

ANNUAL REPORT
OF THE
FEDERAL
TRADE COMMISSION
FOR THE
FISCAL YEAR ENDED JUNE 30, 1923

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FEDERAL TRADE COMMISSION

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ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION, FISCAL YEAR ENDED JUNE 30, 1923.

SUMMARY.

To the Senate and House Of Representatives:

The Federal Trade Commission herewith submits to the Congress its annual report for the fiscal year July 1, 1922, to June 30, 1923. The commission, which was created by act of Congress approved September 26, 1914, was organized March 16, 1915, and at the close of the fiscal year reported upon concluded the eighth year of its existence. On June 30, 1923, the personnel of the commission consisted of Victor Murdock, of Kansas (chairman); John F. Nugent, of Idaho; Huston Thompson, of Colorado; Vernon W. Van Fleet, of Indiana; and Nelson B. Gaskill, of New Jersey.

Pursuant to the statutes the commission has been engaged during the year in the prevention of unfair methods of competition in domestic and foreign commerce, the elimination of practices which substantially lessen competition or tend to create monopoly, and in gathering and publishing facts for the information of the President, the Congress, and the public with respect to the economic phases of domestic industry and foreign trade. In addition the activities of associations engaged solely in export trade were supervised. Differently stated, the commission's work is to sustain those practices which support the competitive system, as opposed to monopoly, in furtherance of the fundamental object of Congress in the enactment of the Federal Trade Commission act, the Clayton Act, and the export trade act. The commission has sought to protect the public against those methods described by the Supreme Court in the Grata case as (1) methods opposed to good morals because characterized by deception, bad faith, fraud, or oppression, and/or (2) methods regarded as against public policy because of dangerous tendency unduly to hinder competition or create monopoly.

The work of the commission for the year covered the entire scope of the trust problem and related subjects. It reached from the simplest form of unfair methods of competition on through all phases to the more complex question of trust dissolution. These activities touched the whole range of commerce--raw materials, manufacturing, wholesaling, retailing, exporting, manipulation of

markets, and as representing the public interest, consumption. The whole trust problem can be approached satisfactorily only by approaching it on the economic as well as the legal side. Activities in both these fields as disclosed in the report here given register an advance in an understanding of the matter.

The year was marked also in the commission's work by the increasing variety of the subjects handled and the growing intricacy of the legal and economic questions presented in many of the cases arising under the law. In this connection especial interest attaches to that division of the commission's work which is directed to carrying out the law against competition-lessening combinations arising from the acquisition of the share capital of one corporation by a competing corporation, which is prohibited specifically by the Clayton Act. The particular question presented to the commission is whether under existing law severance of competing corporations, united contrary to law, may be accomplished in fact rather than merely in form. Through proceedings in several cases before the commission this question reached the courts during the year. Among the cases in which the commission issued orders directing segregation and from which orders appeals to the courts were taken are those directed to (1) Armour & Co., meat packers, to divest itself of the share capital of E. H. Stanton Co.; (2) Swift & Co., meat packers, to divest itself of the share capital of Andalusia Packing Co. and the Moultrie Packing Co.; (3) the Aluminum Co. of America, to divest itself of the share capital of the Aluminum Rolling Mill Co. In another case, which has not reached the courts, the Thatcher Manufacturing Co. (milk bottles) was ordered to divest itself of the share capital of Essex Glass Co., Travis Glass Co., Lockport Glass Co., and Woodbury Glass Co.

While in all its divisions the commission, in those activities having to do with the preservation of competition and the prohibition of unfair methods of competition, dealt primarily with questions arising in trade in manufactured products, the year was marked by the increasing frequency with which these questions affected agriculture. The Department of Justice during the year petitioned the court for a revision of the decree in the dissolution suit against the International Harvester Co., substantially in accordance with the recommendations made in a report by the Federal Trade Commission. This proceeding is pending. The commission prosecuted in the courts motions to enforce its right of access to the records of exporters of grain and to records of manufacturers of tobacco needed in the preparation of reports directed by Congress. The right of such access was, in the circumstances appearing in these cases, denied, and appeals have been taken to the Supreme Court of the United States. Orders for the divestment of absorbed share capital of a corporation

by a competing corporation were made in several cases in the meat-packing industry. Appeals have been taken from these orders by the respondents. An order for divestment of share capital was directed by the commission to a large manufacturer of milk bottles. In connection with agricultural interests among the numerous formal complaints considered during the year were those against the Chamber of Commerce of Minneapolis, a grain market, and the Utah-Idaho Sugar Co. and Amalgamated Sugar Co., manufacturers of refined beet sugar. By direction of the Congress the commission made also reports of interest to the farmer on grain marketing, cotton marketing, the fertilizer industry, and calcium arsenate.

LEGAL WORK OF COMMISSION.

Under the laws which it administers the commission was called upon during the year to handle 2,273 separate legal matters in domestic and foreign trade, involving unfair competition, price discriminations, tying contracts, acquisitions of corporate stock, and interlocking directorates. It disposed of 1,352 such matters. This left on hand undisposed of at the close of the year 921 such matters. To a marked degree the 921 matters represent delay by reason of inadequacy of funds.

Details of the procedure of the commission in legal matters are given below under topic headings which carry the unfair competition and Clayton law cases from their inception through their several steps to decision in the Supreme Court of the United States, the end of the process in the final determination of existing law. These topics are (1) the applications for complaint, (2) the complaints, (3) the orders to cease and desist, and (4) the court decisions.

Applications for complaint.-This is the initial approach to the commission in an unfair competition or Clayton law case and is usually in the form of a letter from the general public through an individual or corporation calling the attention of the commission to some alleged illegal or harmful practice in foreign or domestic commerce. In bringing these matters to the commission no formalities or blank forms are required. A letter suffices to bring a matter to the Commission's attention if it is signed by the complaining party, contains the name and address of the party complained against, and a statement of the nature of the relief sought. It should also transmit all the evidence in the possession of the complainant, documentary or otherwise, to aid in the inquiry, which is always made preliminary to the issuance of complaint.

During the year there were before the commission 1,169 separate requests from the public in which the activity of the commission was asked. Of these, 646 were handled in an informal way by correspondence at small expense to the Government. In 416 instances the

papers were docketed as applications for complaint and 107 of these matters were undisposed of at the close of the fiscal year. To the number of 416 applications for complaints docketed during the year must be added 458, the number pending at the beginning of the year, making a total of 874 applications for complaint before the commission during the year. The commission disposed of 302 such applications during the year, 181 of which were dismissed after preliminary inquiry and 121 advanced to formal complaints. This left 572 applications for complaints undisposed of and on hand at the start of the fiscal year beginning July 1, 1923.

The applications for complaint which give some prima facie indication of violation of law are first examined for necessary jurisdictional elements--the public interest, unfair methods, and the interstate commerce feature; if these are present, and without them the commission can not proceed, jurisdiction is assumed and a thorough preliminary investigation, which usually requires field work, is undertaken. After the facts are gathered they are presented to a board of review, which prepares a report summarizing the evidence, reciting the law applicable, and containing a recommendation for commission action. The file is then assigned to a commissioner who reviews the entire record and presents the case to the full commission with recommendation either that a complaint issue or that the application be dismissed. A majority vote controls.

Complaints.--It is only after most careful scrutiny of a record that the commission issues its complaint. The commission must have, in the language of the statute, a reason to believe that the law has been violated before complaint issues. The complaint is by way of a citation and is the only statutory means to bring a party charged with violation of law properly before the commission. It requires an answer in 30 days and provides for a date and place of hearing.

Complaints to the number of 144 were issued during the year. In addition, 214 were on hand and undisposed of at the beginning of the year, making a total of 358 separate complaints demanding the attention of the commission in the fiscal year. The commission disposed of 126 of these complaints, 78 by orders to cease and desist and 48 by dismissal, leaving 232 on hand with which to start the year beginning July 1, 1923. The record indicates a variety of reasons for dismissing complaints. It is noted that seven were dismissed because the parties to whom complaints were directed had died or were out of business when the case came on for trial, nine were dismissed for the reason that the charges of the complaint were covered by controlling court decisions rendered after institution of proceedings by the commission, and the remainder were, dismissed for other reasons, including failure of proof to sustain

the charges of the complaint, want of interstate commerce, and in one case, the Midvale-Republic-Inland Steel merger case, because the challenged merger was abandoned. Since its organization 1,043 complaints of unfair competition and/or violations of the Clayton Act have been issued by the commission.

That unfair methods of competition were used is the averment in a great majority of the 144 complaints issued this year; 137 complaints contained this averment alone. In 3 complaints the citation was for both unfair competition and violation of the Clayton Act. In 3 complaints price discrimination was averred in violation of section 2 of the Clayton Act. In 1 complaint tying contracts contrary to section 3 of the Clayton Act were averred, and 4 complaints averred the acquisition of stock of a competing concern in violation of section 7 of the Clayton Act.

Without enumerating all the various forms of unfair competition set out in the complaints it may be of interest to note that there were 58 cases of false and misleading advertising, 8 of misbranding, 3 for conspiracy to injure competitors, 3 of disparagement of a competitor's name or goods, 11 of passing off of a competitor's name or goods, 10 of price fixing, 31 of resale price maintenance, 2 of bribery of customers' employees, and 67 other cases involving misrepresentation, coercion, combination to effect monopoly price discrimination, and many other questioned practices.

The complaints issued this year were directed to 2,384 separate respondents, and involved a wide range of products and industries.

After complaint, answer by respondent, testimony or stipulation of facts in lieu thereof, briefs and oral argument before the full commission, the commission either dismisses the complainant or issues an order to cease and desist.

Orders to cease and desist.--The final expression of the commission in a legal case under the Federal Trade Commission act and Clayton Act is an order upon a respondent to cease and desist a particular practice or practices. During the year 78 such orders were issued against 211 respondents, the practices condemned including 26 cases of misbranding, 61 cases of false advertising, 8 cases of passing off of name and goods, 2 cases of conspiracies in restraint of trade, 1 case of commercial bribery, 2 cases of disparagement of competitor's goods, 2 cases of resale price maintenance, and 11 cases of misrepresentation of various kinds.

Of the orders issued this year 75 were grounded upon the Federal Trade Commission act alone, 2 were under both the Federal Trade Commission act and the Clayton Act, and 1 under section 7 of the Clayton Act alone. The parties to whom the orders were directed have in a great majority of cases accepted the orders and have filed

reports with the commission signifying their compliance with its terms. Of the 78 orders issued during the year appeals were taken to the circuit court in but two instances. These cases were (1) the Swift & Co. case, involving the acquisition of corporate stock of a competing concern in violation of section 7 of the Clayton Act, and (2) the Chicago Portrait Co. case, involving misrepresentation in the sale of portraits, held by the commission to be an unfair method of competition.

Orders were issued in nine cases directed to firms and individuals who were found to have followed the practice of falsely advertising in connection with the sale of stock in various oil companies. These were all cases of the character commonly known as blue-sky cases and in which the commission protected the public against promoters falsely advertising to induce the sale of stock. The record of the year discloses that misleading brands or labels is a frequent form of representation coming to the commission's attention. In the 27 cases of misbranding in which orders were issued, 20 orders involved the hosiery business alone and were directed to such branding as would convey the impression that the hosiery composed of a mixture of cotton and wool, or of cotton and silk, was pure wool or pure silk.

Appeal lies to the United States circuit courts either by the respondent to set aside the order of the commission or on behalf of the commission to enforce it. Since its organization the commission has issued 548 orders to cease and desist directed to 1,583 respondents. Appeal has been taken in 40 cases.

Court cases.--While the law administered by the commission has been subject to review by the courts in relatively few cases, a number of important decisions have been rendered which have materially affected the commission's work.

Among the helpful decisions may be mentioned the Sears-Roebuck Co. case, the first case of unfair competition to be taken to court for review of the commission's order, and in which the court sustained the commission's condemnation of false advertising, and in answer to the company's plea of discontinuance prior to the order the court confirmed the necessity for the order and said, "No assurance is in sight that petitioner (Sears-Roebuck Co.), if it could shake the respondent's (Federal Trade Commission) hand from its shoulder, would not continue its former course." The power of the commission to deal with misbranding of products in general and with similar deceptive practices was affirmed by the Supreme Court of the United States in the Winsted Hosiery Co. case. The same court in the Beechnut Co. case affirmed the commission's view with some qualification that cooperative schemes directed to the maintenance of resale prices were unlawful where the effect was to inter-

ferre with the free and natural flow of commerce. In the case against the Aluminum Co. of America, the circuit court of appeals upheld the commission's order directing this company to divest itself of the stock of a competing company. On appeal the Supreme Court, refused to review this decision. In several cases, namely, the National Harness Manufacturers' Association, the Western Sugar Refining Co. case, the Wholesale Grocers' Association, and Southern Hardware Jobbers' Association cases, the courts have affirmed the power of the commission over unfair practices by combined or concerted effort on the part of associations or other groups.

In another group of cases the courts have denied the power and authority of the commission to enforce the cessation of practices which had been found by the commission to be unfair methods of competition or to violate the provisions of the Clayton Act. The first denial of the power of the commission was in the Grata case, wherein the Supreme Court of the United States, in defining the term "unfair methods of competition," stated that it was clearly inapplicable to practices never heretofore regarded as opposed to good morals or against public policy, and thereby tended to restrict the jurisdiction of the commission to precedents established under common law and judicial decisions. This would seem adversely to effect the ready development of the law of business practices under the commission's rulings as reviewed by the courts. In the same case a second denial is found when the court attached to the commission 5 procedure a rule of pleading comparable in its strictness to that governing a criminal indictment.

In a review of an order which the commission had issued, directing the Curtis Publishing Co. to discontinue certain contracts which the commission found after testimony to be tying contracts, contrary to the Clayton Act and the Federal Trade Commission act, the Supreme Court held that notwithstanding the findings of facts made by the commission were not disturbed by the circuit court of appeals, the circuit court or the Supreme Court could find additional facts upon their own motion and reverse the commission's order on such new findings. The law creating the commission states that the findings of the commission as to the facts, if supported by testimony, shall be conclusive. In the Mennen case, the commission issued its order prohibiting discrimination in net selling prices between purchasers of the Mennen products of the same grade, quality, and quantity, upon the basis of a classification of customers by the Mennen Co. as "jobbers," "wholesalers," or "retailers," or any classification which relates to the purchaser's form of organization. The circuit court set the order aside, saying that the Mennen Co. had a right to give one class of customers a preferential rate as against another class notwithstanding that both classes purchased in the

same amount and upon the same terms, and that discrimination in price by a manufacturer which only lessens competition between his customers and not between such manufacturer and his immediate competitors is not such price discrimination as is condemned by the Clayton Act. The Supreme Court refused to review the case.

On the economic side of the commission's work, which consists largely in the gathering of industrial facts and recording economic tendencies at the direction of the President and Congress, a serious interference has arisen by reason of injunctions in the Claire Furnace Co. case and the Maynard Coal Co. cases. The work which the commission undertook related to the gathering of reports respecting the production, prices, and costs of necessities of life and of commerce, in these two instances reports from the coal industry and the steel industry. This work was specifically appropriated for by Congress in the deficiency appropriation act of November 4, 1919. The right of the commission to require corporations to make reports in this regard will probably be passed upon by the Supreme Court of the United States during the coming fiscal year.

In two groups of cases, (1) American Tobacco Co. and P. Lorillard Co. (Inc.), involving tobacco products, and (2) Baltimore Grain Co., H. C. Jones Co. (Inc.), and Hammond-Snyder Co. (Inc.), involving grain, the commission petitioned the United States district courts at New York City and Baltimore, respectively, for writs of mandamus to compel these companies to permit access to records in connection with investigations being conducted by the commission at the direction of Congress or upon the commission's own motion. The petitions were denied. The commission has carried the cases on appeal to the Supreme Court of the United States.

During the fiscal year ending June 30, 1923, the commission had cases in the courts as follows:

In the Supreme Court of the United States--Curtis Publishing Co., Mishawaka Woolen Manufacturing Co., Aluminum Co. of America, Mahoney Oil & Manufacturing Co., Gulf Refining Co., Sinclair Refining Co., Standard Oil Co. of New Jersey, Raymond Bros., Clark Co., Mennen Co., Fruit Growers' Express, American Tobacco Co., P. Lorillard Co. (Inc.), Hammond-Snyder Co. (Inc.), H. C. Jones Co. (Inc.), Baltimore Grain Co., Claire Furnace Co., et al.

In the United States Circuit Courts of Appeals--Mishawaka Woolen Manufacturing Co., Mahoney Oil & Manufacturing Co., Gulf Refining Co., Standard Oil Co. of New Jersey, Guarantee Veterinary Co. et al., Armour & Co., S. E. J. Cox et al., Swift & Co., B. S. Pearsall Butter Co., L. B. Silver Co., Southern Hardware Jobbers Association, Mennen Co., Juvenile Shoe Co., Chicago Portrait Co.

In the United States district court--American Tobacco Co., P. Lorillard Co. (Inc.), Baltimore Grain Co., H. C. Jones Co. (Inc.), and Hammond-Snyder Co. (Inc.).

In the courts of the District of Columbia--Claire Furnace Co. et al. and Mannered Coal Co. et ah. in the Court of Appeals. The Mannered Coal case was also in the Supreme Court of the District.

Summary of court cases to which the commission has been a party.--The cases to which the commission has been a party since its organization until June 30, 1923, may be grouped under three headings: (I) Those in which the commission's orders to cease and desist were sought to be set aside by the respondents, or in which the commission has sought to enforce them, and which involve section 5 of the Federal Trade Commission act, or section 2, 3, 7, or 8 of the Clayton Act; (II) those in which the commission's powers under section 6 of the organic act were called into question; (III) those in which it was sought by respondents to restrain the commission from issuing or proceeding with its complaints prior to the issuance of orders by the commission, etc. The results of these three classes of cases are summarized below.

I. Cases in which the commission's orders under section 5 of the Federal Trade Commission act or section, 2, 3, 7, or 8 of the Clayton Act were (A) sought to be set aside by the respondents, or (B) enforced by the commission.--The great bulk of the cases fall within this group; are instituted in the Federal Circuit Courts of Appeals, and are as follows:

(A) CASES IN WHICH THE COMMISSION'S ORDERS WERE SOUGHT TO BE SET ASIDE BY RESPONDENTS.

- (1) Cases in which the commission was sustained (13):
 Sears, Roebuck & Co. v. Federal Trade Commission.
 National Harness Mfgs. Assn. v. Federal Trade Commission.
 Federal Trade Commission v. Winsted Hosiery Co.¹
 Western Sugar Refining Co. et ah. v. Federal Trade Commission .
 Federal Trade Commission v. Beech-Nut Packing Co.¹
 Wholesale Grocers Assn. of El Paso v. Federal Trade Commission.
 Royal Baking Powder Co. v. Federal Trade Commission.
 Aluminum Co. of America v. Federal Trade Commission.²
 Mishawaka Woolen Mfg. Co. v. Federal Trade Commission.²
 Guarantee Veterinary Co. v. Federal Trade Commission.
 L. B. Silver Co. v. Federal Trade Commission.
 Juvenile Shoe Co. v. Federal Trade Commission.²
 Southern Hardware Jobbers Assn. v. Federal Trade Commission.

¹ Decisions by the Supreme Court of the United States reversing decisions by the United States Circuit Court of Appeals for the Second Circuit.

² Petition for writ of certiorari denied by Supreme Court.

(2) Cases in which the commission was not sustained (10):

- New Jersey Asbestos Co. v. Federal Trade Commission.
 Federal Trade Commission v. Warren Jones & Gratz. ³
 Ward Baking Co. v. Federal Trade Commission.
 Federal Trade Commission v. Curtis Publishing Co. ³
 Kinney Rome Co. v. Federal Trade Commission.
 Raymond Bros.-Clark Co. v. Federal Trade Commission.
 Mennen Co. v. Federal Trade Commission. ⁴
 Texas Co. v. Federal Trade Commission.
 Standard Oil Co. of N. Y. v. Federal Trade Commission.
 Canfield Oil Co. v. Federal Trade Commission.
 Thos. K. Brushart v. Federal Trade Commission.
 White Star Oil Co. v. Federal Trade Commission.
 Paragon Refining Co. v. Federal Trade Commission.
 Columbus Oil Co. v. Federal Trade Commission.
 Standard Oil Co. of Ohio v. Federal Trade Commission.
 Federal Trade Commission v. Sinclair Refining Co. ³
 Federal Trade Commission v. Standard Oil Co. of N. J. ³
 Federal Trade Commission v. Gulf Refining Co. ³
 Federal Trade Commission v. Maloney Oil & Mfg. Co. ³
 D. A. Winslow & Co. v. Federal Trade Commission. ⁴
 Norden Ship Supply Co. v. Federal Trade Commission. ⁴
 Fruit Growers Express Co. v. Federal Trade Commission. ⁵

(B) CASES IN WHICH THE COMMISSION HAS SOUGHT TO ENFORCE ITS ORDERS.

Thus far the commission has filed but one petition to enforce an order to cease and desist. This was against S. E. J. Cox et al. in the United States Circuit Court of Appeals for the Fifth Circuit. That court, on June 18, 1923, granted the commission's motion for a preliminary restraining order enjoining the respondents from a violation of the order until hearing on the merits.

In each of the above groups, where a case has been decided by both the Circuit Court of Appeals and the Supreme Court of the United States, the decision of the latter tribunal only has been taken into account.

In the list of cases in which the commission was not sustained it will be noted that 12 oil pump and tank cases have been grouped together. While these cases were brought in four circuits, there was only one question involved in the entire group, the complaints, orders, and findings being practically identical. They were consolidated for briefing and argument in the circuit courts, and those

³ Decisions by the Supreme Court of the United States affirming the judgments of the Circuit Courts of Appeals.

⁴ Petition for writ of certiorari denied by the Supreme Court of the United States.

⁵ The commission's petition for writ of certiorari was granted in this case, but the writ was afterwards

dismissed upon motion of the commission, the question involved having become moot.

which reached the Supreme Court were decided in one opinion and should be regarded as one case. Two other cases, *D. A. Winslow & Co. v. Federal Trade Commission* and *Norden Ship Supply Co. v. Federal Trade Commission*, involved but one question, were argued together in the fourth circuit, and decided in one opinion.

On this basis, the commission has been sustained in 13 and not sustained in 10 cases involving violation of section 5 of the commission act or the named sections of the Clayton Act.

Three appeals from the commission's orders to cease and desist are now pending in the United States Circuit Court of Appeals, viz, *Armour & Co. v. Federal Trade Commission* (Commission's Docket 351), *Swift & Co. v. Federal Trade Commission* (Commission's Docket 453), and *Chicago Portrait Co. v. Federal Trade Commission* (Commission's Docket 840). They are all in the Seventh Circuit.

II. Cases in which the commission's powers under section 6 of the Federal Trade Commission act were called into question.--Eight cases have involved the commission's power to require reports or to compel access to corporate records for purposes of inspection, six cases being instituted by the commission by petitions for writs of mandamus and two being instituted by corporations for injunctions to restrain the commission from requiring reports. The issues in three of these are identical and in addition two others involve the same question. These five cases were decided in two opinions.

All of these cases were decided against the commission 5 contention in the lower courts, and all but one are now pending on appeal.

The cases in this group are as follows :

- Federal Trade Commission *v.* Basic Products Co.
- Mannered Coal Co. *v.* Federal Trade Commission.
- Claire Furnace Co. et al. *v.* Federal Trade Commission.
- Federal Trade Commission *v.* The American Tobacco Co.
- Federal Trade Commission *v.* Lorillard Co.
- Federal Trade Commission *v.* Baltimore Grain Co.
- Federal Trade Commission *v.* H. C. Jones Co. (Inc.).
- Federal Trade Commission *v.* Hammond, Snyder Co. (Inc.).

III. Cases where respondents have sought to restrain the commission from issuing or proceeding with its complaints, etc.--In this class of cases, four proceedings have been instituted, the titles of which are as follows :

- Douglas Fir Exploitation & Export Co. et al. *v.* Federal Trade Commission.
- Butterick Co. et al. *v.* Federal Trade Commission.
- T. C. Hurst & Son *v.* Federal Trade Commission.
- The Chamber of Commerce of Minneapolis et al. *v.* Federal Trade Commission.

All of these cases have been decided in favor of the commission.

ECONOMIC WORK OF COMMISSION.

The general economic work of the commission during the past fiscal year, as in previous years, has formed a vital part of its activities and one that is fundamental for the proper presentation of facts relating to the economical and statistical phases of industry to the President, the Congress, and the public. Such facts are fundamental not only with respect to the general problem of maintaining healthful competition in industry and restraining the encroachments of monopoly but are also useful in the fields of industrial organization and marketing methods and for constructive legislative effort. This branch of the work is carried forward under section 6 of the Federal Trade Commission act, which grants the commission power to gather information concerning any corporation engaged in commerce, except banks and common carriers, and also authorizes the commission, upon the direction of the President or either House of Congress, to investigate and report the facts relating to any alleged violation of the antitrust acts by any corporation. The power of the commission to require report under this section is now before the Supreme Court of the United States. Other duties of the commission in this field are to investigate and report to the Attorney General the manner in which final decrees of the United States courts to prevent violations of the antitrust acts are being carried out; upon application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts; to classify corporations; and to investigate trade conditions in foreign countries.

Inquiries.--A total of 11 economic inquiries were carried forward during the year. These related to the bituminous-coal industry; export grain; foreign control in the petroleum industry; the cotton trade; house-furnishings industries; wheat-flour milling; pulp and paper industry; national wealth, debt, and income; a general study of the grain trade; petroleum industry of Wyoming and Montana; and costs and profits of southern pine-lumber manufacturers.

Six of these inquiries--grain exporting, foreign petroleum, house furnishings, cotton, wheat-flour milling, and national wealth--were initiated by resolutions of the United States Senate.

Reports were issued during the year covering a preliminary survey of the cotton trade, foreign ownership in the petroleum industry, household furniture, bituminous-coal mining, methods and operations of grain exporters, petroleum industry of Wyoming and Montana, and costs and profits of southern pine-lumber manufacturers. Statistics relative to newsprint supply were issued during the year but at the close of the year were discontinued.

Grain and cotton.--The reports regarding both the grain trade and the cotton trade, as well as the current work in the inquiries on these subjects, show the need not only of remedial reforms in the methods of marketing and handling agricultural products and of restraining injurious speculation therein but also the practicability of developing cooperative enterprise to the advantage of both the producer and the consumer.

Petroleum.--The report on foreign ownership in the petroleum industry was occasioned by the activity of the Royal Dutch-Shell group, a combination of British and Dutch industries in acquiring petroleum producing, transporting, refining, and marketing properties and equipment in the United States. The report describes the Royal Dutch-Shell group with special reference to its holdings in the United States, and particularly the absorption of the Union Oil Co. (Delaware); it relates the facts regarding the present ownership and control of the Union Oil Co. of California, and outlines the situation with respect to discrimination of foreign governments against citizens of the United States in the acquisition and development of petroleum-producing properties in foreign lands.

In a brief report on the petroleum trade in Wyoming and Montana, supplementing a previous extensive investigation into conditions in that region, the commission found the whole trade dominated by the Standard Oil interests, which, after perfecting their monopoly by absorbing the Midwest Refining Co., formed an alliance with the Sinclair interests, lessees of the Teapot Dome naval reserve, for the purchase of crude oil and the construction of a pipe line from Wyoming to Kansas City.

Coal.--In connection with the great public concern in the coal industry which marked the past year, the commission completed its preliminary report on investment and profit in soft-coal mining, an important report but not entirely complete because of the handicap of an injunction which prevented the requirement of the additional information needed. The principal conclusions of the report were (1) the need of more accurate and complete information regarding the ownership of bituminous coal deposits and coal mines, the true investment therein, and the true profits arising therefrom; (2) the need of ascertaining the profits of selling companies owned by or affiliated with mining companies, and also with other wholesalers or retailers in coal; (3) the need of establishing the coal industry in public confidence and protecting it by devising lines of Federal supervision and publicity so as to avoid periods of excessively high prices and of severe depressions.

While owing to the injunction in the Mannered Coal case the commission itself undertook no new coal work during the year, it did

give material aid to the United States Coal Commission, which was created by Congress to make a special study and report on the coal problem.

At the request of the Coal Commission and pursuant to law the Federal Trade Commission turned over to it the greater part of its force which had formerly been engaged on its coal inquiries. These employees were coal experts, economists, accountants, and statistical clerks, and formed a supervising force and nucleus for those sections of the Coal Commission's staff dealing with the costs and profits of coal-mining companies and coal dealers.

House furnishing.--The first report on house furnishings covered ordinary wooden household furniture. The report was in two sections, the first pertaining to investment, costs, prices, and profits, and the second to the organization and concentration of ownership of corporations and firms and to unfair practices and restraints of competition. This was the first report of the commission to trace a manufactured product from the producer to the consumer through the crest of the "peace boom" in 1920, and through the "buyers' strike" and business depression which followed. It showed that in 1920, of the consumers' dollar, about 13.3 cents went for retailers' profit, 8.3 cents for manufacturers' profit, 2.1 cents for freight, and the balance for manufacturers' and retailers' costs and expenses. Th 1921, 6.9 cents went for retailers' profit, 4.2 cents for manufacturers' profits, 3.3 cents for freight, and the balance for manufacturing and retailing costs and expenses. The second part of the report on kitchen furnishings and domestic appliances is under way.

In various recent economic inquiries and in particular some on which reports have been issued during the fiscal year the commission has brought to public view the subtle restraints of trade through open price associations for which justification has been attempted on the ground of necessary information for a rational conduct of competitive trade.

In addition to the economic work as described above the commission, through its chief examiner, conducted three general investigations and issued reports of conditions in industry where questions as to violations of the antitrust laws are involved. These are:

Fertilizer.--Under a resolution of the Senate an inquiry was made as to whether the production or sale of fertilizer is controlled by an unlawful combination and whether dealers or manufacturers of the product had conspired to fix prices. The report to the Senate showed, among other interesting facts, that in 1921 the seven largest companies in the industry, i.e., American Agricultural Chemical Co., the Virginia-Carolina Chemical Co., the International Agricultural Corporation, F. S. Royster Guano Co., Armour Fertilizer Works, Swift & Co., and the Baugh Co., produced 65 per cent of the total

fertilizer used in the United States. The report also disclosed an increasing activity among farmers' cooperative agencies.

Calcium arsenate.--A resolution of the Senate directed an inquiry as to the alleged violation of the antitrust acts by the manufacturers and dealers in calcium arsenate. Report was submitted from which it was concluded that the main reasons for the marked increase in price were the increased demand for the product for use in combating the cotton-boll weevil and the inadequacy of the available supply of white arsenic, the chief ingredient of calcium arsenate.

Lumber.--At the request of the Attorney General a report was made summarizing the activities of trade associations composed of manufacturers of posts and poles. These associations have their headquarters at Spokane, Wash., and are as follows : Western Red Cedar Association, Lifetime Post Association, and the Western Red Cedar Men's Information Bureau. A similar report on the activities of the Northern Hemlock and Hardwood Manufacturers' Association was also submitted.

A complete investigation is being made by the chief examiner of the radio industry by virtue of House Resolution 548, adopted February 21, 1923. The data being collected is for the use of Congress in determining what further legislation, if any, is needed for the regulation of this industry. Some phases of the inquiry are quite technical since a large number of patents and contracts relating thereto are involved. Considerable work has already been done and will be completed in time for the commission to make its report to the next Congress when it convenes.

EXPORT TRADE ACTIVITIES.

Under the export trade act (Webb-Pomerene law) of April 10, 1918, the commission is given jurisdiction over combinations or "associations" organized for the purpose of, and solely engaged in, export trade from the United States to foreign nations. The sections of this act provide exemptions from the antitrust laws, provided such associations shall not restrain trade in the United States nor conspire to enhance prices or lessen competition within the United States.

Associations to the number of 123, with members approximating 1,500 throughout the United States, have filed papers with the commission under this act. The associations are engaged in the exports of raw materials and manufactured products of many kinds.

A substantial increase is noted in exports by associations during the past fiscal year. The revival of foreign trade is reflected in a renewed interest in the export trade act and operations under its provisions.

Eight new associations were organized during the year and a number of others are in process of formation. The new associations are : American Surface Abrasive Export Corporation, New York City; American Tire Manufacturers' Export Association, New York City; Delta Export Lumber Corporation, Memphis, Tenn.; Grain Products Export Association, New York City; Naval Stores Export Corporation, New Orleans, La.; Rubber Export Association, New York City; Sulphur Export Corporation, New York City ; United States Maize Products Export Association (Inc.), Chicago, Ill.

In the interest of the foreign trade of the United States the commission has made inquiries in the matter of complaints filed by foreign concerns against American exporters and importers. During the year 114 such complaints were handled, 35 were finally disposed of, and 79 were pending at the close of the fiscal year. Various Government officers and trade organizations avail themselves of the investigatory powers granted the commission and refer complaints for inquiry. Cases were received during the year from the State, Commerce, and Treasury Departments, the Department of Agriculture, the Department of Justice, the chambers of commerce, and from foreign complainants direct. Ordinarily, however, complaint is made by the foreign concern to the office of the American consul and is referred back to the United States for investigation.

These complaints involve charges of nondelivery of goods ordered, nonpayment for goods received, shipments of defective or damaged goods or articles below sample, short-weight delivery, and various other matters concerning orders and shipments of goods to and from foreign countries.

The commission's inquiries serve to establish the facts of the complaint through which the parties may be able to adjust their differences. In many cases the facts developed serve to clear the American firms of responsibility. A number of complaints were handled as unfair methods of competition cases.

The commission feels that its report of facts in these disputes is in the interest of American business abroad. Litigation for small claims is too expensive to be practicable, yet the smallest claim may result in widest publicity to the discredit of American concerns in foreign countries. As stated in its last report, the commission is assured that the adjustment of even a small complaint goes far toward the establishment of confidence and good will in foreign markets.

At the request of the State Department the commission made a special inquiry concerning alleged tampering with Canadian grain passing in bond through the United States for shipment via United States ports to foreign countries. No evidence was found of deliberate tampering or mixing within the United States, but recom-

mentations were made for closer Federal supervision of Canadian grain shipped in bond through this country.

TRADE PRACTICE SUBMITTAL.

From time to time the commission is approached by groups of business men representing an entire industry and Seeking the assistance of the commission in the elimination from their industry of practices found to be unfair and harmful but which the industry is unable by itself to eliminate. The commission has lent its assistance in these situations and has called the industry together in gatherings which have been termed "trade-practice submittals." These submittals have been held in the following industries: Ink, celluloid, knit goods, paper, oil, used typewriters, creamery, hosiery, guarantee against decline, macaroni, silverware, gold knives, watch cases.

At these submittals the objectionable practices are frankly discussed and resolutions usually adopted by the industry looking to their elimination. These resolution are considered by the industry as binding upon it and are received by the commission as informative as to conditions in the particular industry and the views of the trade thereon.

During the past year, at the request of manufacturers of gold-mounted knives, representing a major portion of those engaged in the industry, a trade-practice submittal was held before Chairman Murdock in New York City and was attended by 24 members of the trade. The gathering was called to discuss practices having to do with the marking of knives mounted in gold.

The industry adopted a resolution which was intended, first, to define gold mounting and, second, to condemn any method in the construction of a gold-mounted knife by which it may be made to appear that more gold of an indicated karat fineness has been used than has been employed in fact.

The second trade-practice submittal held during the year was held before Chairman Murdock at Washington, D. C., and was at the instance of a number of manufacturers of gold-filled and gold-plated watch cases representing approximately 75 per cent of the industry. The submittal was held for the purpose of giving those engaged in the industry an opportunity to express their views in relation to the alleged unfairness of prevailing methods of branding their product with long-time guaranties, and otherwise, and the practicable methods of correcting any evils found to exist. The gathering was attended by all the principal manufacturers.

The principal office of the commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. To expedite the

investigation and trial of cases and also in the interest of economy, the commission maintains branch offices at New York, Chicago, and San Francisco. At the close of the year the commission had 308 employees, of which number there were 31 lawyers employed in the trial of cases, 54 lawyers employed in the investigation of complaints, 30 economists, 25 accountants, and the remainder, 168, statistical, clerical, and administrative employees. Appropriation to the amount of \$974,480.32 was available to the commission during the year. The commission issued 14 publications during the year; these are listed on page 27 of the report.

ADMINISTRATIVE DIVISION.

The sections in this division are those generally adopted in all Government departments and establishments and are arranged to care for the management of the commission's activities. Changes in arrangements and functions are less liable to occur in this than in the other divisions of the commission where the character of the work is continually varying according to the demands made upon them through the several sources of direction that govern their scope and activities.

For these reasons there has not been any material change in the management, organization, and procedure of this division. All of its functions are largely governed by general statutes and orders applicable to all work of this character wheresoever situate in the Government service. Units in this division are :

Office of the secretary.--The secretary is the custodian of the minutes, of all confidential papers, and of the seal of the commission; he signs all orders of the commission in formal docket cases and intraoffice orders to all chiefs of divisions and employees. The clerks in this office attend to the writing up of minutes, preparation of answers to all inquiries from the general public and interested parties with reference to the status of formal and informal proceedings. They are also responsible for the service of all formal complaints and orders and for notices of assignments of trial to interested parties in formal proceedings. It is the duty of this office also to arrange for reporting of all formal proceedings before the commission. The secretary's office is also responsible for certification of copies of formal records to the different circuit courts of appeal, to the United States Supreme Court, and of such documents as are requested by the public or other departments of the Government.

Office of assistant secretary.--Administrative assistant to the secretary. Assumes duties and responsibilities of secretary during absence of said officer.

Disbursing office, having charge of the fiscal affairs.

Supplies and equipment section, in charge of building and quarters, purchase of supplies and equipment, supervision of the messenger, mechanical, and laboring forces.

Personnel section, in charge of all matters relating to appointments, promotions, demotions, transfers, changes in designation, and the relationship between this commission and the Civil Service Commission.

Mail and files section, where the receipt and distribution of the mail takes place and where all the papers and records of the commission except those of the docket section are finally receivable and cared for.

Publications section, in charge of all matters having connection with the Public Printer and the Superintendent of Documents. In this section are handled the distribution of publications, maintenance of mailing lists, multigraph, mimeograph, and photostat duplication work, and all of the clerical work necessary in keeping the records of this branch of the commission's activities.

During the fiscal year ended June 30, 1922, 4,735 copies of the commission's reports were sold by the Superintendent of Documents for \$1,108. The figures for the instant fiscal year are not available, but it is anticipated that they will far exceed the previous year.

Docket section is a section somewhat comparable to the office of a clerk of a court. All applications for the issuance of complaints pass through this section; it records and files all correspondence, exhibits, notices of assignments to attorneys, field and office reports, and all other material in connection with such applications. In its custody also are pleadings, exhibits, correspondence, and other material relating to formal complaints which have been served, and it maintains the current docket record for the inspection of the public, together with a proper supply of mimeographed copies of pleadings in the various cases before it for distribution to interested parties, upon application. This section also indexes and files a large quantity of legal material of a general nature not directly connected with specific applications for complaints or formal complaints, and performs various miscellaneous services for the legal staff of the commission. In addition to the above, this section handles all the work involved in the direction of the official reporters for the commission (said work being done under contract) the receipt, care, and custody of the transcript of hearings, and the auditing of vouchers covering payment for reportorial services.

Stenographic section, from which is supplied to all of the force needed stenographic and typewriting assistance.

Library section.--The functions carried on in the library are under the direction of the administrative division.

The library has a collection of over 20,000 books, pamphlets, and bound periodicals, devoted largely to the subjects of law, economics, and industries. In addition are extensive files of clippings, leaflets' etc. The distinctive features of the economic collection are the files relating to corporation and trade association data and files of representative trade periodicals for the more important industries. There is a function peculiar to the commission's library in the character of the work that it performs, and that is in the material it gathers in the form of pamphlets, corporation reports, association records, current financial and statistical services, catalogues, trade lists, etc., which are not ordinarily found in libraries of even a technical character. The greater amount is furnished gratuitously and much of

it is of a confidential character. This material furnishes a valuable adjunct to the investigatory work and is adapted to furnish leads to examinations rather than complete and substantive information on the subject matter.

The bulk of the law collection consists of the various national and regional reporter systems and the more important reference encyclopedias and reference books that are commonly found in law libraries. The distinctive feature, however, is a file of records and briefs of an antitrust cases, which were acquired without expenditure.

Care is exercised to limit the selection of books to supply only those needed constantly and immediately in the commission's work. The commission is far removed from other governmental law libraries and the library of the Supreme Court of the United States and must have available sufficient volumes to answer the ordinary requirements of the legal force. In all other instances use is made of the other libraries in Washington.

APPROPRIATIONS AND EXPENDITURES.

The appropriations of the commission for the fiscal year ended June 30, 1923, under the executive and sundry independent executive act approved February 13, 1922, amounted to \$955,600. In addition to this amount the commission had available the sum of \$18,880.32, ¹ making a total amount available of \$974,480.32.

The expenditures of the commission for the fiscal year ended June 30, 1923, plus the outstanding liabilities as of that date, amounted to \$970,753.28, which left an unexpended appropriation balance of \$3,727.04. Of this amount, \$1,750.93, represented the unexpended balance of the appropriation provided for the payment of increase of compensation (bonus), and was available for no other purpose. The remainder, \$1,976.11, represents the unexpended balance of the commission's lump-sum appropriation.

The appropriations, including unexpended balances of appropriations for previous years and expenditures, are tabulated below:

	Amount available.	Amount expended.
Federal Trade commission, 1923:		
Salaries, commissioners, secretary	\$55,000.00	\$55,000.00
Increase of compensation (bonus)	50,600.00	48,849.07
All other authorized expenses	850,000.00	827,485.91
Total fiscal year, 1923	955,000.00	931,334.98
Unexpended balances:		
Federal Trade Commission-		
1922	88,509.71	45,608.33
1921	72,056.00	Cr. 977.71
1913-14	18,880.32	18,880.32
	1,135,046.12	994,845.92

¹ This amount represents the unexpended balance of the amount made available by the ruling of the Comptroller of the Treasury under the second paragraph of section 3 of the act creating the commission, said amount representing the unexpended balance of the appropriations for the Bureau of Corporations

for the fiscal year 1913-14.

It is estimated that the outstanding liabilities of the commission as of June 30, 1923, amount to \$20,537.98, payment of which will be made from the unexpended balance of the appropriations "Federal Trade Commission, 1923."

A detailed analysis of the expenditures of the commission is given in the following statement:

Detailed statement of the expenditures of the Federal Trade Commission for the fiscal year ended June 30, 1928.

ADMINISTRATIVE DIVISION.			
Item.		Office.	Field.
Annual leave		\$14,038.26	
Sick leave		4,735.72	
General administration		74,924.57	\$579.93
Mail and files		10,869.20	
Disbursement and accounts		9,885.62	
Purchases and supplies		5,466.87	
Docket division		14,721.59	
Library		6,437.63	
Messengers		7,693.24	
Time excused by Executive or commission's order		415.11	
Economic supervision		52.67	
Legal supervision		14.99	
Medical attendant		1,151.77	
Printing and publications		10,997.76	
Stenographic		23,676.46	532.50
Appointment division		8,090.12	
Labor		2,652.84	1.00
Board of review		23.53	
Preliminary work on informal complaints		97.45	66.26
Informal Complaints		65.25	160.57
Formal complaints		7.77	179.09
Court leave		2.99	
Export Grain Inquiry, Part 5, Statistical Investigation of Market Manipulations		88.98	1,221.48
Foreign oil control		3.29	
Supplies		7,478.16	
Communications		3,823.88	
Transportation of things		425.57	
Printing etc		22,460.21	
Heat and light		129.28	
Rent		8,662.09	
Repairs		730.31	
Miscellaneous		352.30	
Equipment		8,552.45	
Total		248,727.84	2,740.83

ECONOMIC DIVISION.

Annual leave	\$25,461.75	
Sick leave	6,919.49	
General administration	302.51	
Time excused by Executive or commission's order	562.16	
Economic supervision	17,192.18	
Legal supervision	641.96	
Services rendered to Department of Justice	264.34	
Services rendered to Senate Committee on Manufactures--Crude oil and Petroleum products	100.32	
Services rendered to Department of Commerce	305.16	
Services rendered to Coal Commission	984.77	
Military leave	291.31	
Printing and publications	308.22	
Informal complaints	5,702.44	\$966.96
Formal complaints	9,049.93	2,313.90

Miscellaneous computing machine work	549.72
Lumber	118.97
Trading with the enemy	5.95
Coal	701.93
Steel	1,057.56
Lumber	590.76
Livestock and its products	71.25
Grain and produce exchanges	14,827.59
Paper schedule	6,042.39

ADMINISTRATIVE DIVISION.

Detailed statement of the expenditures, etc.--Continued.

ECONOMIC DIVISION--Continued.		
Item.	Office.	Field.
Milk products	\$134.33	
Tobacco situation		Cr. \$2.00
Export Grain Inquiry, Part 1, Prices, Costs, and Profits	5,105.28	227.61
Export Grain Inquiry, Part 2, Market Manipulations	520.33	288.16
Export Grain Inquiry, Part 3, Control and Interrelations	4,160.26	2,509.85
Export Grain Inquiry, Part 4, Methods of Foreign Buyers	4.53	16.28
Export Grain Inquiry, Part 5, Statistical Investigation of Market Manipulations	8, 159.93	4,047.38
House Furnishings Goods Industry and Trade, Part 1, Competitive Conditions	6,652.37	1,004.32
House Furnishings Goods Industry and Trade Part 2, Costs, Prices, and Profits	7,537.35	104.16
Second Section of the House Furnishing Goods Industry and Trade, "Kitchen Equipment," Part 1, Competitive Conditions	18,940.26	4,223.57
Second section of the House Furnishings Goods Industry and Trade, "Kitchen Equipment," Part 2, Costs, Prices, and Profits	24,557.01	1,401.49
Cotton Trade Inquiry, Part 1, Cotton Exchanges	24,739.73	7,407.29
Cotton Trade Inquiry, Part 2, Cotton Statistics	13,112.11	70.99
Cotton Trade Inquiry, Part 3, Cotton Manipulations	3,523.75	1,805.10
Foreign oil control	5,222.42	472.12
Fertilizers	14.68	
Flour milling	2,254.47	3,466.26
National Wealth Inquiry, National Wealth, Part I	1,067.44	
National Wealth Inquiry, Part 2, National Income	289.78	
National Wealth Inquiry, Part 3, National Taxation	51.01	
Total	238,379.70	30,323.44

LEGAL DIVISION.

CHIEF COUNSEL

Annual leave	\$12,005.17	
Sick leave	3,541.34	
General administration	9.90	
Time excused by Executive or commission's order	272.18	
Special briefs	139.21	
Legal supervision	17,503.96	\$122.56
Study of procedure	49.03	
Stenographic	2.49	
Special for commissioners	67.17	
Board of review	43.46	
Preliminary work on informal complaints	19.80	
Informal complaints	4,638.68	379.60
Formal complaints	89,099.14	54,276.85
Petitions of mandamus	1,846.70	321.39
Preliminary work on formal complaints	132.53	
Injunction proceedings against the commission	27.23	
Court leave	4.71	
Grain products	21.13	
Export trade	35.48	
Export Grain Inquiry, Part 5, Statistical Investigation of Market Manipulations.	76.87	
Second Section of the House Furnishings Goods Industry and Trade, "Kitchen Equipment," Part 1, Competitive Conditions	29.43	
Second Section of the House Furnishings Goods Industry and Trade, "Kitchen Equipment," Part 2 Costs Prices, and Profits	7.07	
Cotton Trade Industry, Part 1, cotton Exchanges	11.49	
Total	130,036.17	55,100.40

CHIEF EXAMINER.
WASHINGTON (D.C.) OFFICE.

Annual leave	6,759.04	
Sick leave	1,093.92	
Library	565.68	
Time excused by the Executive or commission's order	189.11	
Legal supervision	15,355.50	353.93
Services rendered to Federal Real Estate Board	37.94	
Services rendered to Departmental Contract Board	22.66	
Services rendered to Senate Committee on Manufactures-Crude oil and petroleum products	Cr. 1.63	
Corporation reports	9.31	

Study of procedure	61.91	
Labor		3.00
Special for the commissioners	5.66	
Board of review	2,112.62	
Preliminary work on informal complaints	8,006.99	2,515.07
Informal complaints	15,659.09	11,484.08
Formal complaints	32,177.72	17,398.84

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Detailed statement of the expenditures, etc.--Continued.

LEGAL DIVISION.--Continued.

Item.	Office.	Field.
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CHIEF EXAMINER--Continued.

WASHINGTON (D.C.) OFFICE--continued.

Lumber	\$14.86	
Stock securities (blue sky)	2,328.98	\$141.34
Trade practice submittal guaranteed against price decline		1.85
Export Grain Inquiry, Part 1, Prices, Costs, and Profits	29.47	
Cotton Trade Inquiry, Part 3, Cotton Manipulations		40.29
Fertilizers	1,764.52	1,081.29
Radio industry	7.92	
Total	86,202.08	33,019.60

NEW YORK BRANCH OFFICE.

Annual leave	2,783.84	
Sick leave	638.80	
Legal supervision	4,554.41	603.20
Study of procedure	42.43	4.76
Stenographic	4,016.54	
Preliminary work on informal complaints	3,366.98	572.88
Informal complaints	10,063.92	3,483.09
Formal complaints	3,404.59	1,131.87
Radio industry	331.09	65.60
Total	29,202.60	5,861.40

CHICAGO BRANCH OFFICE.

Annual leave	2,277.38	
Sick leave	369.81	
Time excused by the Executive or commission's order	8.26	
Legal supervision	3,299.74	393.56
Study of procedure	209.13	92.85
Stenographic	3,170.21	177.00
Preliminary work on informal complaints	2,614.73	342.91
Informal complaints	8,570.13	3,334.45
Formal complaints	5,360.15	2,124.07
Lumber	399.30	140.86
Export trade	19.82	
Radio Industry	28.88	
Total	26,327.54	6,605.70

SAN FRANCISCO BRANCH OFFICE.

Annual leave	560.16	
Sick leave	7.15	
Legal supervision	388.70	126.71
Stenographic	1,215.19	255.25
Preliminary work on informal complaints	1,692.01	512.96
Informal complaints	1,972.81	1,539.60
Formal complaints	835.62	609.39
Lumber	244.47	71.97
Stock securities (blue sky)	15.59	
House Furnishing Goods Industry and Trade, part 1, Competitive Conditions		171.67
Total	6,931.70	3,287.55

SUMMARY, CHIEF EXAMINER.

Washington office	80,202.08	33,019.60
New York branch office	29,202.60	5,861.40
Chicago branch office	26,327.54	6,005.70
San Francisco branch office	6,931.70	3,287.55
Total	148,663.92	48,774.25

BOARD OF REVIEW.

Annual leave	1,834.23	
Sick leave	912.15	
Stenographic	55.06	
Board of Review	15,444.01	
Informal complaints	44.62	
Formal complaints	622.05	190.26
Total	18,912.12	190.26

ADMINISTRATIVE DIVISION.

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Detailed statement of the expenditures, etc.--Continued.

LEGAL DIVISION.--Continued.

Item.	Office.	Field.
CHIEF EXAMINER--Continued.		
EXPORT TRADE BRANCH.		
Annual leave	\$882.41	
Sick leave	187.93	
Time excused by Executive or commission's order	11.50	
Board of review	13.21	
Formal complaint	1,189.16	\$1,886.66
Trading with the enemy	8.26	
Export trade	8,469.80	1,016.61
Total	19,762.27	2,903.27
TRADING WITH THE ENEMY.		
Annual leave	451.88	
Sick leave	289.49	
Time excused by Executive or commission's order	13.53	
Formal complaint	24.57	
Court leave	45.98	
Trading with the enemy	3,202.71	270.48
Total	4,028.16	270.48

SUMMARY OF EXPENDITURES.

Item.	Office.	Field.	Total.
Administrative	\$248,727.84	\$2,740.83	\$251,468.67
Economic	238,379.70	30,323.44	268,703.14
Legal:			
Chief counsel	130,036.17	55,100.40	185,136.57
Chief examiner	148,663.92	18,774.25	197,438.17
Board of review	18,912.12	190.26	19,102.38
Export trade branch	10,762.27	2,903.27	13,665.54
Trading with the enemy	4,328.16	270.48	4,298.64
Grand total	799,510.18	140,3312.93	939,813.11

Adjustments.--The following adjustments are made to account for the difference between the cost and disbursements :

Total cost for the year ended June 30, 1923	\$939,813.11
Less transportation issued	48,226.95
New total	891,586.16
Plus transportation paid	45,404.81
New total	936,990.97

Allotted to the retirement fund	9,005.88
Increase of compensation (bonus)	48,849.07
Disbursements for the year ended June 30, 1923	994,845.92

The appropriations for the Federal Trade Commission for the fiscal year ended June 30, 1923, were as follows :

For five commissioners. at \$10,000 each ; secretary, \$5,000 ; in all, \$55,000.

For all other authorized expenditures of the Federal Trade Commission in performing the duties imposed by law or in pursuance of law, including personal and other services, supplies and equipment, law books, books of reference, periodicals, Printing and binding garage rental, traveling expenses in-

cluding actual expenses at not to exceed \$5 per day, or per diem in lieu of subsistence not to exceed \$4, newspapers, foreign postage, and witness fees and mileage in accordance with section 9 of the Federal Trade Commission act, \$850,000.

PERSONNEL.

On December 1, 1922, Vice Chairman Victor Murdock was elected chairman of the commission for the ensuing year, succeeding Chairman Nelson B. Gaskill. On the same date, Commissioner John F. Nugent was elected Vice chairman for the ensuing year.

During the fiscal year ended June 30, 1923, 29 employees entered the Service of the commission, making a total of 2,112 original appointments in the service of the commission since its creation. During the year, 39 employees left the commission's service, leaving the total number of employees at the close of June 30, 1923, 308, with a total basic salary of \$762,040. Of this number, 179 were under civil-service appointment and designation, and 129 held positions excepted from civil service rules and regulations.

At the close of the fiscal year the commission had 58 employees who have had United States military or naval service. The number of female employees at the close of June 30, 1923, was 100. For the same date the number of employees in the service coming under the provisions and benefits of the civil service retirement law was 178.

APPLICATIONS FOR COMPLAINTS AND FORMAL COMPLAINTS.

The following table shows in detail the receipt and disposition of applications for complaints, by months for the fiscal year ended June 30, 1923, and by fiscal years from the organization of the commission to June 30, 1923:

Table showing receipt and disposition of applications for complaints and formal complaints, by fiscal year s, from organization of the Commission to June 30, 1923.

Fiscal Year.	Applications for complaints.				Served.	Formal complaints.			
	Dock- eted.	Disposed of.		Total		Dis- missed.	Disposed of.		Cases ap- pealed
Dis missed		For- mal served.	Orders to cease and desist.		Total.				
Organization (Mar. 16, 1915) and prior thereto to June 30, 1915	112	8		8					
Ended June 30:									
1916	134	105	3	108	5				
1917	153	79	16	95	9	1	3	4	
1918	332	160	80	240	154	7	71	78	
1919	535	301	125	426	135	13	71	84	4
1920	724	339	220	559	308	43	112	155	9

1921	426	357	157	514	177	37	118	155	17
1922	382	287	103	390	111	75	91	166	5
1923	410	181	121	302	144	87	82	169	5
Total	3,214	1,817	825	2,642	1,043	263	548	811	49

PUBLICATIONS ISSUED.

The following publications were issued by the Federal Trade Commission during the fiscal year ended June 30, 1923:

Annual Report of the Federal Trade Commission for the fiscal year ended June 30, 1922; November 22, 1922. 169 pp.

Calcium Arsenate Industry, June 23, 1923. 21 pp.

Preliminary Report on the Cotton Trade, February 26, 1923. 28 pp.

Decisions, Findings, and Orders of the Federal Trade Commission. Volume IV (July 1, 1921, to June 30, 1922), April 19, 1923. 651 pp.

Fertilizer Industry, March 15, 1923. 87 pp.

Foreign Ownership in the Petroleum Industry, March 26, 1923. 152 pp. House Furnishings Industry, Volume I (Household Furniture), May 26, 1923. 484 pp.

Index-Digest of Federal Trade Commission Decisions, volumes 1, 2, 3, November 28, 1922. 233 pp.

Preliminary Report on Investment and Profits in Soft Coal Mining, July 6, 1922. 222 pp.

Methods and Operations of Grain Exporters, Volume I (Interrelations and Profits), October 21, 1922. 123 pp.

Petroleum Industry of Wyoming and Montana, August 25, 1922. 3 pp. War Time Costs and Profits of Southern Pine Lumber Manufacturers, November 29, 1922. 94 pp.

Western Red Cedar Association, February 26, 1923. 22 pp.

Northern Hemlock and Hardwood Manufacturers' Association, May 7, 1923. 52 pp.

LEGAL DIVISION.

The legal division of the commission includes two branches, viz, the trial division, at the head of which is the chief counsel, who is also the legal advisor to the commission, and the examining and investigating division, at the head of which is the chief examiner. The latter division makes preliminary investigations of all practices complained of to the commission as being in violation of the acts which it is charged with enforcing. If as a result of such inquiry formal complaints are issued, the respondents are directed to make answer and show cause why an order to cease and desist from the use of the practices charged should not issue. After joinder of issue, testimony is taken before a trial examiner who hears the testimony and makes a preliminary report on the facts to the commission.

CHIEF COUNSEL.

The chief counsel directs the trial of all cases. When there is a review of the orders of the commission by the circuit courts of appeals, as provided by statute, the conduct of the cases is also in the hands of the chief counsel and his staff. If recourse be had to the Supreme Court of the United States, the chief counsel cooperates with the Solicitor General in the preparation of the cases.

During the year the commission disposed of 126 formal complaints. In all of these cases, in the absence of an admission of the facts and stipulation in lieu of testimony, trials were had at different places throughout the country and witnesses were examined and documentary evidence received in support of the charges stated in the complaint and on behalf of the parties against whom the complaint had been issued. The cases then came for final determination before the commission on brief and oral argument. Upon such determination orders to cease and desist were issued by the commission in 78 formal cases during the fiscal year ending June 30, 1923.

Complete lists of the cases disposed of during the year under formal complaints and those still pending before the commission appear further on in this report under appropriate captions; but it is desired to make brief mention at this point of some of the more important or unusual cases or classes of cases contained in those lists.

CASES INVOLVING SECTION 7 OF THE CLAYTON ACT.

Proceedings under section 7 of the Clayton Act have increased in number during the year and have emphasized the importance of that section. In proceedings against Swift & Co., Western Meat Co., and

Thatcher Manufacturing Co. the formal complaints charged the acquisition of stock in other corporations in violation of section 7 of the Clayton Act, and final orders were issued in these cases during the year. Two of these complaints also charged unfair methods of competition under section 5 of the Federal Trade Commission act. The orders of the commission required each respondent to divest itself of the stock acquired and held contrary to section 7 and to cease and desist from the ownership, management, operation, and control of the assets, rights, property, and privileges resulting from such acquisition. A proceeding charging the Owens Bottle Co. with acquiring the stock of three corporations in violation of section 7 was partly tried and is nearing completion, and formal complaints have been issued against Standard Oil Co. of New Jersey, Illinois Glass Co., Hygrade Lamp Co., and International Shoe Co. charging each of them with acquiring stock in other corporations in violation of section 7 of the Clayton Act.

“PITTSBURGH PLUS” CASE.

A complaint was issued against the United States Steel Corporation, American Bridge Co., American Sheet & Tin Plate Co., Carnegie Steel Co., National Tube Co., American Steel & Wire Co., Illinois Steel Co., Minnesota Steel Co., Clairton Steel Co., Union Steel Co., the Lorain Steel Co., and the Tennessee Coal, Iron & Rail-road Co., alleging that the respondents are discriminating in price between customers, contrary to both the Federal Trade Commission act and section 2 of the Clayton Act. The discrimination, it is averred in the complaint consists in the fact that customers everywhere are charged the Pittsburgh base price for steel products plus an amount equivalent to the rate of freight from Pittsburgh to destination, irrespective of the place of the actual manufacture of the steel. By way of illustration, it is alleged that for Steel manufactured at Duluth the discrimination against a Duluth customer, as contrasted with sales to a Pittsburgh customer buying Pittsburgh steel, is \$13.20 per ton ; that the discrimination against a La Porte, Ind., customer buying at Chicago, as contrasted with a Pittsburgh customer buying Pittsburgh steel, is \$3.30 ; and that the discrimination, in varying degrees, exists against steel buyers at all points outside Pittsburgh.¹ The practice is averred to have the following effects :

First. The substantial lessening of the competition of western and southern manufacturing buyers of steel in meeting eastern manufacturing buyers, and their elimination from important markets.

¹ There is a local variation in Birmingham, Ala., section which is not described herein for the sake of brevity.

Second. The substantial lessening of competition with respondents and a tendency toward monopoly for respondents in lines wherein they are competitors of their customers, on the ground that respondents do not pay the discriminatory price.

Third. The substantial lessening of competition among all producers of steel in the United States, on the ground that they charge the Pittsburgh base price plus any amount equivalent to the rates of freight to the point of delivery, irrespective of the location of the steel mill, and that without the maintenance of the said basing practice by respondents the other steel producers of the country would be unable to maintain the said prices.

Testimony in support of the complaint and for the defense has involved a most searching inquiry, not merely into competitive conditions surrounding steel makers but also into many lines of industry wherein steel is an important cost factor, in order to ascertain the effect of the practice upon the markets and the competitive powers of competing purchasers of steel throughout the country. Hearings have been held at Chicago, Pittsburgh, Milwaukee, Detroit, New York, Minneapolis, Duluth, Chattanooga, Birmingham, and Washington. The defense is to close shortly after the end of the fiscal year.

STEEL MERGER CASES.

During the latter part of the last year the commission issued a complaint against the Bethlehem Steel Corporation and the Lackawanna Steel Co., charging that the acquisition of the properties and assets of the latter by the former was in violation of section 5 of the Federal Trade Commission act; and a complaint against the Midvale Steel & Ordnance Co., Cambria Steel Co., Republic Iron & Steel Co., and Inland Steel Co., charging that the consolidation of these companies was also in violation of said section 5. This latter consolidation was abandoned shortly after issuance of the complaint, which was dismissed. A short time thereafter Bethlehem Steel Corporation and Bethlehem Steel Co. purchased the properties, assets, and businesses of Midvale Steel & Ordnance Co. and Cambria Steel Co. The commission thereupon, under date of January 26, 1923, issued a complaint against Bethlehem Steel Corporation, Bethlehem Steel Co., Bethlehem Steel Bridge Co., Lackawanna Steel Co., Lackawanna Bridge Works Corporation, Midvale Steel & Ordnance Co., and Cambria Steel Co. The complaint charges that the consolidation of these companies, the only large and thoroughly integrated steel companies east of Pittsburgh, will substantially lessen competition among the respondents, has a dangerous tendency unduly to hinder competition in the iron and steel industry, and is an unreasonable restraint upon competition amounting to a restraint of

trade in the iron and steel industry, particularly in the northeastern section of the United States. The commission after issuing this complaint dismissed the complaint first above mentioned. The case was pending at the close of the fiscal year.

MOTION-PICTURE CASES.

During the year the commission considered several questions of alleged unfair methods of competition in the motion-picture industry. These cases involved for the most part the distribution for exhibition of old or reissued motion-picture films under new names, without revealing to the exhibitors or to the public in any adequate manner, if at all, that such films had previously been given more or less wide-spread distribution under a different name. In three of such cases which were completed during the year the commission was of the opinion that the companies concerned were violating section 5 of the Federal Trade Commission act and issued orders to cease and desist. These companies were the American Film Co., Signet Films (Inc.), and the Eskay Harris Film Co.

By far the most important case dealing with the motion-picture industry remained uncompleted at the close of the year, notwithstanding the taking of testimony had consumed several weeks up to that time. The respondents are Famous Players-Lasky Corporation, Realart Pictures Corporation, the Stanley Co. of America, the Stanley Booking Corporation, Black New England Theaters (Inc.), Southern Enterprises, Saenger Amusement Co., and certain individual defendants, officers of said companies. These respondents include some of the largest and most powerful factors in the three branches of motion-picture industry, namely, the production, the distribution, and the exhibition of pictures. They are charged with a conspiracy to dominate and monopolize the industry in the United States, and with various specific acts looking toward the carrying into effect of the object of the conspiracy. Due to the importance of the industry and its diversified character, not only as to physical field of operations but also as to the necessarily different personnel and methods employed in the three separate branches above named, a vast amount of work has devolved upon the commission and its employees in the case. The chief counsel assumed personal charge of the conduct of the hearings, and it is anticipated that the completed record will be ready for disposition by the commission on or before the first of the calendar year.

THE BISCUIT CASES.

Following the usual preliminary investigations, the commission issued formal complaints against the two largest biscuit and cracker

manufacturers in the United States, the National Biscuit Co. and the Loose-Wiles Biscuit Co., charging them with Violations of section 2 of the Clayton Act and, section 5 of the Federal Trade Commission act. Such charges were based on the alleged practices of these companies in giving certain discounts based on total purchases over a given period of time, which discounts it is claimed operated unfairly to the advantage chain-store systems as compared with individual grocers whose purchases are equal to those of the chain-store units similarly located. Testimony was taken during the last few weeks of the year, but final disposition of the case has not been made by the commission.

RESALE PRICE MAINTENANCE CASES.

The prosecution of the class of proceedings coming under the head of resale price maintenance, which had been suspended pending the action of the Supreme Court and resumed after the decision by that court in January, 1922, sustaining the order of the commission against the Beech Nut Packing Co., has been continued. This decision made further investigation appear necessary in many of the suspended cases and the issuance of new complaints where the fresh investigations warranted them. Many new applications based on allegations of resale price maintenance as constituting a violation of section 5 of the Federal Trade Commission act have been received and complaints have been issued in a number of cases during the present year. One of the most important of these cases previously suspended is in course of trial, namely, that against the Cream of Wheat Co. Other cases, in which complaints have been issued, are the following : National Lead Co., Twinplex Sales Co., McCord Manufacturing Co., Seth Thomas Clock Co., Goodall Worsted Co., Bowers Bros. et ai., Hills Bros., Toledo Pipe Threading Machine Co., Amour & Co. In the case of the Standard Electric Manufacturing Co., an order to cease and desist was issued by the commission January 17, 1923. It is hoped to obtain a further definition of the law as to resale price maintenance as soon as cases where the order of the commission may be taken to the courts for review can be advanced.

In the case of the Music Publishers' Association of the United States, and its members, and the National Association of Sheet Music Dealers, and its members, the commission found that the respondents and each and all of them conspired together for the purpose of fixing and maintaining specific standard resale prices of musical publications in the Various States of the United States by the members of the National Association of Sheet Music Dealers

and other dealers and publishers selling musical publications to the public, and that as a result of the conspiracy and the acts of the respondents done in pursuance thereof, the prices of musical publications to the public and to the music profession were enhanced generally throughout the United States. The respondents were ordered, among other things, to cease and desist from combining and conspiring, among themselves or with others, to fix or increase the prices of musical publications published or sold by them or any of them, and from combining and conspiring among themselves or with others to maintain standard or fixed resale prices for musical publications.

THE TOBACCO CASES.

