vicious circle, or endless chain, and you have no market at all.

The result of this is that Hodell, with a very small percentage of the total chain business, is making the market for more than 95 percent of the industry. Some time ago President Roosevelt described some of the parties in the cutting prices activities as chisellers, and it is generally recognized that a reputable concern having a published price should maintain that price unless circumstances force them in a hurry to modify it.

Hodell has the privilege of making any price he pleases. He is nominally a member of the Institute, but in my opinion is not actually one. Every other manufacturer in the Institute has the same privilege you have of making any price you please, but I ask you again to count the cost. You will share in the losses in direct proportion to the percentage of the business you secure, and it is not a question of one year, but probably ten years before profits might be secured.

With business acknowledged to be around fifty percent of normal, great care must be taken on the part of every manufacturer unless he proposes to turn things upside down. Every manufacturer is entitled to a legitimate profit so as to pay fair salaries and wages, and if possible, certain taxes for the maintenance of the government. This can't be done by selling goods below cost.

If Hodell was to take enough business to run full for the balance of this year, the tonnage involved would not hurt anyone. There are others producing chain outside of the Institute we never hear about, and nobody seems to care, so why concentrate on everything Hodell does.

This is just a heart to heart personal talk in the hope that you will consider this subject thoroughly and from the standpoint of the most good for all, and if you do, that means is going to do the most good for you also.

In all my experience I have seen so many situations somewhat similar to this and when reason did not prevail, the result was chaos and ruin for some. Nobody wants to see that happen.

You refer to prices on trace chains. I do not know what Hodell is quoting on trace chains, but there is a report that your chains are being offered—since May 23— at 20–10–5 percent and can now be secured on that basis. If that is so,

you have no complaint against anyone, and in view of all I heard about the disastrous price on trace chains and the loss at which they are selling, I am at a loss to understand why these prices should rule.

There is no use in trying to attach the blame to any one manufacturer. In my opinion all share in the responsibility. Again I say, it is your mill, your product, your money invested, and you can make any price you please but once again—count the loss, not for today, but for the next ten years. (Comm. Ex. 182.)

On September 24, 1940, respondent Bond, vice-president of McKay, wrote W. H. Reid, a salesman of McKay, as follows:

Merriman contacted Carroll, who states they haven't sold Georgia Supply in the last year, and if Gantz makes this statement, I would believe him. We are checking further.

Campbell, of International, advises the last sale of Trace Chains to Kaminski was on June 20, 1939. Since then—no correspondence, no quotations, and no business dealings in any way. (Comm. Ex. 411.)

On February 19, 1941, respondent Bond wrote W. H. Reid as follows:

I have your various reports and have passed the information on to our friend Merriman, as per copy herewith, and am also giving copy of this to Fred Smith.

All we can do is do our damndest—meet the situations when, as and if we get the chance, but still adhere to our policy of not indiscriminately breaking down the price structure as the whole thing doesn't make sense. (Comm. Ex. 404.)

Merriman also made speeches at Institute meetings in the course of which he expounded his personal philosophy with respect to selling in accordance with published prices. For instance, at a meeting of the Institute held on January 10–11, 1940, Merriman said, in part:

Based on my own experience, I consider it a sign of weakness for any sales manager to feel obliged to sell his product below the price of a competitor for similar quality and service. Competition is like water: it seeks its own level, up or down, and while there always will be variations in prices owing to different conditions existing, there is no reasonable excuse why any first class concern should have a published list of prices and then deliberately shade them.

* * * * * * *

If the members of this Institute will exercise good common sense and think twice as to what the reaction may be on the entire market before cutting prices at any time on any product, then the results at the end of 1940 will be satisfactory from the standpoint of profits, and other problems we have to consider will, we feel sure, be taken care of in a pleasant and agreeable manner. (Comm. Ex. 212-E, H.)

By impressing upon the members of the Institute his views to the effect that each member should adhere strictly to its published prices, and in aiding the members in detecting those members who did not so adhere, respondent Merriman contributed materially to the plan of all the respondents to prevent departures from the prices established pursuant to the pricing systems described hereinbefore.

(*c*) The respondents' activities to prevent sales at prices less than those in published list prices and published discounts therefrom were not confined, however, to the above-described activities. The more direct method of one respondent manufacturer inquiring of another as to whether, or why, a particular sale or offer to sell had been made to a particular customer at less than the published price was resorted to in numerous instances.

For example, on July 15, 1937, George J. Campbell, Sr., wrote H. G. Reinicker, one of International's customers, in part:

> Just hung up the 'phone from talking with Van Schaick of Bridgeport.
>
> Van is very angry with me, altho he talked nicely, and stated he didn't know what in the devil I was doing about trace chains, especially in stealing his customer. He stated he had the Monroe Hardware Company order for the last three weeks at regular prices, and now he states we have taken the business away from him, and they feel a little peeved about it, and suggested that probably the result would be, if it kept on, that all prices would reach the level that we made.
>
> Would suggest that your men keep away as much as possible from any of the American Chain Company's customers, because they are the ones that, of course, "pull the whole temple down," while the others, like McKay, will just have to "bite their tongue" and stand for it. (Comm. Ex. 364.)

Again, on August 4, 1937, Mr. Campbell wrote the same customer, in part:

> Was just talking to the boys, and I just had a call from one of the other manufacturers in the Southwest, and he asked me if we had made an additional 5 percent off the old price list. I told him of a couple [of] instances, because I knew he knew something or he wouldn't have asked me.
>
> Inasmuch as we are now all endeavoring to get the prices up, and also to inasmuch as I think you will agree with me, we have sold about as many of the trace chain customers, which includes pound chain, as it is possible to sell this year, hadn't we better now start to quote the pound chain from the new list, even tho we allow a 5 percent on that; but try to get the old list outlawed if we possibly can, before the American Chain or someone comes out with their list the same as the one before this one. (Comm. Ex. 369.)

On September 11, 1937, Mr. Campbell wrote Mr. Reinicker, in part:

> We received the following information from Mr. Edgar Littmann of the Nixdorff-Krein Company, that on August 12th their representative called on Montgomery & Crawford, and they offered him traces at an extra 10 percent which their representative declined. The buyer laughingly then admitted that he had no such prices but that he had already placed his order with his regular source of supply, and had written them he had an offer on Traces of an extra 5 percent, and was now awaiting a reply from the regular source as to whether they would meet. (Comm. Ex. 373.)

With respect to a complaint that American had quoted a particular price on tie-out chains, Mr. Campbell, on November 11, 1937, in a letter to H. G. Reinicker, stated, in part:

Believe it is best to check up some times when the questions of prices get so ridiculous. The writer called up the American Chain Company today regarding the situation on tie-out chains. As you know it has only been a short time ago that tie-out chain prices were fixed on the SRP finish at 60–10–5 percent and on the bright 60–10–10 percent.

We have had so much trouble with this fellow Rawlings of Watters & Martin that I thought it best to put the cards on the table and find out what we could find. I told Mr. Kirkpatrick that we understood American Chain was now quoting 70–10–10–5 percent promiscuously around the Country on Tie-Out Chains SRP finish.

Mr. Kirk went over the situation very carefully and when I told him the name of Watters and Martin, he looked it up and found the following: They, the American Chain Company, received an order from Watters & Martin for 42 doz. tie out chains, SRP finish on November 3rd with a price on the order of 70–10–10–5 percent and to be delivered or shipped on December 25th.

The American Chain Company advised they immediately returned the order and told them the price was 60–10–5 percent. This corresponds with the information you gave us and the letter that was sent to Mr. Hunter by Mr. Rawlings was dated November 5th. Undoubtedly they thought that with the general recession of business that the American Chain or anyone would give them at least an extra 5 percent beyond the prices they had been able to get in the past. (Comm. Ex. 325–A.)

On April 20, 1939, Owen Sandstrom, vice-president of respondent Taylor, wrote W. D. Kirkpatrick of respondent American complaining about a price at which American had sold a particular customer, stating in part:

The thing that is hard for the writer to understand is that Howell claims that they do not entertain quotations from other manufacturers except American and Taylor, so why should you find it necessary to quote such ridiculous prices even though they might be going elsewhere. (Comm. Ex. 27.)

After investigating the transaction complained of, Kirkpatrick, on May 5, 1939, wrote Sandstrom, in part:

Your complaint has been investigated and I am attaching a letter from Trevethan giving you his exact comments on your letter.

Certainly, Owen, it is not our intention to interfere in any way with the operations of your good company. Both you and Win have been more than fair in handling our mutual problems, and it is our intention to cooperate with the S. G. Taylor Chain Company wherever possible. In fact, at one of the recent Institute meetings I intimated to you a possibility of further cooperation in the tire chain field, and you know I would not have done that if I did not think quite a bit of your company. (Comm. Ex. 24.)

On November 6, 1941, the president of respondent Taylor wrote respondent American, in part:

We have information from our representative in the Southwest that an order for $7,000 worth of tire chains was procured by the Monroe Hardware Company for the Arkansas Bomb Proving Ground at Hope, Arkansas. I do not know whether these were Bar Reinforced Tire Chains or Regular Twist Link Chains, but from the information which we have it would seem that this should have

come under the Procurement Contract and should not have gone through a jobber. (Comm. Ex. 30.)

In answering the above, J. J. Thiebauth of respondent American said, in part:

Replying to your letter of November 6th, the Monroe Hardware Co. are not tire chain distributors of ours, and the last Southwest inquiry, as I understand it, was awarded to Goodrich on Western Chain, at something like $4,714.10 on a 60-hour delivery.

We have had no order from the Southwest for anything like $7,000 worth of chains for any Government division. (Comm. Ex. 29.)

(*d*) Among the objects or purposes of the Institute set forth in its Certificate of Incorporation were those to standardize and simplify the products of the industry. The minutes of meetings of the Institute show almost continuous activity in connection with standardization and simplification through committees composed of officers of the respondent manufacturers and otherwise.

The minutes of a meeting of the Institute held on January 20 and 21, 1936, which was attended by representatives of respondents American, Hodell, Cleveland, Columbus McKinnon, International, McKay, Nixdorff-Krein, Pyrene, Taylor, Western, and Woodhouse, contain the following statement:

The membership discussed the standard tire chain specifications adopted by the Institute in 1935. It was the unanimous judgment of those present that these specifications adequately cover requirements. The Specifications Committee was instructed to prepare a letter to accompany standard specifications for distribution to Federal Government Departments and States for the 1936–37 season. (Comm. Ex. 250–B.)

The minutes of a meeting of the Institute held on March 2 and 3, 1936, which was attended by representatives of all the respondent manufacturers except Russell and Turner & Seymour, show the following:

The Specifications Committee at this point was instructed to prepare and submit to the meeting before adjournment their recommendations on a specification for Sub-Standard Tire Chains, and it was agreed that if the Specifications Committee submitted a suitable specification that it be adopted as a standard of the Industry.

The Specifications Committee later submitted their basic recommendation on the fundamental standards of a Sub-Standard Chain and upon motion duly made and adopted, it was agreed that the following be adopted as standard on this item by the Industry, complete details to be later submitted by the Specifications Committee to and to be in turn re-distributed to the members by Mr. Paull:

* * * * * * *

Upon motion duly made, seconded and adopted, it was agreed that the following specifications for Cross Chains on Emergency Unit Chains be adopted as standard for the Industry:

* * * * * * *

Upon motion duly made, seconded and unanimously agreed upon, it was decided that the 6.00–16 Light Car Special assembled complete Tire Chain would be retained in the line for the coming season, but the 6.00 Light Car Special Cross Chain would be eliminated.

At this point, after a re-discussion of the Sub-Standard Chain, it was unanimously agreed that only the eight (8) groups provided in the standard specifications would be made. (Comm. Ex. 225–B. C.)

The minutes of a meeting of the Institute held on January 23 and 24, 1939, at which all the respondent manufacturers except Hodell, Russell, and Turner & Seymour were represented, contain the following statements:

There followed a lengthy discussion relative to specifications of weldless chain. The Secretary, it developed, had overlooked informing Mr. Campbell relative to the specifications for 2/0 Tenso pattern chain and he was instructed to be certain to do this.

The subject of specifications for "substandard" tire chains was then discussed and all present indicated their understanding of these specifications, broadly stated, to be as follows:

The same as standard specifications, with the following exceptions:

1. Wire is one gauge lighter than is used in standard specification chain for same tire size.
2. The hooks are longer than used in standard specification chains.
3. Cross chains are spaced every fourth link.
4. Side chain is lock link pattern. (Comm. Ex. 221–B–1.)

The minutes of a meeting of the Institute held on August 26 and 27, 1941, contain the statements:

Mr. Bond as Chairman of the Specifications Committees made a report on the Welded Chain Specifications Committees recommendations pertaining to the suggestions made to the Committee by the Mackinac Island meeting on the simplification and standardization of various items, which were acted upon as follows:

Elimination of second (HB) grade of Dredge Chain—Approved by the Members and the Secretary instructed to bring this matter to the attention of The Carroll Chain Company, Johnson Farmer Chain Company, Troy Chain Company and The Hodell Chain Company.

Elimination of 1⅜" and 1½" sizes of Proof, BB and BBB Coil Chain—Approved by the members.

Elimination of Fire Welded Steel Loading Chain—Approved by the members.

Elimination of Shouldered cold shuts—Since most of the manufacturers do not make cold shuts they recommended the matter be taken up with the manufacturers outside of the Industry.

Elimination of 1/0 Passing Link Chain—Approved by the members.

Elimination of all Heel Chains excepting Numbers 45, 57 and 61—Approved by the members.

Elimination of all except three sizes of Trace Chains—8–0, 8–1 and 8–2, all with 8 links per foot, available with Ring, Hook, T Hook or T Bar, in Bright or Electro-Galvanized finish—Approved by the members.

One of the members recommended that consideration be given to eliminating the plating of second grade tire chains, which prompted another to suggest elimination of the second grade tire chain entirely from the line. Discussion developed the desirability of not acting on either point hastily and the members were therefore asked to give consideration to both questions in the interval before the next meeting and the Secretary instructed to write each manufacturer involved reminding him of the matter.

Mr. Bond then reported that the Proposed Revision of Federal Specification RR–C–271 has been received and pointed out that as now written it provides for only one grade—double refined iron—Dredge Chain. After discussion it was agreed to accept this revision.

