

## Syllabus

## IN THE MATTER OF

## PAUL M. COOTER DOING BUSINESS AS THE COOTER COMPANY AND MART SALES COMPANY; AND RECORG SUPPLY CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

*Docket 5460. Complaint, Aug. 28, 1946—Decision, Dec. 13, 1951*

Where an individual who (1) was engaged as a food broker and buying agent for a group of wholesale grocers; operated the "Cooter Plan" under which he offered brokerage service, market information, advertising counsel, merchandising assistance and controlled brands to some 200 wholesale food distributor customers in thirty-five states; solicited sellers' accounts on a brokerage basis; and on occasion made purchases on the same basis for his own account; and (2) in 1936, when the Robinson-Patman Antidiscrimination Act, with its brokerage section herein concerned was enacted, held office as general manager and otherwise, in Merchants Service Corporation, a corporate group-buying organization which distributed among its wholesale grocery shareholders in the form of patronage dividends the brokerage it collected from sellers, and in two other corporations closely identified therewith by common officers, wholesale grocer shareholders, interests and objectives, to wit, the Volunteer Stores of America, which it had organized and controlled, and its successor, the Recorg Supply Corporation, to which it assigned its controlled brands;

Following (1) Merchants' discontinuance of trading operations in 1936, and his employment by its successor, Recorg Supply, to supply the same range of services to it and its wholesale grocer shareholders; (2) his acquisition from Volunteer Stores of the "exclusive privilege to use the Volunteer Stores System of distribution," "together with all labels, trade-marks, insignia, store sign designs," etc., in numerous states, and subject to specific conditions as to maintenance of quality of products concerned, etc.; (3) his subsequent making of franchise arrangements with wholesalers designating each as exclusive distributor of Volunteer brands in a specified territory, to be purchased through or from him, or with his consent; and (4) the making of lease agreements with certain sponsoring wholesalers from whom said Volunteer Stores had acquired such "Volunteer" rights and who were shareholders of Volunteer Stores and of Recorg Supply, and appeared as members on said Cooter's group customer list—

- (a) Entered into advertising agreements, pursuant to aforesaid arrangements, whereunder a substantial portion of the brokerage, etc., received from sellers by Cooter on each wholesaler's purchases was returned to the wholesaler in the form of payments for advertising and promotional activities in connection with said merchandise; and
- (b) After the discontinuance of such payments on April 1, 1944, continued to receive brokerage payments from the sellers on merchandise packed under labels owned or controlled by him, by the seller, or by the buyer; and

Where said individual, following his said employment by said Recorg Supply and further agreement with it whereby he was granted "the exclusive right and privilege to use, develop and promote the distribution of all products, goods, wares or merchandise," which were the subject of specified "trade-marks, insignia," etc., subject to maintenance of specified standards of quality and other conditions; the making thereafter of exclusive franchise agreements with different wholesale grocer shareholders of Recorg whereby the particular wholesaler was designated as his exclusive distributor for the goods concerned, to be purchased from or through him or with his approval; and the obtaining of similar agreements from said Recorg and others with respect to other controlled private or buyer labels or brands—

- (c) Entered into similar advertising authorization with each of the wholesalers concerned to whom it had thus granted exclusive territorial distribution of the brands involved, whereby brokerage, etc. received from sellers by said individual on the particular wholesaler's purchases of the merchandise involved was returned to said wholesaler in the form of payments by said individual for such wholesaler's advertising and promotional activities in connection with said merchandise; and
- (d) After October 1, 1945, when such payments were discontinued, continued to receive brokerage payments from sellers on merchandise packed under aforesaid controlled labels; and

Where said individual, following (1) the acquisition during the year 1944 from Recorg Supply and others of certain private or buyers' labels or brands; (2) the making of further and superseding agreements with Recorg's wholesale grocer shareholders under which each wholesaler was given by him exclusive right to use the specified trade-marks and brands in specified territory subject to the purchase, through said individual or with his approval, of a minimum volume of merchandise under the different brands, ranging from \$250 to \$25,000 annually; and (3) the making of a similar lease agreement with a Minnesota concern, conditioned upon the annual volume purchase of \$46,500 of products under the brands there involved—