The commission issued a number of complaints attacking price-fixing agreements made by tobacco jobbers in different localities in combination with tobacco-manufacturing companies. These complaints charge that groups of tobacco wholesalers, in most cases organized into associations, fixed through the means of agreements of their respective associations, uniform prices on tobacco products, and that the tobacco-manufacturing companies assisted the various groups of jobbers in carrying out their agreements by offering to discontinue selling to such members of associations who sold for prices less than the associations had agreed upon. The complaints allege also that in compliance with their promises of cooperation the tobacco-manufacturing companies did discontinue selling certain of their customers, because they had not observed the prices fixed by the associations of which they were members.

The tobacco-manufacturing companies proceeded against, in combination with such wholesalers, are the American Tobacco Co., Liggett & Myers Tobacco Co., P. Lorillard Co. (Inc.), Tobacco Products Corporation, Falk Tobacco Co., Scotten-Dillon Co., and Larus Bros. Co. The associations proceeded against are located in many of the principal cities of the country, notably Philadelphia, Cincinnati, Milwaukee, Chattanooga, Chicago, and Kansas City. Other associations embraced extensive territories in their membership, as, for instance, the Tri-State Association, whose members are located in New York, Ohio, and Pennsylvania; the Western Pennsylvania Association, whose membership is scattered throughout the western part of Pennsylvania; the Central Tobacco Jobbers' Association, whose members are scattered throughout central Pennsylvania; the Keystone Tobacco Jobbers' Association, whose membership is distributed throughout eastern Pennsylvania; the Ohio Wholesale Grocers Association, whose members do business throughout Ohio, while in one complaint the wholesalers who are named as respond-

ents, comprise practically all of the wholesale tobacco dealers along the Pacific coast, as well as in Utah, Idaho, and Nevada.

Hearings were held during the year in 10 of these cases.

THE DOUGLAS FIR CASE.

This case has been pending during the entire fiscal year on formal complaint charging the Douglas Fir Exploitation & Export Co., whose principal places of business are Seattle, Wash.; Portland, Oreg.; and San Francisco, Calif., and 107 other corporations, partnerships, and individuals with a conspiracy to hinder and obstruct competition in the sale and distribution of certain classes of lumber in the United States. The charge also includes specific acts for the purpose of carrying the objects of the conspiracy into effect, such acts including among others price agreements, improper pressure upon competitors to compel them to join the conspiracy, and to comply with its plans. The respondents are alleged to control 85 per cent of the productive capacity of the class of lumber handled by them which is variously known as *Pseudotsuga taxifolia*, Oregon pine, red pine, yellow pine, Columbian pine, Puget Sound pine, and British Columbia pine, and articles and things manufactured therefrom.

A considerable volume of testimony was taken, but the trial of the case remained uncompleted at the close of the year. It will probably be reached for consideration by the commission on the completed record by the first of the calendar year.

BLUE SKY CASES.

Nine companies which were engaged, or pretended to be engaged, in the sinking of oil wells and the production of oil, together with certain individuals promoting them, were found by the commission to have been violating section 5 of the Federal Trade Commission act. These were all cases of the character commonly known as "blue sky" cases; and the objectionable practices consisted in the publication, advertisement, and circulation of false and misleading statements as to the character of the company organization, its assets, location of alleged lands or oil wells, past and present oil production of wells alleged to be owned by it, the amount of dividends previously paid, and other representations of a similar character, made for the purpose of inducing sales of the company stock.

The following concerns and also in every case individual defendants were found using these practices or some of them: Big Diamond Oil & Refining Co., the Lone Star Oil Co., the Guaranty Fund Oil Co., First National Oil Co., Imperial Production Co., the Non-

Derrick Drilling Machine Co. (Inc.), Royal Duke Oil Co., Old Dominion Oil Co. et al., and Melhuish & Co. The oil holdings and alleged holdings of these companies were in the Texas and Oklahoma oil fields, although two of the companies had their principal offices in Denver, Colo.

Orders to cease and desist were issued against all of said companies and such individual defendants as were found using practices charged in the complaints.

HOSIERY MISBRANDING CASES.

The misrepresentation of product in the form of false or misleading brands or labels is a frequent subject of consideration by the commission. It is interesting to note, however, that in the hosiery business alone 20 orders to cease and desist were issued during the past fiscal year against companies which were misbranding in such manner as to convey the impression that hosiery composed of a mixture of cotton and wool, or of cotton and silk, was pure wool or pure silk hosiery. Eight of said cases were against manufacturers of cotton and wool mixtures which were so branded or labeled as to create the impression that the product was pure wool; nine were against manufacturers of cotton and silk mixtures which were so branded as to give the impression of a pure silk product; and three were against distributors of such products manufactured by others. Said orders were directed against the following concerns : Sulloway Mills, Rockford Mitten & Hosiery Co., Nolde & Horst Co., George E. Boyden & Son, Hub Hosiery Mills, King's Palace, Kahn & Frank, Hancock Knitting Mills, Fidelity Knitting Mills, Alamance Hosiery Mills, Esco Hosiery Co. (Inc.), Pilling & Madeley, Rex Hosiery Co., Oscar Schmied, Thompson Bros., Moore & Fisher, Daum-Rogers-Spitzer Co., Simmons, Hatch & Whitten Co., Brown-Durrell CO., and Aristo Hosiery Co.

COURT CASES.

Application to the appropriate United States circuit court of appeals may be made on behalf of the commission to secure enforcement of its orders, or on behalf of any party against whom an order has been issued to secure a review of the order.

The following cases, in which petitions had been filed in the various circuit courts of appeal to review orders of the commission, were decided during the fiscal year :

L. B. Silver Co. v. Federal Trade Commission, 289 Fed. 985.

Guarantee Veterinary Co. v. Federal Trade Commission, 285 Fed. 853.

The Mennen Co. v. Federal Trade Commission, 288 Fed. 774.

Southern Hardware Jobbers Assn. v. Federal Trade Commission, 290 Fed. 773.

Mishawaka Woolen Manufacturing Co. v. Federal Trade Commission, 283 Fed. 1022.

Maloney Oil & Mfg. Co. v. Federal Trade Commission, 282 Fed. 81.

Gulf Refining Co. v. Federal Trade Commission, 282 Fed. 81.

Standard Oil Co. of New Jersey v. Federal Trade Commission, 282 Fed. 81.

Juvenile Shoe Co. v. Federal Trade Commission, 289 Fed. 57.

In the following cases petitions have been filed in the Circuit court of appeals to review orders of the commission. These petitions were pending and undecided at the end of the fiscal year :

Armour & Co. v. Federal Trade Commission.

Swift & Co. v. Federal Trade Commission.

B. S. Pearsall Butter Co. v. Federal Trade Commission.

Chicago Portrait Co. v. Federal Trade Commission.

Applications within die year to the Supreme Court of the United States for writs of certiorari to review the decrees of the circuit courts of appeals in cases wherein orders of the commission had been reviewed were denied in two cases, those of the Mishawaka Woolen Manufacturing Co. and the Aluminum Co. of America, on the application of the parties proceeded against, and in one case, that of the Mennen Co., upon the application of die commission; and writs were granted in four other cases, those of the Maloney Oil & Manufacturing Co., Gulf Refining Co., Standard Oil Co. of New Jersey, and the Raymond Bros.-Clark Co. upon application of the commission.

In the following cases decisions were rendered by die Supreme Court of the United States during the year: Curtis Publishing Co., 260 U. S. 568 ; Maloney Oil & Manufacturing Co., 261 U. S. 463 ; the Gulf Refining Co., 261 U. S. 463 ; Sinclair Refining Co., 261 U. S. 463 ; and Standard Oil Co. of New Jersey, 261 U. S. 463. The Fruit Growers' Express case was dismissed by stipulation (261 U.S. 629.)

The commission within the year disposed of 126 complaints issued by it and in 78 of these matters orders were issued directing the parties proceeded against to cease and desist from the practices upon which the charges stated in the several complaints were based, and in 48 of such matters the complaints were dismissed upon various grounds. In only 2 of the cases disposed of by the commission within the year were petitions filed by the parties proceeded against to have the circuit court of appeals review the orders of the commission. There were 232 complaints pending and undetermined at the end of the year, some having been submitted to the commission on final hearing and others were in various stages of preparation for submission.

The opinion of the courts in the following cases decided within the year dealt with questions of the jurisdiction of the commission

and there are interpreted therein various provisions of the acts of Congress which describe the power and authority of the commission :

PETITION TO REVIEW ORDERS OF THE COMMISSION.

Southern Hardware Jobber's Association et al. v. The Federal Trade Commission, 290 fed. 773 (C. C. A., Fifth Circuit), decided June 13, 1923.

The respondents in this case were the Southern Hardware Jobbers' Association, its officers and members. The association is composed of persons, partnerships, and corporations engaged in the business of buying and selling of hardware in wholesale quantities in certain Southern States. Membership in the association was restricted to dealers whose sales to merchants were not less than 75 per cent of the gross sales or not less than \$250,000 per year and who employed not less than three traveling salesmen, and had capital and surplus of not less than \$75,000. The membership was further restricted to dealers whose policy is to distribute goods through what they termed "regular channels of trade"--that is, from manufacturer to jobber or wholesaler, from jobber or wholesaler to retailer, and from retailer to consumer. It was deemed contrary to the policy of the association for a manufacturer of hardware to sell direct to the retailer on the same terms and conditions that it sells like goods in like quantity to what they termed "legitimate jobber's and wholesalers." To compel or induce manufactures of hardware to conform to its policy the association, through its officers and members, announced that members of the association would not buy the products of any manufacturer who sold goods to buying agencies organized by retail dealers in hardware, upon the terms and at the prices made to so-called regular jobbers or wholesalers, and as a result of such threats to boycott, the manufacturers were deterred from selling to such agencies or to dealers who were not eligible to membership in the association by the fear that they would lose the patronage of the members of the association. An order to cease and desist from the practices charged in the complaint was issued by the commission, whereupon respondents petitioned the court to vacate and set aside the order of the commission. The petition was denied and the order of the commission in all respects affirmed. The following is quoted from the opinion of the court :

That evidence warranted the conclusion that what the petitioners did to thwart the success of the cooperative association and the American Purchasing Co. went beyond each of the petitioners asserting and seeking to enforce its or his individual views as to business policies or methods, and amounted to cooperation between them in furtherance of a common purpose to prevent hardware manufactures selling without price discrimination, to exclusively

retail dealers or organizations buying for such retailers on terms which effect a saving to retailers of all or part of the profit which regular wholesalers or jobbers retain, with the result of requiring such retailers to get hardware only through the self-styled legitimate wholesalers or jobbers. The existence of a combination in restraint of trade may be inferred from evidence of circumstances indicating concert of action to that end. (*American Column Co. v. United States*, 257 U. S. 377.) The success of the concerted action in which the petitioners participated meant the monopolizing of the wholesale hardware trade in an extensive territory by members of the jobbers' association and dealers conforming to the above mentioned policy, and also meant the exclusion of hardware retailers in that territory from sources of supply available to wholesalers unless they combined wholesaling and retailing in the particular way which was approved by the jobbers' association. We are of opinion that such concerted action involved restraint of interstate trade, and is a proper subject of a Federal Trade Commission order to cease and desist.

Juvenile Shoe Company (Inc.) v. Federal Trade Commission, 289 Fed. 57
(C. C. A., Ninth Circuit).

The Juvenile Shoe Co. (Inc.), a corporation organized under the laws of the State of California, is engaged at Los Angeles, Calif., in the business of selling children's shoes at wholesale; it was organized and began business in May, 1919. Prior to that date another corporation was organized under the laws of the State of Missouri with the name of Juvenile Shoe Corporation of America, which senior corporation was engaged in the business of manufacturing and selling children's shoes, and at the time of the organization of the Juvenile Shoe Co. (Inc.) had built up an extensive business in the State of California and States adjacent thereto. The junior corporation made shoes sold by it packed in cartons upon which were printed labels which resemble in size and general appearance the registered trade-mark of the senior corporation. The commission found that the corporate name of the junior corporation so closely resembled that of the senior corporation and the labels of the junior corporation so closely resembled the registered trade-mark of the senior corporation that the use of such name and labels by the junior corporation had the capacity and tendency to cause confusion in the trade and enabled dealers to sell the shoes of the junior corporation as and for those of the senior corporation. An order was issued requiring the junior corporation to cease and desist from the use of the word "Juvenile" as a part of its corporate name and to cease and desist from the use of tags and labels containing the word "Juvenile" upon the cartons of shoes sold by it. Upon application to the court to vacate the order of the commission, the order was in all respects affirmed. The following is quoted from the opinion of the court:

Injunction will lie against a corporation that by any artifice deceives the public into believing that its goods are those of another corporation having a

similar name, and this is true irrespective of any intent to mislead the public, and especially is it true where the corporations are engaged in the same business (citing cases).

*Guarantee Veterinary Co. et al. v. Federal Trade Commission, 285 Fed. 853
(C. C. A., Second Circuit).*

The Guarantee Veterinary Co. is engaged in the business of selling, under the brand name of "Sal-Tonik," salt in the form of blocks for the use of livestock. In its advertisements and advertising matter it claimed that the block salt sold by it contained 16 specified medicinal ingredients and had been adopted by the Quartermaster's Department of the United States. Analyses of samples of "Sal-Tonik" showed no trace of 10 of the 16 ingredients claimed for it in the advertisements, and the evidence disclosed, and the commission found, that the product had never been adopted for use by the Quartermaster's Department. An order to cease and desist from the use of advertisements containing the claims as stated, was issued, whereupon application was made to the court to vacate and set aside the order of the commission. One of the grounds relied upon to support the application to vacate the order of the commission was that for several months prior to the issuance of the complaint the company had voluntarily ceased to make the claim in its advertisements that its product had been adopted for use by the Quartermaster's Department. The order of the commission was in all respects sustained. The following is quoted from the opinion of the court :

In *Sears, Roebuck & Co. v. Federal Trade Commission, 258 Fed. 307, 310*, it was insisted as here that the injunctive order was improvidently issued because before the complaint was filed and hearing had, the petitioner had discontinued certain methods complained of. In that case, unlike this, the petitioner had stated in its answer that it had no intention of resuming them. The Circuit Court of Appeals for the Seventh Circuit, notwithstanding these facts, sustained the right of the commission to make the injunctive order, and said: "No assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course."

The testimony shows conclusively that the petitioners had been publishing advertising matter containing false and misleading statements and had used an unfair method of commerce, and we think the commission was quite within its right in issuing the order in the form it did. In such cases the commission must exercise its discretion in view of all the circumstances.

*The L. B. Silver Co. v. Federal Trade Commission., 289 Fed. 985 (C. C. A.,
Sixth Circuit), decided February 16, 1923.*

The complaint in this case charged that the respondent, a corporation, made use of false and misleading advertising. The respondent is a breeder of hogs which it designates as "Ohio Improved Chester White Hogs" or "O. I. C." The advertisement

upon which the charges stated in the complaint were based contained, among other things, the claim that the O. I. C. hogs were a separate and distinct breed from the Chester white hogs and were superior thereto; that the O. I. C. hogs were not susceptible to cholera, pneumonia and other diseases and possessed a power to repel disease in a degree not possessed by other breeds, and that it had secured greatly reduced express rates on livestock shipped by it. An order directing respondent to cease and desist from the use of advertisements containing the claims set out in the complaint, was issued, whereupon respondent applied to the court to vacate and set aside the commission's order. The court affirmed that part of the order which required respondent to cease and desist from the use of advertising matter in which the claims were made that the hogs designated by respondent as O. I. C. hogs are not susceptible to cholera and other diseases but possess a power to resist diseases to a degree not possessed by hogs of other breeds, and that in the shipment of livestock respondent had secured from express companies rates of transportation lower than the rates granted to other shippers of livestock. That part of the order which required respondent to cease and desist from the use of the advertisements representing that the O. I. C. hogs are a breed separate and distinct from the Chester white was modified as shown by the following quotations from the opinion of the court :

The claim that the O. I. C. hog is a separate and distinct breed from the Chester white is neither palpably nor literally false, as were the brands and labels used by the Winsted Hosiery Co. On the contrary, the truth of this claim finds equal support in the testimony of expert and experienced breeders, as does the claim that it is false and unwarranted by the facts. Nor does the claim tend to lessen competition or create monopoly in violation of the antitrust act. On the contrary, it places the O. I. C. hog in direct competition with the Chester white, while if the O. I. C. are required to be advertised and marketed as Chester whites the tendency of such requirement would be to destroy competition and create a monopoly in the breeding and marketing of Chester whites.

For the reasons above stated a majority of this court is of the opinion that the petitioner is not guilty of unfair methods of competition by advertising the O. I. C. hogs as a separate and distinct breed of hogs from the Chester white so long as it does not include in its advertisements the claim found to be untrue by the Federal Trade Commission that the foundation stock of the O. I. C. was crossed by a mammoth or large white English hog.

Mishawaka Woolen Manufacturing Co. v. Federal Trade Commission, 283 Fed. 1022 (C. C. A., Seventh Circuit) and 43 Sup. Ct. Rep. 247.

This case had been argued and submitted to the court prior to the decision of the United States Supreme Court in the case of the Federal Trade Commission v. Beech Nut Packing Co., 257 U. S. 441. The court concluded that the condemned practices in this

case were substantially identical with those in the Beech Nut Packing Co. case and the findings and order of the commission were approved upon the authority of that case. Application was then made by the Mishawaka Co. to the Supreme Court of the United States for a writ of certiorari. In the brief for the Federal Trade Commission it was conceded that the order of the commission in the Mishawaka Co. case was broader than was warranted by the opinion of the court in the Beech Nut Packing Co. case. The writ was denied, the court assuming that the commission would modify its order to conform to the opinion of the court in the Beech Nut Packing Co. case and without prejudice to an application for that purpose by the Mishawaka Co. The commission thereupon modified its order.

Federal Trade Commission v. Curtis Publishing Co., 43 Sup. Ct. Rep. 881.

The complaint issued by the commission in this case contained two counts, one charging a violation of section 5 of the commission act and the other charging a violation of section 3 of the Clayton Act. The respondent is engaged in publishing and distributing to the public, throughout the several States of the United States, weekly and monthly periodicals. The charges stated in the complaint were based upon the practice of respondent of refusing to sell its publications to dealers who would not agree to refrain from selling and distributing the publications of competitors of respondent, and the making of contracts with numerous wholesale dealers to distribute its periodicals as agents and not to distribute the publications of competitors of respondent without permission of respondent, although in many instances such dealers, for a number of years, had been distributing the periodicals of other publishers, which periodicals competed with those of respondent, and upon entering into the contracts in question with respondent such dealers were compelled to and did discontinue the distribution of periodicals previously distributed by them, but which competed with those of respondent. The order issued by the commission directed the respondent to cease and desist from entering into and enforcing agreements with wholesale dealers, which agreements prohibited the wholesale dealer from distributing the magazines and newspapers of other publishers.

Upon petition for review to the circuit court of appeals the order of the commission was vacated and set aside and the case was taken to the Supreme Court on the petition of the commission for certiorari. It was held by the Supreme Court that the contracts in question, whereby wholesale dealers were prohibited from selling or distributing the publications of competitors of respondent, were

contracts of agency and not of sale on condition, so that they did not violate section 3 of the Clayton Act. It was further held that the employment of competent agents to devote their entire time to the development of their principal's business to the exclusion of all others where nothing else appears is not unfair competition within the provisions of section 5 of the commission act.

The Mennen Co., v. Federal Trade Commission, 288 Fed. 774 (C. C. A., Second Circuit) , decided March 13, 1923.

The complaint in this case contains two counts, one charging a violation of section 2 of the Clayton Act and the other charging violation of section 5 of the Federal Trade Commission act, the charge in each count being based upon the same state of facts. The Mennen Co. is engaged in the business of manufacturing and marketing toilet products. In the course of selling its products it markets same according to a classification adopted by it as "whole-salers" and "retailers." It places in the class whom it calls "wholesalers" certain distributors designated in the trade as "old line wholesalers," and in the class whom it calls "retailers" it places, among ordinary retail dealer purchasers, certain distributors designated in the trade as "cooperative wholesalers." These "cooperative wholesalers" are corporations cooperative or mutual in form of organization, whose capital stock is held by retailers engaged in selling to the consuming public. Both the "old line wholesalers" and the "cooperative wholesalers" purchase exclusively from manufacturers and importers and sell exclusively to retail dealers, never selling to ultimate consumers. The Mennen Co. charges "old line wholesalers" less than it charges "cooperative wholesalers" who purchase like products in the same quantities. The commission found that there was no difference in the service rendered as between "old line wholesalers" and "cooperative wholesalers" and it also found that the discrimination in price eliminated competition between the "old line wholesalers" and the "cooperative wholesalers." The commission concluded upon its findings of fact in the case that the discrimination in price between the "old line wholesalers" and the "cooperative wholesalers" was in violation of section 2 of the Clayton Act and section 5 of the Federal Trade Commission act. (The commission's findings as to the facts, conclusion, and order to cease and desist were issued on March 3, 1922.)

The circuit court of appeals, on a review of the case, reversed the order of the commission, holding the discrimination in price not to be in violation of either statute. The court based its decision under the Clayton Act on the interpretation of section 2 of said act, holding the section applicable only to the elimination of competition

between the seller and his immediate competitors and not between purchasers. The court, in holding that the selling policy of the Mennen Co. did not constitute an unfair method of competition, determined that the “cooperative wholesalers” were not wholesalers but retailers, and applied the custom of manufactures of discriminating in price between wholesalers and ordinary retailers selling to consumers. The Supreme Court denied a writ of certiorari to review the case. (43 Sup. Ct. R. 705, June 11, 1923.)

It is now the law of the case that--

(1) The Clayton Act does not render discrimination in price by a manufacturer unlawful although its effect is to lessen competition between purchasers but only if the effect be to lessen competition between a seller and his competitors, and

(2) Discrimination in price between purchasers (in the absence of ability or tendency to create a monopoly) is not in violation of section 5 of the Federal Trade Commission act, if the discrimination be between wholesalers and retailers, retailers including “cooperative” distributors engaged in functioning the same as “old line” distributors and performing identical services.

Federal Trade Commission v. Sinclair Refining Co., Federal Trade Commission v. Maloney Oil & Manufacturing Co., Federal Trade Commission v. Gulf Refining Co., Federal Trade Commission v. Standard Oil Co. of New Jersey (all reported in 261 U. S. 463).

The charges stated in the complaints issued by the commission in the above-entitled cases, which were, argued and submitted together, were based upon the practice of respondents of leasing to retail dealers for a nominal rental underground tanks and pumps for use in distributing gasoline to the consuming public upon the condition that the equipment so leased would be used by lessees only in the distribution of the products of the respective lessors. In each of the complaints, in separate counts, the practice was made the basis of charges of unfair methods of competition in commerce in violation of section 5 of the commission act and a violation of section 3 of the Clayton Act. The commission had issued an order to cease and desist from the practice charged in the complaint in each of the cases, and upon petition for review to the circuit court of appeals the orders of the commission were vacated and set aside, and the cases having been brought to the Supreme Court by certiorari, the judgments of the lower court were affirmed. The Supreme Court held that the practices did not violate section 3 of the Clayton Act, where neither the leasing contract nor the circumstances of the business restricted the lessees’ freedom to buy or deal in gasoline sold by other manufacturers, although the parties had no need of and never used more

than one pump and tank. It was further held that the practice was not an unfair method of competition within the provisions of section 5 of the commission act.

PETITIONS BY THE COMMISSION FOR WRITS OF MANDAMUS TO COMPEL
ACCESS TO RECORDS OF CORPORATIONS IN CONNECTION WITH
INVESTIGATIONS DIRECTED BY CONGRESS, DENIED.

During the fiscal year the commission applied, through the Attorney General of the United States, to the courts in several instances for writs of mandamus to compel access to books and records of corporations in connection with investigations directed by Congress, and in each instance the petition was denied.

In the first of these cases, those against the American Tobacco Co. and the P. Lorillard Co., the Senate had, by resolution, directed the commission to investigate conditions in the domestic and export tobacco trade, with particular reference to the market prices to producers of tobacco, the market prices for manufactured tobacco, and the export prices of leaf. Subsequently complaint was made to the commission that certain of the great tobacco manufacturing corporations were conspiring with associations of tobacco jobbers to fix the prices at which products of the manufacturers should be sold by the jobbers. Inquiry proceeded in both matters to the point where the facts gathered convinced the commission that an examination of the correspondence files of the large tobacco manufacturers would disclose evidence pertaining to both phases of the investigation; and an informal request for access to the records having been denied by the companies, a formal demand was served upon them for access to the correspondence files for a period of approximately one year and for the privilege of examining the contracts existing between the companies and the jobbers handling their products. The demand was denied, and the commission applied to the District Court for the Southern District of New York, through the Attorney General of the United States, for a writ of mandamus to compel compliance with the commission, 5 demand. Subsequent to the service of the demand, but prior to the filing of the petition with the district court, the commission issued a formal complaint against the companies charging a conspiracy with jobbers to fix resale prices on products manufactured by the companies. The issuance of the complaint was recited in the petition for mandamus, and an examination of the files for the purpose of securing evidence in support thereof was in part made the basis of the petition. The petition was denied, the court holding: (a) That as the Senate resolution did not, in terms, direct an inquiry into alleged violation of the antitrust laws it did not confer any authority upon the commission; (b) that the power to conduct inqui-

ries conferred by section 6 (a) and (b) of the Trade Commission act authorizes the gathering of such information only as may be voluntarily supplied; (c) that the right to inspect documents to the extent demanded by the commission could be exercised only where there was some specific complaint of a violation of law, together with a showing of probable cause to believe that information would be found in the files, and where the materiality to the charge of an alleged violation of law of the particular correspondence and files demanded was made to appear; and (d) that to grant the inspection prayed for would amount to an unreasonable search and seizure within the prohibition of the fourth amendment to the Federal Constitution. (Federal Trade Commission v. American Tobacco Co.; Federal Trade Commission v. P. Lorillard Co., 283 Fed. 999.)

The second group of cases arose out of an investigation by the commission pursuant to a Senate resolution (S. Res. 133, 67th Cong., 2d sess.) directing the commission to investigate the grain business, with particular reference to export business, with a view to ascertaining the causes of the decline in domestic prices of grain, whether the decline in export prices was due to conditions in the export market, and the reason for the spread of from 15 to 20 cents between the prices of cash wheat and of futures.

In connection with this investigation the commission, after informal requests had been denied, made formal demand for access to the books and records of three companies engaged in the export grain business in Baltimore, Md. The demand was refused and a petition for mandamus to compel the inspection was filed. The court denied the petition for the writ, holding (a) that the Senate resolution did not direct the commission to inquire respecting any alleged violation of the antitrust act, and therefore did not confer any authority upon the commission under section G (d) of the Trade Commission act; (b) that section G (a) and (b) of the Trade Commission act do not confer any authority to inspect the books and documents of corporations generally where there is no alleged violation of law but where a general investigation only is being made into conditions existing in the industry; (c) that any attempts by the courts to confer the authority to make such inspection in a general inquiry would be unconstitutional. (Federal Trade Commission v. Baltimore Grain Co.; Federal Trade Commission v. H. C. Jones Co.; Federal Trade Commission v. Hammond, Snyder & Co., 284 Fed. 886.)

The cases against both the tobacco and grain companies have been taken to the Supreme Court by writ of error and are there pending. They will doubtless be reached for argument during the October term, 1923, of that court.

SUITS TO ENJOIN THE COMMISSION FROM PROCURING INFORMATION IN CONNECTION WITH INQUIRIES DIRECTED BY CONGRESS OR INSTITUTED UPON THE COMMISSION'S OWN MOTION.

Two suits instituted during the last fiscal year to enjoin the commission from in any manner requiring corporations to make reports respecting the production, prices, and cost of producing necessities of life and of commerce, or from proceeding, by mandamus or otherwise, as directed by the Trade Commission act, to compel the making of such reports, still remain undecided by the Supreme Court. These suits grew out of an investigation which was instituted by the commission on its own motion, but after suggestions and conference with a committee of Congress, the work being specially appropriated for by Congress in the deficiency appropriation act of November 4, 1919. Pursuant to resolution duly adopted, the commission sent questionnaires to practically all corporations engaged in the manufacture and in the sale in interstate commerce of finished and semifinished steel products, requiring them to make monthly reports showing the quantities of products manufactured, plant capacity; orders booked during the month, the cost of manufacturing, the prices at which sold in domestic and foreign commerce, and general income statement and balance sheet. The declared purpose of the inquiry was to publish the information acquired in totals so as to show existing conditions in the production and sale of steel products. Certain of the corporations declined to make the reports and joined in a suit in equity to restrain the commission from proceeding in any manner to compel its production or to impose any penalties for failure to produce the information. The Supreme Court of the District of Columbia, in which the suit was instituted, issued a permanent injunction enjoining the commission as prayed the ground of the decision being that the information sought was not information respecting interstate commerce, nor information with respect to matters so directly affecting such commerce that it could be required under the commerce clause of the Constitution. The case was appealed by the commission to the Court of Appeals of the District of Columbia, which affirmed the decree of the lower court. (*Claire Furnace Co. et al. v. Federal Trade Commission*, 285 Fed. 936.) This proceeding was sent to the Supreme Court of the United States March 21, 1923, where it is still pending.

At about the date when the steel companies were requested to file monthly reports, substantially similar questionnaires were sent to practically all corporations engaged in the production and sale in interstate commerce of bituminous coal. One of these companies declined to make the reports and applied to the Supreme Court of the

District of Columbia for an injunction. A permanent injunction practically identical with that issued in the steel cases was awarded. The case was taken by the commission by appeal to the Court of Appeals of the District of Columbia, and is there pending.

SUMMARY OF PROCEEDINGS UNDER SECTION 5 OF THE COMMISSION ACT.

The first formal complaint was issued by the commission on February 18, 1913; it charged unfair methods of corn petition in violation of section 5 of the Federal Trade Commission act; since that date violations of this act have been charged in 1,017 complaints; of these proceedings 548 have resulted in the issuance of orders to cease and desist from the use of the various methods of competition charged in the complaints. Some of these complaints also included an additional count charging the violation of some section of the Clayton Act; usually each count was based on the same state of facts.

SUMMARY OF PROCEEDINGS UNDER THE CLAYTON ACT.

Forty-two complaints issued by the commission have charged violations of section 2 of the Clayton Act and in seven of these proceedings orders to cease and desist from the violation of law charged in the respective complaints have been entered. Ninety-six complaints have been issued by the Commission charging violation of Section 3 of the Clayton Act, and in 38 of these proceedings orders were issued to cease and desist from the violation of law charged in these respective complaints. Twenty-nine complaints have charged violations of section 7 of the Clayton Act and three complaints have charged violation of section 8 of said act. In six proceedings under section 7 of the Clayton Act orders have been issued requiring respondent to divest itself of the stock held as charged in the complaint.

As hereinbefore noted, some of the complaints which charged Violation of the Clayton Act also included a count charging the use of unfair methods of competition in interstate commerce in violation of section 5 of the commission act. In all there have been issued by the commission up to the end of the fiscal year 1,043 complaints; of these, 1,017 have been grounded on section 5 of the commission act, and 140 of such complaints contained a count based on section 5 of the commission act, together with a count under one of the sections of the Clayton Act.

At the close of the fiscal year there were pending in the various circuit courts of appeals four petitions to review the orders made by the commission, which orders directed the party proceeded against to cease and desist from the use of certain alleged unfair methods of

competition in violation of section 5 of the commission act or violation of sections 2 and 3 of the Clayton Act. In one of these cases the complaint contained a count based upon the said section 5, and also a count based on section 7 of the Clayton Act; in two of these cases the complaints were based upon section 7 of the Clayton Act, in one case upon section 3 of the Clayton Act, and in one case upon section 5 of the Federal Trade Commission act. One of these cases had been argued and submitted to the court prior to the close of the year, and the other three cases were awaiting argument.

PROCEEDINGS PENDING AND DISPOSED OF.

A review of the proceedings disposed of by the commission within the fiscal year and the proceedings pending before the commission at the close of the year will be found in Exhibits 16 and 17.

CHIEF EXAMINER.

All the former proceedings begun by the commission and all of the reports made to the Congress involving legal questions have as their basis investigations made by the investigators of the legal investigating division. Broadly stated, it is the function of this division to ascertain the facts and to make reports to the commission upon the facts and the law applicable thereto in all matters involving alleged violations of law; in other words, the investigations made by this division are the foundation of all the commission's corrective work.

The force consists of a chief examiner, 2 assistants, 3 attorneys in charge of branch offices, and about 40 investigators, most of whom have a legal education. There are besides 7 trial examiners attached to the division and 11 clerks and stenographers.

Besides directing the work generally, the chief examiner confers personally with parties to proceedings and conducts correspondence with applicants and others. He also directs the assignments of formal cases to the trial examiners. The attorneys in charge of branch offices direct the work in the territory attached to their offices.

It is of interest to set down here the charges on which applications for complaints received in the past fiscal year were based :

Adulteration.	Cumulative deferred rebates.
Appropriation of competitor's advertising values.	Destruction of mail-order catalogs.
Blacklisting.	Disparagement of competitor's business.
Bogus Independents.	Enticement of employees.
Commercial bribery.	Export trade, unfair practices in.
Combination or conspiracy in restraint of trade.	False and misleading advertising.
	Fraudulent use of trade-mark.

Full line forcing.	Section 2, Clayton Act.
Interference with competitor's source of supply.	Section 3, Clayton Act.
Manipulation of market.	Section 7, Clayton Act.
Misbranding.	Selling below cost to put applicant out of business.
Misrepresentation.	Selling old for new.
Passing off of name and goods.	Slack-filled packages.
Price cutting.	Subsidizing salesmen.
Price fixing.	Threats and intimidations.
Sale of stock by misrepresentation ("blue sky" cases).	Use of false testimonials.
Resale price maintenance.	Violation of commission's order.
	Wrongful use of corporate name.

The largest number of applications had reference to false and misleading advertising and there was an increase of 23 per cent over the previous year; the next largest item was resale price maintenance, with an increase of 32 per cent; then misbranding, which increased 140 per cent; misrepresentation, with a small increase; interference with competitor's source of supply, and disparagement of competitor's business were about the same. In connection with applications involving the following alleged unfair practices, received in 1921-22, none were docketed in 1922-23:

Fraudulently securing patent.	Interference with competitor's customers.
Causing breach of competitor's contracts.	Obtaining audit of competitor's books under false pretenses.
Dumping.	Unfairly obtaining list of competitor's customers.
Falsely marking watch cases.	
Giving free goods.	
Guarantee against decline in prices.	

These facts will illustrate some of the tendencies in connection with applications received by the commission.

The following table gives a comprehensive view of the work received and completed by the division in the past four years :

	1919-20			1920-21			1921-22			1922-23						
Preliminary inquiries at headquarters	1	34	1,600	1	600	34	832	838	28	877	881	24	871	867	28	
Investigations:																
Docketed applications	203	724	527	400	401	603	258	361	388	231	436	456	211			
Undocketed applications	39	155	167	27	233	220	48	412	275	185	451	499	137			
Supplementary applications	15	127	130	12	86	77	21	190	176	35	206	213	28			
Formal cases	(2)	(2)	(2)	7	105	98	14	115	110	19	72	83	8			
Trial assignments	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	10	48	32	28			
Trial examiner's cases	(2)	(2)	(2)	(2)	(2)	(2)	34	61	60	35	117	89	63			
Total	291	1,606	1,424	480	1,717	1,836	403	2,016	1,890	539	2,201	2,239	501			

1 Estimated. 2 No record.

From the foregoing it appears that there has been a steady increase in the matters taken up for investigation: In 1920-21, 7 per cent; in 1921-22, 17 per cent; and in 1922-23, 9 per cent over each preceding year. The matters disposed of show a similar increase, being in 1920-21, 28 per cent; in 1921-22, 3 per cent; and in 1922-23, 18 per cent. The average annual increases have been: Matters received, 12 1/3 per cent, and those disposed of 19 per cent. This small gain in work completed as compared with the increase in investigations undertaken is reflected in a moderate reduction in 1922-23 of the annual "hang over," or total of cases left uncompleted at the close of each fiscal year. Prior to that year this item, as the table shows, had been increasing at a marked rate. On July 1, 1922, the commission had at headquarters 231 cases which had been on hand an average of 6 months and 13 days, and at branches 123 cases having an average age of 4 months and 8 days. These were the older matters, and the remaining 185 assignments were being taken care of promptly. A reduction was made during the year not only in the number of matters left on hand but also, to some extent, in their average age.

It is important that all investigations undertaken should be begun promptly and prosecuted with speed. To delay is oftentimes to deny justice in the class of cases with which the commission deals. Many complaints about delays in this investigating work have been received. The chief reasons for this situation are, first, the normal growth in the work already outlined, and, second, the inadequacy of the force of investigators which the commission has been able to employ. A force of between 40 and 50 examiners, however well trained and equipped, to make prompt and thorough investigation of all the cases of alleged unfair competition in the United States, besides considerable work under the Clayton Act and on special investigations by direction of the Congress, has proved inadequate.

The commission has used various means to meet this situation. It has increased the legal investigating force as far as its funds would permit, and urged the examiners to use all possible speed compatible with thoroughness; it has made important changes in its procedure, with a view to expediting the disposition of the cases; and by increased care in the examination of preliminary inquiries the proportion of these taken up for investigation has been decreased. This has been made possible by the fact that, as the established precedents grow in number and the field which they cover widens, it becomes possible to dispose of more applications with less investigation and consideration. Several court decisions have also been helpful in this respect.

The steady growth in the number of preliminary inquiries disposed of in this way is shown by the following table:

	1920-21	1921-22	1922-23
	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Preliminary inquiries docketed	54	39	30
Filed without docketing	46	61	70

In the report for last year attention was directed to the general investigation made by this division of conditions in various industries, where questions as to violations of law are involved. Considerable time during the past year was spent on work of this character and although not appreciably increasing the total number of assignments, is of importance. The investigations of this nature on which reports have been made are as follows :

Lumber.--As a result of the investigation of conditions in the lumber industry, which was begun in 1919 at the request of the Attorney General, a report was made to Congress and to the Attorney General on January 24, 1923, summarizing the activities of the trade associations composed of the manufacturers of posts and poles. These associations have their headquarters in Spokane, Wash., and are as follows : Western Red Cedar Association, Lifetime Post Association, and the Western Red Cedarmen's Information Bureau. A similar report, on the activities of the Northern Hemlock and Hardwood Manufacturers Association was also made to Congress and the Attorney General on May 7, 1923.

Fertilizer.--Under a resolution of the Senate, an inquiry was made as to whether the production or sale of fertilizer is controlled by an unlawful combination and whether dealers or manufacturers of the product had conspired to fix prices. An extensive investigation was made which showed that in 1921, the seven largest companies in the industry produced 65 per cent of the total fertilizer used in the United States. Competition in the sale of fertilizers appeared keen in both 1921 and 1922, and the large manufacturers were unable to maintain their high prices. Report was made to the Senate on March 3, 1923.

Calcium arsenate.--Pursuant to a resolution adopted by the Senate on January 23, 1923, an inquiry was made as to the alleged violation of the antitrust acts by the manufacturers and dealers in calcium arsenate. A report in which was incorporated the facts disclosed by the investigation as made on March 3, 1923. The report shows that in October, 1922, prices ranged from 10 to 12 cents per pound and in February, 1923, had increased to a range of 18 to 19 cents per pound. It was concluded that the main reasons for the marked increase in

price were the increased demand for the product for use in combating the cotton boll weevil and the inadequacy of the available supply of white arsenic, the chief ingredient of calcium arsenate.

In the work of the legal investigating division not only has the lapse of the since the commission was organized given scope for the improvement of the relations between those engaged in investigative work and the parties to such proceedings, but it has also brought a larger measure of understanding of the problems involved. The decisions of the courts as well have construed the laws relating to unfair competitions, so that greater directness and certainty are possible.

TRADE PRACTICE SUBMITTALS.

Gold-mounted knives.--A trade practice submittal on the branding of gold-mounted knives was held before Commissioner Victor Murdock, in New York City, May 2, 1922. Those participating in the meeting were:

- L. A. Moreau, Federal Trade Commission attorney.
- Fred G. Backus, secretary National Jewelers' Board of Trade, New York City.
- Charles B. Byron, president Chas. B. Byron Co., New York City.
- Edward T. Todd, factory manager Edward Todd & Co., New York City.
- Fred A. Pooley, manager export department J. R Wood & Sons, New York City.
- Irving W. Broder, secretary Tomchin & Levinson (Inc.), New York City.
- Melville Miller, head of knife department Goldsmith, Stern & Co., New York City.
- Mortimer G. Foster, partner Goldsmith, Stern & Co., New York City.
- A. L. Woodland, treasurer Kent & Woodland Co., New York City.
- Harry C. Larter, partner Larter & Sons, New York City.
- J. F. Umpleby, bookkeeper Carter, Gough & Co., New York City.
- Abraham Shiman, president Shiman, Miller Manufacturing Co., New York City.
- Thomas F. Morgan, supervising inspector mayor's bureau of weights and measures, New York City.
- Julius C. Rauch, president Kollmar Rauch & Co., Irvington, N. J.
- F. J. Kremetz, president Frank Kremetz Co., Newark, N. J.
- John D. Battin, president Battin & Co., Newark, N. J.
- J. Koch, president Long & Koch Co. (Inc.), Newark, N. J.
- Henry C. Ward, vice president Durand & Co., Newark, N. J.
- A. G. Van Houten, representing C. Sydney Smith Co., Providence, R. I.
- C. J. Roche, vice president-treasurer the Bassett Jewelry Co., Providence, R. I.
- R. E. Walsh, sales manager Ostby & Barton Co., Providence, R. I.
- W. N. Dutemple, representative Jewelry & Cutlery Novelty Co., Attleboro, Mass.
- Edward I. McConnell, New York representative L. E. Freeman Co., Attleboro, Mass.
- George J. Bessinger, owner Geo. J. Bessinger & Co.
- Frisch Brothers (sold to Bessinger & Co.).
- Edward Todd, president Edward Todd & Co. (Inc.), New York City.
- G. H. Niemeyer, president National Jewelers' Board of Trade, New York City.

Morris L. Ernst, counsel to National Jewelers' Board of Trade, New York City.
W. A. Biglin, Investigator National Jewelers' Board of Trade, New York City.
T. Edgar Wilson, editor the Jewelers' Circular, New York City.

As a result of the meeting the Trade Commission has issued the following statement:

At the instance of manufacturers of gold-mounted knives, representing a major proportion of those engaged in the industry, an invitation was issued to all manufacturers in this industry to attend a meeting in New York City, May 9, 1922, at which it was proposed to submit to the Federal Trade Commission certain trade practices with respect to the marking of knives mounted in gold. The meeting was attended by 24 representatives of the industry. Commissioner Murdock was present, explained the functions of the Federal Trade Commission, and received for transmittal to the commission the following resolution as a submittal of trade practices regarded as desirable by the industry:

1. In our opinion a gold-mounted knife consists of the following : (a) A gold sheet or shell; (b) The knife movement or skeleton consisting of scales, rivets, spring, and blades.
2. All parts, including the bale and the rivets, other than the gold shell or sheet, appearing or purporting to be gold, must be of the karat fineness marked on the gold.
3. A knife stamped with a mark indicating the karat fineness, such as 10K, 14K, or 18K, is improperly marked if, between the skeleton and the gold sheet, any metal composition is inserted by any method whatsoever, unless that inserted part is of the same karat fineness, to wit, 10K, 14K, or 18K.
4. We agree that all parts which appear to be gold must be of the karat fineness indicated. Furthermore we believe that the consumer has the right to assume that a base metal sheet or other composition inserted under a gold sheet is gold of the karat mark on the gold if the gold sheet covers the edges of the inserted part.
5. Our decision is to the same effect even if the base metal sheet is affixed to the skeleton or movement instead of to the gold. A knife made of a gold sheet and a stiffening of base metal may well be a legitimate article of trade, but the mark indicating the karat fineness is improper unless the fineness of the gold and the stifling or inserted part is up to the karat indicated.

The resolution is intended, first, to define a gold-mounted knife, and, second, to condemn any method in the construction of a gold-mounted knife by which it may be made to appear that more gold of an indicated karat fineness has been used than has been employed in fact.

In the first instance--that is, in the matter of definition--the commission has jurisdiction over brands or marks which may prove, after challenge, to be deceptive and unlawful. In the second instance--that is, in the matter of construction--if there is to be read into the resolutions an endeavor by the industry to standardize the product by methods of manufacture it should be said the commis-

sion is without jurisdiction to apply its law against departure from such standardization, in the absence of deceptive, misleading, and unlawful markings:

Each of the five paragraphs of which this resolution is comprised was considered separately, was subject to amendment, was debated and, after amendment in some instances, was adopted by a viva voce vote, confirmed by telling, the voting showing little division among those participating.

The pertinent facts developed in debate, which resulted in the adoption of the resolution, may be summarized as follows :

Paragraph 1 : The definition in this paragraph may be taken as excluding, in the view of the industry, the use of the designation "gold knife" to describe knives that have a gold sheet or shell over the knife scales and as excluding, in view of the industry, the use of the designation "gold-mounted knife" to describe knives made with a shell of gold-filled stock or with an electroplated shell.

Paragraph 2. It is proposed by this expression to convey the opinion of the industry that the use of a solder in attaching a sheet or shell to the knife scales, unless of the karat fineness marked on the gold, is a means of deception, for the reason that a manufacturer by this practice can make it appear that a greater amount of gold of the quality indicated in the karat mark has been employed than has been used in fact.

Paragraph 3 : The purpose of this expression of the industry is to condemn as deceptive the reenforcement of the sheet of gold of indicated fineness by attaching a metal sheet or composition not of the same karat fineness inside the gold sheet. The reason given by the industry for this condemnation is that the amount of gold of indicated fineness is thus made to appear to be greater than the amount that has actually been used.

Paragraph 4 : This expression is directed against the practice of inserting between the sheet or shell of gold of indicated fineness and the scales of the knife any base metal or other composition, the edge of which is concealed. This practice is considered deceptive by the industry, for the reason that the quality of gold indicated is made to appear to be present in greater quantity than it is in fact.

Paragraph 5 : By this expression the industry condemns as unfair, because of deception, the use of a stiffening base metal attached to the skeleton of the knife, if the base metal is covered with a sheet of gold definitely indicated to be of a certain karat fineness.

It will be seen that the principal affirmations of the industry are based on the belief that certain methods of construction in gold-mounted knives deceive the public into believing that a greater amount of gold of the fineness indicated has been used by manufacturers employing those methods than is present in the article. It

appears that some 90 per cent of the output of gold-mounted knives carry either on the bale or on the side of the knife a mark indicating the quality of gold used, as 10K, 14K, 18K.

While the views of the industry, as submitted, are valuable and informative, and as such will no doubt prove useful in event of consideration of a concrete case by the commission, the commission does not believe them conclusive of the questions raised in all particulars.

Considering the first paragraph of the resolution, it appears that the definition of the industry is comprehensive. Obviously a knife and its skeleton covered with a sheet of gold is a gold-mounted, not a gold, knife. It should also be remembered that a knife covered with rolled gold or electroplate gold can not, under the statute, carry the mark of karat fineness without the brand which identifies it as rolled gold or electroplate gold.

The question raised in the second paragraph of the resolution which has to do with the use of a solder presents a matter of some difficulty. The national stamping act limits the manufacturer in the use of solder in articles bearing the karat-fineness mark. The tolerance granted in the act is given at one-half of one karat of the indicated gold fineness, with an exception. This exception is in the case of watch cases and flat ware where the tolerance granted is three one-thousandths parts of the fineness indicated. Provision is made that in case of test for fineness a portion which does not contain any solder or alloy of inferior fineness shall be used and, further, that the actual fineness of the entire quantity of gold in any article, including all solder and alloy of inferior fineness, shall not be less by more than one karat of the fineness indicated. The second paragraph of the resolution as it reads disapproves the use of solder of a different karat fineness from that marked on the gold. The resolution stands as it was adopted. However, it appeared by vote that many in the industry are adverse to the use of any solder in a gold-mounted knife. It also appeared that a portion of the industry approves of the use of solder in attaching a sheet or shell to the knife skeleton if the gold fineness of the shell and solder together is not less than the mark indicated. The commission may well wait for further light upon this particular matter in connection with the terms and tolerances of the national stamping act, applicable herein. A further difficulty bearing upon alleged deception in this connection is the construction of a knife skeleton by a manufacturer who, by varying the thickness of the flat scales or by the use of convex scales, may make it possible for the completed knife, after the gold shell or sheet has been superimposed, to appear to carry more gold of the karat fineness indicated than has been used in fact. In view of the difficulties cited, judgment, so far as an expression on the second paragraph of the resolution is concerned, may well be reserved until the questions arise in an appli-

cation for the issuance of a complaint under the regular procedure of the commission.

In examining the third paragraph of the resolution which condemns as deceptive the insertion of inferior composition between the shell and the knife skeleton, it is well to consider whether or not a manufacturer who reenforces the gold shell by soldering a strip of base metal inside the shell is not violating the national stamping act if he indicates the karat fineness of the shell and does not otherwise mark the article, as the act provides that certain forms of gold and a base metal combined shall be specially marked if karat fineness is indicated. If such a practice should prove to be unlawful, it would be, of course, unfair. Under this paragraph, as under paragraph 2, the question again arises as to the accomplishment of the same appearance, alleged here to be deceptive, by the use of a knife skeleton with convex scales or scales of a thickness which may make it appear that more gold of the karat fineness indicated has been used than has been used in fact. As in that instance, so in these, judgment should be reserved on the matter until further testimony is adduced in a proceeding in a concrete case before the commission.

Paragraph 4, which is an expression against the use as deceptive of a concealed inferior material under a gold sheet of indicated fineness, such inferior material not being attached to the gold sheet, should be considered in the light of the possibility of inserting a perforated or meshed strip of gold fineness equal to that indicated for the shell but reduced in weight. The element of alleged deception, as to the thickness of the gold, would still be present. Here also the question of accomplishing the same appearance by the shape and thickness of the knife scales arises, and judgment should be reserved on the expression in the paragraph.

Paragraph 5, advancing an expression of the industry that deception where the karat fineness is indicated follows where a base metal sheet is affixed to the skeleton, is subject to the same reservations as were applied to the previous paragraphs. As before, the knife scales, convex or of a thickness, would seem to accomplish the same deceptive appearance as to the amount of indicated gold which the industry condemns.

The questions which have been here advanced may best be resolved when they arise in connection with concrete cases before the commission, each case to be judged on the law and the facts as they are adduced in the particular case. The trade practice submittal herewith submitted is informative. It is not conclusive.

That is to say, the commission does not accept this declaration as conclusive upon it, and may, in the event that complaints are made to it by members of the industry and a concrete case comes before it, receive the declarations of the industry as herein set forth in weigh-

ing the question of whether an unfair method of competition has been practiced or upon new evidence or further information add to or take away from the definitions herein set forth by the industry.

Completeness of disclosure in representation labels, and markings in any commodity, so far as it is practicable, seems desirable to the industry and the public. Unless the nature of the article clearly forbids, complete disclosure in articles made in part or in whole of gold would appear to involve not only a revelation of the karat fineness of the gold employed but the pennyweight as well, quantity as well as quality being designated, while gold-filled and gold-rolled stock to meet the requirements of complete disclosure would be marked as such with the karat fineness added and the proportion of gold to base metal indicated, due tolerance for mechanical and decorative purposes being granted. In the same way, when base metal upon which gold has been deposited by electrolysis or by fire gilding is used, the fact could be indicated.

January 22, 1923.

Gold-filled and gold-plated watch cases.--At the request of a number of manufacturers of gold-filled and gold-plated watch cases, representing approximately 75 per cent of the industry, a trade-practice submittal was held with the Federal Trade Commission on January 18, 1923, for the purpose of giving those engaged in the industry an opportunity to express their views in relation to the alleged unfairness of prevailing methods of branding their products, with long-time guaranties and otherwise, and to practicable methods of correcting any evils found to exist. The gathering was attended by all the principal manufacturers and was fairly representative of the industry. Commissioner Murdock conducted the submittal on behalf of the commission.

The purpose of the meeting and the powers of the commission were duly explained, and the representatives of the industry then organized by electing a chairman and secretary and the discussion proceeded. The facts which were developed are summarized in the following preamble and resolutions, which were unanimously adopted and subscribed to by all present :

Whereas, There now exists, and for years past has existed, among manufacturers and dealers in gold-filled and gold-plated watch cases throughout the United States the practice of guaranteeing such gold-filled and gold-plated watch cases to last or wear for a specified length of time, in most cases such guaranteeing being for a period of 20 and 25 years; and

Whereas, This practice has become so widespread that any manufacturer or maker desiring to compete in the markets of the United States has been and is compelled as a matter of self-protection to adopt and continue the practice; and

Whereas, The public has been defrauded and deceived because unscrupulous manufacturers and dealers have placed upon watch cases of an inferior quality

or watch cases made of brass with a thin plating of gold, long-time guaranties, and it being impossible for anyone to tell without destroying the case the amount of gold contained in the case, and it clearly appearing that said practice is not only detrimental to the purchasing public but has resulted in unfair methods of competition in interstate commerce among manufacturers and dealers;

Now, therefore, We, the undersigned manufacturers of not less than 75 per cent of all of the gold-filled or gold-plated watch cases manufactured in the United States, in open meeting condemn the practice of guaranteeing gold-filled or gold-plated watch cases to last or wear for specified lengths of time, and we hereby petition the Federal Trade Commission to bring its action against any person, firm, corporation, or association, being a manufacturer of or wholesaler or retail dealer in watch cases, made in whole or in part of an inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto, platings, coverings, or sheets composed of gold or of an alloy thereof, and which watch cases are known in the market as gold-filled, rolled gold plate, gold-plate, gold electro plate, or by any similar designation, or against any officer, manager, director, or agent of such firm, corporation, or association who imports into or causes to be imported into the United States for the purpose of selling or disposing of the same or deposits or causes to be deposited in the United States mails for transportation thereby or to deliver or cause to be delivered to any common carrier for transportation from one State, Territory, or possession of the United States or the District of Columbia in any other State, Territory, or possession of the United States or to said District, in interstate commerce or to transport or cause to be transported from one State, Territory, or possession of the United States or to said District in interstate commerce except any such cases wherein the destination marked upon the package containing same is some foreign country not a possession of or a dependency of the United States, outside of the United States any watch case manufactured after the date when the order takes effect and have stamped, printed, engraved, or imprinted thereon or therein, or upon any tag, card, or label attached or applied thereto, or inclosed therewith or upon any box, package, cover, or wrapper to which such watch case is incased or inclosed, the word "guaranteed" or the word "warranted," with or without other words or marks indicating the time or duration of wear, or any mark or marks designed or intended to indicate the length of time that such watch-cases or the plate, covering, or sheet of gold or of its alloy in or on such watch case will last or wear, or any word or words, mark or marks, indicating or importing or designed or intended to import time or duration; that every manufacturer and dealer as hereinbefore described shall mark conspicuously and indelibly on the inner surface of one of the lids or cap of any such watch-case the registered name or properly registered trade-mark of the maker or manufacturer thereof, and that when any such watch cases are stamped, branded, engraved, or imprinted with the words "gold filled," or words indicating that such watch cases are gold filled, such words shall be accompanied, in close proximity thereto, by some words or marks usually employed to indicate the fineness of gold, which words or marks shall be legibly stamped, branded, engraved, or imprinted upon such watch case, in characters of the same size as those employed in said words "gold filled"; and the actual fineness of each and every portion of the sheets of gold or of its alloy which are soldered, brazed, or otherwise affixed to the inferior metal in such watch cases shall not be less by more than three one-thousandths part than the fineness indicated by the words or marks of fineness so stamped, branded, engraved, or imprinted upon such watch cases; provided further, that when any such watch cases are

stamped, branded, engraved, or imprinted with the words "gold-lined," or words indicating that such watch cases are gold-filed, they shall be constructed in accordance with the following specifications : the backs and caps of such cases shall be made of two sheets of gold or of any alloy thereof, soldered, brazed, or otherwise affixed respectively to the inner and outer surfaces of the sheet of inferior metal; the center, bezel, pendant crown, and bow shall be made of one sheet of gold or of an alloy thereof, soldered, brazed, or otherwise affixed to the outer surface of the sheet of inferior metal; the sheet of gold or of its alloy affixed to the outer surface of the backs, center, open-face, bezel pendant, crown, and bow shall not be less than three one-thousandths of one inch In thickness: the sheets of gold or of its alloy affixed to the inner surfaces of the backs, to the inner and outer surfaces of the caps, and to the outer surface of the hunting bezel, shall not be less than one one-thousandth of an inch in thickness. Whenever the thickness of the sheets of gold or of its alloy is stamped, branded, engraved, or imprinted in such watch cases, such mark shall only refer to the thickness of the sheets of gold or of its alloy so affixed to the outer surfaces of the backs, centers, open-face, bezel, pendant, crown, and bow, and in no instance shall the thickness of the gold or of its alloy in any of the parts so mentioned be less than the thickness indicated by the mark stamped, branded, engraved, or imprinted in such case. The mark indicating such thickness shall be expressed in decimals indicating thousandths of an inch. Provided, that in any test for the ascertainment of the thickness of such sheets of gold or of an alloy thereof, the part or parts to be measured shall be those where no gold has been added to or deducted from the thickness by any process designed or intended for the purpose of decoration or ornamentation.

DUEBER-HAMPDEN WATCH Co.,
 A. M DUEBER, President.
 EMERSON WATCH CASE Co. (INC.),
 By SAUL SMIGROD, *President.*
 JOSEPH FAHYS Co.,
 GEORGE E. FAHYS, *President.*
 THE KEYSTONE WATCH CASE Co.,
 By JOHN G. MUELLER, *Secretary.*
 JOHN W. SHERWOOD,
President Solidarity Watch Case Co.
 WADSWORTH WATCH CASE Co.,
 H. M. STEGEMAN, *Treasurer.*

After consideration of the whole matter, it is concluded :

I. That the Federal Trade Commission has reason to believe from the facts submitted to it by the manufacturers, subject to further inquiry in proceedings, as provided by section 5 of the Federal Trade Commission act :

(a) That the practice of placing the guaranties on gold-filled and gold-plated watches, for distribution and sale in interstate commerce, has led and leads to deception of the purchasing public.

(b) That the marking and/or calling of watch cases for distribution and sale in interstate commerce, as gold-filled, leads to deception of the purchasing public, in the absence of the following elements as a minimum :

(1) That they are marked in close proximity to the words "gold-filled" and as plainly as the words "gold-filled," with words or marks indicating the fineness of the gold which shall not be less by more than three one-thousandths part than the fineness indicated.

(2) That the backs and caps are made of two sheets of gold or an alloy thereof, affixed to the surfaces of a sheet of other metal.

(3) The center, bezel, pendant, crown, and bow are made of one sheet of gold or an alloy thereof, applied to the outer surface of a sheet of other metal.

II. That the commission received the following as the opinion of the trade on the subjects covered, and will take due notice thereof when proper to do so in any proceeding pending before it :

(a) That manufacturers and dealers should be required to place the maker's trade-mark "conspicuously and indelibly" on the inner surface of the lid or cap.

(b) The sheet of gold or of its alloy affixed to the outer surface of the backs, center, open-faced bezel, pendant, crown, and bow shall not be less than three one-thousandths of 1 inch in thickness; the sheets of gold or its alloy affixed to the inner surfaces of the backs, to the inner and outer surfaces of the caps, and to the outer surface of the hunting bezel, shall not be less than one one-thousandth of an inch in thickness.

(c) That whenever the thickness of the sheets of gold or its alloy in gold-filled watch cases is indicated, the mark indicating such thickness shall only refer to the thickness of the sheets of gold or its alloy so affixed to the outer surfaces of the backs, center, open face, bezel, pendant, crown, and bow, the mark accurately indicating such thickness which shall be expressed in decimals indicating thousandths of an inch, in tests to ascertain the thickness, measurements being taken at a point where no gold has been added or taken away for decoration or ornament.

By the commission : Commissioner Nugent dissenting.

OTIS B. JOHNSON, *Secretary*.

The following dissenting memorandum was filed by Commissioner Nugent :

I am in favor of requiring the manufacturers to place on each watch the number of pennyweights of gold used, in addition to the carat fineness, which does not indicate and is not intended to indicate to the mind of the consumer anything relative to the value of the gold used.

The long-time guaranty is a fake, and as it is used for the purpose of deceiving the general public, I am in accord with the proposal that manufacturers who resort to it should be proceeded against.

JOHN E. NUGENT, *Commissioner*.

ECONOMIC DIVISION.

The work of the Economic Division for the fiscal year ended June 30, 1923, comprised inquiries into various subjects, among which may be especially mentioned the profits of the bituminous coal industry, speculation and competitive conditions in the grain export business, foreign control in the petroleum industry, the methods and practices of the cotton trade, profits, prices, and price combinations in the house-furnishing industries, and the costs and profits of wheat-flour milling. These inquiries were made in response to demands for information regarding conditions complained of, and with a view generally to constructive remedial action.

Six of the inquiries, namely, those into grain exporting, the petroleum industry, the house-furnishings business, the cotton trade, wheat-flour milling, and an inquiry into the amount and distribution of national wealth and income, were initiated at the request of the United States Senate. A comprehensive inquiry into the grain trade, on which four volumes have already been published, had its origin in a request of the President. The coal work mentioned above, was undertaken by the commission on its own initiative.

In regard to the inquiry into the coal-mining industry, a more particular description is given below, but it may be noted briefly here that a report was compiled from data, previously acquired by the commission in the regular course of its work, showing the extent of investment in bituminous coal mining operations, the average amount of investment per ton of output, and how such data may be used to determine what the more or less familiar margins of profit in the prices of coal mean in terms of profit on investment. These data may be used not only for testing the results of margins obtained in past years, concerning which much has been published, but also give a useful practical basis of ascertaining what rate of profit current prices probably afford to the mine operators. There is also given below a statement of the extensive assistance rendered by this commission with respect to recent inquiries into the coal mining industry by the Senate and by the United States Coal Commission.

The assistance of the commission has been regularly called upon because its economic staff includes a unique group of expert economists and accountants familiar with the business problems of the coal industry. The constant contact of this commission with the varying but persistently recurring economic disorders in the coal

industry justifies its past activities in endeavoring to throw more light on the real conditions and their causes.

The inquiry into the methods and operations of grain exporter's developed some very remarkable data on the operations of certain large speculators and grain merchants especially in the wheat-futures market. This information was sought with a view to ascertaining what effect such speculative operations had upon grain prices generally and whether there was any general combination among such speculators in these operations in the grain-futures market. The analysis of these statistical data indicated that, while these large speculators were apparently working quite independently in their operations and oftentimes on opposite sides of the market, the changes in prices corresponded quite generally to the preponderance of their transactions. In its examination of competitive conditions in the grain export trade, the commission discovered two regional agreements regarding the purchase price of grain in the country markets, one affecting chiefly the Gulf export trade in wheat and the other wheat purchases in the Pacific Northwest.

The inquiry into the extent of foreign ownership of the domestic petroleum industry, together with the extent to which reciprocity was accorded to American petroleum companies in foreign countries, originated in consequence of a rather marked development of the holdings of the so-called Royal Dutch-Shell petroleum group in this country, and brought out the fact that in a number of foreign countries American companies are, directly or indirectly, prevented from engaging in the petroleum industry.

In the household furniture inquiry the commission made a careful study, for this industry, of the remarkable economic experience of this country in the boom of 1919-20 and the period of price deflation and depression that immediately followed. The effects of price changes on profits and other operating results were carefully analyzed. The extent also to which artificial price agreements contributed, directly or indirectly, to the various price advances and later retarded the fall of prices when the general depression set in during the latter part of 1920 and during 1921, were also examined in considerable detail.

These and other matters covered by the work of the Economic Division during the fiscal year, and the constructive recommendations made by the commission, are discussed in more detail below.

METHODS AND OPERATIONS OF THE GRAIN EXPORTERS.

The commission was directed by Senate Resolution 133, Sixty-seventh Congress, second session, passed December 22, 1921, to make an inquiry into the various phases of the export grain business. The

demand for this inquiry was the result of an unprecedented decline in the price of the principal grains at a time when the quantities of certain cereals exported, particularly wheat and rye, were unusually large.

The first volume of this report, dealing chiefly with the interrelations and profits of grain exporters in 1920 and 1921, was transmitted to the United States Senate in manuscript on May 16, 1922, and was printed and ready for distribution early in this fiscal year. The second volume, which deals mainly with speculation, competition, and prices, was completed during the fiscal year. The inquiry concerning the effect of speculation upon grain prices was delayed by the refusal of 18 Chicago commission houses to permit an examination of their customers' futures trading accounts. Most of the concerns having large speculative costumers were among those who did not grant access to those accounts. Fourteen of the 18 commission houses refusing to grant access were partnerships, to whose records the commission could lawfully obtain access only with their consent. Regarding the four corporations refusing access to the records of their customers' future trading accounts, it would have been futile to attempt to enforce an examination by legal procedure in time to be of service to the inquiry.

After many members of the Chicago Board of Trade had refused the commission's request for access to their customer's futures trading accounts the commission sought the cooperation of the officers of the Chicago Board of Trade, but they refused such cooperation, stating that the board had no power to compel its members to reveal their customers' business to the commission and that a mere recommendation of the board of directors would be disregarded by many members. In this connection it should be noted that 6 of the 15 directors of the Chicago Board of Trade were officials or partners of concerns refusing the commission's request for access to the records of their customers' future trading accounts.

Later, the commission secured, directly from the speculators themselves, considerable data concerning futures trading on the Chicago Board of Trade. None of the speculators whose futures trades were requested refused to furnish them.

Some of the outstanding facts developed in the second volume of the commission's report on methods and operations of grain exporters are summarized in the report as follows :

In order to ascertain what effect the operations of large speculators and cash grain dealers who hedged their mercantile transactions had on the prices of wheat, the commission secured the daily trades in wheat futures on the Chicago Board of Trade of 12 such speculators and 9 such hedgers for the period July 15, 1920, to May 31, 1922. A number of these traders, moreover, gave detailed testimony concerning their operations.

From the information thus obtained and from other pertinent data the commission concludes that while speculation frequently caused injurious aberrations in wheat prices, the extensive decline in prices of the contract grade of wheat at Chicago from an average of about \$2.85 per bushel on July 17, 1920, to a fraction over \$1 per bushel on September 14, 1922, was due mainly to other factors, including supply and demand, rather than to speculation or manipulation. Speculators and hedgers are especially able to run up prices during the delivery month, and, when this occurs, after their future interests are closed out, prices inevitably fall. In general, however, it appears that, although the frequent and temporary fluctuations in grain prices may be attributed largely to speculation, the relatively infrequent, but long-time fluctuations, may be attributed almost entirely to other causes including actual supply and demand conditions.

* * * * *

While the evidence is clear that speculation during this period resulted, in various instances, in producing artificial price changes in the wheat futures market, the speculators, whose trades were obtained, pursued quite diverse buying and selling policies, although their net position taken as a group indicates that they were usually on the profitable side in different turns of the market.

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In view of the fact that futures prices have a substantial influence on cash prices (and this is insisted on by most of the proponents of futures trading) and the fact that artificial price conditions so often prevail in the futures market, it seems clear that, if this trading is permitted to continue, the Federal Government should regulate it, in order to prevent abuses.

