

Complaint

60 F.T.C.

IN THE MATTER OF

HARRY J. ASLAN DOING BUSINESS AS HARRY ASLAN  
CO. ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-124. Complaint, Apr. 25, 1962—Decision, Apr. 25, 1962*

Consent order requiring 13 California shippers of white muscat juice grapes, used primarily for wine-making, in the Fresno area—their shipments and sales of which during the 1961 season represented more than half of all interstate carlot shipments made from California—to cease conspiring to fix and adhere to minimum prices for juice grapes, as they did at a series of meetings held beginning about mid-September of 1961, slightly prior to the shipping season, and continuing to early October.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in respect thereto as follows:

PARAGRAPH 1. Harry J. Aslan, individually and doing business as Harry Aslan Co., has places of business at Kingsbury and Del Rey, Calif., with his principal place of business at 1060 Simpson Street, Kingsburg, Calif.

L. W. Crosby, individually and doing business as Del Rey Fruit Distributors, has his office and principal place of business at 12480 E. American Avenue, Del Rey, Calif.

Giannini Fruit Sales, Inc. is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at 496 South N. Street (P.O. Box 155), Dinuba, Calif. In 1961 its officers, who were also its directors, were Leroy G. Giannini, president; Wayne H. Towne, vice president; and Ruth E. Giannini, secretary-treasurer.

Chris Sorensen Packing Co. is a corporation organized and existing under and by virtue of the laws of the State of California with its

office and principal place of business at Newmark Avenue (Box 338), Parlier, Calif. In 1961 its officers were Chris Sorensen, president; George Domoto, vice president; James Ruby, treasurer; and Chris Sorensen, Jr., secretary. The directors were Mr. and Mrs. Chris Sorensen and James Ruby.

Edwin L. Barr, Sr., Edwin L. Barr, Jr., Merle Barr and Caroline Barr, individually and as co-partners doing business as Barr Packing Company, a partnership, have their office and principal place of business at Seventh and L Streets (P.O. Box 207), Sanger, Calif.

Tennis H. Erickson, individually and doing business as Erickson Packing Company, has his office and principal place of business at American and Portola Streets, Del Rey, Calif.

William P. Condry, H. Y. Hamilton and Samuel B. Randall, individually and as co-partners doing business as Hall Packing Company, a partnership, have their office and principal place of business at Sanger, Calif.

John B. Jorgensen, Sr., individually and doing business as Jorgensen Farms, has his office and principal place of business at First and East Grant Streets, Selma, Calif.

Jack Young, individually and doing business as Youngstown Grape Distributors, has his office and principal place of business at 16th Street (Box 271), Reedley, Calif.

Ballantine Produce Co., Inc. is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at (Box 185) Sanger, Calif. In 1961 its officers, who were also its directors, were Herman A. Albertson, president; Virgil E. Rasmussen, vice president; and Ed Schoenburg, secretary-treasurer.

Bianco Packing Co., Inc. is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at 930 M Street (Box 274), Sanger, Calif. In 1961 its officers, who were also its directors, were Alphonse Bianco, president, Dominic Bianco, vice president, and Anthony Bianco, Jr., secretary-treasurer.

Mike Fierro and Vaughn Girazian, individually and as co-partners trading as G & F Fruit Distributors, a partnership, have their office and principal place of business at 39400 14th Avenue, West, Kingsburg, Calif.

Floyd J. Harkness, Inc. is a corporation organized and existing under and by virtue of the laws of the State of California, doing business as United Packing Co., with its office and principal place of business at 216 Rowell Building, Fresno, Calif. In 1961 the officers

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of the corporation were Floyd J. Harkness, Sr., president; W. Hoyt Colgate, vice president, and Floyd J. Harkness, Jr., secretary-treasurer. The directors of the corporation were its officers and Molly Harkness and Harriette Colgate.

