

Complaint

IN THE MATTER OF

FEDERATED NATIONWIDE WHOLESALERS SERVICE,
GARYDEAN CORP. TRADING AS FEDERATED
WHOLESALERS SERVICE, ETC.ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8649. Complaint, Nov. 10, 1964—Decision, June 16, 1967

Order requiring Lynbrook, N.Y., sellers of mail-order merchandise, selling primarily to consumers, to cease misrepresenting themselves as wholesalers who sell at wholesale prices.

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 Federated Nationwide Wholesalers Service, Garydean Corp., trading under the names Federated Wholesalers Service, Nationwide Wholesalers Service, and Nationwide-Federated Wholesalers Service, Jay Norris Corp., and Joel Jacobs and Mortimer Williams, individually and as officers of each of said corporations, 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 Federated Nationwide Wholesalers Service, Garydean Corp., trading under the names Federated Wholesalers Service, Nationwide Wholesalers Service and Nationwide-Federated Wholesalers Service, is a 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 in Oceanside, New York.

Respondent Jay Norris Corp., is a 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 in Oceanside, New York.

Respondents Joel Jacobs and Mortimer Williams are individuals and are officers of each of the corporate respondents. Said respondents formulate, direct and control the acts and practices of each of the said corporate respondents, including the acts and

practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of articles of general merchandise, including electric fry pans, electric broilers, clock-radios, electric can openers, jewelry, clothing, dinnerware, etc., to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused their said articles of merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their merchandise, respondents have advertised same by means of circulars and catalogs circulated and disseminated by and through the use of the U.S. Mails to prospective purchasers located in various States of the United States other than the State of New York.

PAR. 5. By and through the use of the trade names "Federated Wholesalers Service," "Nationwide-Federated Wholesalers Service" and "Nationwide Wholesalers Service" separately and in conjunction with statements appearing in their catalogs, circulars and other printed advertising matter, respondents have represented and do represent, directly or by implication, that they are wholesalers and that they sell their merchandise at wholesale prices.

Typical and illustrative, but not all inclusive, of the statements and representations appearing in respondents' catalogs, circulars and letters of solicitation are the following:

Wholesale Catalog No. 908.

Over 1000 items at the lowest wholesale prices GUARANTEED.

Remember: you're getting not ONE, TWO, BUT THREE wholesale catalogs * * *.

BUY YOUR NEXT CAR WHOLESAL AND SAVE UP TO \$1000.

Most people would gladly pay \$10 to \$20 for the privilege of buying wholesale.

PAR. 6. Through the use of the aforesaid trade names and statements, and other statements of like import not specifically set out herein, the respondents have represented, directly or indirectly,

1083

Complaint

that they are wholesalers, that the prices set out in their catalogs at which the merchandise is offered for sale are wholesale prices and that in each instance the savings afforded is that amount which is realized by purchasers who buy at actual wholesale prices.

PAR. 7. In truth and in fact, respondents are not wholesalers, nor do they offer to sell, or sell, many of their articles of merchandise at wholesale prices but, to the contrary, the prices of many of such items are in excess of wholesale prices. Consequently, in many instances, the savings afforded is less than that amount which is realized by purchasers who buy at actual wholesale prices.

PAR. 8. Respondents, in their circulars and catalogs distributed as hereinabove set forth, make the following representations, among others:

Nationwide Wholesalers Service.

Federated Wholesalers Service.

Don't continue to pay high prices for the things you need and use everyday. There are many wholesalers in this country who will sell to *YOU! YOU* will be able to obtain *MANY* of the *FINEST WHOLESALE CATALOGS* free of charge * * *.

