IN THE MATTER OF

QUAKER DISTRIBUTORS, INC. ET AL

MODIFIED CEASE AND DESIST ORDER

Docket 5673. Order, February 29, 1952

Order modifying original order of August 6, 1951, 48 F. T. C. 96, so as to require respondents, in connection with the offer, etc., of aluminum ware or other merchandise in commerce, to cease and desist from—

Representing that they are conducting a poll or survey, "unless they are in fact" so doing; or representing "that they are conducting a poll or survey, where the representation is made in such a manner as to initially conceal from prospective purchasers that they are engaged in the sale of merchandise"; and from making the other misrepresentations in said order below set out.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. William L. Pencke for the Commission.

Sundheim, Folz, Kamsler & Goodis, of Philadelphia, Pa., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a hearing examiner of the Commission theretofore duly designated by it, the hearing examiner's recommended decision and exceptions thereto of counsel for respondents, briefs and oral argument of counsel, the Commission, having ruled on the exceptions to the hearing examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents had violated the provisions of the Federal Trade Commission Act, on August 6, 1951, issued and subsequently served upon the respondents said findings as to the facts, conclusion, and its order to cease and desist.

Thereafter, pursuant to a motion filed by respondents, the Commission reconsidered the matter, and being of the opinion that its order should be modified in certain respects:

It is ordered, That the respondent Quaker Distributors, Inc., a corporation, and its officers, representatives, agents and employees, and the individual respondents Jack Weinstock, Nathan Loesberg, Robert Bertin, Jack Gerstel, and Louis Tafler, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution

of aluminum ware or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That they are conducting a poll or survey, unless they are in fact conducting a bona fide poll or survey;

2. That they are conducting a poll or survey, where the representation is made in such a manner as to initially conceal from prospective purchasers that they are engaged in the sale of merchandise;

3. That the purchasers of the said merchandise are being given a reduced price for such merchandise or any other valuable consideration as a premium or reward for their collection of box tops, clipping of advertisements, cooperation in furnishing information, or participation in any other similar project or activity;

4. That the said merchandise is being sold at a substantial discount or reduction in price when the price so charged is the usual and customary price at which they sell the said merchandise in the ordinary course of business;

5. That respondents' aluminum ware can be used for cooking foods in general without the use of water.

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

IN THE MATTER OF

COVIDEO, INC. ET AL.

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

Docket 5923. Complaint, Sept. 14, 1951—Decision, Feb. 29, 1952

Where a corporation and its two officers and owners, engaged in the interstate sale and distribution of "Covideo" coin-operated television sets for use in hotels, motor courts, hospitals, and similar places; in advertising their said product in magazines and newspapers and by circulars, directly and by implication—

(a) Falsely represented that they owned, operated or controlled a plant or factory where they manufactured coin-operated radios and television sets and component parts thereof;

(b) Represented that said corporation was not a new company but had been in the field for several years; the facts being that, organized in July 1949, it commenced doing business in the following October;

(c) Falsely represented that they maintained a staff of competent engineers and technicians and adequate facilities for research and experimentation in the field of television; and

(d) Falsely represented that said staff engaged in over two years of research and experimentation in said field, the results of which were embodied in their said "Covideo" product, before its offer for sale;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such advertisements were true and thereby induce its purchase of substantial quantities of their coin-operated television sets:

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

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. John F. Walsh for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Covideo, Inc., a corporation, Sidney I. Horwatt and Louis Brown, individually and as officers of Covideo, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Covideo, Inc., is a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 212 Broadway, New York, New York.

Individual respondents Sidney I. Horwatt and Louis Brown are, respectively, president and vice-president of said corporate respondent Covideo, Inc. and, acting in such respective capacities, said respondents formulate, direct and control the practices and policies of corporate respondent, including the advertising and other representations used and business practices employed by corporate respondent, as hereinafter related. Individual respondents own the entire capital stock of corporate respondent and their principal office and place of business is that of said corporate respondent.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of coin-operated television sets designated by them as "Covideo," for use in hotels, motor courts, hospitals and similar places.

Respondents cause their said coin-operated television sets, when sold by them, to be transported from their aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said coin-operated television sets in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said coin-operated television sets, respondents have circulated among their prospective purchasers, throughout the United States, by advertisements inserted in magazines and newspapers and by circulars sent through the mails, many statements and representations concerning their said coin-operated television sets. Among and typical of such statements and representations, disseminated as aforesaid, but not all-inclusive, are the following:

Just a word about Covideo, Inc.

We were pioneers in the manufacture of Coradio coin-operated radios; and, thousands upon thousands of our Coradio sets are in operation throughout the nation piling up profits every day for hundreds of operators . . . We mention the above so that you'll know we're not a new company; but, one that has been in the field for years and enjoys an enviable reputation for successful operation.

Covideo, Inc.

* * * * * * * * * * *

. . . national manufacturer has openings available in this city and surrounding communities for responsible party to independently own and operate PROFIT-

ABLE new metal streamlined TAMPER-PROOF coin-operated television sets, fully guaranteed.

Coin-operated equipment . . . It must be built to give constant service at a minimum cost.

* * * * * * * * * * * *

Our engineering staff spent better than two years in research and experimentation on these Covideo sets to insure perfect, troublefree operation.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondents represent and have represented, directly and by implication:

That respondents own, operate or control a plant or factory where they manufacture radios, television sets and component parts thereof; that respondent corporation is not a new company but has been in the field for several years; that respondents maintained a staff of competent engineers and technicians and adequate facilities for research and experimentation in the field of television, and that this staff engaged in over two years of research and experimentation in this field, the results of which were embodied in "Covideo" before it was offered for sale.

PAR. 5. The foregoing claims, statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondents do not operate a plant or factory where they manufacture radios, television sets and component parts thereof. On the contrary, the said television sets sold by respondents are bought, fully assembled, by respondents from other corporations, firms and individuals.

The corporate respondent is a new company, having been in business for only two years.

Respondents have not maintained a staff of competent engineers and technicians and adequate facilities for research and experimentation in the field of television, nor did such a staff engage in research and experimentation in this field, the results of which were embodied in "Covideo" before it was offered for sale.

PAR. 6. There is a preference on the part of dealers and of a substantial portion of the purchasing public for dealing directly with and buying directly from manufacturers, by virtue of the belief that through such purchases they obtain advantages in price and in other respects.

PAR. 7. The use by respondents of the foregoing false and misleading advertisements and representations, employed and disseminated as aforesaid, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that such advertisements were true and to induce by reason of such erroneous and mistaken belief, a substantial number of the public to purchase substantial quantities of respondents' said coin-operated television sets.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated February 29, 1952, the initial decision in the instant matter of Hearing Examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 14, 1951, issued and subsequently served its complaint in this proceeding upon respondents Covideo, Inc., a corporation, and Sidney I. Horwitt (referred to in the complaint as Sidney I. Horwatt) and Louis Brown, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint, the corporate respondent answered. No answer was filed by either of the individual respondents, but they both appeared and testified at the hearing which was held pursuant to notice and at which testimony and other evidence in support of and in opposition to the allegations of the said complaint were introduced before the above-named hearing examiner theretofore duly designated by the Commission. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested. Said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Covideo, Inc., is a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 212 Broadway, New York, New York.

Individual respondents Sidney I. Horwitt and Louis Brown are, respectively, president and vice-president of said corporate respondent Covideo, Inc., and, acting in such respective capacities, said respondents formulate, direct and control the practices and policies of corporate respondent, including the advertising and other representations used and business practices employed by corporate respondent, as hereinafter related. The individual respondents own the entire capital stock of corporate respondent and their principal office and place of business is that of said corporate respondent.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of coin-operated television sets, designated by them as "Covideo," for use in hotels, motor courts, hospitals and similar places.

Respondents cause their said coin-operated television sets, when sold by them, to be transported from their aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said coin-operated television sets in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said coin-operated television sets, respondents have circulated among their prospective purchasers, throughout the United States, by advertisements inserted in magazines and newspapers and by circulars sent through the mails, many statements and representations concerning their said coin-operated television sets. Among and typical of such statements and representations, disseminated as aforesaid, but not all-inclusive, are the following:

Just a word about Covideo, Inc.

We were pioneers in the manufacture of Coradio coin-operated radios; and, thousands upon thousands of our Coradio sets are in operation throughout the nation piling up profits every day for hundreds of operators . . . We mention the above so that you'll know we're not a new company; but, one that has been in the field for years and enjoys an enviable reputation for successful operation.

. . . national manufacturer has openings available in this city and surrounding communities for responsible party to independently own and operate PROFITABLE new metal streamlined TAMPER-PROOF coin-operated television sets, fully guaranteed.

Coin-operated equipment . . . It must be built to give constant service at a minimum cost.

Our engineering staff spent better than two years in research and experimentation on these Covideo sets to insure perfect, troublefree operation.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondents have represented and represent, directly and by implication,

That respondents own, operate or control a plant or factory where they manufacture coin-operated radios, coin-operated television sets and component parts thereof; that respondent corporation is not a new company but has been in the field for several years; that respondents have maintained and now maintain a staff of competent engineers and technicians and adequate facilities for research and experimentation in the field of television, and that this staff engaged in over two years of research and experimentation in this field, the results of which were embodied in "Covideo" before it was offered for sale.

PAR. 5. The foregoing claims, statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondents do not manufacture, nor do they own, operate or control a plant or factory where they manufacture coin-operated radios, coin-operated television sets or any of the component parts thereof.

The corporate respondent was organized in July 1949 and commenced doing business in October 1949.

Respondents have not maintained and do not now maintain a staff of competent engineers and technicians and adequate facilities for research and experimentation in connection with the development and manufacture of coin-operated television sets, nor did such a staff engage in research and experimentation in this field, the results of which were embodied in "Covideo" before it was offered for sale.

PAR. 6. There is a preference on the part of dealers and of a substantial portion of the purchasing public for dealing directly with and buying directly from manufacturers, by virtue of the belief that through such purchases they obtain advantages in price and in other respects.

PAR. 7. The use by respondents of the foregoing false and misleading advertisements and representations, employed and disseminated as

aforesaid, had and has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such advertisements were and are true and to induce, by reason of such erroneous and mistaken belief, a substantial number of the public to purchase substantial quantities of respondents' said coin-operated television sets.

CONCLUSIONS

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

ORDER

It is ordered, That the respondents, Covideo, Inc., a corporation, and Sidney I. Horwitt and Louis Brown, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of coin-operated television sets or any other similar electronic product or any component part thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That they manufacture coin-operated radios or coin-operated television sets or any component parts of either;

(2) That respondent Covideo, Inc., is not a new company, or that it has been in business for any greater period of time than is actually the fact;

(3) That they maintain a staff of competent engineers and technicians, or adequate facilities for research and experimentation either in the field of television or in connection with the development and manufacture of coin-operated television sets;

(4) That the coin-operated television sets they sell embody the results of research and experimentation by their own staff of engineers or technicians.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of February 29, 1952].

Syllabus

IN THE MATTER OF

PERMANENT STAINLESS STEEL, INC. ET AL.

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

Docket 5936. Complaint, Nov. 20, 1951—Decision, Mar. 6, 1952

Where a corporation and its president, engaged in the interstate sale and distribution of their "High Thermal Permanent Stainless Steel Cookware" principally through agents who solicited the public by demonstrations before groups of prospective purchasers at which pamphlets and charts were exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by them—

(a) Disparaged competitors' utensils through falsely representing that consumption of food cooked or kept in aluminum utensils would cause cancer; that foods so cooked or kept in aluminum are detrimental and hazardous to health; and that the preparation of food in aluminum utensils causes formation of poisons, and unfavorable chemical reaction;

(b) Directly and through many of their sales representatives unfairly disparaged and injured a competitor by falsely representing that said competitor was no longer in business or would not be in business much longer, and falsely reflecting upon its solvency and financial responsibility and thereby indicating that said competitor was not in position to fulfill its orders and otherwise comply with its contractual obligations;

(c) Represented falsely, through charts supplied for use in said cooking demonstrations, that their utensils had been endorsed by health authorities; that use thereof would result in saving money on foods and medicine, would result in less illness, and provided a cooking method especially conducive to health, and that preparation of food therein would aid digestion;

(d) Represented falsely, through charts which were supplied and used as above described and referred to minerals and vitamin losses in foods caused by boiling and prolonged high temperatures, that ordinary cooking methods with other utensils would result in destruction or loss of minerals and vitamins so as to prevent the consumer from receiving his minimum requirements thereof, and that their utensils would retain the minerals and vitamins of food cooked therein to a greater extent than would those of any competitor;

(e) Falsely represented and implied that calcium gives vitality; that magnesium prevents and relieves constipation; that iodine keeps cells active; that sulphur purifies and tones the human system; that sodium aids digestion and purifies the blood; that chlorine cleanses, disinfects, and expels waste from the human body; that fluorine has a beneficial effect by strengthening the body and building resistance; that potassium is a liver activator and creates grace and beauty; that silicon nourishes nails, skin and the hair; that manganese increases resistance; and that phosphorus nourishes brain cells;

With capacity and tendency to deceive and mislead a substantial portion of the purchasing public into the erroneous belief that such representations

were true and thereby induce it to purchase substantial quantities of their products, and thereby unfairly divert trade from their competitors, to their substantial injury:

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

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. R. P. Bellinger for the Commission.
Steptoe & Johnson, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Permanent Stainless Steel, Inc., a corporation, and Bernard L. Marcy, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Permanent Stainless Steel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2641 West 51st Street, Chicago, Illinois. The individual respondent, Bernard L. Marcy, is President of the corporate respondent, Permanent Stainless Steel, Inc., and as such formulates, manages and controls the affairs, activities and policies of said corporation, including the acts and practices hereinafter alleged. The individual respondent's address is the same as that shown above for the corporate respondent.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution in commerce of stainless steel cooking utensils designated as High Thermal Permanent Stainless Steel Cookware. Respondents do a substantial volume of business in said stainless steel cooking utensils and cause and have caused such products when sold to be transported from their said place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now and have been in substantial competition with

other corporations and parties likewise engaged in the business of selling and distributing cooking utensils in commerce between and among the various States of the United States and in the District of Columbia, who truthfully describe and advertise their respective products, and who refrain from unfairly disparaging the product of competitors.

PAR. 4. The advertising and selling of respondents' cooking utensils are conducted principally through the medium of agents, representatives or employees through personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives or employees, at respondents' direction, is the giving of demonstrations of respondents' products before groups of prospective purchasers at which time various pamphlets, leaflets, charts, circulars and other written or printed matter are exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by the respondents all with respect to the characteristics, nature and effectiveness of said products used in the preparation of food.

PAR. 5. At the cooking demonstrations hereinabove referred to, by means of certain so-called tests, including statements made in connection therewith, and otherwise, respondents, through their said agents, representatives or employees, and for the purpose of inducing the purchase of their said products in commerce, have made disparaging statements and representations with respect to utensils sold and distributed in commerce by their competitiors. Such disparaging representations and statements were and are to the effect that the consumption of food cooked or kept in aluminum utensils will cause cancer; that foods so prepared or kept in aluminum utensils are detrimental and hazardous to the health of the user; and that the preparation of food in aluminum utensils causes formation of poisons, and an unfavorable chemical reaction occurs.

PAR. 6. Aluminum has been used in the manufacture of cooking utensils for many years. During that period of time, it has been found to be a highly satisfactory material for use in cooking utensils. The consumption of food cooked or kept in aluminum utensils will not cause cancer; foods prepared or kept in aluminum utensils are neither detrimental nor hazardous to the health of the users thereof by reason of the use of aluminum utensils; poisons are not formed from the preparation of foods in aluminum utensils, and no unfavorable chemical reaction occurs therefrom.

PAR. 7. The respondents, directly, and through many of their sales representatives, have unfairly disparaged and dealt injury to the

business of a competitor by falsely representing that said competitor was no longer in business or would not be in business much longer, and by making other false statements reflecting upon the solvency and financial responsibility of said competitor, thus indicating that said competitor was not in position to fulfill its orders and otherwise comply with its contractual obligations.

PAR. 8. In the course and conduct of their said business, respondents have supplied their sales persons with various printed charts to be displayed during their cooking demonstrations. Among the representations made in such charts are the following:

Permanent Stainless Steel does save money on groceries, fuel and medicine.
Permanent Stainless Steel does have the endorsement of health authorities.
Proper preparation of food aids digestion—The safe way is . . . high thermal permanent stainless steel.

PAR. 9. Through the use of the statements and claims quoted in Paragraph Eight above, respondents have represented directly and by implication that their cooking utensils have been endorsed by health authorities; that the use of their products will result in saving money on foods and medicine, including a reduction in the quantity of needed medicine, and will result in less illness; that the use of said products provides a cooking method especially conducive to good health, and that the preparation of food in respondents' utensils will aid digestion.

PAR. 10. In truth and in fact, respondents' cooking utensils have not been endorsed by any health authority; the use of respondents' products will not effect any monetary saving on food or medicine, will not influence the quantity of medicine needed, and will not result in less illness; the use of respondents' utensils does not provide a cooking method especially conducive to good health, nor any more conducive to health than other methods or other utensils; and the preparation of food in respondents' utensils will not aid digestion any more than preparation in other utensils.

PAR. 11. Among said charts used by respondents in the manner above described is one appearing substantially in the following form, language and symbols:

STOP AND THINK

These Body Building Elements in Food	Perform the Following in the Body	Water and Temperature are Enemies to Minerals and Vitamins
Calcium	Builds * * * Vitality	* W & T
* * *	* * *	* * *
Magnesium	Prevents and Relieves Constipation	* W & T
Iodine	* * * Keeps cells Active	* T
Sulphur	Purifies and Tones System	* T
Sodium	Aids Digestion, Purifies Blood	* W
Chlorine	Cleanses, Expels and Disinfects	* T
Fluorine	Strengthens and Builds Resistance	* T
Potassium	Liver Activator gives grace and beauty	* W
Silicon	Nourishes Nails, Skin—Hair	* W
Manganese	Builds Resistance	* W
Phosphorus	Nourishes Brain Cells	* T

*W Indicates Element Partly Dissolved by Water
*T Indicates Element wholly or Partly injured by Temperature
*W & T Indicates Element Affected by Both Water and Temperature

YOU SHOULD PROTECT
YOURSELF AND RETAIN
THE BODY-BUILDING
ELEMENTS WITH . . .

High Thermal
Permanent
18–8 Stainless Steel

Such chart and others referring to mineral and vitamin losses in foods caused by boiling and prolonging high temperatures serve as representations, either directly or by implication, that ordinary cooking methods with utensils other than those sold by respondents will result in destruction or loss of minerals and vitamins so as to prevent the consumer from receiving his minimum requirements thereof, and that the utensils of respondents will retain the minerals and vitamins of food cooked therein to a greater extent than will the utensils sold by any competitor.

Also, by means of said statements and representations, respondents have represented and implied that calcium gives vitality; that magnesium prevents and relieves constipation; that iodine keeps cells active; that sulphur purifies and tones the human system; that sodium aids digestion and purifies the blood; that chlorine cleanses, disinfects, and expels waste from the human body; that fluorine has a beneficial effect by strengthening the body and building resistance; that potas-

sium is a liver activator and creates grace and beauty; that silicon nourishes nails, skin and the hair; that manganese increases resistance, and that phosphorus nourishes brain cells.

These representations are grossly exaggerated, misleading and deceptive. Minerals are not appreciably damaged or destroyed by the heat used in any method of cooking. Vitamin C and some elements of the vitamin B complex are destroyed by prolonged high cooking temperatures; other vitamins are not. Depending upon the solubility of the compounds in which they occur in foods, minerals and some vitamins are leached out in boiling water. If the water is not consumed, there is loss of these food elements. This amount of loss depends on the amount in the food before cooking, which in turn depends on the soil in which grown, the varieties of fruits and vegetables, the manner of harvesting and storage, and the exposure to light and air between maturity and preparation. Except for persons already deficient in these food elements or on the borderline or those on restricted diets, the maximum loss from any method of cooking in general use would be insignificant from a nutritional standpoint, and ordinary cooking methods with utensils other than those sold by respondents will not result in destruction or loss of minerals and vitamins so as to prevent the consumer from receiving his minimum requirements thereof. Moreover, there are other cooking utensils and methods of cooking which will retain the various food elements to the same extent or to a greater extent than is retained by the use of the utensils sold by respondents. Also, calcium does not give vitality; magnesium does not prevent, nor as found in food for human consumption, relieve constipation; iodine does not keep cells alive; sulphur does not purify or tone the human system; sodium, as found in food for human consumption, does not aid digestion or purify the blood; chlorine will neither cleanse, disinfect nor expel waste from the human body; fluorine does not strengthen the body or build resistance; potassium is not a liver activator and does not create grace or beauty; silicon does not nourish nails, skin or the hair; manganese does not increase resistance, and phosphorus does not nourish the brain cells.