It was also agreed to accept the Government's specifications on Grade 3 material for Buoy Chain, which now calls for a single refined iron.

The Committee, Mr. Bond reported, is preparing comments and recommendations with respect to certain changes in test figures and minor items which they proposed to transmit through the Institute's office if agreeable to the members. This procedure was approved by the members and the hope expressed that the Weldless and Sash and Kindred Chain Specifications Committees would follow the same procedure promptly so the Institute's office could in a single communication make a complete statement of recommended changes. (Comm. Ex. 195–A, B.)

The results of the above-described collective activities in connection with the standardization and simplification of products of the industry are attested to by the respondents' contentions that there is no difference between the welded chain, or weldless chain, or tire chain manufactured by one respondent manufacturer and that manufactured by another manufacturer; and that, therefore, a buyer will not pay more for the products of one respondent manufacturer than for the products of another. The president of respondent Russell in a letter to the Commission, dated December 2, 1942, commented on the activities of the Institute in part as follows:

The writer has always represented his Company in the Chain Institute, and wishes to state that he is principally acquainted with only the manufacturers of the several types of chain such as our own. I can only speak most highly of my experiences in the Chain Institute because of the many constructive accomplishments. Up until 1933 the manufacturers of Sash, Safety and Jack Chains, were all trying to sell their product, size for size, under different numbers, different metal and wire thicknesses, links per foot, tensil strengths, and qualities of steel, brass and bronze varied widely, all of which was most disconcerting to the trade and most unhealthy for the chain business or Industry. (Resp. Ex. 51–G).

(*e*) Another of the cooperative and collective actions engaged in by the respondents through the respondent Institute was the employment by the Institute in 1933 of Charles Donley, an independent traffic consultant in Pittsburgh, Pennsylvania, to compile a book of freight rates on welded chain from Pittsburgh to destinations throughout the United States and to revise such compilation from time to time. The

compilation thus cooperatively and collectively compiled and disseminated between and among respondent members selling welded chain was not intended to serve any need for freight rates for shipping purposes but was designed for use in computing delivered prices on welded chain and was so used by the respondent manufacturers who sold welded chain. The freight rates appearing in said freight rate book do not purport to be the actual freight rates from the points from which shipments of welded chain were made and do not reflect or purport to reflect the rates which would apply from Pittsburgh to the various destinations over all routes. Manufacturers of welded chain who were not members of the Institute were sent copies of the aforesaid freight rate books and revisions thereof. For approximately one year prior to March 1, 1943, the freight rate schedules prepared by Donley for the Institute were mailed by Donley directly to respondents American, Bridgeport, Cleveland, Columbus McKinnon, Hodell, International, McKay, Nixdorff-Krein, Peerless, Pyrene, Round California, Seattle, St. Pierre, Taylor, Western, Woodhouse, and the the Institute.

The purpose of the freight rate books compiled and disseminated as aforesaid was to provide the sellers of welded chain with common delivery charge factors to be included in the price of welded chain delivered at various destinations. It was more important to this purpose that all sellers use the same factor than that they use the correct freight rate. That the respondent manufacturers considered it important that all sellers use the same delivery charge factor is indicated by the following excerpt from a letter from respondent Bond, vice-president of McKay, to J. Emory Seitz, of American:

> In your letter of the 20th, you state that your Traffic Department tells you that the carload rate to St. Paul and Duluth is 61½¢, whereas Donley insists it is 63¢ to Duluth and 62¢ to St. Paul and Minneapolis.
>
> I may be all wet, but I have just made the suggestion to Mr. Paull that he use Charles Donley as an impartial, technical freight advisor, as according to the records he is the Chain Institute's Traffic Counselor. In other words, let Donley advise Mr. Paull's office of any change affecting our freight schedule and any question of rates that might be referred to Mr. Paull by any manufacturer be first taken up with and checked by Donley before being bulletined by Mr. Paull. It seems to me, without doing this, that there is going to be more or less confusion if Mr. Paull's office accepts the comments and notices on freight changes that any of we manufacturers might send in. (Comm. Ex. 884–I.)

(*f*) Respondent American has, for more than twenty-five years, been the most important factor in the Chain Industry in the United States. It manufactures and sells all types of chain involved in this proceeding, and is the largest manufacturer of most of said types. It has been a leader in announcing quotations of prices on the types of chain

and chain products described herein. Other respondent manufacturers have adopted and quoted as their own, prices identical with those announced by American, and have followed such quotations of American for substantial periods of time in connection with the sale of chain and chain products. Price lists and discount sheets and revisions thereof published by American were forwarded two or three days prior to the effective date shown thereon to American's jobber-customers and to each of the other respondent manufacturers. In letters transmitting its price sheets to the other respondent manufacturers, American requested the other manufacturers to send a copy of their price sheets. For example, on May 26, 1939, respondent American wrote respondent Peerless as follows:

> We are attaching hereto a set of Jobber-Dealer, Dealer-Consumer, and Consumer price sheets and would appreciate it if you would, in return, send us a copy of your price sheets for our own files. (Comm. Ex. 35.)

On May 29, 1939, respondent Peerless addressed the following letter to respondent American:

> Received the price sheets enclosed with your letter of the 26th. It may be a week or so before we get ours out but we will send you a couple of the first copies off the press. We will, however, have our new Discount Sheet out in the next couple of days and as there is no material change in the prices of our old and new prices, we will put our new discounts into effect immediately and use our old price lists until our new ones are out.
>
> * * * * * * *
>
> PS Kirk, will you please send us a copy of your discount sheet, channels of distribution, etc. Will appreciate this. (Comm. Ex. 37.)

As soon as practical after receiving price lists from American, the other respondent manufacturers changed their prices to conform to those announced by American and sent copies thereof to American, and in many instances to other respondent manufacturers.

The prices appearing in the price lists published and disseminated by American as aforesaid were the result of understandings and agreements between the respondents, as hereinabove found. For example, on January 30, 1937, George J. Campbell, Sr., wrote Mr. Reinicker, of John K. Wilson Company, in part:

> Just returned from Chicago, after the meeting in Cleveland and I see that you have already advised the Office here that you received my notice of the price advance to go into effect immediately of 45¢ per cwt.
>
> * * * * * * *
>
> I cannot give you the exact raise in the prices of weldless chain as yet, because I left the meeting a little early and just as soon as we get word from the American Chain Company of these price lists, we will send you a copy and tell you all about it, in the meantime, get all the business you can for us at the old prices. **(Comm Ex. 360.)**

A meeting of the Institute was held in Cleveland on January 25, 1937, the minutes of which show that Mr. Campbell was in attendance. Respondent American issued a discount sheet on weldless wire and flat metal chains effective February 15, 1937, reflecting lower discounts and therefore higher net prices than those theretofore in effect. Most, if not all, the other respondent manufacturers manufacturing weldless chain issued similar discount sheets within a short time thereafter.

PAR. 7. All of the respondent manufacturers, except respondents Russell and Turner & Seymour, stipulated that published list prices, published discounts therefrom and published list extras thereon have been generally uniform at any one particular time for all types of chain involved in this proceeding. Russell and Turner & Seymour entered into a similar stipulation insofar as published list prices were concerned, and a comparison of the published discounts of these two respondents with those of other respondents selling the same products shows that the published discounts were uniform for substantial periods of time.

Through the use of generally uniform list prices, discounts therefrom and extras thereon, through the use of identical pricing systems or methods for the different types of chain, supplemented in the case of welded chain by the use of common delivery charge factors to aid in eliminating price differences which might arise from the individual calculation of freight rates, through efforts to prevent departures from prices established pursuant to the different pricing systems, and through the use of the various other acts and practices described herein, the respondents have been able to achieve a relatively high degree of price identity in quoting and selling the different types of chain.

The record contains a number of invoices covering the sales of all three types of chain during the month of October 1941. It was stipulated with respect to such invoices that they demonstrate the manner, form, and substance of the practices of respondents (except Russell and Turner & Seymour) in making sales of the three different types of chain. The methods of selling used by respondents Russell and Turner & Seymour are not materially different from those used by the other respondents selling the same products. It was further stipulated by all the respondent manufacturers, except Columbus McKinnon:

> That counsel supporting the complaint contend that in an average of 95 percent of respondents' total sales of each of the three types of chain and chain products (i. e., welded, weldless and tire) during the period covered by the complaint, respondents followed the pricing and selling practices hereinbefore set forth, whereas respondents, while conceding that said practices were followed, contend that they were followed in an average of only 80 percent of such total sales.

That the difference between the contentions of counsel supporting the complaint and the respondents herein with respect to said percentage figures of 95 percent and 80 percent, respectively, arises from the fact that approximately 20 percent of respondents' total sales, as evidenced by the invoices studied, were at prices or discounts or extras different from their published list prices, published list discounts, and/or published list extras; that counsel supporting the complaint concede that not over 5 percent of such total sales involved nonuniformity of prices among the respondents, and that the remaining 15 percent of such total sales represented sales to large buyers, including mail order houses and railroads, concerning which sufficient information is lacking (without extensive further study of invoices and the taking of testimony) to determine whether or not such instances involved nonuniformity of prices among the respondents.

That counsel supporting the complaint concede that, during the depressed business periods of 1932, the early part of 1933, and 1936 and 1938, respectively, the said estimated average percentage of respondent's total sales in which respondents followed the pricing and selling practices hereinbefore set forth was considerably lower than said 95 percent, and respondents contend that during said depressed business periods said estimated average percentage was considerably lower than said 80 percent. (R. 893–4.)

Respondent Columbus McKinnon did not join in the stipulation from which the above is quoted, but separately stipulated that substantially all the sales represented by its invoices which are in evidence were made at the prices contained in its published price lists and published discounts therefrom.

The record also contains evidence with respect to bids submitted by the respondents in response to invitations for bids from the Treasury Department, Procurement Division, on tire chains, and from the Navy Department on welded and weldless chain. Such evidence shows that the respondent manufacturers of tire chains generally bid their regular published prices on standard unpatented tire chains, with the result that there was almost complete uniformity of the prices bid on such tire chains. In some instances, as shown in Paragraph Eight hereinafter, the higher prices in the bids submitted by some of the respondent manufacturers were the result of agreements and understandings between the respondent manufacturers submitting such higher bids. The bids to the Navy Department by the respondent manufacturers on welded and weldless chain do not reflect as high a degree of uniformity as do the bids to the Treasury Department, Procurement Division, on tire chains. However, there was a relatively high degree of uniformity in the bids submitted on welded and weldless chain.

The exact degree of adherence to the prices determined by the use of the different pricing methods by all the respondents cannot be determined from the facts in the record. However, the exact degree of adherence is immaterial, since it is clear from the entire record

that there were relatively few departures from such prices except during periods of business depression.

PAR. 8. Respondent American, toward the end of the 1920's, acquired ownership and control of certain patented inventions covering improvements on tire chains. The improvements are generally referred to as "bar reinforced anti-skid devices" and tire chains embodying said patented inventions are sometimes herein referred to as "bar reinforced" tire chains. Respondent American as licensor entered into agreements with respondents McKay, Hodell, Pyrene, St. Pierre, and Taylor as licensees which agreements provided that the licensee manufacturers, at ther option, might either manufacture their own bar reinforced links or have the same manufactured for them by American. The latter practice was followed by all the licensee manufacturers except McKay. Said agreements between respondent American and the licensee manufacturers contained provisions whereby the licensee manufacturers were required to observe minimum prices and discounts specified by American in selling tire chains embodying the patented features. Respondent American from time to time did designate the prices at which the licensee manufacturers were to sell bar reinforced tire chains, and the prices so designated were generally adhered to by the licensee manufacturers. In instances where a licensee manufacturer failed to adhere to the prices so designated, respondent American called such non-adherence to the attention of the seller and requested an explanation. For example, on October 1, 1940, respondent Kirkpatrick, vice-president of American, wrote F. G. Hodell, president of Hodell, in part:

> We have just received information that your company has been awarded the North Carolina State Highway Department business through the Tire Sales & Service Company of Raleigh, North Carolina.
>
> We know there are some bar reinforced tire chains on this bid and we understand that your jobber quoted a cash discount beyond the recommended resale for bar reinforced tire chains.
>
> It was my understanding that Mr. Thiebauth telephoned you, calling this mistake to your attention, and that you had instructed your distributor to withdraw the bid.
>
> This is the first break in price on bar reinforced tire chains that I can think of and I am asking you if our information is correct. I hope there is a mistake somewhere. (Comm. Ex. 8.)

In answering the above, Hodell stated in part:

> Answering your letter of October 1st, may I say that the facts as related to Mr. Thiebauth over the telephone some days ago are correct. I likewise add further that there was no intention on our part to make any price other than our published prices on bar reinforced tire chains on this bid, and the difference which exists was purely an error caused by confusion in relaying the prices to the jobber in question.

We had not previously had occasion to instruct this jobber on the subject, as this is the first time we have ever done any business with them. In fact, their inquiry for this particular transaction was the first negotiation that we had had with this company and their prospects of securing this business were so entirely negligible in the mind of our correspondent, that the matter of correct cash discount was unfortunately overlooked.

We dislike to have you say that this is a break in the price because we are not breaking any prices and we are most carefully adhering to our Contract in this respect. Within ten minutes after we received Mr. Thiebauth's telephone message and had checked our records we sent a telegram to this jobber advising him to withdraw the price and of his error. All of this is of record with the telegraph company as to filing of message and in support of the statements we made, and we are sorry there is no way to correct the matter. (Comm. Ex. 7.)

Each of the respondents American, McKay, Pyrene, and Hodell entered into an arrangement with the partnership of Shirley, Olcott & Nichols (sometimes hereinafter referred to as "Shirley") in 1937 whereby the latter was to act as manufacturer's sales representative in the sale of bar reinforced tire chains to the Federal Government. The arrangement was subsequently extended to cover all types of tire chain manufactured by the said manufacturers. Respondents Taylor and St. Pierre joined the arrangement with Shirley in 1940. Under the arrangement, Shirley submitted bids in its own name to the Procurement Division, Treasury Department, for both bar reinforced and standard tire chains. Bids were also submitted by the manufacturers represented by Shirley. Shirley was awarded contracts to supply tire chains for specified periods of time, and orders received by Shirley under such contracts were apportioned among the respondent manufacturers who were participating in the arrangement. Evidence in the record establishes that respondents American, McKay, Hodell, Pyrene, St. Pierre, and Taylor, with the aid and assistance of Shirley, conspired and agreed as to the prices which were bid by Shirley and by said respondents.