To help you receive these many free catalogs and take advantage of the many bargains available, we have established the "NATIONWIDE WHOLESALERS BUYING GUIDE * * *." The "NATIONWIDE WHOLESALERS BUYING GUIDE" will show you how to get quickly and at the lowest possible price *THOUSANDS* and *THOUSANDS* of *NATIONALLY ADVERTISED PRODUCTS!*

PAR. 9. Through the use of the aforesaid statements, and others of like import not specifically set out herein, respondents represent that they are providing a wholesalers' service whereby they assist purchasers to buy at wholesale prices.

PAR. 10. In truth and in fact, respondents are not providing a wholesalers' service and they do not in many instances assist purchasers to buy at wholesale prices. Therefore, respondents' aforesaid representations referred to in Paragraphs--Eight and Nine are false, misleading and deceptive.

PAR. 11. In the course and conduct of their business and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of articles of general merchandise, including electric fry pans, electric broilers, clock-radios, electric can openers, jewelry, clothing, dinnerware and other articles of merchandise of the same general kind and nature as that sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has, the capacity and tendency to mislead mem-

bers of the purchasing public into the erroneous and mistaken belief that said statements were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5(a) (1) of the Federal Trade Commission Act.

Mr. Laurence W. Fenton supporting the complaint.
Bass & Friend, New York, N.Y., by *Mr. Solomon H. Friend*, for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

NOVEMBER 3, 1965

The complaint herein charges respondents with unfair methods of competition and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act.¹

Specifically, the complaint alleges that in advertising, offering for sale, selling, and distributing articles of general merchandise, including electric fry pans, electric broilers, clock-radios, electric can openers, jewelry, clothing, dinnerware, and similar products, to the purchasing public, respondents have represented and do represent, contrary to the fact, that they are "wholesalers" and that their merchandise is being offered for sale at "wholesale" prices. It is further alleged in the complaint that, contrary to the fact, "respondents represent that they are providing a wholesalers' service whereby they assist purchasers to buy at wholesale prices."

Paragraphs Five through Ten, inclusive, of the complaint assert:

PARAGRAPH FIVE: By and through the use of the trade names "Federated Wholesalers Service," "Nationwide-Federated Wholesalers Service" and "Nationwide Wholesalers Service" separately and in conjunction with statements appearing in their catalogs, circulars and other printed advertising matter, respondents have represented and do represent, directly or by implication, that they are wholesalers and that they sell their merchandise at wholesale prices.

Typical and illustrative, but not all inclusive, of the statements and repre-

¹ 15 U.S.C.A. Section 45(a) (1): "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

1083

Initial Decision

sentations appearing in respondents' catalogs, circulars and letters of solicitation are the following:

"Wholesale Catalog No. 908."

"Over 1000 items at the lowest wholesale prices GUARANTEED."

"Remember: you're getting not ONE, TWO, BUT THREE wholesale catalogs * * *."

"BUY YOUR NEXT CAR WHOLESALE AND SAVE UP TO \$1000."

"Most people would gladly pay \$10 to \$20 for the privilege of buying wholesale."

PARAGRAPH SIX: Through the use of the aforesaid trade names and statements, and other statements of like import not specifically set out herein, the respondents have represented, directly or indirectly, that they are wholesalers, that the prices set out in their catalogs at which the merchandise is offered for sale are wholesale prices and that in each instance the savings afforded is that amount which is realized by purchasers who buy at actual wholesale prices.

PARAGRAPH SEVEN: In truth and in fact, respondents are not wholesalers, nor do they offer to sell, or sell, many of their articles of merchandise at wholesale prices but, to the contrary, the prices of many of such items are in excess of wholesale prices. Consequently, in many instances, the savings afforded is less than that amount which is realized by purchasers who buy at actual wholesale prices.

PARAGRAPH EIGHT: Respondents, in their circulars and catalogs distributed as hereinabove set forth, make the following representations, among others:

"Nationwide Wholesalers Service."

"Federated Wholesalers Service."

"Don't continue to pay high prices for the things you need and use everyday. There are many wholesalers in this country who will sell to YOU! YOU will be able to obtain MANY of the FINEST WHOLESALE CATALOGS free of charge * * *."