PAR. 12. The use by respondents and their agents of the above mentioned false, misleading, deceptive and disparaging statements and representations has had and now has the capacity and tendency to deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce a substantial number of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products. As a result thereof, trade has been unfairly diverted to respondents from their competitors in con-

sequence of which substantial injury has been and is being done by respondents to their competitors in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 13. The methods, acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 20, 1951, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

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

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law, and other than the jurisdictional findings, specifically refrain from admitting or denying any of the other said findings of fact.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

---

[1] The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on March 6, 1952, and ordered entered of record as the Commission's findings as to the facts, conclusion and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Permanent Stainless Steel, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2641 West 51st Street, Chicago, Illinois. The individual respondent, Bernard L. Marcy, is President of the corporate respondent, Permanent Stainless Steel, Inc., and as such formulates, manages and controls the affairs, activities and policies of said corporation, including the acts and practices hereinafter alleged. The individual respondent's address is the same as that shown above for the corporate respondent.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale and distribution in commerce of stainless steel cooking utensils designated as High Thermal Permanent Stainless Steel Cookware. Respondents do a substantial volume of business in said stainless steel cooking utensils and cause and have caused such products when sold to be transported from their said place of business in the State of Illinois to purchasers thereof located in other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now and have been in substantial competition with other corporations and parties likewise engaged in the business of selling and distributing cooking utensils in commerce between and among the various States of the United States and in the District of Columbia, who truthfully describe and advertise their respective products, and who refrain from unfairly disparaging the product of competitors.

PAR. 4. The advertising and selling of respondents' cooking utensils are conducted principally through the medium of agents, representatives or employees through personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives or employees, at respondents' direction, is the giving of demonstrations of respondents' products before groups of prospective purchasers at which time various pamphlets, leaflets, charts, circulars and other written or printed matter are exhibited and distributed, accompanied by sales talks taken from sales manuals supplied by the

respondents all with respect to the characteristics, nature and effectiveness of said products used in the preparation of food.

PAR. 5. At the cooking demonstrations hereinabove referred to, by means of certain so-called tests, including statements made in connection therewith, and otherwise, respondents, through their said agents, representatives or employees, and for the purpose of inducing the purchase of their said products in commerce, have made disparaging statements and representations with respect to utensils sold and distributed in commerce by their competitors. Such disparaging representations and statements were and are to the effect that the consumption of food cooked or kept in aluminum utensils will cause cancer; that foods so prepared or kept in aluminum utensils are detrimental and hazardous to the health of the user; and that the preparation of food in aluminum utensils causes formation of poisons, and an unfavorable chemical reaction occurs.

PAR. 6. Aluminum has been used in the manufacture of cooking utensils for many years. During that period of time, it has been found to be a highly satisfactory material for use in cooking utensils. The consumption of food cooked or kept in aluminum utensils will not cause cancer; foods prepared or kept in aluminum utensils are neither detrimental nor hazardous to the health of the users thereof by reason of the use of aluminum utensils; poisons are not formed from the preparation of foods in aluminum utensils, and no unfavorable chemical reaction occurs therefrom.

PAR. 7. The respondents, directly, and through many of their sales representatives, have unfairly disparaged and dealt injury to the business of a competitor by falsely representing that said competitor was no longer in business or would not be in business much longer, and by making other false statements reflecting upon the solvency and financial responsibility of said competitor, thus indicating that said competitor was not in position to fulfill its orders and otherwise comply with its contractual obligations.

PAR. 8. In the course and conduct of their said business, respondents have supplied their sales persons with various printed charts to be displayed during their cooking demonstrations. Among the representations made in such charts are the following:

Permanent Stainless Steel does save money on groceries, fuel and medicine.
Permanent Stainless Steel does have the endorsement of health authorities.
Proper preparation of food aids digestion—The safe way is . . . high thermal permanent stainless steel.

PAR. 9. Through the use of the statements and claims quoted in Paragraph Eight above, respondents have represented directly and by implication that their cooking utensils have been endorsed by health

authorities; that the use of their products will result in saving money on foods and medicine, including a reduction in the quantity of needed medicine, and will result in less illness; that the use of said products provides a cooking method especially conducive to good health. and that the preparation of food in respondents' utensils will aid digestion.

PAR. 10. In truth and in fact, respondents' cooking utensils have not been endorsed by any health authority; the use of respondents' products will not effect any monetary saving on medicine, will not influence the quantity of medicine needed, will not result in less illness, and will not effect any greater monetary saving on food than other similar recognized modern methods of cooking; the use of respondents' utensils does not provide a cooking method especially conducive to good health, nor any more conducive to health than other similar recognized modern cooking utensils or methods of cooking; and the preparation of food in respondents' utensils will not aid digestion any more than preparation in other utensils.

PAR. 11. Among said charts used by respondents in the manner above described is one appearing substantially in the following form, language and symbols:

STOP AND THINK

These Body Building Elements in Food	Perform the Following in the Body	Water and Temperature are Enemies to Minerals and Vitamins
Calcium	Builds * * * Vitality	* W & T
* * *	* * *	* * *
Magnesium	Prevents and Relieves Constipation	* W & T
Iodine	* * * Keeps cells Active	* T
Sulphur	Purifies and Tones System	* T
Sodium	Aids Digestion, Purifies Blood	* W
Chlorine	Cleanses, Expels and Disinfects	* T
Fluorine	Strengthens and Builds Resistance	* T
Potassium	Liver Activator gives grace and beauty	* W
Silicon	Nourishes Nails, Skin—Hair	* W
Manganese	Builds Resistance	* W
Phosphorus	Nourishes Brain Cells	* T

*W Indicates Element Partly Dissolved by Water

*T Indicates Elements wholly or Partly injured by Temperature

*W & T Indicates Elements Affected by Both Water and Temperature

a report in writing setting forth in detail the manner and form in which they have complied with this order.

(sgd) STEPTOE & JOHNSON,
By (sgd) I. MARTIN LEAVITT,
Counsel for Respondents.

Date: January 18, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and entered of record on this the 6th day of March 1952.

1. That the consumption of food cooked or kept in aluminum utensils will cause cancer, or is in any way detrimental or hazardous to the health of the users.

2. That the preparation of food in aluminum utensils causes the formation of poisons, or that any unfavorable chemical reaction occurs therefrom.

3. That any competitor of respondents is no longer in business, or is of doubtful solvency or financial responsibility, if such statements are untrue.

4. That respondents' cooking utensils have been endorsed by any competent health authorities, if such statements are untrue.

5. That the use of respondents' utensils will effect a saving in medicine, or will result in decreasing the quantity of needed medicine, or in less illness, or will effect any greater monetary saving on food than other similar recognized modern methods of cooking.

6. That the use of respondents' cooking utensils constitutes a cooking method especially conducive to good health, or any more conducive to health than the use of other similar recognized modern methods or utensils.

7. That the preparation of food in respondents' utensils will aid digestion any more than the preparation of food in other utensils.

8. That ordinary cooking methods in utensils other than respondents' will result in destruction or loss of vitamins and minerals so as to prevent the consumer from receiving his minimum requirements.

9. That the use of respondents' cooking utensils will retain the minerals and vitamins of food cooked therein to a greater extent than will utensils sold by respondents' competitors which embrace the use of the similar recognized modern methods of cooking.

10. (a) That calcium gives vitality.

(b) That magnesium will prevent or relieve constipation.

(c) That iodine will keep cells active.

(d) That sulphur purifies or tones the human system.

(e) That sodium aids digestion or purifies the blood.

(f) That chlorine will cleanse, disinfect, or expel waste from the human body.

(g) That fluorine strengthens the body or builds resistance.

(h) That potassium is a liver activator and creates grace and beauty.

(i) That silicon nourishes the nails, skin or hair.

(j) That manganese increases resistance.

(k) That phosphorus nourishes the brain cells.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission

Syllabus

IN THE MATTER OF

HOUGHTON MIFFLIN COMPANY

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

Docket 5960.[1] *Settlement, findings and order, March 6, 1952*

Where one of the largest publishers in the United States of "trade" or popular fiction and nonfiction books, which was engaged in the competitive interstate sale and distribution of its said publisher's editions to retail book sellers, and to wholesalers or jobbers for resale thereto, and to others, including public libraries and educational institutions; and which included among its said purchasers many engaged in competition with one another in such wholesaling or retailing—

Long discriminated in price between different purchasers through pricing and selling its said books to some at list prices less discounts which ranged from 40% to 46% for varying quantities, while pricing and selling the same to other jobbers or wholesalers competitively engaged therewith at list prices less discounts ranging from 43% to 48% for the same quantities;

Effect of which discriminations, or any appreciable part thereof, had been or might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and said jobbers or wholesalers were respectively engaged, or to injure, destroy or prevent competition with it or with said jobbers or wholesalers who received the benefit of said discriminations or with customers of either:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Paul H. LaRue* for the Commission.

Choate, Hall & Stewart, of Boston, Mass., for respondent.

---

[1] The instant settlement resulted from a joint motion of counsel for the respondent and counsel in support of the complaint in D. 5899, which requested that count III in said complaint be dismissed without prejudice, as set forth in the Commission's order on page 867 below, following the acceptance of the settlement and the amendment thereto.

As stated in the Commission's release of Apr. 7, 1952, three other similar consent settlements, which similarly originated, were accepted by the Commission in disposition of complaints against Little, Brown and Co., Inc., D. 5961, Random House, Inc., D. 5962, and Simon and Schuster, Inc., D. 5963. Following the acceptance of such consent settlements as reproduced below at pages 869, 878, and 886, count III in the earlier complaints (namely, D. 5900, D. 5901, and D. 5902), were similarly dismissed. See pp. 876, 884, and 892.

As also noted in said release, said complaints, and two others, instituted in 1951 against six book publishers, in addition to the matter embraced in count III as above described, charged said publishers with engaging in unlawful practices which gave book clubs an unfair competitive advantage over retail book stores, and joined as respondents, in addition to the four publishers which agreed to the consent settlements above described, Doubleday & Co., Inc., D. 5897, and Harper & Bros., Docket 5898.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Houghton Mifflin Company, hereinafter referred to as respondent, has violated the provisions of subsection (a) of section 2 of the Clayton Act as amended hereby issues its complaint stating its charges in these respects as follows:

PARAGRAPH 1. Respondent, Houghton Mifflin Company, is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 2 Park Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for many years last past has been, engaged, directly or indirectly, in the publication, distribution, and sale of popular fiction and nonfiction books, commonly known as trade books, and is one of the largest publishers of said trade books in the United States.

Respondent's corporation was founded by Henry O. Houghton in 1852 as H. O. Houghton & Company, the proprietors of Riverside Press. The firm later became a partnership and finally in 1908 it was changed to a corporation under its present name. The Riverside Press in Cambridge, Massachusetts, is its manufacturing plant.

Respondent sells and distributes its trade books to retail book sellers for resale to the public and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been and is now engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships, or causes to be shipped, publisher's editions of said trade books from the States in which said trade books are produced to purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, as alleged in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it has been affected, as alleged in Paragraph Six hereof, many of said jobbers or wholesalers were and are in competition, some in commerce, with each other, and many of said retail book sellers were and are in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent, in the course and conduct of its said business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now discriminating in price between different purchasers of its said trade books by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein alleged.

Respondent has priced and sold its publisher's editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at list prices less discounts ranging from 40% to 46% for varying quantities of books while respondent has priced and sold said books to other jobbers or wholesalers, who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discounts at list prices less discounts ranging from 43% to 48% for the same quantities of books as those sold at the 40% to 46% discounts.

PAR. 6. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of said discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent as alleged in Paragraph Five hereof are in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

CONSENT SETTLEMENT [2]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 12th day of March 1952 issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of Section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

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

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusions, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts or practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful,

---

[2] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on March 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist, and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

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

the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Houghton Mifflin Company, is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 2 Park Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for many years last past has been, engaged, directly or indirectly, in the publication, distribution, and sale of popular fiction and nonfiction books, commonly known as trade books, and is one of the largest publishers of said trade books in the United States.

Respondent's corporation was founded by Henry O. Houghton in 1852 as H. O. Houghton & Company, the proprietors of Riverside Press. The firm later became a partnership and finally in 1908 it was changed to a corporation under its present name. The Riverside Press in Cambridge, Massachusetts, is its manufacturing plant.

Respondent sells and distributes its trade books to retail book sellers for resale to the public and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been and is now engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships, or causes to be shipped, publisher's editions of said trade books from the States in which said trade books are produced to purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it is specified to the contrary in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it is specified to the contrary in Paragraph Six hereof, many of said jobbers or wholesalers were and are in competition, some in commerce, with each other, and many of said retail

book sellers were and are in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent, in the course and conduct of its said business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now discriminating in price between different purchasers of its said trade books by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein set forth.

Respondent has priced and sold its publisher's editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at list prices less discounts ranging from 40% to 46% for varying quantities of books while respondent has priced and sold said books to other jobbers or wholesalers, who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discounts at list prices less discounts ranging from 43% to 48% for the same quantities of books as those sold at the 40% to 46% discounts.

PAR. 6. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of said discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent stated in Paragraph Five hereof are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Houghton Mifflin Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the sale of trade books in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different purchasers of its trade books by selling such books to any of its pur-

chasers at higher prices than it sells the same books by whatever titles of like grade and quality to others of its purchasers where such purchasers are in competition with each other in the resale or distribution of said books.

HOUGHTON MIFFLIN COMPANY,
By (sgd) LOVELL THOMPSON,
Vice President.
(Title)

Date:

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of March 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.[3]

NOTE.—Following Commission's acceptance of consent settlement as above set out, the Commission dismissed count III of the complaint in D. 5899, Houghton Mifflin Co., as below set forth.

This matter coming on to be heard by the Commission upon a joint motion of counsel for the respondent and counsel in support of the complaint, requesting that Count III of the complaint in this proceeding be dismissed without prejudice; and

It appearing from said motion and from the record that prior to the commencement of the taking of evidence herein, the respondent, pursuant to the provisions of Rule V of the Commission's Rules of Practice, moved the hearing examiner to suspend proceedings before

[3] The consent settlement is published as amended by the following:

AMENDMENT TO CONSENT SETTLEMENT

The Consent Settlement hereinbefore transmitted to the Commission by hearing examiner under date of January 17, 1952, in connection with the stipulation between counsel as to settlement regarding Count III in the complaint in Docket No. 5899, is amended on page 4 thereof as follows:

(1) Eliminate the heading, including the words thereof, "COMMISSION'S CONCLUSION" as same appear on said page;

(2) Insert at the beginning of the first line of the paragraph on said page which begins "The acts and practices * * *" the words "PARAGRAPH SEVEN."

(3) In said first line of said paragraph strike out the word "found" as it appears therein, and insert in lieu thereof the word "stated."

HOUGHTON MIFFLIN COMPANY,
By (sgd) LOVELL THOMPSON,
Vice President.
(Title)

Date: 2/14/52.

The foregoing amendment to the consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of March 1952.

him to permit negotiations by counsel upon a consent settlement dispositive of the proceeding, which motion was granted by said hearing examiner; and

It further appearing that the proposed consent settlement thereafter agreed upon would have disposed of Count III of the complaint only, and not the entire proceeding as required by said Rule V, whereupon the parties entered into a stipulation under the terms of which it was agreed to request the dismissal of Count III of the complaint and the simultaneous issuance of a new complaint embodying the substance of said Count III, with the understanding that the parties would at the same time submit to the Commission, through the hearing examiner, a proposed consent settlement of the new proceeding, which proposed consent settlement was submitted with the aforesaid joint motion; and

It further appearing to the Commission that Count III of the complaint states a cause of action entirely separate from those stated in Counts I and II of said complaint, and that dismissal of said Count III would not adversely affect this proceeding insofar as Counts I and II are concerned; and

The Commission having considered the proposed consent settlement tendered by the parties, and being of the opinion that said proposal is appropriate in all respects to dispose of the suggested new proceeding and that it should be accepted, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a notice of such acceptance, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement:

It is ordered, That Count III of the complaint in this proceeding be, and it hereby is, dismissed; it being understood, however, that simultaneously with this action a new complaint will be issued against the respondent embodying all of the allegations of said Count III, the issues raised by which will be disposed of by acceptance of the proposed consent settlement heretofore tendered; and it being further understood that this shall not affect in any way the continuation of this proceeding under Counts I and II of the complaint herein.

IN THE MATTER OF

LITTLE, BROWN AND COMPANY, INC.

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

Docket 5961.[1] *Settlement, findings and order, March 6, 1952*

Where one of the major publishers in the United States of "trade" or popular fiction and nonfiction books, which was engaged in the direct or indirect publication of such books, and in the competitive interstate sale and distribution of its said publisher's edition to retail book sellers, and to wholesalers or jobbers for resale thereto, and to others, including public libraries and educational institutions; and which included among its said purchasers many engaged in competition with one another in such wholesaling or retailing—

Long discriminated in price between different purchasers through pricing and selling its said books to some under a discount schedule which allowed from 40 to 47 percent off list, with the top discount granted on five thousand copies and over, while selling to other purchasers under a different schedule which granted discounts of from 43 to 50 percent, with the latter discount on purchases of twenty-five thousand or more books:

Effect of which discriminations, or any appreciable part thereof, had been or might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and said jobbers or wholesalers were respectively engaged, or to injure, destroy or prevent competition with it or with said jobbers or wholesalers who received the benefit of said discriminations or with customers of either:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Paul H. LaRue* for the Commission.

Haussermann, Davidson & Shattuck, of Boston, Mass., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), and by virtue of the authority vested in it by said Acts, the Federal Trade Com-

[1] For an explanatory statement setting forth the background of the settlement in question in this and in three other cases against Houghton Mifflin Company, page 861, the instant respondent, Random House, Inc. (see *infra*, at page 878) and Simon and Schuster, Inc. (see *infra*, at page 886), see footnote in the proceeding on page 861.

mission having reason to believe that Little, Brown and Company, Inc., hereinafter referred to as respondent, has violated the provisions of subsection (a) of Section 2 of the Clayton Act as amended hereby issues its complaint stating its charges in these respects as follows:

PARAGRAPH 1. Respondent, Little, Brown and Company, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 34 Beacon Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for many years last past has been, engaged, directly or indirectly, in the publication, sale and distribution of popular fiction and non-fiction books, commonly known as trade books.

Respondent is one of the major book publishers of said trade books in the United States. The name Little, Brown and Company came into being in 1837. At that time it conducted a retail book store and engaged in some publishing. From 1847 on, it engaged primarily in publishing and with the turn of the century, Little, Brown and Company was entrenched as one of the leading publishers in the general field. It does not own its own printing plant and its printing is done by other concerns with whom it enters into contractual relationships.

Respondent sells and distributes its trade books to retail book sellers for resale to the public, and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships or causes to be shipped publisher's editions of said trade books from the States in which said trade books are produced to purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, as alleged in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it has been affected, as alleged in Paragraph Six hereof, many of said jobbers or wholesalers were and are in competition, some in commerce, with each other, and many of said

retail book sellers were and are in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent, in the course and conduct of its said business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now discriminating in price between different purchasers of its said trade books by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein alleged.

Respondent has priced and sold its publisher's editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at one discount scheduled as follows:

Number of Copies Ordered of Same Title	*Discount From List Prices (Percent)*
1–2	40
3–24	41
25–49	42
50–99	43
100–249	43½
250–499	44
500–999	45
1,000–2,499	45½
2,500–4,999	46½
5,000 and over	47

while respondent has priced and sold said books to other jobbers or wholesalers who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discounts at a different discount schedule as follows:

Number of Copies Ordered of Same Title	*Discount From List Prices (Percent)*
1–49	43
50–99	44
100–249	44½
250–499	45
500–999	45½
1,000–2,499	46
2,500–4,999	47
5,000–9,999	48
10,000–24,999	49
25,000 and over	50

PAR. 6. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of said discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent as alleged in Paragraph V hereof are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

CONSENT SETTLEMENT [2]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 12th day of March 1952 issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of Section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

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

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease

[2] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on March 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist, and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

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

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

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Little, Brown and Company, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal office and place of business located at 34 Beacon Street, Boston, Massachusetts.

PAR. 2. Respondent is now, and for many years last past has been, engaged, directly or indirectly, in the publication, sale and distribution of popular fiction and non-fiction books, commonly known as trade books.

Respondent is one of the major book publishers of said trade books in the United States. The name Little, Brown and Company came into being in 1837. At that time it conducted a retail book store and engaged in some publishing. From 1847 on, it engaged primarily in publishing and with the turn of the century, Little, Brown and Company was entrenched as one of the leading publishers in the general field. It does not own its own printing plant and its printing is done by other concerns with whom it enters into contractual relationships.

