ANNUAL REPORT

OF THE

FEDERAL TRADE COMMISSION

FOR THE

FISCAL YEAR ENDED JUNE 30, 1923

WASHINGTON
GOVERNMENT PRINTING OFFICE
1923

FEDERAL TRADE COMMISSION

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

CONTENTS.

EXHIBITS.

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

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

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 th

pa

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 urerce, and in one case, thec

reports

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 necessaries 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 bill.

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 S 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 ca 0 aF0 11.04s-8 t0 Tc ( ) Tj Tj -15-550 11.04s-8 t0 Tc ( ) Tj Tj -15-5 4n, 33 0.0022 Tc (great) T

(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 K i n n
Raymond Bros.-Clark Co. v. Federal Trade(9MA1 2375m8sion.) Tj 0 -12.96 TD -0.0149 3ae C

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.

OnOn

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; The1;i oD . 2 1 8 ee T c (o f) 1 5 g (8) 1 5 F e i ( ) T j e t r a n s r i n d u s 4 (I n c

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

67501--23----2

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

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 int Tg 2.4 0 v Tc (Export)1D.iTj 1a9 -G1

City ; hamted, 32.7 Tjo9.32 -12.96 TD 0.005 Tc -0.0D.56 041.tlTD 0.0Tj 1.8 0 TD 0.0509

finally disposed of, ant 79 were pending at .12 close of .12 fiscal year

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

c ( ) T j 2 . i r e 0 T D 0 . 0 2 2

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 [illegible] 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.

[illegible]

e98ices.

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

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 80, 1928.

ADMINISTRATIVE DIVISION.

Item.	Office.	Field.
Annual leave	$14,038.26	
June 80, 1928.		

estimated

[illegible]2.36 0254D -0.04111,028 TDEconomic.supervi4 Twwwwwwwwwwwwwwwwwwwwwwwwwwwwwwwwww

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

Grain64 T0 -l3

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

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

LEGAL DIVISION.--Continued.

Item.	Office.	Field.
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 com plaints	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

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 com plaint	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,

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

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

Thatcher Manufacturing Co. the formal complaints charged the acquisition of stock in other corporations in violation of section 7 of the

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 suppoin thn o

the

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 i n t o

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 ,ciations, jo26Bacco compa.52 0 T most most of

ents, comprise practically all of the wholesale tobacco dealers along the Pacific

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 dis1f 2.3805 T 0 TD 0.0062 Tc (against) T

Mishawaka Woolen Manufacturing Co. v. *Federal Trade Commission, 283 Fed. 1022.*
Maloney Oil & Mfg. Co. v. *Federal Trade Commission, 282 Feb. 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

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

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 si

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 1TD -0.00554.44 0 TD 0.0254 Tc

contracts of agency

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 all24ed d and4 C85TD -0.042 Tc (t17ments) Tj 47.76 0 TI

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 jaw 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 interstateentd7046enty-nineders

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.

t was63ar, and the other th18 Tc n

Full line forcing.
Interference with competitor's source of supply.
Manipulation of market.
Misbranding.
Misrepresentation.
Passing off of name and goods.
Price cutting.
Price fixing.
Sale of stock by misrepresentation ("blue sky" cases).
Resale price maintenance.
Section 2, Clayton Act.
Section 3, Clayton Act.
Section 7, Clayton Act.
Selling below cost to put applicant out of business.
Selling old for new.
Slack-filled packages.
Subsidizing salesmen.
Threats and intimidations.
Use of false testimonials.
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.
Causing breach of competitor's contracts.
Dumping.
Falsely marking watch cases.
Giving free goods.
Guarantee against decline in prices.
Interference with competitor's customers.
Obtaining audit of competitor's books under false pretenses.
Unfairly obtaining list of competitor's customers.

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.

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
	Per cent.	*Per cent.*	*Per cent.*
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 indus tries, where questions as to violations of law are involved. Consider able the 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 when summarizing the activities ions composed of the manufacturers of posts and poles. These e headquarters Spokane, Wash., and are as follows : Western

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

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

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-

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 ease 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 ally a 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

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 i3

(l) 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 thick ness 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

ECONOMIC DIVISION.

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

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

From the information thus obtained

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.

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

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 :

(l) 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

response

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 owTc

/2l 8Tgi8 35D 0.00095 Tc (organization)3ng primTD 0ail ( ) T2p6 0b-l0.0164 p6 0b

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

$15.63 to $37.12 per thousand feet; the average sales realization for different companies ranged from $18.81 to $36.28 per thousand

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,

NATIONAL WEALTH, NATIONAL INCOME, AND TAXATION.