The aforesaid license agreement between respondent American and respondent McKay was terminated on February 6, 1939, and the provisions by which the licensee manufacturers were required to observe minimum prices and discounts specified by American were cancelled in the agreements between American and the other licensees in December, 1942, prior to the issuance of the original complaint herein. Respondent McKay withdrew from the aforesaid arrangement with Shirley on June 30, 1940. Respondents American, Hodell, Pyrene, St. Pierre, and Taylor terminated their arrangements with Shirley in October, 1942.

All of the respondents herein contend that the above-described acts and practices of certain of the respondents in connection with bar reinforced tire chains were in no way related to and formed no part

of the acts and practices engaged in by all the respondents and that, therefore, it is improper that such allegedly unrelated acts and practices can be considered in this proceeding. It is also contended that because of the elimination of the price fixing provisions from the license agreements and the termination of the arrangements with Shirley, no issue remains with respect to such acts and practices which is not now moot. The hearing examiner agreed with these contentions and recommended that the allegations of the amended complaint relating to the aforesaid license agreements and the arrangements with Shirley be dismissed as to all the respondents.

The Commission disagrees with the above contentions and with the hearing examiner's recommendation. Bar reinforced tire chains were generally recognized as being superior in quality to standard unpatented tire chains. Respondent Kirkpatrick testified that American had attempted to keep the price on bar reinforced tire chains approximately fifteen percent higher than the prices on standard tire chains. The published list prices on standard tire chains were uniform for the respondents selling tire chains and sales were generally made in accordance with the published list prices. In view of the superior quality of bar reinforced tire chains, in order to maintain the established uniform prices on standard chains, it was necessary that the prices on bar reinforced tire chains be fixed and maintained at a level substantially higher than the level of the prices on standard tire chains. Consequently, the conspiracy to fix and maintain the prices on bar reinforced tire chains formed a necessary part of the over-all conspiracy to fix and maintain prices on chain and chain products. The fact that some of the respondents did not manufacture or sell bar reinforced tire chains and therefore did not participate in the conspiracy to fix and maintain prices on this particular type of chain does not constitute sufficient grounds for dismissal as to them of the charges in the amended complaint relating to such acts and practices.

The acts and practices by which respondent American and its licensees fixed and maintained prices on bar reinforced tire chains represent only one of the means by which the primary purpose of the over-all combination and conspiracy was effectuated. The arrangements with Shirley were made possible because of the combination and conspiracy between respondent American and its licensees, and because of the understandings and agreements between all of the respondents selling standard tire chains as to the prices at which standard tire chains would be offered for sale and sold to the Government, as well as to other purchasers. Under the circumstances, the cancellation of the price fixing provisions in the license agreements

and the termination of the arrangements with Shirley afford no basis for exempting the described unlawful acts and practices with respect to bar reinforced tire chains from the prohibitions of an order to cease and desist.

PAR. 9. The record herein thus establishes that the respondents discussed, and entered into agreements and understandings concerning, current and future prices of chain and chain products. They cooperatively and collectively compiled schedules of common pricing factors to be used and which were used by the respondents selling welded chain, in computing delivered prices on welded chain. They adopted and used by agreement and understanding a plan whereby the prices and discounts therefrom on chain and chain products announced by respondent American were adopted and followed by other respondent manufacturers. They exchanged with one another, directly and indirectly, information as to the prices at which their products were offered for sale generally, the prices at which offers to sell and sales were made to particular named customers, and other intimate details of one another's business. Certain of them entered into agreements relating to certain patented inventions covering improvements on tire chain by which the legitimate patent monopoly rights of the owner of the patents were extended beyond the scope of the patents and conspired and agreed as to prices at which tire chains embodying such patented inventions were to be offered for sale and sold to purchasers, including the United States Government. They cooperatively and collectively, through the respondent Institute and otherwise, promoted adherence to the prices agreed upon.

Each of the respondent manufacturers has quoted and sold chain and chain products at prices calculated pursuant to and in accordance with the particular method or system of computing delivered prices applicable to the products it sold, with the knowledge that all the other respondent manufacturers selling the same products were simultaneously doing likewise. In entering into and engaging in the cooperative and collective actions described hereinabove, there was necessarily an understanding and agreement between all of the respondents that each of the respondent manufacturers would continue to use the particular method or system applicable to the type or types of chain each sold. Otherwise, the various cooperative and collective actions entered into and engaged in would not have brought about the results desired. By adhering to and continuing to use the particular method or system applicable to the type or types of chain it sold, each respondent manufacturer has contributed to and made more effective the understanding and agreement between all the respondents. All users of each of the three methods or systems of computing delivered

prices have thus been enabled to present to a prospective purchaser a condition of matched prices in which such purchaser was isolated and deprived of any choice on the basis of price. The delivered costs to purchasers have not reflected any of the differences in cost of raw materials, other items, or freight delivery from the places of manufacture to the purchaser's delivery points. The principles and forces of competition have been prevented from making and determining the prices of each of the respondent manufacturers.

Pursuant to Count I of the amended complaint, the Commission concludes, and therefore finds, that the respondents have entered into and have engaged in and carried out an understanding, agreement, combination, or conspiracy among themselves to restrain and suppress competition in the sale of chain and chain products. While the record does not show that each of the respondents has participated in all of the activities relied on to establish said understanding, agreement, combination, or conspiracy, each has acted in concert and cooperation with one or more of the others in doing and carrying out some of the acts and practices herein set forth in furtherance of the understanding or agreement common to them all.

PAR. 10. The tendency, capacity and effect of the combination and conspiracy entered into and maintained by the respondents in the manner aforesaid, and the acts and practices performed thereunder and in connection therewith, as set out herein, have been and are to substantially lessen, hinder, and suppress competition among the respondent manufacturers in the sale of chain and chain products in, among, and between the several States of the United States and in the District of Columbia; to prevent price competition among the respondent manufacturers in the sale of said products; to deprive purchasers of chain and chain products of the benefits of competition in price; to maintain artificial and monopolistic methods and prices in the sale and distribution of such products; and to create a monopoly in the respondent manufacturers in the sale of such products.

PAR. 11. Count II of the amended complaint charges each of the manufacturing respondents with having discriminated in price in the sale of chain and chain products by selling such products to some purchasers thereof at a price higher than the price at which products of like grade and quality were sold to other purchasers, all in violation of subsection (a) of Section 2 of the Clayton Act, as amended. It is alleged that such unlawful discriminations in price resulted from (a) the use of the delivered-price systems described in Count I of the amended complaint and (b) the classification of customers to receive quantity, trade, and other discounts from quoted prices, which resulted in different prices to competing customers. The Commission is of the

opinion that the allegations with respect to use of the delivered-price systems do not clearly show that the alleged unlawful discriminations occurred as a result of differences made in the actual prices at which the said products were sold, and that the allegations with respect to the granting of different quantity, trade, and other discounts to competing customers are not sustained; and that, therefore, Count II of the amended complaint should be dismissed as to all of the respondents.

CONCLUSION

The aforesaid acts and practices of the respondents constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answers of the respondents, testimony and other evidence in support of and in opposition to the allegations of said amended complaint taken before a hearing examiner of the Commission theretofore duly designated by it, recommended decision of the hearing examiner, with exceptions thereto, and briefs and oral argument of counsel; and the Commission having issued its order disposing of the exceptions to the recommended decision and having made its findings as to the facts and its conclusion that the respondents, except Walter S. McCann, Alfred Peter Shirley, Floyd Bronson Olcott, and Forrest C. Nichols, have violated the provisions of section 5 of the Federal Trade Commission Act:

It is ordered, That the corporate respondents Chain Institute, Inc., American Chain & Cable Company, Inc., The Bridgeport Chain & Manufacturing Company, The McKay Company, Pyrene Manufacturing Company, Hodell Chain Company, St. Pierre Chain Corporation, S. G. Taylor Chain Company, Cleveland Chain & Manufacturing Company, Columbus McKinnon Chain Corporation, Campbell Chain Company, Nixdorff-Krein Manufacturing Company, Peerless Chain Company, Round California Chain Company, The John M. Russell Manufacturing Company, Inc., Seattle Chain & Mfg. Company, Turner & Seymour Manufacturing Company, Western Chain Products Company, and Woodhouse Chain Works, their respective officers, representatives, agents, and employees, and the individual respondents, Dennis A. Merriman, Wm. D. Kirkpatrick, Frank A.

Bond, and George J. Campbell, Jr., their respective representatives, agents and employees, in or in connection with the offering for sale, sale, and distribution of chain or chain products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among 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 things:

(1) Establish, fix, or maintain prices, terms, or conditions of sale for chain or chain products or adhere to any prices, terms, or conditions of sale so fixed or maintained.

(2) Directly or indirectly investigate or check the prices, terms, or conditions of any sale of, or offer to sell, chain or chain products to any purchaser or prospective purchaser for the purpose or with the effect of aiding or assisting in maintaining uniform prices, terms, or conditions in the sale of chain or chain products.

(3) Exchange or distribute among the corporate respondents, or any of them, price lists or other information showing current or future prices, terms, or conditions of sale, for the purpose, or with the effect, of fixing or of aiding or assisting in maintaining uniform prices, terms, or conditions of sale in the sale of chain and chain products.

(4) Adopt, use, or in any way follow any price quotation announced by particular respondents, or any of them, whereby quotations are made uniform or matched.

(5) Collect, compile, circulate, or exchange information concerning common carrier transportation charges used or to be used as a factor in computing the price of chain or chain products; or use, directly or indirectly, any such information so collected, compiled, or received as a factor in computing the price of chain or chain products.

(6) Quote or sell chain or chain products at prices calculated or determined pursuant to or in accordance with the single basing point delivered-price system, the freight equalization delivered-price system, or the zone delivered-price system; or quote or sell chain or chain products at prices calculated or determined pursuant to or in accordance with any other plan or system which results in identical price quotations or prices for chain or chain products at points of quotation or sale or to particular purchasers by any two or more sellers of chain or chain products using such plan or system or which prevents purchasers from finding any advantage in price in dealing with one or more as against another seller.

(7) Do or cause to be done any of the things forbidden in the preceding paragraphs of this order through respondents Chain Institute, Dennis A. Merriman, or any other corporation, organization, or individual.

It is further ordered, That nothing contained herein shall be construed as prohibiting the establishment or maintenance of bona fide agreements, understandings, or other relations between any corporate respondent and its officers, directors, and employees, or between any corporate respondent and any of its subsidiaries or affiliates, relating to the sole and separate business of said corporation and its subsidiaries or affiliates, when not for the purpose or with the effect of unlawfully restricting competition.

It is further ordered, That each of the corporate respondents American Chain & Cable Company, Inc., The Bridgeport Chain & Manufacturing Company, The McKay Company, Pyrene Manufacturing Company, Hodell Chain Company, St. Pierre Chain Corporation, S. G. Taylor Chain Company, Cleveland Chain & Manufacturing Company, Columbus McKinnon Chain Corporation, Campbell Chain Company, Nixdorff-Krein Manufacturing Company, Peerless Chain Company, Round California Chain Company, The John M. Russell Manufacturing Company, Inc., Seattle Chain & Mfg. Company, Turner & Seymour Manufacturing Company, Western Chain Products Company, and Woodhouse Chain Works, its officers, representatives, agents, and employees, in or in connection with the offering for sale, sale, and distribution of chain or chain products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from quoting or selling chain or chain products at prices calculated or determined pursuant to or in accordance with a single basing point delivered-price system, a freight equalization delivered-price system, or a zone delivered-price system, for the purpose or with the effect of systematically matching the delivered-price quotations or the delivered prices of other sellers of chain or chain products and thereby preventing purchasers from finding any advantage in price in dealing with one or more sellers as against another.

It is further ordered, For reasons appearing in the findings as to the facts in this proceeding, that the allegations of Count I of the amended complaint herein be, and they hereby are, dismissed as to respondents Walter S. McCann, Alfred Peter Shirley, Floyd Bronson Olcott, and Forrest C. Nichols.

It is further ordered, That the allegations of Count II of the amended complaint be, and they hereby are, dismissed as to all of the respondents.

It is further ordered, That the respondents, except Walter S. McCann, Alfred Peter Shirley, Floyd Bronson Olcott, and Forrest C. Nichols, shall, within sixty (60) days from service upon them of this order, file with the Commission a report in writing showing in detail the manner and form in which they have complied with this order.

Commissioner Mason dissenting and Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

DISSENTING OPINION OF COMMISSIONER LOWELL B. MASON

Here, as in its companion case, *National Lead Company*, Docket 5253, the principal question our superior courts must answer is whether the Commission has the general injunctive powers of an equity court, or may we only prohibit those acts which we in our findings of fact have found to be unlawful. In the event this case is judicially reviewed before National Lead, I incorporate in the record of this case that portion of my dissent in National Lead that bears on this important inroad on the judicial function.[1]

Besides this fundamental issue there are other questions that must be dealt with. Count 2 (the so-called mill net theory count) is a relic of the days when the prosecution staff of the Commission was enamored of the idea that entrepreneurs who paid the freight on their produce to markets away from home discriminated in price to some customers because they profited less on goods sold out of town than on the same kind of goods sold across the street.

This threatened strangulation of small concerns which have only one point of production was happily frustrated by subsequent orders of the Commission in the other cases,[2] and it is with hearty accord that I concur with the majority in the frustration of this ideological tour de force.

AS TO COUNT 1:

Assuming, but not necessarily deciding, that the record in this proceeding will support the finding of the majority that the respondents have entered into and carried out an unlawful conspiracy, the order to cease and desist is nevertheless objectionable.

The order in this case, like the order in Docket 5253, *National Lead Company, et al.*, goes further than to suppress practices found to be unlawful. No finding is made, and clearly none could be made, that the independent use by one of the respondents of a single basing point

[1] Appendix.

[2] *Clay Products Association, Inc.*, Docket 5483; *Clay Sewer Pipe Association, Inc.*, Docket 5484; *National Lead Company*, Docket 5253.

delivered-price system, a freight equalization delivered-price system, or a zone delivered-price system is illegal. It is not even found, and no contention is made that it could be found, that the use by any of the respondents of any of these systems "for the purpose or with the effect of systematically matching" the prices of competition is illegal. It is thus clear that the order to cease and desist is not based on the findings.