- (e) Entered into similar advertising authorizations with or for each of said leasing grocer wholesalers whereby a substantial portion of the commission or other compensation, etc., secured, received and accepted from sellers by said individual on each wholesaler's purchase of the merchandise involved in said lease arrangements was returned to or expended for each wholesaler in the form of payments by said individual for advertising and promotional activities or for such wholesaler in connection with said merchandise; and
- (f) After Oct. 1, 1945, when payments under said arrangements were discontinued, continued to receive brokerage payments from the sellers on purchases by said wholesalers of merchandise packed under labels owned or controlled as aforesaid; and

Where said individual, who had therefore also purchased merchandise from sellers for his own account, by virtue of his interest in a certain wholesale grocery concern and the interest of the latter in Merchants Service and Recorg Supply; and who, more recently engaged in operating said "Cooter Plan," in the course of which he emphasized "the value of selling merchandise under buyers' labels"; solicited the accounts of sellers on a brokerage basis; submitted a group list of wholesale grocers described as his customers; upon request of customers and otherwise contacted sellers named

529

## Complaint

by the customers and canvassed the seller market in the customers' behalf and interest; employed subbrokers and furnished to his wholesale customers the purchasing, merchandising and other services described by him; and employed and paid missionary or field men, including those recommended by customers, to contact affiliated retail grocer groups in their behalf to promote the sale to such retailers of merchandise bearing the private or buyer labels or brands sponsored by said customers and owned and controlled by him—

- (g) Received and accepted commissions, brokerage or other compensation from the sellers (1) on purchase orders for his own account; (2) on orders originated by him for or received from his wholesale grocer customers located throughout the various states; and (3) on purchase orders transmitted directly by his wholesale grocer customers to the seller; and

Where said Recorg Supply Corporation, which, prior to about September 22, 1943, employed said individual and his corporations to supply it and its wholesale grocer shareholders with his aforesaid services—

- (h) Received and accepted commissions, brokerage, etc. from sellers on purchase orders initiated by it for or received from its wholesale grocer shareholders, from said individual or from his grocer wholesale customers; and, prior to about March 13, 1944, on transactions in which purchase orders were transmitted directly by its wholesale grocer shareholders to the sellers:

*Held*, That the receipt and acceptance from sellers by said individual directly and, prior to about September 22, 1943, indirectly through said Recorg Supply, of such commissions, etc., as a result of said purchase transactions in which said Cooter acted for himself, for the former wholesale grocer shareholders of Merchants Service, for respondent Recorg Supply and its shareholders, for the shareholders of Volunteer Stores, and for his own wholesale grocer customers, and in connection with which he rendered no service to the sellers, except for such incidental benefits as might have accrued to them in their not having to seek other outlets for merchandise sold through him, constituted violations of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act; and

That receipt and acceptance from sellers by said Recorg Supply Corporation and its officers and directors of commissions, etc., as a result of said purchase transactions in which Recorg and its officers and directors acted in fact for and in behalf of themselves, their shareholders, respondent individual and his said customers, and in connection with which no services were rendered to the sellers by said corporation and its officers and directors, likewise constituted violations of the aforesaid subsection (c) of said Act, as amended.

*Mr. Eldon P. Schrup* for the Commission.

*Levinson, Becker & Peebles*, of Chicago, Ill., for Paul M. Cooter.

*Breed, Abbott & Morgan*, of New York City, for all other respondents.

## COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c), section 2

## Complaint

48 F. T. C.

of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Paul M. Cooter is an individual doing business under the firm names and styles of The Cooter Company and Mart Sales Company, with principal office and place of business located at 228 North LaSalle Street, Chicago, Illinois, and branch office located at 16 California Street, San Francisco, California.