* * * * *

The car-delivery rule, which permits delivery of grain on futures contracts in cars on track, instead of in regular elevators, is used only in emergencies on a vote of the board of directors of the Chicago Board of Trade, and it has been invoked only twice since its adoption in 1918. Its operation is intended to effect and naturally results in, an increase in the deliverable supply, and consequently in a decline in price. Moreover, demurrage charges and the difficulty of insuring or borrowing money on grain delivered on track are additional price-weakening influences which force prices to a lower level than would be the case if delivery were made in regular elevators. In May, 1922, especially, the invoking of the emergency car-delivery rule helped to break prices lower than would have otherwise been the case. Most of the wheat delivered on track in May, 1922, was delivered by the Armour Grain Co. and the J. Rosenbaum Grain Co.

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An examination of the correspondence files of the more important grain exporters, fobbers (i.e., merchants who sell free on board vessel at seaports), and elevator operators showed that in the sale of grain for export there was keen competition, but that in the purchase of wheat from the farmer and country elevator by exporters and fobbers there were two distinct price agreements in existence in 1921, one covering the purchase of wheat for export through the Gulf

of Mexico ports and the other that for export from the Pacific Northwest.

* * * * *

The expenses of marketing grain were much higher in 1920 than for pre-war years, particularly for transportation and country marketing facilities. When grain prices declined these expenses necessarily became much more burdensome.

A large proportion of the grain elevator capacity used in the export trade is controlled by large grain merchants. Four of these merchants controlled about 22 per cent of the total capacity and 21 merchants controlled 43 per cent thereof.

The evidence in this inquiry supports that previously obtained with regard to the inadequacy of public elevator capacity and the necessity of lower storage rates to afford the grain producer and merchant necessary marketing facilities and to prevent price manipulations.

The recommendations of the commission based upon this study of the grain business were as follows :

1. That the Chicago Board of Trade be required to make public each day the total volume of futures operations in each option of each grain for the preceding day, and also the total volume of open trades in each option of each grain in existence at the close of the preceding day, so that the general public may have information as to the basis for the widely quoted prices of Chicago futures.

2. That all brokers and all commission men, or officers, or large stockholders of companies doing a brokerage or commission business in futures for customers, be prohibited from speculating in grain futures for their own account, in order to prevent abuses and risks arising from the same party acting at the same time as agent and as principal in trading on the exchange.

3. That the car-delivery rule and the settlement rule for defaulted futures contracts on the Chicago Board of Trade should be interpreted and applied by an impartial person or tribunal, because these rules involve complex questions of fact, requiring unprejudiced judgment, and because the present practice involves the discretion of the board of directors and the president, who may be called upon to decide questions affecting their respective interests or those of their customers.

4. That the Chicago Board of Trade be required to permit the delivery of grain on futures contracts at other important markets than Chicago, under proper safeguards and equitable terms, whenever necessary in order to prevent a squeeze or corner in the Chicago market.

5. Finally, the commission reiterates, in substance, a recommendation made in a previous report, namely, that the railroads might be encouraged to furnish, or the States or Federal Government might assume the duty of furnishing, adequate storage elevator capacity at convenient market points, especially at Chicago, free from control or operation by any grain dealer, broker, or commission house, in order to remove the artificial conditions frequently occurring there and with such storage charges and other conditions that the grain farmer or merchant would be able to store grain in competition with elevator merchandisers, while, by means of negotiable warehouse receipts obtained for such grain, the farmer would be aided in borrowing money to finance his crop until he was willing to sell.

FOREIGN OWNERSHIP IN THE PETROLEUM INDUSTRY.

On February 12, 1923, the commission submitted a report to the United States Senate on foreign ownership in the petroleum industry, made pursuant to Senate Resolution 311, Sixty-Seventh Congress, second session, adopted June 29, 1922. The demand for such an inquiry was occasioned by the activity of the Royal Dutch-Shell group, a combination of British and Dutch interests, in acquiring petroleum producing, transporting, refining, and marketing properties and equipment in this country.

This report describes the organization, development, and present status of the Royal Dutch-Shell group, with special reference to its holdings in the United States, and particularly the absorption of the Union Oil Co. (Delaware); it relates the facts regarding the present ownership and control of the Union Oil Co. of California and outlines the situation with respect to discrimination of foreign governments against citizens of this country in the acquisition and development of petroleum-producing properties in foreign lands.

The more important facts developed in this report were as follows :

The Royal Dutch-Shell group, a combination of the Royal Dutch Co. and the Shell Transport & Trading Co., of London, has worldwide oil investments, including numerous refineries, an immense fleet of tank ships, and petroleum production in many lands, which in 1921 was no less than 11 per cent of the world output. This group in February, 1922, consummated a merger of the principal properties and investments of the Union Oil Co. (Delaware) with its chief American subsidiaries in a new company, the Shell Union Oil Corporation, which now controls over 240,950 acres of oil lands in the United States; has about 3.5 per cent of the total output of crude petroleum; owns extensive properties in refineries, pipe lines, tank cars, and marketing equipment; and is one of the largest companies in the domestic petroleum industry. The Union Oil Co. (Delaware) owned about 26 per cent of the stock of the Union Oil Co. of California, but, to prevent the Royal Dutch-Shell group from gaining control, certain stockholders of the Union of California organized an American-controlled holding company, which now owns more than half of its issued stock.

The most important instances of discrimination by foreign governments against citizens of this country are the exclusive, policies of the Governments of Great Britain and the Netherlands in respect to the oil fields of India and the Dutch East Indies, and the 1920 San Remo agreement of Great Britain and France covering the undeveloped oil fields of Mesopotamia and of the British and French colonies. Denial of reciprocity of treatment to citizens of this country appears to exist with respect to the petroleum industry of Australia, British Borneo, certain African colonies, British Honduras, British Guiana, and Trinidad, France and French possessions, Italy, and the Netherlands and its dependencies.

Thus forced to modify its historic policy, Congress in 1920 enacted a mineral leasing law for public lands which forbids the acquisition of properties by the nationals of any foreign country that denies reciprocity to Americans, in consequence of which certain applications for petroleum leaseholds have been denied to the Royal Dutch-Shell group.

The commission drew the following conclusions :

What further efforts may be made by this combination to acquire privately owned petroleum lands or competing oil companies, it is, of course, impossible to predict, or how far antitrust laws may be effective to prevent them.

The supply of crude petroleum in this country is being rapidly depleted to meet the requirements of a growing domestic consumption and foreign trade. The sources of supply of the domestic industry are concentrated within Its own borders and in Mexico, while those of its principal competitor are widely distributed throughout the whole world. It appears obvious that a nation having widely distributed supply and storage facilities and owning the means of distribution will have certain advantages in world trade against one having concentrated supply.

COAL.

Investment and pro fit in soft-coal mining.--The past year was one marked by great public concern in the coal industry. Early in the year the Federal Trade Commission completed its preliminary report on investment and profit in soft-coal mining, an important report, but not entirely satisfactory because completed under the handicap of an injunction which prevented the requirement of the additional information needed. While owing to this injunction in the Mannered Coal Co. case the commission itself undertook no new work during the year, it did give material aid to the United States Coal Commission, which was created by act of Congress of September 22, 1922, to make a special study and to report on the coal problem .

The Federal Trade Commission's examination of investment in soft-coal mining was its first study on any extended scale of the amount of funds invested in bituminous-mining enterprises. During the war and in the commission's coal bulletins issued in 1920 the cost of production per ton and the net margins of profit per ton were ascertained currently but the profits on investment were not determined. Hence it was not known, except in a very general way, whether a profit of a given number of cents per ton meant a high or low rate of return on the funds invested. While the results of this inquiry were discussed in the last annual report, the report was issued during this fiscal year and certain fundamental facts may be noted here.

Net margins of profit per ton had been determined and made public by the Trade Commission for a substantial proportion of the industry's production in 1916 and 1917 and for practically all of it in 1918. The National Coal Association's unrevised figures of net profit per ton for a substantial proportion of the tonnage had been made public for 1919, 1920 (nine months), and 1921. The value of the new report was that it arrived at the approximate average amount of funds invested per ton of coal produced for each of the important bituminous coal districts and thus for the first time fur-

nished a base for judging what these various net margins per ton signified in terms of rate of profit on the investment.

This approximate investment for 1,126 bituminous mining companies scattered throughout nearly all the districts of the country as a whole was found to average \$3.12 per ton of annual production, This investment includes borrowed funds.

The estimated average rate of return on the net investment, including borrowed funds, for all of the districts for the six-year period 1916-1921 was about 15 per cent and for 1918-1921 about 13 per cent. By years, the approximate rates were :

Year.	Per cent profit.
1916	8
1917	29
1918	18
1919	6
1920 (9 months)	23
1921	3
Average, 1916-1921	15

These profits represent the net income before payment of Federal taxes thereon.

Briefly, the year 1916 showed pre-war conditions; the year 1917 was a panic-price period uncontrolled by war regulation until August, 1917; 1918 was a year of price control by the Fuel Administration; 1919, a year of subnormal demand; 1920, when there was a seller's market, had the highest bituminous coal prices in history, and 1921, a year of general business depression affecting this industry severely. For these six years the average return of approximately 15 per cent on the investment represented, therefore, the results both of fat years and lean.

In the third quarter of 1920 (July to September), when the coal panic of 1920 was at its height, the average unrevised net margin of the 466 operators reporting to the National Coal Association was \$1.15 per ton, or approximately 37 per cent on the investment. On the other hand, in December, 1921, 511 operators reporting to the association showed on the basis of unrevised figures a loss of 35 cents per ton or a loss of approximately 11 per cent on the investment.

The three chief coal producing States of the country are Pennsylvania, West Virginia, and Illinois. There were marked differences between them in investment per ton. In Pennsylvania the investment in soft coal averaged \$3.68 per ton of the annual production, in West Virginia \$4.12, and in Illinois \$1.67, less than half as high as in the two first-named States. The average investment in West Virginia was \$1 a ton higher than the general average of \$3.12 in 70 of the 74 mining districts of the country, while in Illinois the figure was nearly \$1.50 a ton less than the average for the country.

The information on which the report was based was that obtained before the injunction against the commission was secured, or that collected by the National Coal Association itself and made public without opportunity for governmental revision. Thus, while in-complete and only partially verified the results may be taken as probably an understatement of the profits in the soft coal mining industry for this period.

The principal conclusions of the report were :

(1) The need of more accurate and more complete information regarding the ownership of bituminous coal deposits and coal mines, the true investment therein, and the true profits arising therefrom.

(2) The need of ascertaining the profits of selling companies owned by or affiliated with mining companies and also of other wholesalers or dealers in coal.

(3) The need of establishing the coal industry in public confidence and protecting it by devising means of Federal supervision and publicity so as to avoid periods of excessively high prices and of severe depression.

Aid to the United States Coal Commission.--At the urgent request of the United States Coal Commission the Federal Trade Commission turned over to it the greater part of its force which had formerly be engaged on its coal inquiries. This was done by granting extended leave without pay to a number of its coal experts, economists, accountants and clerks, who were thereupon employed by the Coal Commission and formed a directing force and nucleus for those sections of the Coal Commission's staff dealing with the costs and profits of coal mining companies and coal dealers.

While this release of a considerable number of its employees handicapped the work of the Economic Division in its other investigations, the Coal Commission 's work was so urgent that the Federal Trade Commission felt obliged not to withhold the aid of the only body of experts in the Government service who are trained in the analysis and compilation of coal costs and profits. Some of them were transferred to this work in the fall of 1922 and the others in January 1923, the understanding being that they would return to the Federal Trade Commission 's work in September, 1923, on the termination of the Coal Commission's existence.

All coal cost and financial records in the files of the Federal Trade Commission, which cover a period of several years prior to January 1, 1919, were also made available to the Coal Commission, in accordance with the provisions of the law creating it. The Coal Commission was thus enabled to confine to the period from 1919 on its work of gathering new cost data from operators, and for the earlier period used in its report the costs and margins which had been determined and published in substantially the same form in the reports of the Federal Trade Commission.

It is worthy of comment that the National Coal Association, which in 1920 secured an injunction against the Federal Trade Commission prohibiting it from requiring information on costs of production of coal, in 1923 publicly recommended to the United States Coal Commission that the bituminous coal operators should be called upon to submit to a governmental agency the facts as to their costs of production. This they proposed should be on a basis of voluntary cooperation their preference being to report to the Department of Commerce or the Department of the Interior. If there was any force in the contention of the operators in enjoining the Federal Trade Commission that neither Congress nor any agency created by Congress could constitutionally require information on the cost of production of coal that force was still unchanged. Yet in less than two years this national association of coal operators had come to see that they could not safely flout public opinion by refusing to governmental agencies and to the public the basic facts about this industry. So it has come about also that the operators have furnished to the United States Coal Commission the very information which they refused to give to the Federal Trade Commission, and which they caused it to be enjoined from securing.

In connection with the services of the Federal Trade Commission experts in the work of the United States Coal Commission on the costs and profits of mining and dealing in coal, it is proper to point out further that while the Federal Trade Commission has been under the injunction referred to since the spring of 1920, it has been called upon to make its information and the services of its experts available to public agencies in two great crises in the coal trade which have developed since the time when the injunction was laid upon it. The coal troubles of 1922 and 1923 have not caused the public to forget the coal panic of the summer and fall of 1920 when prices of soft coal reached theretofore unheard of heights. At that time the "Calder Committee," the Select Committee of the United States Senate on Reconstruction and Production, under the chairmanship of Senator Calder, and the Senate Committee on Manufactures, under the chairmanship of Senator LaFollette, held extensive hearings and made vigorous efforts to probe the causes of the coal panic of that time, to determine the profits of operators, and to secure the passage of constructive legislation to prevent the recurrence of such price excesses in the coal trade. Both of these Senate committees called upon the Federal Trade Commission to make available to them the information obtained by it, which was done, and the services of a number of its experts and clerks familiar with the coal industry were utilized by the committees. Similar service rendered the United States Coal Commission, at its request, during the past year is therefore the Federal Trade Commission's second

response in the past two years to a Call for aid in a matter on which it, itself, is still enjoined, in a large measure, from acting directly.

HOUSE FURNISHINGS.

During the fiscal year the commission continued its inquiry into the house-furnishings industry, which was undertaken pursuant to Senate Resolution 127, adopted January 4, 1922, directing the commission to inquire into factory, wholesale and retail price conditions in the principal branches of the house-furnishings goods industry since January 1920, and particularly to ascertain the organization and interrelations of corporations and firms' engaged therein and whether there were unfair practices or methods of competition or restraints of trade, and to report as the various phases of the inquiry should be completed.

Household furniture.--The first report was published January 17, 1923, and covered ordinary wooden household furniture. The report was divided into two parts, the first pertaining to investment, costs, prices, and profits, and the second part to the organization and concentration of ownership of corporations and firms and to unfair practices and restraints of competition.

Financial returns were received from 299 manufacturing companies, 22 jobbers, and 560 retailers of furniture. The manufacturers made profits amounting to 28.2 per cent of their aggregate investment of over \$80,000,000 in 1920 and 8.4 per cent on an investment of over \$91,000,000 in 1921. The wholesalers profits were 32.7 per cent on an investment of approximately \$4,000,000 in 1920 and 4.2 per cent on over \$4,800,000 in 1921. The average profits of 424 specialized retail furniture stores were 22 per cent on an aggregate investment of nearly \$84,000,000 in 1920 and 8.4 per cent on an investment of nearly \$95,000,000 in 1921.

This was the first report of the commission to trace a manufactured product from the producer to the consumer through the crest of the "peace boom" in 1920 and through the "buyers strike" and business depression which followed. It is shown that in 1920, of the consumer's dollar about 13.3 cents went for retailer's profit, 8.3 cents for manufacturer's profit, 2.1 cents for freight and the balance for manufacturers' and retailers' costs and expenses. In 1921, 6.9 cents went for retailer's profit, 4.2 for manufacturer's profit, 3.3 cents for freight and the balance for manufacturing and retailing costs and expenses.

Further findings as to prices and profits were as follows :

Wholesale prices of household furniture in 1920 reached a higher peak than most commodities and subsequently declined more gradually and without approaching so near the pre-war level.

Furniture manufacturers, however, reduced their prices more in absolute amount than the decline in the prices of raw materials, relatively more than wages, and both absolutely and relatively more than they reduced their total cost.

Retailers also reduced prices, and by the early part of 1922 probably in as great proportion as the manufacturers, but reluctant to cut prices on large stocks of high priced furniture, their price reductions lagged about a half year behind.

* * * * * * *

Most retailing of furniture in 1920 and 1921 was on the installment plan and installment prices averaged probably at least 16 per cent above cash prices. Installment stores generally had higher operating expenses but made considerably higher profits on the investment than those doing primarily a cash business.

For the study of competitive conditions, schedule returns were obtained showing the organization and ownership of 378 manufacturing companies, 97 wholesalers, and 835 retail dealers, together with a considerable mass of letters, minutes of meetings, bulletins, and other documents obtained by agents of the commission through interviews and examination of the records and files of trade associations, examination of files of various large manufacturers, and from the trade press. In the conduct of the inquiry, the offices of 7 national and 9 smaller territorial manufacturers' associations, a national wholesalers' association, a national and 34 local and state retailers' associations were visited by agents of the commission.

The report shows that there was no significant concentration of control through intercorporate stock ownership of the furniture industry as a whole. There were, however, a few cases in each branch of the industry where small groups of companies were controlled by the same stockholders.

The report shows, on the other hand, that all branches of the industry were strongly organized into local and national trade associations and that manufacturers' associations by adopting and using, among other devices, minimum "selling value" (i. e. price) bulletins prepared by an expert and based on theoretical replacement costs plus 25 per cent for contingencies and profit, acted in concert to advance prices during the early part of 1920; to maintain prices, in conjunction with retail organizations, in the face of the general slump during the latter part of 1920; and to retard declines of prices in 1921.

In regard to association activities it was further found that:

Leading furniture manufacturers' associations have jointly employed an expert to price articles of furniture for their members on a theoretical cost basis which tended to uniformity of prices.

Various retail organizations have frequently interfered with the sale of furniture by manufacturers to consumers and to so-called "illegitimate" dealers by means of concerted complaints of members to offending manufacturers and by the publication of the Buyers Guide and Tattle Tales.

In the autumn of 1920 the heading manufacturers' associations, following a conference with the organized retailers who insisted that they should have time to dispose of their high-priced stocks, advised their members to defer making reductions in factory prices.

Although a movement for "truth in furniture" has recently been started, which includes many manufacturers and dealers' furniture, both as to materials and workmanship, is often misrepresented in a manner to deceive the public.

Kitchen furnishings and domestic appliances.--The commission selected kitchen furnishings and domestic appliances as the second division of the house-furnishings goods inquiry.

Field work on this subject was nearly completed during the fiscal year and included inquiry into the manufacture and distribution of stoves, sewing machines, vacuum cleaners, washing machines, refrigerators, brooms, and cooking utensils. Schedules requesting information on investment, prices, costs, and profits and on organization and ownership were sent to 1,286 manufacturers and over 2,500 wholesalers and retailers of these commodities. It was found difficult to secure sufficient usable replies to show representative results and representatives of the commission visited a number of concerns which had returned incomplete data. The commission's agents also visited the offices and examined the records of the principal associations, numbering about 35, in the various industries involved in the inquiry.

A large proportion of the mass of material secured was reviewed and digested, and drafts of reports were prepared for several important parts of the inquiry.

WYOMING PETROLEUM MONOPOLY.

Supplementing a previous elaborate report on the petroleum industry of Wyoming there was issued at the beginning of the fiscal year a very brief report on the petroleum trade in Wyoming and Montana, which discussed the selling prices of gasoline. The most important conclusion of the report was that the petroleum industry and trade in that region was dominated by Standard Oil interests, a local monopoly having been perfected in 1920 and 1921 through the acquisition of the formerly independent Midwest Refining Co. The even more recent acquisition from the Federal Government of the lease of the Teapot Dome Naval Reserve by the Sinclair interests, together with the alliance between these interests and the Standard of Indiana for the purpose of purchasing crude petroleum and the construction of a pipe line to Kansas City for marketing the oil constituted another effort to reintegrate monopoly in the petroleum industry. The commission found the existing law inadequate to meet the situation and suggested specific additional legislation of a form which would effect the abolition of the extensive community of interest among the Standard Oil companies, which resulted from

the defective requirements of the original decree dissolving the Standard Oil monopoly.

WAR-TIME COSTS AND PROFITS OF SOUTHERN PINE LUMBER COMPANIES.

During the war much valuable information regarding costs was Secured from the lumber industry and compiled by the commission for the War Industries Board. In the Spring of 1919 the commission secured reports containing balance sheets, sales realization, and profits for 1917 and 1918 from many manufacturers of southern pine lumber. Owing to extensive reductions in the office force this data could only be tabulated intermittently and it was not until the autumn of 1922 that the report on war-time costs and profits of southern pine lumber companies was printed and ready for distribution. Some of the outstanding facts developed in this report are summarized as follows :

The average rate of earnings on the entire business, as reported by 143 identical companies, was 9 per cent in 1917 and almost $\frac{1}{2}$ per cent in 1918. There was a wide variation in the reported rates of earnings for individual companies. In 1917 the reported rates of earnings ranged from a loss of almost 3 per cent to a profit of a little over 52 per cent, while in 1918 the range was from a loss of 13 per cent to a gain of nearly 52 per cent.

The revision of the returns of these 143 companies by the elimination of stumpage appreciation from investments and costs increased their average rate of earnings on total investment from about 9 per cent to about 12 per cent in 1917 and from almost $8\frac{1}{2}$ per cent to about 11 per cent in 1918.

The total investment in the lumber business compared with the annual output varied greatly for different companies on account of differences in the supply of standing timber owned. Consequently companies owning a timber supply sufficient to last for short periods only generally received larger rates of return on their investment than those owning timber supplies sufficient to last a long time. In 1917, for example, the average revised rate of return on investment for 146 companies was a little less than 12 per cent, while the rates of return for companies grouped according to the period of timber supply were as follows : Five years or less, not quite 15 per cent; 6 to 10 years, a little over 12 per cent; 11 to 15 years, nearly 8 per cent; and over 15 years, $9\frac{1}{2}$ per cent. In other words, the companies not burdened with a relatively large timber supply were more profitable.

There was a wide range in the reported costs, sales realization, and earnings per thousand feet for both years. In 1918, for example, individual costs, as reported by the 205 companies, ranged from

\$15.63 to \$37.12 per thousand feet; the average sales realization for different companies ranged from \$18.81 to \$36.28 per thousand feet; while the net earnings for individual manufacturers ranged from a loss of \$4.85 to a profit of \$13.79 per thousand feet.

The southern pine lumber industry was under increasingly strict governmental control of prices from July, 1917, to the end of 1918, and throughout this period the increase in prices practically paralleled increasing costs. Following the termination of governmental price control the prices of southern pine lumber advanced rapidly to unprecedented levels during the latter part of 1919 and early 1920. These high prices gave rise to a "buyers' strike" and a rapid decline in prices, which began in the spring of 1920 and continued through the middle of 1921, when the prices of many grades reached the price levels prevailing in the early months of 1917.

COTTON TRADE.

Preliminary report.--A Senate resolution of March 16, 1922 (No. 262), directed the commission to make inquiry into the causes of the depressed prices of cotton in the United States, giving particular attention to the operation of the cotton exchanges, whether trading on these was being carried on in a fair, just, and legal way, and whether present laws were operating equitably to the grower of cotton. The resolution requested that in the event that the commission found remedial legislation necessary that it inform the Senate thereof and submit such recommendation as it believed feasible.

In February, 1923, a preliminary report dealing chiefly with the causes of the decline in cotton prices was submitted to the Senate. It was found that "the most important factors in the sharp decline in prices in 1920-21 were the marked increase in supply and decrease in demand."

Pursuant to the resolution inquiry was also made into existing laws affecting the cotton trade, and the preliminary report discussed the operation of the cotton futures act of 1914, together with its subsequent amendments, and their influence upon future trading. Some consideration was given also to the character of the future contract in its relation to future prices and the bearing that such prices have on spot prices for cotton.

Other aspects of the cotton trade, particularly those relating to operations of exchanges, were reserved for a subsequent report.

Subsequent inquiry.--In January, 1923, the Senate adopted another resolution (No.429) which makes special reference to alleged corporate violations of antitrust laws with respect to operations in cotton, the conduct of cotton exchanges, operations upon such exchanges by corporations, partnerships, and individuals.

The inquiry under this resolution was combined with the portions of the inquiry under the earlier resolution not covered in the preliminary report.

Much additional field work has been done in all the most important cotton markets since the second resolution was passed, and special consideration is being given to the study of the future exchanges, the contract which is sold thereon, the making of quotations, and their influence on prices in both spot and future markets.

WHEAT FLOUR MILLING.

Senate Resolution 212, Sixty-seventh Congress, second session, adopted January 18, 1922, directed this commission "to extend its investigation of commercial wheat flour milling from the date of the conclusion of its investigation of said industry included in its report to Congress on September 15, 1920, up to the close of the fiscal year ending June 30, 1921."

Owing to the lack of funds for economic inquiries and the pressure of other work already begun this inquiry could not be started until late in 1922. Although the funds available for field work were inadequate the milling industry generally cooperated with the commission, and data covering costs, investment, and profits were secured from a large number of flour mills in most of the important milling centers for the period 1919-1922. Reports were obtained from most of the mills included in the 1920 report, thus making it possible to present costs and profits for the period 1913-1922 for a representative group of companies. At the close of the fiscal year the compilation of the data covering costs, investments, prices, and profits was nearly completed, together with much other data pertinent to this inquiry.

GRAIN TRADE.

The work on Volumes IV and VI of the commission's report on the grain trade was substantially completed during the fiscal year.

Volume IV deals with the costs and profits of country and terminal elevator operations, concerning which certain data have already been published in a preliminary report.

Volume VI deals with the movement, variability, and relationships of cash and future grain prices, and subjects to statistical tests certain long current economic theories with reference to such prices.

A large amount of the work was also done during the year on Volume VII, which deals with the results of future trading. In this volume it is planned to formulate general conclusions on the subject of future trading in grain.

NATIONAL WEALTH, NATIONAL INCOME, AND TAXATION.

Senate Resolution 451, adopted February 28, 1923, directed the commission to make an inquiry into and to compile data concerning the total amount of the chief kinds of wealth in the United States, to ascertain the ownership thereof and the encumbrances thereon, including both public and private indebtedness, and to secure statistics for recent years covering the amount of the annual increase in the national wealth in different lines of economic activity and by different classes of the population; and also to obtain information regarding the amount of the income exempt from Federal taxation and to report on the various phases of the inquiry as soon as practicable. An amendment to this resolution instructed the commission to ascertain the aggregate taxes levied by States, counties, municipalities, and other local taxing bodies for the last completed fiscal year and for the corresponding fiscal year five years previous.

On account of the comprehensiveness of the subject matter of this Senate resolution and in order to expedite the work and enable the commission to report on certain phases at an early date the subject was divided into three parts, viz, national wealth, national income, and taxation. The work on all three parts is being carried on as rapidly as the limited personnel and funds available for such inquiries will permit.

PAPER STATISTICS.

The collection and compilation of statistics concerning the paper industry for monthly publication begun in 1917 was continued through the first 11 months of the fiscal year and then was brought to a close.

The statistics obtained from the paper industry itself related chiefly to the production, shipment, and stocks of paper and pulp by grades. The statistics obtained from publishers related chiefly to consumption, stocks, and prices of newsprint paper. The information so collected was compiled and published in monthly bulletins and in a yearly summary for the benefit of those engaged in the industry, the consumers, and the public. In addition to the data collected by the commission, there were also included in its current bulletins data on the imports and exports of paper compiled from the records of the Bureau of Foreign and Domestic Commerce, Department of Commerce.

While wide interest was manifested in these statistics, there was considerable difficulty in getting complete and prompt returns, as the reports were made entirely on a voluntary basis. Moreover, the heavy increase in the expense of the commission for its legal work made it seem necessary to reduce the amount of its allotment to

economic and statistical work. In view of this condition, the paper manufacturers, jobbers, and publishers furnishing statistical data, as well as all persons receiving the reports, were notified on June 22, 1923; that in accordance with the commission's resolution of June 11 the further collection, compilation, and publication of paper statistics would be discontinued as of July 1, 1923. When this decision was announced an effort was made by important representatives of the paper industry to induce some other branch of the Government to undertake this work. It was finally continued by a trade association.

COOPERATION WITH THE LEGAL DIVISION.

The legal work of the commission often involves fact-finding inquiries in which the assistance of the economists and accountants of the economic division is often required on a more or less extensive scale. Some of the more important instances are noted below:

Steel basing point case.--The proceeding against the United States Steel Corporation and its subsidiaries with regard to the practice of selling certain steel products on the basis of Pittsburgh prices plus freight to point of delivery, without regard to the actual place of manufacture or cost of transportation, continued to require throughout the fiscal year the services of several members of the economic division in compiling data and digesting testimony.

Bethlehem-Lackawanna-Midvale merger.--The merger of three of the largest independent steel companies, namely, the Bethlehem, Lackawanna, and Midvale steel companies, resulted in legal proceedings in the course of which the detail of an accountant was sought from the economic division in order to ascertain various facts regarding the business operations of these companies and the extent to which competition had been eliminated as a result of the merger.

Western creamery case.--In connection with a charge of unfair competition on the part of a large creamery company in the purchase of milk it became necessary to examine in detail the accounts of the company, which was done by a detail of accountants from the economic division.

Calcium arsenate inquiry.--An inquiry into alleged restraint of trade in the sale of calcium arsenate was assigned to the legal staff of the commission, but certain members of the economic division were also detailed to assist in this inquiry.

AID TO OTHER BRANCHES OF THE GOVERNMENT.

Several branches of the executive Government as well as a Senate committee have called on the commission for aid which has been Sup-

plied by the economic division. Certain instances may be briefly mentioned.

Senate inquiry into the petroleum industry.--The Senate Committee on Manufactures made an extensive inquiry into the petroleum industry and called upon the commission for expert aid in connection with certain aspects of the inquiry. From the economic division one of the Commission's expert petroleum accountants was selected to aid in preparing report forms for the petroleum refining and marketing companies regarding their investments and profits, and in super-ising the tabulations and analyses tabulating and analyzing the information obtained,

Department of Commerce.--Owing to abnormal conditions in the coal trade in the summer of 1922 the Secretary of Commerce made certain investigations of the situation and suggestions to the mine operators in various mining districts as to what might be considered fair prices for coal. In this connection he requested and obtained the detail of several accountants of the economic division familiar with the industry to ascertain costs of production in certain districts and other data pertinent to this problem.

Department of Justice.--In proceedings in the Court of Claims certain big meat packers sought to recover from the Government on war contracts large sums over and above what the purchasing authorities regarded as legally and equitably due. Assistance was sought by the Department of Justice for the purpose of examining into these purchase transactions, which involved going into the accounts of the packers. An accountant of the economic division expert in the records of the meat-packing industry was selected for this work, which was represented to be indispensable for the successful conduct of the case.

United States Coal Commission.--The extensive assistance rendered by the commission to the United States Coal Commission has been described in some detail above. (See p. 69.)

EXPORT TRADE DIVISION.

Under the export trade act (Webb-Pomerene law) of April 10, 1918, the commission is given jurisdiction over combinations or “associations” organized for the purpose of and solely engaged in export trade from the United States to foreign nations. ¹

Under the provisions of section 6 (h) of the Federal Trade Commission act of September 26, 1914, the commission is empowered--

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable. ²

PROVISIONS OF THE EXPORT TRADE ACT.

Section 1 of the act defines the terms “export trade,” “trade within the United States,” and “association,” wherever used within the law. Export trade means “solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation.” The word “association” means “any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.”

Sections 2 and 3 of the act provide exemption from the antitrust laws, to “an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association,” with the provision that such an association, agreement, or act shall not be in restraint of trade within the United States, or in restraint of the export trade of any domestic competitor, and the further prohibition of any agreement, understanding, conspiracy, or act which shall enhance or depress prices or substantially lessen competition within the United States, or otherwise restrain trade therein.

Section 4 extends the jurisdiction of the commission under the Federal Trade Commission act to include unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

Section 5 provides for the filing of papers with the Federal Trade Commission and covers procedure in case of violation of the export trade act.

¹ see Exhibit No.5.

² See Exhibit No. 1.

The commission has taken the position that the receipt and filing of such papers does not serve as a guaranty of approval, nor as a permit or license to operate under the law. During the debates in Congress before the passage of the act, an amendment was proposed Providing that “before any association shall engage in business under this act it shall secure from the Federal Trade Commission a permit to engage in such business, and said commission is authorized to issue such permits and may, in its discretion, refuse a permit to any association, and may, after hearing, cancel any permit issued.” Strong objection to such a clause was voiced at that time, on the ground that such autocratic power should not be vested in any commission of the Government; and the proposed amendment was not made a part of the law. ³

OPERATION UNDER THE EXPORT TRADE ACT.

Associations which have filed papers with the commission are engaged in the exportation of raw materials and manufactured products of many sorts and kinds, including steel, copper, cement, phosphate, sulphur, rubber, lumber and wood products, locomotives, textile machinery, steel tires and wheels, naval stores, soda pulp, alkali, pipe fittings and valves, paper, paint, alcohol, tanning materials, webbing, abrasives, buttons, clothespins, and foodstuffs such as milk, meat, sugar, canned foods, and grain products.

Members of these associations number approximately 600 and are scattered throughout all parts of the United States.

A substantial increase is noted in exports by associations during the past fiscal year. The revival of foreign trade is reflected in a renewed interest in the act and operation under its provisions. Eight new associations were organized during the year, and a number of others are in the process of formation.

CONCERNS FILING PAPERS IN CONNECTION WITH THE EXPORT TRADE ACT.

During the fiscal year, July 1, 1922, to June 30, 1923, the following concerns filed papers with the commission:

American Corn Products Export Association, 135 William Street, New York City.
American Locomotive Sales Corporation, 30 Church Street, New York City.
American Milk Products Corporation, 71 Hudson Street, New York City.
American Paper Exports, (Inc.), 136 Liberty Street, New York City.
American Pitch Pine Export Co., 522 Maison Blanche Annex, New Orleans, La.
American Provisions Export Co., 223 West Adams Street, Chicago, Ill.
American Soda Pulp Export Association, 200 Fifth Avenue, New York City.

³ Congressional Record, June 13, 1917, vol. 55, pt. 4, p. 3578 fol.

American Surface Abrasives Export Corporation room 1309, 82 Beaver Street, New York City.

American Tanning Materials Corporation, post-office box 857, Knoxville, Tenn.

American Textile Machinery Corporation, 24 Federal Street, Boston Mass.

American Tire Manufacturers' Export Association, 7 Dey Street, New York City.

American Webbing Manufacturers Export Corporation, 395 Broadway, New York City.

Associated Button Exporters of America, (Inc.), 1182 Broadway. New York City.

Automatic Pearl Button Export Co. (Inc.), 301 Mulberry Avenue, Muscatine, Iowa.

Canned Foods Export Corporation, 1739 H. Street NW., Washington, D. C.

Cement Export Company, (Inc.), care of Charles F. Conn, Pennsylvania Building, Philadelphia, Pa.

Chalmers (Harvey) & Son Export Corporation, rear 31 East Main Street, Amsterdam, N. Y.

Clandere Export Corporation, 300 East Twenty-second Street, New York City.

Copper Export Association (Inc.), 25 Broadway, New York City.

Davenport Pearl Button Export Co., 1231 West Fifth Street, Davenport, Iowa.

Delta Export Lumber Corporation, 1339 Bank of Commerce Building, Memphis, Tenn.

Douglas Fir Exploitation & Export Co.,¹ 260 California Street, San Francisco, Calif.

Export Clothes Pin Association of America (Inc.), 90 West Broadway, New York City.

Export Trade Association (Inc.), 99 John Street, New York City.

Florida Hard Rock Phosphate Export Association, Savannah Bank & Trust Building, Savannah, Ga.

Florida Pebble Phosphate Export Association, 2 Rector Street, New York City.

General Alcohol Export Corporation, 60 Wall Street, New York City.

Goodyear Tire & Rubber Export Co., 1144 East Market Street, Akron, Ohio.

Grain Products Export Association, 17 Battery Place, New York City.

Grand Rapids Furniture Export Association, 213 Lyon Street NW., Grand Rapids, Mich.

Gulf Pitch Pine Export Association, 1212 Whitney Bank Building, New Orleans, La.

Hawkeye Pearl Button Export Co., 601 East Second Street, Muscatine, Iowa.

Locomotive Export Association, 30 Church Street, New York City.

McKee Button Export Co., 1000 Hershey Avenue, Muscatine, Iowa.

Mississippi Valley Trading & Navigation Co., 920 Rialto Building, St. Louis, Mo.

Naval Stores Export Corporation, 1425 Whitney Central Annex Building, New Orleans, La.

Pan American Trading Co., 59 Pearl Street, New York City.

Phosphate Export Association, 2 Rector Street, New York City.

Phosphate Export Association & Florida Hard Rock Phosphate Export Association, 2 Rector Street, New York City.

¹ On May 3, 1922, the commission issued complaint, Docket 880, against the Douglas Fir Exploitation & Export Co.

Pioneer Pearl Button Export Corporation, 257 Mansion Street, Poughkeepsie, N. Y.
 Pipe Fittings & Valve Export Association, Branford, Conn.
 Redwood Export Co., 260 California Street, San Francisco, Calif.
 Rubber Export Association, 1790 Broadway, New York City.
 Sugar Export Corporation, 113 Wall Street, New York City.
 Sulphur Export Corporation, 19-21 Dover Green, Dover, Del.
 United Paint & Varnish Export Co., 601 Canal Road, Cleveland, Ohio.
 United States Alkali Export Association (Inc.), 25 Pine Street, New York City.
 United States Button Export Co., 701 East Third Street, Muscatine, Iowa.
 United States Handle Export Co., Piqua, Ohio.
 United States Maize Products Export Association (Inc.), 332 South La Salle Street, Chicago,

III.

United States Office Equipment Export Association, 134 Grand Street, New York City.
 Walnut Export Sales Co. (Inc.) , 616 South Michigan Avenue, Chicago, Ill.
 Walworth International Co., 44 Whitehall Street, New York City.
 Wisconsin Cannery Export Association, Manitowoc, Wis.
 Wood Pipe Export Co., White Building, Seattle, Wash.

INQUIRIES UNDER SECTION 6 (H) OF THE FEDERAL TRADE COMMISSION

ACT.

Work of the office has continued along the line of investigation of trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States.

Antitrust laws have recently been enacted or are under consideration in the following countries : Canada, the Union of South Africa, Argentina, Norway, France, and Germany. Some of this legislation has closely followed The Federal Trade Commission act and the Clayton Act of this country.

The Senate and House of Commons of Canada on June 13, 1923, enacted the combines investigation act, 1923 (13-14 George V). That act provides for the investigation of mergers, trusts, and monopolies; the relation resulting from the purchase, lease, or other acquisition by any person of any control over or interest in the whole or part of the business of any other person; any actual or tacit contract, agreement, arrangement, or combination which has or is designed to have the effect of (1) limiting facilities for transporting, producing, manufacturing, supplying, storing, or dealing; or (2) preventing, limiting, or lessening manufacture or production; or (3) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation; or (4) enhancing the price, rental, or cost of article, rental storage or transportation; or (5) preventing or lessening competition in, or substantially con-

trolling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply; or (6) otherwise restraining or injuring trade or commerce.

If as a result of investigation under the Canadian act, the governor in council is satisfied that with regard to any article of commerce a combine exists at the expense of the public, he may admit such article free of duty or reduce the duty thereon so as to give the public the benefit of reasonable competition. If the owner or holder of a patent makes use of exclusive rights to unduly limit production or restrict or injure trade, such patent shall be liable to revocation. Violation of the act is made an indictable criminal offense. Every one who is a party or privy to or knowingly assists in the formation or operation of a combine as defined in the act is liable to a penalty not exceeding \$10,000 or to two years' imprisonment, or if a corporation to a penalty not exceeding \$25,000.

The Parliament of the Union of South Africa enacted the board of trade and industries act, 1923, on June 30, 1923. Under this act the board of trade and industries, created in 1921, is given, among others, the following powers :

To inquire and report to the Minister (of Mines and Industries) upon the nature, extent, and effect of agreements, arrangements, combinations, associations, and trusts connected with or affecting commerce, finance, manufacture, mining, trade, or transport in so far as they tend to the creation of monopolies or to the restraint of trade, and to submit to the minister recommendations as to any action necessary or advisable for preventing such creation of monopolies or restraint of trade.

The board may take evidence for the purpose of inquiring into any matter falling within Its functions and duties and for this purpose may subpoena witnesses and require the production of any book, record, or document for examination of same.

Recommendations or reports by the board shall be laid upon the tables of both houses of Parliament after its receipt by the minister.

Numerous inquiries have been made by the division during the past year in response to requests from Government departments, Congressional committees, trade associations, and individuals.

FOREIGN TRADE COMPLAINTS INVESTIGATED.

In the interest of foreign trade of the United States, this office has made inquiries in the matter of complaints filed by foreign concerns against American exporters and importers. Such inquiries fall generally within the jurisdiction of the commission under section 6 (h) of the Federal Trade Commission act. In certain cases, however, features of unfair competition have developed and prosecution under section 5 of the Federal Trade Commission act has been necessary.

During the past fiscal year 114 complaints have been handled by the division, some of which are still pending.

Various Government offices and trade organizations avail themselves of the commission's investigatory power, and refer such complaints to the commission for inquiry. Cases have been received from the State, Commerce, and Treasury Departments, the Department of Agriculture, the Department of Justice, chambers of commerce, and occasionally from a complainant direct. Ordinarily, however, complaint is made by the foreign concern to the office of the American consul or trade commissioner in that country and is referred back to the United States for investigation.

Such cases involve charges of nondelivery of goods ordered, nonpayment for goods received, shipment of defective or damaged goods or articles below sample, short-weight delivery, and various other complaints concerning orders and shipment of goods to and from foreign countries.

As example thereof, the following are cited :

A complainant in Cape Town, South Africa, purchased 5 barrels of linseed oil which upon receipt was found to be impure. Complaint was filed with the American consulate at Cape Town, and a test was made of the condition of the oil, which had evidently been shipped in a barrel that was not clean. The commission was asked to make inquiry in the matter, and found the respondent willing to accept the inspector's report as filed with the consulate. He offered an allowance of 15 per cent of the invoice value, which was accepted by the complainant and the dispute was therefore amicably settled by the parties thereto on the basis of the facts brought out by the commission's inquiry.

A complainant in the Philippine Islands ordered a motor for use in a boat, for which he sent the American company \$200 as first payment on the quoted price of \$745. The motor was never shipped and no refund made. Letters to the respondent were not answered. Complaint was filed with the American commercial attache at Manila, and the commission was requested to make inquiry into the matter. It was found that the respondent had become bankrupt, his business was placed in the hands of a receiver, and he had then disappeared. Efforts to locate him were not successful.

A Mexican complainant purchased enamel ware to the amount of \$1,300, which upon delivery was found to be of poor grade, inferior to samples upon which the sale was made. Utensils were scarred, cracked, and on some pieces handles were missing. Complaint was made to the American Chamber of Commerce in Mexico, reported to the American trade commissioner in that country, and was referred to this office with a request for investigation. Upon the reports and samples furnished, the respondent exporter admitted

the inferiority of the goods and offered to pay half of the loss entailed if the manufacturer would assume the other half. This was acceptable to the manufacturer, and these payments were made through the Commerce Department.

A complainant in Australia purchased 106 cases of third-quality glass. When received the goods were found to be marked "fourth quality," very inferior, full of pockets and flaws, and utterly useless for window panes, for which they were intended. Forty-nine cases were received undamaged, but in 57 cases the glass was badly broken due to insufficient padding and packing. Complaint was filed with the American trade commissioner and was referred to this office with a request for an inquiry. The respondent accepted reports of inspection submitted by the trade commissioner, and made an allowance of nearly a thousand dollars in settlement of the claim.

In some instances the respondent company is found to be bankrupt or out of business; in others poor management or careless business methods are responsible. But in most cases the difficulty is due largely to the lack of good and sufficient proof as to the validity of the claim. The commission's inquiry serves to establish the facts of the complaint, through which the parties may be able to adjust their differences.

In a number of cases, the facts brought out by the commission serve to clear the American concern from the allegations of the complaint. For example, an Australian importer purchased from an American concern a consignment of salt salmon packed in barrels and shipped without refrigeration. The fish spoiled en route and a loss of several thousand dollars was claimed. It was found, however, that the Australian was well aware of the risk involved in shipping such goods without refrigeration and had expressed himself as willing to run the risk. Also, there was a substantial sum still unpaid on the consignment. In fact, both complainant and respondent had accepted risk and suffered loss in approximately equal proportions. Further claim was therefore not justified.

The commission's position and that of representatives of the State and Commerce Departments is that of an investigator of the facts involved by these disputes in the interest of American business abroad. Litigation for small claims is too expensive to be practicable. Yet the smallest claim may result in wide publicity toward the discredit of American concerns in foreign countries. As expressed in a recent report from an American consulate in South Africa, such complaints are "detrimental to the good will enjoyed by American manufacturers in South Africa" and elsewhere. Their adjustment is but one of the steps of the American Consular Service and other

Government offices in an effort to promote and encourage American trade.

In this connection it may be stated that in 1923 this division made a special inquiry at the request of the State Department concerning alleged tampering with Canadian grain passing in bond through the United States for shipment via United States ports to foreign countries. This inquiry grew out of complaints filed through State Department representatives in Canada and England, and involved investigation at ports of entry and exit, and inspection of grain elevators and railroad terminals. No evidence was found of deliberate tampering or mixing within the United States, but recommendations were made for closer Federal supervision of Canadian grain shipped in bond through this country, in order to forestall further complaint and the possible withdrawal of some of this business from United States ports. The matter is now under inquiry by the Canadian Board of Grain Commissioners and the London Corn Trade Association

REPRESENTATION ON THE LIAISON COMMITTEE.

A representative of the commission attends the weekly conference of the liaison committee. Members of this committee represent all offices and departments of the Government that are concerned with foreign trade. Weekly discussion amid reports serve to keep each office informed, to promote cooperation, and to prevent duplication of effort in the Government's foreign trade activities.

ENEMY TRADE DIVISION.

The authority vested in the commission by the act of October 6, 1917, together with the Executive order of October 12, 1917, to grant licenses to citizens of the United States or to corporations organized within the United States, to make, use, and vend any machine, manufacture, composition of matter, or design, or to use any process, trade-mark, print, label, or copyright, owned or controlled by an enemy or ally of enemy, was by the terms of the act specifically limited to tire duration of the war, which, by the proclamation of peace, was declared to have officially ended on July 2, 1921. Therefore, in its administration of section 10 of the said act this commission issued no such licenses during the fiscal year ending June 30, 1923.

Subsection (f), section 10, of the said act of October' 6, 1917, provides as follows:

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill In equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit : *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit,

shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

The time limit within which suits in equity might be instituted under the foregoing provision therefore terminated on July 2, 1922, and at the beginning of the fiscal year covered by this report there were pending in the courts a total of 131 suits, instituted as follows :

By enemy owners	47
By Chemical Foundation (Inc.)	64
By other American corporations taking title through the custodian	4
By Alien Property Custodian	16

These suits involved, with few exceptions, every license issued by the commission. The few licenses not the subject of suit represent cases in which commercial production had never been reached, or in which the amount of royalty deposited was so insignificant as not to justify institution of suit thereagainst. The suit instituted by the Government against the Chemical Foundation (Inc.), for the return of the 4,500 patents assigned thereto by the Alien Property Custodian also involves some 60 of the licenses issued by the commission, being 58 covering patents, 1 trade-mark, and 1 copyright. This suit against the Chemical Foundation (Inc.) will be further referred to hereinafter.

During the fiscal year just ended, of an aggregate of 93 licenses issued by the commission 72 were outstanding and of full force and effect, being 57 covering patents, 2 trade-marks, and 13 copyrights; a total of 21 having been previously canceled and terminated, representing 19 under patents and 2 under trade-marks.

Since the licenses were granted in each instance for the life of the patent, trade-mark, or copyright under which issued, the 57 outstanding licenses obviously still remain of full force and effect under the supervision of the commission, and will continue so to remain pending judicial determination of the suits in equity instituted there-against, or in such instances as no suit in equity was instituted against the license, until the expiration of the respective patent, trade-mark, or copyright covered thereby.

The activities of the enemy trade division during the fiscal year just ended have been directed chiefly toward the furnishing of data for use in connection with the prosecution of the suits in equity hereinfore referred to. It may be stated in thus connection that upwards of five hundred copies (in many instances certified) of the licenses issued by the commission have been furnished to the various litigants, together with copies of such other information as was contained in the commission's files, and which was pertinent to the prosecution of such suits. The records of the enemy trade division touching tire matter of royalties accrued under the various licenses have

beer of great importance not only to the "owners" suing under subsection (f), section 10, but to the Alien Property Custodian and the Department of Justice, and, in addition, in connection with the Government's suit instituted against the Chemical Foundation (Inc.); the commission's figures being relied upon by all parties concerned and being in each instance accepted as the basis for stipulations to be entered into between the respective parties to the suits.

In connection with the suit against the Chemical Foundation (Inc.) for the return to the Government of the 4,500 patents assigned thereto by the Alien Property Custodian, some twelve hundred photostat copies were made at the Department of Justice, under the immediate and personal supervision of the chief of the enemy trade division; such copies embracing all the licenses issued by the commission, the patents covering which are involved in said suit, together with all royalty records appertaining thereto.

The original documents being introduced and proved in the district court at Wilmington, Del., by the chief of the enemy trade division as the representative of the commission, substitution was then made of tire photostat copies the same now forming a part of the record of said case. In addition to the various tabulations furnished tire Government by tire enemy trade division covering royalties earned by the patents assigned to the Chemical Foundation (Inc.) , the enemy trade division in its cooperation with the Department of Justice has prepared and furnished an abstract from the file record of each license under which suit has been instituted, the data thus furnished being unused by the Department of Justice in connection with the prosecution of the suit instituted thereagainst in the various district courts not only by the enemy owners of the licensed subject matter, but also by the American owners acquiring title through purchase from the Alien Property Custodian. Considerable data have also been furnished various committees of Congress in connection with certain patent investigations made during the course of the year.

While by the stipulations of subsection (f) , section 10, licensee's liability to render further reports of royalty accruing under tire license ended on July 2, 1922, or such earlier date as marked the institution of suit pursuant to the privilege conferred by said subsection, in many instances the licensee has Voluntarily continued to transmit the usual report, proper attention being given thereto and the information contained therein duly transmitted to the Alien Property Custodian for the completion of his file and for what purpose it might subserve in connection with the equity suits now pending.

The royalty accrued under the commission's licenses, and the disposition of which is one of the important questions for judicial

determination in connection with the equity suits hereinbefore referred to , aggregates \$1,000,15360 accrued as follows: Under patents, \$626,411.06; trade-marks, \$372,696.05; and copyrights, \$1,046.49. These figures do not include any amount accruing subsequent to July 2, 1922. When it is recalled that the amount paid in as royalty represents only from 2 to 5 per cent of gross sales, the vast volume of business done under the commission's licenses can be appreciated.

Subsection (c), section 10, clothed the commission with authority to determine the license fee to be charged in each case, which fee by the terms of the act might not exceed \$100 nor 1 per cent of the fund deposited as royalty under the license, the act containing no specific provisions, however, as to the time or manner of making any proper refund in such instances as the amount of royalty deposited did not justify the retention of the fee originally charged. The disposition of the fund thus created, aggregating some \$18,000 was the subject of recent conferences between this commission and the office of the Comptroller General of the United States, with the result that in view of the failure of the act to prescribe the time or manner of making refund as above referred to, and pending the determination of the suits in equity hereinbefore referred to, it was deemed advisable to allow this fund to remain intact pending future developments.

The bulk of correspondence handled by the enemy trade division during the fiscal year has been considerable. Numerous questions arose, various of which were submitted for the commission's decision as to rights and equities involved under the peculiar and unforeseen circumstances attending the particular case, the most recent being a copyright license issued to Joseph W. Herbert, covering a certain dramatic-musical production entitled "Der Seerauber." The death of this licensee occurring before actual production was had under the license, and with no equities having been created apparently thereunder, the commission was of the opinion that the death of the licensee under the circumstances recited automatically terminated the license and that no rights thereunder accrued to his widow or legal representative.

In connection with the copyright license issued to San Carlo Grand Opera Co. covering the production of the dramatic-musical composition entitled "Salome," and in which the registrant and owner of the copyright failed to avail himself of the privilege of under subsection (f), section 10 registrant has recently sought to enjoin the San Carlo Grand Opera Co. from the continued exercise of the rights conferred by the license and in thus connection addressed to the commission, through the Department of State, a communication from the charge d'affaires ad interim of Austria, to which communication the commission responded that

since the license in question was apparently properly issued under the authority of the act of October 6, 1917, such license being for the life of the copyright involved, and since the registrant had failed to enter suit thereagainst within the statutory period prescribed by law, and the license had not been canceled or otherwise terminated as provided in the act, it was the opinion of the commission that the said license was still of full force and effect and no reason was apparent which would preclude the licensee from continuing to exercise the rights and enjoy the benefits conferred thereby.

The activities of the enemy trade division in its administration of section 10 of the said act of October 6, 1917, have practically reached a conclusion. The commission maintains its supervision over the outstanding licenses as hereinbefore stated, and it is anticipated that there will be more or less frequent demands for data during the prosecution of the numerous suits now pending in the various courts, and that the desultory correspondence from licensees and other interested parties will continue to reach this division for a more or less indefinite period of time, but the amount of active work remaining to be done is but negligible.

All of which is respectfully submitted.

VICTOR MURDOCK, *Chairman.*
JOHN F. NUGENT.
HUSTON THOMPSON.
VERNON W. VAN FLEET.
NELSON B GASKILL.

EXHIBITS.

EXHIBIT I.

FEDERAL TRADE COMMISSION ACT.

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the late of the taking effect of this act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including, all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and

salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental Printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this act. The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 4. That the words defined in this section shall have the following meaning when found in this act, to wit:

“Commerce” means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territories and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

“Corporation” means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Documentary evidence” means all documents, papers, and correspondence in existence at and after the passage of this act.

“Acts to regulate commerce” means the act entitled “An act to regulate commerce,” approved February fourteenth, eighteen hundred and eighty-seven, and all acts amendatory thereof and supplementary thereto.

“Antitrust acts” means the act entitled “An act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an act entitled “An act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August twenty-seventh, eighteen hundred and ninety-four; and also the act entitled “An act to amend sections seventy-three and seventy-six of the act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen.

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnerships or corporation a complaint stating its charges in their respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method

of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while this same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file application transcript of the entire record in the proceeding, including all testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the fact, or make new findings, by reason of the additional evidence so threat, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid, shall be proof of the service of the same.

SEC. 6. That the commission shall also have power--

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of

any corporation engaged in commerce, excepting, banks and common carriers and it subject to the act to regulate commerce, relation to other corporations and to Individuals, associations, and in partnerships.

(b) To require, by general or Special orders, corporations engaged in commerce, excepting, banks, and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendation for the readjustment of the business of any corporation alleged to be violating the antitrust acts in order that the corporation may thereafter maintain its Organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make, rules and regulations for the purpose of carrying out the provisions of this act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, mid to report to Congress thereon, with such recommendations as it deems advisable.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this act, and shall detail from time to time such officials and employees to the commission as he may direct.

SEC. 9. That for the purposes of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and

members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the protection of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court is a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena. of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who, shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission, without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust acts or the acts to regulate commerce, nor shall anything contained in the act be construed to, alter, modify, or repeal the said antitrust acts or the acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

EXHIBIT 2.

PROVISIONS OF THE CLAYTON ACT WHICH CONCERN THE FEDERAL TRADE COMMISSION.

“Commerce,” as used herein, means trade or commerce among the Several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this act contained shall apply to the Philippine Islands.

The word “person” or “persons” wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers, of commodities, on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of Selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale, or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefore or discount front, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to, create a monopoly in any line of commerce.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition maybe to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is

so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

SEC. 8. That from and after two years from the date of the approval of this act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any crime in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this act by the persons respectively subject thereto is hereby vested in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associates and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the Commission or Board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained

of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause spoken may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such notice shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit Court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleading's, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the finding of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or

board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Approved, October 15, 1914.

EXHIBIT 3.

RULES OF PRACTICE BEFORE THE FEDERAL TRADE COMMISSION.

I. SESSIONS.

The principal office of the commission at Washington, D. C., is open each business day from 9 a.m. to 4:30 p.m. The commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sessions of the commission for hearing contested proceedings will be held as ordered by the commission.

Sessions of the commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the commission shall constitute a quorum for the transaction of business.

All orders of the commission shall be signed by the Secretary.

II. COMPLAINTS.

Any person partnership, corporation, or association may apply to the commission to institute a proceeding in respect to any violation of law over which the commission has jurisdiction.

Such application shall be in Writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

The commission shall investigate the matters complained of in such application, and if upon investigation the commission shall have reason to believe that there is a violation of law over which the commission has jurisdiction, the commission shall issue and serve upon the party complained of a complaint, stating its charges and containing a notice of a hearing -upon a day and at a place therein fixed at least 40 days after the service of said complaint.

III. ANSWERS.

Within 30 days from the service of the complaint, unless such time be extended by order of the commission, the defendant shall file with the commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts Which constitute the ground of defense. It shall specifically admit or deny or explain each of the facts alleged in the complaint, unless the defendant is without knowledge, in which case lie shall so state, such statement operating as a denial. Answers in typewriting must be on one side of the paper only, on paper not more then 8 ½ inches wide and not more than 11 inches long, and weighing not less then 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margins not less than 1 ½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10 ½ inches long, with inside margins not less than 1 inch wide.

IV. SERVICE.

Complaints, orders, and other processes of the commission may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director of the corporation or association to be served; or (b) by leaving a copy thereof at

the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

V. INTERVENTION.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which lie or it claims to be interested. The commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Applications to intervene must be on one side of the paper only, on paper not more than 8 ½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1 ½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10 ½ inches long, with inside margins not less than 1 inch wide.

VI. CONTINUANCES AND EXTENSIONS OF TIME.

Continuances and extensions of time will be granted at the discretion of the commission.

VII. WITNESSES AND SUBPOENAS.

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the commission may permit their testimony to be taken by deposition.

Subpoenas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the commission.

Subpoenas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

VIII. TIME FOR TAKING TESTIMONY.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than 5 nor more than 10 days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

IX. OBJECTIONS TO EVIDENCE.

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

X. MOTIONS.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other helpers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS.

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

The general counsel or one of his assistants, or such other attorney as shall be designated by the commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

XII. HEARINGS BEFORE EXAMINERS.

When issue in the case is set for trial it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown, the commission shall extend the time. The examiner shall, within 10 days after the receipt of the stenographic report of the testimony, make his proposed finding as to the facts and his proposed order thereon, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, to such proposed findings and order, and said exceptions shall specify the particular part or parts of the proposed findings of fact or proposed order to which exception is made, and said exceptions shall include any additional findings and any change in or addition to the proposed order which either party may think proper. Citations to the record shall be made in support of such exceptions. Where briefs are filed the same shall contain a copy of such exceptions. Argument on the exceptions to the proposed findings and order, if exceptions be filed, shall be had at the final argument on the merits.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

The commission may order testimony to be taken by deposition in a contest proceeding.

Depositions may be taken before any person designated by the commission and having power to administer oaths.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such depositions should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the commission will make and serve upon the parties or their attorneys an order wherein the commission shall name the witness whose deposition is to be taken, and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the commission's order, may or may not be the same as those named in said application to the commission.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the commission at its office in Washington, D. C. Upon receipt of the deposition and copy the commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8 ½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1 ½ inches wide.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

No deposition shall be taken either before the proceeding is at issue or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

XIV. DOCUMENTARY EVIDENCE.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

XV. BRIEFS.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. The presiding commissioner or examiner shall fix the time within which brief shall be filed and service thereof shall be made upon the adverse parties.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Twenty copies of each brief shall be furnished for the use of the commission, unless otherwise ordered.

Application for extension of time in which to file any brief shall be by petition in writing, stating the facts upon which the application rests, which must be filed with the commission at least 5 days before the time for filing the brief.

Every brief shall contain, in the order here stated-

(1) A concise abstract or statement of the case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

Every brief of more than 10 pages shall contain on its top flyleaves a subject index with page references. The subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10 1/2 inches, with inside margins not less than 1 inch wide and with double-leaded text and single-leaded citations.

Oral arguments will be had only as ordered by the commission.

XVI. ADDRESS OF THE COMMISSION.

All communications to the commission must be addressed to Federal Trade Commission, Washington D. C., unless otherwise specially directed.

EXHIBIT 4.

**EXTRACTS FROM THE TRADING WITH THE ENEMY ACT AND EXECUTIVE
ORDER OCTOBER 12, 1917**

The act of Congress approved October 6, 1917, known as the trading with the enemy act, contains the following provisions:

SEC. 10.

* * * * *

(b) Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trademarks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trademark, print, label, or copyrights in the country of an enemy, or of an ally of enemy, after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matters or design, or to carry on, or to use any trademark, print, label, or cause to be carried on a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trademark, print, label, or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefore not exceeding \$100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label, or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as many be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trademark, print, label, or copyrighted matter or, if the President shall so order, five per centum of the value of the use of such inventions, trademarks, prints, labels, or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label, or copyright registration as hereinafter provided, to be paid from the Treasury upon order

of the court, as provided in sub-division (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated is provided in this act, any license, granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trademark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the, district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment-of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the all such judgments and decrees, facts may appear; and if, after payment of, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought, as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this act to enjoin infringement of letter patent, trade-mark, print, label, and copyrights in the United States, owned or controlled by said enemy or ally of enemy in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided,* That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal Court.

(h) All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section, shall be valid.

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided,* That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that, in application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided, and who faithfully obeys the order of the President above referred to shall tender his

invention to the Government of the United States for its use, the shall, if the ultimately receives a patent, have the right to sue for compensation in the Court of claims, such right to compensation to begin from the date of the use of the, invention by the Government.

By the Executive order of October 12, 1917, the power and authority to administer the above section was vested in the Federal trade Commission, as follows:

XVII. I further hereby vest in the Federal Trade Commission the power and authority to issue licenses under such terms and conditions as are not inconsistent with law or to withhold or refuse the same, to any citizen of the United States or any corporation organized within the United States to file and prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trademark, print, label, or copyright, and to pay the fees required by law and the customary agents' fees, the maximum amount of which in each case shall be subject to the control of such commission ; or to pay to any enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation In relation to patents, trademarks, prints, labels, and copyrights.

XVIII. I hereby vest in the Federal Trade Commission the power and authority to issue, pursuant to the provisions of section 10 (c) of the trading-with-the-enemy act, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse a license to any citizen of the United States or any corporation organized within the United States, to manufacture or cause to be manufactured a machine, manufacture, composition of matter, or design, or to carry on or cause to be carried on a process under any patent, or to use any trade-mark, print, label, or copyrighted matter owned or controlled by all enemy or ally of enemy, at any time during the present war; and also to fix the prices of articles and products manufactured under such licenses necessary to the health of the military and the naval forces of the United States, or the successful prosecution of the war; and to prescribe the fee which may be charged for such license, not exceeding \$100 and not exceeding 1 percent of the fund deposited by the licensee with the alien property custodian as provided by law.

XIX. I hereby further vest in the said Federal Trade Commission the executive administration of the provisions of section 10 (d) of the trading-with-the-enemy act, the power and authority to prescribe the form of, and time and manner of filing statements of the extent of the use and enjoyment of the license and of the prices received and the times at which the licensee shall make payments to the alien property custodian, and the amounts of said payments, in accordance with the trading-with-the-enemy act.

XX. I further hereby vest in the Federal Trade Commission the power and authority, whenever in its opinion the publication of an invention or the granting of a patent may be detrimental to the public safety or defense or may assist the enemy, or endanger the successful prosecuting of the war, to order that the invention be kept secret and the grant letters patent withheld until the end of the war.

XXI. The said Federal Trade Commission is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

By the Executive order of April 11, 1918, the power an authority vested in the Federal Trade Commission under section 10 (b) of the Trading with the Enemy Act ans Section XVII of the Executive order of October 12, 1917, was revoked as follows:

I hereby revoke the power and authority vested in the Federal Trade Commission by section XVII of the Executive order of October 12, 1917, to issue license to any citizen of the United States or any corporation organized within the United States, to file or prosecute application in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay any fees or agent's fees in connection therewith or to pay to any enemy or ally of enemy any tax, annuity, or fee in relation to patents, trade-marks, prints, labels, and copyrights, and no such license shall be granted until further order.

By the Executive order of November 25, 1919, there was revested in designated officers certain powers under the trading with the enemy act as follows:

By virtue of the power and authority vested in me by "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, I hereby rescind, as of the 14th day of July, 1919, the Executive order of April 11, 1918, which revoked (1) the power and authority vested in the Secretary of the Treasury by Section XI of the Executive order of October 12, 1917, to issue licenses to send, take, or transmit out of the United States any letter or other writing, book, map, plan or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an "enemy" or "ally of enemy," in any way relating to letters patent, or registration of trade-mark, print, label, or copyright, or to any application therefore, and (2) the power and authority vested in the Federal Trade Commission by Section XVII of the Executive order of October 12, 1917, to issue licenses to any citizens of the United States or any corporation organized within the United States, to file or prosecute applications in the country of an "enemy" or "ally of enemy" for letters patent or for registration of trade-mark, print, label, or copyright, and to pay any fees or agents' fees in connection therewith; or to pay to any "enemy" or "ally of enemy" any tax, annuity, or fee in relation to patents, trade-marks, prints, labels, and copyrights; and I do hereby order that on and after July 14, 1919, licenses to perform the acts hereinabove described may be issued under Sections XI and XVII of the Executive order of October 12, 1917, by the officials in whom the authority to issue such licenses was by said order vested; and I do hereby further order that any and all licenses issued on or after July 14, 1919, which, except for the above-mentioned order of April 11, 1918, would by their terms authorize any of the acts hereinabove described, are hereby confirmed and approved, and all such licenses shall be deemed to have full force and effect according to the terms thereof, in like manner as though said order of April 11, 1918, had been rescinded prior to July 14, 1919.

By virtue of the power and authority revested in the Commission by the Executive order of November 25, 1919, above quoted, license is hereby granted to all citizens of the United States and all corporations organized within the United States, to file or prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay any fees or agents' fees in connection therewith; or to pay to any enemy or ally of enemy any tax, annuity, or fee in relation to patents, trade-marks, prints, labels, and copyrights.

Dated November 29, 1919.

[SEAL]

(Signed)

FEDERAL TRADE COMMISSION,
J. P. YODER, *Secretary*.

FORM OF LICENSE UNDER PATENT.

Patent licenses issued by the Federal Trade Commission under the provisions of the "Trading with the enemy act" will be in substantially the following form:

Patent No -----, dated ----- to ----- for -----

The Federal Trade Commission, under the authority of and in conformity with the "Trading with the enemy act," and of the Executive order of October 12, 1917, hereby licenses ----- to make, use, and vend within the United States the invention described and claimed in United States letters patent to ----- No - ----- dated ----- (copy annexed hereto) for the period of ----- unless sooner terminated.