I am against it.

APPENDIX

DISSENTING OPINION OF COMMISSIONER LOWELL B. MASON IN THE MATTER OF NATIONAL LEAD COMPANY, ET AL.

In my opinion, the complaint was filed and the case stands or falls on the concurrent knowledge of defendants that the substantial price similarity of their lead pigments was arrived at by substantially similar pricing factors—in short—"conscious parallelism."

For over two decades economic theorists have sought ways to condemn conscious parallelism. The old Federal Trade Commission originated this crusade in the early 1940's and filed numerous complaints accusing defendants with charging prices for their goods with knowledge that others charged the same price. The first order against conscious parallelism to reach the court was *Federal Trade Commission* vs. *Rigid Conduit.*[18] The Circuit Court of Appeals sustained the order and the Supreme Court refused to reverse on a tie vote. However, the decision was a pyrrhic victory, for congressional and public clamor against this decision was so strong that no court proceeding has ever been initiated to enforce it. Until now, all subsequent disposition of cases where conscious parallelism was alleged in the complaint have carefully avoided the type of order issued in *Rigid Conduit.*[19]

But now conscious parallelism again raises its bureaucratic head in this and a companion case,[20] tentatively and collaterally, but not directly, for the instant cases do not find conscious parallelism illegal in their findings of fact, but prohibit it in the orders to cease and desist. The order is justified on what I call a spiral rationale, circular in motion but not coming out where it started:

1. Conscious parallelism is not of itself illegal;

2. But evidence of conscious price parallelism may give the Commission the power to imply conspiracy;

3. Conspiracy is illegal;

[18] *Triangle Conduit and Cable Company* vs. *Federal Trade Commission,* 168 F. (2d) 175 (7th Cir. 1948), aff'd sub nom *Clayton Mark Co.* vs. *Federal Trade Commission,* 336 U. S. 956 (1949).

[19] *Clay Products Association, Inc.,* Docket 5483, 47 F. T. C. 1256; *Clay Sewer Pipe Association, Inc.,* Docket 5484, 48 F. T. C. 202.

[20] *Chain Institute, Inc., et al.,* Docket 4878.

4. With a finding of conspiracy, the Commission assumes the power to prevent its continuation by prohibiting conscious price parallelism;

5. Conscious parallelism is illegal.

Ignoring for the moment the impracticality of carrying out an order against conscious parallelism, and casting aside the question as to whether the Federal Trade Commission is endowed with such complete equity court powers, let us see if there are sounder ways of testing the economic validity of conscious parallelism than all this legalistic folderol about conspiracies that don't exist.

We need tests which can be applied on a factual basis.

At the same time the Commission originated its drive against conscious parallelism as the enemy of free enterprise, a more realistic concept of competition was being developed by economists which held where even if pricing formulas were known and substantially paralleled (as here), "the significant test was to look for the independence and competitiveness of the rivals." [21]

Workable competition, as developed by Professor J. M. Clark, Dean Edward S. Mason and the late Professor Joseph A. Schumpeter, as well as Professors E. P. Lernerd, M. P. McNair and F. S. Teele, placed the emphasis on the longer range aspects of a progressive economy; not on an assumed unchanged equilibrium of demand and supply, but on changes which included population growth, the discovery of natural resources, developments in technology, advances in the art of management, and many others. Stress was laid on the constructive role of entrepreneurs in expanding demand and improving products. National brand advertising was something more than an effort to insulate against the price raids of competitors. It recognized that the businessman often made investments of time and money ahead of current demands. Under the doctrine of workable competition, large business units may have put more competitive pressure on small units than was desirable, but every injury to a small competitor was not necessarily an injury to competition. Competition in a growing economy was bound to put pressure on inefficient competitors, whatever their size.

To condemn conscious parallelism sans conspiracy is to disarm the smaller competitor in his already handicapped battle against multiple-point producers.

I am against it.

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[21] R. H. Meriam's "Bigness in the Economic Analysis of Competition," Harvard Business Review, March 1950.

Syllabus

IN THE MATTER OF

IRVING EPSTEIN ET AL. DOING BUSINESS AS MODERN SEWING MACHINE COMPANY

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

Docket 5817. Complaint, Oct. 16, 1950—Decision, Feb. 16, 1953

Persons who buy machines represented as being factory rebuilt believe that such new parts as have been used to replace worn parts are genuine factory products, and there is a preference on the part of retailers and the public in buying rebuilt machines that any new parts added be genuine factory parts.

Where three partners engaged in the purchase of used sewing machines and in the rebuilding and reconditioning thereof, involving the replacing of worn parts with new; in advertising such machines to dealers in various states—

Falsely represented, directly or by implication, through such statements as "Guaranteed factory rebuilt sewing machines" followed by such words as "Singer 66 Round-Bobbin Reconditioned Head" or "White Rotary Round Bobbin Reconditioned Head" that the Singer and White machines referred to were rebuilt by or at the factory of the original manufacturers and that genuine factory parts were used in the process of rebuilding;

With tendency and capacity to mislead and deceive retailers and with result of placing in their hands a basis for misleading and deceiving the purchasing public into the erroneous belief that said representations were true, thereby inducing the purchase of said rebuilt sewing machines:

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

As respects the allegation of the complaint that respondents' use of the word "guaranteed" in connection with their rebuilt machines without disclosing the terms and conditions of the guarantee was confusing and misleading: it appeared that it was respondents' practice, when complaint was made, either to furnish another machine or refund the purchase price—a manner of making good their advertised guarantee which rendered it highly unlikely that any purchaser would be confused or misled to his damage.

With regard to the adequacy of the disclosure of foreign origin of the machines imported by respondents from Japan, upon the machines themselves; no such issue was presented and such a question was consequently not before the Commission for determination, and as respects Spanish machines imported and sold by respondents, the record did not show that the marks on the machine when sold were inadequate, even if the complaint be taken as raising such an issue.

As respects respondents' alleged failure to disclose the foreign origin of their imported machines in their advertising, with capacity and tendency to induce

the belief that "such statements and representations were and are true": no allegations that respondents made any statements or representations in their advertising concerning the origin of their imported machines appeared in the complaint and consequently no issue was presented with respect to non-disclosure of foreign origin in their advertising.

Before *Mr. Clyde M. Hadley*, hearing examiner.
Mr. William L. Taggart for the Commission.
Mr. H. Robert Levine, 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 said Act, the Federal Trade Commission, having reason to believe that Irving Epstein, Rita Epstein and Sam Epstein, copartners doing business as Modern Sewing Machine Company, 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. Respondents, Irving Epstein, Rita Epstein and Sam Epstein, operate as a partnership under the name of Modern Sewing Machine Company with their principal office and place of business located at 109 Watkins Street, Brooklyn, New York.

PAR. 2. Respondents are now and have been for several years last past engaged in the purchase of used sewing machines; in the rebuilding and reconditioning of said machines in the course of which certain worn parts are replaced with new parts; and in the advertising and selling of such rebuilt or reconditioned machines to dealers located in various States. Respondents also are engaged in the business of importing and selling new sewing machines manufactured in Japan and Spain. These machines are branded and sold under the names of Home Electric and BenDeluxe, respectively.

PAR. 3. The respondents cause and have caused their machines, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said machines in commerce among and between the various States of the United States.

PAR. 4. Respondents in the course of their business circulate catalogs, circulars and pamphlets among the trade in which the following statements appear:

Guaranteed factory rebuilt sewing machines.

Singer	Singer	White
66	127–4 & 27	Rotary
Round-Bobbin	Long Bobbin	Round Bobbin
Reconditioned Head	Reconditioned Head	Reconditioned Head

All sewing machines thoroughly rebuilt, reconditioned and guaranteed.

PAR. 5. By and through the use of the aforesaid statements, respondents represented that the Singer and White sewing machines, referred to, were rebuilt by or at the factory of the original manufacturer and as to the machines rebuilt by them, that genuine factory parts were used in the process of rebuilding.

PAR. 6. The said representations were false, misleading, and deceptive. In truth and in fact, none of the sewing machines sold by respondents were rebuilt by or at the factory of the original manufacturer, but such rebuilding was done by respondents themselves. The use of the word "guaranteed" in said advertising without disclosing the terms and conditions of the "guarantee" is confusing and misleading.

PAR. 7. Persons who buy machines which are represented as being rebuilt and reconditioned believe that such new parts as have been used to replace worn parts are genuine factory parts. In truth and in fact, such new parts as are used by respondents in rebuilding machines are not made by the factories which manufactured the machines but are made by others. There is a preference on the part of retailers and the public in buying rebuilt machines that such new parts as may have been added are genuine factory parts, such preference being based upon the belief that genuine factory parts are longer lasting, better fitting, more efficient and other reasons.

PAR. 8. In advertising the new sewing machines imported from Japan and sold under the name "Home Electric" and those imported from Spain and sold under the name "BenDeluxe," no mention is made in the advertising that said machines are imported from Japan and Spain, respectively. There are no marks on the BenDeluxe Sewing Machines other than the use of certain Spanish words, unintelligible to the average person, indicating that said machines are not of domestic manufacture.

It has been the custom for many years in the advertising of imported articles to state in the advertising matter that such articles are imported, the foreign country of origin usually being stated. In case no mention is made in such advertising matter that the articles are imported, retailers and the purchasing public have come to believe that the articles so advertised are of domestic manufacture.

PAR. 9. There is a preference on the part of many retailers and members of the purchasing public for products, including sewing machines, which are manufactured in this country.

PAR. 10. In the course and conduct of their business respondents are in competition in commerce with other individuals and with corporations and others who rebuild and sell sewing machines and also those who sell new sewing machines, including those which have been imported from other countries. Among such competitors are those who do not make any false representations concerning their said machines; who use genuine factory parts in the rebuilding process and who inform the public that machines imported by them are of foreign manufacture.

PAR. 11. The aforesaid statements and representations made by respondents and their failure to disclose material facts, as above set out, have had and now have the tendency and capacity to deceive and mislead a substantial number of retailers and the purchasing public into the erroneous belief that such statements and representations were and are true; and to induce the purchase of substantial quantities of said machines by reason of said erroneous and mistaken belief. As a result thereof, substantial trade has been unfairly diverted to respondents from their competitors and as a consequence thereof substantial injury has been and is being done to competition in commerce.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and to competition in commerce and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 16, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of the complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing

examiner on the complaint, the answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel supporting the complaint, and said hearing examiner, on August 2, 1951, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel supporting the complaint filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to said appeal, no oral argument having been requested; and the Commission, having issued its order granting said appeal in part and denying it in part and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusions drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Irving Epstein, Rita Epstein and Sam Epstein, operate as a partnership under the name of Modern Sewing Machine Company, with their principal office and place of business located at 109 Watkins Street, Brooklyn, New York. They are now and have been for several years last past engaged, among other activities, in the purchase of used sewing machines and the rebuilding and reconditioning thereof, in the course of which certain worn parts are replaced with new parts, and in the advertising and sale of such rebuilt or reconditioned machines to dealers located in various States of the United States. Respondents have caused said machines, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and have maintained at all times mentioned herein a course of trade in said machines in commerce among and between the various States of the United States.

PAR. 2. Respondents in the course of their business have circulated among the trade circulars or pamphlets in which the following statement appeared:

"Guaranteed factory rebuilt sewing machines

Singer	Singer	White
66	127–4 & 27	Rotary
Round-Bobbin	Long Bobbin	Round Bobbin
Reconditioned Head	Recondition Head	Recondition Head"

PAR. 3. By and through the use of said statement respondents represented, directly or by implication, that the Singer and White

sewing machines referred to were rebuilt by or at the factories of the original manufacturers, and as to such rebuilt machines, that genuine factory parts were used in the process of rebuilding. In truth and in fact, none of the said rebuilt sewing machines sold by respondents were rebuilt by or at the factory of the original manufacturer, but such rebuilding was done by respondents themselves.

PAR. 4. Persons who buy machines represented as being factory rebuilt believe that such new parts as have been used to replace worn parts are genuine factory parts. In truth and in fact, the new parts used by respondents in rebuilding the said machines were for the most part made, not by the factories which manufactured the machines, but by others. There is a preference on the part of retailers and the public in buying rebuilt machines that any new parts added be genuine factory parts.

PAR. 5. Such representations made by respondents as above set forth had the tendency and capacity to mislead and deceive retailers, and have placed in their hands a basis for misleading and deceiving the purchasing public, into the erroneous and mistaken belief that the same were true, thereby inducing the purchase of said rebuilt sewing machines.

PAR. 6. The complaint alleges that the respondents' use of the word "guaranteed" in connection with their rebuilt machines without disclosing the terms and conditions of the guarantee is confusing and misleading.

From the record it appears that respondents' practice, when complaint was made by a purchaser, was either to furnish another machine or refund the purchase price. Such a manner of making good respondents' advertised guarantee renders it highly unlikely that any purchaser would be confused or misled to his damage.

The complaint does not present an issue with respect to the adequacy of the disclosure of foreign origin of the machines imported by respondents from Japan upon the machines themselves, and this question is in consequence not before the Commission for determination. Even if the complaint be taken as raising such an issue with respect to Spanish machines imported and sold by respondents, the record does not show that the marks on the machines when sold were inadequate.

The complaint alleges that respondents' failure to disclose the foreign origin of their imported machines in their advertising had the capacity and tendency to induce the belief that "such statements and representations were and are true." No allegation that respondents made any statement or representation in their advertising concerning the origin of their imported machines appears in the complaint, and consequently

no issue is presented with respect to non-disclosure of foreign origin in respondents' advertising.

CONCLUSION

The acts and practices of the respondents as found in Paragraphs Two, Three and Four hereof are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Irving Epstein, Rita Epstein and Sam Epstein, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rebuilt sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, (1) through use of the words "factory rebuilt" or any expression of like import, that such sewing machines are rebuilt by or at the factories of the original manufacturers thereof, and (2) through the use of the words "factory rebuilt" or otherwise, that new parts installed in such rebuilt machines were made by the original manufacturers of the machines, contrary to the fact.

It is further ordered, That with respect to the issues raised by the complaint other than those to which this order relates, the complaint be, and the same hereby is, dismissed.