Respondent sells and distributes its trade books to retail book sellers for resale to the public, and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships or causes to be shipped publisher's editions of said trade books from the States in which said

trade books are produced to purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it is specified to the contrary in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it is specified to the contrary in Paragraph Six hereof, many of said jobbers or wholesalers were and are in competition, some in commerce, with each other, and many of said retail book sellers were and are in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent, in the course and conduct of its said business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now discriminating in price between different purchasers of its said trade books by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein set forth.

Respondent has priced and sold its publisher's editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at one discount schedule as follows:

Number of Copies Ordered of Same Title	*Discount From List Prices (Percent)*
1–2	40
3–24	41
25–49	42
50–99	43
100–249	43½
250–499	44
500–999	45
1,000–2,499	45½
2,500–4,999	46½
5,000 and over	47

while respondent has priced and sold said books to other jobbers or wholesalers who are in competition in the resale of said books with

those jobbers or wholesalers receiving the aforementioned discounts at a different discount schedule as follows:

Number of Copies Ordered of Same Title	*Discount From List Prices (Percent)*
1–49	43
50–99	44
100–249	44½
250–499	45
500–999	45½
1,000–2,499	46
2,500–4,999	47
5,000–9,999	48
10,000–24,999	49
25,000 and over	50

PAR. 6. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged or to injure, destroy or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of said discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent stated in Paragraph Five hereof are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent Little, Brown and Company, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the sale of trade books in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different purchasers of its trade books by selling such books to any of its purchasers at higher prices than it sells the same books by whatever titles of like grade and quality to others of its purchasers where such purchasers are in competition with each other in the resale or distribution of said books.

LITTLE, BROWN AND COMPANY, INC.,
By (sgd) ARTHUR H. THORNHILL,
President.
(Title)

Date:

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of March, 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.[3]

NOTE.—Following the Commission's acceptance of the consent settlement, as reproduced above, the Commission dismissed Count III of the complaint in D. 5900 by the following order:

This matter coming on to be heard by the Commission upon a joint motion of counsel for the respondent and counsel in support of the complaint, requesting that Count III of the complaint in this proceeding be dismissed without prejudice; and

It appearing from said motion and from the record that prior to the commencement of the taking of evidence herein, the respondent, pursuant to the provisions of Rule V of the Commission's Rules of Practice, moved the hearing examiner to suspend proceedings before him to permit negotiations by counsel upon a consent settlement dispositive of the proceeding, which motion was granted by said hearing examiner; and

It further appearing that the proposed consent settlement thereafter agreed upon would have disposed of Count III of the complaint only, and not the entire proceeding as required by said Rule V, whereupon the parties entered into a stipulation under the terms of which it was agreed to request the dismissal of Count III of the complaint and the simultaneous issuance of a new complaint embodying the substance of said Count III with the understanding that the parties

---

[3] The consent settlement is published as amended by the following:

AMENDMENT TO CONSENT SETTLEMENT

The Consent Settlement hereinbefore transmitted to the Commission by hearing examiner under date of January 17, 1952, in connection with the stipulation between counsel as to settlement regarding Count III in the complaint in Docket No. 5900, is amended on page 4 thereof as follows:

(1) Eliminate the heading, including the words thereof, "COMMISSION'S CONCLUSION" as same appear on said page;

(2) Insert at the beginning of the first line of the paragraph on said page which begins "The acts and practices * * *" the words "PARAGRAPH SEVEN."

(3) In said first line of said paragraph strike out the word "found" as it appears therein, and insert in lieu thereof the word "stated."

LITTLE, BROWN AND COMPANY, INC.,
By (sgd) STANLEY SALMEN,
Exec. V. President.
(Title)

Date:

The foregoing amendment to the consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of March 1952.

would at the same time submit to the Commission, through the hearing examiner, a proposed consent settlement of the new proceeding, which proposed consent settlement was submitted with the aforesaid joint motion; and

It further appearing to the Commission that Count III of the complaint states a cause of action entirely separate from those stated in Counts I and II of said complaint, and that dismissal of said Count III would not adversely affect this proceeding insofar as Counts I and II are concerned; and

The Commission having considered the proposed consent settlement tendered by the parties, and being of the opinion that said proposal is appropriate in all respects to dispose of the suggested new proceeding and that it should be accepted, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a notice of such acceptance, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement:

It is ordered, That Count III of the complaint in this proceeding be, and it hereby is, dismissed; it being understood, however, that simultaneously with this action a new complaint will be issued against the respondent embodying all of the allegations of said Count III, the issues raised by which will be disposed of by acceptance of the proposed consent settlement heretofore tendered; and it being further understood that this shall not affect in any way the continuation of this proceeding under Counts I and II of the complaint herein.

IN THE MATTER OF

RANDOM HOUSE, INC.

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

Docket 5962.[1] *Settlement, findings and order, March 6, 1952*

Where one of the major publishers in the United States of "trade" or popular fiction and nonfiction books, which was engaged in the direct or indirect publication of such books, and in the competitive interstate sale and distribution of its said publisher's editions to retail book sellers, and to wholesalers or jobbers for resale thereto, and to others, including public libraries and educational institutions; and which included among its said purchasers many engaged in competition with one another in such wholesale or retailing—

Long discriminated in price between different purchasers through pricing and selling its said books under a discount schedule pursuant to which it sold to some at list prices less discounts ranging from 49½ per cent on purchases of five thousand or more books to 43 percent on quantities of less than one hundred, while allowing other wholesalers or jobbers who competed with said purchasers only a single discount of 43 per cent irrespective of the quantity purchased:

Effect of which discrimination, or any appreciable part thereof, had been or might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and said jobbers or wholesalers were respectively engaged, or to injure, destroy or prevent competition with it or with said jobbers or wholesalers who received the benefit of said discriminations or with customers of either:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Weil, Gotshal & Manges, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), and by virtue of

---

[1] For an explanatory statement setting forth the background of the settlement in question in this, and three other cases against Houghton, Mifflin Company, page 861, Little, Brown and Company, page 869, the instant respondent, and Simon and Schuster, Inc., page 886, see footnote in the Houghton Mifflin proceeding on page 861.

the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Random House, Inc., hereinafter referred to as respondent, has violated the provisions of subsection (a) of Section 2 of the Clayton Act as amended, hereby issues its complaint stating its charges in these respects as follows:

PARAGRAPH 1. Respondent, Random House, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 457 Madison Avenue, New York, New York.

PAR. 2. Respondent is now, and for many years last past has been engaged directly or indirectly in the publication, distribution, and sale of popular fiction and non-fiction books, commonly known as trade books.

Respondent was organized in 1925 and is one of the major publishers of said trade books in the United States. It does not do its own printing, which is handled by several different printing companies.

Respondent sells and distributes its trade books to retail book sellers for resale to the public and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been, and is now engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships or causes to be shipped publisher's editions of said books from the States in which the several places of production and business of the respondent are located, to purchasers thereof located in other States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, as alleged in Paragraph Six hereof respondent, in the course and conduct of its business in commerce, has been and is now in competition with persons, firms and other corporations, some of which were, and are engaged in similar businesses in commerce.

Also except insofar as it has been affected, as alleged in Paragraph Six hereof many of said jobbers or wholesalers were and are, in competition, some in commerce, with each other, and many of said retail book sellers were, and are, in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent in the course and conduct of its business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now discriminating in price between different purchasers of its trade books by selling such products to some purchasers at higher prices than it sells such products of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein alleged.

Respondent has priced and sold its publishers' editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at said list prices less discounts ranging from 49½% to 43%, with the former being granted with respect to quantities of 5,000 or more copies, and the latter to less than 100 copies while respondent has priced and sold said books to other jobbers or wholesalers who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discounts at list prices less a discount of only 43%, irrespective of the quantities purchased.

PAR. 6. The effect of these discriminations or any appreciable part thereof has been and may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy, or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of such discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent as alleged in Paragraph Five hereof are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

CONSENT SETTLEMENT [2]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies,

[2] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on March 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist, and subject to such condition said consent settlement was

and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on the day of March 12, 1952, issued and subsequently served its complaint on the respondent named in the caption herein charging it with violation of subsection (a) of Section 2 of the Clayton Act as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

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

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts or practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Random House, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 457 Madison Avenue, New York, New York.

---

ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

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

PAR. 2. Respondent is now, and for many years last past has been engaged directly or indirectly in the publication, distribution, and sale of popular fiction and non-fiction books, commonly known as trade books.

Respondent was organized in 1925 and is one of the major publishers of said trade books in the United States. It does not do its own printing, which is handled by several different printing companies.

Respondent sells and distributes its trade books to retail book sellers for resale to the public and to wholesalers or jobbers for resale to retail books stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships or causes to be shipped publisher's editions of said trade books from the States in which the several places of production and business of the respondent are located, to purchasers thereof located in other States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it is specified to the contrary in Paragraph Six hereof respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms, and other corporations, some of which were, and are engaged in similar businesses in commerce.

Also except insofar as it is specified to the contrary in Paragraph Six hereof many of said jobbers or wholesalers were, and are, in competition, some in commerce, with each other, and many of said retail book sellers were, and are, in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent in the course and conduct of its business, in commerce, has for many years last past, and more particularly since June 19, 1936, and until December 31, 1951, discriminated in price between different purchasers of its trade books by selling such products to some purchasers at higher prices than it sells such products of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such books within the United States, except as it has been affected as herein found.

Respondent has priced and sold its publisher's editions of trade books at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at said list prices less discounts ranging from 49½% to 43%, with the former being granted with respect to quantities of 5,000 or more copies, and the latter to less than 100 copies while respondent has priced and sold said books to other jobbers or wholesalers who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discounts at list prices less a discount of only 43%, irrespective of the quantities purchased.

PAR. 6. The effect of these discriminations or any appreciable part thereof has been and may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy, or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of such discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent stated in Paragraph Five hereof are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent Random House, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of trade books in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different purchasers of its trade books by selling such books to any of its purchasers at higher prices than it sells the same books by whatever titles of like grade and quality to others of its purchasers where such purchasers are in competition with each other in the resale or distribution of said books.

RANDOM HOUSE, INC.,
By (sgd) ROBERT K. HAAS,
Vice President.
(Title)

Dated: January 29, 1952.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 6th day of March, 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.

NOTE.—Following the Commission's acceptance of the consent settlement, reproduced above, the Commission dismissed Count III of the complaint in Docket 5901 by the following order:

This matter coming on to be heard by the Commission upon a joint motion of counsel for the respondent and counsel in support of the complaint, requesting that Count III of the complaint in this proceeding be dismissed without prejudice; and

It appearing from said motion and from the record that prior to the commencement of the taking of evidence herein, the respondent, pursuant to the provisions of Rule V of the Commission's Rules of Practice, moved the hearing examiner to suspend proceedings before him to permit negotiations by counsel upon a consent settlement dispositive of the proceeding, which motion was granted by said hearing examiner; and

It further appearing that the proposed consent settlement thereafter agreed upon would have disposed of Count III of the complaint only, and not the entire proceeding as required by said Rule V, whereupon the parties entered into a stipulation under the terms of which it was agreed to request the dismissal of Count III of the complaint and the simultaneous issuance of a new complaint embodying the substance of said Count III, with the understanding that the parties would at the same time submit to the Commission, through the hearing examiner, a proposed consent settlement of the new proceeding, which proposed consent settlement was submitted with the aforesaid joint motion; and

It further appearing to the Commission that Count III of the complaint states a cause of action entirely separate from those stated in Counts I and II of said complaint, and that dismissal of said Count III would not adversely affect this proceeding insofar as Counts I and II are concerned; and

The Commission have considered the proposed consent settlement tendered by the parties, and being of the opinion that said proposal is appropriate in all respects to dispose of the suggested new proceeding and that it should be accepted, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a notice of such acceptance, file with the Commission a report in

writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement:

It is ordered, That Count III of the complaint in this proceeding be, and it hereby is, dismissed; it being understood, however, that simultaneously with this action a new complaint will be issued against the respondent embodying all of the allegations of said Count III, the issues raised by which will be disposed of by acceptance of the proposed consent settlement heretofore tendered; and it being further understood that this shall not affect in any way the continuation of this preceeding under Counts I and II of the complaint herein.

IN THE MATTER OF

SIMON AND SCHUSTER, INC.

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

Docket 5963.[1] *Settlement, findings and order, March 6, 1952*

Where one of the largest publishers of "trade" or popular fiction and nonfiction adult books and juvenile books, ordinarily selling at a retail price of $1.50 or more per copy, which was engaged in the direct or indirect publication of such books, and in the competitive interstate sale and distribution of its said publisher's edition to retail book sellers, and to wholesalers or jobbers for resale thereto, and to others, including public libraries and education institutions; and which included among its said purchasers many engaged in competition with one another in such wholesaling or retailing—

Long discriminated in price between different purchasers through pricing and selling its said publisher's editions to some under a discount schedule of 43 per cent regardless of the number of copies purchased, while allowing other purchasers discounts of from 46 to 50 per cent;

Effect of which discriminations, or any appreciable part thereof, had been or might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which it and said jobbers or wholesalers were respectively engaged, or to injure, destroy or prevent competition with it or with said jobbers or wholesalers who received the benefit of said discriminations or with customers of either:

Held, That such acts and practices, under the circumstances set forth, were in violation of subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Paul, Weiss, Rifkind, Wharton & Garrison, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), (U. S. C. Title 15, Sec. 13), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Simon and Schuster, Inc., hereinafter referred to as

[1] For an explanatory statement setting forth the background of the settlement in question in this and in three other cases against Houghton-Mifflin Company, Little, Brown and Company, Inc., page 869, Random House, Inc., page 878, and the instant respondent, see footnote in the Houghton Mifflin proceeding on page 861.

respondent, has violated the provisions of subsection (a) of Section 2 of the Clayton Act, as amended, hereby issues its complaint stating its charges in these respects as follows:

PARAGRAPH 1. Respondent, Simon and Schuster, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 630 Fifth Avenue, New York City, New York.

PAR. 2. Respondent is now, and for many years last past has been, engaged, directly or indirectly, in the publication, distribution and sale of trade books, that is, popular fiction and non-fiction adult books and juvenile books ordinarly selling at a retail price of $1.50 or more per copy.

Respondent commenced business in 1924 shortly after its incorporation and since then has become and is now one of the largest publishers of said trade books in the United States.

Respondent sells and distributes its trade books to retail book sellers for resale to the public, and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are know as publisher's editions.

PAR. 3. In the course and conduct of its business for many years last past, respondent has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships or causes to be shipped publisher's editions of said trade books from the States in which the several places of production and business of the respondent are located, to purchasers thereof located in other States and in the District of Columbia; and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it has been affected, as alleged in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with persons, firms, and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it has been affected, as alleged in Paragraph Six hereof, many of said jobbers or wholesalers were, and are, in competition, some in commerce, with each other, and many of said retail book sellers were, and are, in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent in the course and conduct of its said business, in commerce, has been for many years last past, and more particularly

since June 19, 1936, and is now, either directly or indirectly discriminating in price between different purchasers of its said trade books by selling such books to some purchasers at higher prices than it sells such books of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less-favored purchasers in the resale of such books within the United States, except as it has been affected as herein alleged.

Respondent has priced and sold its publisher's editions of trade books at list prices, less specific discounts allowed to each class of purchasers, among which are jobbers and wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at said list prices less a discount of 43%, irrespective of the number of copies of a title purchased while respondent has priced and sold said books to other jobbers or wholesalers, who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discount, at list prices less discounts ranging from 46% to 50%.

PAR. 6. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of said discriminations or with the customers of either of them.

PAR. 7. The aforesaid acts and practices of respondent as alleged in Paragraph V hereof are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

CONSENT SETTLEMENT [2]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monop-

[2] The Commission's "Notice of Acceptance of Consent Settlement and Order to File Report of Compliance" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was on March 6, 1952, accepted by the Commission, subject only to the condition that the respondent comply with the requirements of the following paragraph with respect to the filing of a report showing the manner and form in which it has complied with the order to cease and desist, and subject to such condition said consent settlement was ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

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

olies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 12th day of March 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

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

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Simon and Schuster, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 630 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent is now, and for many years last past has been engaged, directly or indirectly, in the publication, distribution, and sale of trade books, that is, popular fiction and non-fiction adult books and juvenile books ordinarily selling at a retail price of $1.50 or more per copy.

Respondent commenced business in 1924 shortly after its incorporation and since then has become and is now one of the largest publishers of said trade books in the United States.

Respondent sells and distributes its trade books to retail book sellers for resale to the public and to wholesalers or jobbers for resale to retail book stores and others, including public libraries and educational institutions. Editions of said trade books so sold and distributed are known as publisher's editions.

PAR. 3. In the course and conduct of its business, for many years last past, respondent has been and is now, engaged in commerce, as "commerce" is defined in the Clayton Antitrust Act, as amended by the Robinson-Patman Act, in that it ships, or causes to be shipped, publisher's editions of said trade books from the States in which the several places of production and business of the respondent are located, to purchasers thereof located in other States of the United States and in the District of Columbia; and there is, and has been at all times mentioned herein, a continuous current of trade and commerce in said books between and among the several States of the United States and in the District of Columbia.

PAR. 4. Except insofar as it is specified to the contrary in Paragraph Six hereof, respondent, in the course and conduct of its said business in commerce, has been and is now in competition with person, firms, and other corporations, some of which were and are engaged in similar businesses in commerce.

Also, except insofar as it is specified to the contrary, in Paragraph Six hereof, many of said jobbers or wholesalers were and are in competition, some in commerce, with each other, and many of said retail book sellers were and are in competition, some in commerce, with each other in the retail sale of said trade books.

PAR. 5. Respondent, in the course and conduct of its business, in commerce, has been for many years last past, and more particularly since June 19, 1936, and is now, discriminating in price between different purchasers of its trade books by selling such products to some purchasers at higher prices than it sells such products of like grade and quality to other purchasers, and some of such other purchasers are engaged in active and open competition with the less favored purchasers in the resale of such products within the United States, except as it has been affected, as herein found.

Respondent has priced and sold its publisher's editions at list prices less specific discounts allowed to each class of purchasers among which are jobbers or wholesalers.

Respondent has so discriminated in that it has priced and sold said books to some jobbers or wholesalers at one discount schedule, to-wit, at list prices less a discount of 43% irrespective of the number of copies of a title purchased while respondent has priced and sold said books to other jobbers or wholesalers who are in competition in the resale of said books with those jobbers or wholesalers receiving the aforementioned discount at a different discount schedule, to-wit, at list prices less discounts ranging from 46% to 50%.

PAR. 6. The effect of these discriminations or any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and said jobbers or wholesalers are respectively engaged, or to injure, destroy, or prevent competition with respondent or with said jobbers or wholesalers who receive the benefit of such discriminations or with customers of either of them.

PAR. 7. The acts and practices of respondent herein stated in Paragraph Five hereof are in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

It is ordered, That the respondent, Simon and Schuster, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of trade books in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different purchasers of its trade books by selling such books to any of its purchasers at higher prices than it sells the same books by whatever titles, of like grade and quality, to others of its purchasers where such purchasers are in competition with each other in the resale or distribution of said books.

SIMON AND SCHUSTER, INC.,
By (sgd) ALBERT R. LEVENTHAL,
Vice President.
(Title)

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 6th day of March, 1952, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a copy of this consent settlement, file with the Commission a report in writing setting

forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement.[3]

NOTE.—Following the Commission's acceptance of the consent settlement, as reproduced above, the Commission dismissed count III of the complaint in Docket 5902, as follows:

This matter coming on to be heard by the Commission upon a joint motion of counsel for the respondent and counsel in support of the complaint, requesting that Count III of the complaint in this proceeding be dismissed without prejudice; and

It appearing from said motion and from the record that prior to the commencement of the taking of evidence herein, the respondent, pursuant to the provisions of Rule V of the Commission's Rules of Practice, moved the hearing examiner to suspend proceedings before him to permit negotiations by counsel upon a consent settlement dispositive of the proceeding, which motion was granted by said hearing examiner; and

It further appearing that the proposed consent settlement thereafter agreed upon would have disposed of Count III of the complaint only, and not the entire proceeding as required by said Rule V, whereupon the parties entered into a stipulation under the terms of which it was agreed to request the dismissal of Count III of the complaint and the simultaneous issuance of a new complaint embodying the substance of said Count III, with the understanding that the parties would at the same time submit to the Commission, through the hearing examiner, a proposed consent settlement of the new proceeding, which proposed consent settlement was submitted with the aforesaid joint motion; and

It further appearing to the Commission that Count III of the complaint states a cause of action entirely separate from those stated

---

[3] The consent settlement is published as amended by the following:

AMENDMENT TO CONSENT SETTLEMENT

The Consent Settlement hereinbefore transmitted to the Commission by hearing examiner under date of January 17, 1952, in connection with the stipulation between counsel as to settlement regarding Count III in the complaint in Docket No. 5902, is amended on page 4 thereof as follows:

(1) Eliminate the heading, including the words thereof, "COMMISSION'S CONCLUSION" as same appear on said page;

(2) Insert at the beginning of the first line of the paragraph on said page which begins "The acts and practices * * *" the words "PARAGRAPH SEVEN."