PAR. 2. All of the respondents herein are and for the several years last past have been engaged in the business, among others, of selling and shipping juice grapes to various purchasers thereof. Juice grapes, as distinguished from table stock grapes, are raised and sold primarily for the purpose of winemaking. Respondents in the course and conduct of their business of selling and shipping juice grapes during the 1961 season and in previous years have all sold such grapes to purchasers located in Canada and in States other than the State of California and the District of Columbia. Respondents have caused such grapes so sold to be transported and shipped to the places where such purchasers were located. All of the respondents herein during the 1961 season were engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act in connection with the sale and shipment of juice grapes.

PAR. 3. The great bulk of all grapes produced in the United States, whether for juice or table purposes comes from the State of California. During the seasons for each year from 1950 through 1960 California carlot rail shipments of grapes have exceeded 98% of the total of such shipments in the United States. And of the total California carlot rail shipments of grapes in each of these years, more than 95% represented interstate carlot rail passings. Few, if any, juice grapes are shipped throughout the United States from any State other than California.

Juice grapes may be separated into two classes, namely, black juice grapes and white juice grapes. There are a number of different kinds of varieties of grapes within each classification. In the black juice class the great bulk of interstate carlot rail passings from California during each of the years since 1950 has been composed of Alicante and Zinfandel grapes. In the white juice category such shipments during each of the same years, except for 1950, were composed of more than 95% of Muscat grapes.

The shipping season for juice grapes in California generally commences about the first of September for black juice and about mid-September for white juice grapes, and extends to the end of October or the first few days of November for both classifications. The great bulk of these grapes, however, is shipped in a much more concentrated period. To illustrate, during the 1960 season more than 95% of California carlot rail shipments of white juice grapes occurred

during the period between the weeks ending September 17 and October 22. A comparable illustration for black juice grapes during the same season reflects more than 95% of shipments occurring during the period between the weeks ending September 17 and October 29.

The production and shipping areas for black juice grapes in the State of California are substantially larger than for those in the white juice classification. By way of illustration, in the 1960 season interstate carlot rail passings of California grapes for the black juice class emanated from loading stations within 11 counties while the corresponding figure for white juice grapes embraced only five counties. Production and shipment of white juice grapes is largely concentrated in an area within a 20 to 30 mile radius of Fresno. Of all interstate carlot rail passings of white juice grapes in California during 1960, more than 99% were Muscat grapes and more than 60% of this total emanated from loading stations within Fresno County. All respondents herein, with the exception of Giannini Fruit Sales, Inc., have their offices and places of business in communities included among such loading stations.

PAR. 4. Respondent grape shippers as a group do now and for several years last past have occupied a strong and dominant position in the business of shipping and selling juice grapes, particularly white juice Muscat grapes. For example, their combined shipments of such grapes during the 1961 season approached or exceeded 1,000 carlots or the equivalent thereof. From the time in September when they, or some of them, commenced shipments of Muscat grapes through October 7, 1961, such shipments in the aggregate represented more than 50% of total carlot equivalents of all interstate passings of such grapes from California.

PAR. 5. Each of the respondents herein is and has been in competition with one or more of the other respondents and with other shippers and vendors of juice grapes not parties hereto, in the sale and distribution of juice grapes in commerce, as "commerce" is defined in the Federal Trade Commission Act, except to the extent that actual and potential competition has been hindered, lessened, restricted, restrained and eliminated by the acts and practices hereinafter alleged.

PAR. 6. Respondent shippers herein have agreed, combined, conspired or otherwise engaged in a course of dealing or reached a common understanding to fix and establish minimum prices for juice grapes during the shipping season for 1961 to which they would and did adhere and below which they did not and would not sell. The result of this combination, conspiracy, course of dealing or common under-

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standing as heretofore alleged, and acts and practices engaged in by respondents pursuant thereto, has been or may be to unlawfully hinder, restrain and destroy competition between and among respondents herein and others not parties hereto who are engaged in the sale and distribution of juice grapes in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. The agreement, combination, conspiracy, course of dealing or common understanding among respondents to fix and adhere to minimum prices for juice grapes was reached at a series of meetings among which were those held in Sanger, California. These meetings were held at intervals of a few days or a week beginning about mid-September of 1961 at or slightly prior to the commencement of the shipping season for juice grapes and continuing thereafter to a date within the first few days of October. Each of the respondents herein or a representative or representatives thereof attended one or more of these meetings. Among the matters discussed, and agreed upon, at such meetings were minimum prices to be charged and adhered to in the sale of Muscat grapes.