It is further ordered, That the respondents 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

NYE N. SUSSMAN D. B. A. UTILITY BLANKET COMPANY AND NYE MERCANTILE COMPANY

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

Docket 6062. Complaint, Nov. 21, 1952—Decision, Feb. 24, 1953

Where an individual engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

(*a*) Misbranded certain blankets in that they were not stamped, tagged or labeled as required by said Act and the Rules and Regulations promulgated thereunder; and

(*b*) Misbranded blankets in that, labeled as "100% reprocessed wool", they in fact contained substantial quantities of fibers other than wool:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Nye N. Sussman, trading and doing business under the name of Utility Blanket Company as well as under the name of Nye Mercantile Company has violated the provisions of said acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Nye N. Sussman is an individual trading and doing business as Utility Blanket Company and as Nye Mercantile Company, with his principal place of business in both instances at 136 Greene Street, New York, New York.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, respondent has manu-

factured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products, to-wit; blankets, were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the meaning and intent of the said Act and the Rules and Regulations thereunder in that they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded wool products aforementioned were blankets labeled by the respondent as "100 percent reprocessed wool" when in truth and in fact such blankets were not 100 percent reprocessed wool but contained substantial quantities of fibers other than wool.

PAR. 5. The acts and practices of the respondent as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts in commerce within the intent and meaning 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 February 24, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on November 21, 1952, issued and subsequently served its complaint in this proceeding upon the respondent Nye N. Sussman, trading and doing business as Utility Blanket Company and as Nye Merchantile Company, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Acts. On December 18, 1952, respondent filed his answer, in which answer

he admitted all of the material allegations of fact set forth in said complaint and waived any hearing as to the facts and all intervening procedure, except the right to submit proposed findings and conclusions and the right to appeal from the initial decision. Thereafter, the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and answer thereto, no proposed findings and conclusions having been submitted by counsel, and all other intervening procedure having been waived, and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Nye N. Sussman is an individual trading and doing business as Utility Blanket Company and as Nye Mercantile Company, with his principal place of business in both instances at 136 Greene Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1950, respondent has manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products, to-wit; blankets, were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the said Wool Products Labeling Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the meaning and intent of the said Act and the Rules and Regulations thereunder in that they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded wool products aforementioned were blankets labeled by the respondent as "100% reprocessed wool" when in truth and in fact such blankets were not 100% reprocessed wool but contained substantial quantities of fibers other than wool.

CONCLUSION

The acts and practices of the respondent, as hereinabove found, were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constitute un-

fair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Nye N. Sussman, individually and trading under the names of Utility Blanket Company and Nye Mercantile Company or trading under any other name, and said respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, of blankets or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers therein;

2. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in clear and conspicuous manner:

(*a*) The percentage of the total fiber weight of such product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

(*b*) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(*c*) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivering for shipment thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (*a*) and (*b*) of section 3 of the Wool Products Labeling Act of 1939, and

Provided further, That nothing contained in this order shall be

construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of February 24, 1953].

Syllabus

IN THE MATTER OF

UNDERWOOD CORPORATION

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5797. Complaint, July 12, 1950—Decision, Mar. 2, 1953

Where a corporation, long engaged in the manufacture and interstate sale of fanfold billing machines and carbon rolls, which, in the five years ending in 1950, sold its said machines to the amount of about $1,000,000, sold carbon rolls for its machines to about $711,000, and sold carbon rolls for other machines to about $1,290,000; which had long been engaged in active and substantial competition with others similarly engaged, including those who made, sold, and distributed carbon rolls suitable for use in its own said machines; and which, as thus engaged, had long supplied to numerous purchasers and users of its said machines devices—known as "carbon roll bracket plates", which were of value in the operation of its said machines—of which it was the sole manufacturer—

(*a*) Entered into "loan agreements" with thousands of customers over a period of years, the earlier of which set forth that the equipment loaned, consisting of the aforesaid carbon roll bracket plates for which no rental was charged, was loaned for use exclusively on machines made or marketed by it (or its predecessor), and exclusively with its carbon rolls; and supplemented—at least on occasion—a later form of agreement, in which no mention was made of such condition, by representations of its salesmen, dealers, or agents, that users of the devices were obligated to buy carbon rolls exclusively from it;

Whereby a significant and substantial volume of business was affected, and competitors were foreclosed from a substantial market for carbon rolls suitable for use in its fanfold billing machines;

Tendency and capacity of which leases without rental may have been to substantially lessen competition in the sale of carbon rolls of the type suitable for use in its said machines, in commerce; and

(*b*) Represented, during the period involved, through some of its salesmen, dealers, or agents, to users of the devices, that they were obligated to buy carbon rolls exclusively from it;

With tendency and capacity to compel such users to purchase carbon rolls exclusively from it, to the exclusion of purchases from its competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce; and that said corporation, through use of the acts and practices above set forth, violated Sec. 3 of the Clayton Act.

Before *Mr. Webster Ballinger*, hearing examiner.
Mr. Floyd O. Collins for the Commission.
Strauss, Reich & Boyer, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Underwood Corporation, a corporation, is now and has been for more than twenty years last part, as set forth in Count I hereof, while operating under the name of the Underwood Elliott Fisher Company, and under its present name Underwood Corporation, violating Section 3 of an Act of Congress approved October 15, 1914, entitled: "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and is now, and has been for more than twenty years last past, violating Section 5 of the Federal Trade Commission Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint in two counts, stating its charge in that respect as follows:

COUNT I

PARAGRAPH 1. The Underwood Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office located at No. 1, Park Avenue, New York, N. Y. Respondent is a successor in business to the Underwood Elliott Fisher Company, a corporation, and has a selling agent, a New Jersey Corporation, known as Underwood Corporation.

PAR. 2. Respondent has been for more than twenty years last past, engaged in manufacturing and selling fanfold billing machines and carbon rolls. Respondent's income from sales of billing machines in the past five years has been approximately $1,000,000. Its income from sales of carbon rolls during the same period has been approximately $2,000,000. Respondent sells its billing machines and carbon rolls to customers located throughout the several States of the United States and in the District of Columbia. Respondent, when sales are made, ships said products or causes the same to be shipped from its place of business across State lines to the purchasers thereof who are located in the several States of the United States and in the District of Columbia. For more than twenty years, respondent has carried on a constant current of trade and commerce in said products as herein described.

PAR. 3. Respondent, in the course and conduct of its business in the manufacture, sale and distribution of said products, has been,

or would have been during all the time herein set out, in substantial competition with other firms and corporations except for the restrictive, oppressive, and unlawful contracts, agreements and understanding hereinafter described.

PAR. 4. Some time in the late 1920's, the exact date of which is unknown to the Commission, the respondent invented an attachment which it designated a carbon roll bracket. Said attachment, when used in connection with billing machines, effects a great saving in the amount of carbon paper used and increases to a substantial degree the efficiency of said billing machines. Since the invention, respondent has been the sole manufacturer of said attachments and has refused to sell them to owners of billing machines.

Immediately after respondent invented the carbon roll bracket, it adopted and thereafter carried on, the policy and practice of calling upon and inducing owners of billing machines to contract with respondent for the use of said attachment and succeeded in securing many hundreds of such agreements. Substantially all of said agreements are in writing and contain, among other things, the following conditions:

> It is agreed that the equipment so loaned is and shall remain the sole and exclusive property of Underwood Elliott Fisher Company and is to be used exclusively on equipment manufactured or marketed by Underwood Elliott Fisher Company and exclusively with carbon rolls supplied by said company.
>
> It is also agreed that the Underwood Elliott Fisher Company may terminate the loan of this equipment and retake the same at any time without notice or legal proceedings.

and,

> It is agreed that the equipment so loaned is and shall remain the sole and exclusive property of Underwood Corporation.
>
> It is also agreed that Underwood Corporation may terminate the loan of this equipment and retake the same at any time without notice or legal proceedings.

PAR. 5. The effect of said contracts and agreements may be to substantially lessen, injure, destroy and prevent competition in the sale and distribution of carbon rolls in commerce, among and between the various States of the United States and in the District of Columbia, and has resulted in respondent securing substantially all sales in carbon rolls. Said contracts and agreements have a dangerous tendency to completely eliminate competition and create in respondent and absolute monopoly in the sale and distribution of carbon rolls in commerce as is herein described.

PAR. 6. The aforesaid acts of respondent constitute a violation of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for

other purposes," approved October 15, 1914, and commonly known and referred to as the Clayton Act.

COUNT II

PARAGRAPH 1. As for Count II of this, its complaint, against respondent Underwood Corporation, a corporation, the Federal Trade Commission adopts and makes as a part hereof by reference as fully as though it were copied herein, all that part of Count I down to and including Paragraph Five thereof and further charges:

PAR. 2. The carbon roll brackets manufactured by respondent greatly increase the efficiency of the billing machines manufactured by respondents, and respondent is the only one from whom said brackets can be obtained. It is necessary for a purchaser or an owner of a billing machine to accept said brackets on respondent's terms or forego their use.

PAR. 3. Respondent, in the course and conduct of its business, in manufacturing and selling its billing machines and carbon rolls, and manufacturing and distributing its carbon roll brackets, has, during all the time herein alleged, employed and carried on, in addition to those hereinbefore alleged, the following unfair methods and practices:

(*a*) Respondent purposely does not offer to sell and at times refuses to sell or give title to said brackets to purchasers or owners of billing machines who desire to use said brackets so that respondent will be in a position to exact of such purchasers or owners a promise, either express or plainly implied, that carbon rolls necessary for the operation of said brackets are to be bought exclusively from respondent.

(*b*) When a purchaser or owner of a billing machine makes arrangements with respondent for the use of its brackets, respondent makes it understood by agreement, or by language and conduct produces in such user, the belief that the user is obligated to buy carbon rolls exclusively from respondent.

(*c*) When respondent discovers or receives information that a user of its brackets is using carbon rolls other than those supplied by respondent, it threatens to retake its brackets, or by the use of such words as "You know we can take the bracket back at any time," or other similar language, produces in the user a fear of losing the use of the brackets and causes the user to refrain from purchasing carbon rolls from anyone other than respondent.

PAR. 4. The acts and practices of respondent as herein alleged are all to the injury of the public and respondent's competitors who sell carbon rolls and tend to compel users of respondent's brackets to pur-

chase carbon rolls exclusively from respondent to the exclusion of purchases from respondent's competitors, have a tendency and effect to, and in fact do, hinder, lessen, and restrain competition in the sale and distribution of carbon rolls and 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 AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of an Act of Congress approved on October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), and to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 12, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Underwood Corporation, a corporation, charging it with having made agreements and contracts pursuant to which the other parties thereto were furnished by respondent with devices known as carbon roll bracket plates for use without direct charge, but only upon machines manufactured or marketed by respondent and only with carbon rolls supplied by respondent, in violation of the provisions of section 3 of said Clayton Act, and with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of section 5 of the Federal Trade Commission Act. After the issuance of said complaint and the filing of respondent's answer thereto, a hearing was held before a hearing examiner of the Commission theretofore duly designated by it, at which a stipulation, signed by counsel in support of and in opposition to the complaint and comprising all the evidence to be offered in support of and in opposition to the complaint, was received in evidence and duly recorded and filed in the office of the Commission. Subsequently, it was further stipulated by said counsel that the stipulation referred to above may be taken as the facts in this proceeding upon such issues as are not determined by the pleadings, and that the said stipulation and pleadings may serve as a basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding. Thereafter, the hearing examiner having denied respondent's motion to dismiss the complaint without prejudice, the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, the answer thereto, and the said stipulations, and said hearing examiner, on October 19, 1950, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, both counsel supporting the complaint and for respondent filed with

the Commission appeals from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to the said appeals and oral arguments of counsel; and the Commission, having entered its order granting the appeal of counsel supporting the complaint and granting in part and denying in part the appeal of respondent, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Underwood Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office located at No. 1 Park Avenue, New York, New York. Respondent is a successor in business to the Underwood Elliott Fisher Company, a corporation, and has a selling agent, a New Jersey corporation, known as Underwood Corporation.

PAR. 2. Respondent has been for more than twenty years last past engaged in manufacturing and selling fanfold billing machines and carbon rolls. Respondent's sales of billing machines in a five-year period ending in 1950 amounted to approximately one million dollars, its sales of carbon rolls for fanfold billing machines to approximately seven hundred and eleven thousand dollars, and its sales of carbon rolls for other machines to approximately one million two hundred and ninety thousand dollars. Respondent sells its billing machines and carbon rolls to customers located throughout the several States of the United States and in the District of Columbia. Respondent, when sales are made, ships said products across State lines to the purchasers thereof who are located in the several States of the United States and in the District of Columbia. For more than twenty years respondent has carried on a constant current of trade and commerce in said products as herein described.

PAR. 3. In the course and conduct of its business respondent is, and for many years has been, in active and substantial competition with other firms and corporations in the manufacture, sale and distribution of fanfold billing machines and carbon rolls, including carbon rolls suitable for use in respondent's fanfold billing machines.

PAR. 4. In the course and conduct of its business the respondent, for many years, supplied to numerous purchasers and users of its fanfold billing machines devices known as "carbon roll bracket plates." Respondent was the sole manufacturer of these devices, which were of

value in the operation of respondent's fanfold billing machines. Prior to about September 20, 1949, the devices were not sold by respondent, but were supplied as aforesaid, pursuant to one of two forms of "loan agreement" with those by whom they were to be used.

The original form of agreement contained, inter alia, the following provisions:

> It is agreed that the equipment so loaned is and shall remain the sole and exclusive property of Underwood Elliott Fisher Company and is to be used exclusively on equipment manufactured or marketed by Underwood Elliott Fisher Company and exclusively with carbon rolls supplied by said company.
>
> It is also understood that the Underwood Elliott Fisher Company may terminate the loan of this equipment and retake the same at any time without notice or legal proceedings.

A later form of agreement contained, inter alia, the following:

> It is agreed that the equipment so loaned is and shall remain the sole and exclusive property of Underwood Corporation.
>
> It is also agreed that Underwood Corporation may terminate the loan of this equipment and retake the same at any time without notice or legal proceedings.

Thereafter both forms of agreement were used by respondent until about September 20, 1949, when their use was discontinued, and the devices sold to anyone who wanted them.