Respondent Paul M. Cooter formerly did business both in his own name and under the firm name and style of the Cooter Brokerage Company, and preceding that was the president, treasurer, controlling shareholder and the general manager of the Lakeshore Brokerage Company, Inc., and successor Lakeshore Marketing & Merchandise Company, Inc., all with principal office and place of business one time located at Room 904, Merchandise Mart, Chicago, Illinois, and branch office located at 16 California Street, San Francisco, California. The Lakeshore Brokerage Company, Inc., incorporated July 11, 1936, and renamed the Lakeshore Marketing & Merchandising Company, Inc., November 13, 1936, was a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois. Said corporation's assets were sold and transferred January 8, 1938, to respondent Paul M. Cooter concurrently doing business under the firm name and style of the Cooter Brokerage Company and the aforesaid corporation was dissolved February 17, 1938.

Respondent Paul M. Cooter, prior to doing business as hereinbefore set out, was the assistant secretary, assistant treasurer and general manager of respondent Recorg Supply Corporation, the assistant secretary and assistant treasurer of Volunteer Stores, Inc., of America, and the assistant secretary, assistant treasurer and general manager of Merchants Service Corporation.

PAR. 2. Respondent Recorg Supply Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 201 North Wells Street, Chicago, Illinois. Said corporation, one time located at Room 904, Merchandise Mart, Chicago, Illinois, amongst other activities, does business as a group buying organization for its wholesale grocer shareholders. Respondent Recorg Supply Corporation was organized and is controlled by wholesale grocer shareholders formerly the controlling shareholders of Merchants Service Corporation.

Volunteer Stores, Inc., of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 201

## Complaint

t, Chicago, Illinois. Said corporation, one time t, Merchandise Mart, Chicago, Illinois, was organ- Service Corporation to license and provide for Corporation sponsoring wholesale grocer share- trolled, private or buyers' label or brand "Volun- teer Stores system of retail distribution for led or branded.

e Corporation, one time located at Room 904, Mer- ago, Illinois, with branch office located at 16 Cali- rancisco, California, was a corporation organized, business under and by virtue of the laws of the

Said corporation, now dissolved, amongst other ess as a group buying organization for its whole- ders and in so doing received and accepted com- , and other compensation, allowances or discounts 1 sellers upon purchases from sellers for its said s.

Herscher, the president and a director of respond- Corporation, was formerly the president and a ants Service Corporation. Respondent J. W. president and a director of Volunteer Stores, Inc., ndent J. W. Herscher is associated with the Hub- any, Charleston, West Virginia. The Hubbard was a shareholder in Merchants Service Corpora- lder in both respondent Recorg Supply Corpora- Stores, Inc., of America. The Hubbard Grocery pears as a member on respondent Paul M. Cooter's d group customer list.

H. Tyler is the vice president and a director of Supply Corporation. Respondent Wm. H. Tyler Tyler & Simpson Company, Gainesville, Texas. ompany was a shareholder in Merchants Service a shareholder in respondent Recorg Supply Cor- Simpson Company further appears as a member on Cooter's group customer list.

A. McKay, the secretary, treasurer and a director g Supply Corporation, was formerly the treasurer erchants Service Corporation. Respondent Neil treasurer and a director of Volunteer Stores, Inc., ndent Neil A. McKay is associated with Bursley ne, Indiana. Bursley & Co., Inc., was a share- Service Corporation and is a shareholder in both pply Corporation and Volunteer Stores, Inc., of

America. Bursley & Co., Inc., further appears as a member on respondent Paul M. Cooter's group customer list.

Respondent L. H. Joannes, a director of respondent Recorg Supply Corporation, was the secretary and a director of Merchants Service Corporation. Respondent L. H. Joannes is also the secretary and a director of Volunteer Stores, Inc., of America. Respondent L. H. Joannes is associated with Joannes Brothers Company, Green Bay, Wisconsin. Joannes Brothers Company was a shareholder in Merchants Service Corporation and is a shareholder in both respondent Recorg Supply Corporation and Volunteer Stores, Inc., of America. Joannes Brothers Company further appears as a member on respondent Paul M. Cooter's group customer list.

Respondent Max A. Kuehn is a director of respondent Recorg Supply Corporation. Respondent Max A. Kuehn is associated with Andrew Kuehn Company, Sioux Falls, South Dakota. Andrew Kuehn Company was a shareholder in Merchants Service Corporation and is a shareholder in respondent Recorg Supply Corporation. Andrew Kuehn Company further appears as a member on respondent Paul M. Cooter's group customer list.

