

Appearances

IN THE MATTER OF
NATIONAL PAPER TRADE ASSOCIATION OF THE
UNITED STATES, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 5592. Complaint, Oct. 5, 1948—Decision, Sept. 24, 1954

Order requiring a national and 22 regional and local trade associations, and nearly 100 wholesalers and distributors of fine and wrapping paper to cease their planned common course of action to restrict competition through concerted action, including the dissemination, as price books, of the national association's "Blue Book" for fine paper, and "Yellow Book" and "Brown Book" for wrapping paper, containing average mark-up percentages, tables, etc.; and including surveys, studies, cooperative group discussions, and other action directed to the establishment of uniform cash discounts and schedules of cutting charges in the respective trade areas; in the course of which conspiracy they concertedly—

- (a) Established uniform and identical prices, terms, and discounts for both fine and wrapping paper in their respective trade areas;
- (b) Classified paper products and agreed upon uniform and identical prices, terms, and discounts to be charged for each classification;
- (c) Established uniform and identical additions to and deductions from prices within each classification, including differentials for individual items or classes of items, quantity, color, cutting, trimming, packaging, or delivering;
- (d) Established uniform and identical mark-ups for use in arriving at the selling prices for their products in the respective trade areas;
- (e) Established uniform charges in certain trade areas for cutting or trimming to a purchaser's specifications;
- (f) Held meetings at which prices, terms and conditions of sale, and trade practices designed to eliminate competition among them were discussed and acted upon; and
- (g) Disseminated among themselves, at frequent intervals, current and future quotations of prices, terms, and conditions of sale offered to the trade.

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

Mr. Earl W. Kintner, *Mr. Floyd O. Collins* and *Mr. Peter J. Dias* for the Commission.

Javits, Levitan & Held, of New York City, for National Paper Trade Association of the United States, Inc., and various officers and members thereof, and along with—

Mr. George E. Landis, of Columbus, Ohio, for The Central States Paper Trade Ass'n, John L. Richey, Diem & Wing Paper Co., Cincinnati Cordage and Paper Co., Indiana Paper Co., The Middle States Wrapping Paper Ass'n, The Globe Paper Co., National Paper and Twine Co. and The Central Ohio Paper Co.;

Mr. Arthur M. Kracke, of Chicago, Ill., for Swigart Paper Co.;
Tenney, Sherman, Rogers & Guthrie, of Chicago, Ill., for Bradner
 Smith & Co.;

Reno & Wright, of Champaign, Ill., for Duckett Paper Co.;

Mr. David H. Rice, of Irvington, N. J., for Paper Trade Association
 of New Jersey, David H. Rice, Jersey Paper Co., Inc., J. Liberman &
 Co., Commercial Paper Bag Co., Inc. and H. G. Mooney Co.; and

Mr. Isadore G. Alk, of Washington, D. C., for Brauman Paper Co.;
Harmon, Colston, Goldsmith & Hoadly, of Cincinnati, Ohio, also
 represented Diem & Wing Paper Co.

Mr. Robert Engel, of Pittsburgh, Pa., for Interstate Cordage &
 Paper Co. and along with—

Kittelle & Lamb, of Washington, D. C., for Pittsburgh Paper Ass'n,
 Robert Engel and Morris Paper Co.; and

Taft, Stettinius & Hollister, of Cincinnati, Ohio, for The Chatfield
 & Woods Co. of Pennsylvania, who also represented—Chatfield Paper
 Corp., Union Paper and Twine Co. and Whitaker Paper Co.

Kirkland, Fleming, Green, Martin & Ellis, of Chicago, Ill., for
 Birmingham & Prosser Co.

Wells, Martin & Lane, of Omaha, Nebr., *Mr. James Perkins Parker*,
 of Washington, D. C., and *Mr. George E. Frazer*, of Chicago, Ill., for
 Carpenter Paper Co.

Barshay & Frankel, of New York City, for Metropolitan Bag &
 Paper Distributors Ass'n, Inc., Fred Free, Jr., A. E. MacAdam &
 Co., Inc. John H. Free, Inc., Shuttleworth Wollny Co., Inc., S. Pos-
 ner Sons, Inc. and Yorkville Paper Co., Inc.

Wechsler & Solodar, of New York City, for Cosmopolitan Twine
 & Paper Ass'n, Inc., David Kasson, Harlem Paper Products Co.,
 Imperial Bag & Paper Co., Inc. and Liberty Bag & Paper Co.