PAR. 5. The agreements pursuant to which the devices were supplied to users of respondent's fanfold billing machines, were referred to as "loan agreements"; the agreements themselves refer to "the equipment so loaned"; and the users were not required to pay any license fees or rentals for their use. Nevertheless, from the specific language of the first of the forms mentioned in the preceding paragraph, it is apparent that the "loan" was made in consideration of the user's agreement not to use, in connection with the device, any carbon rolls except rolls supplied by respondent. The second form was supplemented, at least on occasion, by representations of respondent's salesmen, dealers or agents that users of the devices were obligated to buy carbon rolls exclusively from respondent. In each case the actual result was a lease without rental of the device by respondent to the user.

PAR. 6. It was stipulated that respondent's vice-president in charge of domestic sales, if called as a witness, would testify that the total number of "loan agreements" executed by customers on both of the forms of agreement mentioned above was less than 4,000, some of which covered more than one bracket plate.

It was also stipulated that on January 22, 1943, the manager of respondent's New York Branch Office Supply Department stated in

a letter to a customer that "20,000 of the largest institutions in the country have signed this Loan Agreement * * *."

The record shows that the original form was in use at least as early as October 1932. It also shows that as of January 19, 1950, respondent had some 360 of the original form agreements, and presumably a number of new form agreements which had been executed by customers in New York City. As of January 11, 1950, respondent had 31 customers agreements on the original form and some 175 on the new form in Philadelphia.

The Commission is of the opinion that, in view of the foregoing and of respondent's volume of business, the volume of business affected by respondent's use of these agreements was significant and substantial and that their use foreclosed competitors from a substantial market for carbon rolls suitable for use in respondent's fanfold billing machines.

PAR. 7. The tendency and capacity of said leases may have been to substantially lessen competition in the sale of carbon rolls of the type suitable for use in respondent's fanfold billing machines in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. During the period when the said "loan agreements" were in use by respondent, some of respondent's salesmen, dealers or agents represented to users of the devices that they were obligated to buy carbon rolls exclusively from respondent.

The tendency and capacity of such representations was to compel such users to purchase carbon rolls exclusively from respondent to the exclusion of purchases from respondent's competitors.

CONCLUSION

The acts and practices of respondent, as hereinabove found, were all to the prejudice and injury of the public and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act, and through the use of the acts and practices, as hereinabove found in Paragraphs 4, 5, 6, and 7, respondent has violated section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

ORDER

It is ordered, That the respondent, Underwood Corporation, a corporation, and its officers, agents, representatives and employees, di-

rectly or through any corporate or other device, in connection with the leasing, selling or contracting for the sale of respondent's carbon roll bracket plates, or any similar devices, in commerce, as "commerce" is defined in the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), do forthwith cease and desist from:

1. Leasing, selling or making any contract for the sale of respondent's carbon roll bracket plates, or any similar devices, on the condition, agreement or understanding that the lessees or purchasers thereof shall not use such devices with carbon rolls other than those acquired from respondent.

It is further ordered, That the respondent, Underwood Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, leasing or distribution of respondent's carbon roll bracket plates, or any similar device, or carbon rolls, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

2. Leasing, selling or making any contract for the sale of respondent's carbon roll bracket plates, or any similar devices, on the condition, agreement or understanding that the lessees or purchasers thereof shall not use such devices with carbon rolls other than those acquired from respondent.

3. Representing, directly or by implication, that the users of said carbon roll bracket plates, or similar devices, are obligated to buy carbon rolls exclusively from respondent.

It is further ordered, That respondent, Underwood Corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Commissioner Carretta not participating for the reason that oral argument was heard on December 20, 1950, prior to his becoming a member of the Commission.

Syllabus

IN THE MATTER OF

BROWNER & LEFKOWITZ, INCORPORATED ET AL.

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

Docket 6054. Complaint, Oct. 17, 1952—Decision, Mar. 5, 1953

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

(*a*) Misbranded certain ladies' coats in that they were not stamped, tagged or labeled as required by said Act and the Rules and Regulations promulgated thereunder;

(*b*) Misbranded certain of said coats in that they were labeled or tagged as containing "Wool Interlining", notwithstanding the fact that said interlinings were not wool as defined by said Act but were composed of reused wool together with substantial quantities of miscellaneous fibers; and

(*c*) Further misbranded such coats in that the character and amount of the constituent fibers contained in the interlinings thereof were not separately set forth on the stamps, tags, and labels as required by the said Act and Rule 24 of said Rules and Regulations:

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

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. George E. Steinmetz for the Commission.
Mr. Bernard L. Baskin, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Browner & Lefkowitz, Incorporated, a corporation, and Benjamin Browner and Herman Lefkowitz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 Browner & Lefkowitz, Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of New York, and respondents Benjamin Browner and Herman Lefkowitz are the president and the secretary-treasurer, respectively, of the said respondent corporation. Respondents Benjamin Browner and Herman Lefkowitz direct and control the policies, acts and practices of the corporate respondent, and the offices and principal place of business of all respondents are located at 252 West 37th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged, or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of said Wool Products Labeling Act and the Rules and Regulations made thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among the misbanded wool products aforementioned were ladies' coats labeled or tagged by the respondent corporation as containing "Wool Interlining," when in truth and in fact the said interlinings were not wool as defined by the Wool Products Labeling Act of 1939, but contained reused wool together with substantial quantities of miscellaneous fibers other than wool.

Other wool products of the respondent corporation, namely, ladies' coats, were misbranded in that the character and amount of the constituent fibers contained in the interlinings thereof were not separately set forth on the stamps, tag or label as required by the said Act and Rule 24 of the Rules and Regulations promulgated under said Act.

PAR. 5. The acts and practices of the respondents as herein alleged constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and all of the aforesaid acts and practices as herein alleged are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of 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 March 5, 1953, the initial decision in the instant matter of hearing examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on October 17, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, in connection with the sale of women's wearing apparel. After the filing of respondents' answer in this proceeding a hearing was held on December 17, 1952, before the above-named hearing examiner of the Commission, theretofore duly designated by it, at which a stipulation was entered into by and between Bernard L. Baskin, attorney for respondents, and George E. Steinmetz, attorney in support of the complaint, subject to the approval of the hearing examiner, whereby it was stipulated and agreed that a statement of facts agreed to on the record may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto; that the said hearing examiner may proceed upon said statement of facts to make his initial decision stating his findings as to the facts, including inferences which he may draw from the said stipulation of facts and his conclusion based thereon and enter his order disposing of the proceeding as to said respondents without the filing of proposed findings and conclusions or the presentation of oral argument. Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission, said stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint.

Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer, and stipulation, said stipulation having been approved by the hearing examiner who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Browner & Lefkowitz, Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of New York, and respondents Benjamin Browner and Herman Lefkowitz are the president and the secretary-treasurer, respectively, of the said respondent corporation. Respondents Benjamin Browner and Herman Lefkowitz direct and control the policies, acts and practices of the corporate respondents, and the offices and principal place of business of all respondents are located at 252 West 37th Street, New York, New York,

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged, or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of said Wool Products Labeling Act and the Rules and Regulations made thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among the misbranded wool products aforementioned were ladies' coats labeled or tagged by the respondent corporation as containing "Wool Interlining," when in truth and in fact the said interlinings were not wool as defined by the Wool Products Labeling Act of 1939, but contained reused wool together with substantial quantities of miscellaneous fibers other than wool.

Other wool products of the respondent corporation, namely, ladies' coats, were misbranded in that the character and amount of the constituent fibers contained in the interlinings thereof were not separately set forth on the stamps, tag or label as required by the said Act and Rule 24 of the Rules and Regulations promulgated under said Act.

CONCLUSION

The acts and practices of respondents as found in Paragraphs Three and Four hereof are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and are to the prejudice and injury of the public and constitute unfair and

deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Browner & Lefkowitz, Incorporated, a corporation, and its officers, and respondents, Benjamin Browner and Herman Lefkowitz, individually and as officers of said corporation, and respondents' respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' coats or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner;

(*a*) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(*b*) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

(*c*) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Failing to separately set forth on the required stamp, tag, label or other means of identification the character and amount of the constituent fibers appearing in the interlinings of such wool products,

as provided in Rule 24 of the Rules and Regulations promulgated under the said Act.

Provided: That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939, and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act of the Rules and Regulations promulgated thereunder.

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 March 5, 1953].

IN THE MATTER OF

FEDERAL COACHING INSTITUTE, INC. ET AL.

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

Docket 6056. Complaint, Nov. 3, 1952—Decision, Mar. 5, 1953

The term "registrar" implies the functions ordinarily incumbent upon officers of educational institutions employed and designated as "registrars."

Where a corporation and its president and general manager, engaged in the interstate sale and distribution of a correspondence course to prepare students for examinations for United States Civil Service positions; in advertising their said course through printed matter, including postal cards, distributed to prospective students—

(*a*) Falsely represented and implied through the use of their corporate name, Federal Coaching Institute, Inc., that their business was a branch of or connected with the United States Government or the United States Civil Service Commission; and

(*b*) Represented falsely that many positions in the United States Civil Service, including those specifically listed in their "Partial List of Civil Service Positions", were vacant, and were available to all applicants: that many thousands of permanent appointments were being made monthly; and that men and women were needed to fill said vacancies and were wanted by the U. S. Government to prepare for Civil Service positions, which might be obtained through it;

(*c*) Represented that examinations would be held for the various aforesaid positions in the vicinity of the residence of the applicant; that instructions were being given for preparatory training for civil service if the applicant could qualify; that starting salaries were as high as $4479 a year and that experience was usually unnecessary; and that the specifications as to age, education, and starting salaries set forth in said "Partial List" were in accordance with the requirements of the Civil Service Commission;

The facts being that starting salaries were, in many instances, substantially less than stated; there were, among positions listed, a substantial number that do require experience; their information with respect to requirements, starting salaries, etc., was inaccurate and misleading in that many positions were restricted to veterans or required special qualifications or experience; and in the case of a number of the listed positions, no examination had been announced for many years;

(*d*) Represented as aforesaid that checking their said list would enable prospective students to determine for what positions they were qualified, and that their "field registrars" were qualified and competent to advise prospects as to their qualifications for positions in the Civil Service;

The facts being that their salesmen or so-called "registrars" did not exercise the functions implied by the term, were employed on a commission basis to sell their courses, and were not qualified to so advise prospective students;

(*e*) Falsely implied through stating on said postal card: "Preparatory Training for Civil Service" "INSTRUCTIONS NOW BEING GIVEN IF YOU QUALIFY," "Dept. of Education," "Examinations will be held in your vicinity", together with their aforesaid corporate name, that they were authorized or designated by the Civil Service Commission to qualify and prepare applicants for the taking of Civil Service examinations; and

Where said corporation and individual, in carrying on their said business through sales agents or representatives whom they designated as "registrars" or "field registrars"—

(*f*) Falsely represented through oral statements and representations made by their said agents to prospects that said corporation was connected with the United States Government or some agency thereof, including the Civil Service Commission; that said agents were representatives or employees of said Commission or had some official connection therewith; that completion of said course made enrollees eligible for appointment to, or assured them or guaranteed them of, United States Civil Service positions, and that to obtain such positions enrollees must take their course of study; and that examinations given by them were examinations for specific position in the Civil Service;

(*g*) Represented falsely as aforesaid that, unless a prospect enrolled for a course at the time the agent called, the opportunity would be lost forever; that enrollees would obtain such Civil Service positions immediately or within a few days after successfully completing said courses; and that they might obtain employment at or near their homes—

(*h*) Represented falsely as aforesaid that enrollees who did not have the experience, mental or educational qualifications or veterans' status required in many positions for which they offered training, might nevertheless find employment in such positions;

The facts being that respondents had no authority or power to waive such requirements;

(*i*) Falsely represented that enrollment contracts were cancelled if no deposit had been made on the tuition fee or if the enrollees desired to discontinue their course or were dissatisfied or had changed their minds, and that the Chamber of Commerce and the Better Business Bureau of St. Louis recommended their business;

(*j*) Falsely represented in connection with their use of a so-called free scholarship offer that "hundreds have received free scholarships"; that "over $25,000 have been paid to students under said offer"; and that said "free scholarship checks are mailed each year just before Christmas, and are very acceptable at that season of the year";

The facts being they had no free scholarship offer; and

(*k*) Represented and implied through collection letters sent out in the name of "Individual's Credit Bureau" that said Bureau was an independent organization engaged in collecting accounts generally, notwithstanding the fact it was operated by them solely for the purpose of collecting their own delinquent accounts:

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

Before *Mr. John Lewis*, hearing examiner.
Mr. William L. Pencke for the Commission.

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 Federal Coaching Institute, Inc., a corporation, and Robert P. Narup, individually and as an officer of Federal Coaching Institute, Inc., 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 Federal Coaching Institute, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business at Grant State Bank Building, 4914 Gravois Avenue, St. Louis, Missouri.

Respondent Robert P. Narup is an individual and president and general manager of said corporation, and as such formulates the policies and controls and manages all of the affairs of said corporation. His principal office and place of business is the same as that of the corporate respondent.

PAR. 2. For more than one year last past, respondents have been and are now engaged in the sale and distribution of a course of study and instruction intended for preparing students thereof for examination for certain civil service positions under the United States Government, which said course is pursued by correspondence through the medium of the United States mails. Respondents, in the course and conduct of said business, cause said course of study and instruction to be transported from their place of business in the State of Missouri to, into and through States of the United States other than Missouri to the purchasers thereof located in such other States. There has been at all times mentioned herein a course of trade in said course of instruction so sold and distributed by respondents in commerce between and among the various States of the United States, and said course of trade has been and is substantial.

PAR. 3. In connection with the sale of said course of study and instruction respondents have made and are making use of printed advertising matter distributed to prospective students in States other than the State of Missouri, in and by which numerous representations have been and are made in regard to said course of study and matters and things connected therewith. Typical of such representations,

made on postal cards distributed to "rural, Star route or Post Office Box holders," are the following:

I AM VERY MUCH INTERESTED IN CIVIL SERVICE
Please send Full Information and List of Positions
CAN YOU QUALIFY FOR A
U. S. GOVERNMENT JOB!
BIG STARTING SALARIES
AS HIGH AS $4479 YEARLY TO START

Preparatory Training for Civil Service — Men Women Ages 17 to 50

Examinations will be held in your vicinity
Many thousands of permanent appointments are being made each month throughout the country
EXPERIENCE USUALLY UNNECESSARY
INSTRUCTIONS NOW BEING GIVEN IF YOU QUALIFY
You can prepare immediately in your spare time at home for a big government position

Dept. of Education — Federal Coaching Institute.