(3) In said first line of said paragraph strike out the word "found" as it apears therein. and insert in lieu thereof the word "stated."

SIMON & SCHUSTER INC.,
By (sgd) ALBERT N. LEVENTHAL,
Vice President.
(Title)

Date:

The foregoing amendment to the consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 6th day of March 1952.

in Counts I and II of said complaint, and that dismissal of said Count III would not adversely affect this proceeding insofar as Counts I and II are concerned; and

The Commission having considered the proposed consent settlement tendered by the parties, and being of the opinion that said proposal is appropriate in all respects to dispose of the suggested new proceeding and that it should be accepted, subject only to the condition that the respondent shall, within sixty (60) days after service upon it of a notice of such acceptance, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in said consent settlement:

It is ordered, That Count III of the complaint in this proceeding be, and it hereby is, dismissed; it being understood, however, that simultaneously with this action a new complaint will be issued against the respondent embodying all of the allegations of said Count III, the issues raised by which will be disposed of by acceptance of the proposed consent settlement heretofore tendered; and it being further understood that this shall not affect in any way the continuation of this proceeding under Counts I and II of the complaint herein.

IN THE MATTER OF

INDEPENDENT GROCERS ALLIANCE DISTRIBUTING COMPANY 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 5433. Complaint, Apr. 18, 1946—Decision, Mar. 7, 1952

Where four corporations, which were fairly typical members of a large class of manufacturers, processors and producers who sold a substantial amount of foodstuffs, groceries and allied products to wholesale grocery buyers who also purchased through the corporate agency below described—

(a) Paid to said corporate service and purchasing agency brokerage or allowances upon purchases in connection with which said agency or intermediary acted in fact for its wholesale grocer stockholders and other wholesale grocer buyers; and

Where said agency, which was owned and controlled, directly and through two holding corporations, by wholesale grocery firms who bought through it and received the benefit of brokerage or commissions paid by sellers to it on their purchases; and which—

1. Through the operation of franchise agreements between it and its numerous affiliated wholesale grocers, received from them monthly fees as compensation for purchasing and other services rendered to them in connection with its purchase and sale of merchandise under its I. G. A. label, and, in connection with merchandise packed for sale thereunder, through the thousands of retail grocers affiliated with the I. G. A. movement, allotted and restricted the territory and channels through which said merchandise might be sold; and

2. Through contracts executed between it and aforesaid and other selected sellers, packers, manufacturers and producers, specified and controlled the quality of merchandise which they might pack and sell under said brands; controlled, restricted and designated the number and types of buyers to whom said merchandise might be sold; and through negotiation with said sellers, controlled the price at which it might be sold to said buyers;

(b) Acting in its own behalf and in behalf of its wholesale grocer affiliates, received commissions or other compensation from sellers upon purchases made by its said affiliated wholesale grocers, which it passed on to said buyer wholesalers in the form of services, including advertising allowances restricted to the promotion of said branded merchandise, known as "territorial advertising", and measured by the amount of brokerage it collected on the wholesaler's purchases of I. G. A. branded products, and in the form of stock dividends to one of aforesaid holding companies, the majority of the stock of which was owned by wholesale grocers concerned; and

Where one of said two holding companies, which owned and controlled the stock of said corporate agency, and the controlling stock of both of which was

owned by wholesale grocery firms buying through said agency, which received the benefit of brokerage paid by sellers to said agency on said buyers' purchases—

(c) Received as dividends on its stock in said corporate agency, benefits from allowances or discounts paid said agency on purchases as to which it acted in fact for wholesale grocer buyer stockholders and affiliates concerned, and parties to the transaction other than the seller; and

Where a large number of wholesale grocers, associated with said corporate agency as stockholders and by virtue of their aforesaid contracts with it—

(d) Received from it or from said holding company also by virtue of their stock interest in the form of services or dividends, the benefit of brokerage or other compensation paid by sellers upon their purchases, in transactions in which said corporate agency acted in their interests, and in connection with which it rendered no service to the sellers except for such incidental services as were involved in their not having to seek other outlets for merchandise sold through said corporate agency:

Held, That the payment by such sellers of brokerage fees or commissions to said corporate agency on the purchases of the aforesaid wholesale grocer buyers, and the receipt and acceptance thereof by said corporate agency, holding company and buyers, under the circumstances set forth, constituted violations of the provisions of subsec. (c) of Sec. 2 of the Clayton Act, as amended.

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

Mr. Eldon P. Schrup for the Commission.

Ungaro & Sherwood, of Chicago, Ill., for Independent Grocers Alliance Distributing Co., J. Frank Grimes, L. G. Groebe and William W. Thompson.

Shea & Hoyt, of Milwaukee, Wis., for James D. Godfrey, Ned N. Fleming, Robert H. Perlitz, The Grocers Co., T. G. Harrison, Robert McLain, E. F. Brewster, Joseph Parker, Normal Younglove and Harry K. Grainger.

Barnes, Hickam, Pantzer & Boyd, of Indianapolis, Ind., and *Covington, Burling, Rublee, O'Brian & Shorb*, of Washington, D. C., for Stokely-Van Camp, Inc.

Sonnenschein, Berkson, Lautmann, Levinson & Morse, of Chicago, Ill., for Franklin MacVeagh & Co.

Bender, Trump, McIntyre, Trimborn & Godfrey, of Milwaukee, Wis., for E. R. Godfrey & Sons Co. and Wetterau Grocer Co., Inc.

Dorsey, Colman, Barker, Scott & Barber, of Minneapolis, Minn., for Winston & Newell Co.

Tillinghast, Collins & Tanner, of Providence, R. I., for Brownell & Field Co.

Thomas, Beedy, Nelson & King, of San Francisco, Calif., for Haas Brothers.

213840—54——60

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 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, Independent Grocers Alliance Distributing Company (hereinafter for convenience referred to as "respondent I. G. A.") is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 309 West Jackson Boulevard, Chicago, Illinois, and with branch offices located in San Francisco, California; Seattle, Washington; and New York, New York.

The respondent directors of respondent I. G. A. are:

J. Frank Grimes	James D. Godfrey, Chairman
L. G. Groebe	Ned N. Fleming
William W. Thompson	Robert H. Perlitz.

Respondent Grocers Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office located at 3900 Board of Trade Building, Chicago, Illinois.

The respondent directors of respondent Grocers Company are:

James D. Godfrey, c/o E. R. Godfrey & Sons Co., Milwaukee, Wisconsin;

Ned N. Fleming, c/o Fleming-Wilson Mercantile Co., Topeka, Kansas;

Robert H. Perlitz, c/o The Schul[illegible]nacher Company, Houston, Texas;

T. G. Harrison, c/o Winston & Newell Co., Minneapolis, Minnesota;

Robert McLain, c/o McLain Grocery Company, Massillon, Ohio;

E. F. Brewster, c/o Brewster, Gordon & Company, Rochester, N. Y.;

Joseph Parker, c/o Millikin, Tomlinson Company, Portland, Maine;

Normal Younglove, c/o Younglove Grocery Company, Tacoma, Washington;

and

Harry K. Grainger, c/o Grainger Brothers Company, Lincoln, Nebraska.

PAR. 2. Respondent Jersey Cereal Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business located at 10 S. LaSalle Street, Chicago, Illinois.

Respondent Stokely Brothers & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 940 North Meridian Street, Indianapolis, Indiana.

Respondent Dean Milk Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 20 North Wacker Drive, Chicago, Illinois.

Respondent Cupples Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri with its principal office and place of business located at 401 South Seventh Street, St. Louis, Missouri.

The respondents in this paragraph named are hereinafter designated and referred to as "seller respondents." Said seller respondents, and each of them, are, and since June 19, 1936, have been, engaged in the business of selling commodities particularly foodstuffs, groceries and allied products to numerous buyers, including the buyer respondents hereinafter set out. Said seller respondents are fairly typical and representative members of a large group or class of manufacturers, processors and producers engaged in the common practice of selling a substantial portion of their commodities to buyers who purchase through respondent I. G. A. as intermediary for buyers. Said group or class of sellers is composed of a large number, to-wit: approximately 300, of such manufacturers, processors and producers too numerous to be individually named herein as respondents without manifest inconvenience and delay.

PAR. 3. Respondent Franklin MacVeagh & Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 1347 South Clinton Street, Chicago, Illinois.

Respondent E. R. Godfrey & Sons Company is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin with its principal office and place of business located at 402 N. Broadway, Milwaukee, Wisconsin.

Respondent Winston & Newell Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 300 Sixth Avenue, N., Minneapolis, Minnesota.

Respondent Wetterau Grocer Company, Inc., is a corporation, the place of whose incorporation is not known to the Commission with its principal office and place of business located at 112 Monroe Street, St. Louis, Missouri.

The respondents in this paragraph named are hereinafter designated and referred to as "buyer respondents." Each of the said buyer respondents is engaged in the wholesale grocery business and is affiliated and under contract with respondent I. G. A. and is a stockholder of the respondent Grocers Company. Said buyer respondents are named as parties respondent, both individually and as representative of a group or class of a large number of wholesale grocery concerns, each of whom is likewise affiliated and under contract with respondent I. G. A. and is a stockholder of respondent Grocers Company.

PAR. 4. Respondent I. G. A., since its organization in 1927, has sponsored and is now sponsoring the so-called "I. G. A. movement"; in pursuance to which respondent I. G. A. has entered into, is now entering into, and acting in accordance with franchise agreements with wholesale grocers, located throughout the United States, whereby said wholesalers are granted "exclusive rights to all the merchandising, publicity, sales and promotion service" of respondent I. G. A., in certain specified territories, in connection with I. G. A. merchandise which consists of foodstuffs and other articles to which has been applied trade names, trade-marks or insignias owned by respondent I. G. A.; said affiliated wholesalers agree to cooperate and do cooperate with respondent I. G. A. in the furtherance of the said I. G. A. movement, in enrolling and maintaining qualified retail grocers known as "I. G. A. Stores" within specified territories; purchasing all I. G. A. merchandise through I. G. A. or through mutually agreed sources, and selling or distributing such merchandise for resale only to duly qualified I. G. A. stores within the specified territory, paying to I. G. A. $4.75 per month for each I. G. A. store in such specified territory, plus a monthly fee of $40.00, plus an additional sum equal to one-fourteenth of one percent of the average monthly sales of the wholesaler during the preceding calendar year. Respondent I. G. A., in accordance with such agreements, agrees to instruct and does instruct the personnel of the wholesalers in the effective administration of the I. G. A. plan; cooperating with such personnel in supervising I. G. A. stores; making available, without cost, a consultation, advisory and follow-up service; furnishing merchandising service and advertising materials to and for the wholesalers and for the I. G. A. Stores; continuing to maintain a complete brokerage department through which the wholesalers agree to purchase and do purchase the fullest extent of their requirements; fur-

nishing to wholesalers full and complete market information relative to commodities handled by the wholesalers. The affiliated wholesalers have the privilege of renewing such agreements from year to year provided that they have actively and fully cooperated with I. G. A.

As of January 1, 1939, there were affiliated and under contract with respondent I. G. A. approximately 97 wholesale grocers who in turn sponsored approximately 4,836 I. G. A. retail stores. Three of the six directors of respondent I. G. A. are representatives of affiliated wholesalers.

PAR. 5. All the capital stock of respondent I. G. A. was formerly owned by the Market Specialty Company, an Illinois corporation; the said corporation was organized merely for the purpose of holding said stock; all the capital stock of the Market Specialty Company is held by four individuals who were the original promoters of the I. G. A. movement, three of whom are directors of respondent I. G. A., and are also the officers and directors of Market Specialty Company. In 1933, as a result of the efforts of affiliated wholesalers to protect their interest in and expected benefits from respondent I. G. A., respondent Grocers Company was organized as a holding company and purchased 50% of the capitalization of respondent I. G. A. or 100,000 shares from the Market Specialty Company for $500,000. The greater portion of this purchase money came from the earnings of respondent I. G. A. All the capital stock of respondent Grocery Company is held by wholesalers affiliated and under contract with respondent I. G. A.

PAR. 6. Respondent I. G. A. is now and since June 19, 1936, has been engaged in the business of providing, purchasing and other services for its affiliated wholesalers who are referred to as buyer respondents in Paragraph Three hereof.

In the course and conduct of its business, respondent I. G. A. receives orders from the buyer respondents to purchase commodities for them and transmits such orders as agent for said buyer respondents to the seller respondents and other sellers, as a result of the transmission of said orders, by said buyers to respondent I. G. A., the execution of same by said respondent I. G. A., for and in behalf of said buyers, and the acceptance of said orders by said seller respondents and other sellers, commodities, particularly foodstuffs, are by each of the said seller respondents and other sellers shipped from the State in which such commodities are located at the time of sale into and through the various other States of the United States directly to each of said buyer respondents.

In the course of the buying and selling transactions hereinabove referred to resulting in the delivery of commodities from seller respondents to the buyer respondents, said seller respondents, since June

19, 1936, have transmitted, paid and delivered and do transmit, pay and deliver to the respondent I. G. A. so-called brokerage fees or commissions, the same being percentages of the total sales prices agreed upon by the said seller respondents and the respondent I. G. A. Respondent I. G. A., since June 19, 1936, has received and accepted and is receiving and accepting such so-called brokerage fees or commissions upon the purchases of the buyer respondents. In 1937, respondent I. G. A. received such brokerage fees and commissions amounting to approximately $557,026.88; in 1944, such brokerage amounted to $346.667.39.

PAR. 7. In all of the buying and selling transactions hereinabove referred to, the so-called brokerage fees or commissions are paid and transmitted by the seller respondents and other sellers to and received and accepted by the respondent I. G. A., upon the purchases of the buyer respondents, while the said respondent I. G. A. is acting in fact in its own behalf and for and in behalf of buyer respondents, and for said so-called brokerage fees or commissions no services whatsoever have been rendered or are being rendered in connection with such purchases for or to said seller respondents and other sellers by respondent I. G. A.

Prior to the enactment of the Robinson-Patman Act in June, 1936, 80% of the so-called brokerage fees and commissions paid by the seller respondents and other sellers to respondent I. G. A., as intermediary upon the purchases of the buyer respondents were transmitted to and received and accepted by the buyer respondents. After the enactment of said Act, respondent I. G. A. discontinued the practice of remitting such brokerage and commissions, directly as such, to the buyer respondents; respondent I. G. A. in lieu thereof passed on, and now passes on, such brokerage and commissions to respondent buyers in the form of services, including advertising allowances by the way of "territorial advertising contracts" which, in 1944, amounted to over $250,000 and in the form of dividends on 50% of the stock of respondent I. G. A. paid to its stockholder, respondent Grocers Company, for the benefit of the affiliated wholesalers who own the entire capital stock of said respondent Grocers Company.

PAR. 8. The payment, by seller respondents and others, of brokerage fees or commissions to the respondent I. G. A. upon the purchases of buyer respondents and the receipt and acceptance thereof by the respondent I. G. A. and its directors; Grocers Company and its directors; and the buyer respondents, in the manner and form hereinabove set forth, are in violation of the provisions of Section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act) (U. S. C. Title 15, Sec. 13), the Federal Trade Commission on April 18, 1946, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with having violated the provisions of subsection (c) of section 2 of the Clayton Act as amended. Answers were filed separately by respondent Stokely-Van Camp, Inc. (designated in the complaint as Stokely Brothers & Company, Inc.), on May 7, 1946; separately by respondent Franklin MacVeagh & Company and separately by respondent The Grocers Company (designated in the complaint as Grocers Company), a corporation, and its directors, James D. Godfrey, Ned N. Fleming, Robert H. Perlitz, T. G. Harrison, Robert McLain, E. F. Brewster, Joseph Parker, Normal Younglove, and Harry K. Grainger, on June 11, 1946; separately by respondents Independent Grocers Alliance Distributing Company, a corporation, and its directors, J. Frank Grimes, L. G. Groebe, William W. Thompson, James D. Godfrey, Ned N. Fleming, and Robert H. Perlitz, on June 12, 1946; jointly by respondents E. R. Godfrey & Sons Company and Wetterau Grocer Company, Inc., on June 24, 1946; and separately by respondent Winston & Newell Company on September 3, 1947. All other respondents failed to file answers. On January 7, 1947 a trial examiner of the Commission was duly designated and appointed to take testimony and receive evidence in this proceeding.

Thereafter, respondents James D. Godfrey, Ned N. Fleming, and Robert H. Perlitz, in their capacities as directors of respondent Independent Grocers Alliance Distributing Company, a corporation, respondents The Grocers Company and its above-named directors, and respondents E. R. Godfrey & Sons Company, a corporation, and Wetterau Grocer Company, Inc., a corporation, by their attorneys, filed motions requesting permission to withdraw their aforesaid answers and, in lieu thereof, to substitute answers annexed to, and made a part of, said motions. On September 16, 1947, the Commission granted said motions, and the substitute answers annexed to, and made a part thereof, have been duly received and filed. All of said substitute answers, together with the answer of Winston & Newell Company, admit in part and deny in part the allegations of the complaint and provide that the Commission may, without the holding of hearings, the taking of testimony, the adduction of other evidence, and without

intervening procedure, hear this matter upon the complaint, the aforesaid answers, and briefs and oral argument of opposing counsel as to whether or not the allegations of the complaint as therein stated and admitted constitute a showing of a violation of law by these respondents and may then proceed to make and enter its findings of fact, including inferences and conclusions based thereon, and enter its order disposing of this proceeding.

On March 31, 1947, separate stipulations were entered into by and between counsel in support of the complaint and the respondent Winston & Newell Company, and by and between said counsel and respondents Independent Grocers Alliance Distributing Company and its directors, J. Frank Grimes, L. G. Groebe, William W. Thompson, James D. Godfrey, Ned N. Fleming, and Robert H. Perlitz. Counsel for respondent Franklin MacVeagh & Company signed the latter stipulation and agreed that said respondent would be bound by its terms. At a hearing before the trial examiner on the same date, said stipulations, including statements of fact and exhibits therein set forth, were introduced and admitted in evidence in lieu of other testimony. They provide that the Commission may, without the holding of hearings, the taking of testimony, the adduction of other evidence, and without intervening procedure, hear this matter on the complaint, the answers of these respondents, the stipulations as to the facts, including the incorporated exhibits, and briefs and oral argument of opposing counsel, and proceed to make and enter its findings of fact, including inferences and conclusions based thereon, and enter its order disposing of this proceeding. At a hearing held before the trial examiner on April 15, 1947, the exhibits attached to and made a part of the stipulation between counsel supporting the complaint and the respondent Independent Grocers Alliance Distributing Company and its aforesaid directors were admitted in evidence as to all respondents named in the complaint.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, answers, substitute answers, the aforesaid stipulations of fact, recommended decision of the trial examiner and exceptions thereto (which exceptions have been separately disposed of), briefs, oral argument and reargument of counsel, and the Commission having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACT

PARAGRAPH 1. (a) Respondent Independent Grocers Alliance Distributing Company (hereinafter referred to as "respondent I. G. A.")

is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 309 West Jackson Boulevard, Chicago, Illinois. Said respondent owns substantially all of the stock of corporations of the same or similar name located in San Francisco, California, Seattle, Washington, and New York, New York. Said respondent was organized April 25, 1928,

"to buy, sell and generally deal in and trade with, either as principal or agent, all grocery and food products, wearing apparel, hardware, machinery, implements, building material, furniture, manufacturers' raw materials and supplies, pharmaceutical preparations, wood and fiber material and products, leather products, aluminum utensils, glass and earthenware, chemicals, florist supplies, paints and varnishes, store fixtures, bakery products and other commodities used or marketed, and to sell service in connection with all production, distribution and utilization of such commodities; to contract for and deal in the advertising of such commodities; to install efficiency and other service systems, both personal and general, in plants producing or distributing such commodities; to organize, foster and promote trade and other associations and organizations, and to make business and market analyses for such organizations; to assist in financing manufacturers and distributors of such commodities; to publish bulletins and newspapers for the industries and members of the industries dealing with such commodities; to acquire and disseminate information regarding the production, preparation, distribution and consumption of said articles or commodities; and to generally aid and assist wholesale and retail merchants, and to do any and all things incident to the same or any of them."