The licensee during the continuance of this license shall pay to the alien property custodian, semiannually, within 30 days after the 1st day of January and the 1st day of July, respectively, of each year, a royalty at the rate of ----- per cent of the gross sums received by the licensee from the sale of the invention so herein licensed (or ----- per cent of the value

of the use thereof to the licensee as established by the Federal Trade Commission).

The licensee shall, during the continuance of this license, keep proper accounts and separate books containing full particulars of:

(a) All articles made or caused to be made by the licensee under the said letters patent and of the price or prices charged therefore;

(b) All items of cost incurred in the use of such invention and the manufacture and sale of articles inside thereunder; and

(c) All other matters and things which in the opinion of the Federal Trade Commission may be material for the purpose of showing the amounts from time to time payable by the licensee concerning such royalty and what is a fair and reasonable price to the public for such article.

The licensee shall, within 10 days after each of the semiannual days aforesaid, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall, during the continuance of this license, give al such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of the use of such invention, the cost of producing and the price or prices charged by the licensee for the said article, and for that purpose shall, if requested by the Federal Trade Commission, permit such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any factory or place of bus in which the use of the said invention or the manufacture shall be carried on and all books, papers, and documents of such licensee relating to such use, manufacture, and sale.

If any payment under this license shall not be made, within one month after the same shall have become due under the provisions herein contained (whether demand therefor shall have been inside or not), or if the licensee shall or shall attempt to assign or part with the benefit of or grant any sublicense under this license, or shall make default in the performance or observance of any obligations on his part herein contained, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if, after 10 days' notice in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may, by notice in writing, and after a hearing, cancel and terminate this license as from the date of such notice, but without prejudice to and so as not in any annular to affect any liability hereunder on the part of the licensee which may then be subsisting of have accrued.

If in the opinion of the Federal Trade Commission the licensee has failed to use this license so as to satisfy the reasonable requirement of the public with regard to the subject matter thereof; or

If in the opinion of the Federal Trade Commission the licensee has failed to supply to thin public tire articles made under this license at reasonable prices; or

If in the opinion of the Federal Trade Commission the licensee has charged unreasonable or excessive prices for articles made under this license; or

If in the opinion of the Federal Trade Commission the articles made under this license are of unsatisfactory quality (and the licensee shall furnish to the Federal Trade Commission in the manner prescribed by it and when and as often as required, samples and specimens for inspection, analysis, and test); or

Circumstances have arisen which, in the opinion of the Federal Trade Commission, make it just and equitable that this license be canceled in whole or in part ;

The Federal Trade Commission may, in its discretion, give notice in writing to the licensee to terminate and cancer this license in whole or in part, and, if canceled and terminated, the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

Any sums which may at any time be payable by the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States and shall be recovered in an appropriate action in the name of the people of the United States against the licensee.

Dated _____ 191__

Accepted and agreed to.

Licensee.

A copy of the patent is to be attached.

If the licensee is not to be the actual manufacturer, the licensee will be held accountable to the Federal Trade Commission for the observance of the terms of his license by the actual manufacturer of the article, and the license will contain the following addendum, naming the actual manufacturer who shall sign:

_____, manufacturer for _____, the licensee _____ of the article herein licensed, separately agrees to keep separate books containing full particulars of all articles manufactured, and the cost thereof, sold to _____ the licensee, and the price or prices charged therefore and his books and plant shall be open to inspection in the same manner as provided for the licensee. The licensee and the undersigned, during the continuance of the license, shall furnish or procure to be furnished all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee, the cost of producing or procuring the patented article, the price or prices charged for said article, and shall permit or procure permission to be given to such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any factory or place of business in which the manufacture of the patented article shall be carried on by the undersigned for the licensee, and all books, papers, and documents relating to such manufacture and sale.

The undersigned, manufacturer, is not authorized to make, use, or vend the Invention of the patent except for _____, the licensee, and not further or otherwise, and the undersigned undertakes to observe and perform the terms and conditions of the license to _____ to which this is attached.

Dated _____, 191__.

Accepted and agreed to.

_____,
Manufacturer.

FORM OF LICENSE UNDER COPYRIGHT.

Copyright licenses issued by the Federal Trade Commission under the provisions of the "Trading with the enemy act" will be in substantially the following form:

Copyright No. _____, dated _____ to _____ for the (book, etc., as the case may be; see copyright act of March 4, 1909, sec. 5, for classification) entitled (insert title of work).

The Federal Trade Commission, under the authority of and in conformity with the "Trading with the enemy act" and of the Executive order of October 12, 1917, hereby licenses _____ to exercise within the United States all the rights created by the copyright laws of the United States of America, being the act of March 4, 1909, as amended with respect to the subject matter of copyright to _____, No. _____, dated _____ for the (book, etc., as the case may be; see copyright act of March 4, 1909, sec. 5, for classification) entitled (insert title of work), a copy of which is annexed hereto, for the period of _____, unless sooner terminated.

The licensee, during the continuance of this license, shall pay to the alien property custodian, semiannually, within 30 days after the 1st day of January, and the 1st day of July, respectively, of each year, a royalty at the rate of ___ per cent of the gross sums received by the licensee from the sale of the copyright work so herein licensed (or ___ per cent of the value of the use thereof to the licensee as established by the Federal Trade Commission).

The licensee shall, during the continuance of this license, keep proper accounts and separate books containing full particulars of-

(a) All copies of said copyright work made or caused to be made by the licensee under the said copyright and of the price or prices charged therefor;

(b) All items of cost incurred in the use of said copyright work and in the manufacture and sale of such copyright work; and

(c) All other matters and things which, in the opinion of the Federal Trade Commission, may be material for the purpose of showing the amounts from

time to time payable by the licensee concerning such royalty and what is a fair and reasonable price to the public for such copyright work.

The licensee shall, within 10 days after each of the semiannual days aforesaid, deliver a sworn statement to the Federal Trade Commission in writing showing the aforesaid particulars.

The licensee shall the continuance of this license give all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee under this license, the cost of producing, and the price or prices charged by the licensee for the said copyright work, and for that purpose shall, if requested by the Federal Trade Commission, permit such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any factory or place of business of the licensee in which the use or manufacture of the said copyright work shall be carried on, and all books, papers, and documents of such licensee relating to such use, manufacture, and sale.

If any payment under this license shall not be made within one month after the same shall have become due under the provisions herein contained (whether demand therefor shall have been made or not), or if the licensee shall or shall attempt to assign or part with the benefit of or grant any sublicense under this license, or shall make default in the performance or observance of any obligation on his part herein continued, or shall have violated any of the conditions of this license or any of the provisions of the statute under which it is granted, and if after 10 days' notice, in writing, shall have failed to comply with the aforesaid, then the Federal Trade Commission may, by notice in writing, and after a hearing, cancel, and terminate this license as from the date of such notice, but without prejudice to and so as not in any manner to affect any liability hereunder on part of the licensee which may be subsisting of have accrued.

If in the opinion of the Federal Trade Commission the licensee has failed to use this license so as to satisfy the reasonable requirement of the public with regard to the copyright work; or

If in the opinion of the Federal Trade Commission the licensee has failed to supply to the public the copyright work at reasonable prices; or if in the opinion of the Federal Trade Commission the licensee has charged unreasonable or excessive prices for said copyright work; or

Circumstances have arisen which in the opinion of the Federal Trade Commission make it just and equitable that this license be canceled in whole or in part;

The Federal Trade Commission may, in its discretion, give notice in writing o the licensee to terminate this license in whole or in part, and if canceled and terminated the same shall be without prejudice to and so as not in any manner to affect any liability hereunder on the part of the licensee which may then be subsisting or have accrued.

Any sums which may at any time be payable by the licensee under the provisions of this license shall be a debt due from the licensee to the people of the United States and shall be recovered in an appropriate action In the name of the people of the United States against the licensee.

Dated _____, 191____

Accepted and agreed to.

_____,
Licensee.

If the licensee is not to be the actual manufacturer or producer of the copyright work, the licensee will be held accountable to the Federal Trade Commission for the observance of the terms of his license by the actual manufacturer or producer of the article, and the license will contain the, following addendum, naming the actual manufacturer or producer of the article, who shall sign:

_____, the manufacturer for _____ the licensee of the copyright work herein licensed, separately agrees to keep separate books containing full particulars of _____, the licensee, and the price or prices charged thereof, and his books and plant shall be open to inspection in the same manner

as provided for the licensee. The licensee and the undersigned, during the continuance of the license, shall furnish or procure to be furnished all such information as the Federal Trade Commission may consider to be material for the purpose of ascertaining the amount of royalty payable by the licensee, the cost of producing or procuring the copyright work, the price or prices charged thereof, and shall permit or procure permission to be given to such person or persons as shall be authorized in that behalf by the Federal Trade Commission at any time or times to enter upon and inspect any factory or place of business in which the manufacture of the copyright work shall be carried on by the undersigned for the licensee, and all books, papers, and documents relating to such manufacture and sale.

The undersigned, manufacturer, is not authorized to exercise any right conferred by the copyright statutes with respect to the copyright work here involved except for _____, the licensee, and not further or otherwise, and the undersigned undertakes to observe and perform the terms and conditions of the license to _____ to which this is attached.

Dated _____, 191__.

Accepted and agreed to.

Manufacturer.

A surety company bond may be required of the licensee, if, in the opinion of the Federal Trade Commission, it is necessary to safeguard the public interest.

FORM OF APPLICATION FOR LICENSE.

TRADING WITH THE ENEMY ACT.

To the FEDERAL TRADE COMMISSION:

Application of _____ for a license under patent to _____, date _____ No. _____.

(If under copyright, state title of work, name of copyright proprietor, and date of copyright registration.)

The undersigned, for the purpose of securing a license, represents to the Federal Trade Commission as follows:

(a) The undersigned is a citizen of the United States, residing at street, in the city of _____, State of _____, United States of America. (If a corporation, state under the laws of what State it is organized; the location of its corporate offices, its business offices, and plants or factories.)

(b) The undersigned is desirous of being licensed under the patent (or copyright) above United, which is owned or controlled by a citizen or subject of _____. (State the enemy country or the ally of the enemy of which the patentee or copyright proprietor is a citizen or subject, or if a corporation where it is incorporated, and if the patent or copyright is not owned but is claimed to be controlled state fully the facts which establish the nature and origin of the enemy or ally of enemy control, whether it is means of an agency, by contract, by stock ownership in corporations, or otherwise.)

(c) Attached here is a Patent copy of the letters patent and a certified abstract of its title, from the Patent Office and a certified copy of the petition and all powers of attorney in the file of the application (or, in the case of a copyright, a specimen of the copyrighted work, and a certified copy of the copyright entries from the office of the Register of Copyrights).

(d) It is for the public welfare that the license applied for be granted because--(Here state briefly but completely and in nontechnical language the reason why it is for the public benefit that the license be granted and specifically the demand for the article prior to the war, the demand for the article at the present time whether or not this demand is being met or can be met, prices obtained prior to the war and prices at the present time.)

(e) Applicant is able to make or cause to be made the patented or copyrighted article because (Here state specifically the applicant's experience in the production of articles of the kind covered by the patent or copyright, his

technical equipment for manufacturing and selling such articles and his ability to do so, the estimated cost of manufacture and price proposed to be charged if the license is granted.)

(If the applicant does not intend to manufacture but to procure the manufacture of the article, state specifically what arrangements have been made or proposed to this end and their terms and conditional. State the name and address of the manufacturer proposed to be employed and his technical equipment, etc., and article copies of any contracts or proposals.)

(f) The license desired is exclusive or nonexclusive for the following reasons:(Here state reasons why, in the opinion of the applicants the license be exclusive or nonexclusive.)

(g) The license is desired-

(1) For the term of the patent or copyright, (2) the duration of the war, or (3) any other period, stating reasons in each case.

(h) The application is also to contain the following: "The undersigned intends in good faith to manufacture or cause to be manufactured the article licensed and understands that the license, if granted, may not be assigned and may be canceled by the Federal Trade Commission, after due notice of hearing upon violation by the undermined of any of the provisions of the "Trading with the enemy act " or of any of the conditions of the license."

(Signed) _____, Applicant.

OATH FOR AN INDIVIDUAL.

STATE OF _____
County of _____, ss:

_____, being duly sworn, deposes and states that the is the same person whose name is signed to the foregoing statement; that lie has read this statement and' knows and understands its contents; and that it is true.

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public.

OATH FOR A CORPORATION.

STATE OF _____
County of _____, ss:

_____, being duly sworn, deposes and states that he is the _____ of _____, the corporation whose name is signed to the foregoing statement; that the is duly ,authorized to swear to such statement on behalf of such corporation; that the has read this statement and knows and understands its contents; and that it is true.

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public.

To: _____ (Date)
In re application for United States
patent of _____
_____. Ser. No. _____
Filed _____
For _____

GENTLEMEN: Inclosed is a duly certified copy of an order of the Federal Trade Commission with reference to the matter identified in the caption of this letter. Violation of this order entails a fine of not more than ten thousand dollars (\$10,000) or imprisonment of not more than ten (10) years, or both. You are directed to govern yourselves accordingly.

Very truly yours,

(Signed)

FEDERAL TRADE COMMISSION,
L. L. BRACKEN, Secretary.

UNITED STATES OF AMERICA,
FEDERAL TRADE COMMISSION,
(Date.)

IN THE MATTER OF ENJOINING PUBLICATION OF CERTAIN PATENTS AND SECRECY
OF INVENTIONS.

It appearing to the Federal Trade Commission that the publication of certain alleged inventions, for which applications for patents have been made in the United States Patent Office, and which are fully identified in a schedule filed with the Federal Trade Commission _____, said schedule being dated _____, and now in the files of the Federal Trade Commission, may be detrimental to the public safety or defense and may assist the enemy and endanger the successful prosecution of the war, and that said alleged inventions are in whole or in part known to the alleged inventors, assigns, if any, and their solicitors.

Therefore, in conformity with the provisions of the trading with the enemy act and of the Executive order of October 12.1917-It is ordered that, without the consent or approval of the Commissioner of Patents or license from the Federal Trade Commission, the said inventors, assigns, if any, and solicitors, and each thereof, and all others having knowledge of the said inventions or any thereof, keep the said inventions and each of them secret and refrain from publication or any disclosure thereof.

It is further ordered that a copy of this order be served upon the said inventors, assigns, if any, and solicitors by registered mail forthwith.

A true copy of the order this day entered.

FEDERAL TRADE COMMISSION.

Attest:

[SEAL.]

(Signed)

L. L. BRACKEN, *Secretary*.

EXHIBIT 5.

EXPORT TRADE ACT.

An Act To promote export trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States Of America in Congress assembled, That the words "export trade" wherever used in this act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

That the words "trade within the United States" wherever used in this act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "association" wherever used in this act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

SEC. 2. That nothing contained in the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further,* That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

SEC. 3. That nothing contained in section seven of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the act entitled "An act to create a Federal trade commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

SEC 5. That every association now engaged solely in export trade, within sixty days after the passage of this act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written state-

ment setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Approved, April 10, 1918.

EXHIBIT 6.

CURTIS CASE.

FEDERAL TRADE COMMISSION v. CURTIS PUBLISHING Co.

(Argued Nov 17.1922. Decided Jan. 8, 1923.)

No.86.

1. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No.80½, NEW VOL., 8A KEY-NO. SERIES--WHETHER METHOD IS UNFAIR COMPETITION, OR AGREEMENT TENDS TO CREATE MONOPOLY, IS FOR THE COURT.

The ultimate determination of what constitutes unfair competition in interstate commerce, and whether the leases, sales agreements, or understandings substantially lessen competition or tend to create a monopoly, is for the court, and not for the Trade Commission.

2. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION KEY No.80½, NEW VOL. 8A KEY-NO. SERIES--COURT NEED NOT REMAND TO COMMISSION FOR FURTHER FINDINGS, IF CIRCUMSTANCES SHOW JUSTICE REQUIRES DECISION.

Under the Federal Trade Commission act (Comp. St., par. 8836a--8836k), making the findings of fact supported by evidence conclusive, but granting jurisdiction to the Circuit Court of Appeals to make and enter, on the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside an order of the commission, the court can examine the whole record, and ascertain whether there are material facts not reported by the commission, and if there is substantial evidence relating to such facts, from which different conclusion reasonably might be drawn, the matter should be remanded to the commission to make additional findings; but, if, from all the circumstances, it clearly appears that In the interest of justice the controversy should be decided without further delay, the court has full power to do so.

3. MONOPOLIES KEY No. 17(2)-CONTRACTS WITH DISTRIBUTORS HELD AGENCY AND NOT SALES AGREEMENTS.

Contracts between a publisher and a large number of distributors, some of whom had been wholesale dealers in magazines and others not, whereby the distributors agreed to requisition from the publisher the number of magazines required for their territory, title to remain in the publisher until sold, and to train and supervise boys who were to sell the magazines, are contracts of agency and not of sale on condition, so that they do not violate Clayton Act, paragraph 3 (Comp. St., par. 8835c), prohibiting lease or sale contracts which prohibit the lessee or buyer from handling the product of competitors, even though the contracts contained clauses prohibiting the distributors from handling other magazines, unless with the consent of the publisher.

4. TRADE-MARKS AND TRADE--NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW VOL. 8A KEY-No. SERIES--EMPLOYMENT OF EXCLUSIVE AGENTS IS NOT "UNFAIR COMPETITION."

The employment of competent agents obligated to devote their entire time and attention to developing the principal's business, to the exclusion of all others, where nothing else appears, is not unfair competition, within Federal Trade Commission act, par. 5 (Comp. St., par. 8836e).

(The syllabus Is taken from 43 Sup. Ct. 210.)

On writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Complaint by the Federal Trade Commission against the Curtis Publishing Company. An order of the Commission requiring the company to desist from

entering into certain contracts or enforcing certain provisions of outstanding-contracts was set aside by the Circuit Court of Appeals (270 Fed. 88,1), and the commission brings certiorari. Affirmed.

Mr. Chief Justice Taft and Mr. Justice Brandeis, doubting.

Mr. Solicitor General Beck and Adrien F. Busick, both of Washington, D. C., for petitioner.

Mr. John G. Milburn, of New York City, for respondent.

Mr. Justice McReynolds delivered the opinion of the court :

The court below entered a decree setting aside an order of the Trade Commission, dated July 21, 1919, which directed respondent publishing company to cease and desist from entering into or enforcing agreements prohibiting wholesalers from selling or distributing the magazines or newspapers of other publishers. 270 Fed. 881. And the cause is here by certiorari.

The commission issued an original complaint July 5, 1917, based mainly on a restrictive clause in existing contracts with so-called district agents. Thereafter respondent changed its agreement. An amended complaint followed, which amplified the original allegations and attacked the second contract and consequent conditions.

The first section of the amended complaint declares there is reason to believe that respondent has been and is using unfair methods of competition contrary to section 5, act of Congress approved September 26, 1914, c. 311, 38 Stat. 717,1 and specifically charges: That respondent, a Pennsylvania corporation with principal place of business at Philadelphia, has long engaged in publishing, selling, and circulating weekly and monthly periodicals in interstate commerce. That with intent, purpose, and effect of suppressing competition in the publication, sale, and circulation of periodicals it now refuses and for some months past has refused to sell its publications to any dealer who will not agree to refrain from selling or distributing those of certain competitors to other dealers or distributors. That with the same intent, purpose, and effect it is making and for several months last past has made contracts with numerous wholesalers to distribute its periodicals as agents, and not to distribute those of other publishers without permission. That wholesalers so restricted are the principal and often the only medium for proper distribution of weekly and monthly periodicals in various localities throughout the United States, and many of the so-called agent's formerly operated under contracts with respondent which abridged their liberty of resale.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charge in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. * * * If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. * * *

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application, and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of

1 SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.
The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of all application by the commission for enforcement of its order and the findings of the commission as to the facts if supported by testimony, shall in like manner be conclusive.

The second section declares there is reason to believe respondent is violating Section 3, act of Congress approved October 15, 1914--Clayton Act--c. 323, 38 Stat 730, 2 and specifically charges: That respondent publishes, sells, and circulates weekly and monthly periodicals in interstate commerce. That for some months past in such commerce, it has sold and is now selling and making contracts for the sale of its publications and periodicals for use and resale and is fixing the price charged on condition, agreement, or understanding that the purchaser shall not sell other publications or periodicals, thereby substantially lessening competition and tending to create a monopoly.

Respondent replied to the notice to show cause why it should not be required to desist "from the violations of law charged in this complaint." It denied unlawful conduct and claimed that the parties contracted with as agents were such in fact their services were necessary for the maintenance of the plan originated by it of distributing publications through schoolboys, who require special superintendence; and further, that such agents had lawfully agreed to abstain from other connections and devote their time and attention to superintending the boys and to the general upbuilding of sales. Copies of respondents first and second agreements with distributors accompanied the answer. The first had then been superseded and largely discontinued.

The second contract provides that upon requisition respondent will consign its publications to the agent as he may require, retaining title until they are sold; that the agents will supply the demand of boys and dealers at specified prices, will use reasonable efforts and devote all necessary time to promoting sales of such publications; "that without the written consent of the publisher he will not display, deliver, or sell any copies of any one of said publications before the authorized publication date, as specified in the printed requisition blanks, or disposed of any periodicals other than those published by the publisher, or directly or indirectly furnish to any other publisher or agent the names and addresses of the persons to whom the publisher's publications are sold or delivered; that subject to the principal's direction and control the agent shall train, instruct, and supervise an adequate force of boys for distributing the publications; and that he will return unsold copies, their cover pages, or headings.

After taking such testimony--2,500 pages--the commission made a brief and rather vague report of two pages, containing findings and conclusions based on the second contract with dealers and without direct reference to the earlier one. The substance of the report follows.

"PARAGRAPH 1. Respondent, a Pennsylvania corporation with principal place of business at Philadelphia, is engaged in publishing, selling, and distributing weekly and monthly periodicals among the States.

"PAR. 2. That in the course of such commerce, the respondent has entered into contracts with certain person's partnerships, or corporations to sell or distribute its magazines, by the terms of which contracts, such persons, partnerships, or corporations have agreed among other things, not to act as agent for or supply at wholesale rates any periodicals other than those published by the publisher 3--the respondent herein--without the written consent of such publisher;

2 SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place, under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Section 11 authorizes the Trade Commission to enforce, section 3, with certain exceptions, and directs that this shall be done, as prescribed by the act establishing the commission, supra, with like power of review in the courts.

3 These words are quoted from the second contract.

that of such persons, partnerships, or corporations approximately four hundred forty-seven (447), hereinafter referred to as 'dealers,' are and previous to entering into such contracts with respondent were regularly engaged in the business of wholesale dealers in newspapers or magazines, or both, and as such are as aforesaid engaged in the sale or distribution of magazines or newspapers, or both, and as such are as aforesaid engaged in the sale or distribution of magazines or newspapers, or both, of other publishers; that many of said four hundred forty-seven (447) dealers, and many others who have become such wholesale dealers since entering into such contracts, bound by said contract provisions as aforesaid, have requested respondent's permission to engage also in the sale or distribution of certain publications competing in the course of said commerce, with those of respondent, which permission as to said competing publications has been uniformly denied by respondent; that in enforcing said contract provision as to said dealers, and in denying them said permission, respondent has prevented and now prevents certain of its competitors from utilizing established channels for the general distribution or sale of magazines or newspapers, or both, of different and sundry publishers; that such established channels are in most instances the principal and most efficient, and in numerous cases, the only medium for the distribution of such publications in the various localities of the United States; that such method of competition so employed by respondent in the course of such commerce, as aforesaid, has proved and is unfair.

"PAR. 3. That in the course of such commerce, the respondent has made sales of its magazines to or entered into contracts for the sale of the same with certain persons, partnerships, or corporations, by the terms of which sales or contracts for such sales, such persons, partnerships, or corporations have agreed, among other things" (here follow, without material change, the words of paragraph 2 printed, *supra*, in italics; "that the effect of said contract provision has been, and is, to substantially lessen competition with respondent's magazines and tends to create for the respondent a monopoly in the business of publishing magazines of the character of those published by respondent."

The commission concluded that the method of competition described in paragraph 2 of the report violates section 5, act of September 26, 1914, and that the acts and conduct specified in the third paragraph violate section 3; act of October 15, 1914. And it thereupon ordered: That the respondent cease and desist, while engaged in interstate commerce, from entering into any contracts, agreements, or understandings which forbid persons, partnerships, or corporations' already engaged in the sale or distribution of magazines or newspapers, or both, of other publishers from acting as agents for, selling, or supplying to others at wholesale rates periodicals other than respondent's without its consent from contracting with those already engaged in the sale or distribution of magazines or newspapers, or both, of other publishers, forbidding them from selling or distributing or continuing to sell or distribute the same; and from enforcing any provision of an outstanding contract whereby one now engaged in the sale or distribution of magazines or newspapers, or both of other publishers is forbidden to sell or distribute the same without respondent's permission.

The statute provides (sec. 5) that when the commission's order is duly challenged it shall file a transcript of the record, and thereupon the court shall have jurisdiction of the proceedings and the question determined therein and shall have power to make and enter, upon the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside the order; but the commission's findings as to the facts, if supported by evidence, shall be conclusive. The court is also empowered to order the taking of additional evidence for its consideration.

We have heretofore pointed out that the ultimate determination of what constitutes unfair competition is for the court, not the commission; and the same rule must apply when the charge is that leases, sales, agreements, or understandings substantially lessen competition or tend to create monopoly. *Federal Trade Commission v. Gratz*, 253 U. S. 421, 427.

Manifestly, the court must inquire whether the commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter, upon the pleadings; testimony, and proceedings, a decree affirming, modifying or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the commission. If there be substantial evidence relating to such facts

from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the commission--the primary fact-finding body--with direction to make additional findings, but if from all the circumstances it clearly appears that in the Interest of justice the controversy should be decided without further delay the court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the interstate commerce act. *Louisville and Nashville Railroad Company v. Behlmer*, 175 U. S. 648, 675, 676; *Inter state Commerce Commission v. Clyde Steamship Company*, 181 U. S 29, 32; and *Interstate Commerce Commission v. Chicago, Burlington and Quincy Railroad Company*, 186 U. S. 320, 340, while helpful as to proper practice, do not determine the present problem.

Here we find a vague general complaint charging unfair methods of competition and also sales and contracts for sales on condition that the purchaser shall not deal in other publications. This is followed by an answer setting out the original agreement with dealers and also the substituted form. The findings of fact make no reference whatever to the first agreement, but do show that respondent had entered into the second (quoting its language) with "certain" (no number is given but there were 1,535) persons, partnerships, and corporations, approximately 447 of whom before making such contracts were wholesale dealers in newspapers and magazines. Further, that many of" this 447, as well as other parties to such contracts, have been denied permission to distribute the periodicals of other publishers. And that in these ways the most efficient established channels of distribution have been closed to competitors, competition lessened, and a tendency to monopoly established.

The present record clearly discloses the development of respondent's business, how it originated, the plan of selling through school boys, the necessity for exclusive agents to train and superintend these boys and to devote their time and attention to promoting sales, and also contracts with 1,535 such agents. The commission's report suggests no objection as to 1,088 of these representatives who, prior to their contracts, had not been charged in selling and distributing newspapers or periodicals for other publishers. There is no sufficient evidence to show that respondent intended to practice unfair methods or unduly to suppress competition or to acquire monopoly, unless this reasonably may be inferred from making and enforcing the second or substituted agreement with many important wholesale dealers throughout the country.

Judged by its terms, we think this contract is one of agency, not of sale upon condition, and the record reveals no surrounding circumstances sufficient to give it a different character. This, of course, disposes of the charges under the Clayton Act.

The engagement of competent agents obligated to devote their time and attention to developing the principal's business, to the exclusion of all others where nothing else appears, has long been recognized as proper and unobjectionable practice. The evidence clearly shows that respondent's agency contracts were made without unlawful motives and in the orderly course of an expanding business. It does not necessarily follow because many agents had been general distributors, that their appointment and limitation amounted to unfair trade practice. And such practice can not reasonably be inferred from the other disclosed circumstances. Having regard to the undisputed facts, the reasons advanced to vindicate the general plan are sufficient.

Effective competition requires that traders have large freedom of action when conducting their own affairs. Success alone does not show reprehensible methods, although it may increase or render insuperable the difficulties which rivals must face. The mere selection of competent, successful, and exclusive representatives in the orderly course of development can give no just cause for complaint, and, when standing alone, certainly affords no ground for condemnation under the statute.

In the present cause the commission has not found all the material facts, but considering those which it has found and the necessary effect of the evidence, the order to desist is clearly wrong and should be set aside without further delay.

Affirmed.

Mr. Chief Justice Taft, doubting :

The sentence in the majority opinion, which makes me express doubt, is that discussing the duty of the court in reviewing the action of the Federal Trade

Commission when it finds that there are material facts not reported by the commission. The opinion says:

If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn the matter may be and ordinarily, we think should be remanded to the commission--the primary fact-finding body--with directions to make additional findings, but if from all the circumstances, it clearly appears that in the interest of justice the controversy should be decided without delay, the court has full power under the statute so to do."

If this means that where it clearly appears that there is no substantial evidence to support additional findings necessary to justify the order of the commission complained of, the court need not remand the case for further findings, I concur in it. It is because it may bear the construction that the court has discretion to sum up the evidence pro and con on issues undecided by the commission and make itself the fact-finding body, that I venture with deference to question its wisdom and correctness. I agree that in the further discussion of the evidence, the reasoning of the opinion of the court would seem to justify the view that it does not find in the evidence sufficient to support additional findings by the commission justifying its order. I only register this doubt because I think it of high importance that we should scrupulously comply with the evident intention of Congress that the Federal Trade Commission be made the fact-finding body and that the court should in its rulings preserve the board's character as such and not interject its views of the facts where there is any conflict in the evidence.

I am authorized to say that Mr. Justice Brandeis concurs with me in this.

EXHIBIT 7.

MISHAWAKA CASE.

MISHAWAKA WOOLEN MANUFACTURING Co. v. FEDERAL TRADE COMMISSION.

Commission's order in 1 F. T. C. 506 requiring petitioner to cease and desist from using systems of price maintenance therein set forth, affirmed, upon the authority of Federal Trade Commission v. Beech-Nut Packing Co., 257 U. S. 441, and petition for writ of certiorari denied by the Supreme Court with the understanding that the Commission with modify its order so that the same may be no broader than said decision.

(Circuit Court of Appeals, Seventh Circuit. September 13, 1922.)¹

No.2773.

Before Baker, Evans. and Page, Circuit Judges.

Per Curiam :

This is a proceeding to revise an order of the Federal Trade Commission. In its order the Commission found that the petitioner's methods of controlling prices in the retail trade were unfair.

Inasmuch as the record shows that the condemned practices were substantially identical with those involved in Federal Trade Commission v. Beech-Nut Packing Company, 257 U. S. 441, we approve the finding of the Commission upon the authority of that decision.

The petition is accordingly dismissed.

(Supreme Court of the United States. January 8, 1923.)²

No. 720.

Per Curiam :

The petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is denied. The Solicitor General, in his brief for the Federal Trade Commission, concedes that the order affirmed by the Circuit Court of Appeals is broader than the decision in Federal Trade Commission v. Beech-Nut Packing Co., 257 U. S. 441, 42 Sup. Ct. 150, 50 L. Ed. 314, 19 A. L. R 882, which the Circuit Court of Appeals followed in dismissing the petition for the Woolen Manufacturing Co. The court denies the application for writ of certiorari herein, assuming that the Federal Trade Commission will modify its order accordingly, and without prejudice to an application for that purpose by the petitioner.

¹ Reported in 283 Fed. 1022. Appearances : Alexis C. Angell and Henry E. Bodman, of Detroit, Mich., for petitioner. Adrien F. Busick, of Washington, D. C., for respondent.

² Reported in ---- U. S. -----, 43 Sup. Ct. 247. Appearances: Henry E. Bodman, of Detroit, Mich., for petitioner.

EXHIBIT 8.

GUARANTEE VETERINARY CO. ET AL.

United States Circuit Court of Appeals for the Second Circuit.

Guarantee Veterinary Company and George L. Owens, Petitioners, Against Federal Trade Commission,
Respondent.

Before Rogers and Manton, Circuit Judges, and Augustus N. Hand, District Judge.
Will H. Krause, counsel for petitioners.
W. H. Fuller, I. E. Lambert, for respondent.

Petition to revise an order of the Federal Trade Commission.

Petition of Guarantee Veterinary Co., a comm law trust, and George L. Owens individually for the review of the findings and order of the Federal Trade Commission commanding them to cease and desist from certain advertising alleged to be an unfair method of competition in commerce.

Rogers, Circuit Judge : This proceeding brings before us for review an order entered by the Federal Trade Commission directing the petitioners to desist from certain unfair methods of competition.

The Guarantee Veterinary Co. is an association in the form of a common law trust, and has its principal office and place of business in the city of Chicago in the State of Illinois. George L. Owens is the controlling and managing trustee. They are engaged in the sale of salt in the form of blocks for the use of live stock under the brand name "Sal-Tonik" in the several States of the United States.

It appears that the Federal Trade Commission, proceeding under the act of September 26, 1914, commonly known as the Federal Trade Commission act (38 Stat. 717, C. 311), on September 2, 1919, issued a complaint against the petitioners in which it averred that they are engaged in interstate commerce in the sale of salt in the form of blocks for the use of live stock under the brand of "Sal-Tonik" in direct competition with other persons, copartnership, and corporations also engaged in the sale of block salt for the use of live stock ; that in connection with the sale of said "Sal-Tonik" blocks they had been publishing and distributing advertising matter containing false and misleading statements Concerning the said "Sal-Tonik" blocks. And the complaint alleged that among the false and misleading statements which the petitioners put forth in their advertising matter were representations and implications to the effect that the "Sal-Tonik" blocks contained certain medicinal ingredients that they operated a number of factories in various part of the United States, the total product of one of which was purchased and thereby endorsed by the Quartermaster's Department of the United States Army, and that the petitioners owned and operated certain large and expensive machinery necessary for the manufacture of the said "Sal-Tonik" blocks; and that all of thus was designed to and did mislead the purchasing public into the belief that the petitioners' product possessed certain unique and beneficial characteristics and tended to secure for the product an undue preference over the product of competitors.

The complaint was duly served upon the petitioners, who filed their answer thereto on October 11 1919.

Notice of the taking of testimony was given, and testimony was taken on September 9, 1920, and on December 15, 1920. On June 8, 1921, the commission filed its finding as to facts and conclusion and on the same day entered the order to cease and desist.

On July 18. 1921, the petitioners filed their exceptions and on December 13, 1921, the commission filed modified findings and a modified order.

The commission has made the following findings of fact:

“One. That the respondent, the Guarantee Veterinary Co., is an association in the form of a trust, having its principal office and place of business in the city of Chicago, State of Illinois, of which the respondent, George L. Owens, is the controlling and managing trustee, and that the respondents are now and for more than two years last past have been engaged in the sale of salt in the form of blocks, for the use of livestock, under the brand name ‘Sal-Tonik’ in and among the several States of the United States and the District of Columbia, in direct competition with other persons, copartnership, and corporations also engaged in the sale of block salt for the use of livestock.

“Two. That during the years 1918 and 1919 the respondents printed and caused to be circulated, in and throughout the various States of the United States, circulars in which it stated that its product, Sal-Tonik, contained the following ingredients : Sulphate of iron (redried), carbonized peat, charcoal, tobacco, quassia, sulphur, gentian pure salt, chloride of magnesia, Epsom salts, Glauber’s salts bicarbonate of soda, oxide of iron, mineralized humoides, American wormseed, Levant wormseed, capsicum (red pepper); when in truth and in fact respondent’s product, Sal-Tonik, did not contain all of said ingredients, and did not contain carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoides, American wormseed, Levant wormseed, or capsicum (red pepper).

“Three. That prior to the organization of the respondent, Guarantee Veterinary Co., in the year 1918, the respondent, George L. Owens, caused to be organized the Guarantee Swine Veterinary Co., a corporation organized under the laws of South Dakota, and the Guarantee Serum Co., a corporation organized under the laws of Iowa, in both of which corporations the respondent, George L. Owens, was the largest stockholder, and of which he was the controlling manager and president.

“Four. That said Guarantee Serum Co. was owned and operated by said Guarantee Swine Veterinary Co.; that later the word ‘Swine’ was dropped from the corporate name and the owning and operating company became the Guarantee Veterinary Co. (Inc.); that said Guarantee Veterinary Co. (Inc.) succeeded to all property, assets, and rights of both the said Guarantee Serum Co. and the said Guarantee Swine Veterinary Co., and that later the assets and rights of the said Guarantee Veterinary Co. (Inc.) were assigned or surrendered to the Guarantee Veterinary Co., a common-law trust ; that George L. Owens was the principal stockholder and president of the Guarantee Serum Co., the Guarantee Swine Veterinary Co., and the Guarantee Veterinary Co. (Inc.), and is the controlling and managing trustee of the Guarantee Veterinary Co., a common-law trust; and that all of these corporations and the trust and George L. Owens, first as president and later as trustee, caused to be manufactured and sold, and are now causing to be manufactured and sold, in interstate commerce the article known and designated Sal-Tonik.

“Five. That during all the time of the existence of the said Guarantee Serum Co., the said Guarantee Swine Veterinary Co., the said Guarantee Veterinary Co. (Inc.), the said Guarantee Veterinary Co., a common-law trust, George L. Owens, as the principal stockholder and president of the first three named corporations and as trustee for the last named, a common law trust, was advertising and representing or causing to be advertised and represented to customers and dealers in said Sal-Tonik that their product, Sal-Tonik, contained substantially the following ingredients : Sulphate of iron (redried) , carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, pure salt, chloride of magnesia, Epsom salts, Glauber’s salts, bicarbonate of soda, oxide of iron, mineralized humoides, American wormseed, Levant wormseed, capsicum (red pepper); when in truth and in fact, respondent’s product, Sal-Tonik, did not contain all of said ingredients, and did not contain carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoides, American wormseed, Levant wormseed, or capsicum (red pepper).

“Six. That during the years 1918 and 1910, respondents advertised in the Cooperative Manager and Farmer (commission’s Exhibit No. 10), a magazine published at Minneapolis, Minn., which had a general circulation through the medium of the mails and other distributing agencies in and throughout various States and Territories of the United States and the District of Columbia, and also by circulars prepared and printed by respondents which they caused to be circulated throughout various States and Territories of the United States and District of Columbia, the following:

“U. S. Government adopts San-Tonic.--The Quartermaster’s Department of the U. S. Army has adopted Sal-Tonik and purchased our entire southern output for use in the U.S. Cavalry. * * *

“The U. S. Army used Sal-Tonik, as is shown by a letter which appears below, written by the assistant veterinarian of the U. S. Army at Camp Johnston. * * *

“CAMP JOSEPH E. JOHNSTON, FLA.,

“January 25, 1919.

“GUARANTEE VETERINARY COMPANY,

“Chicago, Illinois

“To whom it may concern:

“While acting as 2d Lt., Vet. U. S. A., Auxiliary Remount Depot No. 333 Camp Joseph E. Johnston, Florida, I had the opportunity of recognizing the value of Sal-Tonik. Large numbers of animals were kept in corrals in this camp and naturally much sickness would be expected; however, I noticed that where the animals had access to Sal-Tonik they improved in flesh and vitality. There was a very small percentage of digestive disturbances, such as indigestion, colic, impaction, and diseases of systemic origin.

“Having recognized the value of Sal-Tonik I highly recommend it as an efficient medicinal salt of superior quality.

“(Signed)

J. F. SWAIN,

“2d Lt., Vet. U. S. A., Auxiliary Remount

“Depot 333, Camp Joseph E. Johnston.’

“That the Palestine Salt & Coal Co., of Palestine, Tex., made salt blocks for respondents, the respondents furnishing the medical ingredients and the Palestine Salt & Coal Co. furnishing the labor and salt. That the Quartermaster Department of the U.S. Army purchased in the month of December, 1917, 1,200 blocks of Sal-Tonik at Palestine, Tex., from the Palestine Salt & Coal Co., who were agents for the respondents, and that this one purchase was the only purchase of the respondent’s product made by the United States Government.

“That the U.S. Government did not adopt Sal-Tonik.

“That Mr. J. F. Swain was not assistant veterinarian of the U. S. Army at Camp Johnston, and at the time the above letter was written he was not 2d lieutenant in the U. S. Army, nor was he located at Camp Joseph E. Johnston, Fla.”

After making the above findings as to the facts the commission made the following conclusion:

“That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances set forth, unfair methods of competition in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled ‘An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes.’”

Thereupon it issued the following order :

“It is ordered, that the respondents, Guarantee Veterinary Co., and George L. Owens, trustee, their officers, agents, servants, and representatives, do cease and desist, directly or indirectly--

“From publishing or causing to be published on circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, advertisements, circular letters, or other printed matter whatsoever wherein it is falsely stated, set forth, or held out to the general public that the respondents’ product, Sal-Tonik, contains carbonized peat, charcoal, tobacco, quassa, sulphur, gentian, mineralized humoides American wormseed, Levant wormseed, or capsicum (red pepper), on any other ingredients, medical or otherwise, if said Sal-Tonik does not then, in fact Contain each and all of the ingredients which are stated in the advertisement to enter into its composition.

“From publishing and circulating or causing to be published and circulation throughout the various States of the United States, the Territories thereof the District of Columbia, and foreign countries, advertisements, circular folders, letters, on any other printed or written matter whatsoever, wherein it is falsely stated, set forth, or held out to the public :

‘(1) That the United States Government, or any department, branch. agency thereof, has adopted respondents’ product, Sal-Tonik.

“(2) That respondents have sold their entire southern output to the United States Government or to any department, branch, on agency thereof.

“From using as an advertisement of their product, Sal-Tonik, a certain letter, dated January 25, 1919, and signed by J. F. Swain, purported to be at the time of signature a second lieutenant in the United States Army, at Camp Joseph E. Johnston, Fla.

“It is further ordered, that the respondents, the Guarantee Veterinary Co. and George L. Owens, trustee, shall within 60 days after the service upon them of a copy of this order, file within 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 hereinbefore set forth.”

The Federal Trade Commission act, in section 5, provides that “The findings of the commission as to the facts, if supported by testimony, shall be conclusive.” (38 Stat. 720.) We have, therefore, examined the transcript of record, which has been filed in this court, for the purpose of determining whether the testimony before the commission supports the findings.

It appears that the Guarantee Veterinary Co. admitted in its answer that it was engaged in interstate commerce. It, however, asserts that no proof was ever made that any Sal-Tonik claimed to have been analyzed, ever moved in interstate commerce, or that said blocks were made either for or by the Guarantee Veterinary Co., or George L. Owens, nor was it shown or proven that any competitors ever made or sold any medicated salt block, nor was it shown that George L. Owens individually was ever engaged in interstate commerce not any time.

The transcript of record shows that the petitioners prepared and sent out no prospective customers in various States in the latter part of the year 1918, and the earlier part of the year 1919, an advertising circular which stated that Sal-Tonik contains the following ingredients :

“Sulphate of iron (redried) , carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, pure salt, chloride of magnesia, Epsom salts, Glauber’s salts, carbonate of soda, oxide of iron, mineralized humoides, American wormseed, Levant wormseed, capsicum (red pepper).”

The statement contained in the circular sustains that part of Finding No. 1 as to the advertising circulars which the petitioners circulated setting forth the ingredients of the product Sal-Tonik.

It also appears from the transcript that three different analyses were made of the petitioners’ product. The first in June, 1916, from a sample furnished by the petitioners; the second in February, 1919, from a sample purchased on the open market and was the product of petitioners; and the third in December, 1919, from a sample purchased on the open market which also was the product of petitioners. This is last analysis was made by the acting chief chemist of the United States Department of Agriculture--an expert chemist in the Department of Agriculture who had studied and compared all three of these analyses testified that they did not show any of the following ingredients : Carbonized meat charcoal, tobacco, quassia, sulphur, gentian, mineral humoides, American wormseed, Levant wormseed, capsicum (red pepper). He further testified that “Sal-Tonik” was just salt with its impurities and coloring matter.

The petitioners advertised in their circulars that sixteen ingredients entered into the unmanufactured of their blocks of “Sal-Tonik,” and the chemical analyses proved show no trace often of them. This is an excerpt from the testimony:

“Question. Mr. Murray, is it not a fact that this product is merely salt with a little coloring matter?

“Answer. Essentially that; nearly all salt contains more or less impurities and this is colored distinctly red by the iron oxide.

“Question. And that is about all this product is, just salt with its impurities and coloring matter?

“Answer. Essentially that ; yes.

“Question. That is what the different analyses show?

“Answer. The impurities would be a little greater than you would get in first-class table salt. The Bureau of Chemistry’s analysis shows two per cent of sodium sulphate. That is much more than you would get in good table salt.

The petitioners contend, however, that the “Sal-Tonik” blocks might contain all the ingredients as advertised, and yet all the ingredients might not appear in any of the different analyses which were introduced in evidence by the commission. This might be possible but is not probable. The three analyses which were introduced in evidence stand undisputed and uncontradicted. The petitioners might have submitted samples of their product for analysis and offered evidence to rebut that produced before the commission, but they did not choose to do so. The presumption is that the testimony

presented is true, no proof having been introduced to overcome it. There is no evidence to show that the specimens taken for analysis were not fair or typical ones, and the question whether the ingredients which were not detected upon the chemical analysis were in some other part of the block from which the specimens was not taken and failed to be detected on account of improper mixing is one of fact on which the decision of the commission should be followed.

The petitioners object to finding of fact No. 6. An examination of the transcript, however, satisfies us that the finding is supported by the testimony. It appears conclusively that Swain, the writer of the letter set forth in the finding, never was assistant veterinarian at Camp Joseph E. Johnston and that he had not been at the camp since December 11, 1918. That he had been discharged from the Army long before the letter of January 25, 1919, was written, and that he was not at that the connected with the Army in any way also is beyond question.

The circumstances connected with the purchase of "Sal-Tonik" by the Government are disclosed in a letter written to the Guarantee Veterinary Co. by the Palestine Salt & Coal Co. dated January 23, 1917, and which is in the transcript. The letter shows that the Palestine Salt & Coal Co. were themselves the manufacturers of a medicated block and had arranged to sell their own product to the United States Government at \$13.40 per ton; that on December 23, 1917, a Government inspector came to the Palestine plant to inspect their blocks. At that time 1,200 blocks which the Palestine Co. had manufactured for the Guarantee Veterinary Co. were on hand and the Palestine Co. wanted "to have them out of the way," and it was suggested by the latter that they could turn these blocks belonging to the Guarantee Veterinary Co. in on the contract which it, the Palestine Co., had with the Government, the blocks having been held so long in the Palestine's warehouse that they were being damaged. This was assented to and the 1,200 blocks were turned in by the Palestine Company oil its contract. There is no evidence whatever that the United States Government ever bought any "Sal-Tonik" blocks other than those mentioned above. This was all the basis there was for the advertisement that "Sal-Tonik" had been adopted by the Quartermaster's Department of the United States Army, and that it had purchased the entire southern output for use in the United States Cavalry. The advertisement was unquestionably false and misleading. The United States Government never adopted the respondent's product, never bought any Sal-Tonik blocks other than those mentioned above and which were taken over by the Government to accommodate the Palestine Co. and to get them out of its warehouse and out of its way. And it does not appear that the respondent at any time ever had a contract of any kind with the Government of the United States. Our conclusion is that finding No. 6, like finding No.2, is amply sustained by the evidence.

It is not necessary for us to comment upon the other findings of fact. It is enough to say that we have read all the testimony the commission had before it, and it amply sustains all the findings the commission made.

The commission's order among other things requires the petitioners to cease and desist from publishing and circulating any printed matter wherein it is falsely stated that the United States Government or any department, branch or agency thereof has adopted respondent's product, Sal-Tonik. It appears that for several months before the complaint herein was filed against them the petitioners had voluntarily ceased to use the word "adopted" in their advertisements and circulars and inserted in lieu thereof the word "purchased" because of thus voluntary discontinuance of the word "adopted" prior to the filing of the complaint it is urged that thus part of the order to cease and desist is unjustifiable and erroneous.

Mr. Kerr lays it down as a rule in regard to bills to restrain the violation of trade-marks that the owner of a trade-mark, where the mark has been illegally taken by another, is not bound to rely upon mis assurance or promises not to repeat the illegal appropriation of the mark, but is entitled to the protection of the court by injunction. Kerr on Injunctions, 4th ed., 350.

Mr. Nims, in his work on Unfair Competition, sec. 372, states that the fact that defendant has ceased to commit infringing acts is no reason why an injunction should not issue.

In *Saxlehner v. Elsner*, 147 Fed. 189, 191, which was brought for an infringement of a trade-mark, it appeared that all use of the infringing bottles had ceased three weeks before the suit was brought. This court, speaking through Judge Lacombe, said : "In view of the past conduct of defendants, complain-

ant might fairly aver an apprehension that they would in some way continue the old infringement or concoct some new one, even though the company itself were enjoined. The circumstance that since that time they have not, in fact, infringed is not "controlling." The injunction granted below was sustained.

It is to be observed, however, that this is not a suit to restrain the infringement of a patent or a trademark or copyright, but that it is a proceeding under the Federal Trade Commission act. The language of the act therefore must be considered. Section 5 of the act declares that "whenever the commission shall have reason to believe that any such person, partnership [or corporation] has been or is using any unfair method of competition in commerce and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public it shall issue and serve upon such person, partnership, or [corporation a] complaint * * *." In view of this language of the statute we are unable to say that the language of the order was used improvidently and was beyond the commission's authority.

In *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307, 310, it was insisted, as here, that the injunctive order was improvidently issued because before the complaint was filed and hearing and, the petitioner had discontinued certain methods complained of. In that case, unlike this, the petitioner had stated in its answer that it had no intention of resuming them. The Circuit Court of Appeals for the Seventh Circuit, notwithstanding these facts, sustained the right of the commission to make the injunctive order, and said: "No assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course.

The testimony shows conclusively that the petitioners had been publishing advertising matter containing false and misleading statements and had used an unfair method of commerce, and we think the commission was quite within its right in issuing the order in the form it did. In such cases the commission must exercise its discretion in view of all the circumstances.

Before bringing this opinion to its conclusion we perhaps should refer to the fact that one of the petitioners, George L. Owens, moved the commission to strike his name from the proceeding on the ground that he individually is not now and never was engaged in interstate commerce and never did any advertising of any kind individually. It is undoubtedly true that George L. Owens was not a necessary party to this proceeding. But the evidence shows that he is and has been since its organization the president or trustee and absolute manager of the Guarantee Veterinary Company. He has no right, therefore, to complain because he was made a party to the proceeding.

The order of the commission is affirmed.

EXHIBIT 9.

THE MENNEN CO. CASE.

United States Circuit Court of Appeals for the Second Circuit.

The Mennen Company, petitioner, against Federal Trade Commission,
respondent.

Before Rogers, Manton, and Mayer, circuit judges.

Gilbert H. Montague, for petitioner ; Gilbert H. Montague, Joseph W. Goodwin, Charles Furnald Smith.

W. H. Fuller, chief counsel, Federal Trade Commission.

W. T. Kelley, attorney for respondent.

Felix H. Levy, for wholesale Dry Goods Association, National Hardware Association, National Supply & Machinery Dealers' Association, National Wholesale Jewelers' Association, National Floor Covering Association, and American Brush Manufacturers' Association, as amici curiae.

Thus cause comes here on petition to review an order made on March 3, 1922, by the Federal Trade Commission.

The petitioner is a corporation organized under the laws of the State of New York, with its principal office and place of business in the city of Newark, in the State of New Jersey. It is engaged in the business of manufacturing and selling talcum powder, tooth paste, shaving soap, and various other toilet articles, causing the same to be transported to purchasers thereof from the State of New Jersey into various other States of the United States and foreign countries in direct competition with other persons and corporations similarly engaged. It is hereinafter referred to as the respondent.

The Federal Trade Commission on April 15, 1920, filed a complaint against the respondent and subsequently an amended complaint on January 27, 1921. It alleged that respondent had adopted a plan for the allowance of trade discounts in the marketing of its products ; that in pursuance of such plan respondent has and continues to classify its customers into two groups according to a basis of selection adopted by it and has allowed and does allow to purchasers of the same quantity and quality of its products, different discount rates according to the classification of such purchasers by respondent. It is further alleged that thus practice of varying discounts, irrespective of quantity and quality, tends unduly to hinder competition between distributors of respondent's products to retailers or directly to the consuming public. It is also alleged that by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning 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," approved September 26, 1914.

It is further alleged that the varying discount rates allowed by the respondent are a discrimination in price between purchasers of respondent's commodities for use, consumption, or resale within the United States and the District of Columbia, the effect of which may be to substantially lessen competition in the distribution of respondent's products or between distributors thereof.

It is further alleged that such discrimination is not founded in differences in the grade, quality, or quantity of the commodity sold and does not make only due allowance for difference in the cost of selling or transportation and is not made in good faith to meet competition ; that the plan for classification of customers and the allowance of varying discount rates is not a selection of customers in bona fide transactions not in restraint of trade.

It is also alleged that the actions and doings of the said respondent referred to and recited are contrary to the intent and meaning of section 2 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.

The respondent filed an answer denying the jurisdiction of the commission. It also denied the material allegations of the amended complaint and asked that it be dismissed. The motion to dismiss was overruled and denied.

Hearings were had and evidence was introduced, before an examiner of the commission, in support of the allegations of the amended complaint and on behalf of the respondent. Then the proceeding came on for final hearing and the commission having heard argument and considered the record made its findings as to the facts and its conclusions. Its conclusion was that the practices of respondent amounted to unfair methods of competition in interstate commerce and a violation of the acts of Congress hereinbefore mentioned. And an order to cease and desist was entered.

Rogers, Circuit Judge : The transactions complained of are transactions in interstate commerce and the acts with which the respondent is charged are done in the course of such commerce. The practices in which the respondent is engaged as charged in the complaint are admitted by it in its answer, but it denies that those practices tend unduly to hinder competition, or that they constitute an unfair method of competition in commerce, or amount to a restraint of trade.

Two acts of Congress are herein involved. The Federal Trade Commission act, being the act of September 26, 1914, 38 Stat. 717,724, which provides in section 5. That unfair methods of competition in commerce (i. e., interstate commerce) are hereby declared unlawful, and the Clayton Act, being the act of October 15, 1914, which was passed to supplement existing laws against unlawful restraints and monopolies, 38 Stat. 730, provides in section 2 as follows :

That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce : *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made In good faith to meet competition : *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not In restraint of trade”

The section of the Clayton Act provides in substance that it shall be unlawful for any person engaged in Interstate or foreign commerce to discriminate In price between different purchasers of commodities in transactions within the United States or under its jurisdiction where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce.”

Before considering the provision of section 2 of the Clayton Act we find it necessary to consider the Federal Trade Commission act which lies at the basis of this entire proceeding.

The Federal Trade Commission act having declared that unfair methods of competition in commerce” unlawful, amid created a Federal Trade Commission empowered and directed it to prevent persons, partnerships, or corporations except banks, and common carries subject to the acts to regulate commerce, “from using unfair methods of competition in commerce.” And unless a person, partnership, or corporation is engaged in using “unfair methods of competition the commission has no authority whatever to proceed under the act.

We are therefore confronted with the question as to what is meant by the words “ unfair methods of competition in commerce” as used in the act. That question was before the Supreme Court in 1919 in *Federal Trade Commission v. Grata*, 253 U. S. 421. That case went up from this court, 258 Fed. 314. and affirmed the conclusion at which we arrived. The defendants were partners and were engaged in selling ties and bagging for cotton bales. They sold principally to jobbers and dealers who resold the same to retailers, cotton ginners, and farmers. For more than a year they had refused to sell any such ties unless the prospective purchasers would also buy from them the bagging to be used with the number of ties proposed to be bought. This was held plainly

Insufficient to show an unfair method of competition. In the opinion, which was written by Mr. Justice McReynolds, the court said :

“The words ‘unfair method of competition’ are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as matter of law what they include. They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud, or oppressing, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade. * * *

The complaint contains no intimation that Warren, Jones & Grata did not properly obtain their ties and bagging as merchants usually do; the amount controlled by them is not stated; nor is it alleged that they held a monopoly of either ties or bagging or had ability, purpose or intent to acquire one. So far as appears, acting independently, they undertook to sell their lawfully acquired property in the ordinary course, without deception, misrepresentation, or oppression, and at fair prices, to purchasers willing to take it upon terms openly announced.”

In this case, as in the Grata case, the complaint contains no intimation that the Mennen Co. has any monopoly of the business of manufacturing and selling toilet articles, or that it has the ability or intent to acquire one. So far as appears the Mennen Co., acting independently, has undertaken to sell its own products in the ordinary course, without deception, misrepresentation, or oppression, and at fair prices, to purchasers willing to take them upon terms openly announced.

In this case, as in the Grata case, nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint. The allegation that its practice of varying discounts tended unduly to hinder competition between distributors of respondent’s products to retailers or directly to the consuming public is a pleader’s conclusion. The acts complained of in this case are not those which have heretofore been regarded as “opposed to good morals because characterized by deception, bad faith, fraud, or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly.” And as said in the Grata case, “If real competition is to continue the right of the individual to exercise reasonable discretion in respect of his own business methods must be preserved.”

The Clayton bill, as originally introduced, did not contain the words “where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce,” now found in section 2, but contained the words “with the purpose or intent thereby to destroy or wrongfully injure the business of a competitor of either such purchaser or seller.”

The record filed in this court shows no contention by the commission that the practices complained of have lessened competition as between the Mennen Co and its competitors, but it shows at the most that the practices have decreased competition among the Mennen Co.’s customers, or those desiring to become such. And it is said that if the phraseology above quoted as originally contained in the bill had been retained therein upon final passage instead of the phraseology, likewise above quoted, which was substituted therefor, there might be just ground for the claim that the Clayton Act prescribed practices which injure competition among the customers of the manufacturer, and not merely competition between such manufacturer and his competitors. But the elimination of the phraseology contained in the bill as originally reported and the substitution therefor of the phraseology in the form in which the bill was finally enacted strongly indicates that Congress did not have in contemplation the former character of

competition but only the latter.

In the phraseology of the bill as originally reported the intention was unmistakably expressed that It was intended to protect by its prohibitions both kinds of competition, competition between the manufacturer and his competitors, as well as competition between the customers of the manufacturer. The act as reported prohibited acts “with the purpose or intent to thereby destroy or wrongfully injure the business of a competitor, of either such purchaser or seller.”

We have recently had occasion to point out that in the case of an ambiguous or obscure statute the intent of Congress may be gathered from statements in

reports of committees having the legislation in charge in either House of Congress. U. 5. ex rel. Fazio v. Tod, decided Nov. 13, 1922. And statements made on the floor of either House by the committee in charge of the bill in the course of its passage may in like manner be considered. See Duplex Printing Press Co. v. Dearing, 254 U. S. 443, 475.

It is a matter of common knowledge that prior to the enactment of the Clayton Act a practice had prevailed among large corporations of lowering the prices asked for their products in a particular locality in which their competitors were operating, for the purpose of driving a rival out of business. Such lowering of prices was maintained within the particular locality while the normal or higher prices were maintained in the rest of the country; and this practice was continued until the smaller rival was driven out of business, whereupon the prices in that locality would be put back to the normal level maintained in the rest of the country. The Clayton Act was aimed at that evil. Thus appears from the report of the Judiciary Committee of the House of Representatives from which we quote as follows :

Section 2 of the bill is intended to prevent unfair discriminations. It is expressly designed with the view of correcting and forbidding a common and widespread unfair trade practice whereby certain great corporations and also certain smaller concerns which seek to secure a monopoly in trade and commerce by aping the methods of the great corporations, have heretofore endeavored to destroy competition and render unprofitable the business of competitors by selling their goods, wares, and merchandise at a less price in the particular communities where their rivals are engaged in business than at other places throughout the country. * * *

The necessity for legislation to prevent unfair discriminations in prices with a view of destroying competition needs little argument to sustain the wisdom of it. In the past it has been a most common practice of great and powerful combinations engaged in commerce--notably the Standard Oil Co., the American Tobacco Co., and others of less notoriety, but of great influence--to lower prices of their commodities, oftentimes below the cost of production in certain communities and sections where they had competition, with the intent to destroy and make unprofitable the business of their competitors, and with the ultimate purpose in view of thereby acquiring a monopoly in the particular locality or section in which the discriminating price is made. * * *

"In seeking to enact section 2 into law we are not dealing with an imaginary evil or against ancient practices long since abandoned, but are attempting to deal with a real, existing, widespread, unfair and unjust trade practice that ought at once to be prohibited in so far as it is within the power of Congress to deal with the subject."

There is nothing in the report of the committee which shows that in reporting the bill the committee had in mind anything more than the suppression of the evil above referred to.

This substitution in the final stages of the Clayton bill of the clause to which we have referred plainly indicates the intent of Congress to exclude from the operation of the section mere competition among "purchasers" from the "seller" or "person" who allowed or withheld the discount and to include therein only competition between such "seller" or "person" and the latter's own competitors. It was the latter class of competition and not the former which had been "the common practice of great and powerful combinations engaged in commerce" to which the committee in its report referred. And there is nothing in the report of the Judiciary Committee of either House, or in anything said on the floor of either House by those in charge of the bill, which indicates or suggests any such interpretation which the commission in this case has placed upon the act.

What the Mennen Co. has done was to allow to "wholesalers" who purchased a fixed quantity

of their products a certain rate of discounts while to the “retailers” who purchased the same quantities it denied the discount rates allowed to the “wholesalers.” This does not indicate any purpose on the part of the Mennen Co. to create or maintain a monopoly. The company is engaged in an entirely private business and it has a right freely to exercise its own independent discretion as to whether it will sell to “wholesalers” only or whether it will sell to both “wholesalers” and “retailers,” and if it decides to sell to both it has a right to determine whether or not it will sell to the “retailers” on the same terms it sells to the “wholesalers.” It may announce in advance the circumstances--that is, the terms--under which it will sell or refuse to sell. In *United States v. Colgate & Co.*, 250 U. S. 300, 307, the Supreme Court declared that-

“In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long-recognized right of trader or manufacturer engaged in an entirely private business freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell. ‘The trader or manufacturer, on the other hand, carries on an entirely private business, and may sell to whom he pleases.’ *United States v. Trans. Miss. Freight Association*, 166 U. S. 290, 320. ‘A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade.’”

In the *Colgate* case the court sustained the right of a manufacturer engaged in a private business to announce in advance the prices at which his goods may be resold and his right to refuse to deal with wholesalers or retailers who do not conform to such prices. As subsequently explained by the court, that case was decided upon the ground that the manufacturer had an undoubted right to specify resale prices and to refuse to deal with anyone who failed to maintain the same. It did not appear that the *Colgate Co.* had undertaken to enter into any agreements, express or implied, which undertook to obligate vendees to observe specified resale prices. And in the case now before the court it does not appear and is not alleged that the *Mennen Co.* ever undertook to fix the prices at which its products were to be resold by those who purchased from it.

In *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, the subject was gone into very fully and the *Colgate* case was explained and the reason for that decision was clearly stated and it was made evident that if the *Colgate Co.* had undertaken by agreements express or implied to obligate those to whom it sold its products to observe specified resale prices a different decision would have been rendered. In the *Beech-Nut* case the right to fix the prices at which the manufacturer will sell is again fully recognized. But the course which the *Beech-Nut Co.* had adopted was condemned because of the method it pursued to control the resale prices. The difficulty was that the manufacturer had adopted and was enforcing a system of fixing and maintaining certain specified standard prices at which its products should be resold by purchasers thereof with the purpose of eliminating competition in prices among all jobbers engaged in handling the products manufactured by the company. And the court after reviewing its previous decisions (250 U. S. 300, 252 U.S. 85, 256 U.S. 208) said:

“By these decisions it is settled that in prosecutions under the Sherman Act a trader is not guilty of violating its terms who simply refuses to sell to others, and he may withhold his goods from those who will not sell them at the prices which he fixes for their resale. He may not, consistently with the act, go beyond the exercise of this right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.”

In *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307, 312, the Circuit Court of Appeals in the Seventh Circuit declared in speaking of the Federal Trade Commission act of September 26, 1914, 38 St. 719, c. 311:

“We find in the statute no intent on the part of Congress even if it has the power, to restrain an owner of property from selling it at any price that is acceptable to him or from giving it away.”

And in *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.* 227 Fed. 46, 49, we declared in our opinion written by Judge Lacombe :

Before the Sherman Act it was the law that a trader might reject the offer of a proposing buyer for any reason that appealed to him. It might be because he did not like the other's business

methods, or because he had some personal difference with him, political, racial, or social. That was purely his own affair, with which nobody else had any concern. Neither the Sherman Act, nor any decision of the Supreme Court construing the same, nor the Clayton Act has changed the law in this particular. We have not yet reached the stage where the selection of a trader's customers is made for him by the Government."

In accordance with these opinions we have no doubt that the Mennen Co. had the right to refuse to sell to retailers at all, and if it chose to sell to them that it had the right to fix the price at which it would sell to them, and that it was under no obligation to sell to them at the same price it sold to the wholesalers. It did not discriminate as between retailers but sold to all retailers on one and the same scale of prices. And it did not discriminate as

between wholesalers but sold to all wholesalers on one and the same scale of prices. There is nothing unfair in declining to sell to retailers on the same scale of prices that it sold to wholesalers, even though the retailers bought or sought to buy the same quantity the wholesalers bought.

In conclusion it ought perhaps to be said that we have not been unmindful of the fact that the Mennen Co. in classifying purchasers into two groups, those of wholesalers and retailers, placed in the group of retailers a class of mutual or cooperative corporations which purchased in large quantities the Mennen products. These mutual or cooperative corporations, it is admitted, consist solely of the retailers in the same line of trade, the stock being held exclusively by retailers. The fact that these individuals, admitted by the counsel for the Federal Trade Commission to be retailers, see fit for their own convenience to organize themselves into a corporation which they constitute their agent for purchasing purposes does not change their character, or the character of their purchases, and convert them into wholesalers.

Whether a buyer is a wholesaler or not does not depend upon the quantity he buys. It is not the character of his buying but the character of his selling which marks him as a wholesaler as thus court pointed out in *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.*, supra. A wholesaler does not sell to the ultimate consumer but to a "jobber" or to a "retailer." The persons who constitute these mutual or cooperative concerns are buying for themselves to sell to the ultimate consumers, and not to other "jobbers" or to other "retailers." The nature of the transaction herein involved is not altered by the fact that they make their purchases through the agency of their corporation. For some purposes a corporation is distinct from the members who compose it. But that distinction is a fiction of the law and the courts disregard the fiction whenever the fiction is urged to an intent and purpose which is not within its reason and policy. And in such a case as this the fiction can not be invoked. The important fact is that members of the corporation are all retailers who buy for themselves to sell to the ultimate consumer. The Mennen Co. is within its rights in classifying them as retailers.

The facts established by the testimony are not sufficient to constitute a violation either of the Federal Trade Commission act or of the Clayton Act, and they do not support the commission's conclusions of law. The Mennen Co. is not shown to have practiced "unfair methods of competition in commerce."

The order to cease and desist is reversed.