"To help you receive these many free catalogs and take advantage of the many bargains available, we have established the 'NATIONWIDE WHOLESALERS BUYING GUIDE * * *.' The 'NATIONWIDE WHOLESALERS BUYING GUIDE' will show you how to get quickly and at the lowest possible price THOUSANDS and THOUSANDS of NATIONALLY ADVERTISED PRODUCTS!"

PARAGRAPH NINE: Through the use of the aforesaid statements, and others of like import not specifically set out herein, respondents represent that they are providing a wholesalers' service whereby they assist purchasers to buy at wholesale prices.

PARAGRAPH TEN: In truth and in fact, respondents are not providing a wholesalers' service and they do not in many instances assist purchasers to buy at wholesale prices. Therefore, respondents' aforesaid representations referred to in PARAGRAPHS EIGHT and NINE are false, misleading and deceptive.

In their answer the respondents deny the allegations in Paragraphs Five and Eight of the complaint but admit that certain of their catalogs, circulars, and letters contain the quoted statements.

Respondents deny the allegations in Paragraphs Six, Seven, Nine, and Ten of the complaint.

On March 31, 1965, complaint counsel filed a Motion To Take Official Notice. Pursuant thereto, at a prehearing conference on May 10, 1965, the hearing examiner took official notice that:

* * * the term "Wholesale" means "To sell merchandise, usually in quantity lots, to one who intends to resell it in one form or another, or to use it for business needs as supplies or equipment."

* * * the term "wholesaler" means "One who sells merchandise at wholesale." (Tr. 46.)

The hearing examiner further ruled (Tr. 46-47) that his taking of official notice meant only that a prima facie case as to such noticed facts had been established, and therefore counsel supporting the complaint would not need to introduce evidence as part of their case-in-chief regarding the meaning of those terms. It was pointed out that the taking of official notice did not prevent the respondents, if they chose, from offering evidence as to what respondents considered the correct meaning of the terms to be. (Tr. 47.) (See Commission's Rules of Practice for Adjudicative Proceedings § 3.14(d).)

Complaint counsel seeks an order enjoining respondents from:

1. Representing that they are wholesalers or that their business is a wholesale business;
2. Representing that they are providing a wholesalers' service;
3. Representing that they are offering articles of merchandise for sale at their wholesale prices unless such is the fact;
4. Misrepresenting the amount of savings to persons buying at respondents' alleged wholesale prices; and
5. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise.

The substance of respondents' defense is that they do, in fact, sell items of merchandise at wholesale prices and do provide a means by which their customers may subscribe to a wholesalers' service. Respondents assert, therefore, that their holding themselves out as wholesalers is not a misrepresentation. Respondents assert further that they do provide a wholesalers' service which assists prospective purchasers in buying at wholesale prices.

The Federal Trade Commission has adjudicated issues similar to those presented in this record in prior proceedings, including: Docket 8449, *Majestic Electric Supply Company, Inc.*, (opinion of February 28, 1964) [64 F.T.C. 1166, 1187]; Docket 8466, *Sans & Streiffe, Inc.*, (opinion of July 12, 1963) [63 F.T.C. 138]; Docket 8517, *Continental Products, Inc.*, (opinion of April 23, 1964) [65

F.T.C. 361, 405]; Docket 8561, *Silvo Hardware Co.*, (Commission's Order of January 24, 1964) [64 F.T.C. 409, 427]; Docket 7962, *Southern Indiana Wholesalers, Inc.*, (order of January 16, 1963) [62 F.T.C. 46, 57]; Docket 8428, *National-Porges Co.* (order of July 15, 1963) [63 F.T.C. 163, 204]; Docket 7655, *The Sessions Company* (decision of August 1, 1963) [63 F.T.C. 333, 349]; Docket 8533, *Name Brand Distributors*, (decision of April 24, 1964) [65 F.T.C. 497, 522].