(b) The officers and directors of respondent I. G. A. are as follows:

J. Frank Grimes	President and Director,
Gerard M. Ungaro	Vice President,
Howard Gerhard	Vice President,
Louis G. Groebe	Secretary, Treasurer, and Director,
James D. Godfrey	Chairman, Board of Directors,
Ned N. Fleming	Director,
Robert H. Perlitz	Director, and
William W. Thompson	Director.

(c) Respondent I. G. A. had an original authorized capitalization of 100 shares of no-par-value common stock, representing a subscribed, paid-in amount of $1,000, divided as follows: J. Frank Grimes subscribing $300 and receiving 30 shares; L. G. Groebe subscribing $300 and receiving 30 shares; William W. Thompson subscribing $300 and receiving 30 shares; W. K. Hunter subscribing $100 and receiving

10 shares. The capital stock of respondent I. G. A. was increased from 100 shares no-par-value to 200,000 shares no-par-value on April 24, 1933, at which time the number of directors was increased from three to six. This capitalization increase was accomplished by transfer of all the original shares of stock, valued at $1,000,000, on the basis of exchanging 2,000 shares of new stock for each share of the old stock. The corporate stock of respondent I. G. A. is now owned and controlled as follows:

(1) Market Specialty Company, an Illinois corporation, owning and controlling 100,000 shares;

(2) The Grocers Company, respondent herein, a Delaware corporation, owning and controlling 100,000 shares.

PAR. 2. Market Specialty Company is an Illinois corporation organized by respondents J. Frank Grimes, L. G. Groebe, and William W. Thompson, with its office and principal place of business located at 309 West Jackson Boulevard, Chicago, Illinois. Said corporation was chartered April 24, 1933, "to acquire, own, sell and otherwise dispose of and deal in and with stocks, bonds, mortgages, securities, and notes of corporations and individuals." The authorized capitalization of Market Specialty Company is 100 shares of no-par-value common stock, representing the subscribed, paid-in amount of $1,000, divided as follows: J. Frank Grimes, 33⅓ shares; L. G. Groebe, 33⅓ shares; and William W. Thompson, 33⅓ shares. Said capital stock of Market Specialty Company was paid for by 50 shares of the capital stock of respondent I. G. A. The present owners of its capital stock, together with its officers and directors, are as follows:

J. Frank Grimes, President and Director	30%
William W. Thompson, Secretary and Director	30%
L. G. Groebe, Treasurer and Director	30%
Fay H. Hunter	3⅓%
Jane Hunter Wiscomb	6⅔%

PAR. 3. (a) Respondent The Grocers Company is a Delaware corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 100 West Second Street, Wilmington, Delaware. It was organized April 3, 1933, for the purpose of acquiring, holding, and exchanging the capital stock of other corporations, and specifically to hold the capital stock of respondent I. G. A., by certain wholesale grocers holding respondent I. G. A. franchises, who were interested in protecting their rights in the I. G. A. label, and in the efficient management of respondent I. G. A.'s national headquarters, as hereinafter

more particularly set forth. The present officers and directors of respondent The Grocers Company are as follows:

J. D. Godfrey		President,
Joseph Parker		Vice-President,
Harry K. Grainger		Secretary-Treasurer.
Directors:		
J. D. Godfrey	%	E. R. Godfrey & Sons Co., Milwaukee, Wisconsin;
T. G. Harrison	%	Winston & Newell Company, Minneapolis, Minnesota;
Ned N. Fleming	%	Fleming-Wilson Mercantile Company, Topeka, Kansas;
E. F. Brewster	%	Brewster, Gordon & Company, Rochester, New York;
Robert McLain	%	McLain Grocery Co., Massillon, Ohio;
Normal Younglove	%	Younglove Grocery Co., Tacoma, Washington;
Harry K. Grainger	%	Grainger Bros. Co., Lincoln, Nebraska;
Robert H. Perlitz	%	The Schumacher Co., Houston, Texas;
Joseph Parker	%	Millikin Tomlinson Co., Portland, Maine.

(b) Respondent I. G. A., the Market Specialty Company, and respondent The Grocers Company entered into a subscription agreement with I. G. A.'s affiliated wholesale grocers with respect to the purchase of stock of respondent I. G. A. then held by the Market Specialty Company, wherein it was provided that the Market Specialty Company would cause respondent I. G. A. to increase its capitalization so as to provide for 200,000 shares of no-par-value stock, and that Market Specialty Company would sell one-half of the capital stock (100,000 shares) of respondent I. G. A. to wholesalers affiliated with the I. G. A. movement, and that as a part of said agreement, respondent I. G. A. would pay to Market Specialty Company, out of a so-called advertising account held by it, the sum of $61,370. In consideration of such payment, Market Specialty Company transferred and delivered, pursuant to agreement, 12,274 shares of the capital stock of respondent I. G. A. to respondent The Grocers Company, which would in turn transfer and deliver an equal number of shares of its capital stock to the wholesalers affiliated with the I. G. A. movement, without cost to them; and further, that the Market Specialty Company would sell to these said wholesalers the remainder of the 100,000 shares of stock. that is, 87,726 shares, at the rate of $5 per share, payment for same being spread over a period of 56 months, commencing May 1, 1933.

It was also agreed that "all profits or dividends which during the time of this agreement are paid on account of the shares of stock being purchased hereunder shall be applied towards the purchase price of the said stock." This agreement also provided that the wholesaler who purchased this stock from the Market Specialty Company agreed with respondent The Grocers Company to transfer and deliver to the latter company all such capital stock being purchased pursuant to the agreement, and to accept from respondent The Grocers Company shares of the capital stock of The Grocers Company for each share of the capital stock of respondent I. G. A.

(c) In another agreement between Market Specialty Company and respondent The Grocers Company, dated April 29, 1933, Market Specialty Company agreed to sell to respondent The Grocers Company all shares that it owned (87,726) of the capital stock of respondent I. G. A. not purchased by the said wholesalers, it being intended that respondent The Grocers Company should, upon the completion of all of this and the other said contracts, hold either as principal or otherwise 100,000 shares of the capital stock of respondent I. G. A., that being one-half the lawfully authorized outstanding capital stock of that corporation. This purchase agreement contained the following clause:

"Market Specialty does hereby agree to sell, and Grocers Company does hereby agree to purchase, for $5.00 per share, 87,726 shares of the capital stock of headquarters, payable at the rate of $9,000.00 per month for 56 months, commencing May 1st, A. D. 1933, which said monthly payment shall include interest on the deferred payment at the rate of 6% per annum; Provided, however, that the obligation of the parties hereunder shall be reduced by such payments as may from time to time be made by the Wholesale Grocers affiliated with headquarters who have signed purchase agreements for the said stock as hereinabove mentioned, it being the intent hereof that Grocers Company shall be bound to purchase, and Market Specialty Company shall be bound to sell, only such stock as is not purchased by the said affiliated wholesale grocers."

It also contained a provision that all the stock should be placed in escrow and be delivered to The Grocers Company upon completion of all the payments therein mentioned. It further provided that the Market Specialty Company would, in consideration of the agreement and of services rendered by respondent The Grocers Company and its officers, pay to respondent The Grocers Company a sum equal to 10% of all moneys which it might from time to time receive in payment of the 87,726 shares of stock, whether the same be received from the wholesale grocers or from other sources.

(d) Pursuant to the foregoing agreements, respondent The Grocers Company was organized April 3, 1933, by wholesale grocers affiliated with the I. G. A. movement, and since that date has been conducted as a corporation, having as its officers and directors wholesalers who were then and who are now affiliated with the I. G. A. movement, including respondents James D. Godfrey, Ned N. Fleming, Robert H. Perlitz, T. G. Harrison, and E. F. Brewster. Three of these officers and directors have also continuously served as officers and directors of respondent I. G. A. since 1933.

(e) Beginning May 1, 1933, respondent I. G. A. allocated $4,500 "out of the respective brokerage accounts toward the installment payments due on the said contracts as of May 1, 1933." As of October 1934 there was received by respondent The Grocers Company from respondent I. G. A., on said dividend allocations, a total of $76,500 to apply towards the purchase price of the 87,726 shares of stock. In addition respondent The Grocers Company was given credit for service allowance deductions for 18 months at $4,500 per month, or a total of $81,000. The said stock-purchase plan entered into on April 29, 1933, between respondent The Grocers Company and Market Specialty Company was completed on December 1, 1937, as follows:

The initial down-payment of $61,370, which was obtained from the former national advertising fund held by the Independent Grocers Alliance Distributing Company;

Dividends received on stock of Independent Grocers Alliance Distributing Company owned by The Grocers Company as declared and paid in the period from May 1933 to December 1937, inclusive, $189,000;

Amounts paid by individual wholesalers through charges to their accounts with the Independent Grocers Alliance Distributing Company in the total amount of $315,000.

(f) These payments resulted in the payment to the Market Specialty Company over the 56-month period from May 1, 1933, to December 31, 1937, of the purchase price of $500,000 plus 6% interest, as a result of which, the stock held in escrow at the Northern Trust Company, Chicago, was released to respondent The Grocers Company on December 2, 1937, in stock certificates as follows:

The Grocers Company, dated April 29, 1933	99,997 shares.
For qualifying directors James D. Godfrey, T. G. Harrison, and Ned N. Fleming	1 share each.

At that time all the outstanding capital stock of respondent The Grocers Company was held by wholesale grocers and individuals engaged in the wholesale grocery business and affiliated with respondent

I. G. A. On December 13, 1937, proxies were appointed to vote the stock of respondent I. G. A. during the year 1938. The stockholders as of April 20, 1946, were as follows:

Name	*Number of shares*
Virginia M. Beattie (Mrs.), 690 Bellaire St., Denver, Colo	6
F. J. Bedessem, 231 South 15th St., LaCrosse, Wis	34
Blake-Curtiss Company, Haverhill, Mass	1,136
E. Franklin Brewster, 2080 East Ave., Rochester 10, N. Y	2,816
Carroll T. Brown, 657 Lafayette St., Denver, Colo	109
E. N. Brown, Jr., 1324 Williams St., Denver, Colo	89
J. S. Brown, Jr., 745 Columbine St., Denver, Colo	90
Lu Gray D. Brown (Mrs.), 657 Lafayette St., Denver, Colo	301
W. K. Brown, 651 Emerson St., Denver, Colo	421
W. K. Brown, Jr., 1038 U. S. National Bank Bldg., Denver, Colo	20
William K. Brown, Jr., 1036 U. S. National Bank Bldg., Denver, Colo	110
Brownell & Field Company, Providence, R. I	1,300
Burlington Grocery Company, Burlington, Vt	1,501
Carroll, Brough & Robinson, Inc., Oklahoma City, Okla	50
Central Grocery Company, Yakima, Wash	50
Champa & Co., % Colorado National Bank, Denver, Colo	70
The F. H. Cobb Company, Cortland, N. Y	1,850
Bessie S. Cosgriff (Mrs.), Trustee, 1064 Gaylord St., Denver, Colo	175
R. M. Davidson, 1104 Warm Springs Ave., Boise, Idaho	1,000
C. H. Deutsch, 1935 Janette Ave., Cleveland Heights, Ohio	8
Marcel L. Deutsch, 1924 East 105th St., Cleveland, Ohio	8
De Voe Grocery Corporation, Warren, Ohio	1,300
David Childs Dodge, 3901 South University Blvd., Denver, Colo	27
D. C. Dodge, 1330 Broadway, Denver, Colo	105
Margaret Niles Dodge (Mrs.), 3901 South University Blvd., Denver, Colo	53
Pearce K. Drake (Mrs. Fred R.), 305 Lexington Ave., New York City	2,260
The Eavey Company, Xenia, Ohio	4,640
Mrs. Mary Egstad, 241 South 23d St., La Crosse, Wis	51
Lois P. English & Clarence H. English as Joint Tenants with right of Survivorship, 2919 Dale St., San Diego 4, Calif	20
Dr. William C. Finch, % Robert A. Levi, Esq., Attorney at Law, 4413 S. Broadway, Los Angeles 37, Calif	1
Virginia Miller Fleming, % The Fleming Company, Topeka, Kans	352
The Fleming Wilson Mercantile Company, Topeka, Kans	2,500
Franklin MacVeagh & Co., 1347 South Clinton St., Chicago, Ill	2,750
C. P. Galligan, 308 North 22d Street, La Crosse, Wis	42
Cannon Grocery Company, Marquette, Mich	1,050
Eleanor P. Garnett & Harry H. Garnett as Joint Tenants, with Right of Survivorship, 124 East Fontanero St., Colorado Springs, Colo	20
Gary Wholesale Grocery Company, Gary, Ind	1,170
General Grocery Company, Inc., Portland, Oreg	500
Mrs. Jean Gillette, 1004 Cass Street, La Crosse, Wis	51
E. R. Godfrey & Sons Company, Milwaukee, Wis	6,440
Philip S. Goldberg, Guardian of the Estate of Edna Goldsmith, Incompetent, % Bloomberg & Wolf, Attorneys at Law, 1910 Union Commerce Bldg., Cleveland, Ohio	16

Name	Number of shares
Grainger Bros. Company, Lincoln, Nebr	2,860
H. K. Grainger, % Grainger Brothers Co., Lincoln, Nebr	909
J. J. Grainger, % Grainger Brothers Co., Lincoln, Nebr	594
Haas Brothers, 3d and Channel Sts., San Francisco, Calif	483
J. W. Hawkins, Trustee, Grand Junction, Colo	34
The Holbrook Grocery Co., Keene, N. H	2,387
Holmstrom-Pilcher Company, Joliet, Ill	117
Mrs. Mariam Hurtgen, 2404 Vine St., La Crosse, Wis	51
Independent Grocers' Alliance Distributing Co., 309 West Jackson Blvd., Chicago, Ill	164
International Trust Company, Guardian for Lu Gray Miles Dodge, 17th and California Sts., Denver, Colo	27
The Inter-State Grocer Co., Joplin, Mo	700
The F. N. Johnson Co., Bellefontaine, Ohio	1,000
S. M. Kennedy, % C. D. Kenny Division, Sprague Warner-Kenny Corp., Baltimore, Md	220
La Crosse Trust Company, Trustee for L. H. Martin, Jr., La Crosse, Wis	51
Lee Grocery Company, Everett, Wash	50
Francis H. Leggett & Company, 27th St. and 12th Ave., New York City	2,280
Lewis-Hubbard Corporation, P. O. Box 2233, Charleston 28, W. Va	4,660
The McLain Grocery Co., Massillon, Ohio	2,910
Thos G. McMahon, Utica, New York	880
Jane Metzler, Mrs., 913-A Euclid St., Santa Monica, Calif	17
Milliken Tomlinson Co., Portland, Maine	5,430
Harriett M. Nash, Mrs., 345 S. Williams St., Denver, Colo	6
The New London City National Bank, Nominee, New London, Conn	900
Katherine J. Nordstrom, Mrs., 911 11th Ave. N., Seattle, Wash	126
Forrest C. Northcutt, First National Bank Bldg., Denver, Colo	14
Nowell Wholesale Grocery Co., Columbia, Mo	320
Oliver-Finnie Company, Memphis, Tenn	1,560
The Ottawa Wholesale Grocery Co., Ottawa, Kans	78
Palmer-Simpson Company, Laconia, N. H	812
A. H. Perfect & Company, Fort Wayne, Ind	2,220
Jacob A. O. Preus, % W. A. Alexander & Co., 135 S. LaSalle St., Chicago, Ill	493
Price & McGillic, Malone, N. Y	1,300
Progressive Wholesale Grocery Co., Bad Axe, Mich	920
L. B. Raymond, 205 North 16th St., La Crosse, Wis	322
The A. Reiter Company, Baltimore, Md	167
Roundup Grocery Company, Spokane, Wash	50
F. E. Royston & Company, Aurora, Ill	970
The Schuhmacher Company, Houston, Tex	3,890
V. V. Sharpe, P. O. Box 1381, Tampa, Fla	805
C. E. Sisson, 349 Milford St., Glendale, Calif	51
F. W. Sisson, 330 North 23d St., La Crosse, Wis	1,747
W. T. Sistrunk & Co., Lexington, Ky	1,530
Mrs. Anna Stall, 1601 Pearl St., Temple Apartments, Apartment 29, Denver 5, Colo	70
Standard Grocery & Milling Co., Inc., Holland, Mich	670
Helen M. Still, Mrs., 730 Dean St., Woodstock, Ill	6

Name	Number of shares
Frances B. Strecker, 338 North Linden Ave., Highland Park, Ill	52
Edwin B. Suydam, 30 E. 42d St., New York, New York	37
Katherine Suydam, Mrs., Archer Road, Harrison, New York	588
The Exchange National Bank of Tampa, Florida, as Trustee Under the Will of Alfred William Perkins, Dec'd., Tampa, Fla	805
Utah Wholesale Grocery Co., Salt Lake City, Utah	550
A. W. Walsh Company, Kalamazoo, Mich	1,450
B. Ward, M. Ziegler and William C. Finch, an undivided .2 interest each; Charles Wilson, Flora Wall, Mayme Heller and Dora Wilson, an undivided .1 interest each	1
The W. A. Weaver Company, East Liverpool, Ohio	650
Wetterau Grocer Company, Inc., 2d and Monroe Sts., St. Louis, Mo	2,130
The White & Bender Company, Wallace, Idaho	68
S. A. Wilson, c/o Grainger Brothers Co., Lincoln, Nebr	594
Winston & Newell Company, Minneapolis, Minn	10,590
Younglove Grocery Company, Tacoma, Wash	50
Zarnitz Bros. Grocery Co., Wheeling, W. Va	2,070
	98,978

PAR. 4. Marketing Specialist, Inc., is an Illinois corporation organized in June 1926 by J. Frank Grimes, William W. Thompson, and L. G. Groebe, hereinbefore mentioned as organizers of respondent I. G. A. and Market Specialty Company. A fourth individual, John J. Miller, also acted as an organizer of Marketing Specialist, Inc., which was the original sponsor of the predecessor of respondent I. G. A., namely, Independent Grocers Alliance of America. Marketing Specialist, Inc., transferred to respondent I. G. A. shortly after its organization all its right, title, and interest in and to the "I. G. A." brand, trademark, trade name, insignia, etc., upon the payment of the nominal sum of $10 and the assumption by respondent I. G. A. of certain obligations then existing on contracts previously entered into between said Marketing Specialist, Inc., and various and sundry jobbers. On March 10, 1931, said Marketing Specialist, Inc., sold the capital stock of respondent I. G. A. to the said J. Frank Grimes, L. G. Groebe and William W. Thompson, and W. K. Hunter, which stock was originally issued to said individuals and sold by them to Marketing Specialist, Inc.

PAR. 5. (a) Food Products Co. of America is an Illinois corporation organized by the said William W. Thompson and L. G. Groebe and John J. Miller, under the laws of the State of Illinois, in November 1926, under the name of Neighbor Products Co., to manufacture, produce, buy, and sell, as principal or agent, grocery and food products and other merchandise, and to own, make, establish, procure, buy, and sell, as principal or agent, trade names, trademarks, copyrights,

patents, secret formulas and processes, etc. The corporate name "Neighbor Products Co." was changed to "Food Products Co. of America" on April 26, 1932, at which time all the stock of said corporation was owned and controlled by respondent I. G. A. On April 30, 1928, the said Neighbor Products Co. transferred all of its right, title, and interest in and to the "I. G. A." brand, trademark, trade name, etc., to respondent I. G. A., retaining, however, at that time, its control of another brand known as "Neighbor Brand." Said Food Products Co. of America now has as its officers, and members of its Board of Directors, individuals who occupied similar positions in respondent I. G. A.

(b) On June 30, 1938, respondent I. G. A. caused to be organized under the laws of the State of Illinois another corporation known as Neighbor Products Co., to act as brokers or agents for others, and to engage in the general advertising and merchandising business for others who engage in the general manufacturing and mercantile business. The present officers and directors of said Neighbor Products Co. are the same persons as those who are officers and directors of said Food Products Co. of America.

PAR. 6. Progressive Wholesale Grocery Company (one of I. G. A.'s supply depots) is a Michigan corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at Bad Axe, Michigan. Said corporation owns and controls all the outstanding capital stock of the Northern New York Grocery Company, Inc., a wholesale grocer corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at Malone, New York. Said Progressive Wholesale Grocery Company also owns and controls all the outstanding capital stock of Redman Wholesale Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at Alma, Michigan. The voting capital stock of Progressive Wholesale Grocery Company is owned and controlled as follows:

J. Frank Grimes---------- 6,600 shares,
L. G. Groebe---------- 2,200 shares,

or 8,800 shares out of a total outstanding issue of 10,341½ shares. These two persons also own 60% of the stock and act as officers and directors of Market Specialty Company, which owns 50% of the stock of respondent I. G. A., of which they are also officers and directors. All the above-described wholesale grocer concerns are affiliated

and under contract with respondent I. G. A., and said Progressive Wholesale Grocery Company is a stockholder of respondent The Grocers Company.