EXHIBIT 10.

L. B. SILVER CO. CASE.

No.3648. United States Circuit Court of Appeals, Sixth Circuit.

The L. B. Silver Company, petitioner, v. The Federal Trade Commission of America, respondent. Petition to revise. Submitted December 5, 1922. Decided February 16, 1923.

Before Knappen, Denison, and Donahue, circuit judges.

In March, 1920, the Federal Trade Commission issued a complaint against The L. B. Silver Co., a corporation, charging the respondent with using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, creating the Federal Trade Commission. (Compiled Statutes, 8836a et seq.)

The complaint alleged in substance that the respondent had made and was continuing to make false representations to the public that it is a breeder and shipper of thoroughbred hogs; that the Ohio Improved Cheaters or famous O. I. C. hogs is a breed of hogs separate and distinct from the Chester White hogs and superior thereto; that it advertised Chester White hogs for sale at a price less than that for which it would sell O. I. C. hogs and would either fill orders for Chester White with inferior animals of the hogs bred by it, or notify its customers that it had no Chester White hogs; that the O. I. C. Hog is not susceptible to cholera, pneumonia, and other diseases and possesses a power to repel disease in a degree unknown to other breeds; that it had secured greatly reduced express rates on livestock and had advertised that two of the O. I. C. breed of hogs weighed 2,806 pounds, in such a way as to mislead prospective purchasers into believing that two O. I. C. hogs weighing that amount were then or recently had been in existence.

The amended answer alleged in substance that the petitioner is a breeder of Ohio Improved Chester White hogs, familiarly known to the trade as O. I. C. hogs. that the O. I. C. hogs are a separate and distinct breed from the Chester Whites and superior thereto; that since December 1, 1918, it has voluntarily and permanently discontinued all advertising to the effect that it would sell Chester White hogs at a price less than that for which it would sell O. I. C. or at any other price and denied that it had represented the O. I. C. breed was not susceptible to cholera and other diseases, but that it had in good faith represented that it is less susceptible to disease than other breeds, but that it would not guarantee its hogs to be immune therefrom; that it had never represented that its hogs are not subject to pneumonia, but that it did represent that there had been no cholera, foot and mouth or other contagious disease in petitioner's locality for over 50 years and that during that period of time had never lost a pig from cholera or any other contagious disease, and that these representations are true.

The amended answer further avers that since the first day of January, 1918, the petitioner voluntarily and permanently discontinued all representations as to reduced or special express rates and admits that it advertised that two of petitioner's breed of hogs weighed 2,806 pounds, but denies that such representations were so made is to mislead a prospective purchaser and that if they were ever so used as to be in the present tense such advertising had been voluntarily discontinued many years ago.

Upon the issue so joined The Federal Trade Commission made separate findings of fact and made and entered a modified order that the respondent, its officers, directors, agents, and employees cease and desist from representing, in Interstate commerce, to the public, by circulars, pamphlets, catalogues, trade journals, periodicals, newspapers, or otherwise :

1. That the so-called Ohio Improved Cheaters, or O. I. C.s, or Famous O. I. C.s, are a breed of hogs separate and distinct from the Chester White breed of hogs.

2. That it has no Chester White pigs when in fact it has Chester White pigs, though called by it O. I. C. pigs; or that it has Chester White pigs and O. I. C. pigs, as if the latter were a different and more valuable breed, when in fact they are one and the same breed; or that it has no Chester White pigs with which to fill orders for Chester White pigs, at its quoted prices or otherwise, when in fact it has Chester White pigs, though called by it O. I. C. pigs; or that it has discontinued to breed Chester White pigs, when in fact it is continuing to breed them, though designated by it O. I. C. pigs.

3. That the so-called O. I. C. pigs, as a breed, or otherwise, are not liable to cholera, foot-and-mouth disease, tuberculosis, and other contagious diseases; that there has been no cholera, foot-and-mouth disease, tuberculosis, nor other contagious diseases in respondent's locality; that the O. I. C. pigs possess a power to resist disease in a degree unknown to other breeds; that in localities where contagious diseases have swept off the dark and black hogs the O. I. C.s were unaffected; from in any way representing to the public that the O. I. C. pigs are more resistant to disease than are other breeds of hogs.

4. That in the shipment of livestock the respondent enjoys or has enjoyed, either or other, from express companies rates of transportation lower than the rates granted to other shippers of livestock by the said express companies.

5. That two of its hogs weigh 2,806 pounds; that such hogs are in existence; that their progeny is for sale by the respondent.

Donahue, Circuit Judge: The petitioner is a corporation and the successor in business of the partnership of L. B. Silver & Son, which partnership was the immediate successor in business of L. B. Silver, who for many years was a successful breeder of cattle, horses, and hogs. In 1863, in Ohio, L. B. Silver undertook to improve the Chester White hog that had originated in Pennsylvania.

It is claimed by the petitioner that L. B. Silver, in his initial efforts to improve the Chester White hogs, crossed that stock with a mammoth or large white English hog. This however is disputed. Silver is dead. There was at that time no hardback for either the O. I. C. or the Chester White hogs, and for that reason this disputed question is not susceptible of direct proof, but must rest on tradition only. But this tradition finds some support not only in the testimony of witnesses to whom L. B. Silver made this statement but also in a pamphlet written and distributed by him in 1870, in which appears the following

"In-and-in breeding is recommended by some, but our observation goes to show that it should not be practiced to any great extent, as its tendency is to weaken the constitution of the future animal."

The claim that he crosses the Chester White stock with a mammoth or large white English hog is entirely consistent with this advice to other breeders contained in this pamphlet, "Hints to Stock Breeders." However that may be, the commission found that from the very beginning of L. S. Silver's business and down to the present time the respondent and its predecessor in business never used boars of any breed other than the pure Chester White, and for the purpose of this case that finding of fact by the commission will be accepted as final and conclusive.

Regardless, however, of whether L. B. Silver originally crossed this stock with a mammoth or large white English hog, there is no conflict in the evidence that by careful selection and systematic mating he did accomplish a substantial improvement in the original stock, and that the result of his efforts was a valuable contribution to progress in swine breeding.

In 1870 L. B. Silver issued the pamphlet, Hints to Stock Breeders, to which reference has heretofore been made. In this pamphlet he made public and definite claim that the hogs bred by him were a distinct breed from the Chester White, which he had named Ohio Improved Chester White breed, now known as the Ohio Improved Chester, or O. I. C. It further appears from the evidence that L. B. Silver, his successors in business including this petitioner and many other O. I. C. breeders for half century prior to the filing of this complaint, have openly, notoriously, and persistently made the claim that the Ohio Improved Cheaters are a separate and distinct breed of hogs from the Chester White, and no action was taken by anyone interested therein to challenge the truth of this claim until 1916, and again in 1918, when complaints were made to the postal authorities. Each of these complaints failed in the accomplishment of its purpose.

While these claims, no matter how long made, can not change the facts, nevertheless they are of importance in determining the question of unfair methods of competition in this respect.

It further appears from the evidence that other breeders, either inspired by Silver's success or acting upon their own initiative, have developed what is known as the Modern Chester White, which is also a decided improvement over the foundation stock. While it is conceded that the present O. I. C. hog is superior to and has many marked characteristics, with power to transmit the same, that distinguishes it from the Chester White as it existed in Pennsylvania and New York in 1863, nevertheless it is insisted that the comparison should now be made between the Modern Chester White instead of with the original stock. The further claim is made that the O. I. C. hog has no characteristics that distinguishes it from the Modern Chester White. Upon this question there is a serious conflict in the evidence.

There is also a sharp and irreconcilable conflict in the expert opinion evidence touching the question as to what constitutes a distinct and separate breed, but disregarding the claim of the petitioner that L. B. Silver crossed Chester Whites with a mammoth or large white English hog, there is practically no substantial conflict in the evidence tending to establish the facts from which these breeders and experts reach different conclusions. One group of experts and breeders are of the opinion that there can not be a distinct breed originated where the blood line goes back to the old foundation stock; that while different strains or types may be developed in this way, it is nevertheless the same breed. Another group of breeders and experts are of the opinion that a distinct breed may be originated through selection and in-and-in breeding. Each of the individual members of these groups that have testified in this case or whose books on livestock breeding have been admitted in evidence, though differing in opinion based on the same state of facts, appears to be entirely honest, sincere, and equally firm in the belief that its conclusion is the right one.

The situation presented by this conflict of opinion among experts and breeders is fully discussed and its effect determined by the Supreme Court in the case of *American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94. In *Bruce v. U. S.*, 202 Fed. 98, the Court of Appeals held that it was error for the trial court to refuse to charge that " * * * if the jury found that whether the substance was remedial in character when exhibited as part of the treatment of morphinism was nearly a matter of opinion among medical men, defendants insist be acquitted of the charge of using the mails for fraudulent purposes." It was also held by this court in the case of *Harrison v. U. S.*, 200 Fed 662, 665, that a scheme to defraud "Can not be found in any mere expression of honest opinion."

As heretofore stated, in the early years of Mr. Silver's activities as a breeder of swine there was no hardback for either the Chester White or the Ohio Improved Chester White. When a hardback known as the "National Chester White Swine Record" was established Mr. Silver recorded his hogs in its book, but at the same time insisted that his doing so should not be regarded as a surrender of his claim to a distinct breed. Later, when the International Ohio Improved Chester Breeders' Association was organized, Mr. Silver recorded his hogs in its book. In 1897, after this organization ceased to function, an organization known as the O. I. C. Swine Breeders was formed and established a hardback, in which was eligible to registry only swine that could trace its origin to the L. B. Silver herd. At the time this complaint was filed there were registered in this hardback about 950,000 hogs, tracing their ancestry to the Silver herd, and but 90,000 hogs registered in the hardback of the three Chester White associations. There is also evidence tending to prove that there are about 20,000 O. I. C. breeders, all of which claim and advertise that it is a separate and distinct breed.

It further appears from the evidence that the O. I. C. hogs were classed as a separate breed of hogs by many stock journals and publications of like nature, including scientific books on stock breeding. While it is true that some of these editors and authors relied upon the claims and representations made by Silver and his successors, yet others made independent investigation of the facts upon which they based their conclusions.

There is also substantial evidence in this record tending to prove that there is no sharp distinction between the term "breed" and "strain" as used by geneticists, and that these terms are used indiscriminately by a great many breeders, so that, in so far as concerns the disposition of this case, it is not of controlling importance whether the one group of experts are correct in their opinion that the O. I. C.s are but a strain of the Chester or the other group are correct in the opinion that it is a distinct and separate breed.

Aside from these considerations, it is apparent from the evidence in this case that this controversy does not vitally concern the general purchasing public. On the contrary, its a controversy largely between rival breeders of hogs, or more particularly between rival hog breeders' associations having and maintaining hardback If the O. I. C. hogs were inferior to the Chester Whites and not of their breed, and the petitioner advertised them as Chester Whites, such practice would, no doubt, constitute unfair competition as against Chester White breeders ; but it is admitted that not only are the O. I. C. hogs superior to the Chester White hogs of 1863, but that they are the equal of the modern Chester Whites That being true, it necessarily follows that neither the general public as consumers nor the small part of the public engaged in the breeding of swine, and particularly in the breeding of O. I. C. amid Chester White swine, can be misled to their prejudice by thus claim of the petitioner nor induced thereby to purchase a hog inferior to the modern Chester White Whether the O. I. C. should or should not be classed or designated as a difficult and distinct breed and whether they are or are not superior to the modern Chester Whites is a question that each breeder will decide for himself, and lie will not change his individual opinion upon this subject no matter what thus court or scientific experts on breeding may determine to be technically essential to the origination of a new and distinct breed. There is evidence in thus record tending to prove that breeders pay little or no attention to scholastic experts, who are designated by them as "book men," dependent upon breeders having actual experience for the data upon which they base their conclusions.

For the purpose of this case it may be conceded that the conclusion readied by the Federal Trade Commission from the facts found by it that the O. I. C. and Chester White hogs are one and the same breed is a finding of fact with the meaning of section 5 of the Federal Trade Commission act, and as such equally conclusive as other findings of fact made by that commission. But in view of the fact that there is a substantial conflict of opinion upon thus subject, as evidenced by the testimony not only of scientific men but also by the testimony of practical and experienced breeders of swine, it does not necessarily follow from this finding that the assertion of an honest opinion upon this subject, either by way of advertisement or otherwise, by any one breeder or any number of breeders constitutes unfair methods of competition where the facts upon which such opinion is based are generally known to that part of the public concerned in the controversy, even if it should appear from scientific standpoint that such opinion is not technically correct.

The statute does not define the term "unfair methods of competition." There-ore the question is one for the ultimate determination of the courts, as are the phrases "unsound mind," "undue influence," "unfair use," "due process of law," found in many other statutes. *Federal Trade Commission v. Grata*, 253 U. S. 421, 427; *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307, 311. In determining the meaning of "unfair methods of competition" within the meaning of the Federal Trade Commission act a court must give due consideration to the public policy declared in the Sherman Act. *Federal Trade Commission v. Beechnut Packing Co.*, 257 U. S. 441, 453, and cases there cited.

In the case of the *Federal Trade Commission v. Winsted Hosiery Co.*, decided by the Supreme Court April 24, 1922, the Winsted Hosiery Co. placed upon the cartons in which its underwear was sold the brands or labels, "Natural merino," "Gray wool," "Natural wool," "Natural worsted," or "Austrialian wool," but none of this underwear was all wool, and much of it contained as little as 10 per cent.

The Supreme Court held that these brands and labels are literally false, and all except the label "Merino" palpably so ; that all are calculated to deceive and do in fact deceive a substantial portion of the purchasing public, and therefore the proceeding to stop the practice was in the interest of the public. The court further found that the practice of using these brands and labels also constituted an unfair method of competition as against manufacturers of all-wool and knit underwear and as against those manufacturers of mixed wool and cotton underwear who brand their products truthfully.

* * * * *

Section 5 of the Federal Trade Commission act authorizes the filing of a complaint when such proceedings would be to the interest of the public. Whether the Federal Trade Commission has jurisdiction to determine complaints as to unfair methods of competition where the general public, the

ultimate consumer, is not misled, deceived, or prejudiced thereby, but involves only a controversy between dealers and breeders, is a question unnecessary to decide in this case.

The claim that the O. I. C. hog is a separate and distinct breed from the Chester White is neither palpably nor literally false, as were the brands and labels used by the Winsted Hosiery Co. On the contrary, the truth of this claim finds equal support in the testimony of expert and experienced breeders, as does the claim that it is false and unwarranted by the facts. Nor does the claim tend to lessen competition or create monopoly in violation of the antitrust act. On the contrary, it places the O. I. C. hog in direct competition with the Chester White. On the other hand, if the O. I. C. are required to be advertised and marketed as Chester Whites the tendency of such requirement would be to destroy competition and create a monopoly in the breeding and marketing of Chester Whites.

For the reasons above stated a majority of this court is of the opinion that the petitioner is not guilty of unfair methods of competition by advertising the O. I. C. hog as a separate and distinct breed of hogs from the Chester White so long as it does not include in its advertisements the claim found to be untrue by the Federal Trade Commission that the foundation stock of the O. I. C. was crossed by a mammoth or large white English hog.

Paragraph 2 of the order to cease and desist as it now reads is inconsistent with paragraph 1 as above modified. In the opinion of a majority of this court paragraph 2 should be changed to read as follows : "That it has Chester White pigs for sale at a less price than O. I. C. pigs, or at any other price, if it in fact has no Chester White pigs, as distinguished by it from O. I. C. pigs, for sale at quoted prices or otherwise."

There is substantial evidence in this record to sustain the findings of facts upon which paragraphs 3 and 4 of the modified order to cease and desist are predicated, and these paragraphs are approved.

Paragraph 5 is based solely upon paragraph 7 of the complaint. That paragraph charges in substance that respondent advertised that two O. I. C. hogs weighed 2,806 pounds, in such a way as to mislead a prospective purchaser to believe these hogs were then, or recently had been, in existence, whereas said representations refer to hogs which are alleged to have existed in the year 1868. There is no charge in the complaint that respondent advertised that it had for sale the progeny of these hogs. It follows that the allegations of this complaint do not support this paragraph. In view of the undisputed evidence that this claim was made in the advertising as early as 1883 ; that its truth is not challenged by complaint or evidence ; that excessive-weight hogs are not desirable or used for breeding purposes ; that some years before the filing of this complaint, when respondent's attention was called to the fact that its advertisement read, "Two hogs weigh 2,806 pounds," it at once changed this to read, "Two hogs weighed 2,806 pounds," and it has continued so to read ever since, it would not appear that this would involve public interest or constitute unfair methods of competition. In any event, the evidence tending to prove that the respondent had in good faith abandoned this form of advertising long prior to the filing of this complaint is not disputed by oral evidence or by circumstances. In the opinion of a majority of the court the fifth paragraph of the modified order to cease and desist should be vacated.

It is unnecessary to discuss in detail the other questions presented by the petition to review in reference to hearsay evidence ; leading questions, the admission of opinion testimony as to the ultimate fact to be decided by the commission, and other similar questions of a more or less technical nature. It is sufficient to say that from the whole record it does not appear that the substantial rights of the petitioner have been prejudiced in any way by these alleged errors.

The first and second paragraphs of the order to cease and desist, made and entered by the Federal Trade Commission, will be modified to the extent hereinbefore stated, and as so modified, approved. Paragraphs 3 and 4 are approved as written without change or modification thereof. Paragraph 5 is vacated.

Denison, circuit judge: I concur in both the reasoning and the result of the opinion, though, for additional reasons, I would go further and vacate entirely the first paragraph of the order to desist. Those additional reasons will be stated in a further memorandum to be filed.

EXHIBIT 11.

SINCLAIR REFINING CO. ET AL.

Supreme Court of the United States. Nos. 213, 637, 638, 639. October term, 1922.

213. Federal Trade Commission, petitioner, v. Sinclair Refining Co. On writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

637. Federal Trade Commission, petitioner, v. Standard Oil Co. (New Jersey). 638. Federal Trade Commission, petitioner, v. Gulf Refining Co. 639. Federal Trade Commission, petitioner, v. Maloney Oil & Manufacturing Co. On writs of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

(April 9, 1923.)

Mr. Justice McReynolds delivered the opinion of the court.

In separate proceedings against 30 or more refiners and wholesalers the Federal Trade Commission condemned and ordered them to abandon the practice of leasing underground tanks with pumps to retail dealers at nominal prices and upon condition that the equipment should be used only with gasoline supplied by the lessor. Four of these orders were held invalid by the Circuit Courts of Appeals for the Third and Seventh Circuits in the above--entitled causes--276 Fed 686, 282 Fed. 81; and like ones have been set aside by the circuit courts of appeals for the second and sixth circuits--Standard Oil Co. v. federal Trade Commission 273 Fed. 478 ; Canfield Oil Co. v. Federal Trade Commission, 274 Fed. 571. The proceedings, essential facts, and points of law disclosed by the four records now before us are so similar that it will suffice to consider No.213 as typical of all.

July 18, 1919, the commission issued a complaint charging that respondent, Sinclair Refining Co., was purchasing and selling refined oil and gasoline and leasing and loaning storage tanks and pumps as part of interstate commerce in competition with numerous other concerns similarly engaged ; and that it was violating both the Federal Trade Commission act, 38 Stat. 717, and the Clayton Act, 38 Stat. 730.

The particular facts relied on to show violation of the Federal Trade Commission act are thus alleged--

“PAR. 3, That respondent in the conduct of its business, as aforesaid, with the effect of stifling and suppressing competition in the sale of the aforesaid products and in the sale, leasing, or loaning of the aforementioned devices and other equipments for storing and handling the same, and with the effect of injuring competitors who sell such products and devices, has within the four years last: past sold, leased, or loaned, and now sells, leases, or loans the said devices and their equipment for prices or considerations which do not represent reasonable returns on the investments in such devices and their equipments ; that many such sales, leases, or loans of the aforesaid devices are made at prices below the cost of producing and vending the same ; that many of such contracts for the lease or loan of such devices and their equipments provide or are entered into with the understanding that the lessee or borrower shall not place In such devices, or use in connection with such devices and their equipments, any refined oil or gasoline of a competitor; that only a small proportion of the dealers in gasoline and refined oil under such agreements and understandings deal also in similar products of respondent's competitors and that only a small proportion of such dealers require or use more that a single pump outfit in the

conduct of their said business ; that there are numerous competitors in the sale of such products who are unable to enter into such lease agreements or understandings because of the large amount of investment required to carry out such lease agreements as a competitive method of selling refined oil and gasoline ; that there are numerous other competitors of respond

ent engaged in the manufacture and sale of said devices and their equipments who do not deal in refined oil and gasoline, and therefore do not sell or lease said devices and their equipments for a nominal consideration on a condition or understanding that their products only are to be used therein; that the said numerous competitors who were unable to enter into such lease agreements or understandings, as aforesaid, have lost numerous customers in the sale of refined oil and gasoline to respondent because of the business practices of respondent hereinbefore set forth. That the said numerous other competitors of respondent who manufacture and sell said devices and their equipments, but do not sell refined oil and gasoline, as aforesaid, have lost numerous customers and prospective customers for the purchase of their devices and equipments because of the said business practices of respondent, as hereinbefore set forth.”

To show violation of the Clayton Act the complaint alleged--

“PAR. 3. That the respondent, for four years last past, in the conduct of its business as aforesaid, has leased and made contracts for the lease and is now leasing and making contracts for the lease of said devices and their equipments to be used within the United States, and has fixed and is now fixing the price charged therefor on the condition, agreement, or understanding that the lessees thereof shall not purchase or deal in the products of a competitor or competitors of respondent; and that the effect of such leases or contracts for lease, and conditions, agreements, or understandings, may be and is to substantially lessen competition and tend to create a monopoly in the territories and localities where such contracts are operative.”

Respondent answered and evidence was taken. In October, 1919, the com-mission announced its report, findings, and conclusions, the substance of which follows :

“1. That the respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the city of Chicago, in the State of Illinois, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter referred to as products, and is largely engaged in refining crude petroleum, and that it is now and has been since January 25, 1917, in connection with the aforementioned business, engaged in the leasing and loaning, but not in the manufacture, of oil pumps, storage tanks, and containers and their equipment, hereinafter referred to as devices, in various States of the United States, but not in the District of Columbia, in competition with numerous other persons, firms, corporations, and copartner-ships similarly engaged; that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Co.

“2. That the respondent, in the conduct of its business, as aforesaid and as hereinafter more particularly described, extensively refines petroleum and its products and purchases refined oil and gasoline, all hereinafter referred to as ‘products,’ and also purchases all pumps, storage tanks, or containers, hereinafter referred to as ‘devices,’ the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and flue aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnership ; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices the same are constantly moved from one State to another by respondent, and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent who in the conduct of their business in competition with respondent purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored In the various States of the United States and transported In interstate commerce; that

the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitor of respondent to various persons, firms, corporations, and copartnership; that In the conduct of their business as aforesaid, competitors of respondent constantly move such products and devices from one State to another, and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent has conducted its said business in a similar manner to that above described since January 25, 1917.

"3. That respondent now leases and loans and has for the period of its business existence leased and loaned devices and equipment for storing and handling its products, and that the monetary considerations received by respondent do not represent reasonable returns upon the investment in such devices and equipment; and also that such leases and loans of said devices and equipment are made for monetary considerations below the cost of purchasing and vending the same when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and sales policy of the respondent; that respondent's form of contract with the users of such devices and equipment provides in substance that the devices and equipment shall be used for the sole purpose of storing and handling gasoline supplied by respondent; and that the uniform contract used by respondent for leasing such devices and equipment is in form, tenor, and substance as follows." (The ordinary form of contract (printed in the margin 1) is here set out. It recites the customer's desire to install certain equipment and, among other things, provides that this shall be used only for storing and handling gasoline supplied by the lessor; that if put to any other use the lessee's right therein shall terminate; and that upon termination of the lease, by whatever means effected, the lessee may purchase the equipment for a specific sum.)

"4. That the contracts mentioned in the preceding paragraph also provide that such equipments shall be used by the lessee only for the purpose of holding and storing the respondent's petroleum products; that a small proportion of such lessees handle similar products of respondent's competitors; and that only a small proportion of such lessees as handle similar products of respondent's competitors require or use more than a single pump outfit in the conduct of their said business; that the practice of leasing such devices requires a large capital investment; that many competitors of respondent do not possess sufficient capital and are not able to purchase and lease devices as respondent does as aforesaid, partly by reason of which such competitors have lost numerous customers to respondent; that the effect of the

1 EQUIPMENT CONTRACT.

This agreement, made and entered into this ---- of --, 19--, between Sinclair Refining Co., of ----, party of the first part, and -----, of the city of -----State of -----, party of the second part, witnesseth:

Whereas party of the second part is now being supplied with gasoline by the party of the first part and desires to install on his premises situated at ----- the following equipment for the better storing and handling of such gasoline:-----.

Now, therefore, in consideration of the premises and of the sum of \$1 by the party of the second part to the party of the first part (the receipt of which is hereby acknowledged), the above-named parties do hereby agree as follows :

1. The above-described equipment shall be used by the party of the second part for the sole purpose of storing and handling the gasoline supplied by the party of the first part.
2. The party of the second part agrees at his own cost, to maintain said equipment in good condition and repair so long as he shall continue to use the same.
3. The party of the second part agrees that he will not encumber or remove said equipment or do or suffer to be done anything whereby said equipment or any part thereof may be seized, taken on execution, attached, destroyed, or injured, or by which the title of the party of the first part thereto may in any way be altered, destroyed, or prejudiced.
4. In the event party of the second part should at any the use said equipment for any other purpose than the storing and handling of gasoline supplied by the party of the first part, or should cease for ----- days to handle gasoline secured from the party of the first part, the right or license of the party of the second part to said equipment shall it once terminate, and thereupon party of the first part shall have the right to enter upon said premises and remove said equipment mind every part thereof.
5. The party of the second part shall identify and save harmless the party of the first part of and from any liability for loss, damage, injury, or other casualty to persons or property caused or occasioned by any

leakage, fire, or explosion of gasoline stored in said tank or drawn through said pump.

6. This agreement shall terminate forthwith upon the sale or other disposition of said premises by party of the second part and in any event upon the expiration ----- months from the date hereof; and in the event that by mutual consent said equipment remains in the possession of the party of the second part at the expiration of said period it is agreed that the same shall be used by party of the second part subject to all of the terms and conditions of this agreement, and such may be terminated at any time after the expiration of months from the date hereof by the party of the first part giving 10 day's notice to that effect. Upon the termination of this license, by whatever means effected the party of the first part shall have the right to enter upon said premises and remove the said equipment and each and every part thereof; provided, however, that the party of the second part shall have the right and option at such time to purchase said equipment by paying therefor the sum of -----.

This contract is executed in triplicate, and at lines agreed that the contract held by the party of the first part is to be considered the original and to be the binding agreement in case the duplicate varies from it in any particular.

In witness whereof the parties hereto have caused this agreement to be executed the day and year first above written.

practice of leasing by contract such equipments, where such contracts contain the said provision restricting the use of the same to the storage and handling of respondent's products as aforesaid, may be to substantially lessen competition and tend to create for the respondent a monopoly in the business of selling petroleum products.

“Conclusions.--That the methods of competition and the business practices set forth in the foregoing findings as to the facts are, under the circumstances set forth therein, unfair methods of competition, in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled ‘An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes’ and are in violation of 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.’”

Thereupon the commission ordered that respondent cease and desist from--

“1. Directly or indirectly leasing pumps or tanks or both and their equipments for storing and handling petroleum products in the furtherance of its petroleum business, at a rental which will not yield to it a reasonable profit on the cost of the same after making due allowance for depreciation and other items usually considered when leasing property for the purpose of obtaining a reasonable profit therefrom, and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

“2. Entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipments the same shall be used only for storing or handling the products of respondent, and from doing anything having the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.”

The Clayton Act provides :

“SEC. 3: That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefore’ or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.”

Respondent's written contract does not undertake to limit the lessee's right to use or deal in the goods of a competitor of the lessor, but leaves him free to follow his own judgment. It is not properly described by the complaint and is not within the letter of the Clayton Act. But counsel for the commission insist that inasmuch as lessees generally--except garage men in the larger places--will not encumber themselves with more than one equipment, the practical effect of the restrictive covenant is to confine most dealers to the products of their lessors; and we are asked to hold that, read in the light of these facts, the contract falls within the condemnation of the statute. *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 340, and *United Shoe Machinery Corporation v. United States*, 258 U. S. 451, are relied upon.

In the *Standard Fashion Co.* case the purchaser expressly agreed not to sell or permit sale of

any other make of patterns on its premises. It had a retail store in Boston and sales elsewhere were not within contemplation of the parties. This court construed the contract as embodying an undertaking not to sell other patterns. In *United Shoe Machinery Corporation v. United States*, when speaking of certain “tying” restrictions, this court said :

“While the clauses enjoined do not contain specific agreements not to use the machinery of a competitor of the lessor, the practical effect of these drastic provisions is to prevent such use. We can entertain no doubt that such provisions as were enjoined are embraced in the broad terms of the Clayton Act which cover all conditions, agreements, or misunderstandings of this

nature. That such restrictive and tying agreements must necessarily lessen competition and tend to monopoly is, we believe, equally apparent. When it is considered that the United Co. occupies a dominating position in supplying shoe machinery of the classes involved, these covenants signed by the lessee and binding upon him effectually prevent him from acquiring the machinery of a competitor of the lessor except at the risk of forfeiting the right to use the machines furnished by the United Co., which may be absolutely essential to the prosecution and success of his business. This system of 'tying' restrictions is quite as effective as express covenants could be and practically compels the use of the machinery of the lessor except upon risks which manufacturers will not willingly incur."

There is no covenant in the present contract which obligates the lessee not to sell the goods of another, and its language can not be so construed. Neither the findings nor the evidence show circumstances similar to those surrounding the "tying" covenants of the Shoe Machinery Co. Many competitors seek to sell excellent brands of gasoline and no one of them is essential to the retail business. The lessee is free to buy wherever he chooses; he may freely accept and use as many pumps as he wishes and may discontinue any or all of them. He may carry on business as his judgment dictates and his means permit, save only that he can not use the lessor's equipment for dispensing another's brand. By investing a comparatively small sum, he can buy an outfit and use it without hindrance. He can have respondent's gasoline with the pump or without the pump, and many competitors seek to supply his needs.

The cases relied upon are not controlling.

Is the challenged practice an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act? ² Reviewing the circumstances, four circuit courts of appeals have answered no. And we can find no sufficient reason for a contrary conclusion. Certainly the practice is not opposed to good morals because characterized by deception, bad faith, fraud, or oppression. (Federal Trade Commission v. Grata, 253 U. S. 421, 427.) It has been openly adopted by many competing concerns. Some dealers regard it as the best practical method of preserving the integrity of their brands and securing wide distribution. Some think it is undesirable. The devices are not expensive--\$300 to \$500--can be purchased readily of makers and, while convenient, they are not essential. The contract, open and fair upon its face, provides an unconstrained recipient with free receptacle and pump for storing, dispensing, advertising, and protecting the lessor's brand. The stuff is highly inflammable and the method of handling it is important to the refiner. He is also vitally interested in putting his brand within easy reach of consumers with ample assurance of its genuineness. No purpose or power to acquire unlawful monopoly has been disclosed, and the record does not show that the probable effect of the practice will be unduly to lessen competition. Upon the contrary, it appears to have promoted the public convenience by inducing many small dealers to enter the business and put gasoline on sale at the crossroads.

The powers of the commission are limited by the statutes. It has no general authority to compel competitors to a common level, to interfere with ordinary business methods, or to prescribe arbitrary standards for those engaged in the conflict for advantage called competition. The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their the, skill, and capital should have large freedom of action in the conduct of their own affairs.

The suggestion that the assailed practice is unfair because of its effect upon the sale of pumps by their makers is sterile and requires no serious discussion.

The judgements below must be affirmed.

A true copy.

Test:

Clerk, Supreme Court, United

States.

2 SEC. 5: That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

EXHIBIT 12.

SOUTHERN HARDWARE JOBBERS' ASSOCIATION ET AL.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3887: Southern Hardware Jobbers' Association et al., petitioners, v. Federal Trade Commission, respondent.

Petition to review order of Federal Trade Commission, sitting at Washington, D. C.

Peter O. Knight (Peter O. Knight, C. Fred Thompson, and A. G. Turner on the brief for petitioners. W. H. Fuller, chief counsel, Adrien F. Busick, and Charles Melvin Neff (W. H. Fuller, chief counsel, and Charles Melvin Neff, trial counsel, on the brief) for respondent.

Before Walker, Bryan, and King, circuit judges.

Walker, circuit judge: The Southern Hardware Jobbers' Association, a voluntary, unincorporated association (herein called the jobbers' association), four business corporations, and two individuals, George E. King and John Donnan, filed their petition in this court praying the review and setting aside of an order to cease and desist made against them by the respondent, the Federal Trade Commission. The proceeding which resulted in that order was commenced by a complaint made against the petitioners by the respondent. That complaint contained allegations to the following effect: The members of the jobbers association, about 350 in number, are persons, partnerships, and corporations engaged in the business of buying and selling hardware in wholesale quantities throughout certain Southern States of the United States, said King being its president, said Donnan its secretary, and said business corporations being members thereof and engaged in the business of buying and selling hardware in wholesale quantities in Atlanta, Ga.; they buy hardware in various States of the United States and cause same to be transported in interstate commerce and are fairly representative of the entire membership. Within a year prior to the filing of the complaint certain retail dealers in hardware in Georgia and adjacent States organized under the laws of Delaware a corporation called the Merchants' Cooperative Association (herein referred to as the cooperative association), for the purpose of purchasing in wholesale quantities through the instrumentality of that corporation all hardware and supplies dealt in by such retail dealers. The profits arising from the business of that corporation were to be distributed between its stockholders and other retailers for whom it purchased, a retailer to get the whole or a part of the profit made on each sale to it by that corporation. At the outset that corporation undertook to purchase supplies for the retailers for whom it was to purchase through W. A. Ray Hardware Co., of Pensacola, Fla., a member of the jobber's association, under all arrangement which provided for that company receiving as compensation 5 per cent of the cost price of supplies so purchased.

Another corporation, the American Purchasing Co., was organized under the laws of Delaware for the purpose of acting as purchasing agent for the cooperative association and other domestic and foreign purchasers. The parties named as defendants in the complaint mentioned have conspired and confederated together with themselves and with other persons, and particularly with other members of the jobbers' association, to prevent the cooperative association and American Purchasing Co. from obtaining from manufacturers and other usual sources from which purchasers of hardware in wholesale quantities must obtain supplies, either directly or through the assistance of said W. A. Ray Hardware Co., and have, by boycott and threats of boycott and other unlawful means, induced manufacturers and others to refuse to sell their products to the cooperative association and the American Purchasing

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Co., and such manufacturers and their brokers were informed by petitioners herein that if they sold their products to the Cooperative association and the American Purchasing Co. the members of the jobbers' association would not thereafter buy the products of such manufacturers, by means whereof manufacturers of hardware generally were intimidated to the extent that they thereafter refused to sell their products to the cooperative association and the American Purchasing Co. The machinery of the jobbers' association was employed by its officers and members in bringing about and making effective said boycott. After petitioners herein had answered that complaint and after the introduction of evidence and a hearing by the commission, it made its findings as to the facts and stated its conclusion. It made findings in accord with the allegations of the complaint as to the nature and composition of the jobbers' association, as to the relations to it of the defendant individuals and corporations, as to the nature of the business engaged in by the latter, as to the organization and purpose of the cooperative association and the American Purchasing Co., and as to purchases made through the W. A. Ray Hardware Co. The commission found, among other things, to the following effect : When the complaint was filed and when the findings were made the jobbers' association comprised about 90 per cent of all those doing a jobbing or a wholesale business in hardware in that portion of the United States bounded by the Potomac River on the north, the Rio Grande on the south, the Atlantic Ocean on the east, and the western boundary of Oklahoma on the west; about 90 per cent of its members were and are engaged in selling hardware at retail as well as at wholesale, and are competitors of exclusively retail dealers in hardware in the territory mentioned, including their own customers who are retailers. For a firm or corporation to be eligible to membership in the jobbers' association a by-law provides that its sales to merchants shall be not less than 75 per cent of its gross sales of not less than \$250,000 a year, that it has not less than three salesmen consistently on the road, and that it has capital, or capital and surplus, of not less than \$75,000. The membership of the jobbers' association is further restricted to those wholesalers whose policy it is to distribute goods through so-called regular channels of trade; that is, from manufacturer to jobber or wholesaler, from jobber or wholesaler to retailer, and from retailer to consumer; It being contrary to that policy for a hardware manufacturer to sell direct to a retailer on the same terms and conditions that it sells like goods and quantities to so-call legitimate jobbers and wholesalers; such policy requiring that, in the case of a sale by a manufacturer to a retailer price differentials be charged to protect the so-called legitimate jobber or wholesaler in his method of distribution. The purpose of the jobbers' association and its members is to dominate the wholesale and jobbing trade in hardware in the territory mentioned and to hinder competition in such trade arising from the operation of jobbers or wholesalers who do not conform to the plan of distribution approved by the jobbers' association. It is the policy of members of the jobbers' association to refuse to buy from hardware manufacturers who sell to customers who do not conform to the distribution policy approved by the jobbers' association. To promote that policy said association conducts a system of espionage upon the business of the wholesale and jobbing trade in said territory.

In many instances the members and officers of the jobbers' association, including petitioners, have notified hardware manufacturers that named jobbers or wholesalers, including the cooperative association and the American Purchasing Co., do not conform to the method of distribution approved by the jobbers' association whereby the manufacturers so notified are made to understand that they have the choice between getting the custom of the members of the jobbers' association or selling to jobbers or wholesalers who do not conform to the practice approved by the jobbers' association. Close relations have been and are maintained between the officers and members of the jobbers' association and the officers and members of the

American Hardware Manufacturers' Association, which includes the principal manufacturers of hardware in the United States. The officers and members of the jobbers association made known to the officers and members of the Hardware Manufacturers' Association that the former disapproved of sales of hardware to jobbers or wholesalers who do not conform to the policy approved by the jobbers' association on the same terms and conditions as are accorded to jobbers and wholesalers who conform to that policy. The jobbers' association furnished to the Hardware Manufacturers

Association and its members lists of so-called regular jobbers and wholesalers in the territory mentioned and notified them that named jobbers or wholesalers in that territory, including the cooperative association and the American Purchasing Co., did not conform to the policy approved by the jobbers' association. By such means manufacturers of hardware were warned by petitioners not to trade or deal with objectionable wholesalers or jobbers on the same terms accorded to so-called regular jobbers or wholesalers on pain of losing the trade or patronage of members of the jobbers' association. In the territory mentioned there are many retailers whose requirements of hardware were and are sufficiently large to make it practicable and profitable for manufacturers to sell direct to them and on the same terms and conditions as they accord to members of the jobber's association. Hardware manufacturers are deterred from selling to such dealers on the same terms that are accorded to members of the jobbers' association by the fear of losing the patronage of members of that association. By means of recited action participated in by petitioners, manufacturers of hardware, by threats of loss of the patronage of so-called regular jobbers or wholesalers if they sold to the cooperative association or the American Purchasing Co. on the same terms accorded to members of the jobbers' association, were induced to refuse to deal with or to sell to the cooperative association and the American Purchasing Co., in interstate commerce, on the same terms which are accorded to members of the jobbers' association and to wholesalers and jobbers who conform to the policy of distribution approved by the jobbers' association. The stated conclusion of the commission was that the acts, agreements, understanding, policies, and practices of the petitioners, and each and all of them, are unfair methods of competition in interstate commerce and constitute a violation of the Federal Trade Commission act (38 Stat 719). By the order complained of the petitioners were to forever cease and desist from--

1. Combining and conspiring among themselves or with others, directly or indirectly, to induce, persuade, or compel, and from inducing, persuading, or compelling, manufacturers, importers, or producers, their agents or brokers, to refuse to sell to the American Purchasing Co. or the Merchants' Cooperative Association because of any plan of organization or method of transacting business adopted by said company.

2. Combining and conspiring among themselves and with others to give and from giving, directly or indirectly, verbal, written, or other notices or communications to manufacturers, importers, and producers, their agents or brokers, that business concerns not members of the Southern Hardware Jobbers' Association and not in harmony with the plans and policies of the said association and not conforming to the tests and standards set up by the said association for membership therein are not entitled to purchase and obtain goods, wares, and merchandise upon the same terms and conditions usually accorded by said manufacturers, importers, and producers to the members of the Southern Hardware Jobbers' Association.

3. Combining or conspiring together among themselves or with others, and from using any scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct, or prevent manufacturers, producers, or importers, their brokers or agents, from dealing with the American Purchasing Co. or the Merchants' Cooperative Association or others engaged in similar business, upon as favorable terms and conditions usually accorded by the said manufacturers, producers, or importers to the members of the said Southern Hardware Jobbers' Association.

4. Hindering, obstructing, or preventing, directly or indirectly, any manufacturer, promoter or importer, or broker or agent thereof, from selling and shipping, either or both, in interstate commerce, to the American Purchasing Co. or to others engaged in similar business.

5. Combining and conspiring together among themselves or with others, and from using any

scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct, or prevent the American Purchasing Co. or the Merchants' Cooperative Association, or others engaged in similar business, from freely purchasing and obtaining, in interstate commerce, the goods, wares, and merchandise usually handled by the said company or association in the course of their business, or from freely competing in interstate commerce with the members of the Southern Hardware Jobbers' Association, Beck & Gregg Hardware Co., the Dinkins-Davidson Hardware Co., King Hardware Co., George E. King, or others engaged in similar business.

6. Combining and conspiring, directly or indirectly, among themselves or with others, to establish and to continue maintaining any tests or standards for de-

termining whether said American Purchasing Co. or Merchants' Cooperative Association, or others engaged in similar business, shall be permitted to purchase goods, wares, and merchandise in interstate commerce upon the same terms and conditions as the members of the said Southern Hardware Jobbers' Association.

7. Combining and conspiring, directly or indirectly, among themselves or with others, to publish' or to distribute, and from publishing or distributing to manufacturers, importers, and producers, their agents or their brokers, engaged in selling goods, wares, and merchandise, especially hardware, among the various States, lists of the members of the Southern Hardware Jobbers' Association for the purpose and with the intent of influencing said manufacturers, importers, producers, their agents and their brokers, to refrain from making sales of such commodities to others than those named in such lists in the territory covered by the said association.

8. Combining and conspiring among themselves, or with others, to induce, coerce, and compel manufacturers, importers, and producers, or their agents or their brokers, directly or indirectly, to refuse to sell goods, wares, and merchandise to the American Purchasing Co., or to the Merchants' Cooperative Association, either or both, or to others engaged in the same business, upon the same terms and conditions usually offered and given by the said manufacturers, importers, and producers, their agents or their brokers, to the members of the Southern Hardware Jobbers' Association.

9. Carrying on between and among themselves, or with others, communications written or verbal, having the purpose, tendency, or the effect of inducing, coercing, or compelling manufacturers, importers, or producers of goods, wares, and merchandise, especially hardware, their agents or their brokers, directly or indirectly, to refuse to deal with or sell to the American Purchasing Co., or to the Merchants' Cooperative Association, or others engaged in similar business upon the same terms and conditions usually accorded by said manufacturers, importers, and producers to the members of the Southern Hardware Jobbers' Association.

10. Combining or conspiring among themselves, or with others, to compel, or to attempt to compel, the American Purchasing Co., or the Merchants' Cooperative Association, or others engaged in a similar business, to purchase the goods, wares, and merchandise required for their business from or through any competitor of said purchasing company or said cooperative association, or from others similarly engaged.

11. Combining or conspiring among themselves or with others to boycott or to threaten to boycott, or to threaten with loss of patronage or custom, any manufacturer, importer, or producer, or his agent or broker, engaged in interstate commerce, for selling or agreeing to sell to the American Purchasing Co., or the Merchants' Cooperative Association, or others engaged in similar business. on the same terms and conditions accorded by such manufacturer, importer, or producer, or his agent or broker, to members of the Southern Hardware Jobbers' Association.

Evidence adduced warranted the conclusion that a main purpose of the jobbers' association, its officers and members, was to promote the policy of distributing hardware from manufacturer to wholesaler or jobber, from wholesaler or jobber to retailer, and from retailer to customer, only in the way they approved. It is consistent with that policy for a wholesaler or jobber to be also a retailer if he has in his business a specified amount of capital, if a specified per cent of his gross sales of not less than a specified amount a year is to dealers, and if he keeps constantly on the road not less than a specified number of salesmen. It is contrary to that policy for a retailer, unless he is also a wholesaler or jobber who complies with the just mentioned requirements, to have such relations with a wholesaler or jobber or interest in the business of a wholesaler or jobber as results in the retailer receiving the whole or a part of the profits

realized by the wholesaler or jobber on sales made by him to the retailer. The plan of doing business adopted and attempted to be put into effect by those who promoted and organized the cooperative association and the American Purchasing Co. was not in harmony with the policy of the jobbers' association, as it was a feature of that plan of business that a retailer who gets hardware through the concerns mentioned shares in the profits realized by such concerns on sales made by them to the retailer, though such retailer does no wholesale business. It was part of the plan of the promoters and organizers of the cooperative association and the American Purchasing Co. to supply hardware to only such retailers as were willing and able to pay

cash for the hardware they bought. A result of a hardware manufacturer conforming to the policy approved by the jobbers' association is that one who is solely a retailer can not buy hardware directly or indirectly, or in cooperation with other such retailers from such manufacturer on the same terms as are accorded to retailers who are members of the jobbers' association, though such retailer buys in what, as between the manufacturers and jobbers or wholesalers, are recognized as wholesale quantities. A consequence of the success of the policy approved by the jobbers' association is to impair the ability of jobbers or wholesalers who share with dealers who are exclusively retailers, to whom they sell, the profits realized on such sales, to compete with jobbers or wholesalers who retain the profits realized on sales made by them to such retailers, as jobbers or wholesalers so sharing their profits with buyers who sell only at retail can not buy hardware from the manufacturer at jobbers' prices and terms. Another consequence of the success of the policy mentioned is to give to retailers who are also such jobbers or wholesalers as are eligible to membership in the jobbers' association a substantial advantage over dealers who sell only at detail thereby restraining or hindering competition by the last mentioned dealers. Whatever influences manufacturers of hardware to refuse to sell their products to dealers who are obnoxious to the jobbers' association on the same terms as are allowed to members of that association and those who conform to its policy tends to restrain trade by obstructing or pre-venting it with such obnoxious dealers. There was evidence of conduct by each of the petitioners which was intended to induce, and was effective in inducing, manufacturers not to sell to the cooperative association or of buying for it on the same terms which were accorded to members of the jobbers' association. If that conduct was in pursuance of an agreement or understanding, express or implied, to which petitioners were parties, thereby to hinder or obstruct the free and natural flow of commerce in interstate trade it constituted an "unfair method of competition" within the Federal Trade Commission act. *Federal Trade Commission v. Beech Nut Co.*, 257 U. S. 441, 453; *Wholesale Grocers Association v. Federal Trade Commission*, 277 Fed. 657.

It was permissible to consider the conduct of the petitioners in the light of the fact that it was disclosed that they had in common the purpose to put into effect the above-mentioned policy of the jobbers' association. The doing by them of like acts to induce manufacturers to conform to that policy was, under the circumstances, indicative of the existence of an agreement or understanding between them to cooperate in furtherance of that policy. From the evidence as to the relations between the jobbers' association, its officers and members, and hardware manufacturers and their organization, it well might be inferred that manufacturers, in conforming to the jobbers' association policy, were influenced by the desire to retain the custom and good will of the large body of wholesale buyers banded together in the jobbers' association, and that such manufacturers or many of them were induced or coerced by the united opposition of the members of the jobbers' association not to sell hardware in wholesale quantities and at jobbers' prices and terms to dealers such as the cooperative association, which was prepared to buy in large quantities and sought no credit for goods bought. The circumstances attending the furnishing to hardware manufacturers or their association of lists of members of the jobbers' association and the giving of notice to such manufacturers that named dealers were irregular or not entitled to be treated as legitimate wholesalers were such that it could properly be inferred that those acts were intended to have, and had, the effect of warnings to the manufacturers against selling on usual wholesale terms to dealers who were not members of the jobbers' association or who were so charged with noncompliance with the policy of that association. There was evidence tending to prove that the petitioners combined and cooperated to keep manufacturers, will I to do so. from selling their products at wholesale prices and terms to the

cooperative association and the American Purchasing Co., and to obstruct and prevent those concerns from competing as jobbers or wholesalers in territory sought to be appropriated by the jobbers' association and dealers conforming to the method of doing business which was approved by that association. The evidence warranted the conclusion that what the petitioners did to thwart the success of the cooperative association and the American Purchasing Co. went beyond each of the petitioners asserting and seeking to enforce its or his Individual views as to business policies or methods, and amounted to cooperation between them in furtherance of a common purpose to prevent bard-ware manufacturers selling without price discrimination to exclusively retail

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dealers or organizations buying for such retailers on terms which effect a saving to retailers of all or part of the profit which regular wholesalers or jobbers retain, with the result of requiring such retailers to get hardware only through the self-styled legitimate wholesalers or jobbers. The existence of a combination in restraint of trade may be inferred from evidence of circumstances indicating concert of action to that end. *American Column Co. v. United States*, 257 U. S. 377. The success of the concerted action in which the petitioners participated meant the monopolizing of the wholesale hardware trade in an extensive territory by members of the jobbers' association and dealers conforming to the above-mentioned policy, and also meant the exclusion of hardware retailers in that territory from sources of supply available to wholesalers unless they combined wholesaling and retailing in the particular way which was approved by the jobbers' association. We are of opinion that such concerted action involved restraint of interstate trade, and is a proper subject of a Federal Trade Commission order to cease and desist.

As affecting the kind of interstate trade undertaken to be carried on by the cooperative association and the American Purchasing Co., none of the things enumerated in the order complained of includes conduct which the petitioners are entitled to persist in. The doing or continuing to do by the petitioners of the things enumerated in the order to cease and desist is incompatible with the discontinuance of the practices condemned by the commission. Under the circumstances, the doing of the forbidden things would be concerted action tending to restrain competition in interstate trade. That being so, we do not think that order is too broad.

We conclude that the petition should be denied, and it is so ordered.

(Original filed June 13, 1923.)

EXHIBIT 13.

JUVENILE SHOE CO. (INC.).

In the United States Circuit Court of Appeals for the Ninth Circuit.

Juvenile Shoe Company, Incorporated, petitioner, v. Federal Trade Commission,
respondent. No.3927.

Before Gilbert and Rudkin, circuit judges, and Dietrich, district judge.

The petitioner seeks to review the order entered against it by the respondent commanding it to desist from certain methods of competition in commerce. The respondent's complaint alleged that the petitioner was organized on May 26, 1919, at Los Angeles, Calif., to sell children's shoes exclusively at wholesale in California and in adjacent States; that the Juvenile Shoe Corporation of America was organized in Missouri on June 8, 1918, to manufacture and sell children's shoes exclusively throughout the United States in interstate commerce in competition with others similarly engaged; that it has built up an extensive business in the sale of its product in California and adjacent States; and that its shoes are of greater value and of superior quality and sell for higher prices than the petitioner's shoes; that the petitioner's Corporate name so nearly resembles the Corporate name of said Juvenile Shoe Corporation and its trade name or design so nearly resembles the registered trade-mark of the Juvenile Shoe Corporation that it causes confusion in the trade and thereby induces purchasers of children's shoes to believe that the shoes offered for sale by the petitioner are the shoes manufactured by the Juvenile Shoe Corporation; that the trade-mark of the latter corporation is "Juvenile Shoe System," used by it since January 1, 1919, and registered November 30, 1920; that since January 1, 1919, the Juvenile Shoe Corporation used its trade-mark displayed as a wax seal, and this seal was employed by it by means of a label placed on the cartons in which the shoes were sold and by tags attached directly to the shoes and by means of a design on the soles of the shoes; that the petitioner put upon the boxes in which its shoes are packed a circular label containing the face of a child surrounded by the words "Juvenile Shoe Company, Inc." which so resembled the trade-mark of the Missouri corporation as to be likely to cause confusion in the trade and deceive purchasers.

The answer of the petitioner admitted that the shoes sold by the Missouri corporation were of superior quality to those sold by itself. Upon the pleadings and the proof the respondent made findings and held that the petitioner had violated the provisions of section 5 of the act of Congress approved September 26, 1914, creating the Federal Trade Commission and defining its powers and duties, and it ordered that the petitioner, its officers, directors, agents, and employees cease and desist (1) from using as a part of its corporate name the word "Juvenile" or any word or combination of words likely to be confused with the name of the Juvenile Shoe Corporation of America; (2) from using or permitting to be used in its behalf the word "Juvenile" on its marks, labels, tags, or other devices upon or in connection with the sale of shoes for infants, children, and misses; and (3) from directly or indirectly suggesting by the use of a word, mark, or label or otherwise that the goods of the petitioner are the goods of the Juvenile Shoe Corporation of America.

Gilbert, circuit judge, after stating the case :

The record fully justifies the order of the Federal Trade Commission enjoining the use of the petitioner's Corporate name. The petitioner went into the business of manufacturing and selling children's shoes and took a name so similar to a senior corporation that was engaged in precisely the same business and in the same field that confusion of the two corporations in the public mind was inevitable. The names "Juvenile Shoe Corporation" and "Juvenile Shoe Company, Inc." are practically identical. The reported cases in which injunction has been sustained against the use of a corporate name afford few in

stances of names so similar and so likely to create confusion as those which these two corporations used. In assuming its name, a corporation acts at its peril, *American Order Scottish Clans v. Merrill*, 151 Mass. 558; *Metropolitan Tel. Co. v. Metropolitan Tel. Co.*, 141 N. Y. S 598. Injunction will lie against a corporation that by any artifice deceives the public into believing that its goods are those of another corporation having a similar name, and this is true Irrespective of any intent to mislead the public, and especially is it true where the corporations are engaged in the same business. *General Film Co. of Mo. v. General Film Co. of Me.*, 237 Fed. 64; *Nat. Circle Daughters of Isabella v. Nat. Order D. I.*, 270 Fed 723.

Nor are we convinced that this court should modify that portion of the order here under review which forbids the petitioner to use the word "Juvenile" on its marks, labels, and tags in connection with the sale of children's shoes and from suggesting by word, mark, label, or otherwise that its goods are the goods of the Juvenile Shoe Corporation. The Federal Trade Commission found as a fact that the use of the word "Juvenile" as it was employed by the petitioner caused confusion and led purchasers to believe that the petitioner's goods were those of the Juvenile Shoe Corporation. It is not asserted that the Juvenile Shoe Corporation has the exclusive right to the word "Juvenile" as applied to shoes, but we think it has a proprietary and exclusive right to the good will which it has created by Its dealing and its advertising with the purchasing public as well as by the superior quality of its shoes, and that the use of the word "Juvenile" by the petitioner on its shoes, has, as the Trade Commission finds, tended to create the false impression that the goods sold by the petitioner were the goods of the Juvenile Shoe Corporation, and while it may be that the word "Juvenile" is not susceptible of appropriation as a trade mark, the right to its use as a trade name may still be protected against the unfair competition which might result from the use of the same trade name by another corporation, where both are engaged in the same trade, dealing in the same class of goods and in actual competition with one another. *Pillsbury-Washburn Flour Mills Co. v. Eagle*, 86 Fed. 608; *Strauss v. Notaseme Co.*, 240 U. S. 179; *G. W. Cole Co. v. American Cement and Oil Co.*, 130 Fed. 703; *N. K. Fairbank Co. v. Luckel King and Cake Soap Co.*, 102 Fed. 327; *Stark v. Stark Bros. Nurseries and Orchards Co.*, 257 Fed. 9.

It is contended that since the petitioner has ceased the use of a label on the cartons in which Its shoes are packed and sold, an order to cease placing such labels on the cartons is not warranted. But it does not follow that the order should be dissolved. The Juvenile Shoe Corporation is not hound to accept the fact of the disuse of the labels as proof that the use will not be resumed in the future, and the mere fact that the petitioner has ceased such use is no reason why injunction should not issue. *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307; *Saxlehner v. Eisner*, 147 Fed 189.

The order of the Federal Trade Commissioner is affirmed.

(Indorsed : Opinion filed May 14, 1923. F. D. Monckton, clerk. By Paul P. O'Brein, deputy clerk.

EXHIBIT 14.

P. LORILLARD CO. CASE.

United States District Court, Southern District of New York.

The Federal Trade Commission, petitioner, against P. Lorillard Co., respondent; Federal Trade Commission, petitioner, against American Tobacco Co. (Inc.), respondent.

William Hayward, Esq., United States attorney, attorney for petitioner; W. H. Fuller, Esq., chief counsel for Federal Trade Commission ; William D. Guthrie, Esq., William B. Bell, Esq., Bernard Hershkopf, Esq., of counsel for respondent, P. Lorillard Co.; John Walsh, Esq., Junius Parker, Esq., Jonathan H. Holmes, Esq., of counsel for respondent, American Tobacco Co. (Inc.).

These cases were argued together and will be considered in one opinion. The petitioner in each of the above-named proceedings was granted an alternative writ of mandamus commanding the respondent to show cause why a peremptory writ should not issue directing that immediately it forthwith deliver into the possession of the Federal Trade Commission the accounts, books, records, documents, memoranda, papers, and correspondence of the respondent for inspection and examination and for the purpose of making copies thereof. The petition upon which the alternative was granted sets forth that on the 16th of September, 1921, a complaint was filed with the Federal Trade Commission against the respondent. The complaint alleged that the respondent in the conduct of its interstate commerce was indulging in practices which were in violation of the provisions of the act of Congress of September 26, 1914 (38 Stat. 717), in that the respondent was using certain methods of business practices resulting in unfair competition, and that it was regulating and fixing, or attempting to regulate and fix, the prices at which the commodities sold by it should be resold by those to whom it had sold them, and was cooperating, aiding, and abetting others to successfully formulate and carry out a scheme or combination pursuant to which the resale prices of respondent's commodities should be fixed and maintained by those to whom respondent had previously sold its products or commodities. Further, that the Senate of the Congress of the United States by a resolution directed the Federal Trade Commission to investigate the tobacco situation in the United States as to the domestic and export trade, with particular reference as to the market price to producers of tobacco and the market price for manufacturing tobacco and the price of leaf tobacco exported, and to report to the Senate as soon as possible the result of such investigation. Petitioner then sets forth that at various times between September 29, 1921, and November 5, 1921, authorized agents of the petitioner in its belief demanded of the respondent to produce and furnish to them at respondent's offices certain specified documentary evidence or written data, correspondence, and other paper writings which were then and there in the possession, custody, and control of the respondent, so that copies thereof or parts thereof might be made. And the respondent, complying with the demands and pursuant to its duty, under the provisions of the Federal trade act, did produce for inspection and examination of petitioner's agents certain of the data commanded, but in violation of provisions of the Federal trade act it refused to produce for inspection and examination "certain documentary evidence, records, correspondence, and writings herein specified which were then and there in respondent's possession, custody, and control, and it refused to permit copies thereof to be made by petitioner." And it set forth that it is necessary in the prosecution of its duty that such inspection and examination be granted to the petitioner's agents and that it is hindered in the performance of its duty and in the exercise of its power by the refusal of the respondent to grant such examination and inspection. Its prayer for relief is that "all papers and telegrams received by the American Tobacco Co. (P. Lorillard Co.) from all of its jobber customers located in different points throughout the United States and also copies

of all letters and telegrams sent by the American Tobacco Co. (P. Lorillard Co.) to such jobbers during the period of January 1, 1921, to December 31, 1921, inclusive," be turned over for examination and inspection. Each respondent resists the application for a peremptory writ, contending that the Federal Trade Commission is asserting authority which it does not possess in seeking to make in unlimited and unrestricted inspection, with the right to copy all of the correspondence with its jobber customers. That the Senate resolution directing the Federal Trade Commission to make the investigation referred to grants no authority for unlimited and unrestricted search, with the right to copy the correspondence. It further contends that sections 5, 6, and 9 of the Federal Trade Commission act give no such authority of unlimited and unrestricted search and examination, and it is said that any such construction or interpretation of the Federal Trade Commission act would be in contravention of the fourth amendment of the Constitution, guaranteeing the right of the people to be secure in their papers and effects against unreasonable searches and seizures and that no warrant shall issue but upon probable cause supported by oath or affirmation. Thus the question is presented whether Congress can delegate visitatorial powers under the commerce clause of the Constitution over private corporations engaged in interstate commerce to the extent of granting unlimited and unrestricted examination and inspection, with the right to copy.

By the act of Congress of September 26, 1914, the Federal Trade Commission was created a body corporate. Its purposes were defined by the statute creating it and its duties and powers and administration are referred to in sections 5, 6, and 9. It is provided by section 9 of the act that, "for the purposes of this act, the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against"; and section 6 of the act provides "That the Commission shall also have power, (a) to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships."

The Constitution provides (Art. 1, sec. 8, d. 3) that Congress shall have power to regulate commerce with foreign nations and among the several States.

Each respondent is conceded to be a private corporation engaged in selling tobacco and its products and is engaged in interstate and intrastate commerce. This investigation was commenced "for the purpose of ascertaining the facts relating to respondent's business." The business of each of the respondents is very extensive, its letters, papers, and other documents making it a business of thousands of letters per month. The affidavits submitted by the respondents set forth a mass of correspondence and other documentary evidence which, if the petitioner prevails in its alleged right to "full and complete access to any and all documentary evidence in the possession and control of the respondent" would, it is alleged, handicap the respondent in its business and entail transactions expense and difficulties. Much of the correspondence relates to transactions bearing upon intrastate commerce only. As to such of the correspondence as bears upon intrastate commerce, the petitioner is not entitled to examination, inspection, or copying any part thereof. The commerce clause of the Constitution granting power to the Congress to legislate as to the commerce permits only of legislation which has to do with interstate commerce. The Federal trade act forbids unfair practices in reference to the commerce of an interstate character only. (*Ward Packing Co. v. Federal Trade Comm.*, 264 Fed. 330.) The commerce clause of the Constitution vested in the Congress a full and complete power to regulate commerce among the several States for the strong arm of the

National Government may be put forth to brush away all obstacles to interstate commerce.” (In re Deb, 158 U. S. 564.) And Constitutional privileges do not change, but their operation extends to new matters as modes of business and the habits of life of the peoples vary with each succeeding generation. The power is the same, but it operates to-day upon modes of interstate commerce unknown to the fathers and will operate with equal force upon any new modes of such commerce which the future may develop.” (Gibbons v. Ogden, 22 U. S. 1.) The power of Congress to legislate embraces not only to regulate and control that which is wholly interstate, but also that which even though intrastate affects the free flow of interstate

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commerce. (Minn. Rate Oases, 230 U. S. 352.) To regulate is the power to enact legislation directly affecting interstate commerce. (United States v. Adair, 152 Fed. 737.) The Constitution having granted to the Congress plenary power to regulate or control commerce among the States, Congress may delegate such duties to investigate and learn conditions to a permanent administrative body.

The validity of the Interstate Commerce Commission act granting to that Commission the power to investigate facts relating to interstate transportation was considered in *Interstate Commerce Commission v. Brimson* (154 U. S. 447). It has been held that the visitorial power of the Federal Government provided for in the act over private corporations must be restricted to activities of an Interstate-commerce character. (*Hale v. Henkel*, 201 U. S. 43; *Interstate Commerce Comm. v. Goodrich Co.*, 224 U.S. 194; *United States v. Basic Products Co.*, 260 Fed. 472.) We must presume that the Congress did not intend by this legislation to invade the field reserved under the Constitution to the several States by interfering with transactions in intrastate commerce. "The statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." (*United States v. Jim Fuey Moy*, 241 U. S. 394; see also *United States v. D. & H. Co.*, 213 U. S. 366.)

The resolution of the Senate provided that "the Federal Trade Commission be, and is hereby, directed to investigate the tobacco situation in the United States as to the domestic and export trade, with particular reference to the market price to producers for tobacco and the market price for manufactured tobacco and the price of leaf tobacco exported, and report to the Senate as soon as possible the result of such investigation." This resolution has not the mandatory effect of statutory enactment with reference to the commerce clause of the Constitution, and the present application for the writ must rest by reason of the command of section 9 of the Federal Trade Commission act, wherein jurisdiction is granted to the district courts of the United States "to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act or any order of the Commission made in pursuance thereof." The resolution of the Senate does not come within the terms of the authority conferred by the statute in question. Under section 6 power is conferred upon the Commission upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation, "but the language of this statute makes it necessary for one of the Houses of Congress to adopt a resolution for a direction to investigate, and reporting such investigation must be for alleged violation of the antitrust acts. The quotation from the resolution of the Senate fails to indicate that it is founded upon any violation or alleged violation of the antitrust law. It does not indicate that the Senate intended that any antitrust law violation should be investigated by the Commission. If so, an apt expression to that effect could have been used. It can not, therefore, be concluded that it was intended in the language used to investigate any violations of the antitrust acts by any corporation. In any case the power of the Federal Trade Commission can not be broader than what Congress did or could delegate. The analogy of the cases arising under the powers of the Interstate Commerce Commission with that of the Federal Trade Commission's powers is pertinent. This was referred to in *Beechnut Packing Co. v. Federal Trade Comm.* (264 Fed. 885). A comparison of the statutes particularly setting forth the procedure under the two acts shows the similarity. In each any person may be compelled to appear and depose and produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission. Both commissions are required to make findings and proceedings before them and the findings must be based upon the testimony given.

In the Harriman case (211 U. S. 417), Justice Holmes said :

“The Commission * * * is given power to require the testimony of witnesses ‘for the purpose of this act.’ The argument for the Commission is that the purposes of the act embraces all the duties that the act imposes and the powers that it gives the Commission; that one of the purposes is that the commission shall keep itself informed as to the manner and method in which the business of carriers is conducted, as required by section 12; that another is that it shall recommend additional legislation * * * and that for either of these general objects it may call on Congress to require anyone whom it may point out to attend and testify if he would avoid the penalties for contempt.

“We are of the opinion, on the contrary, that the purposes of the act for which the commission may exact evidence embraces only complaints for violation of the act, and investigations by the Commission upon matters that might have been made the object of the complaint. As we have already implied, the main purpose of the act was to regulate the interstate commerce business of carriers, and the secondary purpose, that for which the commission was established, was to enforce the regulations enacted. These, in our opinion, are the purposes referred to; in other words, the power to require testimony is limited, as it usually is in English-speaking countries, at least, to the only cases where the sacrifice of privacy is necessary—those where the investigations concern a specific breach of the law.

“If we felt more hesitation than we do, we still feel bound to construe the statute not merely so as to sustain its constitutionality, but so as to avoid a succession of constitutional doubts, so far as candor permits.”

The Interstate Commerce Commission deals with quasi public corporations. But the phrase of the Federal Trade Commission act considered, in view of the language in the Harriman case, would indicate that the right to procure information in its investigations under the provisions of section 6 would not grant the unlimited search and inspection of correspondence with the right to copy the same in the absence of some specific complaint which would point out the materiality to that complaint of the particular correspondence and papers sought to be obtained.