Ridgway, Ridgway & Slote, of New York City, for Paper Associa-
 tion of New York City, Irwin Slote, Bonded Paper Products Co.,
 Graphic Paper Corporation, Capital Paper Co. and Royal Paper
 Corporation.

Lewis, Rice, Tucker, Allen & Chubb, of St. Louis, Mo., and *Cleary,*
Gottlieb, Friendly & Ball, of Washington, D. C., for Graham Paper
 Co.

STATEMENT OF THE CASE

This is a proceeding under the Federal Trade Commission Act wherein the Commission on October 5, 1948, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them and others listed in the complaint as members of respondent trade associations with having entered into and carried out

an unlawful agreement or conspiracy to hinder, lessen and restrain competition in prices and otherwise between and among themselves in the sale and distribution in interstate commerce of fine and wrapping paper. The complaint was subsequently amended to specify that the Carpenter Paper Company, named respondent herein, is a Delaware corporation with principal offices in Omaha, Nebraska. This amended complaint was served on that respondent.

On February 28, 1949, the Commission duly designated Everett F. Haycraft as trial examiner in this proceeding. After an initial hearing, held in New York City on May 2, 1949, negotiations were held looking to a settlement of the case. On December 5, 1949, at a hearing held in Pittsburgh, Pennsylvania, all of the respondents named in the caption hereof, with the exception of respondents Graham Paper Company, Pittsburgh Paper Association, Robert Engel, Chatfield & Woods Co. of Pennsylvania, Morris Paper Company, Anderson Paper & Twine Company, and Clarence E. Dobson filed substitute answers.

With the exception of those filed by respondents Metropolitan Bag & Paper Distributors Association, Inc., A. E. MacAdam & Company, Inc., John H. Free, Inc., Shuttleworth Wollny Co., Inc., S. Posner Sons, Inc., Yorkville Paper Company, Inc., Fred Free, Jr., and Irwin Slote, all of said substitute answers concede that, solely for the purpose of this proceeding, the enforcement or review thereof before a United States Court of Appeals or in the United States Supreme Court, or to enforce the order to be entered herein, inferences may be drawn from such answer and documentary evidence received in evidence, that the acts and practices thereby indicated may be deemed to reflect in effect an agreement or understanding, and that they do not and will not contend otherwise. Said respondents state further that, solely for the purposes aforesaid, they consent that documentary and other evidence to be offered by counsel in support of the complaint may be admitted without objection. Further, solely for the purposes aforesaid, said respondents also state that they will not offer explanation of or evidence to contradict the evidence which they consent to be made a part of the record, and agree that the acts and practices indicated or reflected by said evidence may have tended to, and, if continued in the future, may affect adversely competition in price between merchant respondents. Said substitute answers also waived hearing on the complaint and consented that the Commission may without trial, without the taking of testimony, and without other procedure, except for the trial examiner's report, enter its findings as to the facts including such inferences as may be drawn from the facts

admitted in the answer and as may be drawn from the facts otherwise shown by the record, and issue its order thereon.

The remaining substitute answers were the same in substance except that they did not concede that the acts and practices indicated may be deemed to reflect in effect an agreement or understanding or that they may have tended to and, if continued in the future, may affect adversely competition in price between merchant respondents. However, respondent Slote states in his substitute answer that he will not contend that the findings and order of the Commission are not supported by the record. The other respondents filing such substitute answers agreed that they would not introduce any evidence to rebut such inferences drawn from the evidence of record and will not offer explanation of such evidence.

Respondent Anderson Paper & Twine Company filed no answer to this complaint. Each of the other respondents named in the caption hereof who did not file a substitute answer as aforesaid, filed an answer denying that they had violated the Act as alleged.

Respondents Butler Paper Co., Inc., Fort Wayne, Indiana, J. W. Butler Paper Company, Chicago, Illinois, and Butler Paper Co., Minneapolis, Minnesota, not named in the caption hereof, filed substitute answers in the form first described above.

Hearings were held thereafter at Washington, D. C., and Pittsburgh, Pennsylvania, between December 5, 1949, and March 30, 1950, inclusive, at which documents were admitted by agreement of counsel, and also testimony and other evidence was presented with respect to the allegations of the complaint as to respondents which had not filed substitute answers.