PAR. 7. (a) Respondent Franklin MacVeagh & Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1347 South Clinton Street, Chicago, Illinois.

(b) Respondent E. R. Godfrey & Sons Company is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 402 North Broadway, Milwaukee, Wisconsin. Respondent James D. Godfrey is president and director of this corporation.

(c) Respondent Winston & Newell Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 300 Sixth Avenue North, Minneapolis, Minnesota. Respondent T. G. Harrison is president and director of this corporation.

(d) Respondent Wetterau Grocery Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 112 Monroe Street, St. Louis, Missouri.

(e) Each of the corporations previously named in this paragraph is engaged in the wholesale grocery business, and (excepting Winston & Newell Company, since August 31, 1942) is affiliated and under contract with respondent I. G. A., and is a stockholder of respondent The Grocers Company. Said corporations are herein referred to as buyer-respondents and are named in this proceeding as representative of all the wholesale grocers listed below, who, on April 18, 1946, had franchise agreements with respondent I. G. A., the first thirty-one of which, on April 20, 1946, also held stock in respondent I. G. A.

E. R. Godfrey & Sons Co., Milwaukee, Wisconsin,
Ganno Grocery Company, Marquette, Michigan,
DeVoe Grocery Co., Warren, Ohio,
The Fleming Company, Inc., Topeka, Kansas,
Holmstrom-Pilcher Co., Joliet, Illinois,
A. H. Perfect & Co., Fort Wayne, Indiana,
Lewis, Hubbard & Co., Charleston, W. Va.,
Grainger Bros. Co., Lincoln, Nebraska,
The F. N. Johnson Co., Bellefontaine, Ohio,
Zarnitz Brothers Grocery Company, Wheeling, W. Va.,
The Schumacher Company, Houston, Texas,
Gary Wholesale Grocery Co., Gary, Indiana,
Standard Grocer Co., Holland, Michigan,

The Inter-state Grocer Co., Joplin, Missouri,
Milliken Tomlinson Co., Portland, Maine,
Burlington Grocery Co., Burlington, Vermont,
The Holbrook Grocery Co., Keene, New Hampshire,
The McLain Grocery Co., Massillon, Ohio,
Blake Curtiss Co., Haverhill, Massachusetts,
Nowell Wholesale Grocery Co., Columbia, Missouri,
W. T. Sistrunk & Co., Lexington, Kentucky,
Franklin MacVeagh & Co., Chicago, Illinois,
Wetterau Grocery Co., Inc., St. Louis, Missouri,
The F. H. Cobb Company, Cortland, New York,
Progressive Wholesale Grocery Co., Bad Axe, Michigan,
Thomas G. McMahon & Co., Utica, New York,
Brownell & Field Co., Providence, Rhode Island,
Haas Brothers, San Francisco, California,
Utah Wholesale Grocery Co., Salt Lake City, Utah,
Roundup Grocery Co., Spokane, Washington,
Lee Grocery Co., Everett, Washington (resigned January 1, 1947),
DeVoe Grocery Co., Warren, Ohio, and its successor,
William Edwards Co., Warren, Ohio,
The Sisson Co., La Crosse, Wisconsin,
Gateway Grocery Co., La Crosse, Wisconsin,
Brewster, Gordon & Co., Rochester, New York,
House of Pilcher, Inc., Joliet, Illinois, and its successor,
Holmstrom-Pilcher Co., Joliet, Illinois,
Becker Prentiss, Inc., Buffalo, New York,
Perkins & Sharpe, Inc., Tampa, Florida, and its successor,
Gulf Grocery Co., Tampa, Florida,
The Holbrook Grocery Co., Keene, New Hampshire, and its predecessor,
Homer Simpson Co., Laconia, N. H.,
Northern New York Grocery Co., Malone, New York,
Roger Williams Wholesale Grocery Co., Providence, R. I.,
American Wholesale Grocery Co., Seattle, Washington,
The D. G. Penfield Co., Danbury, Connecticut,
C. D. Kenny Company, Jason, Ohio,
Williamette Grocery Company, Salem, Oregon,
Bryan Keefe & Company, Tampa, Florida,
Bird-Shankle Corporation, San Antonio, Texas,
Lakewood Grocery Co., La Crosse, Wisconsin,
The Copps Company, Stevens Point, Wisconsin,
F. G. Foster Company, Hoquiam, Washington,

Davidson Wholesale Company, Twin Falls, Idaho (subsequently taken over by Utah Wholesale Grocer Co. February 15, 1947),
Alpena Wholesale Grocer Co., Alpena, Michigan,
Redman Wholesale Company, Alma, Michigan (subsidiary of Progressive Wholesale Grocery Co.),
J. M. Jones Distributing Co., Champaign, Illinois.

(f) The aforesaid corporations are the present holders of franchises obtained during the period of time from August 1926 until April 18, 1946. Many other wholesale grocers were franchise holders during this period, but in the interim have either canceled their franchises or were absorbed by other corporations. Respondent Winston & Newell Company, for instance, canceled its franchise with respondent I. G. A. on August 31, 1942, although the president of this respondent, Mr. T. G. Harrison, continues as a member of the Board of Directors of respondent The Grocers Company, and respondent Winston & Newell Company continues to be a stockholder of respondent The Grocers Company, owning 10,590 shares in that corporation. On the other hand, respondent Winston & Newell Company does not handle merchandise with the I. G. A. label, and has not done so since August 1942.

PAR. 8. (a) Respondent I. G. A., when entering a new territory, makes a contract with a wholesale grocer concern in such territory. This contract usually covers the normal trading area of the wholesale grocer, and outlines the wholesaler's responsibilities in dealing not only with respondent I. G. A., but also with retail dealers in the territory. Respondent I. G. A. supplies its affiliated wholesalers with trade information and market trends; investigates new products before attempting to sell them in order to be assured that the products are worthy, will fill the demand of buyers, and will meet consumer acceptance; investigates the responsibility of new or unknown manufacturers entering the field; arranges in some instances for cooperative advertising between the seller and the buyer or the buyer's affiliated retail stores; checks performance of any such cooperative advertising arrangement; and supplies said retail grocers with retail merchandising services. In the latter connection, assistance to the retailer grocer has been in the form of store layouts which have been furnished, departmental plans, merchandising aid for day-to-day selling and for special sales, assistance on low-price selling, advertising materials and posters, weekly bulletins and monthly house-organs, advice as to trends or changes in the retail store operation and management, advice as to market conditions and proper inventories, advice and forms as to bookkeeping methods, etc.

(b) As of January 1, 1937, there were approximately 4,994 retail grocers affiliated with the I. G. A. movement as I. G. A. stores, and as of December 31, 1946, there were 4,294 retail grocers so affiliated. The character of the stores has changed in the interim, so that the lesser number of retail grocers now affiliated with the I. G. A. movement represents a larger proportion of the retail food business than did the greater number of stores in 1937. All of the retail grocers affiliated with the I. G. A. movement are designated as "I. G. A. Stores." Each is independently owned, and none is owned either by respondent I. G. A. or respondent The Grocers Company.

PAR. 9. (a) Most of the wholesale grocers who are affiliated with respondent I. G. A. are operating under a printed "Wholesalers' Agreement" or franchise, which was inaugurated by respondent I. G. A. in 1935. In this agreement respondent I. G. A. is referred to as "Headquarters" and the wholesale grocer as "Wholesaler." This agreement provides, among other things, as follows:

"WHEREAS Headquarters is sponsoring and fostering a national movement, including an alliance of retail grocers, the same being sometimes known or designated as the INDEPENDENT GROCERS ALLIANCE OF AMERICA (I. G. A.) for the purpose of improving the grocery trade, aiding retail merchants and producing economies and service efficiencies for the retailer and the ultimate consumer, and the said retail grocers have a common designation and are sometimes known as I. G. A. stores or I. G. A. retailers; and

WHEREAS Headquarters is the owner of various and sundry trademarks, trade names and insignias which have been applied by it to and are now in use on and in connection with various and sundry articles, merchandise and food products (herein sometimes referred to as I. G. A. merchandise), used, sold and distributed principally by wholesale grocers and sold to the consumer only through I. G. A. stores; and

WHEREAS the I. G. A. movement works through exclusive wholesale grocers, and the said Wholesaler has heretofore entered into a certain franchise agreement with Headquarters and is desirous of extending the said agreement as hereinafter set forth, and does hereby promise and agree that it will cooperate fully in all the plans presented by Headquarters for the I. G. A. movement so that the I. G. A. Stores in the said territory will receive needed benefits and more satisfactorily serve their customers, * * *.

(b) Following this preliminary statement, respondent I. G. A., in this agreement, grants to the wholesaler exclusive rights to all the merchandising, publicity, sales, and promotion services of respondent I. G. A. in the grocery field, including participation in the I. G. A. movement in certain described territory. This agreement also provides that the wholesaler will cooperate with respondent I. G. A. in its plans and programs adopted for the furtherance of the I. G. A. movement; will enroll and maintain retail grocers as I. G. A. stores in the territory described; and respondent I. G. A. will make available

for the wholesale grocers, without cost, a consultation, advisory, and follow-up service; will furnish the wholesaler a merchandising service, advertising materials, etc., for which the wholesaler agrees to pay respondent I. G. A. a membership and advertising fee of $4.75 per month for each retail grocer enrolled. The wholesaler further agrees that it will pay respondent I. G. A., in addition to the sum just mentioned for services to be rendered, a monthly fee of $40, plus an additional sum monthly equal to 1/14th of 1% of the average monthly sales of the wholesaler during the preceding calendar year, and to furnish the respondent I. G. A. with a statement, 30 days after execution of this agreement, and annually thereafter, showing sales during the preceding calendar year.

(c) Respondent I. G. A., in this agreement also agrees to furnish and make available for the use of the wholesaler, during the life of the agreement, products, merchandise, supplies, labels, and cartons bearing thereon the I. G. A. trademark and insignia, and agrees to permit the use and distribution of same by the wholesaler in the territory described. The wholesaler, on his part, agrees that all I. G. A. merchandise shall be purchased exclusively through respondent I. G. A. or through such other sources as may be mutually agreed upon, and that all I. G. A. merchandise used, handled, or purchased by the wholesaler shall be sold or distributed only to duly qualified I. G. A. stores within the territory described, or to schools, hospitals, and institutions purchasing for their own use and not for resale. Respondent I. G. A. also agrees that it will maintain and continue to maintain a complete brokerage department, and that it will furnish from time to time to the wholesaler full and complete information relative to commodities handled by the wholesaler; furnish market postings, analyses of conditions and other pertinent information relative to such commodities. The wholesaler agrees on its part that it will purchase through the said brokerage department the fullest extent of its requirements, provided, however, that the wholesaler shall not be obligated to use such department unless headquarters (respondent I. G. A.) or the vendor represented by it is in a position to serve the said wholesaler equally as well as other brokers handling the particular commodities. The wholesaler further agrees, on its part, that it will furnish to headquarters (respondent I. G. A.) at its request, a report of all purchases made or contracts entered into by it of such merchandise or commodities as may be specified by headquarters (re-

spondent I. G. A.) in such request. This agreement further provides as follows:

The parties hereto agree that in all transactions involving any purchase by the Wholesaler, Headquarters shall act as the representative and broker of the vendor and shall not be deemed to be the agent or representative of the Wholesaler. Headquarters further agrees that brokerages received by it and designated as sales service allowances, shall, in so far as the same is not prohibited by codes* of fair competition, be distributed to the wholesalers by Headquarters, provided, however, that Headquarters may retain therefrom a sum equal to its cost of general operations as determined by its Board of Directors. Headquarters further agrees that all sales service allowance, if any, which cannot be so distributed because of the provisions of codes, shall be retained by Headquarters and expended for special advertising, as may from time to time be determined by its Board of Directors.

(d) This agreement further provides that headquarters will use its best efforts to obtain from producers, manufacturers, and suppliers of groceries and other products distributed by the wholesalers contracts for advertising and merchandising services to be rendered on behalf of the products and merchandise of the respective manufacturers, producers, and suppliers, and will advise the wholesaler of all such contracts within due time, permitting the wholesaler to render and perform in the territory specified the services provided for in the respective agreements made by headquarters with such manufacturers, producers, and suppliers.

If the Wholesaler elects to render such services, Headquarters agrees that it will compensate the Wholesaler as may be mutually agreed upon for such services. * * * The Wholesaler agrees that payments received by it hereunder shall not be used to reduce a sales price, and that it will faithfully render the services bargained for, and perform the terms and conditions of all such agreements.

PAR. 10. (a) In the wholesalers' agreements entered into between respondent I. G. A. and its wholesaler affiliates in years subsequent to 1935, the same general language is used with respect to the maintenance of a complete brokerage department by respondent I. G. A. For instance, although the language with respect to the payment of brokerage is somewhat different, the 1938 agreement contains the following provision:

The Parties hereto agree that in all transactions involving any purchase by the Wholesaler, Headquarters shall act as the representative and broker of the

*Reference is to codes under the National Industrial Recovery Act (NRA).

vendor and shall not be deemed to be the agent or representative of the Wholesaler.

(b) In 1946 the franchise agreement entered into between respondent I. G. A. and its affiliated wholesale grocers (Par. Eighth) contained the following provisions:

Headquarters agrees to use its best efforts to have made available for the use of the Wholesaler, during the life of this agreement, products, merchandise, supplies, labels, carton and containers bearing thereon trademarks and insignias owned by Headquarters, and agrees that the Wholesaler may use or distribute the same in the territory herein described. The Wholesaler understands that Headquarters acts as the exclusive broker or selling agent in connection with I. G. A. merchandise of all manufacturers packing or preparing I. G. A. merchandise, and the Wholesaler agrees that all I. G. A. merchandise, if any, purchased by it, shall be obtained only from manufacturers, packers, producers and suppliers which have been duly authorized to pack or prepare such merchandise, it being understood and agreed that in all transactions involving any purchase by the Wholesaler, Headquarters shall act as the representative and broker of the vendor, and shall not be deemed to be in any manner whatsoever the agent or representative of the Wholesaler.

PAR. 11. (a) Respondent I. G. A., in addition to the foregoing franchise agreement, has, since June 19, 1936, the date of passage of the Robinson-Patman Act, entered into what are known as "Advertising and Merchandising Agreements" with wholesalers affiliated with it. Pursuant to the terms of these agreements, the wholesaler agrees to furnish certain advertising and merchandising services over certain periods of time, such as newspaper advertisements, store display, window display, handbills, etc., featuring the products in the I. G. A. Merchandiser, a trade publication sent to retailers, and to furnish the respondent I. G. A. with evidence of performance, consisting of copies of newspaper advertising or dodgers with certification showing the number used, etc., and in consideration thereof respondent I. G. A. agrees to pay the wholesaler certain sums of money after evidence of performance, as mentioned, has been furnished it.

(b) During 1943 respondent I. G. A. entered into 2,289 such contracts, and paid out $278,090.46 to wholesale grocers, and during 1944 entered into 1,787 such contracts, and paid out $253,276.13 to wholesale grocers. The following is a list of such advertising and merchandising agreements in force during the years 1943 and 1944 between respondent I. G. A. and its affiliated wholesalers or supply depots:

	Contracts Issued		Number of Contracts	
	1943	1944	1943	1944
American Wholesale Grocery Co	$3,231.87	$3,608.03	101	141
Becker-Prentiss Inc	3,425.55	2,818.35	23	16
Bird-Shankle Corp	4,481.28	4,057.80	48	30
Blake-Curtis Company	2,109.42	1,953.06	49	34
Brewster, Gordon & Co	8,199.06	6,065.22	35	22
Brownell & Field Co	3,932.62	4,440.47	20	15
Bryan Keefe & Co	137.40	685.80	16	-------
Burlington Grocery Co	7,424.60	7,443.00	36	30
F. H. Cobb Company	4,219.03	3,823.55	24	21
The Copps Company	----------	1,483.30	-------	16
Wm. Edwards Company	2,576.23	1,612.60	38	23
The Fleming Co., Oklahoma City	5,842.87	5,635.00	29	22
The Fleming Co., Topeka	21,140.19	15,555.36	55	28
Gannon Grocery Company	3,275.40	3,040.12	39	45
Gary Wholesale Grocery Co	5,849.87	3,861.50	44	24
Gateway Grocery Company	----------	2,670.00	-------	14
E. R. Godfrey & Sons Co	15,584.40	17,972.00	20	19
Grainger Brothers Company	13,090.70	13,912.80	28	23
Haas Brothers	2,222.14	976.40	16	5
Hannaher & O'Neil	114.64	----------	40	-------
Holbrook Grocery Company	9,015.60	8,598.19	61	61
Holmstrom-Pilcher Company	2,865.66	2,651.61	37	29
Inter-State Grocer Company	5,303.94	4,276.47	50	32
Inter-Mountain Grocery Co. (Baker)	766.90	----------	4	-------
F. N. Johnson Company	2,770.40	2,921.68	101	135
C. D. Kenny Division—Dayton	3,998.65	5,465.95	43	51
C. D. Kenny Division—Indianapolis	----------	518.40	-------	4
C. D. Kenny Division—New Castle	3,400.39	705.26	22	4
C. D. Kenny Division—Richmond	----------	833.38	-------	8
Lee Grocery Company—Bellingham	231.25	856.00	88	141
Lee Grocery Company—Everett	862.10	704.96	28	21
Lewis, Hubbard Company	247.80	1,230.00	19	-------
Franklin MacVeagh & Company	3,311.18	3,751.73	32	17
McLain Grocery Company	9,463.75	7,682.75	34	22
Thos. G. McMahon & Company	3,523.95	2,760.00	53	41
Milliken, Tomlinson Company	18,316.06	17,500.56	45	39
Northern New York Grocery Co	7,609.74	7,070.85	93	32
Nowell Wholesale Grocery Co	2,952.82	1,937.14	63	42
Omar, Inc	518.40	1,724.80	10	36
Palmer-Simpson Company	2,467.70	2,445.00	32	27
D. G. Penfield Co	3,278.10	2,849.50	31	25
A. H. Perfect & Co., Fort Wayne	9,758.29	5,907.91	103	38
A. H. Perfect & Co., Sturgis	----------	951.00	-------	19
Progressive Wholesale Grocery Co	3,570.24	3,512.83	62	41
Roundup Grocery Company	10,945.31	5,315.80	99	36
F. E. Royston & Co	2,117.18	2,229.35	35	32
The Schumacher Company	20,031.63	21,781.42	63	56
The Sisson Company	4,231.78	1,560.00	24	6
W. T. Sistrunk & Co	1,954.15	925.75	52	33
Standard Grocer Company	7,064.04	7,977.84	44	34
Utah Wholesale Grocery Company	5,313.87	8,688.79	81	119
Wetterau Grocer Company	11,304.96	14,655.48	34	37
Willamette Grocery Company	4,660.90	506.67	83	-------
Younglove Grocery Company	7,812.02	3,457.80	87	27
Zarnits Bros. Grocery Company	2,993.83	3,389.40	15	14
Total	278,050.46	253,276.13	2,289	1,787

(c) The following is a statement of the amounts paid for advertising under such agreements during the years 1937, 1940, and 1945 by six representative wholesalers or supply depots, together with the amounts of merchandise purchased by each during these years:

	Advertising Contracts Paid		
	1937	1940	1945
E. R. Godfrey & Sons Co	$9,301.50	$12,750.50	$20,335.13
Franklin MacVeagh & Co	3,049.20	3,239.81	5,535.00
Northern New York Grocery Co	7,319.87	4,633.17	7,018.43
Progressive Wholesale Grocery Co	2,921.97	2,558.94	5,977.85
Redman Wholesale Co	None	None	None
Wetterau Grocer Co	9,969.93	12,923.76	11,700.02

	Purchases Through IGA Headquarters		
	1937	1940	1945
E. R. Godfrey & Sons Co	$570,758.99	$542,502.98	$945,034.13
Franklin MacVeagh & Co	201,832.22	158,310.97	231,137.43
Northern New York Grocery Co	259,226.25	223,931.66	590,196.18
Progressive Wholesale Grocery Co	138,074.36	102,176.40	254,231.85
Redman Wholesale Co	None	None	11,615.12
Wetterau Grocer Co	334,855.02	532,615.43	596,371.14

PAR. 12. The aforesaid "Advertising and Merchandising Agreement" referred to in Paragraph Eleven, *supra*, was not inaugurated and did not come in effect until after the passage of the Robinson-Patman Amendment to the Clayton Act, in June, 1936. Moneys allocated and paid each affiliated wholesaler by respondent I. G. A. under such agreements were and are allocated and paid each such individual wholesaler by said respondent directly in ratio to the amount of the commissions, brokerage, or other compensation, allowances, or discounts in lieu thereof collected from sellers by respondent I. G. A. on said individual wholesalers' purchases of I. G. A.-branded merchandise. Said "Advertising and Merchandising Agreements" are distinct and apart from the advertising services furnished respondent I. G. A.'s affiliated retail stores in exchange for the payment for said advertising services made to respondent I. G. A. by said retail stores and collected for by means of and through respondent I. G. A.'s wholesalers, as set out and described in agreements entered into by and between said wholesalers and said retailers. Said "Advertising and Merchandising Agreements" are not based on the monthly fee and percentage of sales payments made by affiliated wholesalers as set out and described in agreements between respondent I. G. A. and said

wholesalers, as said latter payments by the wholesaler to respondent I. G. A. are for the services rendered said wholesaler by respondent I. G. A. through its various departments, including its Sales-Service Department. Said territorial "Advertising and Merchandising Agreements" cover only, and are restricted to, advertising by the said wholesale buyers of merchandise under or bearing labels, brands, or insignia owned or controlled by respondent I. G. A. or its owned subsidiaries.