Counsel supporting the complaint has the burden of proving his allegation that the prices at which respondents sell their products are not wholesale prices, but are "in excess of wholesale prices." Similarly, the burden is also upon complaint counsel to prove his allegation that, contrary to their representations, "* * * respondents are not providing a wholesalers' service and they do not in many instances assist purchasers to buy at wholesale prices." (§ 3.14 (a) of the Commission's Rules of Practice for Adjudicative Proceedings; § 7 (c) of the Administrative Procedure Act.)

The following witnesses testified in support of the complaint:

Joel Jacobs, president and one of the principal stockholders of the corporate respondents. (Tr. 116 *et seq.*)

Walter J. Rieger (Tr. 235 *et seq.*), president of John M. Maris Company, Inc., of 52 Walker Street, New York, New York, wholesale distributors of drug sundries (Tr. 236) ("everything except drugs and chemicals"), principally to drug stores.

John H. Foley (Tr. 268 *et seq.*), vice president in charge of sales of Gilman Brothers, Inc., 100 Shawmut Avenue, Boston, Massachusetts. Gilman Brothers, Inc., is a wholesale drug firm.

Ronald Reigle (Tr. 302 *et seq.*), field sales director of Regal Ware, Inc., of Kewaskum, Wisconsin. Regal Ware, Inc., manufactures cookware and related items out of aluminum and stainless steel.

Mrs. Judith Weinberger (Tr. 344 *et seq.*), Mastercraft Pipes, Inc., 25 West 32nd Street, New York, New York, importers and vendors of smoking pipes and smoking accessories.

James R. Cecil (Tr. 393 *et seq.*), merchandise manager and buyer for Goulds, Inc., 244 East Woodlawn, Louisville, Kentucky. Goulds, Inc., is a "wholesale drug service" (Tr. 393) selling drugs and sundries to approximately 400 drug stores in and around Louisville, Kentucky, and in other portions of Kentucky and in southern Indiana.

Frank W. Schattschneider (Tr. 414 *et seq.*), an attorney on the staff of Westinghouse Electric Corporation in Pittsburgh, Pennsylvania.

Randolph S. Harper (Tr. 436 *et seq.*), administrative service manager for Westinghouse Electric Supply Company of Newark, New Jersey.

Robert Kemelhor (Tr. 456 *et seq.*), salesman and sales representative for International Appliance Company, 918 Stanley Avenue, Brooklyn, New York, a manufacturer of electrical appliances—primarily broilers, bakers, and rotisseries.

Ralph Sigler (Tr. 478), district sales manager of Spalding Sales Corporation, the selling organization of A. G. Spalding & Bros., manufacturers of sporting goods and equipment, located at 75 Varick Street, New York, New York.

Milton Prizant (Tr. 519 *et seq.*), sales manager for Gazzolo Drug and Chemical Company, 123 South Green Street, Chicago, Illinois, a “full-line service wholesale drug distributor to retail drug stores and hospitals.” (Tr. 519.) The company sells up to the Wisconsin border on the north, to the Fox River Valley on the west, to Joliet, Illinois on the southwest, and Gary, Indiana on the southeast.

Annette Brodsky (Tr. 534 *et seq.*), a mailing list broker associated with Accredited Mailing List, Inc., 15 East 40th Street, New York, New York.

The only witness called by respondents was *Joel Jacobs*. (Tr. 562 *et seq.*)

The testimony of *Walter J. Rieger* of John M. Maris Company, Inc., *John H. Foley* of Gilman Brothers, Inc., *James R. Cecil* of Goulds, Inc., and *Milton Prizant* of Gazzolo Drug and Chemical Company was elicited for the purpose of establishing the prices at which these four wholesale drug firms purchased and resold Amity wallets, pocket books, and other Amity products, during the pertinent periods, in their respective sales areas.