Reading sections 5, 6, and 9, I do not think that Congress intended at the time of the enactment of this law to go beyond the well-recognized principles of limitations with reference to searches and seizures guarded against by the fourth amendment of the Constitution. It is better to deduce the intention that information should only be extracted by the procedure long established in the courts in conformity with the constitutional guaranty against unlawful and unreasonable searches and seizures and the right of people to be secure in their papers and effects therefrom. The fourth amendment provides :

The right of the people to be secure in their * * * papers and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

This command of the Constitution, properly interpreted, is a prohibition against Congress granting powers to the commission for unlimited searches and seizures of letters and documents. The act makes plain the duty of the commission to gather, compile, and publish for use in its proceedings what may be voluntarily offered or submitted in response to request or demand. It may also make investigation independently, but the exercise of visitorial power over private corporations must keep within the restrictions of the fourth amendment. “Neither branch of the legislative department, still less any merely administrative body established by the Congress, possesses or can be vested with a general power of making inquiry into the private affairs of a citizen.” (*Interstate Commerce Comm. v. Brimson*, 154 U. S. 478.)

As was said by Mr. Justice Brewer in *re Pacific Ry. Comm.* (32 Fed. 241):

“There is no doubt that Congress may authorize a commission to obtain information upon any subject which in its judgment it may be important to possess * * *. But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters.”

It is the duty of the court to so construe the act as to save the statute from constitutional infirmity. (*Knights Templar Indemnity Co. v. Jarman*, 187 U. S. 197; *U. S. v. D. & H. Co.*, 213 U. S. 407; *Harriman v. Interstate Commerce Comm.*, 211 U.S. 401.)

Section 6 (b) grants to the commission the right to require corporations coming within its

jurisdiction to make reports concerning their affairs and thus to furnish to the Commission such information as It may require. And subdivision (a) of section 6 calls upon the corporations in question to report upon specific matters as provided in subdivision (1). If the corporations fail in reporting or are false, the commission is entitled, upon properly showing the probable cause, to demand due disclosures and access to the inspection of any specific, necessary, and relevant papers, excluding such papers as may be privileged. In other words, there must appear to be some reasonable cause for a search, such as a definite complaint charging a specific wrong, and this presenting an inquiry which would have reasonable and readily ascertainable limits.

Such a construction of subdivisions (a) and (b) of section 5 would effectuate the Intent of Congress and the procedure Can be kept within constitutional limit (United States v. L. & N. R. R., 236 U. S. 318 ; Veeder v. United States, 252 Fed 414.) Such a construction would seem to be In accord with the discussions In the Senate when this legislation was enacted. (See 51 Congressional Record, part 13, 63d Cong., 2d sess., pp.12747, 128(X), 1280-12811, 12918, 12927.) It was not intended to grant an unlimited power of inquisition or an unlimited right of access to books and papers of private parties not engaged in any public service or a search without basis of some facts tending to establish a charge of wrongdoing.

It is now well established that a corporation is entitled to invoke the guaranties of the fourth amendment against unreasonable searches and seizures in as full a measure as would a person or partnership. (Silverthorne Lumber Co. v. United States, 251 U. S. 385; Coastwise Lumber Co. v. United States, 259 Fed 847.)

In the papers submitted on this application there is no show of the existence of probable cause. The relief prayed for is in general terms and includes all papers and telegrams received by each respondent from its jobber customers located in different points throughout the United States and copies of all letters and telegrams sent by each respondent to such jobbers during the period from January 1, 1921, to December 31, 1921, inclusive. Such general demands made in other warrants of law, such as a subpoena duces tecum, have been condemned as not giving a reasonably accurate description of the papers wanted, either by date, title, substance, or subject to which they relate. (Ex Parte Brown, 72 Mo. 83; Carson v. Hawley, 82 Minn. 204.)

In *Boyd v. United States* (116 U. S. 616), the court quoted with approval Judge Camden's language in *Entick v. Carrington and Three Other King's Messengers* (19 Howell's State Trials, 1029), wherein he said:

"Papers are the owner's goods and chattels; they are his dearest property; and are so far from enduring a seizure that they will hardly bear an inspection; and though the eye can not by the laws of England be guilty of a trespass, yet where private papers are removed and carried away, the secret nature of those goods will be an aggravation of the trespass, and demand more considerable damages in that respect. Where is the written law that gives any magistrate such a power? I can safely answer, there is none; and, therefore, It Is too much for us, without such authority, to pronounce a practice legal which would be subversive of all the comforts of society."

To grant the relief prayed for by the petitioner would be to permit of an unreasonable search and seizure of papers in violation of the fourth amendment. It was not the intention of Congress to grant such unlimited examination and inspection by the legislature in question, nor, indeed, did Congress have authority to do so under the commerce clause of the Constitution. It would be unreasonable and unjust to accede to the demands of the petitioner and the application for the peremptory writ of mandamus against the respondents, American Tobacco Co. and P. Lorillard Co., is denied.

Manton, United States judge.

Dated October 3, 1922.

EXHIBIT 15.

BALTIMORE GRAIN CO. ET AL.

In the District Court of the United States for the District of Maryland.

Federal Trade Commission v. The Baltimore Grain Co.; Federal Trade Commission v. H. C. Jones Co. (Inc.); Federal Trade Commission v. Hammond, Snyder Co. (Inc.).

Rose, District judge :

In these cases the Federal Trade Commission seeks a mandamus to compel the respondents, each a corporation, the first two of Maryland and the last of Delaware, and each of them engaged in foreign and interstate as well as intrastate trade in grain, to permit the petitioners' agents to examine, inspect, and copy respondents' books of account, records, documents, correspondence, and paper writings relating to or bearing upon their business in interstate commerce, and all letters and telegrams passing between the respondents and the latter's jobber customers throughout the United States during the calendar year 1921. The petitions say that the Commission, on its own motion, determined to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practice, and management of the respondents and to investigate and determine the facts of the relation of each of them to other corporations, individuals, associations, and partnerships. The petition further represents that the Commission is also acting in compliance with resolution No. 133 of the Senate of the United States, passed December 22, 1921, directing it to investigate the margins between farm and export prices; the freight and other costs of handling; the profits or losses of the principal exporting firms and corporations and their subsidiary or allied companies and firms; all the facts concerning market manipulations, if any, in connection with large export transactions or otherwise; the organization, ownership, control, interrelationship, foreign subsidiaries, agents, or connections of the concerns engaged in the export of grain, including the extent of their control of the facilities used by them, the organization, methods of operation, and agents used by farm buyers of grain in this country, and other data affecting the demand for a foreign disposition movement and use of American exported grain and report its findings and recommendations thereon as promptly as the various phases of the work are concluded.

In the case of the Federal Trade Commission v. P. Lorillard Co., Judge Manton, sitting in the District Court for the Southern District of New York, has recently elaborately reviewed the statutes and authorities defining or limiting the power of the Federal Trade Commission to compel private corporations to submit their papers to its examination. In that case the petition of the commission, which was denied, set forth facts legally indistinguishable from those alleged in the one at bar.

Here, as there, the resolution of the Senate conferred upon the Commission no authority not already given by law.

United States v. Louisville & Nashville R. R., 236 U. S. 329: The Federal Trade Commission act does empower the Commission, upon the direction of the president or either House of Congress, "to Investigate and report the facts relating to any alleged violation of the antitrust acts by any corporation." The resolution cited in the instant case does not suggest any breach of these acts. The question here is whether the statute creating the Commission entitles it to the inspection for which it asks, and if so, whether the act in that respect is valid.

Paragraph A of section 6 of the statute authorizes the Commission "to gather and compile information concerning, and to investigate from the to the, the organization, business, conduct, practices, and management of any corporation engaged in commerce * * * and its relation to other corporations and to individuals, associations, and partnerships."

Paragraph H provides that the commission may upon its own motion “investigate from time to time trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions may affect the foreign trade of the United States, and to report to Congress thereon * * *.”

Section 9 declares “that for the purpose of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purposes of examination and the right to copy, any documentary evidence of any corporation being investigated or proceeded against * * *.”

The measure originated in the House of Representatives, and the committee which reported it was familiar with what the Supreme Court had said in *Harriman v. Interstate Commerce Commission*, 211 U. S. 243, and it said that in order that the proposed trade commission “may have powers of subpoena and production of books and papers, the language” of the bill “has been expressly made broad enough to permit a full exercise of that power in connection with any kind of investigation which may be undertaken.” (Report of Committee on Interstate and Foreign Commerce, No.533, 63d Cong., 2d sess.)

The Senate Committee on Interstate Commerce, while recognizing that In “the conduct of such special investigations as the commission may deem necessary, it is indispensable that it should have extensive powers of inquiry with the right to subpoena witnesses and require the production of books and papers,” concluded that those conferred upon it were practically the same as were then possessed by the Interstate Commerce Commission and by The Bureau of Corporations. (Report Senate Committee on Interstate Commerce, No.597, 63d Cong., 2d sess.)

The legislative history of the act may suggest that Congress did not intend that the powers of the commission to investigate should be confined to cases In which a complaint had been made, or might have been, but there is no reason to suppose that Congress thought that in other respects it was giving any authority which the Interstate Commerce Commission did not possess.

The precise question here to be decided is whether the statute confers upon the commission the right to inspect and copy the papers of any private corporation engaged in interstate or foreign commerce whenever, in the judgment of the commission, such inspection may furnish information of value to an inquiry it is making as to some economic or commercial problem and when it has no reason to believe that any violation of law has been committed. There can be no question of the timeliness of an investigation into the causes of the marked difference between the prices received by the grain grower and those paid by the ultimate consumer. Many of the farmers have long been convinced that in some way they were victimized by the railroads and the middlemen. The feeling of resentment has become so strong among them that in some of the wheat-growing States it has forced a realignment of political parties and has resulted in the demand for many laws and the enactment of a number of them as to the wisdom of which there is still grave difference of opinion.

The problems involved are of unusual perplexity. The causes of the evil most complained of are still obscure to many. Congress and the people need all the light they can get. The more thorough the inquiry the more valuable its results should be, provided the investigators do not gather so much material that they will be unable to see the woods for the trees.

That is one side of the question. There is another. The respondents In these cases are private corporations, by which various individuals more conveniently carry on that trade of corn merchants which antedates the beginning of recorded History. They have and exercise no franchises other than that of being corporations. They are not engaged in rendering public service, except in the sense that such service is rendered by everyone who follows any useful calling. To them the demand that they shall be compelled to let strangers, officials though they

be, go through not only their books of account but their correspondence files as well seems outrageous. In their belief the gain to the public from anything which such an inquiry can probably or possibly reveal seems slight as compared with the annoyance and sense of wrong it will cause them. If they are right the search and seizure asked for would be unreasonable, and therefore forbidden. The prohibition of unreasonable and the sanction of reasonable search and seizure is simply a practical compromise between two conflicting rights.

For upward of a century and a half there has been no doubt that general warrants are forbidden. No official can be given authority to rummage through the papers of an individual without the latter's consent in the hope that something or other may be discovered useful for some public purpose. A corpora-

tion's rights as against the sovereign which created it or permits It to do business within its borders are not, It is true, the same as those of a natural person. It is the creature of the State. He is not. The State may exclude it, while lie may freely come in. As a condition of obtaining a charter, or under some circumstances of retaining it or doing business under it, it is probable the State might reserve a right to an unlimited inspection of all corporations' books and papers. But that question is not here presented. As was said In *Silverthorne Lumber Co. v. United States* (251 U.S. at 392), "The rights of a corporation against unlawful search and seizure are to be protected even if the same result might have been achieved In a lawful way." It is not necessary for the purposes of the instant case to inquire whether the United States may exercise over a corporation engaged in interstate or foreign commerce all the powers which are possessed by the State which chartered it. Even if it may, the wording of the statute, broad and general as in some respect it is, does not suggest that Congress Intended to strike down as respects private corporations engaged in inter-state commerce all the limitations which for 150 years or more had protected private papers from searches under general warrants. Nor is there anything in the legislative history of the act to suggest that the legislators supposed that they were taking so radical a step, or that they were raising a constitutional question of serious and far-reaching character. Unquestionably some of them wanted to authorize the compulsory examination of the papers of a corporation, although no complaint of a specific violation of law was pending against it or was in contemplation. Very possibly that much could be done, some of the things which were said In *Harriman v. Interstate Commerce Commission*, supra, to the contrary notwithstanding; *Smith v. Interstate Commerce Commission* (245 U. S. 44). But so far as concerns nonpublic service corporations, at least, the inquiry in which the commission is engaged, whatever it is, must be more or less definite and restricted in its character, so that the activities of its minor agents, to whom in practice the actual searching must necessarily be confided, can be kept within some bounds. Very possibly, to sustain any right of inspection and searching, It must also appear that there la some reasonable proportion between the public value of the information likely to be obtained and the private annoyance and irritation It will occasion.

With these general principles In mind, it will be noted that the act gives the commission power "to investigate the organization, business, conduct, practices, and management of any corporation engaged in" (interstate or foreign) "commerce and its relation to other corporations, and to individuals, associations, and partnerships," and that the right of access to papers and books is limited to those of a corporation being investigated or proceeded against. That much of a restriction the statute itself imposes. Whether it may, to that extent, authorize the examination of a private corporation's papers need not be here considered. These corporations are not being proceeded against. Are they, in the sense of the statute, being "investigated"? The investigation which the commission has In hand, and for which it is here seeking information, is, strictly speaking, not of them or of the scores or, perhaps, hundreds of other corporations whose papers it wishes to inspect, but of the conditions affecting one of the most important branches of our national trade. To make such an investigation scientifically complete, it may well be desirable to find out precisely how not only the corporations engaged in it conduct their business, but to obtain the same fullness of information concerning the individuals or firms concerned in it, but the portions of the statute with which we are now dealing give no authority to inspect papers of any natural person. Is there not a fair presumption that the investigation mentioned in the statute was one of another character than the one now being carried on, and that it was to be an inquiry into the way the particular corporation itself conducted its business, having as its substantial object the ascertainment of facts concerning that corporation, and as its ultimate end the possibility that in some way such corporate body might be required to mend Its

ways? If that be not the true construction of the act, and if it really means that whenever the commission thinks best to make an inquiry into the way in which some great department of commerce is carried on, it may send its employees into the office of every private corporation which does an interstate business in that line and empower them to go through the company's books, correspondence, and other papers. I am satisfied it goes beyond any power which Congress can confer, in this way at least.

It follows that the petitions for writs of mandamus must be denied.

United States of America, District of Maryland, to wit :

I, Arthur L. Spamer, clerk of the District Court of the United States for the District of Maryland, do hereby certify that the foregoing is a true copy of the opinion of the court, which was filed on the 20th day of November, 1922, In the therein entitled cases of Federal Trade Commission v. the Baltimore Grain Co.; Federal Trade Commission v. H. C. Jones Co. (Inc.); Federal Trade Commission v. Hammond, Snyder Co. (Inc.) , No.301 equity, In said district court.

In testimony whereof I hereunto set my hand and affix the seal of the said district court this 21st day of November, 1922.

[SEAL]

ARTHURL. SPAMER, *Clerk.*

EXHIBIT 16.

PROCEEDINGS PENDING JUNE 30, 1923.

Complaint No. 82.--Federal Trade Commission v. Photo-Engravers' Club of Chicago. Charge: Adopting a standard scale of uniform prices at which the members sell their products, with the intent of stifling and suppressing competition in the manufacture and sale of photoengraving, the respondent having entered into an agreement with the Chicago Photo-Engravers' Union No. 5, I. P. E. U., by the terms of which the respondent's members employ only union labor in their manufacturing plants and the members of the union do not accept employment from any manufacturing photoengraver not a member of the respondent club. In furtherance of such agreement the union has adopted a rule whereby union labor is to cease working in photoengraving plants which do not maintain such standard scale of prices, and has initiated a series of fines and threats to withdraw labor, thereby compelling members to maintain such prices against their will, all in alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial. (Consolidated with Doc. 928.)

Complaint No. 123.--Federal Trade Commission v. American Can Co. Charge : Price discrimination and price fixing on condition that the purchasers shall not use or deal in the products of competitors, the effect of which is to substantially lessen competition and to tend to create a monopoly in the tin-can business in alleged violation of sections 2 and 3 of the Clayton Act; stifling and suppressing competition in the manufacture and sale of tin cans by attempting to induce customers to enter into long-term contracts by giving certain customers more favorable terms than others in reference to allowances for leaky cans and storage privileges, by rebating if prices are lowered, and by other discriminations, in alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 157.--Federal Trade Commission v. Saenger Amusement Co. Charge : Stifling and suppressing competition in the purchase and sale, lease, and exhibition of moving-picture films by forcing exchanges to accept its terms on threat to cause exhibitors to refuse to handle otherwise; causing contracts between exhibitors and exchanges to be broken by divers means and methods, including prior exhibition of films in neighboring theaters after "first exhibition" had been advertised by the other; threatening withdrawal of patronage if exchanges continued to supply exchanges; threatening curtailing supply unless exhibitors dealt with respondent; inducing employees of competitors to leave their employment, all in alleged violation of section 5 of the Federal Trade Commission act. Status : On suspense pending close of docket 835.

Complaint No. 163.--Federal Trade Commission v. Armour & Co. Charge : Stifling and suppressing competition in the manufacture and sale of dairy products by concealing its control of and affiliation with Beer Bros. Co., a creamery company, while directing the efforts and business of said company; discriminating in prices paid for butterfat or cream; and by purchasing and offering to purchase butterfat or cream in certain localities at prices unwarranted by trade conditions and so high as to be prohibitive to small competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 168.--Federal Trade Commission v. The National Wholesale Druggists' Association et al. Charge : Engaging in a combination or conspiracy among themselves with the intent, purpose, and effect of discouraging, stifling, and suppressing competition in the wholesale drug trade and of unfairly hampering and obstructing certain of their competitors by inducing or compelling manufacturers to refuse to recognize competitors as jobbers, and as entitled to the benefits such competitors as jobbers would receive by means of oral and written notices to manufacturers to the effect that certain competitors not eligible to membership in the association were not entitled to recognition as

jobbers; the appointment of committees to confer with manufacturers to the end that they adopt sales methods in harmony with the policies of the association, written and oral notices by the secretary of the association to manufacturers to the effect that competitors are selling below the manufacturers' established resale price, or that such competitors are persistent price cutters; the compilation and distribution among manufacturers and wholesalers of lists of so-called legitimate jobbers, and by bringing influence to bear on various local associations of drug jobbers and wholesalers to adopt policies in harmony with the policies of the association, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 266.--Federal Trade Commission v. Pictorial Review Co. Charge : Using unfair methods of competition in the sale of paper dress patterns, consisting of selling patterns to dealers under a contract permitting the dealer to return all unsold patterns on the termination of contract at three-fourths of the cost thereof, upon the condition that during the continuance of such contracts they have sold no patterns except those manufactured by respondent, or shall have sold such patterns at the prices fixed by respondent, in alleged violation of section 5 of the Federal Trade Commission act; selling and making contracts for sale of its paper dress patterns on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the patterns of competitors, the effect of which is to substantially lessen competition or tend to create a monopoly in violation of section 3 of the Clayton Act. Status : On suspense, awaiting the outcome of the Butterick Co.- case. (Dec. 594.)

Complaint No. 303.--Federal Trade Commission v. Utah-Idaho Sugar Co., Amalgamated Sugar Co., E. R. Wooley, A. P. Cooper, and E. F. Cullen. Charge : Using unfair methods of competition in connection with the manufacture and sale of beet sugar, consisting in the circulation of false and misleading reports concerning the business, methods, and financial standing of competitors and the inability of competitors to produce sugar, due to the alleged fact that all the producing territory is controlled by respondent; making long-term contracts with growers in territories where competitors were intending to erect factories; causing railroads to delay building tracks and other facilities for competitors, and causing banks to withhold credit; spying upon the private and business affairs of competitors; establishing factories and buying imp supplies in territories about to be occupied by competitors; preventing manufacturers of machinery from supplying competitors; secretly paying others to institute litigation against competitors and furnishing money to secret agents for the purpose of acquiring the controlling interest in the business of competitors, in alleged violation of section 5 of the Federal Trade Commission act. Status : This proceeding is now before the Commission for final determination.

Complaint No. 424.--Federal Trade Commission v. Lautz Bros. & Co. Charge : Using unfair methods of competition in the sale of soap and washing powders by guaranteeing its jobbers in the wholesale grocery trade against the decline in price of goods purchased and not resold by such customers at the time of any subsequent decline in the respondent's list price thereof; and in the event of decline in price of goods giving to such jobbers rebates equal to the difference between the purchase price of such products as were undisposed of and respondent's lower list price therefor subsequently made, with the effect of obtaining for respondent an unfair and undue advantage over competitors who do not follow this practice; relieving respondent's jobbers from risk of loss and encouraging such jobbers to hold in stock excessively large quantities of respondent's product for the purpose of realizing a speculative profit thereby and deterring respondent from reducing list prices of its product in accordance with reductions in cost of manufacturing, in alleged violation of section 5 of the Federal Trade Commission act. Status : Pending before Commission.

Complaint No. 425.--Federal Trade Commission v. Fels & Co. Charge : Using unfair methods of competition in the sale of soap and soap powders. (Ante, complaint No.424.) Status : (Ante, complaint No.424.)

Complaint No 426.--Federal Trade Commission v. The Globe Soap Co. Charge : Using unfair methods of competition in the sale of soap, soap powders, and other cleansing compounds. (Ante, complaint No.424.-) Status : (Ante, complaint No.424.)

Complaint No. 427.--Federal Trade Commission v. B T Babbitt (Inc.). Charge : Using unfair methods of competition in the sale of soap, soap powders, and other cleansing compounds. (Ante, complaint No.424.) Status : (Ante, complaint No.424.)

Complaint No. 428.--Federal Trade Commission v. Curtice Bros. Co. Charge: Using unfair methods of competition In the sale of canned food products. (Ante, complaint No.424.) Status: At issue.

Complaint No. 429.--Federal Trade Commission v. Joseph Campbell Co. Charge : Using unfair methods of competition In the sale of canned soups. (Ante, complaint No.424.) Status : At issue.

Complaint No. 446.--Federal Trade Commission v. Van Camp Packing Co. and Van Camp Products Co. Charge : Using unfair methods of competition In the ho sale of canned food products. (Ante, complaint No. 424.) Status : At issue.

Complaint No. 449.--Federal Trade Commission v. Wilson & Co. (Inc.-). Charge : That the respondent purchased all the property of the Morton Gregson Co., a Nebraska corporation, theretofore engaged In the same line of business as respondent and In active competition with it, and thereafter organized under the laws of the State of Delaware a subsidiary corporation called the "Morton Gregson Co.," which proceeded to take over the property thus purchased and to operate the business of the salol Nebraska corporation, with the effect of eliminating competition previously existing between Morton Gregson Co., the Nebraska corporation, and the respondent, In alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: Awaiting answer to third amended complaint.

Complaint No 450.--Federal Trade Commission v. Wilson & Co. (Inc.). Charge : That the respondent acquired the whole of the common or voting stock of the Paul O. Reyman Co., a corporation, the effect of such acquisition being to enable respondent to completely dominate the business and policy of said Paul O. Reyman Co., to restrain competition between said respondent and said Paul O. Reyman Co., and to tend to create a monopoly In the sale of meats and like products, In alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status : Awaiting examiner's findings.

Complaint No. 451.--Federal Trade Commission v. The Cudahy Packing Co.-Charge : That respondent acquired 55 per cent of the shares of capital stock of the Nagle Packing Co., a competitor; 95 per cent of the capital stock of the D. E. Wood Butter Co., a competitor; and that a subsidiary corporation, the Dow Cheese Co., purchased the business and good will of a competitor, the A C. Dow Co., with the effect that respondent has dominated the business of the Nagle Packing Co. and the D. E. Wood Butter Co., and has eliminated competition theretofore existing between the three above-mentioned companies and the respondent, In alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status : Dismissed iii part and In course of trial as to remainder.

Complaint No. 452.--Federal Trade Commission v. Morris & Co. Charge : That the respondent acquired approximately 75 per cent of the capital stock of the Crescent City Stock Yard & Slaughter House Co., a competitor; that It acquired stock In the Bluefield Produce & Provision Co.; that It acquired the whole of the capital stock of the Holland Butterine Co., and held the same out to the public as wholly Independent and without connection with respondent; that it acquired 66 per cent of the common stock of the Providence Churning Co., a competitor, and organized a corporation to take over and succeed to the business and property of said Providence Churning Co.; that it acquired one-half of the entire capital stock of the Eskerson Co., a competitor; that it acquired one-half of the capital stock of the Jacob Marty Co., a competitor; that It acquired one-half of the capital stock of the C. A. Straubel Co., a competitor; and acquired \$64,300 of the capital stock of the Sherman, White Co., whose entire stock was \$123,700; and that the result of such acquisition is the domination by respondent of some of the above-mentioned companies, the elimination of competition theretofore existing between the above-mentioned companies and the respondent, and the creation of conditions which tend to create a monopoly, In alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status : In course of trial.

Complaint No. 454.--Federal Trade Commission v. Swift & Co., and United Dressed Beef Co. Charge: That the respondent caused its subsidiary, United Dressed Beef Co., to acquire all of the capital stock of J. J. Harrington & Co. (Inc.), which acquisition resulted In the control by Swift & Co. of the business theretofore conducted and controlled by said J. J. Harrington & Co. (Inc.), elimination of competition between respondents, Swift & Co. and United Dressed Beef Co. and J. J. Harrington & Co. (Inc.), and a tendency to create for respondent, Swift & Co., a monopoly In alleged violation of section 5 of the

Federal Trade Commission act and section 7 of the Clayton Act. Status : Awaiting examiner's findings.

Complaint No. 455.--Federal Trade Commission v. Armour & Co. Charge : That respondent acquired three-fifths of the capital stock of Harold L. Brown Co. (Inc.), a competitor, which company had previously acquired the capital stock and business of Beer Bros. Commission Co., and also the capital stock and business of Beer Bros. Co.; that It acquired as vendee and pledgee a controlling amount of the capital stock of the Eau Claire Creamery Co.; that It acquired through its agents 503 of the 1,000 shares of the capital stock of the Loudon Packing Co., an Ohio corporation, which corporation transferred all its business and property to the Loudon Packing Co., a Delaware corporation, In consideration of all of the stock of the Delaware corporation, consisting of 1,000 shares, 503 of which are held by agents of respondent In trust for respondent; that it acquired one-half of the capital stock of the A. S. Kinimoth Produce Co.; that It acquired the entire capital stock of the Pacific Creamery, which company the respondent held out and advertised as wholly independent without connection with respondent; and acquired 501 shares of the capital stock of Smith, Richardson & Conroy, a Florida corporation, and that the result of such acquisitions by respondent is the domination by respondent of the business of some of the above-mentioned companies the elimination of competition between the above-mentioned companies, and the creation of conditions which tend to create a monopoly, In alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status : Commission's testimony In chief completed.

Complaint No. 457.--Federal Trade Commission v. Western Meat Co. and Nevada Packing Co. Charge: That respondents have violated section 5 of the Federal Trade Commission act and section 8 of the Clayton Act by having F. L. Washburn, a director of both the Western Meat Co. and the Nevada Packing Co. (between which companies competition existed) , and illegally acquiring, by the Western Meat Co., the capital stock of the Nevada Packing Co., which acquisition suspended between respondents competition which theretofore existed between them and tended to create a monopoly. Status : Held pending action of respondent In docket 456, In which case the Commission entered its order to divest stock on February 2, 1923.

Complaint No. 459.--Federal Trade Commission v. United Typothetae of America, Benjamin P. Moulton, Arthur E. Southworth, Charles L. Kingsley, George H. Gardner, E. H. James, Fred W. Gage, and Joseph A.- Borden. Charge : Using unfair methods of competition by inaugurating a campaign known as the "three-year plan" for the purpose of collecting assessments from manufacturers and merchants who sell paper, Printing presses, type. ink, and other supplies to employing printers and other associations allied to the Printing industry, the money to be used mainly for the purpose of inducing employing printers to use a uniform system of cost accounting and a standard price list compiled by the respondent; using coercive methods to obtain subscriptions to the "three-year-plan" fund; adopting through its "trade-matter committee" a practice of attempting to control the matter of terms on which manufacturers of Printing presses, etc., sell their output to Printing establishments, and attempting to have such manufacturers refuse to place any of their presses, etc., In any Printing establishment until a cash payment equal to 25 per cent of the amount of the total purchase price be paid urging printers to adopt a "standard cost system" and "standard price list," for the purpose of establishing a uniform scale of prices throughout the Printing Industry, In alleged violation of section 5 of the Federal Trade Commission act. Status : Before Commission for final determination.

Complaint No. 472.--Federal Trade Commission v. Pioneer Paper Co. Charge : Using unfair methods of competition by falsely advertising its products as rubber, and using the terms "one ply," "two ply," and "three ply," to designate and describe the different degrees of thickness of its product, when the different degrees of thickness consist of but one layer or ply, with the effect of misleading and deceiving the public, and giving the respondent's product an undue preference over products of competitors who do not use such methods, In alleged violation of section 5 of the Federal Trade Commission act. Status of dockets 472 to 490, inclusive: Stipulations have been signed in 12 of these cases. Docket 485 is in course of trial. Stipulations in the six remaining cases will be executed after docket 485 is tried. All were formerly on suspense awaiting decision in the Winsted case.

Complaint No. 473.--Federal Trade Commission v. Western Elaterite Roofing Co. Charge: (Ante, complaint No.472.) Status: (Ante, complaint No.472.)

Complaint No 474.--Federal Trade Commission v. Sifo Products Co. Charge: (Ante, complaint No 472.) Status : (Ante, complaint No. 472.)

Complaint No. 475.--Federal Trade Commission v. Oertell Roofing Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 476.--Federal Trade Commission v. Stowell Manufacturing Co. Charge : (Ante, complaint No. 472.) Status : (Ante, complaint No.472.)

Complaint No. 477.--Federal Trade Commission v. Beckman-Dawson Co. Charge : (Ante, complaint No.472.) Status : (Ante, complaint No.472.)

Complaint No. 478.--Federal Trade Commission V. Durable Roofing Manufacturing Co. Charge : (Ante, complaint No.472.) Status : (Ante, complaint No.472.)

Complaint No. 479.--Federal Trade Commission v. McHenry-Millhouse Manufacturing Co. Charge: (Ante, complaint No. 472.) Status : (Ante, complaint No.472.)

Complaint No. 480.--Federal Trade Commission v. International Roofing Manufacturing Co. Charge: (Ante, complaint No.472.) Status : (Ante, com-plaint No. 472.)

Complaint No 481.--Federal Trade Commission v. Amalgamated Roofing Co. Charge : (Ante, complaint No.472.) Status : (Ante, complaint No.472.)

Complaint No. 482.--Federal Trade Commission v. The Chatfield Manufacturing Co. Charge : (Ante, complaint No.472.) Status: (Ante, complaint No. 472.)

Complaint No. 483.--Federal Trade Commission v. H. W. Jolins-Manville Co. Charge : (Ante, complaint No.472.) Status : (Ante, complaint No.472.)

Complaint No. 484.--Federal Trade Commission v. Keystone Roofing Manufacturing Co. Charge : (Ante, complaint No.472.) Status : (Ante, complaint No.472.)

Complaint No. 485.--Federal Trade Commission v. The Barrett Co. Charge : (Ante, complaint No.472.) Status : (Ante, complaint No.472.)

Complaint No. 486.--Federal Trade Commission v. Patent Vulcanite Roofing Co. Charge : (Ante, complaint No.472.) Status : (Ante, complaint No.472.)

Complaint No. 487.--Federal Trade Commission v. Philip Carey Manufacturing Co. Charge: (Ante, complaint No. 472.) Status: (Ante, complaint No. 472.)

Complaint No. 488.--Federal Trade Commission v. H. F. Watson Co. Charge : (Ante, complaint No.472.) Status : (Ante, complaint No.472.)

Complaint No. 489.--Federal Trade Commission v. The Paraffine Companies. Charge : (Ante, complain No.472.) Status : (Ante, complaint No.472.)

Complaint No. 490.--Federal Trade Commission v. Sylvester L. Weaver, trading as the Weaver Roof Co. Charge : (Ante, complaint No. 472.) Status : (Ante, complaint No. 472.)

Complaint No . 522.--Federal Trade Commission v. Rub-No-More Co. Charge : Using unfair competition iii the sale of soaps. Status : (Ante. complaint No. 424.)

Complaint No 531.--Federal Trade Commission v. Armour & Co. Charge. Organizing apparently independent companies for the purpose of taking over the business and property of the Lookout Refining Co. and the Chattanooga Oxygen Gas Co., and the Harris Tannery Co., competitors of respondent, the capital stock of thee independent companies being held by officers and employees or agents of respondents with the purpose or effect of restraining and eliminating competition and tending to create a monopoly, In alleged violation of section 5 of the Federal Trade Commission act acid section 7 of the Clayton Act. Status : At issue.

Complaint No. 540.--Federal Trade Commission v Roy al Baking Powder Co. Charge : Using unfair methods of competition h)y unfairly representing and charging that its competitors' products contain alum to wit sodium aluminum sulphate (SaS), and are harmful, unhealthful, deleterious and dangerous to users and consumers of such baking powders, In alleged violation of section 5 of the Federal Trade Commission act. Status : Preparing for trial.

Complaint No. 549.--Federal Trade Commission v. Cement Securities Co. Charge : Using unfair methods of competition by purchasing the whole of the stock and share capital of the Oklahoma Portland Cement Co., a competitor; purchasing and acquiring \$392,300 of preferred stock of a total of \$400,000, and \$195,750 of the common stock of a total of \$199,750 of the United States Portland Cement Co.; and purchasing and acquiring all of the preferred stock of the Nebraska Cement Co., In alleged violation of section 5 of the Federal Trade

Commission act and section 7 of the Clayton Act. Status : Suspended, pending action by the Department of Justice.

Complaint No. 551.--Federal Trade Commission v. Armour & Co. Charge :Using unfair methods of competition by adopting and maintaining a practice of offering, giving, and allowing certain benefits and advantages to purchasers In the way of free advertising, services of specialty salesmen, and payment of dealers' license fee, on the condition that such purchasers agree to purchase all or a large percentage of their supplies of Butterine and oleomargarine from the respondent, In alleged violation of section 5 of the Federal Trade Commission act; and entering into contracts with a large number of purchasers of its said products at prices, In quantities, and for periods therein specified upon the condition, agreement, or understanding In the case of each contract that the purchaser named therein shall purchase all or a large percentage of the oleomargarine and Butterine needed by said purchaser of the respondent, In alleged violation of section 3 of the Clayton act. Status : On suspense pending final decision of courts In docket 550. (Federal Trade Commission v. B. S. Pearsall Butter Co. now awaiting decision by the Circuit Court of Appeals for the Seventh Circuit.)

Complaint No. 552.--Federal Trade Commission v. Swift & Co. Charge: (Ante, complaint No.551.) Status : (Ante, complaint No.551.)

Complaint No. 553.--Federal Trade Commission v. Downey-Farrel Co. Charge :(Ante, complaint No.551.) Status : (Ante, complaint No.551.)

Complaint No. 554.--Federal Trade Commission v. Wm. J. Moxley (Inc.). Charge : (Ante, complaint No. 551.) Status : (Ante, complaint No.551.)

Complaint No. 555.--Federal Trade Commission v. The Ed. S. Vail Butterine Co. Charge : (Ante, complaint No.551.) Status : (Ante, complaint No.551.)

Complaint No. 559.--Federal Trade Commission v. Troco Nut Butter Co.--Charge : (Ante, complaint No.551.) Status : (Ante, complaint No. 551.)

Complaint No. 560.--Federal Trade Commission v. Friedman Manufacturing Co. Charge : (Ante, complaint No.551.) Status : (Ante, complaint No.551.)

Complaint No. 573.--Federal Trade Commission v. Owens Bottle Co. Charge : That respondents have violated section 3 of the Clayton Act by entering into licensing agreements for the use of its glass-blowing machines with the principal manufacturers In the United States of glass bottles, jars, and other glass products, upon the express condition, agreement, and understanding In each licensing agreement that the licensee named therein shall not use respondent's machine In connection with the machine or devices of competitors, with the effect of excluding and debarring competitors of respondent from securing sales of their machines or devices In commerce and lessening competition therein; that respondent has violated section 7 of the Clayton Act by acquiring 4,836 shares of the capital stock of the Whitney Glass Works, a competitor; the whole of the capital stock of the American Bottle Co., a competitor; and the whole of the capital stock of the Graham Glass Co., with the effect of eliminating competition In sections and communities theretofore served by said com-panics; and that respondents have violated section 8 of said Clayton Act by having L. S. Stoehr a director of both the American Bottle Co. and the Graham Glass Co. since respondent acquired the capital stock of said companies. Status : Additional testimony to be taken about July 23, 1923.

Complaint No. 578.-Federal Trade Commission v. Swift & Co., Libby, McNeill & Libby (of Illinois) and Libby, McNeill & Libby (Ltd.) (of Honolulu) . Charge : That the respondent, Libby, McNeill & Libby, In effect a subsidiary of the respondent, Swift & Co., acquired all of the share capital of the Thomas Pineapple Co.; the share, capital. property, and business of the Honolulu Pineapple Co.; Kahaluu Pineapple & Range Co. (Ltd.); and Koolau Fruit Co. (Ltd.) , with the effect of substantially lessening competition In the sale of pineapples In the Territory of Hawaii and creating a condition which tended to create for respondents a monopoly In the growing and sale of pineapples, In alleged violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission act. Status : On suspense pending court decisions In dockets Nos. 351 and 453, being the Commission's proceedings against Armour & Co. and Swift & Co., respectively, both of which are on appeal In the United States Circuit Court of Appeals for the seventh circuit.

Complaint No. 591.--Federal Trade Commission v. One-piece Bifocal Lens Co., a corporation. Charge: Using unfair methods of competition by adopting an elaborate system of licensing and price fixing by which respondent's product is manufactured In part by certain licensee manufacturers to a specified degree of utility, and thereupon sold by such manufacturing licensee to other finishing

or retailing licensees who complete the product and sell and distribute the same, the price or prices thereof being at all stages in the progress of the article prescribed and rigidly maintained by the express terms and conditions of its licensing agreements and by the refusing of respondent to sell to those who do not maintain such resale prices, in alleged violation of section 5 of the Federal Trade Commission act; and by agreements with certain of its so-called licensees, and on the agreement or understanding that such licensee shall not use or deal in the product of a competitor or competitors of respondent with the effect of substantially lessening competition or tending to create a monopoly, in alleged violation of section 3 of the Clayton Act. Status : Awaiting examiner's findings.

Complaint No 594.--Federal Trade Commission v. Butterick Co., Federal Publishing Co., Standard Fashion Co., Butterick Publishing Co., New Idea Pattern Co., and Designer Publishing Co. Charges : Using unfair methods of competition by entering into contracts with approximately 20,000 retail dry goods dealers whereby its paper dress patterns are to be resold at certain prices fixed and established by respondents, and refusing to sell to those who do not maintain such resale prices, iii alleged violation of section 5 of the Federal Trade Commission act ; and entering into contracts whereby its dealers are prohibited from dealing in patterns manufactured by competitors of respondents, and enforcing such contracts by refusal to sell to such dealers who do not maintain such agreements and by threats of suits and institution of suits for damages, in alleged violation of section 3 of the Clayton Act. Status: This is proceeding is now before the commission for final determination.

Complaint No. 626.--Federal Trade Commission v. Gulf Ship Chandlery Co. Charge : Unfair methods of competition in that the respondent, engaged in the sale of ship chandlery, etc. has given valuable gifts, cash commissions, and gratuities to captains and other officers of ships to induce them to purchase ship chandlery and supplies from the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status : Suspended because of the action of the Supreme Court of the United States in denying petitions for writs of certiorari in the Winslow and Norden cases. (Dockets 458 and 614.)

Complaint No. 648.--Federal Trade Commission v. Alabama Dry Dock & Ship Building Co. (Inc). Charge : Unfair methods of competition in that the respondent, engaged in the business of repairing ships and furnishing repair parts, has given to captains and other officers and employees of vessels valuable gifts, cash commissions, and gratuities as an inducement to have the ships operated by them for the owners thereof repaired by the respondent in alleged violation of section 5 of the Federal Trade Commission act. Status : (Ante, complaint No.626.)

Complaint No. 694.--Federal Trade Commission v. The Chamber of Commerce of Minneapolis; the officers, board of directors, and members of the Chamber of Commerce of Minneapolis; Manager Publishing Co.; John H. Adams ; and John F. Fleming. Charges : Using unfair methods of competition by engaging in a confederation and conspiracy to annoy and embarrass and destroy the business of the Equity Cooperative Exchange, a competitor of the respondent chamber of commerce and its members in the selling, buying, and distribution of grain, by (a) the publication of false and misleading statements concerning the said cooperative exchange, particularly in the publications of the respondent publishing company; (b) the instigation and preparation for trial of certain litigation; (c) refusal to make available to said cooperative exchange and its members the telegraphic market quotation service supplied by the respondents; (d) the boycott of and persistent refusal to buy grain from the said cooperative exchange; (e) the suppression of competition among members of the respondent chamber of commerce and discrimination against nonmembers; and (f) by the means of contracts binding country shippers to slump all or a greater part of their grain to the respondent chamber of commerce members, in alleged violation of section 5 of the Federal Trade Commission act. Status : Before commission for final determination.

Complaint No. 705.--Federal Trade Commission v. S. Davidson Co., D. R Davidson, S. Davidson, and M. A. Davidson. Charge: Using unfair methods of competition in the sale of ship chandlery by giving expensive gifts and large sums of money in the form of cash commissions to officers and employees of ships to induce them to purchase ship-chandlery supplies from the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status : (Ante, complaint No.626.)

Complaint No. 726.--Federal Trade Commission v. Constantine Calevas, Joseph Garcia, and E. A. Piller, partners, styling themselves Garcin, Piller & Co., and Calevas Bros. Charge : Using unfair methods of competition In the sale of ship chandlery, including stewards' supplies, deck, engine, and cabin supplies, by giving to captains and other officers of vessels valuable gifts, cash commissions, and gratuities to induce them to purchase supplies from the respondents, In alleged violation of section 5 of the Federal Trade Commission act. Status : (Ante, complaint No.626.)

Complaint No. 728.--Federal Trade Commission v. American Safety Razor Corporation.- Charge : Using unfair methods of competition by the use of advertising matter containing false and misleading statements concerning the quality of material and workmanship entering into shaving brushes sold by it and by placing deceptive labels on the containers of such brushes with the effect of misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Ready for oral argument.

Complaint No 740.--Federal Trade Commission v. Prichard & Constance (Inc.). Charge : Using unfair methods of competition In the manufacture of cosmetics and toilet articles by adopting and maintaining a system of fixing the resale price of its products and refusing to sell until prospective customers have given written assurance that the resale prices fixed by respondent will be maintained, In alleged violation of section 5 of the Federal Trade Commission act. Status : Before commission for final determination.

Complaint No. 742.--Federal Trade Commission v. F. B. Dunn, R T Harris, L. G. Wright, T E. Lester, 5. 11 Miles, George F. Burton, F. L. McCoy, and J. H. Darby. Charge : Using unfair methods of competition In the sale of the capital stock of the Congressional Oil Co. by the use of said company as a device for the disposition of certain oil leases at exclusive and fictitious prices; by published false and misleading statements relative to the company's property, earnings, and prospects, and by deceiving the purchasing public by numerous fraudulent schemes of promotion, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting briefs.

Complaint No 745.--Federal Trade Commission v. Austin, Nichols & Co. (Inc.) (Virginia). Charge: That Austin, Nichols & Co. (Inc.) entered into an agreement with Wilson & Co. (Inc.) for the acquisition of the Wilson & Co. (Whiteland, Ind.) vegetable-canning plant and control of the Fame Canning Co. and Wilson Fisheries Co. In anticipation of a consent decree resulting from the prosecution of a suit in equity brought by the Attorney General of the United States, by which decree Wilson & Co. (Inc.) were perpetually enjoined from engaging in business unrelated to the meat-packing industry. The respondent, incorporated to effect the consolidation of all the properties, now holds control thereof, and is charged with the suppressing of competition, tending to create a monopoly In the grocery and food-product business, In alleged violation of section 7 of the Clayton Act. Status : Further testimony to be taken.

Complaint No. 746.--Federal Trade Commission v. W. J. Chapman. Charge : Using unfair methods of competition by offering and giving to captains of vessels cash gratuities to induce them to purchase ship chandlery, steward's supplies, deck, engine, and cabin supplies from the respondent, In alleged violation of section 5 of the Federal Trade Commission act. Status : (Ante, complaint No.626).

Complaint No 760.--Federal Trade Commission v. United States Steel Corporation, American Bridge Co., American Sheet & Tin Plate Co., Carnegie Steel Co., National Tube Co., American Steel & Wire Co., Illinois Steel Co., Minnesota Steel Co., Clairton Steel Co., Union Steel Co., the Lorain Steel Co., and the Tennessee Coal, Iron & Railroad Co. Charge : Using unfair methods of competition and discrimination In prices, In that the United States Steel Corporation and its subsidiaries In fixing the price of steel which is made and used In such centers as Chicago, Duluth, and Birmingham upon the price f. o. b. mill at Pittsburgh, plus the freight rates from Pittsburgh to such centers. operates as a discrimination In price In favor of Pittsburgh fabricators as against fabricators In Chicago, Duluth, and Birmingham districts, In violation of section 2 of the Clayton Act and section 5 of the Federal Trade Commission act. Status : Testimony being taken.

Complaint No. 767.--Federal Trade Commission v. Wichita-Engle Oil Co., E. U. Engle, C. T Engle, and W. S. Pratt. Charge : Using unfair methods of

competition in the sale of the capital stock of the respondent company by the use of false and misleading statements respecting the location, owners, productivity, and value of respondent's oil interests, with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : Before commission for final determination.

Complaint No. 775.--Federal Trade Commission v. Swift & Co., National Leather Co. Charge: That the respondent Swift & Co. by reason of Its acquisition of a controlling Interest In England, Walton & Co. (Inc.) and its subsidiaries and the subsequent organization by Swift & Co. of respondent . National Leather Co. and the transfer thereto of the Swift & Co. interest In England, Walton & Co., and In numerous other corporations engaged In tanning and the manufacture and sale of leather and by-products, the corporate stock of which had been acquired by Swift & Co., has been for the purpose and effect of substantially lessening competition and of creating a combination In restraint of trade In the manufacture and sale of leather, In alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status : At issue.

Complaint No 776.--Federal Trade Commission v. Armstrong Paint & Varnish Works, United States Roofing Paper & Paint Factories (Inc.) , and Abe Hochman and Harry Goldfish, partners doing business under the trade name of Army & Navy Stores. Charge : Using unfair methods of competition by offering for sale paints, varnishes, and roofing paper, labeled "U. S." with a reproduction of a picture of Uncle Sam, with the purpose and effect of misleading the purchasing public into the belief that the goods were made for the Army or Navy, or according to Government specifications, and by labeling its product In such manner as to indicate they were manufactured by the respondent United States Roofing Paper & Paint Factories (Inc.) and by the use of numerous false and misleading statements by the respondent, Hochiman and Goldfish, as to the value and quality of the paints, varnishes, and roofing paper offered for sale, with the effect of misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting respondent's brief.

Complaint No. 778.--Federal Trade Commission v. Tide Water Oil Co., and Tide Water Oil Sales Corporation. Charge : That the respondents, by maintaining a system of rebates and discounts based and graduated on the separate purchases of their petroleum products by dealers during a definite period and on purchases of carload lots thereof, thereby causing the purchasers to confine their purchases to the respondents, have indulged Iii the practice which tends to substantially lessen competition and create a monopoly In alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status : At issue.

Complaint No. 785.--Federal Trade Commission v. J. H. Crites, John G. Dee, W. J. Ross, M. W. McQuaid, and M. L. Chandler. Charge : Using unfair methods of competition In the sale of share stock of the O-tex Production Co., by the use of numerous false and misleading statements as to the said company s drilling operations and the productivity of its properties, to the effect of misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 786.--Federal Trade Commission v. Kelly Dry Dock & Ship Building Co. (Inc.). Charge: Using unfair methods of competition by offering and giving to officers and other employees of vessels, without the knowledge and consent of their employers, cash commissions and gratuities as an inducement to have their vessels repaired and repair parts furnished by the respondent, In alleged violation of section 5 of the Federal Trade Commission act. Status : (Ante, complaint No.626.)

Complaint No 793.--Federal Trade Commission v. the Q. R. S. Music Co. Charge : Unfair competition In the manufacture and sale of rolls for player pianos, In establishing and announcing fixed resale prices and stating that it will refuse to resell, and In fact has refused to sell, to those who fail to maintain such prices, In alleged violation of section 5 of the Federal Trade Commission act; further, because of contracts entered into with dealers under the terms of which such dealers to the extent of their trade In player rolls are to handle respondent's products only, the effect is to substantially lessen competi-

tion and tend to create a monopoly, In alleged violation of section 3 of the Clayton Act. Status: Awaiting examiner's findings.

Complaint No. 798.--Federal Trade Commission v. Osa J. Smythe and S. W. Levy, partners, styling themselves Smythe & Levy. Charge : Unfair methods of competition In that the respondent, engaged In the sale of ship chandlery, has given cash commissions and gratuities of various kinds to captains, officers, and employees of ships to induce them to purchase ship chandlery supplies from the respondents, all In alleged violation of section 5 of the Federal Trade Commission act. Status : This proceeding is now before the commission for final determination.

Complaint No. 801.--Federal Trade Commission v. Adolphe Schwobe (Inc.) . Charge : Unfair methods of competition In taking advantage of the American practice of grading watches by the number of jewels In the movement, by Importing Swiss lever watch movements of a low grade but containing 15 to 23 jewels, and after casing said movements, selling the watches to retailers with the number of jewels conspicuously marked on the works or dial or both, thereby enabling said retailers to deceive the purchasing public as to the value and quality of said watches and injuring the manufacturers of and dealers In Swiss and American-made watches, In alleged violation of section 5 of the Federal Trade Commission act. Status : Negotiations for stipulation proceeding.

Complaint No. 804.--Federal Trade Commission v. Maritime Co. (Inc.) . Charge : Unfair methods of competition In offering and giving to captains, engineers, and other officers of vessels, without the knowledge of their employers, as an Inducement to have their vessels cleaned, painted, and repaired by the respondent, lavish entertainment, including automobile, dinner, and theater parties, lodging accommodations, and for other forms of entertainment, are In alleged violation of section 5 of the Federal Trade Commission act. Status : (Ante, complaint 626.)

Complaint No. 807.--Federal Trade Commission v. Athol Manufacturing Co. Charge : The respondent, which is engaged In the manufacture of "Atholeather," a cotton fabric product finished so as to resemble genuine leather, indicates by the use of the name of "Atholeather" that its product consists of or contains leather, thereby tending to confuse the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue

Complaint No. 821.--Federal Trade Commission v. Liberty Iron & Wire Company (Inc.) . Charge : Unfair methods of competition In offering and giving to captains, engineers, and other officers of vessels, without the knowledge of their employers, as an inducement to have their vessels repaired and repair parts furnished by the respondent, money and lavish entertainment including automobile parties, dinner and theater parties, lodging accommodations, and forms of amusement, In alleged violation of section 5 of the Federal Trade Commission act. Status : (Ante, complaint No.626.)

Complaint No. 825.--Federal Trade Commission v. J. Berman and B. Brenner, partners, styling themselves Berman & Brenner. Charge : Unfair methods of competition In that the respondents, engaged In New York, N. Y., In the manufacture and sale of clothing for men and boys, label their clothes to Indicate Rochester, N. Y., manufacture, thereby misleading the purchasing public into the belief that the respondents' clothing is of the quality produced In Rochester and under Rochester manufacturing conditions, as extensively advertised by the chamber of commerce and other business associations of that city, In alleged violation of section 5 of the Federal Trade Commission act. Status : Suspended pending disposition of other similar cases.

Complaint No. 826.--Federal Trade Commission v. Phillip Moskowitz, trading under the name and style of Rochester Clothing Co. Charge : Unfair methods of competition In that the respondent, engaged In New York, N.Y., In the manufacture and sale of clothing for men and boys, labels his clothes "Trade-Mark, Rochester Clothing Co., for particular men," with the abbreviation "Co." inconspicuously placed, thereby misleading the purchasing public into the belief that the respondent's clothing is of the quality produced In Rochester and under Rochester manufacturing conditions as extensively advertised by the chamber of commerce and other business associations of that city, In alleged violation of section 5 of the Federal Trade Commission act Status : This proceeding is now before the commission for final determination.

Complaint No. 827.--Federal Trade Commission v. Samuel Blum. Charge : Unfair methods of competition In that the respondent, engaged In New York, N. Y., In the manufacture and sale of clothing for men and boys, labels his

clothes to indicate Rochester, N. Y., manufacture, thereby misleading the purchasing public into the belief that the respondent's clothing is of the quality produced in Rochester and under Rochester manufacturing conditions, as extensively advertised by the chamber of commerce and other business associations of that city, in alleged violation of section 5 of the Federal Trade Commission act. Status: This proceeding is now before the commission for final determination

Complaint No 828.--Federal Trade Commission v. A D. Davis Packing Co. Charge : Unfair methods of competition in offering and giving to officers and employees of vessels without the knowledge of their employers, as an inducement to have their vessels provisioned by respondent, lavish entertainment, in alleged violation of section 5 of the Federal Trade Commission act. Status : (Ante, complaint No.626.)

Complaint No. 833.--Federal Trade Commission v. John J. Morrill and Louis Halvarson, partners styling themselves A. H. McLeod and Co. Charge : The respondents have offered and given cash commissions and gratuities to captains, engineers, and other officers or employees of vessels without the knowledge of their employers to induce the purchase of sails, rigging, and canvas equipment from respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status : This proceeding is now before the commission for final determination.

Complaint No. 835.--Federal Trade Commission v. Famous Players-Lasky Corporation, the Stanley Co. of America, Stanley Booking Corporation, Black New England Theaters (Inc.) , Southern Enterprises (Inc.), Saenger Amusement Co., Adolphe Zukor, Jesse L. Lasky, Jules Mastbaum, Alfred S. Blank, Stephen A. Lynch, Ernest V. Richards, jr. Charge : Unfair methods of competition in that the respondents Famous Players-Lasky Corporation, Adolphe Zukor, and Jesse L. Lasky have combined and conspired to secure control of and monopolize the motion-picture industry, and to restrain, restrict, and suppress competition in the distribution of motion-picture films by (a) acquisition of all the corporate stock of Bosworth (Inc.) , Jesse L. Lasky Feature Play Co. (Inc.) , Famous Players Film Co., and by coercion, Paramount Pictures Corporation; (b) affiliation with certain independent producers; (c) the creation and exploitation of the Realart Pictures Corporation which the respondents held out to the general public as wholly independent and not affiliated with or controlled by said respondents; (d) acquiring, with the aid of the other respondents, the control of numerous theater corporation operating motion-picture theaters throughout the United States; and (e) building or acquiring numerous theaters for the exhibition of respondents' motion pictures, exclusively, all in alleged violation of section 5 of the Federal Trade Commission act, and, as to respondents Famous Players-Lasky Corporation, Adolphe Zukor, and Jesse L. Lasky, in alleged violation of section 7 of the Clayton Act. Status : In course of trial.

Complaint No. 836.--Federal Trade Commission v. National Biscuit Co. Charge : Unfair methods of competition in that the respondent, engaged in the manufacture and sale of biscuits, crackers, and other bakery products, in allowing discounts based on aggregate monthly orders, refuses to grant as high a rate of discount on the pooled orders of two or more retail store owners as on the orders of owners of so-called chain stores, thereby giving the owners of chains of retail stores an undue advantage in competing with owners operating but one retail store, the said discrimination in price tending to lessen competition and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status : Awaiting examiner's findings.

Complaint No. 831.--Federal Trade Commission v. Loose-Wiles Biscuit Co. Charge : Unfair methods of competition in that the respondent, engaged in the manufacture and sale of biscuits, crackers, and other bakery products, in allowing discounts based on aggregate monthly orders, refuses to grant as high a rate of discount on the pooled orders of two or more retail store owners as on the orders of owners of so-called chain stores, thereby giving the owners of chains of retail stores an undue advantage in competing with owners operating but one retail store, the said discrimination in price leading to lessen competition and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status : At issue on amended complaint and answer.

Complaint No 842.--Federal Trade Commission v. Berkeley Machine Works (Inc.). Charge : Unfair methods of competition in that cash commissions, gratuities, and lavish entertainment, including automobile parties, dinner and theater parties, lodging accommodations, and other forms of entertainment and

amusement are offered and given to officers, agents, and employees of vessels, without the knowledge or consent of their employers, to induce them to have their vessels repaired by the respondent, In alleged violation of section 5 of the Federal Trade Commission act. Status : (Ante, complaint No. 626)

Complaint No. 852.--Federal Trade Commission v. the Proctor & Gamble Co. and the Proctor & Gamble Distributing Co. Charge: Unfair methods of competition In that the respondents, certain of whose soaps and washing powders contain no naphtha, falsely designate said products as naphtha soap and naphtha washing powders, and further advertise their soap as of the highest grade because it Is white and because it contains naphtha, which loosens the dirt, whereas said soap contains no naphtha, and the fact that it is white adds nothing to its cleansing value, thereby misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial.

Complaint No. 856.--Federal Trade Commission v. George F. Barton, Rock-wood Brown, Charles N. Edwards, Claude A. Hargis, and R W. Watts. Charge : The respondents are the officers and promoters of the Consolidated Royalty & Leasing Syndicate, an unincorporated association. They are charged with making and publishing numerous false and misleading statements relative to the organization, business, and prospects of the association, as a means of deceiving the purchasing public and furthering the sale of the share stock of the said Consolidated Royalty & Leasing Syndicate, all In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting respondent's brief.

Complaint No. 857.--Federal Trade Commission v. S. F. Shepard, Rockwood . Brown, A. L. Todd, R Allyn Lewis, R J. Wiswell, D. M. Leopold, H. P. Hanson, E. H. Eshleman, F. L. Moorman, and E. H. McArthur Charge : The respondents are trustees for or associated In the promotion of the Burkley Oil Co., Burk Crest Oil Co., Burk Bethel Oil Co., Gypsy Burk Oil Co., Burk Imperial Oil Co., and Burk Consolidated Oil Co. Unfair methods of competition are charged In that the respondents, to further the sale of the share stock of said unincorporated associations, issued and published numerous false and misleading statements and concealed or withheld other material information relative to the organization, business, and properties of the said companies, thereby deceiving and misleading the purchasing public, In alleged violation of section 5 if the Federal Trade Commission act. Status : Awaiting respondent's brief.

Complaint No. 862.--Federal Trade Commission v. Crofts & Reed Co., Polonia Soap Co. Charge : Unfair methods of competition In that the respondent Crofts & Reed Co., controlled by the respondent Polonia Soap Co.. brands and mislabels its products to promote the belief that olive oil, poroxido, palm oil, witch-hazel, buttermilk, medicines, or drugs are contained In the soaps so designated, when In fact its soaps contain no such ingredients, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting respondent's brief.

Complaint No 863.--Federal Trade Commission v. Central Railway Signal Co. Charge : Unfair methods of competition In that the respondent's which is a manufacturer of certain compounds, features, and parts for railway signal fusees, brought suit In equity against the Unexcelled Manufacturing Co. (Inc.) for alleged infringement of patents and notified a number of railway companies who were the principal purchasers of said fusees of the pendency of said suit, stating that other fusees on the market were infringements also, and making mention of a right to recover damages from the users of any such alleged infringing fusees, all of which was calculated to bring and had the tendency of bringing all railway signal fusees other than those manufactured by the respondent into suspicion among the railway companies, In alleged violation of section 5 of the Federal Trade Commission act. Status : Negotiations for stipulation proceeding.

Complaint No 865.--Federal Trade Commission v. Henry H. Hoffman, R C. Russell, J. H. Cain, R V. Wilson, B. Baernstein, the Ranger - Burkburnett Oil Co., the Ranger-Comanche Oil Co., and the Union National Oil Co. Charge : The respondent individuals are promoters of the respondent corporation. Unfair methods of competition are charged In that they, In order to further the sale of the share stock of the said corporations, issued and published numerous false and misleading statements and concealed or withheld other material information relative to the organization, business, and properties of the said corporations, thereby deceiving and misleading the purchasing public, In alleged

violation of section 5 of the Federal Trade Commission act. Status : Awaiting respondent's brief.

Complaint No. 868.--Federal Trade Commission v. Calumet Baking Powder Co. Charge : Unfair methods of competition In that the respondent, for the purpose of furthering the sale of its baking powders, adopted the practice of publishing anonymously adverse, disparaging, and derogatory pinions, statements, and comments as to the wholesomeness of self-rising flours, the use of which does not involve the addition of baking powder, such statements being not founded In fact, all for the purpose of deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : Negotiations for stipulation proceeding.

Complaint No. 871.--Federal Trade Commission v. A W. Perryman, doing business under the name and style Perryman Investment Co.; A. W. Perryman, F. P. Penfield, C. S. Thomas, individually and as trustees and officers of the Houston Oil & Refining Co., a trust; W. L. Diehl, individually and as second vice president of the Houston Oil & Refining Co., a trust; and William M. Huff, individually and as third vice president of the Houston Oil & Refining Co., a trust. Charge : The respondents are the promoters of the Houston Oil & Refining Co., a Texas trust. Unfair methods of competition are charged In that the respondents, for the purpose of furthering the sale of the same stock of the said oil company, issued and published numerous false and misleading statements and concealed or withheld other material information relative e to the organization, business, property, and prospects of said corporation, thereby deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting briefs.

Complaint No. 873.--Federal Trade Commission v. Hewitt Brothers Soap Co. Charge: Unfair methods of competition In that the respondent advertises, brands, and labels its soap as "white naphtha," stating that it is made by a new process and of a combination of naphtha, coconut oil, and other cleansing ingredients, when, In fact, the said soap contains no naphtha, but contains instead a petroleum distillate other than naphtha, originally only to the extent of 1 per cent or less of the whole constituent ingredients, and substantially all lost by volatilization or evaporation before such soap reaches, the ultimate consumer, thereby misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 875.--Federal Trade Commission v. Lexington Manufacturing Co., Middlesburg Mills, Millwood Corporation. Charge : The respondents, Lexington Manufacturing Co. and Middlesburg Mills, are engaged In the manufacture of cotton bedticking and other cotton products, and are controlled by the respondent Millwood Corporation, a holding company. Unfair methods of competition are charged In that some of the respondent's bedtickings of various grades and qualities are labeled "A. C. A." In simulating of a symbol used for many years by the Amoskeag Manufacturing Co. as a designation for its best quality special-process bedticking, which because of its quality and adaptability to purpose is popular and In great demand In the trade, the said practice by the respondents tending to mislead and deceive the purchasing public Into the belief that tickings manufactured by respondent manufacturers are identical with those of the Amoskeag Manufacturing Co., In alleged violation or section 5 of the Federal Trade Commission act. Status : Before Commission for final determination.

Complaint No. 876.--Federal Trade Commission v. Lawrence S. Mayers and Chauncey H. Mayers, partners, doing business under the firm name and style of Geneva Watch Co. Charge : The respondents, wholesale dealers In watches, the movements of which they Import from places In Switzerland other than Geneva, have adopted the trade name "Geneva Watch Co." for their watch business, have procured the United States registration of the trade-mark "Geneva," and stamp it on the dials, of their watches with the addition of the word "Swiss," to simulate the standard method of designating High-grade Geneva watches, and advertise the said watches as "Geneva" watches manufactured by the "Geneva Watch Co." and offered at the lowest manufacturer's, prices, all for the purpose of creating the mistaken belief that they are engaged In the manufacture of watches, In the Swiss city of Geneva, well known as the place of origin of the highest grade of Swiss watches, that their watches are manufactured In said city, and that they are sold direct to the trade at manufacturer's prices, and thereby induce the trade and consuming public to purchase respondents' watches In preference to competitors' watches of like quality, which are not falsely designated "Geneva," and In many instances In

preference to competitors' watches actually made in the city of Geneva, in alleged violation of section 5 of the Federal Trade Commission act. Status : Ready for oral argument.

Complaint No. 880.--Federal Trade Commission v. Douglas, Fir Exploitation & Export Co. (Inc.) and 107 others. Charge : The complaint sets forth that, although the respondent Douglas Fir Exploitation & Export Co., a domestic corporation of the State of Washington, engaged in the manufacture and sale of lumber in interstate and foreign commerce, has filed papers with the Federal Trade Commission under the Webb Export Trade Associations Act, by reason of its policy and plan of business it is not such an association within the meaning of said act. The 107 other respondents are stockholders and officers of the respondent company and are themselves engaged in the lumber business, representing about 85 per cent of the productive capacity of all American manufacturers, vendors, shippers, and dealers in Oregon pine, red fir, yellow fir, Columbian pine, Puget Sound pine, and British Columbia pine and the product, thereof. Respondents are charged with having fixed the prices and terms at which they have agreed to sell their lumber and by various and diverse means conspiring to hinder and obstruct competition in the sale and distribution of said lumber and lumber products, all in alleged violation of section 5 of the Federal Trade Commission act. Status : Commission's case closed.

Complaint No. 881.--Federal Trade Commission v. Citrus Soap Co. Charge : 'The respondent, engaged in the manufacture and sale of washing powders, soaps, and similar products, has adopted and employs a system for the maintenance and enforcement of uniform prices fixed by it for the resale of its products to retail dealers, refusing to sell to wholesale dealers who fail to observe and maintain said resale prices and requiring its vendees not to sell to other wholesalers except at resale prices fixed by respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status : Ready for trial.

Complaint No. 883.--Federal Trade Commission v. Alfred Peats Co. Charge : The respondent, engaged in the sale of paints and painters' supplies, advertises and asserts that its "Clover Leaf Paint" consists of the purest grades of white lead, zinc, linseed oil, Japan drier, and is of an exceptional high grade, which has never failed to give the best satisfaction, when in fact the said paint consists largely of adulterants and fillers, mineral spirits, and substitutes for pure linseed oil, in alleged violation of section 5 of the Federal Trade Commission act. Status : At issue

Complaint No. 884.--Federal Trade Commission v. Henry Bosch Co. Charge : Unfair methods of competition in that the respondent, engaged in the sale of paints and painters' supplies, falsely advertises and asserts that as to its "Henry Bosch Co.'s Prepared Paint" every ounce of lead, zinc, oil, and Japan drier is of the highest grade and that it is impossible to produce any better paint, when in fact adulterants and fillers are substituted for white lead and zinc oxide and the volatile ingredient consists of mineral spirit, in alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 886.--Wholesale Tobacco Cigar Dealers' Association of Philadelphia, its officers, directors, and members, the American Tobacco Co. and P. Lorillard Co. respondents. Charge : That the association and its members agreed upon a schedule of fixed prices for tobacco products at which the members should resell to their dealer customers, and that they adopted a system for the maintenance and enforcement of such prices by the members of the association and by all other wholesale dealers selling in the association's territory, the respondent manufacturers cooperating and conspiring with the association and its members and participating in said price-maintenance system by agreeing to refuse to sell and by refusing to sell offending dealers further supplies of their products, all in alleged violation of section 5 of the Federal Trade Commission act. Status : Hearings were held in Philadelphia, New York, and Washington, beginning October 16, 1922, and concluding December 19, 1922. The examiner's report was filed on April 12, 1923, to which exceptions have been filed by certain other respondents; final arguments will be heard October 10, 1923.