PAR. 13. (a) Respondent Jersey Cereal Company is a corporation organized and existing under and by virtue of the laws of the State of Pennslyvania, with its principal office and place of business located at 10 South LaSalle Street, Chicago, Illinois.

(b) Respondent Stokely-Van Camp, Inc., formerly Stokely Brothers & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 940 North Meridian Street, Indianapolis, Indiana.

(c) Respondent Dean Milk Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 20 North Wacker Drive, Chicago, Illinois.

(d) Respondent Cupples Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 401 South Seventh Street, St. Louis, Missouri.

(e) The aforesaid corporations are designated and referred to in this proceeding as "seller-respondents," and are now, and since June 19, 1936, have been, engaged in the business of selling commodities, particularly foodstuffs, groceries, and allied products, to numerous buyers, including the buyer-respondents hereinbefore mentioned. Said sellers are fairly typical and representative members of a large group or class of manufacturers, processors, and producers engaged in the common practice of selling a substantial amount of their commodities to buyers who purchase through respondent I. G. A.

PAR. 14. (a) In the course and conduct of its business since June 19, 1936, respondent I. G. A. receives, and has received, orders from the aforesaid buyer-respondents for commodities and transmits, and has transmitted, such orders to the said seller-respondents, and as a result of the transmission of said orders by said buyer-respondents to respondent I. G. A., the execution of same by said respondent I. G. A., and the acceptance of said orders by said seller-respondents, commodities, particularly foodstuffs, are, and have been, by said seller-respondents shipped from the respective States in which such commodi-

ties are located at the time of sale into and through various other States of the United States, directly to said buyer-respondents at their respective locations in various other States of the United States other than those in which said shipments originate. In the course of these transactions, said seller-respondents, since June 19, 1936, have transmitted, paid, and delivered, and do transmit, pay and deliver, to respondent I. G. A., brokerage fees or commissions, the same being percentages agreed upon by said seller-respondents and respondent I. G. A. Respondent I. G. A., since June 19, 1936, has received and accepted, and is now receiving and accepting, such brokerage fees or commissions upon the purchases of the aforesaid buyer-respondents. All of said buying and selling transactions and the transmission and receipt of said brokerage fees or commissions, conducted as aforesaid, constitute a current of trade in commerce among and between the various States of the United States.

(b) Sellers of merchandise under labels or brands owned or controlled and nationally advertised by them do not in some instances allow respondent I. G. A. brokerage on purchases of said merchandise, but restrict said brokerage payments to purchases of merchandise under or bearing labels owned or controlled by respondent I. G. A. or its owned subsidiaries.

(c) For more than eight years prior to 1945, respondent I. G. A. entered into annual agreements with approximately 200 sellers, of whom the seller-respondents are representative. Said agreements were made effective only as to transactions pertaining to merchandise packed under labels, brands, trade-marks, or insignia owned or controlled by respondent I. G. A. and purported to license said sellers to use such labels, brands, trade-marks, or insignia. Certain other sellers were not required to execute such a formal agreement in order to thus pack and sell their merchandise. The form of this agreement has been changed occasionally, but typical of those frequently used since June 19, 1936, is one executed May 15, 1937, between respondent I. G. A. and Elyria Canning Company, which contains the following provisions:

THAT WHEREAS Headquarters is the sole owner of or controls various and sundry trade-marks, trade names, insignias, and other identifying characteristics (hereinafter sometimes referred to as "I. G. A. Trade-marks"), which Headquarters has applied to and is now using on and in connection with various and sundry articles and merchandise used by the grocery trade and in the grocery field, said articles and merchandise being standardized as to quality, packing, etc.; and

WHEREAS Headquarters is the sponsor of a Movement known as INDEPENDENT GROCERS' ALLIANCE OF AMERICA (I. G. A.), and under said Movement has granted charters to certain wholesale grocers to supply or make available I. G. A. goods, wares and merchandise to affiliated retail grocers, each charter covering

a specific territory, as per the list attached hereto and made a part hereof; and * * *

1. Headquarters does hereby grant to the Manufacturer a nonexclusive, nonassignable and indivisible license to use the I. G. A. trade-marks on and in connection with the items hereinabove mentioned, for the period of one year from the date hereof. This agreement may be renewed from year to year thereafter upon the advance of such annual fee as may from time to time be fixed by mutual agreement between the parties hereto, and provided further that the manufacturer has faithfully kept and performed all of the covenants and conditions herein contained. It is agreed, however, that if and when headquarters notifies the manufacturer that the charter agreement of any wholesale grocer mentioned on said attached list has expired, then this agreement, as to such wholesaler and the territory serviced by it, shall also be considered as having expired under the expiration date of said charter. Headquarters further agrees that in the event that it enters into charter agreements with wholesale grocers other than those mentioned on said attached list, it will so notify the manufacturer and thereupon the names of such wholesale grocers shall be included on the list attached hereto, and shall be considered a part thereof. * * *

3. The manufacturer further agrees that all merchandise, commodities or food products manufactured and sold or distributed by it under, or bearing thereon any I. G. A. trade-marks shall in all respects conform to the description or designation carried by or appearing on said merchandise, and all grade and quality requirements fixed by headquarters, and shall be in strict conformity with all rules, regulations, statutes, laws, and/or ordinances, if any, of properly constituted authorities, and the manufacturer further agrees that headquarters shall have the right at all times to inspect or analyze the said merchandise, commodities or food products for the purpose of ascertaining that all of the requirements herein mentioned have been complied with. Notwithstanding said right of examination and analysis, the manufacturer does hereby agree to indemnify and save harmless headquarters from any and all liability claims, if any, which may result from the adulteration of or impurities in, or misbranding of any merchandise packed or shipped hereunder, or from the unlawful or unauthorized use of any I. G. A. trade-marks.

4. The manufacturer agrees that any merchandise, commodities or food products manufactured, sold or distributed by it under the I. G. A. trade-marks shall be sold by it only to the wholesale grocers now or hereafter included in the attached list, it being understood and agreed that nothing herein contained shall estop the manufacturer from manufacturing, selling or distributing the same or identical merchandise under some other name, and without the I. G. A. trademarks to any and all purchasers whatsoever.

5. The manufacturer agrees to manufacture, produce and deliver the merchandise, commodities or food products herein mentioned in such quantities as may from time to time be required to fill the needs and requirements of the wholesale grocers herein mentioned, provided however, that the manufacturer shall first have the opportunity of passing upon and approving the credit ratings of said wholesalers or any of them, and provided further that the price at which said merchandise, commodities or food products are to be sold to said wholesale grocers shall be mutually agreed upon by the parties hereto.

6. It is understood and agreed that nothing herein contained shall give to the manufacturer any right, title, interest or claim in and to the name I. G. A. and/or to the I. G. A. trade-marks, except the right of usage as herein mentioned

for the particular wholesale grocers mentioned on the attached list, and for the period of time herein specified on the above-described articles, and in accordance with the terms and conditions herein set forth, and the manufacturer shall have no right to use said I. G. A. trade-marks on any article or commodity other than as specifically mentioned herein, without the written permission of headquarters being first had and obtained. It is further understood and agreed that this agreement shall not in any manner whatsoever restrict headquarters from additional licensing of said I. G. A. trade-marks to any other manufacturer, or interfere with or limit the use of the said I. G. A. trade-marks on the same or other products handled by the grocery trade or used in the grocery field. * * *

Attached to such an agreement is usually a list of the wholesalers to whom the products are to be sold.

(d) A partial list of such seller-respondents—manufacturers, processors, and producers—together with the names of their products, the rate of brokerage paid, and the total amount of brokerage received by respondent I. G. A. from said seller-respondents, is as follows:

Name of Principal	Product	Rate of Brokerage	Amount of Brokerage			
			1937	1938	1943	1944
Blue Seal Food Products, Inc., Chicago, Ill.	Mayonnaise and salad dressing.	2% and 6%	$3,105.63	$3,112.99	$7,308.47	$8,016.30
Dean Milk Company, Chicago, Ill.	Canned milk	5¢ a case	5,584.66	8,483.60	2,603.48	2,696.24
Cupples Company, St. Louis, Mo.	Household sundries.	2½%, 3% and 5%.	8,376.56	10,812.79	7,074.02	3,742.46
Illinois Food Products Co., Chicago, Ill.	Syrup products.	4% to 5%	1,870.70	1,718.44	5,105.00	4,301.64
Hoberg Paper Mills, Green Bay, Wis.	Paper products	3% to 6%	16,728.15	17,040.73	17,283.74	16,389.69
Thinshell Products Co., Chicago, Ill.	Cookies and candy.	2%, 3½%, 5½%			19,700.78	22,298.54
Purity Oats Co., Keokuk, Iowa.	Rolled oats	4% and 8%	7,291.35	7,359.62	5,574.99	4,044.09
Woolson Spice Co., Toledo, Ohio.	Tea and spices	3%, 5%, 1¾¢ dozen.	9,329.88	8,058.74	10,515.55	10,546.13
The Weber Flour Mills Co., Salina, Kans.	Flour	10¢ to 15¢ per barrel.	6,362.48	7,982.79	3,800.33	3,634.55
Rosenberg Bros., San Francisco, Calif.	Canned fruits	2½%			15,036.32	15,201.59
Loyal Packing Co., Chicago, Ill.	Canned meats	3%	19,364.63	16,516.00	7,193.50	11,685.41
Ball Bros., Muncie, Ind.	Glassware	2% and 5%	7,903.71	5,003.61	7,502.00	4,506.95

PAR. 15. Prior to the enactment of the Robinson-Patman Act in June 1936, 80% of the brokerage fees and commissions paid by the sellers to respondent I. G. A. as intermediary upon the purchases of the respondent buyers was transmitted to said buyers by respondent I. G. A., and received and accepted by them. After the enactment of said Act, respondent I. G. A. discontinued the practice of remitting

said brokerages and commissions directly, as such, to said buyer-respondents. Respondent I. G. A., however, has since inaugurated, and has now in effect, "Advertising and Merchandising Agreements," hereinbefore described in Paragraph Eleven, with all franchised or chartered I. G. A. wholesale grocers and supply depots, and in accordance therewith has passed on and now passes on, such brokerages and commissions, to said buyer-respondents and other buyers in the form of the advertising allowances more particularly hereinafter set forth, and continues to pay respondent The Grocers Company dividends on the stock owned by said respondent The Grocers Company in respondent I. G. A., for the benefit of the affiliated wholesalers, who own more than 60% of the capital stock of said respondent The Grocers Company.

PAR. 16. (a) Respondent I. G. A. received from sellers brokerage fees or commissions upon the purchases of the buyer-respondents during the years 1937 to 1946, from January 1 to November 30, 1946, as follows:

1937	$608, 452. 91
1938	540, 522. 14
1939	539, 060. 84
1940	495, 390. 26
1941	484, 970. 70
1942	447, 591. 41
1943	430, 598. 24
1944	401, 181. 60
1945	396, 112. 27
1946 (11 months)	390, 859. 37

(b) The total income of respondent I. G. A. during the said period of time is set forth in the following table:

Year	Service Fees	Membership Dues	Advertising Div. Income	Brokerage and Commissions	All other Income
1937	$92, 000. 82	$273, 540. 59	$98, 405. 48	$608, 452. 91	$40, 368. 69
1938	92, 655. 52	236, 3. 3. 94	90, 266. 34	540, 522. 14	56, 125. 81
1939	88, 620. 11	238, 991. 37	112, 578. 16	539, 060. 84	62, 278. 83
1940	84, 198. 13	255, 072. 96	131, 038. 97	495, 390. 26	73, 220. 32
1941	77, 686. 39	245, 799. 75	122, 344. 94	484, 970. 70	82, 253. 07
1942	79, 110. 68	232, 944. 76	72, 298. 41	447, 591. 41	52, 251. 84
1943	82, 079. 13	205, 913. 24	70, 237. 14	430, 598. 24	60, 241. 49
1944	82, 967. 15	211, 434. 33	69, 639. 37	401, 181. 60	64, 818. 40
1945	81, 604. 08	211, 068. 59	60, 414. 87	396, 112. 27	58, 616. 94
1946 [1]	79, 035. 65	213, 159. 97	61, 062. 30	390, 859. 37	81, 435. 23

[1] 1946 includes 11 months only, or from January 1 to November 30th.

(c) For comparative purposes year by year, there follows a schedule which groups the expenditures of the gross income of respondent

I. G. A. Such expenditures are represented by (1) salaries and other disbursements in connection with its brokerage business, (2) administrative and general expenses, (3) advertising expenditures other than so-called territorial advertising, (4) payments pursuant to said "Advertising and Merchandising Agreements," otherwise known as "territorial advertising," and (5) miscellaneous.

Year	Sales Service Expenses	General and Admin. Expenses	Advertising Expenses	Territorial Advertising	All other Expenses
1937	$156,129.22	$158,685.43	$259,208.72	$437,620.53	$24,309.77
1938	175,732.14	183,876.29	246,524.86	367,809.96	12,621.58
1939	169,738.21	181,304.81	261,041.50	374,731.75	15,545.00
1940	167,827.28	197,942.64	272,862.89	302,791.25	16,420.21
1941	153,091.55	[2] 196,650.36	250,295.10	308,348.54	16,268.66
1942	146,934.13	179,493.41	185,974.42	282,163.49	10,003.41
1943	138,049.15	161,180.89	183,253.14	278,090.46	4,813.72
1944	131,140.04	167,726.08	184,975.71	253,276.13	5,193.03
1945	146,629.78	163,244.44	193,041.72	228,543.84	1,944.98
1946 [1]	142,988.18	[2] 187,147.72	211,274.94	163,243.71	4,116.88

[1] 1946 includes 11 months only, or from January 1st to November 30th.

[2] Includes cost of producing Special 15th and 20th Anniversary issues of "The Independent Grocergram."

The amounts in the column headed "Territorial Advertising" for the respective years 1937 to 1946, both inclusive, represent the amounts paid buyer-respondents and other buyers in accordance with said territorial "Advertising and Merchandising Agreements," hereinbefore mentioned in Paragraphs Eleven and Fifteen, and have been paid by respondent I. G. A. to said buyer-respondents and other buyers in lieu of said brokerage fees and commissions.

PAR. 17. (a) The gross income of respondent I. G. A. for the year ending December 31, 1937, from all sources, amounted to $1,141,049.43, of which $608,452,91 was received in the form of brokerage and commissions. Expenditures for territorial advertising, as previously shown, amounted to $437,620.53. The net profit for the year was $68,109.47, which, added to the surplus on hand, produced a total surplus of $105,131.93, out of which dividends in the amount of $63,000 were paid to stockholders of record. The outstanding capital stock was valued at one million dollars, and the principal assets listed as labels, copyrights, contracts, etc., in the sum of $999,000. Respondent The Grocers Company received one-half of the dividends paid that year, or approximately $31,500.

(b) For the year 1943, respondent I. G. A. received a total income of $849,069.24 from all sources; $430,598.24 was received that year in the form of brokerage and commissions; and $278,090.46 was paid out for territorial advertising. The net profit after the payment of

income taxes amounted to $51,757.55, from which a stock dividend of 5% was paid on capital stock valued at one million dollars, of which respondent The Grocers Company received 50%.

(c) In 1944, income of I. G. A. received from all sources amounted to $830,070.85. Of this, income from brokerage and commissions amounted to $401,181.60, and the amount paid out for territorial advertising was $253,276.13. The net profit after taxes amounted to $58,536.91. The surplus carried over into that year amounted to $44,504.51, supplying a total of $103,041.40 available for the payment of dividends. The record does not show the exact amount of stock dividends paid that year, but it is estimated at approximately $50,000, since $53,041.42 was carried over as surplus.

(d) Income of respondent I. G. A. for the year 1945 received from all sources amounted to $807,816.75. Of this, income from brokerage and commissions was $396,112.27. The total amount expended for territorial advertising was $228,543.84. The net profit that year after deduction for income taxes amounted to $45,398.09, which, when added to an available surplus of $53,041.42, totaled $98,439.51. Stock dividends were paid that year to the amount of $25,000, leaving $73,439.51 in the surplus account, available for the payment of dividends in 1946.

PAR. 18. (a) In the transactions of purchases and sale hereinbefore described, respondent Independent Grocers Alliance Distributing Company has, by reason of the facts already set forth, including more particularly those referred to in this subparagraph, acted for and in its own behalf and for and in behalf of the buyer-respondents and other buyers.

(1) The capital stock of respondent Independent Grocers Alliance Distributing Company is and has been owned and controlled by two holding corporations—Market Specialty Company and The Grocers Company—the controlling stock of both of which is owned by individuals, partnerships, or corporations which also own or control, directly or indirectly, through stock ownership, or otherwise, wholesale grocery firms which are and have been buyers through said respondent and which directly or indirectly receive and have received the benefit of brokerages or commissions paid by sellers to respondent Independent Grocers Alliance Distributing Company on said buyers' purchases; and, further, each of respondent Independent Grocers Alliance Distributing Company's officers and directors, with the exception of William W. Thompson, is an official or director of a wholesale grocery firm which is or has been a buyer of merchandise through Independent Grocers Alliance Distributing Company and which directly or indirectly receives and has received the benefit of broker-

ages or commissions paid to Independent Grocers Alliance Distributing Company by sellers upon said buyers' purchases.

(2) Through the operation of franchise agreements executed between respondent Independent Grocers Alliance Distributing Company and its affiliated wholesale grocers, said respondent collects and receives from said wholesale grocers certain monthly fees as compensation for purchasing services and for other services rendered to said wholesale grocers in connection with their purchase and sale of merchandise; and, further, in connection with merchandise packed for sale under I. G. A. labels, allots, restricts, and designates the territory and channels through which said merchandise may be sold.

(3) Through the operation of contracts executed between respondent Independent Grocers Alliance Distributing Company and selected seller-respondents and other selected sellers, packers, manufacturers, and producers, respondent Independent Grocers Alliance Distributing Company specifies and controls the quality of merchandise which said sellers may pack and sell under the I. G. A. brands; controls, restricts, and designates the number and type of buyers to whom said merchandise may be sold, and determines through negotiation with said sellers the prices at which said merchandise may be sold to said buyers.

(4) Respondent Independent Grocers Alliance Distributing Company passes on and has passed on said brokerages, commissions, or other compensation received by it from sellers to the buyer-respondents and other buyers in the form of services, including advertising allowances restricted to the promotion of I. G. A.-branded merchandise and known as "territorial advertising" and in the form of stock-dividend payments, 50 percent of which said respondent paid to its stockholder respondent The Grocers Company, for the benefit of the buyer-respondents (except Winston & Newell Company) and other buyers who own the majority of the stock of respondent The Grocers Company.

(b) Seller-respondents Jersey Cereal Company, Stokely-Van Camp, Inc., Dean Milk Company, and Cupples Company, together with numerous other sellers as hereinbefore specified, while engaged in commerce and in the course of commerce, since June 19, 1936, have paid and granted brokerages and commissions, or other discounts and allowances in lieu thereof, to respondent Independent Grocers Alliance Distributing Company upon purchases of merchandise bearing trade names or trade-marks owned by said sellers or by respondent Independent Grocers Alliance Distributing Company which purchases were made by buyer-respondents and other buyers of merchandise and in connection with which respondent Independent Grocers Alliance

Distributing Company acted for and in its own behalf and for and in behalf of said buyer-respondents and other buyers.

(c) During the aforesaid period, respondent Independent Grocers Alliance Distributing Company has received and accepted brokerages, commissions, other compensation, and allowances, or discounts in lieu thereof, upon purchases made by respondents Franklin MacVeagh & Company, E. R. Godfrey & Sons Company, Wetterau Grocer Company, Inc., other buyer-respondents, and other buyers. In connection with said purchases, respondent Independent Grocers Alliance Distributing Company received and accepted for and in its own behalf and for and in behalf of said buyer-respondents and other buyers, and has passed on and now passes on, directly or indirectly, to respondent The Grocers Company and to said buyer-respondents and to other buyers, brokerages, commissions, other compensation, and allowances, or discounts in lieu thereof, which payments have been received and accepted by respondent The Grocers Company, said buyer-respondents, and other buyers. Respondent Independent Grocers Alliance Distributing Company, acting in the aforesaid manner and capacity, has not rendered, and is not now rendering, any service for or to said seller-respondents and other sellers, except for such incidental services in the form of benefits as may have accrued to said sellers in not having to seek other outlets for merchandise sold through said respondent.