Complaint counsel’s witnesses (other than Joel Jacobs and Annette Brodsky) were offered to prove that the prices which respondents characterized in their mail-order catalog, of which Commission Exhibit 4 (CX 4) is a specimen, as “wholesale” prices were not, in fact, wholesale prices.

No direct evidence, oral or otherwise, was offered to prove that respondents are not providing a wholesalers’ service and they do not in many instances assist purchasers to buy at wholesale prices.

Hearings were conducted in New York, New York, on July 19, 20, 21, 22, and 23, 1965. The record was closed for the receipt of evidence on August 11, 1965. Proposed findings, conclusions, and briefs have been filed, and they have been considered by the hear-

ing examiner. This proceeding is now before the hearing examiner for final consideration on the entire record, including the pleadings, testimony, and exhibits. All findings and conclusions which are not hereinafter specifically found and concluded in the precise form submitted or in substantially such form are hereby rejected. All motions heretofore made and presently undisposed, which are not otherwise specifically ruled upon in this decision, are hereby denied. After having carefully considered the entire record, the hearing examiner makes the following:

FINDINGS OF FACT

The corporate respondent, Federated Nationwide Wholesalers Service, Garydean Corp., a New York corporation, was originally incorporated in 1944 by Joel Jacobs' father under the name Textile Mart, Inc. (Tr. 118.) It also trades under the names Federated Wholesalers Service, Nationwide Wholesalers Service and Nationwide-Federated Wholesalers Service. Its principal office and place of business is located at 273 Merrick Road, Lynbrook, Long Island, New York. (Tr. 117.)

Corporate respondent, Jay Norris Corp., also a New York corporation, has its principal office and place of business also located in Lynbrook, New York, at the same address as Federated.

Individual respondents Joel Jacobs and Mortimer Williams are the chief executive officers and principal stockholders of each of the corporate respondents. They formulate, direct, and control the acts and practices of each of the said corporate respondents, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

Respondents are now, and for some time last past have been, engaged in advertising, offering for sale, selling and distributing, in commerce, articles of general merchandise, including electric fry pans, electric broilers, clock-radios, electric can openers, pipes, wallets, purses, sporting goods, jewelry, clothing, dinnerware, and similar products to the purchasing public.

In the course and conduct of their business, respondents now cause and for some time last past have caused their merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States and the District of Columbia. Respondents maintain and at all relevant times have maintained a substantial course of trade in their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. The Federal Trade Commission has jurisdiction over the parties to and subject

matter of this proceeding. This proceeding is in the public interest.

In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their merchandise, respondents have advertised extensively by means of circulars and catalogs circulated and disseminated by and through the United States mails to prospective purchasers of their products located in various States of the United States other than in the State of New York.

In the course and conduct of their business and at all relevant times, respondents have been in substantial competition, in commerce, with other corporations, firms, and individuals in the sale of articles of general merchandise, including electric fry pans, electric broilers, clock-radios, electric can openers, pipes, wallets, purses, sporting goods, jewelry, clothing, dinnerware, and other articles of merchandise of the same general kind and nature as that sold by respondents.

The business conducted by respondents Jacobs and Williams was originally started as a wholesale business in 1944 by Joel Jacobs' father under the name of Textile Mart, Inc. (Tr. 193.) The nature of this business was "Selling [through salesmen] to small installment and small retail stores throughout the south. * * * all sorts of general merchandise." (Tr. 193.) Originally, Textile Mart, Inc., specialized in the sale of curtains, draperies, and assorted soft goods. (Tr. 194.) The business originally sold "to small door-to-door installment-type companies, small furniture stores. * * *" The bulk of sales were made in the South where representatives of Textile Mart, Inc., sold to persons who in turn resold door-to-door. (Tr. 194.)

Textile Mart, Inc., was established to service the small businessman at a wholesale level, and it continued its operation at the wholesale level from its formation in 1944 to 1960.