On September 28, 1951, the trial examiner filed his recommended decision in which he concluded that all of the respondents, with the exception of respondents Robert Engel and Graham Paper Company have violated section 5 of the Federal Trade Commission Act as alleged.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, as amended, the answers and substitute answers, evidence, recommended decision of the hearing examiner and the exceptions thereto, briefs in support of and in opposition to said complaint, and oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent National Paper Trade Association of the United States, Inc. (sometimes hereinafter referred to as respondent National Association) is a membership corporation, consisting of twenty-three constituent regional associations, whose members, by virtue of said membership and the payment of dues to the National Association, all as provided for by the by-laws of the National Association, were at the time of the issuance of the complaint members of said National Association. Certain additional corporations, partnerships and individuals, who were not members of any constituent regional association, also held membership in said National Association or contributed financially to the support of its activities. Said National Association was organized under the laws of the State of New York and has its office at 220 East 42nd Street, New York, New York.

Respondent Arthur H. Chamberlain, an individual, was, at the time of the issuance of the complaint, and had been since 1931, the Executive Secretary of the National Association, and has been actively engaged in supervising the affairs of the National Association and its constituent regional associations.

Respondent W. G. Leathers, an individual, was, at the time of the issuance of the complaint, and had been since 1943, the Assistant Executive Secretary of respondent National Association, and has been actively engaged in supervising the affairs of the National Association and its constituent regional associations.

Respondent J. H. Londergan, an individual, was, at the time of the issuance of the complaint, and had been since 1934, the Director of the Statistical Research Division of respondent National Association, and has actively supervised and carried on statistical research for said National Association, as well as assisting generally in supervising the affairs of said National Association and its constituent regional associations.

PAR. 2.

(1) Respondent The Central States Paper Trade Association (sometimes hereinafter referred to as respondent Central States Association) is a voluntary unincorporated association, organized by and composed of individuals, partnerships and corporations engaged in the purchase, sale and distribution of fine paper at wholesale to wholesale and retail dealers in the States of Indiana, Kentucky, Michigan and Ohio and in neighboring States, with its office in the office of its Secretary, respondent John L. Richey, in the Hotel Sinton, Cincinnati, Ohio. Said respondent is a constituent member association of

respondent National Association. The following paper merchants, among others, are members of said respondent Central States Association and of respondent National Association:

Respondent Diem & Wing Paper Company, an Ohio corporation with its principal office at Gilbert Ave. Viaduct, Cincinnati.

Respondent Chatfield Paper Corporation, an Ohio corporation with its principal office at 3265 Colerain Ave., Cincinnati, Ohio.

Respondent Cincinnati Cordage and Paper Company, an Ohio corporation with its principal office at 889 Williams Ave., Columbus, Ohio.

Respondent Indiana Paper Company, an Indiana corporation with its principal office at 151 Neal St., Indianapolis, Indiana.

Respondent Butler Paper Co., Inc., an Indiana corporation with its principal office at 110 W. Columbia, Fort Wayne, Indiana.

Respondent John L. Richey, an individual, was, at the time of the issuance of the complaint, the Secretary of the respondents The Central States Paper Trade Association, The Chicago Paper Association, Illinois State Paper Merchants Association, The Middle States Wrapping Paper Association, and Wisconsin Paper Merchants Association, with his office located in the Hotel Sinton, Cincinnati, Ohio, and has been actively engaged in supervising the affairs and activities of said respondents.

(2) Respondent The Fine Paper Association of Chicago, Inc. (sometimes hereinafter referred to as respondent Fine Paper Association of Chicago), located at 801 South Wells Street, Chicago, Illinois, is a membership corporation organized and existing under and by virtue of the laws of the State of Illinois, organized by and composed of individuals, partnerships, and corporations engaged in the business of selling fine paper and paper products at wholesale to wholesale and retail dealers in the State of Illinois and in neighboring States. Said respondent, at the time of the issuance of the complaint, was a constituent member association of respondent National Association. The following paper merchants, among others, at the time of the issuance of the complaint, were members of said respondent Fine Paper Association of Chicago and of respondent National Association:

Respondent Chicago Paper Company, an Illinois corporation with its principal office at 801 S. Wells St., Chicago, Illinois.

Respondent Hobart Paper Company, an Illinois corporation with its principal office at 111 W. Washington St., Chicago, Illinois.

Respondent Swigart Paper Company, an Illinois corporation with its principal office at 723 S. Wells St., Chicago, Illinois.