CONCLUSION

The payment by said seller-respondents and other sellers of brokerage fees or commissions or other compensation to respondent Independent Grocers Alliance Distributing Company on the purchases of said buyer-respondents and other buyers, and the receipt and acceptance thereof by respondent Independent Grocers Alliance Distributing Company, and by respondent The Grocers Company, and by said buyer-respondents and other buyers, in the manner and form hereinabove set forth, constitute violations of the provisions of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of certain respondents, substitute answers of certain other respondents, stipulations, including statements of fact and exhibits therein set forth, entered into by and between counsel in support of the complaint and counsel for certain other respondents (the details of all of which are

more fully set forth in the findings as to the facts herein), testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and the exceptions thereto, briefs, oral argument and reargument of opposing counsel, one of said answers and the aforesaid substitute answers admitting certain material allegations of the complaint and, together with said stipulations, providing in part that the Commission may, without the holding of hearings, the taking of testimony, the adduction of other evidence, and without intervening procedure, hear this matter upon the complaint, said answers, substitute answers, stipulations of fact, and briefs and oral argument of opposing counsel, and proceed to make and enter its findings as to the facts, including inferences and conclusions based thereon, and enter its order disposing of this proceeding; and the Commission having entered its order disposing of the exceptions to the recommended decision of the trial examiner and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, Sec. 13):

I. *It is ordered*, That respondents Jersey Cereal Company, Stokely-Van Camp, Inc., Dean Milk Company, and Cupples Company, and their respective officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the sale of grocery products or other commodities in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to any buyer, or to respondent Independent Grocers Alliance Distributing Company, or any other agent, representative or intermediary acting for or in behalf or subject to the direct or indirect control of the buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any sale for such buyer's own account.

II. *It is further ordered*, That respondent Independent Grocers Alliance Distributing Company, its directors, J. Frank Grimes, L. G. Groebe, William W. Thompson, James D. Godfrey, Ned N. Fleming, Robert H. Perlitz, and its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase of grocery products or other commodities in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation,

or any allowance or discount in lieu thereof, upon any purchase for the account of respondent Independent Grocers Alliance Distributing Company or for the account of any stockholder of respondent Independent Grocers Alliance Distributing Company or respondent The Grocers Company, or for the account of any wholesale grocery concern affiliated or under contract with respondent Independent Grocers Alliance Distributing Company, or in connection with any purchase wherein said respondents act in fact for or in behalf or subject to the direct or indirect control of any party to the transaction other than the seller.

III. *It is further ordered*, That respondent The Grocers Company, its directors, James D. Godfrey, Ned N. Fleming, Robert H. Perlitz, T. G. Harrison, Robert McLain, E. F. Brewster, Joseph Parker, Normal Younglove, Harry K. Grainger, and its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase of grocery products or other commodities in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, or from respondent Independent Grocers Alliance Distributing Company, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any purchase for the account of respondent Independent Grocers Alliance Distributing Company or for the account of any stockholder of respondent Independent Grocers Alliance Distributing Company or respondent The Grocers Company, or for the account of any wholesale grocery concern affiliated or under contract with respondents Independent Grocers Alliance Distributing Company, or in connection with any purchase wherein said respondents act in fact for or in behalf or subject to the direct or indirect control of any party to the transaction other than the seller.

IV. *It is further ordered*, That respondents Franklin MacVeagh & Company, E. R. Godfrey & Sons Company, Wetterau Grocer Company, Inc., Gannon Grocery Company, DeVoe Grocery Co., The Fleming Company, Inc., Holmstrom-Pilcher Co., A. H. Perfect & Co., Lewis, Hubbard & Co., Grainger Bros Co., The F. N. Johnson Co., Zarnitz Brothers Grocery Company, The Schumacher Company, Gary Wholesale Grocery Co., Standard Grocery & Milling Co., Inc., The Inter-State Grocer Co., Milliken Tomlinson Co., Burlington Grocery Co., The Holbrook Grocery Co., The McLain Grocery Co., Blake Curtiss Co., Nowell Wholesale Grocery Co., W. T. Sistrunk & Co., The F. H. Cobb Company, Progressive Wholesale Grocery Co., Thomas G. McMahon & Co., Brownell & Field Co., Haas Brothers, Utah

Wholesale Grocery Co., Roundup Grocery Co., and Lee Grocery Co. (the first three of which are named in the complaint as representative of the others as a class), and all other wholesale grocery concerns which now are or in the future may be affiliated or under contract with respondent Independent Grocers Alliance Distributing Company or stockholders in respondent The Grocers Company, and their respective officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase of grocery products or other commodities in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, or from respondent Independent Grocers Alliance Distributing Company or respondent The Grocers Company, or from any other agent, representative or intermediary acting for or in behalf or subject to the direct or indirect control of said respondents named in this paragraph, in the form of money or credits or in the form of services or benefits provided or furnished, or otherwise, any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases made for said respondents' own accounts.

V. *It is further ordered*, For the reasons stated in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to respondent Winston & Newell Company.

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

OPINION OF THE COMMISSION

By Spingarn, Commissioner.

There is nothing new or novel in this case. The Commission and the courts have many times held that intermediaries acting in behalf or under the control of buyers may not receive brokerage payments upon the purchases of such buyers (Biddle Purchasing Company, et al. v. F. T. C., 25 F. T. C. 564, 96 F. (2d) 687 [1938]; Oliver Brothers, Inc., et al. v. F. T. C., 26 F. T. C. 200, 102 F. (2d) 763 [1939]; Webb-Crawford Company, et al. v. F. T. C., 27 F. T. C. 1099, 109 F. (2d) 268 [1940]; Quality Bakers of America, et al., v. F. T. C., 28 F. T. C. 1507, 114 F. (2d) 393 [1940]; Modern Marketing Service, Inc., et al., v. F. T. C., 37 F. T. C. 386, 149 F. (2d) 970 [1945]; F. T. C. v. Herzog, et al., 35 F. T. C. 71, 150 F. (2d) 450 [1945]; F. T. C. v. David M.

Weiss, 35 F. T. C. 65, C. C. A. 2nd Cir., July 28, 1945; and numerous cases in which the Commission's orders were not appealed to the courts, including the significant case against United Buyers Corporation, et al., 34 F. T. C. 87, [1941] and the recent case against Paul M. Cooter, et al., Docket No. 5460, decided on December 13, 1951). This case does not affect the rights of small business units to engage in lawful cooperative activities for their mutual benefit, but neither the law nor this decision provides special privileges for any one class of buyers against another.

This case presents the situation in which an intermediary acting for and in behalf of buyers receives brokerage payments from sellers in connection with interstate sales of merchandise to the buyers. There is no dispute about the facts—they were stipulated; there is no uncertainty that those facts constitute violation of the law—the Commission is unanimous on that; and there is no doubt concerning the Commission's obligation to enforce the law—to which end the order to cease and desist has been entered.

These are simple and compelling considerations. They should not be confused or clouded by exaggerations of the scope of the decisions or by suggestions of frightful consequences which find no support in the record or in the past experience of the Commission in the application of the law to many similar situations.

CONCURRING OPINION OF COMMISSIONER LOWELL B. MASON

Because this case so closely parallels the recent Carpel decision in its economic injury to small grocers, to which I dissented, it is proper to set forth in this opinion the factual differences that I believe require me to concur in the instant order.

This proceeding, brought under the brokerage clause of the Robinson-Patman Act (Section 2 (c) of the Clayton Act), involves a "voluntary chain" composed of 4300 independently owned and operated grocery stores, some 43 independently owned wholesalers and the Independent Grocers Alliance Distributing Company. The Alliance, one of the pioneers in the voluntary cooperative movement, has just celebrated its twenty-fifth and, with this order prohibiting the collection of brokerage, perhaps its last, birthday.

In a free economy, brokers are an important segment of our distribution system. Without them, small packers and producers would be at a loss to compete with the industrial giants who maintain their own sales forces. The brokers' social utility guarantees their existence. Without them and the other avenues of independent distribution, retailers would lose an alternative choice for their supplies and might be chained to some one manufacturer or producer.

This order will channel fees back to brokers which have been spent on improving the lot of small retailers. In justification of the law it is urged that these small merchants must be so restricted else the big chains may use the same aids. There is no doubt but that some chains used the brokerage subterfuge as a means of covering up unlawful price discriminations, an unfair act and practice which could be prohibited under the Federal Trade Commission Act. But it is by no means necessary for the chains or any other large buying power to engage in such subterfuge, for the truth is, they will always have the advantages here taken away from the small merchant. "Integrated function," as McNair has pointed out, rather than buying power, is the principal source of chain store economies.[1]

There is no doubt but that this decision will have a major impact upon distribution in this country. It will apply in many other fields, such as small town retailers of dresses, hats, furs and other specialties who merchandise through resident buyers acting in their behalf, which buyers receive compensation from the manufacturers.

This proceeding is not brought under the Federal Trade Commission Act. An examination of the report of the Trial Examiner who heard the evidence reveals that it would not be feasible to bring this case under that statute. Actions under the Federal Trade Commission Act must be based on a showing of public interest or injury to competition, and from a study of the Trial Examiner's conclusions of fact as well as from a reading of the testimony, I do not believe there was either public interest or injury to competition in this case.

This decision will do much to (and not for) the little independent dry goods store because the instant defense controls are lifted, their competitive disadvantage will be further aggravated by the multi-million dollar expansions on the part of the chain dry goods stores in the field or suburban neighborhood competition just waiting around the corner to get going. The similarity of operations here condemned and those of all cooperative merchandising movements should be the cause of grave concern to those interested in saving the small merchant.

Up until the decision in this case, buyer interest (as disclosed in the findings of fact herein) indicating direct or indirect control in an intermediary operation had not been declared illegal. As a consequence, in the grocery field alone over 120,000 small independents buy their supplies today through retail-owned wholesalers, voluntary cooperatives or straight cooperatives to the tune of around $8,900,000,000 annually.

---

[1] McNair Marketing Functions and Costs and the Robinson-Patman Act, 4 Law & Contemp. Prob. 334 (1937).

The unaffiliated stores not affected by this decision distribute over $8,000,000,000 worth of foodstuffs.

In those locations where they are in competition with affiliated stores, the decision in this case could set off a chain reaction of countless vexatious triple damage suits between small grocers. Probably not many would be filed, but to harass all affiliated grocers with the threat of such unwarranted and vexatious suits by the unaffiliated is litigious and mischievous, to say the least.

Thus it can be seen that this decision cuts deeper into our food economy than any other case that has ever come before this agency for consideration.

The law of this case in a nutshell—to steal Mr. Justice Jackson's famous phrase—is that seller-paid compensation or allowances to any intermediary is illegal if purchasers (retainers or wholesalers) are interested in the intermediary, and if the Commission chooses to infer that that interest amounts to a direct or indirect control.

What makes a purchaser interested in an intermediary? Or, to be more specific as to this case, what makes a grocery man interested in the intermediary who supplies him? A grocery man likes to sell food. In fact, the only reason he puts the stuff on his shelf is so he can hear the cash register ring as the food leaves the store.

Food is like music. A bugler can blow himself blue in the face, but if the music doesn't come out of the horn, there is no room for more tunes at the mouthpiece. And the same goes for the groceries which a manufacturer's intermediary gets a grocer to take.

The intermediary whose only concern is to pocket his own brokerage as the food crowds into the grocery shop is not nearly as attractive to the corner grocer as the intermediary who helps the grocer move the food out.

One way the small grocer (or his wholesaler) could assure that his intermediary would be interested in his welfare was to own stock in the intermediary corporation. Another way was to stop doing business with those intermediaries who were just order-takers, and start doing business with intermediaries who were retailer-minded and furnished marketing and merchandising services and stock controls to the small grocer, either gratis or on a part-pay basis.

Those intermediaries who absorbed part or all of the cost of those retailer aids out of their own earnings were the ones the Commission infers are under the control of the small grocery buyers.

And Congress has commanded that a manufacturer's intermediary cannot be under the direct or indirect control of the buyer. To give a high moral tone to this mandate, it is said that in law as well as morals, a man cannot serve two masters. A more inept application

could hardly be found, for in the American business scene, the merchant serves not one, but thousands of masters if he would succeed. In the words of the greatest Teacher of all: "And whosoever of you will be the chiefest, shall be the servant of all."

But to make doubly sure that an intermediary employed by a manufacturer didn't serve the retailer, we are here enforcing a law which in effect decrees that a certain cut of the housewife's gocery dollar must go as a broker's gabelle or else be pocketed by the manufacturer himself rather than have it seep down to aid either grocer or consumer. As the Yale Law Journal more euphonistically put it: [2]

"Because a direct buyer is denied functional compensation, an unneeded broker picks up business or a seller pockets the value of the function. The clause thus grants a legal toll gate to the broker or a windfall to the seller. Ironically, small wholesalers' cooperative buying agencies are conspicuous victims of the strict FTC 'brokerage clause' enforcement."

If we were permitted to weigh the welfare of the small merchant, our course might be quite the opposite to what it is.

During the argument before the Examiner, when discussing the handicaps facing the small grocers, namely, their inability to obtain merchandising, stock control and other management services, and the lack of mass advertising and advice on marketing, Examiner Haycraft stated:

"It is recognized that organizations such as the respondent IGA are probably the best solution of this problem from the standpont of the reail dealer."

Any student of food distribution will agree with this viewpoint, but under the mandate of the Robinson-Patman Act, the Trial Examiner was constrained to recommend an order, and I find myself in much the same boat. But I row with the horrid knowledge that our order is directed against a voluntary alliance of wholesale grocers because they gave certain merchandising advantages to small business men heretofore generally available only to large chains. The small grocers obtained these benefits at considerably less cost than if they paid for the same out of their own pockets.

As a matter of fact, the services were, for the most part, out of the reach of little independent merchants except through some sort of voluntary alliance or cooperative agreement like the one challenged in this present case.

Defendant IGA was the capillary that fed down through its wholesaler associates to small retailers, the merchandising skill, the lack of

[2] Yale Law Journal, June 1951, p. 958.

which in the past had nearly spelled genocide to the little independents. To place the small shops on a par with their chain competitors required a highly talented management organization. To maintain such a costly staff at each individual store would be prohibitive. Hence it was that the 4300 corner grocers affected by this order hoped to find a way of using a central organization such as the chains always use. They wanted to meet the competition of the chains and yet not lose their identities as independent stores, keeping their own names, paying their own taxes, pocketing their own profits, and running their own businesses.

What the retailers received at the hands of IGA is disclosed in some measure by the Commission testimony. To support the charge on which this complaint is grounded, namely, that defendants were aiding and abetting small merchants in the operation of their stores without charging them, it was disclosed as a part of the Government's case that the defendants' function was to:

"* * * install efficiency and other service systems * * * to make business and market analysis for such organizations, to assist in financing * * * to publish bulletins and newspapers for the industries * * * dealing with such commodities; to acquire and disseminate information regarding the production, preparation, distribution and consumption of said * * * commodities; and to generally aid and assist wholesale and retail merchants * * *.

These aids must have been very real, judging from the rapid recruitment of small retailers to the defendants' alliance, and as the findings of fact point out:

"Respondent I. G. A. supplies its affiliated wholesalers with trade information and market trends; investigates new products before attempting to sell them in order to be assured that the products are worthy, will fill the demand of buyers, and will meet consumer acceptance; investigates the responsibility of new or unknown manufacturers entering the field; arranges in some instances for cooperative advertising between the seller and the buyer or the buyer's affiliated retail stores; checks performance of any such cooperative advertising arrangement; and supplies said retail grocers with retail merchandising services. In the latter connection, assistance to the retail grocer has been in the form of store layouts which have been furnished, departmental plans, merchandising aid for day-to-day selling and for special sales, assistance on low-price selling, advertising materials and posters, weekly bulletins and monthly house-organs, advice as to trends or changes in the retail store operation and management, advice

as to market conditions and proper inventories, advice and forms as to bookkeeping methods, etc."

I shall not burden this opinion with a recital of all the benefits, but I cannot pass without commenting on two.

It gave the small grocers a voice in the control over the quality of merchandise they obtained from producers and which they in turn sold to the public. It also gave the small grocer the privilege of identifying his merchandise with his own individual store by use of private brand labels.

From the standpoint of the public interest, this encouraged the feeling of responsibility for good quality between the consumer and his neighborhood grocer (the man on the other side of the counter) rather than between the consumer and a man on the other side of the continent (the producer).

In my opinion, the ultimate welfare of our nation depends not only on the 16 billion dollar productive capacity of our food industry, but is tied to the three feet of counter that separates the consumer from his grocery man.

Be that as it may, the Congressional mandate prohibits these aids to small independent retailers,[3] and I must therefore subscribe to the order herein entered. I do so, however, with one reservation.

The complaint names as buyer-respondents Franklin MacVeagh & Company, E. R. Godfrey & Sons Company and Wetterau Grocer Company, Inc., as representative of parties respondent, both individually and as a group or class of a large number of wholesale grocery concerns, each of whom is likewise affiliated and under contract with respondent IGA and is a stockholder of respondent "Grocers Company." These three respondents were served and given an opportunity to defend the charges filed against them. They have had their day before our quasi-judicial agency.

The order to cease and desist, however, includes other companies which were not named as parties defendant in the complaint, to-wit: Gannon Grocery Company, DeVoe Grocery Co., The Fleming Company, Inc., Holmstron-Pilcher Co., A. H. Perfect & Co., Lewis, Hussbard & Co., Grainger Bros. Co., The F. N. Johnson Co., Zarnitz Brothers Grocery Company, The Schumacher Company, Gary Wholesale Grocery Co., Standard Grocery & Milling Co., Inc., The Inter-State Grocer Co., Milliken Tomlinson Co., Burlington Grocery Co.,

[3] The majority findings of fact (p. 926) trace disbursements of IGA profits (in my opinion, accruing from their operation as an intermediary between sellers and buyers) into the hands of buyers in the form of dividends and other payments to those wholesalers who held a stock interest in IGA and who were otherwise affiliated with it, and also traced other benefits to the retailers who bought from the respondent wholesalers.

The Holbrook Grocery Co., The McLain Grocery Co., Blake Curtiss Co., Nowell Wholesale Grocery Co., W. T. Sistrunk & Co., The F. H. Cobb Company, Progressive Wholesale Grocery Co., Thomas G. McMahon & Co., Brownell & Field Co., Haas Brothers, Utah Wholesale Grocery Co., Roundup Grocery Co., and Lee Grocery Co.

These business men have been tried in absentia and found guilty. Moreover, they are required to file a report in writing within sixty days setting forth their compliance with an order entered in a case to which they were not parties. The burden of the order also runs against officers, agents, representatives and employees of these unamed respondents.

There are, of course, precedents in favor of class suits, the leading case involving the Danbury Hatters. Members of a labor union who owned their own cottages found a judgment for a quarter of a million dollars levied against their homes for violating an order in a case they had not been a party to. We, too, have entered such orders. Though we have never sought to collect damages in a District Court against unnamed respondents, the orders have been drawn, nevertheless, to include persons not parties to the litigation.

In *Federal Trade Commission* vs. *Souhthern Hardware* (1922) such an order was entered. In *Chamber of Commerce* vs. *Federal Trade Commission*, 13 F. (2d) 673, an order against conspiracy was entered, but a report of compliance was not required of persons unnamed in the complaint. A similar order for compliance was also directed against named respondents only in *United Buyers Corporation, et al.*, 34 F. T. C. 104.

In the above and other cases, there were allegations in the complaint that the defendants in a certain class were too numerous to be individually named as respondents without manifest inconvenience and delay. No such allegation was made against this class of defendants in the instant case.

In this order to cease and desist, 28 companies not named as defendants in the complaint have been specifically included in the findings of fact and the order to cease and desist. Never having had their day in court in this case, they are required to file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with its order.

An order by the Federal Trade Commission is wide in its scope. The unnamed officers, agents, representatives and employees as well as unnamed respondents, none of whom have had their day in court, may be subject to a contempt proceeding for violation of a court's enforcement decree.

Little by little our powers and authorities creep up. We approach a condition with relation to the liability of large number of small-business men unnamed in litigation that resembles the liability of unnamed individual laborers in the infamous Danbury Hatters case.

As the late President Wilson said, "The history of liberty is the history of limitation of governmental power, not the increase of it."

I do not concur in that portion of the order requiring an affirmative action from persons not named as defendants in the complaint.