Complaint No. 887.--Federal Trade Commission v. Oppenheim, Oberndorf & Co. (Inc.), doing business under the trade name and style Sealpax Co. Charge : The respondent, in the sale of its "Sealpax" underwear, maintains a schedule of uniform resale prices and refuses to sell said underwear to wholesale dealers who fail to observe and maintain said resale prices and otherwise endeavors to enforce its fixed prices for the resale of its product, in alleged violation of section 5 of the Federal Trade Commission act. Status : Ready for briefs.

Complaint No. 890.--Federal Trade Commission v. Cream of Wheat Co. Charge : Unfair methods of competition In that the respondent, engaged in the manufacture and sale of a cereal-food product known as "Cream of Wheat," has maintained and enforced a schedule of uniform prices for the resale of said product, refusing to sell to price cutters and otherwise enforcing said system of price maintenance, in alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial.

Complaint No 892.--Federal Trade Commission v. V. Vivaudou (Inc.). Charge : The respondent, engaged In the manufacture and sale of toilet articles, adopted and maintains a schedule of uniform prices for the resale of its products, threatening to refuse to sell and refusing to sell said products to those dealers who persist In selling below the resale prices fixed by the respondent and otherwise enforcing said system of price maintenance, In alleged violation of section 5 of the Federal Trade Commission act. Status : Negotiations for stipulation proceeding.

Complaint No 893.--Federal Trade Commission v. St. Louis Wholesale Grocers' Association, its officers and members. Charge: The respondent association is, an unincorporated trade association composed of wholesale grocers, and jobbers of groceries and food products. Unfair methods of competition are charged In that said association, acting on behalf of its members and In cooperation with them, has adopted and carried out a plan of coercing and attempting to coerce manufactures to guarantee against decline In price, publishing classified lists of manufacturers that the said members may give preference when making purchases to those manufacturers who have agreed to guarantee against decline in price and thereby tend to restrict, diminish, and obstruct the business of manufactures of food products who do not so guarantee in alleged violation of section 5 of the Federal Trade Commission act. Status : Ready for submittal to the commission.

Complaint No. 894.--Federal Trade Commission v. Wisconsin Wholesale Grocers' Association, its officers, directors, and members. Charge : The respondent association is an unincorporated trade association composed of whole sale grocers and jobbers of groceries and food products. Unfair methods of competition are charged in that the said association, acting on behalf of its members and In cooperation with them, has adopted and carried out a plan of coercing and attempting to coerce manufacturers to guarantee against decline In price, publishing classified lists, of manufacturers that the said members may give preference when making purchases to those manufacturers who have agreed to guarantee against decline In price and thereby tend to restrict, diminish, and obstruct the business of manufacturers of food products who do not so guarantee, In alleged violation of section 5 of the Federal Trade Commission act Status : Ready for briefs

Complaint No. 898.--Federal Trade Commission v. United States Products Co. Charge . Unfair methods of competition In that respondent, engaged In the manufacture and sale of an abrasive bearing-fitting compound named by it "Kwik-Ak-Shun," having done no more than to file with the commission a petition paving that the commission institute such proceedings In the premises as might seem proper against the M K 11 Products Co., a competitor, nevertheless notified the trade, through advertisements, that it had commenced proceedings for unfair competition against the M. K. T Products Co. before the commission to) enjoin the same, which notification had the capacity and tendency of misleading and deceiving the ti and into the belief that respondent had instituted competent legal proceedings before the Federal Trade Commission wherein the rights and liabilities of respondent and the M. K. T Products Co. In the premises would be legally adjudicated and determined and the legality or illegality of the things done by the M. T. K. Products Co. complained against be fixed and determined In alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial.

Complaint No. 899.--Federal Trade Commission v. Joyce-Pruit Co. The respondent, engaged In the sale of dry goods, clothing, hardware, and groceries at wholesale and retail, offered a prize of \$10 worth of merchandise to the person producing the largest number of current mail-order catalogues. thereby procuring many catalogues of the National Cloak & Suit Co. and other mail-order house competitors, which catalogues it rationed for the purpose of unduly hindering the business of its mail-order house competitors which sell merchandise principally by means of catalogues In the hands of customers and prospective customers In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 900.--Commission v. National Lead Co. Charge : Unfair methods of competition are charged In that the respondent, engaged In the manufacture of white lead, red lead, litharge, and other products used]il the painting trade, has adopted and enforced a system of fixing and maintaining standard prices for the resale of its products by dealers, In alleged violation of section 5 of the Federal Trade Commission act. Status : Ready for argument.

Complaint No 902.--The Chicago Tobacco Jobbers' Association, its officers and members. and the American Tobacco Co., respondents. Charge : The charge is unfair competition In that the association and its members agreed upon a schedule of fixed prices at which the members should resell tobacco products to their customers and that the American Tobacco Co. entered into an agreement with the association and its members to assist them In maintaining the prices fixed and agreed upon, all In alleged violation of section 5 of the Federal Trade Commission act. Status : Hearings were held In Chicago on May 9, 10, 11, and 12, 1923. After the report of the trial examiner has been made, the case will be set down for final argument.

Complaint No. 904.--Commission v. Lease Motor Co. (Inc.) and Acoma Motors Co. (Inc.) Charge : The respondent Lease Motor Co. is engaged In the business of repairing Ford motor cars and trucks and In assembling, producing, and rebuilding "Mohawk" trucks, and its subsidiary, respondent Acoma Motors Co., (Inc.), acts as its sales agent. Unfair methods of competition In commerce are charged In that the respondents falsely advertise and represent their assembled trucks as new "Mohawk" trucks made In New York and describe the chassis thereof as the Mohawk chassis when In truth and In fact such trucks are not made In New York, the chassis thereof is a Ford chassis, and old, used; worn, and second-hand parts enter into said product, In alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

Complaint No. 906.--Cincinnati Tobacco Jobbers' Association, its officers and members, and the American Tobacco Co., respondents. Charge : The charge is unfair competition In that the association and its members agreed with the American Tobacco Co. upon a schedule of prices at which they should thereafter resell the tobacco products of that company, and that the American Tobacco Co. cooperated with the respondent association and its members In enforcing the maintenance of such fixed schedule of prices, all in alleged violation of section 5 of the Federal Trade Commission act. Status : Hearings were held In Cincinnati on November 8, 9, and 10, 1922, and In Washington on November 28 and 29, 1922. The examiner's report not yet completed nor final arguments made.

Complaint No. 907.--Cincinnati Tobacco Jobbers' Association, its officers and members, and the Liggett & Myers Tobacco Co., respondents. Charge : The charge is unfair competition In that the association and its members agreed with the Liggett & Myers Tobacco Co. upon a schedule of prices at which they should thereafter resell the tobacco products of that company, and that the Liggett & Myers Tobacco Co. cooperated with the respondent association and its members In enforcing the maintenance of such fixed schedule of prices, all In alleged violation of section 5 of the Federal Trade Commission act. Status : Hearings were held November 15, 1922, at Cincinnati, and November 27, 1922, at Washington. After the report of the trial examiner has been made the case will be set down for final argument.

Complaint No. 908.--Cincinnati Tobacco Jobbers' Association. Its officers and members, and the Tobacco Products Corporation and Falk Tobacco Co., respondents. Charge : The charge is unfair competition In that the association and Its members agreed with the Tobacco Products Corporation and Falk Tobacco Co. upon a schedule of prices at which they should thereafter resell the tobacco products of these companies, and that the Tobacco Products Corporation and Falk Tobacco Co. cooperated with the respondent association and Its members In enforcing the maintenance of such fixed schedule of prices, all In alleged violation of section 5 of the Federal Trade Commission act. Status : Hearings were held In Cincinnati on November 8, 9, and 10, and In Washington on November 27, 1922. Examiner , s report, exceptions thereto, and briefs filed.

Complaint No. 909.--Cincinnati Tobacco Jobbers' Association. its officers and members, and the P. Lorillard Co., respondents. Charge : The charge is unfair competition In that the association and its members agreed with the P. Lorillard Co. upon a schedule of prices at which they should thereafter resell the tobacco products of that company, and that the P. Lorillard Co. co-

operated with the respondent association and its members In enforcing the maintenance of such fixed schedule of prices, all In alleged violation of section 5 of the Federal Trade Commission act. Status : Testimony was taken In Cincinnati November 13 and 14, 1922, and In Washington, D. C., December 14 and 15, 1922. The trial examiner' report was filed May 28, 1923. Briefs have been filed and final argument is fixed for October 11, 1923.

Complaint No. 911.--Milwaukee Tobacco Jobbers' Association and P. Lorillard Co. (Inc.), respondents. Charge : The charge is unfair competition In that the association and its members agreed upon a schedule of fixed prices at which the members should resell tobacco products to their dealer customers and that the P. Lorillard Co. (Inc.) entered into an agreement with the association and its members to assist them In maintaining the prices fixed and agreed upon, all In alleged violation of section 5 of the Federal Trade Commission act. Status : Hearings were held In Milwaukee on January 30 and 31, 1923, and In Washington on April 10, 1923. After the report of the trial examiner has been made, the case will be set down for final argument.

Complaint No 912 --Milwaukee Tobacco Jobbers' Association and the American Tobacco Co respondents. Charge : The charge is unfair competition In that the association and its members agreed upon a schedule of fixed prices at which the members should resell tobacco products to their dealer customers and that the American Tobacco Co. entered into an agreement with the association and its members to assist them In maintaining the prices fixed and agreed upon all In alleged violation of section 5 of the Federal Trade Commission act. Status . Hearings were held In Milwaukee January 24 to January 29, 1923. After the report of the trial examiner has been made, the case will be set down for final argument.

Complaint No. 913.--Commission v. Films Distributors League (Inc.), Eastern Feature Film Co., Favorite Players Film Corporation, Lande Film Distributing Corporation (of Ohio), Lande Film Distributing Corporation (of Delaware), Supreme Photo Play Corporation, Favorite Film Co., Friedman Film Corporation, Alexander Film Corporation, Supreme Film Co., Quality Film Corporation, Leo G. Garner, doing business under the trade name and style Reliance Film Exchange, M. Brown, doing business under the trade name and style Capital Film Exchange, William Alexander, Maurice Fleckles, Herman Rifkin. Charge : The respondents, distributors of motion-picture films are members of the respondent Films Distributors League (Inc.). Unfair methods of competition In commerce are charged In that the respondents at the of the production of the photo play entitled "The Three Musketeers" by the Douglas Fairbanks Interests, with the purpose of trading on the popularity of said Douglas Fairbanks and on the demand created by advance advertising of his production, reissued the photo play "D' Artagnan," produced by the Tri angle Film Corporation In 1915, after changing the name to "The Three Musketeers," advertised said reissue under its new title without designating it as a reissue and In some instances by displaying In inconspicuous type a statement to the effect that the respondent's photo play was formerly entitled "D' Artagnan," or was an adaptation or recreation of D' Artagnan, and In that the respondents to further the deception that the said reissue was the Fairbanks production supplied for exhibition with the reissue other photo plays In which said Douglas Fairbanks did enact the leading role, all for the purpose of misleading and deceiving the public, iii alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No 914.--Commission v. Twinplex Sales Co., a corporation, and Mrs. H. S. Gardner, H. S. Gardner, jr., and Charles H. Gardner, individually and as copartners doing business under.- the trade name and style of Twinplex Sales Co., H. S. Gardner, individually and as trustee of said business for said copartners, and J. Bryant Reinhart and Thomas L. Fouke, individually and as employees and agents of said partnership. Charge : Unfair methods of competition in commerce are charged in that the respondents have fixed standard prices for the resale of their razor-stropping devices known as "Twinplex" stroppers, and employ cooperative means in the maintenance of said resale prices, listing dealers who fail to maintain the same, and refusing to further supply such offending dealers, thus tending to suppress competition, In alleged violation of section 5 of the Federal Trade Commission act. Status: Preparing for trial.

Complaint No 915.--Commission v. Cutler-Hammer Manufacturing Co. Charge : Unfair methods of competition in commerce are charged in that the respondent practices discrimination in prices in the sale of its electric con-

troublers by granting a greater rate of discount from the list price to those of its vendees who accept the respondent's "sole use contract" whereby the vendee agrees to purchase the respondent's controllers only, the effect of said practice being to substantially lessen competition and to create a monopoly, in alleged violation of section 2 and section 3 of the Clayton Act. Status : Negotiations for stipulation proceeding.

Complaint No 916.--Trigg, Dobbs & Co. and others. Charge : The respondents, Chattanooga Wholesale Tobacco Dealers, are charged with unfair competition in that they entered into an agreement, understanding, and conspiracy by which they fixed a schedule of prices at which they would thereafter resell to their dealer customers, all in alleged violation of section 5 of the Federal Trade Commission act. Status : Hearings were held in Chattanooga April 25, 26, 27, and 28, 1923. After the report of the trial examiner has been made the case will be set down for final argument.

Complaint No. 917.--The American Tobacco Co., Trigg, Dobbs & Co., and others, respondents. Charge : That the American Tobacco Co. and the other respondents, Chattanooga Wholesale Grocers and Wholesale Tobacco Dealers, entered into a combination, conspiracy, and understanding by which they fixed resale prices on American Tobacco Co.'s products, and that the American Tobacco Co. agreed with the other respondents to refuse to continue selling to such of the respondents as would resell its products at prices lower than those agreed upon, all in alleged violation of section 5 of the Federal Trade Commission act. Status : Hearings were held in Chattanooga April 25, 26, 27, and 28, 1923, and in New York May 4, 1923. After the report of the trial examiner has been made the case will be set down for final argument.

Complaint No. 918.--Commission v. Superior Woolen Mills. Charge : Unfair methods of competition in commerce are charged in that the respondent, engaged in retail business, falsely advertises that clothing is sold by it directly from the weaver to the wearer, and indicated by the display of its corporate name that it operates woolen mills and manufactures in its mills the materials used by it in the manufacture of the suits and garments sold by it, all for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial.

Complaint No 920.--Commission v. Atlantic Comb Works. Charge : Unfair methods of competition in commerce are charged in that the respondent in the sale of its toilet articles, composed of nitrated cellulose or pyroxylin plastic, known commercially as "celluloid," "pyroxylin," "fibrelid," "viscoloid," etc., advertises said products as "white ivory," thereby misleading and deceiving the purchasing public as to the quality and value of said articles, in alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial.

Complaint No. 922.--Commission v. Michigan Wholesale Grocers' Association, its officers, executive committee, and members. Charge : Unfair methods of competition in commerce are charged in that respondents have adopted and carried out a policy and plan of coercing manufacturers to guarantee the respondent members against decline in price of commodities dealt in and to make their purchases from manufacturers so guaranteeing, thereby tending to restrict, diminish, and obstruct the sales and business of manufacturers of food products who do not guarantee against price decline, in alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No 924.--Federal Trade Commission v. The Don-O-Lac Co. (Inc.). Charge : Using unfair methods of competition by falsely advertising and misrepresenting as "American Shellac" a product which is not shellac as commercially known and which contains no shellac gum. Status : This proceeding is now before the Commission for final determination.

Complaint No. 925.--Commission v. Mid-American Oil & Refining Co. and B. H. Crites. Charge : The respondent individual is the promoter of respondent Mid-American Oil & Refining Co., a Texas trust. Unfair methods of competition in commerce are charged in that respondents, with the aid of certain subsidiaries known as Mid-American Syndicate, Mid-American Mexia Syndicate, and Mid-American Stevens County Syndicate, published numerous false and misleading statements and representations relative to the organization, business, property, and prospects of respondent company and said syndicates, to further the sale of the share stock of the respondent, and thereby deceived the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting briefs.

Complaint No. 927.--Commission v. Corn Products Refining Co. Charge : Unfair methods of competition in commerce are charged in that the respond-

ent's practice of guaranteeing against decline in price, aided and abetted by its great financial resources, its domination of the markets for glucose and table sirups, and its control of market price of said commodities is a potential weapon for the ruin and elimination of respondent's competitors and has a dangerous tendency unduly to hinder competition in the table-sirup industry, and to create a monopoly thereof in the hands of the respondent, in alleged violation of section 5 of the Federal Trade Commission act. Status: Preparing for trial.

Complaint No. 928 (In consolidation with 82).--Commission v. the American Photo-Engravers' Association and others, and the International Photo-Engravers' Union of North America, and others. Charge: Unfair methods of competition in commerce are charged in that the respondents conspired and agreed to adopt and maintain a scale of uniform prices for the sale of all photoengraving products. The respondent, International Photo-Engravers' Union of North America and its local organizations threatened to call strikes or with-draw union employees from photo-engraving establishments that would not maintain said uniform scale of prices, it being understood between the respondents that the members of the respondent association would employ none but members of respondent union's local organization, thereby and with the aid of other methods of enforcement of said agreement, regulating, controlling, and suppressing competition between manufacturers of photo-engraving products, making possible the establishment and maintenance of enhanced prices of such products, and hindering free competition, in alleged violation of section 5 of the Federal Trade Commission act. Status: In the course of trial.

Complaint No. 930.--Commission v. Right-Way Royalty Syndicate, E. L. Chapman, H. F. Mitchell, and A. J. Chapman. Charge: Respondent syndicate is an unincorporated Texas trust. The respondent individuals are trustees, officers, organizers, and promoters, and constitute the board of trustees of said respondent syndicate. Unfair methods of competition are charged in that the respondents, to further the sale of syndicate securities have made and are still making numerous false, misleading, and deceptive statements concerning the business, management, operations, property, prospects, etc. of said syndicate, in violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 931.--Commission v. Occidental Oil Corporation and T. F. Smith, president; W. R. Charles, vice president; and L. J. Robling, secretary-treasurer. Charge: Unfair methods of competition in commerce are charged in that the individual respondents in their efforts to sell the shares of stock in the respondent corporation make use of statements concerning the properties, assets, oil production, and prospects thereof, in letters, circulars, maps, and other literature that are false and misleading, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting briefs.

Complaint No. 932.--Commission v. Dispatch Petroleum Co., Porter Oakes, and James T. Chiles. Charge: Respondent company is a Texas joint-stock association and respondent individuals are promoters thereof. Unfair methods of competition in commerce are charged in that respondent, to further the sales of the share stock of said company, made numerous false and misleading statements and concealed essential facts as to the properties, prospects, and earnings of said company, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 933.--Commission v. Texas-Atlantic Oil Co., G. P. Edgell, J. B. Sikes, V. C. Nelson, R. J. Leavitt, and W. Lincoln Wilson. Charge: The respondent company is a Texas trust and the respondent individuals are the promoters, officers, and agents thereof. Unfair methods of competition are charged in that the respondents, to further the sale of the share stock of said company, made numerous false and misleading statements and concealed essential facts as to the properties, prospects, and earnings of said company, in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 934.--Commission v. Pacific States Paper Trade Association, its officers and members; Seattle-Tacoma Paper Trade Conference, its officers and members; Spokane Paper Dealers, its officers and members; Portland Paper Trade Association, its officers and members; Paper Trade Conference of San Francisco, its officers and members; Los Angeles Wholesale Paper Jobbers' Association, its officers and members; J. Y. C. Kellogg, individually and as secretary of the Seattle-Tacoma Paper Trade Conference; Chriss A. Bell, individually and as secretary of the Portland Paper Trade Association; B. N. Coff-

man, individually and as secretary of the Pacific States Paper Trade Association; J. R. Coffman, individually and as secretary of the Los Angeles Wholesale Paper Jobbers' Association; W. B. Gilbert, individually and as secretary of the Spokane Paper Dealers; Zellerhach Paper Co.; Blake, Moffitt & Towne; American Paper Co.; J. W. Fales Paper Co.; Mutual Paper Co.; Washington Pulp & Paper Corporation; Paper Warehouse Co. (Inc.); the Seattle Paper Co.; Standard Paper Co.; Tacoma Paper & Stationery Co.; John W. Graham & Co.; B. G. Ewing Paper Co.; American Type Founders Co.; Blake-McFall Paper Co.; J. W. P. McFall, an individual doing business under the trade name J. W. P. McFall Paper Co.; Endicott Paper Co.; R. L. Brackett and Charles L. Frazier, partners doing business under the name and style Crescent Paper Co.; Bonestell & Co.; Pacific Coast Paper Co.; Union Paper Co.; Richardson Case Paper Co.; Eastman Gibbons Paper Co.; Delmas Paper Co.; San Jose Paper Co.; Pioneer Paper Co.; R. L. Craig Co.; Spokane Paper & Stationery Co.; Rogers Paper Co.; Sierra Paper Co.; Standard Woodenware Co. Charge : Arbitrary designation as to "legitimate" or "illegitimate" dealers and the same adjective applied to the channels through which their trade flows are among the factors involved in this complaint. The association, through its members comprising a number of "local associations," the complaint states, embraces practically all the wholesale dealers in paper and paper products throughout the States of Oregon, Washington, and California. Other States affected in great part by the activities of the association are Idaho, Nevada, Arizona, Montana, New Mexico, and the Territory of Alaska. Averments by the commission are to the effect that by concerted agreement adherence of members of local associations to the maintenance of enforced schedule prices is consummated. It is further alleged that to the end that such schedule prices may be maintained and price competition eliminated throughout the Pacific States, the members notify their local associations and the Pacific States Paper Trade Association of infractions of the agreement to maintain standard prices, and these various associations bring pressure to bear upon the offending member to cease such practice. It is charged that the alleged acts and things done by respondents and by each of them have a dangerous tendency unduly to hinder competition and to create a monopoly, and constitute unfair competition within the meaning of section 5 of the Federal Trade Commission act. Status : Set for final argument November 14, 1923.

Complaint No. 937.--Commission v. McCord Manufacturing Co. (Inc.). Charge : It is charged that unfair methods of competition in commerce in the manufacture and sale of automotive equipment, including motor gaskets for use on cylinder heads, manifolds, etc., have been engaged in by respondent by endeavoring to accomplish in the maintenance of standard resale prices by divers cooperative means and by favoring distributors who do maintain such prices and discriminating against distributors who fail to maintain such prices, in alleged violation of section 5 of the Federal Trade Commission act. Status : Ready for trial.

Complaint No. 940.--Commission v. Scotch Woolen Mills. Charge : Respondents are engaged in the manufacture of men's clothing and the sale thereof in interstate commerce to retail dealers doing business under the name of Scotch Woolen Mills, in many of which respondent or its stockholders have a beneficial interest. The respondent does not own nor is it interested in any woolen mills. Unfair methods of competition in commerce are alleged in that the use of the name Scotch Woolen Mills, when in fact the respondent has no such mills, tends to mislead and deceive the purchasing public to believe that purchases from the respondent are from the manufacturer of the cloth, in alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial.

Complaint No. 941.--Commission v. Keeler Bros. & Co., a corporation; the Columbia Securities Co., a corporation; the National Finance Co., a corporation; George Keeler and Frank Keeler. Charges : Unfair methods of competition are charged in that the respondents, engaged in the purchase and sale of municipal, county, and school bonds, procured bonds, apparently valid, but in which had been fraudulently embodied provisions and terms which indicated increased commercial value, using in connection with the sale thereof false and misleading histories of the bonds, failing to disclose to purchasers and prospective purchasers the real facts of the issues, and thereby misleading the purchasing public to believe that the bonds sold by the respondents were valid obligations of the municipalities by which they had been executed, issued as by law provided in conformity with elections duly called and held, and that

said purchasers would involve no risk of repudiation or expense of litigation to confirm validity or to enforce collection, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No 943.--Commission v. Abbott E. Kay and R T Nelson, as individuals and as copartners, doing business under the name of Aaban Radium Co. Charge : Unfair methods of competition In commerce are charged In that respondent, while engaged In the manufacture and sale of a product purporting to contain radium, but which In fact contains no radium, advertise radium content and thereby tend to mislead and deceive the purchasing public In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings:

Complaint No 945.--Commission v. Ajax Rope Co. (Inc.). Charge : Unfair methods of competition In commerce are charged In that the respondent, engaged In the purchase and sale of rope, cable, and twine, advertises as the "maker" of said products and states that it operates "mammoth rope factories" when In fact the respondent does not own, operate, or control any factory engaged In the manufacture of rope, cable, or twine, and by its advertising tends to mislead the trade and purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Negotiation for stipulation proceeding.

Complaint No. 947.--Commission v. Waldes & Co. (Inc.). Charge : The complaint relates that Waldes & Co., of Prague, Czechoslovakia, sold about 80 per cent of the snap fasteners that were marketed In the United States at the time of the outbreak of the World War, at which time the importation of products from Austria was discontinued by the American trade. During the World War many American corporations were organized for and began the manufacture and sale of snap fasteners In the United States. Unfair methods of competition are charged In that the respondent, organized under the laws of the State of New York In 1919, and engaged In the manufacture and sale of snap fasteners, under the brands "Kohinoor," "Revol," etc., established by its predecessor, Waldes & Co., of Prague, adopted and put into effect the practices of (a) exchanging its products for competitors' snap fasteners found on the shelves of jobbers and department stores, (b) subsequently selling at extremely low prices the snap fasteners so acquired, thereby demoralizing the market and causing many customers of its competitors to discontinue purchasing snap fasteners from said competitors, and (c) underselling its competitors by the sale of its products at less than the cost of production, all for purpose and with the intent of driving the American manufacturer of snap fasteners from the competitive field and to create a monopoly In the manufacture and sale of dress snap fasteners such as was formerly enjoyed by Waldes & Co., of Prague, In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 949.--Commission v. Seth Thomas Clock Co. Charge : Unfair methods of competition are charged In that respondent, engaged In the manufacture and sale In interstate commerce of clocks, employs a system of fixing and maintaining standard prices for the resale of its products, refuses to sell to jobbers, wholesalers, and retailers who fail to maintain said prices, and employs other cooperative means of insuring the observance of its retail price system, thus tending to obstruct commerce and freedom of competition, In alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial.

Complaint No. 950.--Commission v. Dr. Herman Heuser. Charge: Unfair methods of competition In commerce are charged In that the respondent, licensor of patent rights for a process of manufacture of nonalcoholic beverages, caused a letter of warning to be sent to licensee of the Baltimore Process Co., holder of a similar patent of prior date, advising them that the process they were using was an infringement of certain patents owned by the respondent, and, for purposes of intimidation and without intention of bringing suit, threatening legal action unless said licensees discontinued the use of the process owned by the Baltimore Process Co., thereby tending to intimidate and coerce said licensees to discontinue the use of the Baltimore process In favor of respondent's process, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 951.--Commission v. Pennsylvania, New Jersey, and Delaware Wholesale Grocers' Association, its officers, members of executive committee, and members. Charge : Unfair methods of competition are charged In that the respondents adopted a plan of hampering, obstructing, and preventing the Proc-

ter & Gamble Distributing Co., engaged in sale direct to the retail trade, from selling soap, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers to refrain from dealing in the products of said Procter & Gamble Distributing Co., in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No. 952.--Commission v. Pennsylvania, New Jersey, and Delaware Wholesale Grocers' Association, its officers, members of executive committee, and members. Charge : Unfair methods of competition in commerce are charged in that the respondents have adopted and carried out a policy and plan of coercing manufacturers to guarantee the respondent members against decline in price of commodities dealt in and to make their purchases from manufacturers so guaranteeing, thereby tending to restrict, diminish, and obstruct the sales and business of manufacturers who do not guarantee against decline in price, in alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial.

Complaint No. 954.--Commission v. Jacob Hochman and Samuel Levine, as individuals and trading under the name and style of Hochman & Levine. Charge : Unfair methods of competition are charged in that the respondents label, brand, and sell shirts manufactured by them as "English broadcloth," when in fact said shirts are manufactured from cotton cloth manufactured in the United States of a quality inferior to that of the widely advertised English broadcloth imported from England, in alleged violation of section 5 of the Federal Trade Commission act. Status : In course of trial.

Complaint No. 956.--Commission v. Oakleed Oil Co., Mark Kleeden, and Julia K. Threlkeld. Charge: Unfair methods of competition in commerce are charged in the sale of the share stock of respondent company in that the respondents have misrepresented the business, management, properties, and prospects of the said respondent oil company for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : Suspended pending investigation by the Post Office Department.

Complaint No. 957.--Commission v. the Ohio Wholesale Grocers' Association Co., a corporation, and its stock-holding members. Charge : Unfair methods of competition in commerce are charged in that respondents have adopted and carried out the policy and plan of coercing manufacturers to guarantee the respondent members against decline in price of commodities dealt in and to make their purchases from manufacturers so guaranteeing, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 958.--Commission v. Ohio Dairy Co. Charge : Unfair methods of competition in commerce are charged in that respondent's practice of paying, temporarily, unduly high prices at selected competitive points, while at the same time paying lower prices at other points for the same grade, quality, and quantity of cream and butterfat for the purpose of controlling or suppressing competition, tends to compel its competitors to cease buying at such points and artificially restrains competition in alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 959.--Commission v. Hygienic Laboratories. Charge : Unfair methods of competition in commerce are charged in that the respondent's "free trial" offer for its hair color restorer "Kolor-Bak" does in fact involve the payment of the regular price for the said restorer, and in that the respondent avoids fulfillment of its money-back guarantee by claiming that the preparation has not been used according to instructions, in alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 960.--Commission v. Texas-Mexia Drilling Syndicate, B. M. Hatfield, Sterling Syndicate, J. D. Johnson, Old Timers Oil Pool, Albert S. Leach, Co-operative Oil Interests, and C. R. Farmer. Charge : Unfair methods of competition in the sale of the share stock of the respondent syndicates and interests, are charged, in that the respondents have misrepresented the business, management, properties, and prospects of said respondent syndicates and interests for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : Suspended pending criminal prosecution by the United States.

Complaint No. 961.--Federal Trade Commission v. M. F. Skidmore and Elmer L. Skidmore, partners, doing business under the names and styles of "Skidmore Pen Co.," "William Bolles Dollar Pen Co.," and "Toledo Gold Filler Fountain Pen Co." Charge : Unfair methods of competition in commerce are

charged In that the respondents manufacture fountain pens to resemble the product of the Conklin Pen Co. and by simulating the brands and trade names of said Conklin pens tend to deceive and mislead the purchasing public into the belief that pens manufactured by respondents are Conklin pens, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting findings of trial examiner.

Complaint No. 962.-Federal Trade Commission v. Bethlehem Steel Corporation, Bethlehem Steel Co., Bethlehem Steel Bridge Corporation, Lackawanna Steel Co., Lackawanna Bridge Works Corporation, Midvale Steel & Ordnance Co., Cambria Steel Co. Charge : The respondent, the Bethlehem Steel Corporation, on or about October 25, 1922, acquired the properties, assets, and businesses of the Lackawanna Steel Co. and its subsidiaries and is now acquiring and has acquired the properties, assets, and businesses of the respondents, Midvale Steel & Ordnance Co. and Cambria Steel Co. Unfair methods of competition In commerce are charged In that the respondents by uniting under a common ownership and management and thereby effecting control of the iron and steel products originating In their respective territories tend to substantially lessen potential and actual competition, contrary to the public policy expressed In section 7 of the Clayton Act and In alleged violation of section 5 of the Federal Trade Commission act, to unduly hinder competition In the iron and steel industries In said territory and unreasonably restrict competition so as to restrain trade contrary to the public policy expressed In sections 1 and 3 of the Sherman Act and In alleged violation of section 5 of the Federal Trade Commission act. Status : Preparing for trial.

Complaint No 963.-Federal Trade Commission v. Roller Oil & Refining Co. (Inc.), H. C. Roller, C. F. Gibbons, Percie C. Wilie, E. H. Doud. Charge : Unfair methods of competition are charged In the sale of share stock of the respondent corporation In that the respondents have misrepresented the business, management, properties, and prospects of said corporation for the purpose of misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's report.

Complaint No. 964.-Federal Trade Commission v. Standard Oil Co. of New Jersey. Charge : Unfair methods of competition are charged In that the respondent acquired one-half or more of the stock or share capital of the Humble Oil & Refining Co., the effect of such acquisition being to substantially lessen competition between the said Humble Oil & Refining Co. and the respondent and its subsidiary, the Standard Oil Co. of Louisiana, to restrain commerce In those sections In which said companies are engaged In commerce and to create a monopoly In alleged violation of section 7 of the Clayton Act. Status: Preparing for trial.

Complaint No. 965.-Federal Trade Commission v. Turner & Porter (Inc.). Charge : Unfair methods of competition In commerce are charged In that the respondent, engaged In the manufacture and sale of stationery, designates and advertises as "Relief-Engraving" its process of Printing which resembles, In appearance, to some extent, an impression made from engraved plates but is not "engraving" as commonly understood by the purchasing public, and In that respondent falsely represents that the words "Relief-Engraving" have been registered In the United States Patent Office as the trade-mark, all for the purpose of misleading and deceiving the purchasing public In alleged violation of section 5 of the Federal Trade Commission act. Status : Testimony to be taken July 17.

Complaint No. 966.-Federal Trade Commission v. J. B. Harris-Mexia Trust, J. B. Harris-Mexia Trust No.2, and J. B. Harris. Charge : Unfair methods of competition In commerce are charged In the sale of stock of respondent trusts In that the respondents have misrepresented the business, management, properties, and prospects of the said respondent trusts for the purpose of misleading and deceiving the purchasing public In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting briefs.

Complaint No 967.--Tobacco Products Corporation and Midwest Tobacco Jobbers' Association, respondents. Charge : That the respondent association and the Tobacco Products Corporation entered into an agreement, understanding, and conspiracy by which they fixed the price at which the members of the respondent association should resell the products of the Tobacco Products Corporation, and that the Tobacco Products Corporation agreed to assist In the carrying Out of the conspiracy by discontinuing the sale of Its products to such members of the association as would sell such products at prices less than those fixed by the conspiracy, all In alleged violation of section 5 of the Federal Trade Commission act. Status: Complaint issued February 24, 1923.

Complaint No. 968.--Scotten-Dillon Co. and Midwest Tobacco Jobbers' Association, respondents. Charge : That the respondent Association and Scotten-Dillon Co. entered into an agreement, understanding, and conspiracy by which they fixed the price at which the members of the respondent association should resell the products of Scotten-Dillon Co., and that Scotten-Dillon Co. agreed to assist in the carrying out of the conspiracy by discontinuing the sale of its products to such members of the association as would sell such products at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status : Complaint issued February 24, 1923.

Complaint No. 969.--The American Tobacco Co. and Midwest Tobacco Jobbers' Association, respondents. Charge : That the respondent association and the American Tobacco Co. entered into an agreement, understanding, and conspiracy by which they fixed the price at which the members of the respondent association should resell the products of the American Tobacco Co., and that the American Tobacco Co. agreed to assist in the carrying out of the conspiracy by discontinuing the sale of its products to such members of the association as would sell such products at prices less than those fixed by the conspiracy, all in alleged violation of section 5 of the Federal Trade Commission act. Status : Complaint issued February 24, 1923.

Complaint No. 970.--Federal Trade Commission v. Wasatch Woolen Mills, a corporation. Charge : Unfair methods of competition in commerce are charged in that the respondent, engaged in the purchase and sale of "woolen goods made to order" and having no mills or factories of its own, indicates by the use of its corporate name that it is a manufacturer owning or operating woolen mills and that its customers thereby save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 971.--Federal Trade Commission v. Salt Lake Cooperative Woolen Mills, a corporation. Charge : Unfair methods of competition in commerce are charged in that the respondent, engaged in the purchase and sale of "woolen goods made to order," and having no mills or factories of its own, indicates by the use of its corporate name that it is a manufacturer owning or operating woolen mills and that its customers thereby save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 972.--Federal Trade Commission v. Jenkins Knitting Co., a corporation. Charge : Unfair methods of competition in commerce are charged in that the respondent, having no mills or factories of its own but engaged in the purchase and sale of knit goods, indicate by the use of its corporate name that it is a manufacturer owning and operating woolen mills and that its customers therefore save the profits of the middleman, thus misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 973.--Federal Trade Commission v. B. Raff & Sons. Charge : Unfair methods of competition are charged in that the respondent in jobbing pyroxyliny or celluloid combs, toilet sets, etc., advertises said articles as "Parisian Ivory," "White Ivory," or "Reed Ivory," thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting answer.

Complaint No. 974.--Federal Trade Commission v. Brooks Oil Co. and E. A. Benedict. Charge : Unfair methods of competition in commerce are charged in that the respondents, cooperating in the sale of house paint, have falsely represented, advertised, and labeled said product as "U. S. Quality Paint," the said paint in fact being a low-grade product not made for nor used by the United States Government and not made according to any Government specification or requirements, in alleged violation of section 5 of the Federal Trade Commission act. Status : To be tried July 16.

Complaint No. 975.--Edward Frohlich, trading under the name and style of Frohlich Glass Co., and E. A. Benedict. Charge : Unfair methods of competition in commerce are charged in that the respondents, cooperating in the sale of house paint, have falsely represented, advertised, and labeled said product as "U. S. Quality Paint," the said paint in fact being a low grade product not made for nor used by the United States Government and not made according to

any Government specification or requirements In alleged violation of section 5 of the Federal Trade Commission act. Status : To be tried July 16.

Complaint No. 976.--Federal Trade Commission v. Goodall Worsted Co. and Albert Rohaut. Charge: Unfair methods of competition In commerce are charge In that the respondent corporation a manufacturer of Palm Beach cloth, and its sales agent, the respondent Rohaut, fixed uniform and minimum prices below which clothing manufactured from Palm Beach cloth should not be sold to jobbers and dealers and enforce said standard prices by the use of a license agreement with the manufacturers of Palm Beach clothing by refusing to sell such cloth to manufacturers who fail to observe and maintain said resale prices, thereby tending to unduly restrain the natural flow of commerce and freedom of competition In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 977.--Federal Trade Commission v. Eastman Kodak Co., Allied Laboratories Association (Inc.), the Burton Holmes Lectures (Inc.), the Craftsmen -Film Laboratory (Inc.) , Kinoto Co. of America (Inc.) , Erbograph Co., Cromlow Film Laboratories (Inc.) , Palisades Film Laboratories (Inc.), Claremont -Film Laboratory (Inc.), Film Developing Corporation, Evans Film Manufacturing Co. (Inc.), Republic Laboratories (Inc.) , Lyman H. Howe Film Co., Rex Laboratory (Inc.), Tremont Film Laboratories (Inc.) , Mark Dintenfass, George Eastman, Jules E. Brulatour. Charge : The complaint alleges that the Eastman interests, In an endeavor to monopolize the manufacture and sale of cinematographic film In the United States, caused the respondent Brulatour to establish and operate laboratories for the production of positive print motion-picture films (without disclosing the true ownership) for the purpose of coercing competing laboratories to refrain from purchasing foreign cinematography film, such coercion being effected by underselling, discrimination In price and terms of credit or delay In or refusal to make delivery; and that subsequently the Eastman interests assumed title to said laboratories and by threat of operation thereof induced the respondent association and its members to join In a conspiracy by which the association members agreed to confine their purchases to film manufactured In the United States, the Eastman Co. agreeing to close its manufacturing laboratories and to refrain from further competition with members of the association, but threatening to reopen and operate its laboratories if the association members again purchased or used imported film, and the respondent members thereupon confined their purchase to Eastman film, falsely announcing that film produced by manufacturers other than Eastman can not be used to good advantage. Unfair methods of competition are charged In that the practices above described have resulted In the monopoly of the cinematography-film business In the United States by the Eastman Co. and restricted competition and fixed prices In the sale of positive prints to the producers of motion-picture film In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting some answers.

Complaint No. 978.--Federal Trade Commission v. Western Woolen Mills Co., a corporation. Charge: Unfair methods of competition are charged In that the respondent, engaged In the purchase and sale of woolen goods and having no mills of its own, indicates by the use of Its corporate name that it is a manufacturer owning or operating woolen mills and that its customers therefore save the profits of the middleman, thus misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 979.--Federal Trade Commission v. Abraham Cohen, trading under the name and style of Puritan Products Co. (Inc.). Charge : Unfair methods of competition In commerce are charged In that the respondent, en-gaged In the manufacture and sale of "Magnolia" salad and cooking oil simulate the trade name, containers, and labels used by the Corn Products Refining Co. In the sale of its favorably known Mazola salad and cooking oil made of corn oil, thereby misleading and deceiving the purchasing public In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting answer.

Complaint No. 980.--Federal Trade Commission v. Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis. Charge : Unfair methods of competition are charged In that the respondents, operating a beverage stock In the District of Columbia, have simulated the white store front and distinctive sign well known to the people of the District of Columbia as originally adopted by and associated with a chain of retail

stores known as Dikeman's Orange Beverage Stores, thereby tending to mislead and deceive the consuming public In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 982.--Federal Trade Commission v. E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, copartners, doing business under the firm name of Murray Knitting Co. Charge : Unfair methods of competition In commerce are charged In that the respondents, engaged In the purchase and sale of knit goods and having no mills or factories of their own, indicate by the general use and prominent display of the firm name under which they do business that they are manufacturers and that their customers therefore save the profits of the middleman, thereby misleading and deceiving the purchasing public In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 983.--Federal Trade Commission v. Morris Errera. Charge : Unfair methods of competition In commerce are charged In that respondent, operating a beverage store In the District of Columbia, has simulated the white store front and distinctive signs well known to the people of the District of Columbia as originally adopted by and associated with a chain of retail stores known as Dikeman's Orange Beverage Stores and thereby tends to mislead and deceive the consuming public In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 984.--The American Tobacco Co. and the Tobacco Jobbers' Association of Western Pennsylvania, its officers and members, respondents. Charge: That the respondent association and the American Tobacco Co. entered into a conspiracy, agreement, and understanding, by which they fixed resale prices of tobacco products of the American Tobacco Co. handled by the members of the respondent association, and that the American Tobacco Co. agreed to assist In the accomplishment of the conspiracy by agreeing to discontinue selling to such members of the association: as would sell the products or the American Tobacco Co. at prices less than those fixed by the conspiracy, all In alleged violation of section 5 of the Federal Trade Commission act. Status : Complaint was issued March 8, 1923, and answers were filed on April 27, 1923.

Complaint No. 985.--P. Lorillard Co. (Inc.) , and the Tobacco Jobbers' Association of Western Pennsylvania, its officers and members, respondents. Charge : That the respondent association and the P. Lorillard Co. (Inc.) entered into a conspiracy, agreement, and understanding, by which they fixed resale prices of tobacco products of the P. Lorillard Co. handled by the members of the respondent association, and that the P. Lorillard Co. (Inc.), agreed to assist In the accomplishment of the conspiracy by agreeing to dis continue selling to such members of the association as would sell the products of the P. Lorillard Co. (Inc.) at prices less than those fixed by the conspiracy, all In alleged violation of section 5 of the - Federal Trade Commission act. Status : Complaint was issued March 8, 1923, and answers were filed on April 27, 1923.

Complaint No. 986.--Federal Trade Commission v. Broadway Knitting Co., a corporation. Charge : Unfair methods of competition In commerce are charged In that the respondent, engaged In the purchase and sale of knit goods and "woolen goods made to order" and having no mills or factories of its own indicates by the use of its corporate name that it is a manufacturer and that its customers therefore save the profits of the middleman, thereby misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 987.--Federal Trade Commission v. The American Tobacco Co., a corporation; Tri-State Tobacco Jobbers' Conference, an unincorporated organization, Its officers, T W. Mahany, president, William J. Stern, secretary and manager, S. D. Ostrow, treasurer, their successors, and its members. Charge : Unfair methods of competition In commerce are charged In that respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, thereby tending to restrict competition and restrain the natural flow of commerce In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 988.-Federal Trade Commission v. Paramount Royalty Syndicate and Lea R Ellis. Charge : Unfair methods of competition In commerce are charged In the sale of securities of respondent syndicate In that the respondents have misrepresented the organization, business, management, properties, and prospects of said respondent syndicate for the purpose of misleading

and receiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 990.--Federal Trade Commission v. Missouri-Kansas Wholesale Grocers' Association, Peet Bros. Manufacturing Co., the Rub-No-More Co. Charge : The complaint charges unfair methods of competition In that the respondents adopted a plan of hampering, obstructing, and preventing the Proctor & Gamble Distributing Co., which quotes equal prices to wholesalers and retailers, from selling soaps, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers into refraining from dealing In the said products of the Proctor & Gamble Distributing Co., In alleged violation of section 5 of the Federal Trade Commission act. Status : Testimony ready to begin July 17.

Complaint No. 991.--Federal Trade Commission v. Iowa-Nebraska-Minnesota Wholesale Grocers' Association, its officers, members of executive committee, and all of its members; Slocum-Bergren Co.; Gowan-Lenning-Brown Co.; Peet Bros. Manufacturing Co.; Jas. S. Kirk & Co.; and Cudahy Packing Co. Charge : The complaint charges unfair methods of competition In that the respondents adopted a plan of hampering, obstructing, and preventing the Proctor & Gamble Distributing Co., which quotes equal prices to wholesalers and retailers, from selling soaps, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce whole sales into refraining from dealing In the sale products of the Proctor & Gamble Distributing Co., In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting some answers.

Complaint No. 992.--Federal Trade Commission v. The Ohio Wholesale Grocers' Association Co., a corporation, and its stockholding members, and Peet Bros. Manufacturing Co., a corporation. Charge : Unfair methods of competition are charged In that the respondents adopted a plan of hampering, obstructing, and preventing the Proctor & Gamble Distributing Co., which quotes equal prices to wholesalers and retailers, from selling soap, soap products, and cooking fats to the members of the respondent association and wholesale grocers, and sought to coerce wholesalers to refrain from dealing In the products of said Proctor & Gamble Distributing Co., In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting some answers.

Complaint No. 993.--Federal Trade Commission v. Bowers Bros. (Inc.), Lipscomb-Russell Co., W. K. Livingston, and J. K. Livingston, a partnership trading under the name of Livingston & Co.; J. E. Talmadge, jr., C. J. Talmadge, J. Y. Talmadge, and the executors of J. E. Talmadge, sr., a partnership trading under the name of Talmadge Bros. & Co. Charge : Unfair methods of competition are charge In that the respondents cooperate to maintain and enforce standard resale prices established for the resale of coffees roasted by respondent, Bowers Bros. (Inc.); refuse to sell to price cutters and prevent certain wholesalers and jobbers from obtaining said products, thereby suppressing and preventing all price competition, In alleged violation of section 5 of the -Federal Trade Coin-mission act. Status: At issue.

Complaint No. 994.--Federal Trade Commission v. Standard Education Society. Charge : The complaint relates that the respondent offers its "Standard Reference Work" free of charge In conjunction with a 10 years' subscription for its "Standard Loose-Leaf Extension Service" at \$49, payable within one year In monthly installments. Unfair methods of competition are charged In that the respondent's representation that the sum of \$49 is for the so-called extension service is false and misleading, as such sum Is greatly In excess of the cost of the service and is sufficient to compensate the respondent for the set of books delivered "free," and In that the respondent misrepresents the value of the said hooks and extension service and induces individuals to accept said books on approval but prevents the purchasers from exercising their option of returning the books to the respondent at its expense; misrepresents the quality of Its book bindings; makes false and misleading representation as to honorary membership In the " Standard Education Society" offered as an inducement to purchase respondent's books; claims that other books offered In connection with its "Standard Reference Work" are given free and without charge, whereas the price obtained Is so far In excess of the usual selling price of the Standard Reference Work as to constitute a fair price for all of the books delivered to the customers; falsely advertises that the Standard Reference Work has been "officially adopted by 24 States," and circulates commendations of its publications subsequent to their withdrawal and abrogation by the persons signing them, all In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting answer to amended complaint.

Complaint No. 995.--Federal Trade Commission v. King-Ferree Co. (Inc.) Charge: Unfair methods of competition are charged In that the respondent, a manufacturer of cigars at Greensboro, N. C., by labeling and advertising Its said product as "Vantampa" cigars, tends to mislead and deceive the purchasing public to believe said cigars are Tampa cigars manufactured from the Havana tobacco used In the Tampa district, In alleged violation of section 5 of the Federal Trade Commission act. Status : Before commission for final decision.

Complaint No. 997.--Federal Trade Commission v. Prosperity & Co. (Inc.). Charge : Complaint herein charges unfair methods of competition In that the respondent, for the purpose of inducing its competitors' customers to wrong-fully and unlawfully breach their contracts with said competitors and thereupon install and use respondent's garment-pressing machines In substitution for those of its competitors, allows as part payment of the purchase price for its own machines such sums as have been paid on contracts for the purchase of competing machines and furnishes the services of attorneys to defend suits brought by competitors for the purchase price for competing machines originally installed In alleged violation of section 5 of the Federal Trade Commission act. Status: Before commission for final determination.

Complaint No. 998.--Federal Trade Commission v. Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning, and William E. Henning, individuals, trading under the name and style of Phillips Genuine Sausage Co. Charge : Unfair methods of competition are charged In that the respondents, engaged In the sale of pork sausage, simulate the trade name and label of the Joseph Phillips Co., a long-established and favorably known manufacturer of "Phillips Original All-Pork Sausage," In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiner's findings.

Complaint No. 999.--Federal Trade Commission v. Royal Dutch Co. of Texas. Charge: Unfair methods of competition are charged In that respondent, originally organized as the "Pennsylvania Dutch Oil Co.," changed its name In simulation of that of the internationally known Royal Dutch Co., thereby tending to mislead prospective purchasers of Its corporate stock to believe that the said respondent is affiliated with the Royal Dutch Shell group of corporations, In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 1000.--Federal Trade Commission v. The Charles H. Elliott Co. Charge : Unfair methods of competition are charged In that the respondent, engaged In the manufacture of jewelry, stationery, Printing and engraving products suitable for use by schools, colleges, universities, and the student organizations thereof, offers and gives, without the knowledge and consent of the student organization, valuable gratuities to the students authorized to purchase said products as an inducement to buy respondent's products; offers and gives substantial and unwarranted reductions In price and valuable gratuities to induce said students to cancel contracts entered into with competitors of said respondent, and circulates false, misleading, and disparaging statements concerning its competitors, In alleged violation of section 5 of the Federal Trade Commission act. Status : Testimony to be taken July 9, 1923.

Complaint No. 1002.--Federal Trade Commission v. A Morrison and L. Morrison, partners, trading as Morrison Fountain Pen Co. Charge : Unfair methods of competition are charged In that the respondents, engaged In the sale and manufacture of fountain pens and pencils, label their products with false and fictitious resale prices far In excess of the usual retail prices for the purpose of misleading and deceiving the purchasing public as to the true value and usual selling price of said articles, In alleged violation of section 5 of the Federal Trade Commission act. Status : Testimony to be taken In July.

Complaint No. 1005.--Federal Trade Commission v. Consolidated Woolen Mills Co. Charge: Unfair methods of competition are charged In that the respondent, engaged In knitting garments from yarns purchased from woolen mills and In purchasing from the manufacturers thereof blankets, robes and mackinaws for sale by It, Indicates by the use of its corporate name that it Is a manufacturer of woolens, thereby causing the public to believe that purchases from the respondent are direct from the manufacturers of such yarn, cloth, and garments and that the profits of the middleman are thus saved to the purchaser, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting examiners findings.

Complaint No 1004.--Federal Trade Commission v. Harry Lederer & Bros. (Inc.). Charge : Unfair methods of competition are charged In that pens and

pen points manufactured by the respondent from metals other than gold are inscribed or stamped in small and indistinct letters and figures: "Premo 141 Warranted," the said figures being used with the intent and purpose of deceiving the purchasing public by reason of their resemblance to the "14K" mark on articles made of gold, in alleged violation of section 5 of the Federal Trade Commission act. Status: Testimony to be taken in July.

Complaint No 1005.--Federal Trade Commission v. Greenhalgh Mills, a corporation, J. Braumhall, J. W. Byrd, W. C. Baylies, Robert Amory, Charles Crehore, and B. F. Meffert, copartners, trading under the name and style of Amory, Brown & Co. Charge: Unfair methods of competition are charged in that the respondents, manufacturers and sales agents of cotton fabrics, caused certain of said cottons to be labeled "De Luxe Pongee," the said name having the capacity and tendency to mislead the trade and purchasing public to believe that the fabric so labeled is a silk fabric such as that commonly known and designated "Pongee," in alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting examiner's findings.

Complaint No. 1006.--Federal Trade Commission v. Hill Bros. Charge: Unfair methods of competition are charged in that the respondents adopted and maintained a system of standard prices for the resale of certain brands of their roasted coffee, refusing to sell to dealers failing to observe the minimum resale prices and employing various cooperative means for the enforcement of the price list, thereby hindering and suppressing all price competition and tending to obstruct the natural flow of commerce, in alleged violation of section 5 of the Federal Trade Commission act. Status: At issue.

Complaint No. 1007.--Federal Trade Commission v. Canada Dry Ginger Ale (Inc.) and Canada Dry Sales Corporation. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture of ginger ale in the United States and the sale thereof, have adopted and used labels simulating in color, design, wording, and general arrangement the well-known labels of the J. J. McLaughlin (Ltd.), manufacturers of Canadian ginger ale formerly sold in the United States by the respondent Canada Dry Sales Corporation, thereby misleading and deceiving the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Status: In course of trial.

Complaint No 1008.--Federal Trade Commission v. S. A. Samuels, L. E. Samuels, L. H. Samuels, Harry H. Samuels, doing business under the name and style of Cocoa Products Co. Charge: Unfair methods of competition are charged in that the respondents, engaged in the manufacture and sale of cocoa and chocolate preparations, changed, altered, and falsified orders obtained by respondents' salesmen for presentation to and to be filled by jobbers from stock to be purchased from respondents so that said orders represented larger purchases than the actual orders obtained from the retailers, thereby causing retail dealers to refuse to accept the respondents' products from the jobbers, to the detriment and loss of said jobbers, in alleged violation of section 5 of the Federal Trade Commission act. Status: Testimony taken June 20, 1923.

Complaint No 1009.--Federal Trade Commission v. Illinois Glass Co. Charge: Unfair methods of competition are charged in that the respondent, engaged in the manufacture and sale of glass bottles, entered into and carried out an agreement by the effect of which the respondent acquired the entire assets and capital stock of the Cumberland Glass Manufacturing Co., the More Jonas Glass Co., and the Minotola Glass Co., thereby tending to substantially lessen competition, restrain commerce, and create a monopoly, in alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Status: At issue.

Complaint No. 1010.--Federal Trade Commission v. Pittsburgh Coal Co. of Wisconsin, Northwestern Fuel Co., Reiss Coal Co., Clarkson Coal & Dock Co., M. A. Hanna Coal & Dock Co., Carnegie Dock & Fuel Co. Berwind Fuel Co., Northern Coal & Dock Co., Great Lakes Coal & Dock Co. Pittsburgh & Ashland Coal & Dock Co., Northwestern Coal Dock Operators Association, its officers, directors, and members. Charge: Unfair methods of competition are charged in that the respondent companies, the largest distributors of anthracite and bituminous coal in the northwest territory which comprises the States of Minnesota, Wisconsin, North Dakota, South Dakota, and parts of Iowa and Nebraska, entered into an agreement and conspiracy among themselves, through the respondent association and with others, to restrict, restrain, and suppress competition in the sale of coal by (a) abolishing com-

missions to Jobbers; (b) refraining from soliciting certain municipal business, recognizing such business as the prospect of the local retail dealer; (c) restricting certain contracts with retail dealers to cover public-utility business; (d) adopting uniform grading and cost-accounting methods for the standardization of coal sizes and costs; (e) refusing to sell to certain dealers not equipped with sheds and scales; (f) agreeing to uniform methods of accounting with retail dealers; (g) adopting uniform contracts with retail dealers and large consumers, prohibiting the diversion of coal except as authorized by the contract; (h) circulating lists of retailers to whom the respondents refuse to sell; (i) providing for the standardization and maintenance of uniform selling prices; (j) discriminating in price between the city of Duluth and the cities of St. Paul and Minneapolis; (k) selling at less than cost; (l) discriminating in price between wagon dealers and retail dealers equipped with yards and sheds; (m) arbitrarily reducing the price of coal to compel competitors to join the respondent association, all in alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status : In the course of trial.

Complaint No. 1011.--Federal Trade Commission v. J. Mailender, trading under the unincorporated names and styles of "M. Rider & Co.," "Queen City Salvage Co.," "Army Goods Headquarters," "Army-Navy Store." and "Army Goods Store." Charge : Unfair methods of competition are charged in that the respondent, engaged in the purchase and sale of men's work and dress clothing, surplus Army and Navy property, paints, and other goods, falsely represents certain of his wares as purchased from the United States Army or Navy, or made in accordance with specifications of the United States Government and of high quality, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 1012.--Ohio Wholesale Grocers' Association, Cleveland Tobacco Jobbers, and P. Lorillard Co. (Inc.), respondents. Charge : The charge is unfair competition in that the Ohio Wholesale Grocers' Association and a group of Cleveland, Ohio, tobacco jobbers, and P. Lorillard Co. (Inc.), entered into a conspiracy, agreement, and understanding, by which they fixed the prices at which the products of P. Lorillard Co. (Inc.) should be resold by the jobber respondents, and that P. Lorillard Co. (Inc.) agreed with the other respondents to assist in the carrying out of the conspiracy alleged, by refusing to sell to such of the respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Status : The complaint issued April 26, 1923, and answers were filed in June, 1923.

Complaint No. 1013.--Ohio Wholesale Grocers' Association, Cleveland Tobacco Jobbers, and American Tobacco Co., respondents. Charge : The charge is unfair competition in that the Ohio Wholesale Grocers' Association and a group of Cleveland, Ohio, tobacco jobbers and the American Tobacco Co. entered into a conspiracy, agreement, and understanding, by which they fixed the prices at which the products of the American Tobacco Co. should be resold by the jobber respondents, and that the American Tobacco Co. agreed with the other respondents to assist in the carrying out of the conspiracy alleged, by refusing to sell to such of the respondents as would resell its products at prices less than those fixed by the conspiracy. All in alleged violation of section 5 of the Federal Trade Commission act. Status : The complaint issued April 26, 1923, and answers were filed in June, 1923.

Complaint No. 1014.--Federal Trade Commission v. Ralph E. Dings and Lyon S. Schuster, a partnership doing business under the name and style of Dings & Schuster. Charge : Unfair methods of competition are charged in that the respondents, engaged in the manufacture and sale of paints, varnishes, shellac, and shellac substitutes, label as "white shellac" a product composed of shellac gum and a large quantity of shellac gum substitutes, such as rosin and similar ingredients, without distinguishing it from their similarly labeled product which is composed solely of shellac gum dissolved in alcohol, thereby tending to mislead and deceive the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 1015.--Federal Trade Commission v. William R. Warner & Co. (Inc.). Charge: Unfair methods of competition are charged in that the respondent, having established two scales of prices for its patent medicines, pharmaceuticals, and drug specialties designated, respectively, as jobbers' prices and retailers' prices, makes a regular practice of selling its products at said

jobbers' prices to certain selected wholesalers and retailers ; at the same time and irrespective of quantity purchased charges the higher retailers' prices to other wholesalers and retailers, thereby discriminating between its two classes of customers and giving preferred wholesalers and retailers an unfair advantage over competitors, who are compelled to purchase the respondent's goods of the same quality and quantity at higher prices and on less advantageous terms, tending to hinder and lessen competition, In alleged violation of section 5 of the Federal Trade Commission act and section 2 of the Clayton Act. Status : Awaiting answer.

Complaint No. 1016.--Federal Trade Commission v. Edwin E. Ellis Co. (Inc.). Charge : Unfair methods of competition are charged In that the respondent, engaged In the Printing and selling of stationery, designates and advertises as "Process engraving" its method of Printing In simulation of impressions made from engraved plates, thereby tending to mislead and deceive the purchasing public into the erroneous belief that the respondent's products are In fact "engraved" In alleged violation of section 5 of the Federal Trade Commission.

Complaint No. 1017.--Federal Trade Commission v. Process Engraving Co. Charge : Unfair methods of competition are charged In that the respondent, engaged In the Printing and selling of stationery, designates and advertises as Process "engraving" is method of Printing In simulation of impressions made from engraved plates. thereby tending to mislead and deceive the purchasing public into the erroneous belief that the respondent's products are In fact "engraved," In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 1018.--Federal Trade Commission v. Toledo Pipe Threading Machine Co. Charge : Unfair methods of competition are charged In that the respondent, engaged In the manufacture of pipe-threading, boring and cutting tools. and similar products, employs a system or policy whereby it has established and maintained standard prices for the resale of its products by jobbers and other distributors, refusing to sell its products to price cutters and employing other cooperative means for the enforcement of said resale prices, thereby tending to obstruct the free and natural flow of commerce and freedom of coin-petition, In alleged violation of section 5 of the Federal Trade Commission act. Status : A waiting answer.

Complaint No. 1019.--Federal Trade Commission v. The Standard Register Co. Charge: Unfair methods of competition are charged In that the respondent, engaged In the manufacture and sale of manifolding or autographic registers and supplies therefor, publishes numerous false, misleading, disparaging, and unfair representations concerning its completion., the Eery Register Co., falsely asserting that a court decision In favor of the respondent has lead the effect of canceling all orders place with said Eery Co.; threatening to bring and instituting suit for alleged infringement of patents, said suit and threat of litigation being not In good faith but for the purpose of intimidating the said Eery Co. and its customers; falsely representing its register as superior In quality and circulating statements to the effect that the Eery Co. is more than six mouths In arrears with is orders. all for the purpose of injuring its competitor and In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No. 1020.--Federal Trade Commission v. The Armand Co. Charge : Unfair methods of Competition are charged In that the respondent, engaged In the manufacture and sale of toilet preparations, employs a system of fixing and establishing certain specified standard prices for the resale of its products by jobbers, wholesalers, and retailers, refusing to sell to price cutters and employing other cooperative means for the enforcement of said system of resale prices, thereby tending to obstruct the natural flow of commerce and freedom of competition, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting answer.

Complaint No. 1021.--Federal Trade Commission v. Hygrade Lamp Co. Charge : Unfair methods of competition are charged In that the respondent, engaged In the manufacture and sale of tungsten lamps, adopted and enforces a policy of requiring its jobbers to enter into an exclusive agreement whereby said jobbers agree to restrict their purchases to the respondent and to limit their Hygrade Lamp business to said jobber's exclusive territory, which is clearly defined In the agreement, all In consideration of respondent's agreement to sell exclusively to said jobber In said exclusive territory, thereby hindering and suppressing competition In the jobbing of electric lamps, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting answer.

Complaint No. 1022.--Federal Trade Commission v. Hygrade Lamp Co. Charge : Unfair methods of competition are charged In that the respondent, by the acquisition of the capital stock of the Lux Manufacturing Co., a competitor, tends to lessen competition and restrain commerce In the territory served by the Lux Co., In alleged violation of section 7 of the Clayton Act. Status : At issue

Complaint No 1023.--Federal Trade Commission v. International Shoe Co. Charge : It is charged that the respondent, by acquiring substantially all of the capital stock of the W. H. McElwain Co., theretofore engaged In the manufacture and sale of shoes In competition with the respondent, tends to lessen competition, restrain commerce, and create a monopoly, In alleged violation of section 7 of the Clayton Act. Status : Awaiting answer.

Complaint No. 1024.--Federal Trade Commission v. Charles E. Cormier Rice Milling Co. (Inc.). Charge: Unfair methods of competition are charged In that the respondent, engaged In buying and selling rice and having no rice mills of its own, indicates by the use of the word "milling" as a part of Its corporate name that it is a miller of rice and that its customers therefore save the profits of all Intermediate dealers, thereby tending to mislead and deceive the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : At issue.

Complaint No 1025.--Federal Trade Commission v. Charles Tager, an individual trading under the name of Regat Sales Co. Charge : Unfair methods of competition are charged In that the respondent, by resorting to false, mis-leading, and deceptive representations as to the Markwell Manufacturing Co. and the Botts Marking Ink Co., distributors of Acme tacking machines and staples, persuades and induces customers and prospective customers who were using Acme tacking machines and staples to discontinue the use of said Acme machines In exchange for the respondent's Regat tacking machines, and to purchase large supplies of Regat staples, thus preventing said competitors from selling staples to their customers, In alleged violation of section 5 of the Federal Trade Commission act. Status : Taking of testimony to begin July 17, 1923.

Complaint No. 1026.--Federal Trade Commission v. M. Kaplin, trading as Butterfly Shop. Charge : Unfair methods of competition are charged In that the respondent, engaged In the sale of wearing apparel at retail, falsely represents as "silk" certain hosiery and other articles manufactured from materials or fabrics other than silk but resembling silk In appearance and texture, thereby misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Taking of testimony to begin July 6, 1923.

Complaint No 1027.--Federal Trade Commission v. Panama Rice Milling Co. Charge : Unfair methods of competition are charged In that the respondent, engaged In the buying and selling of rice and having no rice mills of its own, Indicates by the use of the word "milling" as a part of its corporate name that it is a miller of rice and that its customers therefore save the profits of fill intermediate dealers, thereby tending to mislead and deceive the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting answer.

Complaint No. 1028.--Federal Trade Commission v. Guaranty Royalties Co., W. F. Rogers, W. L. Hughes, and A. C. Loughrey. Charge : Unfair methods of competition are charged In the sale of the stock of the respondent joint-stock association In that the respondents have made numerous false, misleading, and deceptive statements concerning the organization, management, properties, production, earnings, and prospects of the respondent company for the purpose of inducing the public to purchase said stock, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting answer.

Complaint No. 1029.--American Tobacco Co., Bauswitz Cigar Co., of Phoenix, Ariz., and others, all of whom are Phoenix, Ariz., tobacco jobbers, respondents. Charge : The charge is unfair competition In that the American Tobacco Co. and the other respondents entered Into an understanding by which they fixed the prices at which respondent jobbers should resell the products of the American Tobacco Co., and that the American Tobacco Co. promised the other respondents its cooperation In the enforcement of the alleged conspiracy by agreeing to discontinue selling such of the jobber respondents as would resell its products at prices less than those fixed by the conspiracy. All In alleged violation of section 5 of the Federal Trade Commission act. Status : The complaint issued May 28, 1923, and the hearing day named In the complaint is July 17, 1923.

Complaint No 1030.--Liggett & Myers Tobacco Co., Bauswitz Cigar Co., of Phoenix, Ariz., and others, all of whom are Phoenix, Ariz., tobacco jobbers, respondents. Charge : The charge is unfair competition In that the Liggett & Myers Tobacco Co. and the other respondents entered into an understanding by which they fixed the prices at which respondent jobbers should resell the products of the Liggett & Myers Tobacco Co., and that the Liggett & Myers Tobacco Co. promised the other respondents its cooperation In the enforcement of the alleged conspiracy by agreeing to discontinue selling such of the jobber respondents as would resell its products at prices less than those fixed by the conspiracy. All In alleged violation of section 5 of the Federal Trade Commission act. Status: The complaint issued May 28, 1923, and the hearing day named In the complaint is July 17, 1923.

Complaint No. 1031.--P. Lorillard Co. (Inc.), Bauswitz Cigar Co., of Phoenix, Ariz., and others, all of whom are Phoenix, Ariz., tobacco jobbers, respondents. Charge : The charge is unfair competition In that the P. Lorillard Co. (Inc.) and the other respondents entered into an understanding by which they fixed the prices at which respondent jobbers should resell the products of the P. Lorillard Co. (Inc.) and that the P. Lorillard Co. (Inc.) promised the other respondents its cooperation In the enforcement of the alleged conspiracy by agreeing to discontinue selling such of the jobber respondents as would resell its products at prices less than those fixed by the conspiracy. All In alleged violation of section 5 of the Federal Trade Commission act. Status : The complaint issued May 28, 1923, and the hearing day named In the complaint is July 17, 1923.