Respondents also disseminate to prospective purchasers of their said course of study a "Partial List of Civil Service Positions" containing statements as to age, education and starting salaries with respect to positions in the postal law enforcement, clerical, accounting, custodian and other services, and following direction:

Check this list slowly and carefully. Note the age and educational requirements. In this way you can select those positions you think you are fitted for. Our field Registrar will let you know whether or not you can qualify. . . . The Registrar may determine you are best fitted for some position not listed. Should that be the case he will let you know.

Typical of the representations made in said "Partial List of Civil Service Positions" are the following:

Positions	*Age*	*Starting salaries up to*
Post Office Clerk	18–48	$3,850
Railway Postal Clerk	18–35	4,050
City Mail Carrier	18–48	3,850
Inspector of Customs	21–44	3,600
Customs Guard	21–49	3,351
Storekeeper-Gauger	23–60	4,100
Messenger	18–25	2,469
Business Machine Operator	18–53	2,730
Stenographer-Typist	18–53	3,727
Accounting and Auditing Assistant	18–53	3,727
Junior Professional Assistant	18–35	3,800

Positions	*Age*	*Starting salaries up to*
Student Nurse	18–30	1,800
Hospital Attendant	18–45	2,172
Jr. Observer in Meteorology	18–35	3,250
Customs Patrol Inspector	21–36	3,601
Border Patrolman	21–35	4,480
Junior Custodial Officer	21–45	3,024
Verifier, Opener, and Packer	21–44	3,210
Federal Guard	18–50	2,430
Police Officer	21–33	3,780
Forest and Field Clerk	21–50	2,730

PAR. 4. By means of the foregoing representations and others similar thereto but not herein specifically set out, and by the use of the corporate name Federal Coaching Institute Inc., respondents represent and imply that their said business is a branch of, or connected with, the United States Government or the U. S. Civil Service Commission; that many positions in the United States Civil Service are vacant including those specifically listed in said Partial List of Civil Service Positions, and are available to all applicants; that many thousands of permanent appointments are made monthly; that men and women are needed to fill said vacancies and are wanted by the United States government to prepare for civil service positions, and that said positions may be obtained through respondent, Federal Coaching Institute, Inc.; that examinations will be held for such positions in the vicinity of the residence of the applicant; that instructions are now being given for preparatory training for civil service if the applicant can qualify; that starting salaries are as high as $4479 a year, and that experience is usually unnecessary; that the specifications as to age, education and starting salaries set forth in said Partial List of Civil Service Positions are in accordance with the requirements of the U. S. Civil Service Commission pertaining thereto; that checking said list will enable prospective students to determine for what positions they are qualified, and that respondents' so-called field registrars are qualified and competent to advise said prospects as to their qualifications for positions in the civil service. The statements on said postal cards "Preparatory training for Civil Service," "Instructions now being given if you qualify," "Dept. of Education," "Examinations will be held in your vicinity" together with the name "Federal Coaching Institute" imply that respondents are authorized or designated by the U. S. Civil Service to qualify and prepare applicants for the taking of civil service examinations.

PAR. 5. In the course and conduct of said business as aforesaid, respondents employ sales agents or representatives, designated reg-

istrars or field registrars, who call on prospective purchasers; and by means of oral statements and representations made by said sales agents, respondents represent and imply to prospective students and purchasers of their said courses of study:

1. That Federal Coaching Institute, Inc., is connected with the U. S. Civil Service or the United States Government, or some agency thereof;

2. That respondents' said sales agents are representative or employees of the U. S. Civil Service or have some official connection therewith;

3. That the completion of said course of study makes enrollees eligible for appointment to, or assures them of, or guarantees U. S. Civil Service positions;

4. That enrollees must take respondents' course of study in order to obtain Civil Service positions;

5. That unless a prospect enrolls for said course at the time respondents' sales agent calls, the opportunity for enrolling would be lost forever.

6. That the examinations given by respondents are examinations for specific positions in the Civil Service;

7. That enrollees will receive Civil Service positions immediately or within a few days after successfully completing said courses;

8. That enrollees may obtain employment at or near their homes, or within a short distance therefrom;

9. That enrollees who do not have the experience, physical, mental or educational qualifications, or veterans' status required in many positions for which respondents offer training, may nevertheless find employment in such positions;

10. That enrollment contracts are cancelled if no payment has been made as a deposit on the tuition fee, or if enrollees decide to discontinue said course or are dissatisfied or have changed their minds;

11. That the Chamber of Commerce and the Better Business Bureau of St. Louis recommend respondents' business.

PAR. 6. All of said statements, representations, implications and practices are grossly exaggerated, false and misleading. In truth and in fact, while there are opportunities for employment in government service, the statement that many thousands of permanent appointments are made every month is grossly exaggerted, the rate of appointments since December 1, 1950, being very small and not expected to increase. The U. S. Civil Service Commission does not advertise for men and women to fill government positions or that vacancies exist in government service. Respondents cannot secure positions for their students in the U. S. Civil Service. The starting salaries for positions

listed by respondents are, in many instances, substantially less than stated. While there are many positions in which experience is not required, there are among the positions listed by respondents a substantial number that do require experience as one of the qualifications.

The information with respect to Civil Service positions and their requirements as to age, education and starting salaries contained in said "Partial List of Civil Service Positions" is wholly inaccurate, insufficient and misleading. Many of said positions are not open to applicants generally but are restricted to persons with veterans' status or require special physical or educational qualifications or practical experience; and no examinations have been announced for many years in a number of positions listed by respondents.

Neither respondents nor any of their officers, agents or salesmen are connected in any manner whatsoever with the U. S. Civil Service, the United States Government, nor any agency thereof. Students having completed respondents' course of study are not eligible for any position in the Civil Service by reason of that fact, and any assurance, promise or guarantee to that effect made by respondents' salesmen is false. Respondents accept enrollments at any time and the opportunity to enroll is not lost if a prospect fails to enroll at the time of the salesman's call. There is no requirement by the Civil Service Commission for applicants to take respondents' course of instruction in order to qualify for civil service examinations or positions; examinations given by respondents to their students as part of said course of study are not examinations for specific positions in civil service and do not obviate the necessity of taking civil service examinations; enrollees who have completed respondents' course, or who have taken and passed a civil service examination, will not in most instances be placed immediately, or in a short time, in a Civil Service position, the time of actual employment dependng on a number of factors, such as availability of eligible persons in the several Civil Service districts, the rating of eligibles, veterans' preferences, and other conditions over which neither respondents nor applicants have any control; and respondents can neither determine the time and place of examination nor the place of employment. Applicants for Civil Service positions must comply with all regulations and requirements pertaining to qualifications for said positions, and respondents have no authority or power to waive such requirements and cannot place applicants in positions regardless of whether or not said applicants possess the necessary qualifications.

Respondents do not cancel contracts entered into by purchasers of said course, regardless of the reasons given by said purchasers.

Neither the Better Business Bureau of St. Louis nor the Chamber of Commerce of St. Louis has ever endorsed or recommended respondents to any person or to the purchasing public generally.

The term registrar implies the functions ordinarily incumbent upon officers of educational institutions employed and designated as registrars. Respondents' salesmen do not exercise that function and the use of said terms with respect to them is misleading. Said salesmen are employed on a commission basis to sell said courses of instruction and are not qualified by training or experience to advise prospective students as to their qualifications for civil service positions or availability of employement in the U. S. Civil Service.

PAR. 7. Respondents, in collecting or attempting to collect delinquent accounts arising in connection with their business, send out collection letters in the name of Individual's Credit Bureau, thereby representing and implying that said Individual's Credit Bureau is an independent organization engaged in the business of collecting accounts generally. In truth and in fact, said so-called Bureau is not an independent collection agency but is operated by respondents solely for the purpose of collecting their own delinquent accounts.

PAR. 8. The use of the words "Federal" and "Institute" in the corporate name of Federal Coaching Institute, Inc., under which respondents' business is conducted, is misleading in that they imply some official government connection, which is contrary to the fact and the word "Institute" further implies the operation of a resident institution of learning with a staff of competent, experienced and qualified educators offering instruction in philosophy, the arts, sciences and other subjects of higher learning.

In truth and in fact, respondents do not operate an "Institute" in the accepted sense of that term. Respondents offer no training or instruction in philosophy, the arts, sciences, or other learned subjects. No basic, thorough or competent instruction is given in residence in any subject of learning by competent and qualified educators. The subject matters in which respondents' students are prepared are not of the extent properly to be included in the term of higher education. Respondents' course of study is given exclusively by correspondence and consists of a series of lessons on a general information type of Civil Service examination.

PAR. 9. Respondents, in connection with the sale of said course of study, used a so-called free scholarship offer, which provided that in case a student had studied respondents' lessons diligently, had paid in full for the course and was among the 25 highest on the United States Government Civil Service examination, the full amount paid for the course would be returned to him. Said offer included the representation that "hundreds have received free scholarships" and that "over

$25,000 have been paid to students under said offer"; that said "free scholarship checks are mailed each year just before Christmas, and are very acceptable at that season of the year." In truth and in fact, respondents have no free scholarship offer, and the representation that hundreds of their students received scholarships and that the sum of $25,000, or any other substantial amount, had been paid out to students is false.

PAR. 10. The use by respondents of the statements and representations aforesaid has had, and now has, the tendency and capacity to and does confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and to induce them to purchase respondents' course of study and instruction in said commerce on account thereof.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 March 5, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 3, 1952, issued and subsequently served its complaint in this proceeding upon respondents Federal Coaching Institute. Inc., a corporation, and Robert P. Narup, individually and as an officer of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. The "Notice" portion of said complaint provided that the failure of said respondents to file answer within the time therein provided and the failure to appear at the time and place fixed for hearing would be deemed to authorize the Commission, and the above-named hearing examiner, without further notice, to find the facts to be as alleged in the complaint and to issue an order to cease and desist in the form set forth in said notice. The said respondents failed to file an answer to the complaint herein and, subsequent to the expiration of the time for filing said answer, advised the above-named hearing examiner that they did not intend to appear at the time and place of hearing. Pursuant to notice duly given, a

hearing was thereafter held before the above-named hearing examiner, theretofore duly designated by the Commission. Upon the failure of said respondents to appear and show cause at said hearing, the attorney in support of the complaint moved that the hearing be closed and that hearing examiner proceed, in due course, to find the facts to be as alleged in the complaint and issue an order to cease and desist in the form set forth in the "Notice" portion of the complaint. Said motion was granted and the hearing was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by the said hearing examiner upon the complaint and said motion of the attorney in support of the complaint; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and, pursuant to Rules V and VIII of the Rules of Practice of the Commission, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Federal Coaching Institute, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business at Grant State Bank Building, 4914 Gravois Avenue, St. Louis, Missouri.

Respondent Robert P. Narup is an individual and is the president and general manager of said corporation, and as such formulates the policies and controls and manages all of the affairs of said corporation. His principal office and place of business is the same as that of the corporate respondent.

PAR. 2. For more than one year last past, respondents have been and are now engaged in the sale and distribution of a course of study and instruction intended for preparing students thereof for examination for certain civil service positions under the United States Government, which said course is pursued by correspondence through the medium of the United States mails. Respondents, in the course and conduct of said business, cause said course of study and instruction to be transported from their place of business in the State of Missouri to, into and through States of the United States other than Missouri to the purchasers thereof located in such other States. There has been at all times mentioned herein a course of trade in said course of instruction so sold and distributed by respondents in commerce between and among the various States of the United States, and said course of trade has been and is substantial.

PAR. 3. In connection with the sale of said course of study and instruction respondents have made and are making use of printed advertising matter distributed to prospective students in States other

than the State of Missouri, in and by which numerous representations have been and are made in regard to said course of study and matters and things connected therewith. Typical of such representations, made on postal cards distributed to "rural, Star route or Post Office Box holders," are the following:

I AM VERY MUCH INTERESTED IN CIVIL SERVICE
Please send Full Information and List of Positions
CAN YOU QUALIFY FOR A
U. S. GOVERNMENT JOB!
BIG STARTING SALARIES
AS HIGH AS $4479 YEARLY TO START

Preparatory Training for Civil Service

Men Women
Ages 17 to 50

Examinations will be held in your vicinity
Many thousands of permanent appointments are being made each month throughout the country

EXPERIENCE USUALLY UNNECESSARY
INSTRUCTIONS NOW BEING GIVEN IF YOU QUALIFY

You can prepare immediately in your spare time at home for a big government position

Dept. of Education Federal Coaching Institute

Respondents also disseminate to prospective purchasers of their said courst of study a "Partial List of Civil Service Positions" containing statements as to age, education and starting salaries with respect to positions in the postal, law enforcement, clerical, accounting, custodial and other services, and following direction:

Check this list slowly and carefully. Note the age and educational requirements. In this way you can select those positions you think you are fitted for. Our field Registrar will let you know whether or not you can qualify. . . . The Registrar may determine you are best fitted for some position not listed. Should that be the case he will let you know.