Respondents have spent large sums of money in promoting their public image and in being accepted in trade circles as wholesalers, since the business' formation in 1944. (Tr. 196.) The money has been spent in magazine advertising, classified advertising, and direct mail advertising.

Dun and Bradstreet has "carried" the respondents as wholesalers since 1944. (Tr. 197.) Various suppliers have recognized the respondents as wholesalers. Mr. Jacobs testified that their suppliers include, among others, "Kodak, Sony, Dormeyer, Pepperill, Waltham Watch Company, and Benrus Watch." (Tr. 197.) Also included are "Helbros Watch, Gruen Watch, Bradley Watch, Welby Clock, Sessions Clock, Arvin Radio, Eternalight Diamond

1083

Initial Decision

Company, Amity Leather, Bond Street Cuff Link Company, International Silver Company, Stradolin Corp. * * * Knickerbocker Manufacturing * * * Star Rubber * * * Atlas Manufacturing * * * Ram Tool Company * * * Mono Manufacturing Company * * * Shetland Manufacturing * * * Regal Ware * * * Stetson Manufacturing * * * Superior Manufacturing * * * Monarch Manufacturing * * * Maximilian * * * Ebonite Manufacturing * * * Norelco * * * I. Jacobs & Sons." (Tr. 198-99.)

Joel Jacobs testified (and is uncontradicted in this record) and the examiner finds that the manufacturers with whom the respondents do business have more than one "wholesale" price. Mr. Jacobs testified that in some instances, even R. H. Macy—"the largest retailer in the world"—cannot buy at the same low price that respondents can buy, because Macy will be given 50 percent off list price, whereas respondents will be given 50 percent plus an additional 10 percent in order to encourage respondents to resell the merchandise to retailers, thereby providing wider distribution for the product. (Tr. 202.)

Mr. Jacobs testified, without contradiction, that if respondents were not allowed to continue to represent themselves as wholesalers, they would have to go out of business, because they would not be able to buy at the prices at which they are presently able to buy, and would not be able to resell their merchandise at "wholesale" prices. (Tr. 203.)

Mr. Jacobs testified, and he is uncontradicted in the record, that respondents service every type of retail establishment "from a gasoline station to a beauty parlor to a mortician * * * to just about any type of retail establishment that exists in this country." (Tr. 203-04.)

Respondents sell to grocery stores, Army centers, 5 & 10-cent stores, variety stores, barber shops, gas stations, beauty parlors, door-to-door installment companies, and gift shops. (Tr. 204.) Respondent Jacobs testified that respondents' business permits them to sell to the small businessman and shopkeeper at the wholesale level and that respondents' business is the "middle man" between the manufacturer and the retailer. (Tr. 205.)

In 1961, respondents' sales of merchandise were between \$250,000 and \$300,000. By 1965, this had increased to \$2,000,000, of which amount approximately 40 percent will be sold to the small businessman.

Several years ago, respondents began to make sales to the consumer and ceased to confine their sales to the small businessman. (Tr. 206.)

At or about the same time respondents started selling a wholesalers' service which they have operated separately and apart from their direct mail catalog selling.

Pursuant to stipulation filed in this record, it is found that if the following individuals had been called as witnesses, they would have testified that they had purchased articles of merchandise from respondent Jay Norris Corp. for their own use and not for sale:

Virginia Cicalese	Albert R. Berube
250 Van Buren Street	5 Spruce Street
Newark, New Jersey	Plainville, Connecticut
Stanley Grosky	Mrs. Ruth Frost
44 Marne Street	Mr. Charles G. Chamberlin
Newark, New Jersey	433 Main Street
Irene T. Klecha	West Haven, Connecticut
61 Alden Street	Emily De Decius
Wallington, New Jersey	198 Abermarle Street
Mary Garaventa	Rahway, New Jersey
411 Westview Place	Mrs. Ann Marcheski
Fort Lee, New Jersey	246, B, Davey Street
Elizabeth Macioch	Bloomfield, New Jersey
21 Van Buren Avenue	Mr. Alfred J. Rasmussen
Carteret, New Jersey	14 Volkmar Place
Mrs. Janet Condit	Metuchen, New Jersey
139 Cooper Avenue	Mr. Edward Pizzella
Upper Montclair, New Jersey	80 Centennial Avenue
Glenna Gingerly	Cranford, New Jersey
21 Hampton Road	Mr. Clarence Yarocheski
Cranford, New Jersey	4 Sutton Place
Elmer Young	Trumbull, Connecticut
79 Butler Avenue	Mr. William Brown
Bridgeport, Connecticut	2985 Reservoir Avenue
Mrs. Viola Schovanec	Trumbull, Connecticut
137 Huntington Road	Miss Helen Velykis
Bridgeport, Connecticut	173 DeCicco Road
Stephen G. Beardsley	Waterbury, Connecticut
276 Levenworth Road	Mr. Andrew Bosch
Shelton, Connecticut	St. Mary's Hospital
Michael A. Iarrapino	56 Franklin Street
17 Howard Street	Waterbury, Connecticut
Waterbury, Connecticut	Mr. Lee D. Aspinall
Mrs. Nancy Rosa	20 Forest Street
55 Lockwood Drive	New Haven, Connecticut
Watertown, Connecticut	Mr. Joseph Casher, Jr.
Francis D. Owens	773 Quinipiac Avenue
55 South Elm Street	New Haven, Connecticut
Bristol, Connecticut	

Respondents developed their wholesalers' service to specialize in servicing the small businessman at the wholesale level (Tr. 208)

"to give the small business man [sic] an opportunity to get a tremendous array of products that he never knew about, * * * and find sources for just about any product that any of these people or companies wanted to buy." (Tr. 208.) An individual or businessman may subscribe to respondents' wholesalers' service for \$3 for one year, and this entitles such subscriber to obtain a wholesale source of merchandise for any items or articles in which he may be interested. Respondents started the wholesalers' service as an addition to the wholesale catalog selling, because respondents were convinced that their own wholesale mail-order catalog selling did not offer prospective customers "sufficient product mix"—"we did not offer enough." (Tr. 209.) Respondents' wholesalers' service enabled them to put persons who were interested in buying at "wholesale" prices through catalogs in touch with sellers who were interested in selling at "wholesale" prices through catalogs.

CX 3 in evidence is a catalog, originally prepared by Reliable Wholesale Distributor Company in Chicago, upon which there is imprinted the name of one of respondents' companies. This catalog, CX 3, is sent out by respondents to their prospective wholesale club members. After they join the club and receive the catalog (CX 3) the members send their orders in to respondents, who, in turn, forward the orders to Reliable in Chicago. (Tr. 212.) Respondents keep a record of the number of orders that are received. Reliable has in its catalog one price for a small number of units and a different price for a larger number of units. (Tr. 213.)

Respondents, Federated Nationwide Wholesalers Service, Garydean Corp., was organized for the purpose of conducting the wholesalers' service business described above. (Tr. 213.)

Prior thereto, there was a company called Jay Norris Company. As previously found, Textile Mart, Inc., was the name under which the business was originally incorporated and Jay Norris Company was merely a trade name under which Textile Mart, Inc., operated. (Tr. 214.) Jay Norris Corp. is a name used since by Textile Mart, Inc., for selling merchandise in interstate commerce. The name "Jay Norris" has been used by Textile Mart, Inc., since 1951. (Tr. 215.) Nationwide Wholesalers Service was promulgated in order to expand the sales of the Jay Norris Corp. (Tr. 218.)

For purposes of this proceeding it is necessary to analyze the record evidence relating to two separate facets of respondents' business: first, the sale of merchandise; and second, the sale of a "wholesalers' service." Mr. Jacobs was a witness in support of the complaint as well as the only witness for respondents. His testimony is not contradicted by other evidence in the record, and