Respondent H. L. Miller is a director of respondent Recorg Supply Corporation. Respondent H. L. Miller is associated with the New River Grocery Company, Hinton, West Virginia. New River Grocery Company was a shareholder in Merchants Service Corporation and is a shareholder in respondent Recorg Supply Corporation. New River Grocery Company further appears as a member on respondent Paul M. Cooter's group customer list.

Respondent R. B. Wiltsee is a director of respondent Recorg Supply Corporation and also is a director of Volunteer Stores, Inc., of America. Respondent R. B. Wiltsee is associated with the Gilbert Grocery Company, Portsmouth, Ohio. Gilbert Grocery Company was a shareholder in Merchants Service Corporation and is a shareholder in both respondent Recorg Supply Corporation and Volunteer Stores, Inc., of America. Gilbert Grocery Company further appears as a member on respondent Paul M. Cooter's group customer list.

Respondent Jas. A. Scowcroft is a director of respondent Recorg Supply Corporation. Respondent Jas. A. Scowcroft is associated with John Scowcroft & Sons Co., Ogden, Utah. John Scowcroft & Sons Co. was a shareholder in Merchants Service Corporation and is a shareholder in respondent Recorg Supply Corporation. John Scowcroft & Sons Co. further appears as a member on respondent Paul M. Cooter's group customer list.

PAR. 3. Merchants Service Corporation, amongst other activities, prior to its dissolution did business as a group buying organization

for its wholesale grocer shareholders, purchasing merchandise from selected sellers, either under or bearing the seller's label or brand, or under or bearing so-called private or buyers' labels or brands, which were controlled and sponsored by Merchants Service Corporation and its wholesale grocer shareholders. Sellers accepted as sources of merchandise supply for Merchants Service Corporation were selected from seller lists furnished by the various corporation shareholders to Merchants Service Corporation's Concession Committee and operating manager, respondent Paul M. Cooter, as being sellers from whom brokerage or other monetary concessions in lieu thereof could or should be obtained by the corporation. Each wholesale grocer shareholder of Merchants Service Corporation was required to post a substantial guarantee fund with the corporation towards purchases made on such shareholders' behalf by the corporation. Patronage dividends based upon the total commissions, brokerage, and other compensation, allowances, or discounts in lieu thereof, collected from sellers by said corporation, after deduction of operating expenses, were declared and proportionally paid each corporate shareholder semiannually in ratio to the amount of the commissions, brokerage, or other compensation, allowances or discounts in lieu thereof, collected by the corporation on purchases made for said individual shareholder.

Merchants Service Corporation discontinued trading operations as of July 17, 1936, accepted the resignation of respondent Paul M. Cooter as assistant secretary, assistant treasurer and general manager, and entered into arrangements with the then recently organized Lakeshore Brokerage Company, Inc., whereunder Lakeshore Brokerage Company, Inc., purchased Merchants Service Corporation's office furniture, equipment, fixtures and supplies, assumed the office expenses, including salaries, payroll, and the rental obligations to Merchants Service Corporation's leases to 904 Merchandise Mart, Chicago, Illinois, and 16 California Street, San Francisco, California, and furnished Merchants Service Corporation's wholesale grocer shareholders the purchasing and other services formerly supplied by Merchants Service Corporation. Merchants Service Corporation further transferred its corporate records and outstanding brokerage accounts receivable for collection to respondent Recorg Supply Corporation and also assigned to said respondent Recorg Supply Corporation all the private or buyers' labels or brands controlled and sponsored by Merchants Service Corporation and its member shareholders.

Pursuant to the arrangements aforesaid, Lakeshore Brokerage Company, Inc., solicited the business of Merchants Service Corporation's wholesale grocer shareholders and further, through letters addressed to Merchants Service Corporation sellers signed by respondent

## Complaint

48 F. T. C.

Paul M. Cooter as president, Lakeshore Brokerage Company, Inc., solicited and applied for said sellers' accounts on a brokerage basis. Attached to or enclosed in said letters of application to sellers were group lists whereon appeared the names of the wholesale grocer shareholders of the dormant Merchants Service Corporation stated to have become customers of Lakeshore Brokerage Company, Inc. Such letters of application to sellers, together with attached or enclosed group customer lists, revised as required, have successively since and are now being used by respondent Paul M. Cooter in doing business as herein and hereinafter described in paragraphs following.