Complaint No. 1032.--The American Tobacco Co., Conference of Wholesale Tobacco Dealers of Oregon, and others, respondents. Charge : The respondents joined In its complaint with the American Tobacco Co., groups of tobacco jobbers, and wholesale grocers located In numerous localities along the Pacific coast. The charge is that each group and the American Tobacco Co. conspired to fix resale prices on American Tobacco Co.'s products sold by the members of such groups, and that each of the groups agreed with each and every one of the other groups and with the American Tobacco Co. to adhere to the prices fixed by the American Tobacco Co., and each of such of the other groups, and that the American Tobacco Co. offered each of the groups to assist In the conspiracies by refusing to continue selling to such jobber as would resell its products at prices less than those fixed by the conspiracies aforesaid, all In alleged violation of the Federal Trade Commission act. Status : The complaint issued May 31, 1923, and the hearing day named In it is July 20, 1923.

Complaint No. 1033.--Liggett & Myers Tobacco Co., Conference of Wholesale Tobacco Dealers of Oregon, and others, respondents. Charge : The respondents joined In its complaint with the Liggett & Myers Tobacco Co. and groups of tobacco jobbers and wholesale grocers located In numerous localities along the Pacific coast. The charge is that each group and the Liggett & Myers Tobacco Co. conspired to fix resale prices on Liggett & Myers Tobacco Co.'s products sold by the members of such groups and that each of the groups agreed with each and every one of the other groups and with the Liggett & Myers Tobacco Co. to adhere to the prices fixed by the Liggett & Myers Tobacco Co. and each of such of the other groups, and that the Liggett & Myers Tobacco Co. offered each of the groups to assist in the conspiracies by refusing to continue selling to such jobber as would resell its products at prices less than those fixed by the conspiracies aforesaid, all in alleged violation of the Federal Trade Commission act. Status : The complaint issued May 31, 1923, and the hearing day named in it is July 20, 1923.

Complaint No. 1034.--Liggett & Myers, Keystone Tobacco Jobbers' Association, its officers and members, and the Central Pennsylvania Tobacco Jobbers' Association, its officers and members, respondents. Charge : The charge is unfair competition In that Liggett & Myers Tobacco Co. and the Keystone Tobacco Jobbers' Association by conspiracy fixed prices at which the members of that association should resell the products of the Liggett & Myers Tobacco Co.; that the Central Pennsylvania Tobacco Jobbers Association entered into a similar conspiracy with the Liggett & Myers Tobacco Co.; that each association agreed to abide by the prices of the other association when its members sold into territory of the members of such other associations and that the Liggett & Myers Tobacco Co. agreed with both of the associations to assist In the carrying out of the several conspiracies by discontinuing to sell such members of the associations as would sell its products at prices less than those fixed by the conspiracies aforesaid. Status: The complaint issued June 6, 1923, and the hearing day named In the complaint is July 26, 1923.

Complaint No. 1035.--Larus Bros. Co., Keystone Tobacco Jobbers' Association, its officers and members, and the Central Pennsylvania Tobacco Jobbers' Association, its officers and members, respondents. Charge : The charge is unfair competition In that Larus Bros. Co. and the Keystone Tobacco Jobbers' Association, by conspiracy, fixed prices at which the members of that association should resell the products of Larus Bros. Co.; that the Central Pennsylvania Tobacco Jobbers' Association entered into a similar conspiracy with Larus Bros. Co.; that each association agreed to abide by the prices of the other association when its members sold into territory of the members of such other association, and that Larus Bros. Co. agreed with both of the associations to assist In the carrying out of the several conspiracies by discontinuing to sell such members of the associations as would sell its products at prices less than those fixed by the conspiracies aforesaid. Status : The complaint issued June 6, 1923, and the hearing day named In the complaint is July 26, 1923.

Complaint No 1036.--Federal Trade Commission v. The American Tobacco Co., a corporation; Keystone Tobacco Merchants' Association, an unincorporated organization, its officers, J. C. Lindner, president; E. A. Stroud, vice president; I. Finkelstein, treasurer; W. F. Smulyan, secretary; their successors, and its members; Central Tobacco Jobbers' Association of Pennsylvania, an unincorporated organization, its officers, G. H. Stallman, president; Jacob L. Hauer, vice president; W. Clyde Shissler, secretary and treasurer; their successors, and its members. Charge : Unfair methods of competition are charged In that the respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, the respondent, the American Tobacco Co., refusing to sell its products to those who did not maintain said standard resale prices or resold said products to price-cutting sub-jobbers and retailers, all for the purpose and with the effect of restricting competition and restraining the natural flow of commerce In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting some answers.

Complaint No 1037.--Federal Trade Commission v. P. Lorillard Co. (Inc.), a corporation; Keystone Tobacco Merchants' Association, an unincorporated organization; its officers, J. C. Lindner, president; E. A. Stroud, vice president; I. Finkelstein, treasurer; W. F. Smulyan, secretary; their successors and its members; Central Tobacco Jobbers' Association of Pennsylvania, an unincorporated organization, its officers, G. H. Stallman, president; Jacob L. Hauer, vice president; W. Clyde Shissler, secretary and treasurer; their successors and its members. Charge : Unfair methods of competition are charged In that the respondents conspired and agreed to fix uniform prices for the sale and resale of cigars, cigarettes, and other tobacco products, the respondent, P. Lorillard Co. (Inc.), refusing to sell its products to those who did not maintain said standard resale prices or resold products to price-cutting subjobbers and retailers, all for the purpose and with the effect of restricting competition and restraining the natural flow of commerce In violation of section 5 of the Federal Trade Commission act. Status: Awaiting some answers.

Complaint No 1038.--Federal Trade Commission v. Standard Oil Co. of Kentucky, a corporation, F. T. Hurner, Gulf Refining Co., a corporation, F. D. Jones, the Texas Co., a corporation, H. G. Thompson, Tampa Automobile Dealers' Association, its officers, directors, and members, Tampa Retail Gasoline Dealers' Association, its officers, directors, and members. Charge : Unfair methods of competition are charged In that the respondent associations and their members conspired and agreed to fix prices and margins of profit for the sale of gasoline and for the enforcement of said prices solicited and obtained the cooperation of the respondent oil companies and their local agents, the individual respondents, the last-named group of respondents refusing to sell and deliver gasoline on usual and customary terms and conditions to those gasoline dealers who would not enter into and abide by the agreement fixing prices and margins of profit, all of which tends to reduce and divert the natural flow of commerce and to suppress and restrict the freedom of competition, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting some answers.

Complaint No. 1039.--Federal Trade Commission v. American Electric Heater Co. Charge : Unfair methods of competition are charged In that the respondent, engaged In the manufacture and sale of electrical appliances, established certain specified wholesale and retail prices at which its "American Beauty" iron should be sold by dealers, refusing to sell to price cutters and employing other cooperative means for the enforcement of its standard resale prices, thereby

hindering and suppressing competition and obstructing the free and natural flow of commerce, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting answer.

Complaint No. 1040.--Federal Trade Commission v. F. M. Stamper Co. Charge : Unfair methods of competition are charged In that the respondent, engaged In the purchase and sale of poultry, eggs, and cream, has adopted and maintains the practice of paying higher prices for poultry and eggs at one of its buying stations than it pays for such produce at other buying stations, thereby compelling competing buyers to discontinue purchasing produce In the territory In which higher prices are paid by the respondent and tending to substantially lessen competition and create a monopoly In said territory In alleged violation of section 5 of the Federal Trade Commission act. Status Awaiting answer.

Complaint No. 1041.--Federal Trade Commission v. Mountain Grove Creamery, Ice & Electric Co. Charge : Unfair methods of competition are charged In that the respondent has caused its butter to be put up In packages or cartons containing from 1 to 2 ounces less than the recognized standard weight of 16 ounces or 1 pound, the true weight being marked on the container however, each carton containing separately wrapped, unmarked units of slightly less than the standard and customary size and weight, and In imitation thereof, the tendency being to enable and encourage retailers to commit a fraud on the ultimate purchasers of the separately wrapped unmarked units In alleged violation of section 5 of the Federal Trade Commission act. Status Awaiting answer.

Complaint No. 1042.--Federal Trade Commission v. The Wichita Creamery Co. Charge : Unfair methods of competition are charged In that the respondent has caused its butter to be put rip In packages or cartons containing 1 ounce less than the recognized standard weight of 16 ounces or 1 pound, the true weight being marked on the container, however, each carton containing separately wrapped unmarked units of slightly less than the standard and customary size and weight, and In imitation thereof, the tendency being to enable and encourage retailers to commit a fraud on the ultimate purchasers of the separately wrapped unmarked units, In alleged violation of section 5 of the Federal Trade Commission act. Status : Awaiting answer.

Complaint No. 1043.--Federal Trade Commission v. The Meriden Creamery Co. Charge : Unfair methods of competition are charged In that the respondent has caused its butter to be put up In packages or cartons containing 1 ounce less than the recognized standard weight of 16 ounces or 1 pound, the true weight being marked on the container however, each carton containing separately wrapped, unmarked units of slightly less than the standard and customary size and weight and In imitation thereof, the tendency being to enable and encourage retailers to commit a fraud on the ultimate purchasers of the separately wrapped, unmarked units, In alleged violation of section 5 of the Federal Trade Commission act. Status: Awaiting answer.

EXHIBIT 17.

PROCEEDINGS DISPOSED OF DURING YEAR ENDED JUNE 30, 1923.

I. ORDERS TO CEASE AND DESIST.

Complaint No. 293.--Federal Trade Commission v. Non-Derrick Drilling Machine Co. (Inc.). Charge: Unfair methods of competition In connection with the sale of its corporate stock, consisting of publishing, advertising, and circulating extravagant, false and misleading statements, promises, and predictions concerning the business, organization, assets, capital stock, financial standing, and prospective profits of respondent, and concealing from the public material facts relating to and affecting the plans, organization, business, and capital stock of the respondent, and making, publishing, and circulating false statements regarding the existence, character, strength, efficiency, and operation of a drilling device or apparatus for the manufacture of which the respondent was ostensibly organized, and also falsely stating, representing, and advertising that it is engaged In business as a drilling contractor, whereas its activities have been confined solely to the sale of its capital stock, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After Hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 400.--Federal Trade Commission v. The Music Publishers' Association of the United States, National Association of Sheet Music Dealers, Thomas F. Delaney, individually and as president; E. Grant Ege, individually and as vice president; J. M. Priaulx, individually and as secretary and treasurer of the National Association of Sheet Music Dealers; Walter Fischer, J. Elmer Harvey, Charles W. Homeyer, William J. Kearney, Edward P. Little, Holmes T. Maddox, L. W. Miller, Harold Orth, Gustav Schirmer, S. Ernest Phillpit, Paul A. Schmitt, Clayton F. Summy, Charles H. Willis, W. H. Witt, Harvey J. Wood, individually and as directors of the National Association of Sheet Music Dealers, and all members of said association. Charge: Using unfair methods of competition by conspiring with the intent and effect of stifling competition In the business of selling musical publications, and fixing and maintaining standard resale prices; and by agreeing upon policies of increase In price, and upon uniform rates and schedules of prices of certain classes of musical publications, with the result that the prices of such publications were increased and enhanced, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged In the complaint.

Complaint No. 453.--Federal Trade Commission v. Swift & Co. Charge : That respondent purchased 956 shares of the capital stock of the Moultrie Packing Co., a competitor, causing the same to be transferred on the books of the company to officers and employees of the respondent. who, at a stockholders' meeting of said company, were elected as directors and stockholders for the transfer of property of the said company to respondent ; that it purchased all the capital stock of the Andalusia Packing Co., a competitor, and acquired the business of the company by a procedure similar to that employed In acquiring the Moultrie Packing Co.; and acquired one-half of the capital stock of the England, Walton Co. (Inc.), a competitor, securing control of the remaining stock of said company by receiving said stock as security for money loaned to Mulford & Bryan to purchase it ; and that the result of such acquisitions is the elimination of competition theretofore existing between the above-mentioned companies and the respondent and the creation of conditions which tend to create a monopoly, In alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 456.--Federal Trade Commission v. Western Meat Co. Charge : That respondent acquired all of the capital stock of the Nevada Packing Co., which acquisition resulted in the elimination of competition theretofore existing between respondent and said Nevada Packing Co. and the creation of a monopoly in meat and its by-products in communities adjacent to Reno, Nev., in violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the charges alleged in the complaint.

Complaint No. 584.--Federal Trade Commission v. John Bene & Sons (Inc.).-Charge : Using unfair methods of competition by circulating false and mis-leading statements regarding an analysis made by it of samples of one of its competitor's goods to the effect that such products were harmful, dangerous, and of no benefit. In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 588.--Federal Trade Commission v. Esco Hosiery Co. (Inc.). Charge : Using unfair methods of competition by labeling, advertising, stamping, and branding on packages containing hosiery bought and sold by it representations that the hose contained in said packages are silk, when in truth and in fact the material in said hose is not all silk, but only a portion of such material is silk, the remaining portion being composed for the most part of cotton and wool, with the effect of misleading and deceiving the trade and general public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 676.--Federal Trade Commission v. Harry Friedman, trading under the name and style of Rex Hosiery Co. Charge: Using unfair methods of competition in the wholesale sale of hosiery by labeling hosiery with the words "American silk." when such hosiery in fact contains no genuine silk, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 677.--Federal Trade Commission v. W. A. Shoffner and L. I. Young, partners, styling themselves the Alamance Hosiery Mills. Charge : Using unfair methods of competition in the manufacture and sale of hosiery labeled as "American silk," when such hosiery contains no genuine silk, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 678.--Federal Trade Commission v. Brown Durrell Co. Charge Using unfair methods of competition in the wholesale distribution of hosiery and underwear by falsely labeling it "Worsted," "Fine' wool," "Merino," "All wool," "Natural wool," or "Cashmere," when such hosiery and underwear is made of mixed cotton and wool, with the effect of deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 679.--Federal Trade Commission v. Nolde & Horst Co. Charge : Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery made of mixed cotton and wool in approximately equal parts as "Worsted," "Fine wool," "Merino," "All wool," "Natural wool," or "Cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No 680.--Federal Trade Commission v. Hancock Knitting Mills. Charge : Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery made wholly of cotton or of cotton and wool in approximately equal parts, as "Silk lisle," "Best silk lisle," or "Oriental sylk," or "Men's cashmere half hose," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order

directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 681.--Federal Trade Commission v. Fidelity Knitting Mills. Charge : Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery made wholly of cotton or of cotton and wool in approximately equal parts, as "Silk lisle," or "Cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 682.--Federal Trade Commission v. Joseph Kahn, Jacob Frank, and Jerome Frank, partners, styling themselves Kahn & Frank. Charge : Using unfair methods of competition in the wholesale distribution of hosiery by labeling hosiery containing no genuine silk as "Ladies' silk boot hose," "Ladies' art silk hose," etc., with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 683.--Federal Trade Commission v. J. Reed Thompson, Andrew N. Thompson, George L. Thompson, and A. Walter Thompson, partners, styling themselves Thompson Bros. Charge : Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery containing no genuine silk as "Ladies' silk boot hose," "Ladies' art silk hose," etc., with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 684.--Federal Trade Commission v. Charles Daum, Thomas J. Rogers, and Harry Spritzer, partners, styling themselves the Daum, Rogers, Spritzer Co. Charge : Using unfair methods of competition in the wholesale distribution of hosiery made of cotton and silk, cotton and wool, or silk fiber and wool, as "Men's silk half hose," "Cashmere hose," or "Silk and wool," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 685.--Federal Trade Commission v. Aristo Hosiery Co.-Charge : Using unfair methods of competition in the manufacture and sale of hosiery by labeling hosiery made of mixed cotton and wool as "Worsted ribbed hose," "Worsted fashioned hose," "Wool fashioned hose," "Women's black cashmere hose," "Black cashmere," "Fashioned cashmere hose," "Women's black wool hose, fashioned," "Ladies' high-grade cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 686.--Federal Trade Commission v. Rockford Mitten & Hosiery Co.- Charge : Using unfair methods of competition in the manufacture and sale of hosiery made of mixed cotton and wool by labeling it "Worsted ribbed hose," "Worsted fashioned hose," "Wool fashioned hose," "Women's black cashmere hose," "Black cashmere," "Fashioned cashmere hose," "Women's black wool hose, fashioned," "Ladies' high-grade cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 687.--Federal Trade Commission v. John T. Moore, Clarence G. Fisher, Edward J. Murphy, and W. H. Mathews, partners, styling themselves Moore & Fisher. Charge : Using unfair methods of competition in the wholesale distribution of hosiery made of mixed cotton and silk by labeling it as "World's best pure thread silk" or "Silk plated," and by placing on hosiery containing no genuine silk the label "Silk lisle," and by labeling hosiery made of mixed cotton and wool as "Cashmere," with the effect of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its

order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 689.--Federal Trade Commission v. Everett F. Boyden, trading under the name and style of George E. Boyden & Son. Charge : Using unfair methods of competition by selling hosiery made of cotton and wool In approximately equal parts as "Cashmere," with the effect of misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 698.--Federal Trade Commission v. Pilling & Madeley. Charge : Using unfair methods of competition In the wholesale distribution of hosiery by labeling hosiery containing 110 genuine silk as "Gordon silk hose," "Women's two-tone silk hose," or "Pure thread silk hose," with the effect of misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the com-mission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 699.--Federal Trade Commission v. Oscar Schmied. Charge : Using unfair methods of competition In the wholesale distribution of hosiery by labeling hosiery made of cotton and silk as "Ladies' silk hose," "Men's silk half hose," "Silk hose," or "Silk half hose," with the effect of misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 716.--Federal Trade Commission v. Simon Adelson, trading under the name and style of United States Refining Co. Charge : Using unfair methods of competition In the manufacture and sale of paints and other products by using false advertising matter and deceptive labels to lead the purchasing public into the erroneous belief that his product is ground In pure linseed oil or is pure white lead and is procured from or manufactured by the United States Government, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No 734.--Federal Trade Commission v. International Paint & Oil Co. Charge : Using unfair methods of competition by labeling as "Tar-pen-tine" its coal-tar distillate, which is capable of being used for some of the purposes for which turpentine can be used, which labeling so closely simulates the word "turpentine " that the purchasing public is deceived and misled to believe that the respondent's product is turpentine or similar thereto, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. - 736.--Federal Trade Commission v. Sulloway Mills. Charge : Using unfair methods of competition by the use of false and deceptive labels on hosiery made of wool and other material In approximately equal proportions, which create the belief that Its hosiery so manufactured is composed entirely of wool In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 738.--Federal Trade Commission v. Thatcher Manufacturing Co. Charge : Using unfair methods of competition by acquiring from the Owens Bottling Machine Co. the exclusive right to manufacture and sell milk bottles produced by the first automatic bottle-making machine. Subsequently another bottle-making machine was invented and licensed by the Hartford Fairmont Co.; and that the respondent, by taking over the control of the Hartford Fairmont Co. and its licensees, tends to eliminate competition and create a monopoly In the manufacture and sale of milk bottles, In alleged violation of section 5 of the Federal Trade Commission act and section 7 of the Clayton Act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 741.--Federal Trade Commission v. Eskay Harris Feature Film Co. Charge : Using unfair methods of competition by the adoption of

the title "Black Beauty" for a film reconstructed by it from an old film entitled "Your Obedient Servant," with the purpose and effect of appropriating the value created by the advertising campaign of the Vitagraph Co. for its bona fide production "Black Beauty," and by falsely claiming the control of the motion-picture rights and title of "Black Beauty" and threatening to prosecute any infringement, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 747.--Federal Trade Commission v. The Standard Electric Manufacturing Co. Charge : That the respondent, with the purpose and effect of lessening competition and creating a monopoly In the manufacture and sale of electrical appliances, enters into tying contracts with dealers whereby they, In consideration of a 10 per cent rebate, agreed to refrain from dealing In the products of competitors of the respondent, and that the respondent refuses to sell its appliances to dealers who fail to maintain its standard resale prices, all In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 770.--Federal Trade Commission v. Simons, Hatch & Whitten Co. Charge: Using unfair methods of competition In the wholesale distribution of hosiery by labeling and advertising hosiery made of animal or vegetable fiber product containing no silk as "Pure silk," by labeling a cotton product as "Silk lisle," and by labeling a cotton and wool product as "Cashmere" or "Wool," with the effect of misleading and deceiving the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing, the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 771.--Federal Trade Commission v. Louis Philippe (Inc.-), and Park & Tilford. Charge : Using unfair methods of competition In the manufacture and sale of a face cream, known as "Creme angelus," containing no lemon juice, by falsely labeling and advertising it as a French product made with and compounded from real lemons, with the effect of misleading and deceiving the purchasing public and hindering competitors from marketing similar toilet preparations which do contain the juice of lemons, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing, the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 774.--Federal Trade Commission v. Pinene Manufacturing Co.(Inc.). Charge : Using unfair methods of competition by falsely advertising its product "Pinene" as equal to turpentine and a chemically correct substitute therefor, whereas said product is In fact the petroleum distillate with a small portion of turpentine, with the effect of misleading and deceiving the purchasing public, and by further misleading the purchasing public by the use of the name "Pinene," the respondent's product containing little, if any, pinene, In alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No 789.--Federal Trade Commission v. Royal Duke Oil Co. Charge : Unfair methods of competition In connection with the sale of stock, In that false and deceptive statements were made In advertisements, such as claiming ownership In land where a contingent leasehold interest only existed, and describing certain tracts, covered by leases as being proven acreage although no oil had been produced, and drilling had been abandoned by respondent, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing, the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 790.--Federal Trade Commission v. Charles Goodman, trading under the name and style of Eagle Safety Razor Co. Charge : Unfair competition In the marketing of safety razors and shaving outfits In Printing false, fictitious, and misleading prices on the containers, knowing that those to whom he sells will retail the merchandise at much lower prices, thus tending to deceive the consumer into believing that his purchase is at a greatly reduced price, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 792.--Federal Trade Commission v. Caravel Co. (Inc.) Charge : Unfair competition, tending to discredit American apple growers and other American exporters, In selling abroad as and at the price of "Oregon Newtown Pippins" a superior apple for export purposes, the admittedly inferior "California Newtown Pippins," In alleged violation of section 5 of the Federal Trade Commission act and section 4 of the Webb Act. Disposition : An order was entered requiring the respondent to cease and desist from the practices complained of.

Complaint No. 795.--Federal Trade Commission v. Big Diamond Oil & Refining Co., P. M. Faver, J. F. Dofflemyer, B. F. King, and O. E. Houston. Charge : Unfair methods of competition In the sale of the capital stock of the respondent oil company In publishing false and mishandling statements, thereby deceiving the purchasing public with respect to the location, ownership, productivity, and value of respondents' oil interests, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 796.--Federal Trade Commission v. Lone Star Oil Co., Joe L. Stetman, Mrs. H. S. Lawson, C. H. Langdon, C. A. Bradley, J. D. Hawk, George F. Barton, J. B. Braidwood, and George B. Komp. Charge : Unfair methods of competition In the sale of the corporate stock of the respondent, Lone Star Oil Co., In circulating false and mishandling statements with respect to the extent of its operations and the value of its stock, and, further, the said stock was treasury stock of the Lone Star Oil Co., and the proceeds of sale were to be used for the development of its properties, whereas said stock was the property of the respondent, C. A. Bradley, and no part of said proceeds was turned into the treasury of the Lone Star Oil Co., all In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 799.--Federal Trade Commission v. Phillip King, Harry King, and Joseph King, partners, doing business under the name and style of King's Palace. Charge : Unfair method of competition In advertising cotton blankets as "wool-finished blankets," mercerized cotton tablecloths as , ' mercerized satin damask tablecloths," and hosiery composed partly of wool and partly of cotton as "men's wool sport socks," thereby deceiving and misleading the purchasing public as to the quality and value of the commodities thus offered for sale, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 834.--Federal Trade Commission v. Meyer J. Loeb, doing business under the name and style of Loeb & Co., and P. Hutner, doing business under the name and style U. Hutner & Co. Charge : A material known as "Salt's Peco plush" and used In the manufacture of coats is well known to the trade and purchasing public as of high quality.- The respondent Hutner is charged with having furnished the respondent Loeb with certain coats of inferior material and " Salt's Peco plush" labels therefor, the said respondents thereupon advertising these coats as made of " Salt's Peco plush," and so misrepresenting them to the purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 840.-Federal Trade Commission v. Chicago Portrait Co. Charge : Unfair methods of competition In that the respondent, engaged In making portraits from photographs, obtains orders for such portraits by means of drawings for so-called "lucky envelopes," or by giving trade checks for one-half the pretended purchase price, by which the prospective purchaser is misled to believe that he is obtaining said portraits at prices substantially below their usual selling prices, and In that the respondent misrepresents its portraits to be hand paintings and induces the purchasing public to sign a contract for the reproduction) of photographs, falsely representing said contract as a receipt for the photographs obtained from the customer, whereas said Con tract contains numerous provisions of a binding nature on the customer, which are not explained to or understood by said customer, and which serve to nullify verbal agreements made and false impressions created by respondent's salesmen as to the value of the portraits, the furnishing of frame and glass, etc. In

alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered Its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 841.--Federal Trade Commission v. The Chamber of Commerce of Missoula, its officers, directors, and members, and the Northwest Theaters Co. Charge : Unfair methods of competition In that the respondents conspired to hinder or prevent the sale of goods by mail-order houses situated without the State of Montana by providing for the acceptance of catalogues of mail-order houses in lieu of the usual price of admission to the respondent theater company's playhouse, and offering prizes for certain of such catalogues, all such catalogues being destroyed subsequent to the receipt and pursuant to said conspiracy, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 845.--Federal Trade Commission v. Melvin Behrend and Leopold Behrend, copartners, doing business under the firm name and style of Behrend's. Charge : Unfair methods of competition In advertising their comfortable to the public as "Silkoline covered comforts" and their blankets as "Superior wool finish," thereby misleading the purchasing public to believe that their comfortable are covered with material made of silk, when In fact they are made of highly mercerized cotton, and that their blankets are made of wool, when In fact they contain no wool whatsoever, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 849.--Federal Trade Commission v. Morrison & Co. Charge : Unfair methods of competition In labeling certain razors of inferior quality with fictitious and excessive resale prices to mislead and deceive the purchasing public with regard to the grade or quality of said razors In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practice alleged In the complaint.

Complaint No. 851.--Federal Trade Commission v. C. H. Parker Co. Charge : Unfair methods of competition In that the respondent falsely advertises as "Navy architectural spar and Interior varnish," a varnish which was In fact rejected by the Navy Department because the product had not been made In conformity with the Government specifications, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 853.--Federal Trade Commission v. Budd Tailoring Co. Charge : The respondent has adopted a plan of selling \$30 suits of clothing or overcoats to be paid for by the customer In 60 weekly payments of 50 cents, each payable In advance, with the understanding that such customers will be grouped into clubs of 60 customers each and that the name of 1 customer will be drawn from each club every week, either by lot or for services rendered In securing additional customers, the customers so selected to be given the clothing ordered without payment other than the weekly installments previously paid. Unfair methods of competition are charged In that the said sales methods constitute a lottery and nu that customers are deceived and misled as to the value and quality of the clothing to be furnished thereunder. In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 858.--Federal Trade Commission v. B. H. Stinemetz & Son Co. Charge : The respondent, an old and established mercantile house, advertised a special sale or series of sales In terms, inducing the belief on the part of the purchasing public that high-grade goods In regular stocks would be sold at unusual reductions from market value, whereas inferior goods were purchased and mingled with the regular stock goods, all subjected to a fictitious mark up before establishing mark-down or sale prices, to the deception of the public and the Injury of competitors, In alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered Its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 859.--Federal Trade Commission v. P. E. Ennis, doing business under the name and style of Pure Silk Hosiery Mills. Charge : Unfair methods of competition In that the respondent, a former agent of the "Reel Silk

Hosiery Mills” and now engaged in the sale of hosiery, simulates the trade name of his former employers and their method of doing business and falsely represents that he, as the “Pure Silk Hosiery Mills,” actually manufactures his hosiery in his own mills, when, in fact, such mills exist in trade name only, thereby misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 861.--Federal Trade Commission v. Old Dominion Oil Co., Great Western Oil Co., Bethlehem Oil Co., Metropolitan Oil Co., O. L. Pardue, A. B. Pardue, J. H. West, J. L. Stout, H. J. Gingles, W. B. Young, and J. D. Towner. Charge: The respondent individuals are the promoters of the respondent corporations. Unfair methods of competition are charged in that they, to further the sale of the corporate stock of the said corporations, issued and published numerous false statements and concealed or withheld other material information relative to the organization, business, and properties of said corporations, thereby deceiving and misleading the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 864.--Federal Trade Commission v. The Guaranty Fuel Oil Co., E. M. Thomasson, N. V. S. Mallory, John G. Menke, individually and as trustees and officers of the Guaranty Fuel Oil Co. Charge : Unfair methods of competition in that the respondents, to further the sale of the shares of beneficial interest in the properties of the respondent company, an unincorporated voluntary association, issued and published numerous false and misleading statements relative to the organization, business, and properties of said association, thereby deceiving and misleading the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 866.--Federal Trade Commission v. R. C. Russell, L. C. Hamblet, R. D. Hamblet, Mrs. M. H. Merrill, and First National Oil Co. Charge : The respondent individuals are the promoters of the respondent oil company, a Texas corporation. Unfair methods of competition are charged in that they, in order to further the sale of the share stock of the corporation, issued and published numerous false and misleading statements and concealed or withheld other information relative to the organization, business, property, and prospects of said corporation, thereby deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 867.--Federal Trade Commission v. Imperial Production Co., J. T. Craig, S. F. Tubbs, and J. B. Bright. Charge: The respondent individuals are the promoters of the respondent Imperial Production Co., a Texas trust. Unfair methods of competition are charged in that they, in order to further the sale of the share stock of the company, issued and published numerous false and misleading statements and concealed or withheld other material information relative to the organizations, business, property, and products of said company, thereby deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the consumers entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 872.--Federal Trade Commission v. William F. Melhuish, jr., and Henry Clay Silver, doing business under the firm name and style of Melhuish & Co., T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, J. W. Mastin, and the Edmonds Oil & Refining Corporation. Charge: The respondent individuals are promoters of the respondent Edmonds Oil & Refining Corporation, incorporated under the laws of the State of Louisiana. In order to further the sale of the share stock of said corporation they issued and published numerous false and misleading statements relative to the organization, business, properties, and products of said corporation to deceive and mislead the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 874.--Federal Trade Commission v. Morris Klein, doing business under the name and style of Racine Tire Sales Co. Charge : Unfair methods of competition, in that the respondent, engaged in the business of

rebuilding and repairing second hand and used automobile tires, solicits, by means of advertising and circulars, mail orders for said tires without disclosing, unless in small type, the fact that the said tires are second hand or used tires rebuilt and repaired by the respondent, and in that the respondent simulates the name of the Racine Rubber Co., a well-established and favorably known manufacturer of tires, and simulates its trade name "Multi-Mile Cord" by advertising his tires as "Multi-Cord," thereby tending to deceive and mislead the purchasing public, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing an order was entered requiring the respondent to cease and desist from the practices complained of.

Complaint No. 877.--Federal Trade Commission v. Sam Silverman, Jacob Silverman, and Henry Greenblatt, partners, doing business under the name and style of Warewell Co. Charge: Unfair methods of competition in that the respondents engaged in the publication and sale of books (at times as the Famous Authors Association or Classics Publishing Co.), under the pretense of securing advice from an advertising agency connected with the Little Leather Library Corporation, a favorably known publisher of a collection of thirty pocket editions known as the "Little Leather Library," generally advertised at a price of \$2.98 per set, obtained confidential information and data concerning the publication and sale of the said Little Leather Library and thereupon caused to be published a set of 30 similar volumes containing the same selections published in the said Little Leather Library, closely simulating the latter in materials, form, and advertising copy, all to mislead and deceive the purchasing public to believe that the respondents' set of books is the well-advertised "Little Leather Library," in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 878.--Federal Trade Commission v. Dudley D. Gessler. Charge: The respondent, engaged in the sale of dyes, dyestuffs, and chemicals used in connection with said dyes, trading under his own name and at times under the trade name and style of the Keystone Chemical Co.- offers and gives cash commissions and gratuities to superintendents, foremen, and other employees of textile mills and like industries without the knowledge of their employers to induce said employees to purchase the respondent's commodities in preference to those of its competitors, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 879.--Federal Trade Commission v. Bellas Hess & Co. Charge: The respondent, a mail-order house, purchased and advertised in its catalogues the coats manufactured by the Salts Textile Manufacturing Co. under the trade name "Salts Peco Seal Plush" and also purchased and advertised on the same pages in said catalogues, at lower prices and as "Iceland Seal Plush," similar coats manufactured from a plush having a cotton pile which is much inferior in value to the fur fabric with silk pile generally known as "seal plush," and by false and misleading statements concerning the origin, nature, quality, and values of these cotton plush coats tended to mislead and deceive the purchasing public to believe that its "Iceland Seal Plush" coats are of the quality of genuine "seal plush" and so induced the public to purchase cotton plush coats in preference to seal plush coats and in preference to cotton plush coats sold by its competitors without the use of misleading names and statements, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 882.--Federal Trade Commission v. Keaton Tire & Rubber Co. Charge: The respondent is the general distributing agent for the products of a number of manufacturers of demountable rims and demountable rim parts for automobile wheels, which it designates as "standard" parts, and is engaged in the sale thereof in competition with the like products of the Thompson-Neaylon Manufacturing Co. Unfair methods of competition are charged in that the respondent has inaugurated and carried on a campaign of disparagement against said Thompson-Neaylon Manufacturing Co.- and its parts, characterizing it and similar competitors as pirates and their parts as counterfeit parts, and physically removing the said company's parts and display boards from the trade, substituting therefor the respondent's display boards on which are published "warnings" which suggest that parts such as those made by the Thomp-

son-Neaylon Co. are illegal duplications of standard parts and that the use of such rim parts is dangerous and destroys the rim factory's guarantee on the entire rim equipment, and, with the cooperation of its branch houses and dealers, otherwise aims to discredit the Thompson-Neaylon parts with the trade and public, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 885.--Federal Trade Commission v. L. C. Orrell & Co. Charge : Unfair methods of competition in that the respondent, engaged in the sale of paints and painters' supplies, falsely advertises and asserts that its "Painter's pure paint" contains pure lead, pure zinc oxide, pure raw linseed oil, pure turpentine, and Japan drier; that its paint is the best and cheapest for the painter in use, is equaled by few other paints but surpassed by none; and that the user is guaranteed 100 per cent quality, service, and value, when in fact the said paint contains no turpentine whatsoever in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 888.--Federal Trade Commission v. Amalgamated Tire Stores Corporation. Charge: Unfair methods of competition in that the respondent, dealing in tires secured by it largely from distressed stocks, the stocks of bankrupt or of financially embarrassed concerns, and from the surplus tire stocks of the United States Army, falsely advertised its tires as "firsts" and "fresh" when in fact many of the tires so advertised and offered for sale were "seconds," and were not "fresh," but were more than one year old and deteriorated through age or other causes, thereby tending to mislead and deceive the purchasing public in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 889.--Federal Trade Commission v. Hub Hosiery Mills. Charge : The respondent, by labeling or branding its infants' hose as "Infants' Australian ribbed merino hose," misleads the purchasing public into the belief that its hosiery is made of wool of the merino sheep or of other fine Australian quality, when in fact said hosiery is composed partly of wool and partly of cotton in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 896.--Federal Trade Commission v. Williams Soap Co. (Indianapolis). Charge: The respondent makes numerous false and misleading statements in its catalogues, advertising matter, and labels concerning the origin, nature, quality, and value of its soaps, falsely asserting or implying that certain of its soaps are medicated or contain antiseptics or are especially prepared for the treatment of skin diseases, using fictitious names to indicate manufacture and indorsement by a national association of physicians, and in that it labels certain of its soaps with fictitious resale prices greater than the actual selling price to mislead the public to believe that purchases of its soaps are at prices substantially less than the fair retail value, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing, an order was entered requiring the respondent to cease and desist from the practices complained of.

Complaint No. 901.--Federal Trade Commission v. Fox Film Corporation Charge : Unfair methods of competition in that respondent selected several photoplays which it had produced previously and which had been exhibited throughout the United States, gave such photoplays new names different from those under which said plays had been theretofore exhibited to the public, correspondingly changed the films, and supplied said films with new advertising matter to exhibitors without disclosing the fact that said films were reissues, thereby tending to mislead exhibitors and, through them, the public into the belief that said reissues were new releases, in violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices, alleged in the complaint.

Complaint No. 903.--Federal Trade Commission v. American Film Corporation. Charge : Unfair methods of competition in that respondent selected photoplays which it had previously produced and which had been exhibited throughout the United States, gave said photoplays new names different from

those under when the said photoplays had heretofore been exhibited to the public, correspondingly changed the film, adding thereto an inconsequential amount of new or additional matter, and supplied said finish with new advertising matter to exhibitors without disclosing the fact that said films were reissues, thereby tending to mislead exhibitors and through them, the public, and to discredit the stars who acted the leading roles. In such issues and the current productions in which said stars were appearing before the public at the time respondent's reissues were being exhibited, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 910.--Federal Trade Commission v. Penn Lubric Oil Co. Charges : Unfair methods of competition are charged in that respondent has used various forms of advertising which have been and are calculated to deceive the purchasing public into the belief that the respondent's lubricating oils are pure Pennsylvania oils of the highest grade found in the State of Pennsylvania when in fact its lubricants consist of a compound of Pennsylvania oil and of inferior and cheaper oil, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 919.--Federal Trade Commission v. Clifford Smith, doing business under the name and style of Clifford Smith Co. Charges : That respondent used unfair methods of competition while engaged in the sale of paints, oils, varnishes, turpentine, and allied products by advertising and selling as "Argentine turpentine," a commodity which was and is not turpentine, and was and is, in fact, a mixture of mineral oil and destructively distilled wood turpentine, and the use of said trade name tends and tended to mislead and deceive the trade and consuming public as to the quality and value of its product, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 921.--Federal Trade Commission v. Premier Electric Co. Charges : Using unfair methods of competition in commerce is charged in that respondent, in advertising its telephone instruments, fails to disclose that said instruments contain old, used, or second-hand parts, the use of which permits it to sell its products at prices substantially below those fixed by competitors for similar articles made of new parts, thereby deceiving the purchasing public, in violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 923.--Federal Trade Commission v. Hoffman Machinery Corporation and its officers. Charge : Unfair methods of competition are charged in that the respondents engaged in the manufacture and sale of machines for pressing garments, in which business they have a substantial monopoly, causing their salesmen and other employees to spy upon the salesmen and other employees of their competitors for the purpose of securing the names of such competition's customers and attempting to induce such customers to breach their contracts with competitive manufacturers and install the respondents' garment-pressing machines in place of like machines purchased from said competitors by (a) allowing as part payment of its purchase price an amount equal to that paid on the contract for the purchase of such competing machines; (b) furnishing the services of attorneys to defend suits brought by competitors against such customers; (c) furnishing legal advice as to the way in which customers may rescind or evade contracts with competitors; and (d) framing letters to be addressed to competitors for the purpose of rescinding contracts, all in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 926.--Federal Trade Commission v. Jack Bernstein, doing business as United Woolen Mills of Washington. Charge: Unfair methods of competition are charged in that respondent, engaged in the manufacture and sale of men's clothing, had adopted the trade name "United Woolen Mills of Washington," thereby indicating to the purchasing public that he owns and operates mills which manufacture woolens from which his clothing is made, when in fact respondent neither owns, operates, nor has any interest in any mill manufacturing woolen cloth, and in that respondent's trade name simu-

lated the corporate name of the nationally known United Woolen Mills, a West Virginia corporation, thereby misleading and deceiving the general purchasing public, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 929.--Federal Trade Commission v. John McQuade & Co. (Inc.). Charges: Unfair methods of competition are charged, In that the respondent engaged In the manufacture and sale of paints, zincs, lead compositions, and similar products, misrepresenting the quality of its products by using false, deceptive, and misleading labels calculated and designed to deceive the trade and general public, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing, the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 935.--Federal Trade Commission v. T. S. Southgate, trading under the name and style of T. S. Southgate & Co. and Lexington Grocery Co. and Taylor Bros & Co. (Inc.), trading under the name and style of Southern Salt Co. Charges : Respondents are charged with unfair methods of competition, In that they advertise and sell their ground rock salt as "common fine" and as the highest grade of salt obtainable, without disclosing the fact that said salt was imported from Germany and is rock salt, there being numerous manufacturers of salt In the United States who manufacture salt by an evaporation process and advertise their product as "common fine salt"; also there being numerous salt manufacturers who manufacture salt from rock salt which is especially imported and is indicated to be an inferior grade and quality, and advertise their product as rock salt. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 936.--Federal Trade Commission v. Signet Films (Inc.) Charge: respondent is charged with unfair methods of competition, for the reason that it supplies motion-picture films by reissuing old photoplays under new titles without properly informing the public of such changes, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing, the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 938.--Federal Trade Commission v. American Turpentine Co., trading under the name and style of North American Fibre Products Co. Charge : Respondent is engaged In unfair methods of competition In commerce In that it purchases and sells paints, varnishes, and roofing material which it labels and advertises to indicate as being manufactured by the North American Fibre Co. and having factories located throughout the United States, when In fact it does not own nor operate any factory, thereby misleading and deceiving the purchasing public In alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 942.--Federal Trade Commission v. Sizz Chemical Co., W. C.-Milks, president and trustee; E. M. Hall, vice president and trustee; F. G. Schlueter, secretary-treasurer and trustee; Edwin Gotsch, trustee; C. C. Cummings, trustee. Charge: Unfair methods of competition In commerce are charged In that respondents, engaged In the manufacture and sale In commerce of a cleansing compound known as "Sizz," represent their product as free from alkali and as possessing remarkable cleansing power, and give certain demonstrations of this cleansing power which representations and demonstrations are false and misleading and tend to deceive the prospective purchasers of said product In alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged In the complaint.

Complaint No. 944.--Federal Trade Commission v. Fred A. Maltby and Clarence W. Maltby, as individuals and as partners. Charge : Unfair methods of competition are charged In that the respondents, engaged In the operation of taxicabs for hire, adopted and advertised under the names of Yellow Bell Taxicab, Yellow Ford Taxi Co., and Black and White Taxi Co., In simulation of the trade name of their competitors and to secure listing In the telephone directory immediately preceding or following the listing of said competitors, thereby diverting from said competitors a portion of the good will and patronage which would have accrued to them, and In that the said respondents list and adver-

tise under some 50 additional names used by taxicab companies throughout the United States to prevent such other taxicab companies from operating under or using any of said names in the city of Washington and the District of Columbia, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 946.--Federal Trade Commission v. Henry Lederer & Bros. (Inc.). Charge : respondent is charged with unfair methods of competition in that while engaged in the manufacture and sale of fountain pens and pencils it labels its product with false and fictitious resale price marks which are far in excess of the actual value of selling price, and thereby misleads the purchasing public as to the quality of said product, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 948.--Federal Trade Commission v. Eli Hyman and Louis Zaslav, partners, doing business under the name and style of Hyman and Zaslav. Charge : Unfair methods of competition are charged in that the respondents, jobbers of toilet articles, silverware, and novelties, purchase such toilet articles composed of nitrated cellulose grained to imitate ivory and label and brand said articles as French ivory, thereby tending to mislead and deceive the purchasing public as to the quality of said articles, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 955.--Federal Trade Commission v. John T. Bailey, trading under the name and style of United Fibre Works. Charge : Respondent is charged with unfair methods of competition in that while engaged in the purchase and sale of manila rope and acted as sales agent and manufacturer of oakum, cotton, hemp, and jute twine he falsely represented himself to be a manufacturer with mills in various cities, and to be the successor of the John T. Bailey Cordage Co., which company was until recently a large and long-established cordage and in that he advertises and represents "certain Government rope" manufactured during the World War, shipped to Europe, and later reshipped to the United States as being first grade and best quality, when in fact it has deteriorated by reason of its age and for other causes, all for the purpose of misleading and deceiving the public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition: After hearing the Commission entered its order directing the respondents to cease and desist from the practices alleged in the complaint.

Complaint No. 981.--Federal Trade Commission v. the Holsman Co. Charge : Unfair methods of competition are charged in that the respondent falsely advertises as "French ivory" its toilet articles composed in whole or in part of nitrated cellulose or pyroxylin plastic, commonly known as "celluloid," "pyralin," "fibreloid," etc., for the purpose of misleading and deceiving the purchasing public, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the Commission entered its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 996.--Federal Trade Commission v. Kraus & Co. (Inc.) and Herman T. Weeks. Charge : Complaint herein charges unfair methods of competition in commerce in that the respondent Kraus & Co. engaged in the manufacture of cigars in Baltimore, Md., and its selling agent, respondent Weeks, caused said product to be labeled "Tampa," and thereby tending to mislead and deceive the purchasing public into the belief that said cigars are Tampa cigars manufactured from Havana tobacco used in the Tampa district, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission issued its order directing the respondent to cease and desist from the practices alleged in the complaint.

Complaint No. 1001.--Federal Trade Commission v. G. F. Hemler. Charge : Unfair methods of competition are charged in that the respondent, a manufacturer of cigars at McSherrystown, Pa., by labeling and advertising the said product as "Tampa, Florida" and "All Havana Hand Made," tends to mislead and deceive the purchasing public into the belief that said cigars are Tampa cigars manufactured from the Havana tobacco used in the Tampa district, in alleged violation of section 5 of the Federal Trade Commission act. Disposition : After hearing the commission issued its order directing the respondent to cease and desist from the practices alleged in the complaint.

2. CASES DISMISSED.

Complaint No. 40.--Federal Trade Commission v. The Colorado Milling & Elevator Co. Charge: Attempting to eliminate competition by fixing resale prices and by refusing to sell to those who will not agree to maintain such prices, In alleged violation of section 5 of the Federal Trade Commission act. Disposition : Dismissed July 20, 1922.

Complaint No. 131.--Commission v. Atlantic Refining Co. Charge : Falsely representing the product of certain of their competitors to be unsatisfactory, defective, and further representing that such would not operate and was being sold at such exorbitant prices, thereby inducing competitors' customers to cancel orders, selling and lending pumps, etc.-, without adequate consideration and threatening to sell oil direct by retail unless dealers used the Gilbert & Baker product, and holding itself out to be the agent of its competitors as well as of the Gilbert & Barker Manufacturing Co. Disposition : Dismissed by reason of decision of the Supreme Court of the United States, October term, 1922, Federal Trade Commission v. Sinclair Refining Co., etc.

Complaint No. 207.--Commission v. the Cleveland Macaroni Co. Charge : Respondent sought to obtain preference for the sale of Its products, to wit, macaroni, noodles, and kindred products, by the adoption and use of a plan of rewards to salesmen of wholesalers, graduated In value according to quantities sold by such salesmen to the retail dealers. Disposition : Dismissed, respondent having been adjudicated a bankrupt and being now out of business.

Complaint No. 215.--Commission v. Minerals Separation Ltd., Mineral Separation American Syndicate Ltd., Minerals Separation American Syndicate (1913), Ltd., Beer, Sondheimer & Co., Beer, Sondheimer & Co. (Inc.), Minerals Separation North American Corporation, Benno Elkan, Otto Frohnknecht, and Harry Falck. Charge : The selling, leasing, and licensing of apparatus, processes, paraphernalia, supplies, accessories, data, etc., used In the separation and concentration of ores by flotation, by entering into and enforcing and attempting to enter into and enforce agreements by which respondents attempt, and undertake to prevent inventors, manufacturers, vendors, lessors, licensors, and users (independent concerns) of apparatus, etc., not covered by patent or patent rights controlled by respondents, from selling, leasing, licensing, or using the independent commodities without permission, to permit no independent concern to manufacture and sell independent commodities except on payment of exorbitant commission, to compel mine operators, metallurgists, etc., not In respondent's employ, to withhold all Information relating to apparatus, etc., from defendant In the event of patent litigation instigated by respondent, and to exact exorbitant royalties and to discriminate In such royalties, and to compel acceptance of respondents' patent claims without dispute or objection, and by falsely and maliciously disparaging Independent commodities and concerns, asserting exclusive rights, etc. Disposition : Dismissed because of lack of appearance of Interstate commerce.

Complaint No. 227.--Commission v. Helvetia Milk Condensing Co. Charge : Injuring and harassing competitors, destroying the trade of competitors and Suppressing and stifling competition In the sale of evaporated milk by guaranteeing Its customers against a decline In price of goods purchased and not resold at the time of such subsequent decline, and agreeing to refund the difference and by actually making such refund. Disposition : Dismissed without prejudice, Commissioners Nugent and Thompson dissenting.

Complaint No. 308.--Commission v. the Ohio Cities Gas Co., Columbus, Ohio. Charge : Unfair methods of competition In the business of purchasing and selling refined oil and gasoline, and the leasing and loaning of oil pumps, storage tanks, and containers, and their equipment, is charged by virtue of selling and loaning such pumps, tanks, etc., below cost, with the understanding that dealers shall not retail gasoline of competitors from such tanks thus furnished. Disposition : Dismissed by reason of Supreme Court decision In the gasoline pump cases. (See ante, 131.)

Complaint No. 324.--Commission v. the Factory Oil Co., Akron, Ohio. Charge : (Ibid above, 309.) Disposition : Dismissed, Supreme Court decision. (See ante, 131.)

Complaint No. 339.--Commission v. The Pictorial Review Co. and Oklahoma Publishing Co. Charge: Hampering and embarrassing competitors and obtaining an unfair and undue advantage by compilation of a list of news dealers throughout Oklahoma handling magazines of competitor without disclosing to the dealers the purpose for which it was sought. Disposition : Dismissed without prejudice.

Complaint No. 372.--Commission v. Standard Oil Co. of Kentucky. Charge : Unfair methods of competition in the business of purchasing and selling refined oil and gasoline by virtue of selling, leasing, and loaning oil pumps, storage tanks or containers, and their equipments, below cost, with the understanding that dealers shall not place in such devices the refined oil or gasoline of competitors. Disposition : Dismissed by decision of the Supreme Court. (See ante, 131.)

Complaint No. 395.--Commission v. Ida Davis, doing business under the trade name of David Davis Sons.- Charge : That respondent is knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, thereby falsifying the weight of said sponges, creating a fictitious price, defrauding and misleading customers, and causing prejudice and injury to competitors. Disposition : Dismissed without prejudice.

Complaint No. 468.--Commission v. H. A. Metz & Co. (Inc.). Charge : That respondent has been offering, loaning, and giving sums of money to employees of customers and prospective customers of dyestuffs and chemicals sold and offered for sale by him as an inducement to influence such employees to purchase from respondent and refrain from dealing with respondent's competitors. Disposition : Dismissed without prejudice.

Complaint No. 499.--Commission v. the Bayer Co. (Inc.). Charge : Respondent has been publishing false and misleading advertisements to the effect that the word "aspirin" is only properly applied to designate the product of respondent; that respondent's product is the only genuine, unadulterated, and safe drug product manufactured and sold as aspirin; and that the products manufactured and sold by competitors as and for aspirin are spurious and adulterated and composed of other materials, such as talcum powder and the like. Disposition : Dismissed.

Complaint No. 504.--Commission v. F. Hecht, Louis Friedheim, and T. I. Glynn, partners, styling themselves F. Hecht & Co., and T. I. Glynn Leather Co. (Inc.). Charge : Respondent sold to foreign countries an inferior grade of leather known as "kips," and an inferior grade of sheepskin, said leathers being billed as "calf" and "cabretta," respectively, and not conforming in value, quality, or grade to the samples by which same were sold. Disposition : Dismissed for failure of proof.

Complaint No. 515.--Federal Trade Commission v. The Haller & Merz Co. Charge : (Ante, complaint No. 468.) Disposition : Dismissed October 21, 1922.

Complaint No. 517.--Commission v. the Franklin Import & Export Co. (Inc.). Charge : Respondent has offered and given to employees of customers and prospective customers and competitors' customers of respondent's dyestuffs and chemicals, sums of money as an inducement to influence their said employers to purchase from respondent and refrain from dealing with competitors of respondent. Disposition : Dismissed.

Complaint No. 520.--Commission v. Proctor & Gamble Distributing Co. Charge : Respondents make a practice of giving guaranties and assurances against price decline in the list price of its soap and of giving rebates to compensate its customers for such decline, thereby obtaining an unfair advantage over competitors, encouraging jobbers to hold excessive stocks for the purpose of realizing a speculative profit to the injury of the public and deterring respondent from reducing list prices in accordance with the reduction in cost. Disposition: Dismissed.

Complaint No. 525.--Commission v. New York Color & Chemical Co. Charge : Respondent has been offering and giving to employees of customers and prospective customers sums of money and other gratuities as an inducement to influence their employers to deal with respondent and purchase the dyestuffs and chemicals sold and offered for sale by him and to refrain from dealing with competitors of respondent. Disposition : Dismissed.

Complaint No. 526.--Commission v. Louis Rosenthal, doing business under the name and style of United Chemical & Color Co. Charge : (Ibid above.) Disposition : Dismissed.

Complaint No. 528.--Commission v. Arkansas Distributing Co. Charge : (Ibid above.) Disposition : Dismissed.

Complaint No. 529.--Commission v. Max B. Kaesche, doing business under the name and style of F. Bredt & Co. Charge : (Ibid above.) Disposition : Dismissed.

Complaint No. 544.--Commission v. Valvoline Oil Co. Charge : (See ante 131.) Disposition : Dismissed. (See ante 131.)

Complaint No. 545.--Commission v. Irving Abraham, doing business under the name and style of

Abraham Bros. Charge : Offering to give employees of cus-

tomers, without the knowledge and consent of their employers, sums of money as an inducement to influence such employers to purchase paints, varnishes, and kindred products from respondents and refrain from dealing with respondent's competitors. Disposition : Dismissed.

Complaint No. 556.--Commission v. The G. H. Hammond Co. Charge : Respondent allows its customers advantages, such as free advertising services of specialty salesmen and payment of dealers' license fees, only on condition they agree to purchase all or a large percentage of their Butterine and oleomargarine from respondent, and enters into contracts to that effect, tending to lessen competition and create a monopoly, In violation of section 5 of the Federal Trade Commission act and section 3 of the Clayton Act. Disposition : Dismissed.

Complaint No. 557.--Commission v. Morris & Co. Charge : (Same as 556.) Disposition : Dismissed.

Complaint No. 558.--Federal Trade Commission v. Wilson & Co. Charge : Using *unfair* methods of competition by adopting and maintaining a practice of offering, giving, and allowing certain benefits and advantages to purchasers In the way of free advertising, services of specialty salesmen, and payment of dealers' license fee, on the condition that such purchasers agree to purchase all or a large percentage of their supplies of Butterine and oleomargarine from the respondent, In alleged violation of section 5 of the Federal Trade Commission act; and entering into contracts with a large number of purchasers of its said products at prices, In quantities, and for periods therein specified upon the condition, agreement, or understanding In the case of each contract that the purchaser named therein shall purchase all or a large percentage of the oleomargarine and Butterine needed by said purchaser of the respondent, In alleged violation of section 3 of the Clayton Act. Disposition : Dismissed November 4, 1922.

Complaint No. 587.--Commission v. Tide Water Oil Co., Tide Water Oil Sales Corporation, Tide Water Oil Co. of Massachusetts. Charge : (See ante 131.) Disposition : Dismissed. (See ante 131.)

Complaint No. 624.--Commission v. Autographic Register Co. Charge: Respondent enters into written contracts with users and lessees of its autographic registers, such contracts containing the express provision that such lessees will use on such registers only the supplies furnished by respondent, which provision prevents such lessees from purchasing from competitors of respondent any supplies to be used upon or In connection with the registers leased by respondent. Disposition : Dismissed.

Complaint No. 662.--Commission v. Deep Wells Oil Co., George B. Mechem & Co., and George B. Mechem. Charge : That the stock of respondent oil company, issued In exchange for oil and gas leases, which same were In part nonexistent, and for an agreement to drill certain test wells, which agreement was not carried out by respondent Mechem, the principal stockholder, was sold by respondent George B. Mechem & Co. by means of false and misleading statements concerning its business and property. Disposition : Dismissed for failure of proof.

Complaint No. 688.--Commission v. Reber Manufacturing Co. Charge : Respondent falsely labels so as to deceive the purchasing public, the hose manufactured and sold by it, such labels bearing the words "World's best pure thread silk" or "Silk plated" being placed on the hosiery which is made of mixed cotton and silk, while hosiery which contains no genuine silk is labeled "Silk lisle" and that made of mixed cotton and wool is branded "Cashmere." Disposition : Dismissed for the reason that respondent is not now engaged in business.

Complaint No. 695.--Commission v. Associated Oil Co. (Inc.), Adey-Johnston Co. (Inc.), E. A. Adey, jr., S. B. Coleman, and B. V. Johnston. Charge : Respondents are charged In the sale of the corporate stock of respondent Associated Oil Co. (Inc.) by the respondent, Adey-Johnston Co. (Inc.), and the respondent individual stockholders, officers, and directors of each of said corporations, with numerous false and misleading statements concerning the business and property of the respondent oil company which were issued and published to deceive the purchasing public and that the sale of the corporate stock was continued after the properties of the company were proven of no value. Disposition : Dismissed.

Complaint No. 697.--Commission v. New York Hosiery Works. Charge : Respondent, engaged In the sale of hosiery at wholesale, places his labels bearing the words "Ladies' silk hose," "Men's silk half hose," "Silk hose," "Silk half hose," or "Pure silk," on hosiery made of cotton and silk, thereby misleading

and deceiving the public. Disposition : Dismissed for the reason that respondent is not now engaged in business.

Complaint No. 710.--Commission v. Tide Water Oil Co. and Tide Water Oil Sales Corporation. Charge: That In the advertising of their lubricating oils respondents published a facsimile copy of a letter from the Bethman Motor Co. to the Tide Water Oil Co. containing a statement to the effect that Henry Ford & Son (Inc.) recommended for exclusive use In Fords on tractors the respondents' heavy special Veedol oil. which statement was known to the respondents to be false and was calculated to mislead the purchasing public and owners of Fords on tractors. Disposition : Dismissed.

Complaint No. 727.--Commission v. Austin Bond doing business under the trade name and style of Bond Bros. & Co., New York. Charge : Respondent, engaged In the business of buying, packing, and selling overissued or unused newspapers, has simulated and appropriated the trade name, trade-mark, and code address of the long-established and favorably known Bond Bros. & Co., engaged In export and import of overissued and unused newspapers. Disposition : Dismissed.

Complaint No. 761.--Commission v. The Prest-O-Lite Co. (Inc.). Charge : Respondent sells its acetylene gas In metal containers on which is etched a notice to the effect that the device is sold and licensed for sale and use only while filled by the respondent and when sold for not less than the fixed price, the cylinder being exchangeable In the Prest-O-Lite system only when filled and issued by the respondent. Unfair methods of competition and a tendency to create a monopoly In the sale of acetylene gas are charged In that, as the respondent sells its metal cylinders containing acetylene gas and passes title to the purchasers thereof, said notices are false and misleading; that respondent refuses to refill cylinders not of its issue or which have been issued by it but were filled by a competitor of respondent; that respondent maintains for its products a fixed resale price and eliminates all competition as to price between dealers In its products by refusing to supply dealers who resell its products at less than the price indicated. Disposition : Dismissed.

Complaint No. 794.--Commission v. Big Bear Oil Co. Charge : Respondents are charged with unfair methods of competition In the sale of capital stock of the respondent oil company, In that numerous false and misleading statements have been published to deceive the purchasing public with respect to the location, productivity, and value of respondent's oil interests. Disposition : Dismissed for failure of proof.

Complaint No. 800.--Commission v. Herbert W. Brand, Harry C. Oppenheimer, and Edwin W. Brand, partners, doing business under the name and style of Brand & Oppenheimer. Charge : Respondents engaged In the manufacture and sale of cotton lining material, advertise and label their products as "Silkette," thereby deceiving and misleading the public into the belief that their linings are partly or wholly composed of silk. Disposition : Dismissed without prejudice.

Complaint No. 820.--Commission v. The Carnick Bros. Co. Charge : Respondents purchasing steel and iron specialties which are unmerchantable or of inferior grade, quality, and size, and mixed with old and rusty wares bought "as is," sells these goods for export and misrepresents them to be of certain specified grades, qualities, and sizes, underbidding competitors who sell similar goods but of a character and quality as represented, with the tendency of bringing the character of certain exports of the United States into disrepute. Disposition : Dismissed, respondent having gone out of business.

Complaint No. 831.--Commission v. The Excelsior Shoe Co. Charge : Respondents, through the unauthorized use of the names, designations, and emblems of the well-known Boy Scouts of America, advertises, pictures, and labels Its shoes as "Boy Scout" shoes, and indicates the approval of the Boy Scouts of America as part of the regulation Boy Scout uniform, thereby misleading the purchasing public to believe that the respondent's shoes are of superior quality, that the respondent enjoys the exclusive right to sell shoes under the said name, and that the boys buying respondent's shoes, having acquired medalions furnished by the respondent, are eligible to membership In the Boy Scout troops. Disposition : Dismissed.

Complaint 838.--Commission v. Gypsum Industries' Association, its officers, committees, and members. Charge : Respondent conspired to binder competition In the sale and distribution of gypsum products manufactured by members of the association by limiting the territory In which such products may be sold by customers of its members and by prohibiting sales to dealers who deal with

customers without their territory, thereby restricting the sale of such products by mail order, or otherwise, for delivery at points other than those at which the authorized dealer maintains a retail establishment. Disposition : Dismissed, "it appearing that on January 3, 1923 the District Court of the United States for the Southern District of New York entered a decree In an action then pending therein In which the United States of America was complainant and Gypsum Industries' Association et ah were defendants, by which decree the issues In the above-entitled proceeding were adjudicated and disposed of.

Complaint No. 850.--Commission v. Goheen Manufacturing Co. Charge : Respondent, In selling its especially prepared paint for galvanized iron and labeled "Galvanum," has circulated letters which contain false and misleading statement that : "It is the standard of the United States Government," when In fact the Government of the United States has never adopted said Galvanum as a standard for any purpose. Disposition : Dismissed, respondent having been a Steamboat Co.

Complaint No. 869.--Commission v. Baltimore & Philadelphia Steamboat Co. Charge : Respondent, engaged In the transportation by water of freight and passengers between Baltimore and Philadelphia, has made it a practice to cut the price of transportation below cost to compel a competitor, the Marine Transport Corporation, to withdraw and discontinue its business that the previously existing monopoly held by the respondent may be restored to it. Disposition : Dismissed.

Complaint No. 891.--Commission v. Bethlehem Steel Corporation and Lackawanna Steel Co. Charge : Respondents, by entering into an agreement to combine or consolidate their respective properties, businesses, and interests into a common enterprise whereby the properties, assets, and business of respondent Lackawanna Steel Co. as well as those of its subsidiary Lackawanna Bridge Works Corporation and Lackawanna Steel Co., another subsidiary, are to be acquired by said Bethlehem Steel Corporation, itself In control of a number of subsidiary corporations, will thereby effect a combination which will control a substantial percentage of the production of certain steel and iron products In the United States, and especially In the State of Ohio and ail territory north of the Potomac River and east of said State, which said merger or consolidation will have a dangerous tendency to hinder and lessen competition and restrain trade and commerce, the agreement constituting an attempt to monopolize certain interstate trade and commerce. Disposition : Dismissed without prejudice.

Complaint No. 895.--Commission v. Otto Eisenlohr & Bros. (Inc.). Charge : Respondent engaged In the manufacture and sale of cigars and other tobacco products, has adopted and maintained a schedule of uniform resale prices for Its products, threatening to refuse to sell to price cutters and otherwise enforcing said system of resale price maintenance. Disposition : Dismissed, Commissioner Nugent dissenting.

Complaint No. 897.--Commission v. M. T. K. Products Co. and Trust (J. A. Menard, John E. Burkheimer, B. G. Raymond, H. P. Vogt. R. G. Townsend, and their successors, trustees under said trust); M. T. K. Sales Corporation; Beckley-Ralston Co. Charge: The company and trust is engaged In the manufacture and sale of an abrasive bearing-fitting compound named "Timesaver" the Sales Corporation and the Beckley-Ralston Co. are distributors of "Timesaver." It is charged that respondents have caused notices and advertising matter to be sent to the trade generally to the effect that "Timesaver" was a patented article, that similar articles (not specified however) infringing the patent were on the market, that the policy would be to protect their patent against all infringements and that legal proceedings would be vigorously pressed against dealers In and users of such infringing compounds, all of which has the capacity and tendency to bring all other similar products into suspicion to the harm of the manufacturers thereof and the dealers therein, none of whom has been especially charged and placed on notice. Disposition : Dismissed for the reason that the charges of the complaint were not supported by the proof.

Complaint No. 905.--Commission v. Midvale Steel & Ordinance Co., Republic Iron & Steel Co., and Inland Steel Co. Charge: Respondents, Midvale Steel & Ordinance Co. and Inland Steel Co., have agreed to consolidate their respective properties, businesses, and interests into a common enterprise and to acquire the properties, assets, and business of the Republic Iron & Steel Co., thereby tending to suppress and eliminate all competition which has theretofore existed between them and to effect control of a large proportion of the iron and steel

commodities business in the United States and particularly the States of Pennsylvania, Ohio, West Virginia, Kentucky, Indiana, Michigan, and Illinois; that said consolidation and merger has a dangerous tendency to unduly restrain trade and commerce and to create a monopoly. Disposition : Dismissed without prejudice, the merger having been abandoned.

Complaint No. 939.--Commission v. Braden's California Products (Inc.) and A. Claude Braden. Charge : Respondent Braden, a former stockholder of the Braden Preserving Co., in organizing the said respondent, Braden's California Products (Inc.) simulated the name of said Braden Preserving Co., well known to the purchasing public by reason of its advertising, and that the respondent corporation in the sale of its products, packed by various packers and labeled by it, features its name to enable it to pass off said products as and for the jams, preserves, and marmalades packed by the Braden Preserving Co. (Inc.), which misled and deceived the general purchasing public. Disposition : Dismissed.

Complaint No. 953.--Commission v. C. C. Cannan. Charge : That to further the sale of stock, shares, and units of beneficial interest of oil companies and syndicates promoted by him respondent made numerous false and misleading statements concerning the value of the securities offered and the business, prospects, management, and earnings of the various companies. Disposition : Dismissed.

Complaint No. 989.--Commission v. Paul E. Peck and Richard K. Peck, copartners, doing business under the name of P. E. Peck & Son. Charge: Respondents, engaged in the sale of steamship supplies, offer and give sums of money and other things of value to employees and representatives of steamship owners, without the knowledge or consent of such owners, as an inducement to said employees and representatives to purchase their supplies from respondent. Disposition : Dismissed for the reason that the respondent had been adjudicated bankrupt and said respondent Paul E. Peck is now deceased and said partnership is itself no longer doing business.

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