Senate Resolution 451, adopted February 28,1923,

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

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. l.

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

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, Ill.
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 Canners' 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-

the inferiority of the goods and offered to pay half of the loss entailed if the manufacturer would

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

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 Governments suit

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.

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.

salaries.

of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appears 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

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 subpena 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 ally 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

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

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 option 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, the

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 wailed as aforesaid, shall be proof of the service of the same. joining 96.025 68TD -0.08 0.03 Tw ( ) Tj 1.68 1.56 TD 0 T 034.56 0 TD 0 Tf9 marcourts.96 0220olio

V. INTERVENTION.

marservices7.76 6 28.cliou Tw ( )eT1.8 Tw ( ) T1.8 0 3 T 4 6 (

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. TD 0 Tc 0.03 Tw ( ) Tj 1.68 22 TD 0 Tc 0.03 Tw ( ) Tj 1.68 22rea 1.03 T12.84D5.6 0

Applications to intervene must be made on white paper, 8½ 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 1½ inches wide, or they may be folio reashall 20.04 0 TD 0 Tc 0.03 Tw ( ) Tj 2 real139 Tc-0. 0 TD 0 Tc 0.03 Tw ( ) Tj 1.4 0 TD 0.00.00.06 Tc 0 Tgood 17.04 0c 0 Tw (margin)

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 bearings 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 comm

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 flied 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 101/2 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 much 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,

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 much 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, lie may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *war,o wSieTD 0 Tc 0.0D Tj s 0.03 Tw ( ) 9 TD f Tj 2.16 0 TTc TD 0 Tc 050 TD 0*

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.

such o to)1.927 .( )d j 1.92 0 TD -0.042 Tc 0 Tw (each) Tj 1 16.56 0 TD 0 Tc 0.03 Tw ( ) T

XVIII. pay e.above, and f0.8 0 ( ) Tj 0 1.927 TD 0.3 Tc 223 Tw (e) Tj 2.0433 TD 0.078 Tc 56.0 (pay) Tj 0 1.544 0 d TD 0 ( ) Tc 0.24 T

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,

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.

(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 demand lic

as provided

FEDERAL TRADE COMMISSION,

(Signed) 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

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 enti

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

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 [illegible]

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

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 fortune 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

speD 0.012thly

38 or Td 0.01 Tc 0 Tw (w) (such) Tj 1.44 Tj 16.56 0.056 Td 0.056 Tc 0.03 (if) Tj 5.04 0 TD 0 Tc 0 Tw 0 T5( ) Tj 2.52 0 TDTD 0.004 Tc 0 Tw (now) Tj 15

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 com mission 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

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. 5. 441, w 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

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

"'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. 5. Army at Camp Johnston. * * *

"'CAMP JOSEPH E. JOHNSTON, FLA.,

"'*January 25, 1919.*

"'GUARANTEE VETERINARY COMPANY,

"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 magne

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 winy 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 thev 12 Tf

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 had adopted by respondent, allowed and allows to purchasers of the same quantity and quality of the products, different discount rates according to the classification of such purchasers by respondent. It is further

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, [illegible]

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.* Deering, 254 U. S. 443, 475, 476.

Prefacing the bill

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. 5. 300, 307, the Supreme Court declared that-

"In the absence of any purpose to create or maintain a monopoly, the act does not restrict create

methods, or because lie had some personal difference with him,

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

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 Chesters or famous O. I. C. hogs is a breed of hogs separate and distinct

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 in localities .44 0 TD 0 Tc Td0.w (v TD

It further appear's 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 thus 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 thus 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.* McAnnullty, 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

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 "Australian 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. O. 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

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 sin States conduct

"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

leakage, fire, or explosion of gasoline stored in said tank or drawn through said pump.

6. This agreement small terminate forthwith upon the sale or other disposition of said premises by party of

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

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 us 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 'trying' 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 en-gaged 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, flied 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

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 hatter, 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 complai (:)j 39.72 0 TD 0 Tcar 0 Tc37 -7

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 apfa Tc 0 Tw (the) Tj 12.12 0 TD 0 Tc 0.03 Tw ( ) Tj 4.2 0 TD -0.019 Tc 0 Tw-3 Tc10 3a

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, Southern the Cooperative

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 hue treated as legitimate wholesalers were such that it could properly be inferred that those acts were intended to were

cooperative associ

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 8,19198to Lmanufactur and sell children's shoes exclusively

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

EXHIBIT 14.