Merchants Service Corporation, prior to dissolution, the controlling shareholder in Volunteer Stores, Inc. of America, further sold and transferred said shares to the wholesale grocer shareholders of Merchants Service Corporation and such others as were engaged in sponsoring the Volunteer label or brand and the Volunteer Stores system of distribution. Merchants Service Corporation was dissolved and final disposition of all assets and liabilities was made August 27, 1942.

PAR. 4. Volunteer Stores, Inc., of America was organized by Merchants Service Corporation to lease from Volunteer Stores, Inc. of Tennessee the controlled private or buyers' label "Volunteer" and the Volunteer Stores system of retail distribution for the use of Merchants Service Corporation wholesale grocer shareholders. Volunteer Stores, Inc. of Tennessee is a Tennessee corporation controlled by King, Dobbs & Company, Chattanooga, Tennessee. King, Dobbs & Company was a shareholder in Merchants Service Corporation, is a shareholder in respondent Recorg Supply Corporation and Volunteer Stores, Inc. of America, and also appears as a member on respondent Paul M. Cooter's group customer list. Following the lease arrangement between Volunteer Stores, Inc. of America and Volunteer Stores, Inc. of Tennessee, all merchandise to be distributed under the "Volunteer" label or brand was to conform to a certain grade and quality and bear a label as approved and designated by the Board of Directors of Volunteer Stores, Inc. of America. All distributors operating under the Volunteer franchise were required to stock a specified number of items and it was further provided that any Merchants Service Corporation member failing to actively sponsor and promote the Volunteer Stores movement in the territory allotted would automatically forfeit the franchise to any other Merchant Service Corporation member desiring to actively sponsor and promote the Volunteer movement in such allotted territory. In addition to those Merchants Service Corporation wholesale grocer shareholders exclusively franchised for allotted territories, said label or brand was also made available to other groups of retail dealers sponsored by Merchants Service



Corporation wholesale grocer shareholders where such sponsored retail dealers displayed on their store windows the legend "Affiliated with Volunteer Food Stores."

Merchants Service Corporation on January 23, 1938, by resolution moved to dispose of and on February 15, 1938, sold and transferred its controlling shares of Volunteer Stores, Inc., of America as hereinbefore described. Prior to the said disposition, respondent Paul M. Cooter and Volunteer Stores, Inc., of America, on January 22, 1938, entered into the following agreement:

MEMORANDUM OF AGREEMENT made and entered into this 22d day of January, A. D. 1938, by and between PAUL M. COOTER, doing business under the firm name and style of Cooter Brokerage Company (hereinafter for convenience termed "Cooter"), party of the first part; and VOLUNTEER STORES, INC., OF AMERICA, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter for convenience termed "Volunteer"), party of the second part:

*WITNESSETH: That:*

WHEREAS, Volunteer represents and warrants that it is the holder and owner of the exclusive and perpetual franchise and the right to use the Volunteer Stores System of distribution, including Volunteer labels, trade-marks, insignia, store sign designs and any and all other incidents appurtenant thereto, in the following States of the United States of America: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, and District of Columbia; and

WHEREAS, Cooter desires to develop and promote the Volunteer Stores System of Distribution, as aforesaid, and to foster and expand the same to national proportions; and

WHEREAS, Volunteer has heretofore granted certain exclusive franchises to wholesalers in various territories (hereinafter sometimes referred to as the "Sponsoring Wholesalers");

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter contained, the parties hereto do mutually agree as follows:

1. Volunteer does hereby grant and lease to Cooter (except as the same may have heretofore been granted to certain Sponsoring Wholesalers, as aforesaid) the exclusive privilege, franchise and right to use, develop and foster the Volunteer Stores System of distribution, as aforesaid, together with all labels, trade-marks, insignia, store sign designs and any and all other incidents appurtenant thereto, in each and any of the States hereinabove set forth for a term of five (5) years from the date hereof; provided, however, that Cooter may, upon compliance with all of the terms and provisions hereof, if he so elects, renew this lease and all of its terms and provisions, for a like term, upon the giving of sixty (60) days' prior notice in writing to Volunteer. Such notice shall be deemed sufficient if deposited in the United States mail, postage prepaid, addressed to the last known address of Volunteer or to Volunteer in the care of its duly appointed or acting agent for the service of process in the State of Delaware.