Typical of the representations made in said "Partial List of Civil Service Positions" are the following:

Positions	*Age*	*Starting Salaries up to*
Post Office Clerk	18–48	$3,850
Railway Postal Clerk	18–35	4,050
City Mail Carrier	18–48	3,850
Inspector of Customs	21–44	3,600
Customs Guard	21–49	3,351
Storekeeper-Gauger	23–60	4,100
Messenger	18–25	2,469
Business Machine Operator	18–53	2,730

Positions	*Age*	*Starting Salaries up to*
Stenographer-Typist	18–53	3,727
Accounting and Auditing Assistant	18–53	3,727
Junior Professional Assistant	18–35	3,800
Student Nurse	18–30	1,800
Hospital Attendant	18–45	2,172
Jr. Observer in Meteorology	18–35	3,250
Customs Patrol Inspector	21–36	3,601
Border Patrolman	21–35	4,480
Junior Custodial Officer	21–45	3,024
Verifier, Opener and Packer	21–44	3,210
Federal Guard	18–50	2,430
Police Officer	21–33	3,780
Forest and Field Clerk	21–50	2,730

PAR. 4. By means of the foregoing representations and others similar thereto but not herein specifically set out, and by the use of the corporate name Federal Coaching Institute, Inc., respondents represent and imply that their said business is a branch of, or connected with, the United States Government or the U. S. Civil Service Commission; that many positions in the United States Civil Service are vacant including those specifically listed in said Partial List of Civil Service Positions, and are available to all applicants; that many thousands of permanent appointments are made monthly; that men and women are needed to fill said vacancies and are wanted by the United States Government to prepare for civil service positions, and that said positions may be obtained through respondent, Federal Coaching Institute, Inc.; that examinations will be held for such positions in the vicinity of the residence of the applicant; that instructions are now being given for preparatory training for civil service if the applicant can qualify; that starting salaries are as high as $4,479 a year, and that experience is usually unnecessary; that the specifications as to age, education and starting salaries set forth in said Partial List of Civil Service Positions are in accordance with the requirements of the U. S. Civil Service Commission pertaining thereto; that checking said list will enable prospective students to determine for what positions they are qualified, and that respondents' so-called field registrars are qualified and competent to advise said prospects as to their qualifications for positions in the civil service. The statements on said postal cards "Preparatory training for Civil Service," "Instructions now being given if you qualify," "Dept. of Education," "Examinations will be held in your vicinity" together with the name "Federal Coaching Institute" imply that respondents

are authorized or designated by the U. S. Civil Service to qualify and prepare applicants for the taking of civil service examinations.

PAR. 5. In the course and conduct of said business as aforesaid, respondents employ sales agents or representatives, designated registrars or field registrars, who call on prospective purchasers; and by means of oral statements and representations made by said sales agents, respondents represent and imply to prospective students and purchasers of their said courses of study:

1. That Federal Coaching Institute, Inc., is connected with the U. S. Civil Service or the United States Government, or some agency thereof;

2. That respondents' said sales agents are representatives or employees of the U. S. Civil Service or have some official connection therewith;

3. That the completion of said course of study makes enrollees eligible for appointment to, or assures them of, or guarantees U. S. Civil Service positions;

4. That enrollees must take respondents' course of study in order to obtain Civil Service positions;

5. That unless a prospect enrolls for said course at the time respondents' sales agent calls, the opportunity for enrolling would be lost forever;

6. That the examinations given by respondents are examinations for specific positions in the Civil Service;

7. That enrollees will receive Civil Service positions immediately or within a few days after successfully completing said courses;

8. That enrollees may obtain employment at or near their homes, or within a short distance therefrom;

9. That enrollees who do not have the experience, physical, mental or educational qualifications, or veterans' status required in many positions for which respondents offer training, may nevertheless find employment in such positions;

10. That enrollment contracts are cancelled if no payment has been made as a deposit on the tuition fee, or if enrollees decide to discontinue said course or are dissatisfied or have changed their minds;

11. That the Chamber of Commerce and the Better Business Bureau of St. Louis recommend respondents' business.

PAR. 6. All of said statements, representations, implications and practices are grossly exaggerated, false and misleading. In truth and in fact, while there are opportunities for employment in Government service, the statement that many thousands of permanent appointments are made every month is grossly exaggerated, the rate of appointments since December 1, 1950, being very small and not expected to increase. The U. S. Civil Service Commission does not

advertise for men and women to fill Government positions or that vacancies exist in Government service. Respondents cannot secure positions for their students in the U. S. Civil Service. The starting salaries for positions listed by respondents are, in many instances, substantially less than stated. While there are many positions in which experience is not required, there are among the positions listed by respondents a substantial number that do require experience as one of the qualifications.

The information with respect to Civil Service positions and their requirements as to age, education and starting salaries contained in said "Partial List of Civil Service Positions" is wholly inaccurate, insufficient and misleading. Many of said positions are not open to applicants generally but are restricted to persons with veterans' status or require special physical or educational qualifications or practical experience; and no examinations have been announced for many years in a number of positions listed by respondents.

Neither respondents nor any of their officers, agents or salesmen are connected in any manner whatsoever with the U. S. Civil Service, the United States Government, nor any agency thereof. Students having completed respondents' course of study are not eligible for any position in the Civil Service by reason of that fact, and any assurance, promise or guarantee to that effect made by respondents' salesmen is false. Respondents accept enrollments at any time and the opportunity to enroll is not lost if a prospect fails to enroll at the time of the salesman's call. There is no requirement by the Civil Service Commission for applicants to take respondents' course of instruction in order to qualify for civil service examinations or positions; examinations given by respondents to their students as part of said course of study are not examinations for specific positions in civil service and do not obviate the necessity of taking civil service examinations; enrollees who have completed respondents' course, or who have taken and passed a civil service examination, will not in most instances be placed immediately, or in a short time, in a Civil Service position, the time of actual employment depending on a number of factors, such as availability of eligible persons in the several Civil Service districts, the rating of eligibles, veterans' preferences, and other conditions over which neither respondents nor applicants have any control; and respondents can neither determine the time and place of examination nor the place of employment. Applicants for Civil Service positions must comply with all regulations and requirements pertaining to qualifications for said positions, and respondents have no authority or power to waive such requirements and cannot place applicants in positions regardless of whether or not said applicants possess the necessary qualifications.

Respondents do not cancel contracts entered into by purchasers of said course, regardless of the reasons given by said puchasers.

Neither the Better Business Bureau of St. Louis nor the Chamber of Commerce of St. Louis has ever endorsed or recommended respondents to any person or to the purchasing public generally.

The term registrar implies the functions ordinarily incumbent upon officers of educational institutions employed and designated as registrars. Respondents' salesmen do not exercise that function and the use of said terms with respect to them is misleading. Said salesmen are employed on a commission basis to sell said courses of instruction and are not qualified by training or experience to advise prospective students as to their qualifications for Civil Service positions or availability of employment in the U. S. Civil Service.

PAR. 7. Respondents, in collecting or attempting to collect delinquent accounts arising in connection with their business, send out collection letters in the name of Individual's Credit Bureau, thereby representing and implying that said Individual's Credit Bureau is an independent organization engaged in the business of collecting accounts generally. In truth and in fact, said so-called Bureau is not an independent collection agency but is operated by respondents solely for the purpose of collecting their own deliquent accounts.

PAR. 8. The use of the words "Federal" and "Institute" in the corporate name of Federal Coaching Institute, Inc., under which respondents' business is conducted, is misleading in that they imply some official government connection, which is contrary to the fact and the word "Institute" further implies the operation of a resident institution of learning with a staff of competent, experienced and qualified educators offering instruction in philosphy, the arts, sciences and other subjects of higher learning.

In truth and in fact, respondents do not operate an "Institute" in the accepted sense of that term. Respondents offer no training or instruction in philosophy, the arts, sciences, or other learned subjects. No basic, thorough or competent instruction is given in residence in any subject of learning by competent and qualified educators. The subject matters in which respondents' students are prepared are not of the extent properly to be included in the term of higher education. Respondents' course of study is given exclusively by correspondence and consists of a series of lessons on a general information type of Civil Service examination.

PAR. 9. Respondents, in connection with the sale of said course of study, used a so-called free scholarship offer, which provided that in case a student had studied respondents' lessons diligently, had paid in full for the course and was among the 25 highest on the United States Government Civil Service examination, the full amount paid for

the course would be returned to him. Said offer included the representation that "hundreds have received free scholarships" and that "over $25,000 have been paid to students under said offer"; that said "free scholarship checks are mailed each year just before Christmas, and are very acceptable at that season of the year." In truth and in fact, respondents have no free scholarship offer, and the representation that hundreds of their students received scholarships and that the sum of $25,000, or any other substantial amount, had been paid out to students is false.

PAR. 10. The use by respondents of the statements and representations aforesaid has had, and now has, the tendency and capacity to and does confuse, mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations are true, and to induce them to purchase respondents' course of study and instruction in said commerce on account thereof.

CONCLUSION

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

ORDER

It is ordered, That respondent, Federal Coaching Institute, Inc., a corporation, and its officers, and Robert P. Narup, individually and as an officer of said corporation, and the respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a course of study and instruction intended for preparing students thereof for examination for Civil Service positions under the United States Government, or any similar courses of study, do forthwith cease and desist from:

1. Using the word "Institute" or any abbreviation or simulation thereof as a part of respondents' trade or corporate name, or as a part of the name of the respondents' school.

2. Representing directly or by implication through the use of the word "Federal" or any other term of similar import or meaning or any abbreviation or simulation thereof as a part of corporate or trade name that respondents have any connection with the United States Government or any branch or agency thereof.

3. Representing directly or by implication:

(*a*) That respondents or their business have any connection with

the United States Civil Service Commission or any other branch or agency of the United States Government.

(*b*) That respondents' sales agents and representatives are employees of the United States Civil Service Commission or any other government agency or have any connection therewith.

(*c*) That positions in said Civil Service may be obtained through respondents' school.

(*d*) That starting salaries for positions in the United States Civil Service are greater than they are in fact.

(*e*) That Civil Service positions requiring experience or certain physical, mental or educational qualifications or veterans' status may be obtained by persons not meeting such requirements.

(*f*) That it is necessary that persons seeking Civil Service positions take respondents' course of study in order to obtain such positions.

(*g*) That the completion of respondents' course of study assures students of positions in the United States Civil Service or makes them eligible for appointment to such positions.

(*h*) That the number of positions available in the United States Civil Service is greater than is actually the fact.

(*i*) That unless prospective students enroll for respondents' course of study at the time of the visit of respondents' sales agent, they will forever lose the opportunity to do so.

(*j*) That the examinations given by respondents relate to specific positions in the United States Civil Service.

(*k*) That persons who have qualified for appointment to positions may select their place of employment.

(*l*) That respondents will cancel enrollment contracts at the instance of the students.

(*m*) That any organization or individual recommends or endorses respondents' school unless such is the fact.

(*n*) Through the use of the designation "Registrar" for their salesmen or otherwise that the individuals employed by respondents to sell their course are anything other than salesmen.

(*o*) That respondents' sales agents are qualified to advise prospective students concerning their qualifications for United States Civil Service positions.

(*p*) That the name Individual Credit Bureau, or any other name used by respondents for the purpose of collecting money due them, is that of a separate or independent organization.

(*q*) That scholarships or other advantages are awarded, contrary to the fact.

4. Misrepresenting in any manner the positions, salaries and opportunities for employment in the United States Civil Service to purchasers and prospective purchasers of respondents' course of study.

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 March 5, 1953].

IN THE MATTER OF

MILLER & LIBOW, INC. ET AL.

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

Docket 6057. Complaint, Nov. 3, 1952—Decision, Mar. 12, 1953

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

(*a*) Misbranded certain ladies' coats in that they were not stamped, tagged or labeled as required by said Act and the Rules and Regulations promulgated thereunder; and

(*b*) Misbranded certain of said coats in that they were labeled or tagged as containing "100 percent Wool" zip-in or removable linings, notwithstanding the fact that said interlinings were not wool as defined by said Act but were composed of reclaimed and reprocessed wool fibers, together with substantial quantities of miscellaneous fibers other than wool:

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

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

Mr. George E. Steinmetz for the Commission.

Mr. Milton J. Levy, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Miller & Libow, Incorporated, a corporation, and Robert Libow and M. L. Miller, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 Miller & Libow, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, and respondents Robert Libow and M. L. Miller are the president and the secretary treasurer, respectively, of the said respondent corporation. Respondents Robert Libow and M. L. Miller direct

and control the policies, acts and practices of the corporate respondent. The offices and principal place of business of all respondents are located at 241 West 37th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of said Wool Products Labeling Act and of Rule 24 of the Rules and Regulations made thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among the misbranded wool products as aforementioned were ladies' coats, labeled or tagged by respondent corporation as containing "100 percent Wool" zip-in or removable linings; whereas, in truth and in fact, said linings were not Wool as defined by the Wool Products Labeling Act of 1939, but were composed of reclaimed and reprocessed wool fibers, together with certain quantities of miscellaneous fibers other than wool.

PAR. 5. The acts and practices of the respondents, as herein alleged, constitute misbranding of wool products and as such are in violation of the Wool Products Labeling Act of 1939, and of the said Rules and Regulations promulgated thereunder, and all of the aforesaid acts and practices as herein alleged are to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission on November 3, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, in connection with the sale of women's wearing apparel.

After the filing of respondents' answer in this proceeding a hearing was held on December 18, 1952, before a hearing examiner of the Commission, theretofore duly designated by it, at which a stipulation was entered into by and between Milton J. Levy, attorney for respondents, and George E. Steinmetz, attorney in support of the complaint, subject to the approval of the hearing examiner, whereby it was stipulated and agreed that a statement of facts agreed to on the record may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto; that the said hearing examiner may proceed upon said statement of facts to make his initial decision stating his findings as to the facts, including inferences which he may draw from the said stipulation of facts, and his conclusions based thereon, and enter his order disposing of the proceeding as to said respondents without the filing of proposed findings and conclusions or the presentation of oral argument. Thereafter on January 23, 1953, said hearing examiner filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel for respondents filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including said appeal and answer of counsel supporting the complaint not opposing said appeal; and the Commission, having issued its order granting said appeal and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Miller & Libow, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, and respondents Robert Libow and M. L. Miller are the president and the secretary treasurer, respectively, of the said respondent corporation. Respondents Robert Libow and M. L. Miller direct and control the policies, acts and practices of the corporate respondent. The offices and principal place of business of all respondents are located at 241 West 37th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of said Wool Products Labeling Act and of Rule 24 of the Rules and Regulations made thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. The misbranded wool products as aforementioned were ladies' coats, labeled or tagged by respondent corporation as containing "100 percent Wool" zip-in or removable linings; whereas, in truth and in fact, said linings were not Wool as defined by the Wool Products Labeling Act of 1939, but were composed of reclaimed and reprocessed wool fibers, together with certain quantities of miscellaneous fibers other than wool.

CONCLUSION

The acts and practices of respondents as found in Paragraphs Three and Four hereof are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Miller and Libow, Inc., a corporation, and its officers, Robert Libow and M. L. Miller, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' coats or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding said products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner;

(*a*) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(*b*) The maximum percentage of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter;

(*c*) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Failing to separately set forth on the required stamp, tag, label or other means of identification the character and amount of the constituent fibers appearing in the interlinings of such wool products, as provided in Rule 24 of the Rules and Regulations promulgated under the said Act.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939, and

Provided, further, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or Rules and Regulations promulgated thereunder.

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.