P. LORILLARD CO. CASE.

United States District Court, Southern District of New York.

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 prob-able cause supported by oath or affirmation. Thus the question is presented whether Congress can delegate visitorial 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 sect ions 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.)

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 dele gate 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 Commerc,e TD 0 T8 0 TD 0 Tc 0.03 Tw ( ) Tj 2.28 0 TD -0Tc 0 Tw (Commerce) Tj 43.44 0 T

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 or 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 war-rants 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 sized."

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 (l). 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

EXHIBIT 15.

BALTIMORE GRAIN CO. ET AL.

be, go through not only their books of account but their correspondence flies 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

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

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

EXHIBIT 16.

PROCEEDINGS PENDING JUNE 30, 1923.

Complaint No. 82.--Federal Trade Commission *v.* Photo-Engravers' Club or Chicago. Charge: Adopting a standard scale of uniform prices at which the members sell their products, with the intent of stifling and suppressing coin-petition 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.,

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 Usingthat

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 0. Reyman Co., a corporation, the effect of such acquisition being to enable respondent to completely dominate the business and policy of said Paul 0. Reyman Co., to restrain competition between said respondent and said Paul 0. 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

Federal Trade Commission act and section 7 of the Clayton Act. Status : Awaiting examiner's findings.

Complaint No. 455.--Federal

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 Manufacturing

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. 5. Pearsall Butter Co. now awaiting decision by the Circuit Court of Appeals for the Seventh Circuit.)

Complaint No.

or retailing licensees who complete the product and sell and distribute the same, the price or prices thereof being at all stages

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 l)rushes sold l)y 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 hoof the capital stock of the Congressional Oil Co. by the use

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

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, and of

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

violation of section 5 of the Federal Trade Commission act. Status : Awaiting respondent's brief.

Complaint No.

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.

Complain

Complaint No. 900.--Commission *v.* National Lead Co. Charge : Unfair methods of competition are charged In that the

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 C o. (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

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 comc 0 Tw (N 41.16 n TD 0Tc 0.03 Tw

man, individually and as secretary of the Pacific States Paper Trade As

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 how 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 then 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

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 Proctor & 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

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

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 l)y 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 thatI n

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 its prices

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 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

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 decisionTD 0 i9f25.56 0 TTj 24.36 0 TD 0 Tc 0.03 Tw ( )1 D 0 6Befo27.8.043D6 .0013 Tc 203 Tw ( ) T3.2onB

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 mini mum 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 ha(dle)Tj 12.84 0 TD0 Tj T2 1603 TD-0.0

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; Tj 13.08d1Torg2j 1.56 0 TD 0.018 Tc 0 Tw (; Tw (and) Tj mt9giw ( ) Tj 1.68 0

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 considerationcomme

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

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 the Jobbers' Jobbers' Association

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 1Tc 0.0TD 0.028 0 0Tj 139

[redacted]

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 Com-mission 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 *3 Tw 0 ND Cotton Tc 0.03* cease(y) [illegible] Federal

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

wholly t wholly wh ll ys a l e t fro e th UAL REPORT OF THE 0 Tw (sale) Tj 13.92 .03
Complaint sa1065 Tj 1Aft4 26e23.12410.s81 Tj 44.76 0ce:ft4 26e5 1 6T

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 bearing 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 caw (States) Tj 21.48 0 TD 0 Tc 0.03 T

the title "Black Beauty" for a film reconstructed by it from an old film en-tithed " 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 bearing 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

Complaint No. 792.--Federal Trade Commission *v.* Caravel Co. (Inc.) Charge : Unfair competition,

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 fr Commission 206 0 Tw ( ) Tj 1.3

Hosiery Mills" and now engaged In

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 us ed 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" or "Plush"

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-

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 has fact, "Argentine distilled dist

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

tise under some 50 additional names used by taxicab companies throughout the United States to prevent such other taxicab companies from operating tinder or using any of said names In the city of Washington aud 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 lie 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, and In pursuance of the [illegible]

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

Abraham Bros. Charge : Offering to give employees of cus-

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 f503 Tw ( ) Tj 2.64 0 TD -0.018 iTc 0.03 Tw ( ) Tj 2.88 0 TD -0.039 Tc 0 Tw (gas

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

States

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 v