## Complaint

48 F. T. C.

2. Cooter shall pay to Volunteer the sum of Twenty-Five Hundred Dollars (\$2,500.00) as rental for the exclusive privilege, franchise, and right hereinabove granted, payable in five (5) installments of Five Hundred Dollars (\$500.00) each in advance upon the first day of each and every year of said term, at the principal office of Volunteer. In the event that pursuant to the provisions of Paragraph 1 hereof Cooter exercises his option to renew this lease and all of its terms and provisions, Cooter shall pay to Volunteer the sum of Five Thousand Dollars (\$5,000.00) as rental aforesaid, payable in five (5) installments of One Thousand Dollars (\$1,000.00) each in advance upon the first day of each and every year of said renewed term at the principal office of Volunteer.

3. In the event of the death or total disability of Cooter, this agreement, which is nontransferable and nonassignable by Cooter, shall automatically terminate. For the purposes of this agreement, total disability is defined to mean the absence from or inability to work for a continuous period of six (6) months or more.

4. Cooter agrees to assume the duties and obligations of Volunteer during the term of this agreement as imposed upon Volunteer by a certain lease agreement between Volunteer and Volunteer Stores Inc. of Tennessee, executed contemporaneously herewith.

5. Volunteer will cooperate with and assist Cooter whenever possible to obtain lease agreements with each and every sponsoring wholesaler, said lease agreements to authorize the extension of Cooter's development activities to the respective territories hereinbefore allocated to such Sponsoring Wholesalers, as aforesaid.

6. It is expressly understood and agree that each Wholesaler, whether a Sponsoring Wholesaler or otherwise, through whom the Volunteer Stores System of Distribution has developed, as aforesaid, shall be designated, and accept such designation, as an agent of Volunteer for the distribution, sale and marketing of all food products bearing such labels, trade-marks, insignia and store sign designs of Volunteer, as aforesaid. It is further expressly understood that the duties of said Wholesalers, as agents aforesaid, shall be to insure against the distribution of any food products bearing said labels, trade-marks and insignia of a standard of quality less than the minimum fixed by the Board of Directors of Volunteer.

IN WITNESS WHEREOF, Cooter has hereunto set his hand and seal, and Volunteer has caused this instrument to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, all on the day and year first above set forth.

PAUL M. COOTER, doing business under the  
firm name and style of COOTER BROKER-  
AGE COMPANY

VOLUNTEER STORES, INC., OF AMERICA

By \_\_\_\_\_

Following the aforesaid memorandum of agreement between Volunteer Stores, Inc., of America, and respondent Paul M. Cooter, such shareholder dividends as paid by Volunteer Stores, Inc., of America were in large part declared on lease monies obtained from respondent Paul M. Cooter as afore-described.

## Complaint

Pursuant to the aforesaid lease arrangement with Volunteer Stores, Inc., of America, respondent Paul M. Cooter further entered into lease agreements with various wholesalers, copy of typical lease agreement being as follows:

MEMORANDUM OF AGREEMENT made and entered into this ----- day of ----- 1938, by and between PAUL M. COOTER, doing business under the firm name and style of Cooter Brokerage Company (hereinafter for convenience termed "Cooter"), party of the first part, and ----- (hereinafter for convenience termed the "Wholesaler"), party of the second part,

*WITNESSETH: That,*

WHEREAS, Cooter, by agreement dated January 22, 1938, made and entered into with Volunteer Stores, Inc. of America (hereinafter for convenience termed "Volunteer"), did become the holder, for a term of (5) years (with an option to renew said agreement for a like term) of the exclusive privilege, franchise, and right (except as the same may have theretofore been granted to certain sponsoring Wholesalers) to develop and foster the Volunteer Stores System of distribution, together with all labels, trade-marks, insignia, store-sign designs, and any and all incidents appurtenant thereto, in the following States of the United States of America: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, and District of Columbia; and

WHEREAS, Cooter desires to develop and promote the Volunteer Stores System of Distribution, as aforesaid, and to foster and expand the same to national proportions; and

WHEREAS, Wholesaler desires to participate in such program of development and promotion, and to obtain the various advantages thereof;

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter contained, and in the further consideration of the sum of One Dollar (\$1.00) to Cooter paid in hand by Wholesaler, receipt of which is hereby acknowledged, the parties hereto do mutually agree as follows:

1. Wholesaler is hereby designated as the exclusive distributor for Cooter in the following described territory, to wit:

for the goods, wares, and merchandise bearing the Volunteer Stores, Inc., of America labels, trade-marks, insignia, or other designs, until January 21, 1943, or, in the event of the exercise by Cooter of his option to renew said agreements between Cooter and Volunteer, as hereinabove set forth, until January 21, 1948.

2. Wholesaler does hereby agree to attempt to increase the demand for and the use of the goods, wares and merchandise bearing the Volunteer Stores, Inc., of America labels, trade-marks, insignia, or other designs in the territory hereinabove described.

3. Cooter agrees that no goods, wares or merchandise bearing said Volunteer Stores, Inc., of America labels, trade-marks, insignia or designs, will be sold by or through Cooter, or with its consent for distribution or otherwise, in the territory of Wholesaler hereinabove described, to any person, partnership, corporation or association other than Wholesaler.

Complaint

48 F. T. C.

4. All goods, wares and merchandise sold by Wholesaler bearing said Volunteer Stores, Inc. of America labels, trade-marks, insignia or designs shall be purchased by Wholesaler from or through Cooter, or with its consent and approval.

IN WITNESS WHEREOF, the parties hereto have executed this agreement under seal, all on the day and year first above set forth.

-----  
PAUL M. COOTER, doing business  
under the firm name and style of  
COOTER BROKERAGE COMPANY

Respondent Paul M. Cooter upon payments of \$3,400.00 and \$1,125.00 on January 28, 1938, and \$1,000.00 on March 8, 1938, respectively, to King, Dobbs & Company, Chattanooga, Tennessee, Grenada Grocery Company, Grenada, Mississippi, and Evans Terry Company, Laurel, Mississippi, further entered into similar memorandums of agreement with the said sponsoring wholesalers formerly holding lease agreements with Volunteer Stores, Inc., of Tennessee prior to said corporation's lease arrangements with Volunteer Stores, Inc., of America. The aforesaid leasing and sponsoring wholesalers, including both former shareholders and nonshareholders of Merchants Service Corporation, as hereinbefore described, comprise the controlling shareholders of Volunteer Stores, Inc., of America, are shareholders in respondent Recorg Supply Corporation, and also appear as members on respondent Paul M. Cooter's group customer list.

Pursuant to all the foregoing lease arrangements, respondent Paul M. Cooter entered into advertising authorizations with each of the leasing wholesalers whereunder a substantial portion of the commissions, brokerage or other compensation, allowances or discounts in lieu thereof received and accepted from sellers by respondent Paul M. Cooter on such wholesaler's purchases of Volunteer brand merchandise was returned to each wholesaler in the form of payments by respondent Paul M. Cooter for such wholesaler's advertising and promotional activities in connection with said merchandise.

PAR. 5. Respondent Recorg Supply Corporation, organized and controlled by wholesale grocer shareholders, formerly the controlling shareholders of Merchants Service Corporation, amongst other activities, does business as a group buying organization similar in style to that hereinbefore described in paragraphs preceding for the said dissolved Merchants Service Corporation. Upon the discontinuance of trading operations by Merchants Service Corporation as hereinbefore described and the resignation of respondent Paul M. Cooter on September 27, 1936, effective as of July 18, 1936, as assistant secretary, assistant treasurer and general manager of respondent Recorg Supply Corporation, respondent Recorg Supply Corporation under successive arrangements and for varying considerations since September 27, 1936,