PAR. 8. Respondents' shipments and sales of juice grapes, particularly white Muscat, during the 1961 season through October 7, 1961, represented more than half of all interstate carlot shipments or the equivalent, of such grapes made from California and the greatest percentage of such sales were made pursuant to the agreement, combination, course of dealing, or common understanding reached by and among the respondents as heretofore alleged.

PAR. 9. The capacity, tendency and effect of said agreement, understanding, conspiracy, combination or course of dealing, and the acts and practices of the respondents and each of them done and performed pursuant thereto and in furtherance thereof are now and have been or may be to substantially lessen, restrain, restrict and prevent price competition between and among said respondents in the sale of juice grapes and, because of respondents' dominant position as a group in this business, have had and now have or may have the effect of creating high and artificial prices to purchasers thereof in interstate commerce.

PAR. 10. The concerted acts and practices of the respondents, all and singularly, as hereinbefore set forth, are to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Harry J. Aslan, individually and doing business as Harry Aslan Co., has places of business at Kingsburg and Del Rey, Calif., with his principal place of business at 1060 Simpson Street, Kingsburg, Calif.

Respondent L. W. Crosby, individually and doing business as Del Rey Fruit Distributors, has his office and principal place of business at 12480 E. American Avenue, Del Rey, Calif.

Respondent Giannini Fruit Sales, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at 496 South N Street (P.O. Box 155), Dinuba, Calif.

Respondent Chris Sorensen Packing Co. is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at Newmark Avenue (Box 338), Parlier, Calif.

Respondents Edwin L. Barr, Sr., Edwin L. Barr, Jr., Merle Barr and Caroline Barr, individually and as co-partners doing business as Barr Packing Company, a partnership, have their office and principal place of business at Seventh and L Streets (P.O. Box 307), Sanger, Calif.

Respondent Tennis H. Erickson, individually and doing business as Erickson Packing Company, has his office and principal place of business at American and Portola Streets, Del Rey, Calif.

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Respondents William P. Condry, H. Y. Hamilton and Samuel B. Randall, individually and as co-partners doing business as Hall Packing Company, a partnership, have their office and principal place of business at Sanger, Calif.

Respondent John B. Jorgensen, Sr., individually and doing business as Jorgensen Farms, has his office and principal place of business at First and East Grant Streets, Selma, Calif.

Respondent Jack Young, individually and doing business as Youngstown Grape Distributors, has his office and principal place of business at 16th Street (Box 271), Reedley, Calif.

Respondent Ballantine Produce Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at (Box 185) Sanger, Calif.

Respondent Bianco Packing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at 930 M Street (Box 274), Sanger, Calif.

Respondents Mike Fierro and Vaughn Girazian, individually and as co-partners trading as G & F Fruit Distributors, a partnership, have their office and principal place of business at 39400 14th Avenue, West, Kingsburg, Calif.

Respondent Floyd J. Harkness, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, doing business as United Packing Co., with its office and principal place of business at 216 Rowell Building, Fresno, Calif.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## ORDER

*It is ordered,* That respondents Harry J. Aslan, individually and doing business as Harry Aslan Co., L. W. Crosby, individually and doing business as Del Rey Fruit Distributors, Giannini Fruit Sales, Inc., its officers and directors, Chris Sorensen Packing Co., its officers and directors, Edwin L. Barr, Sr., Edwin L. Barr, Jr., Merle Barr and Caroline Barr, individually and as co-partners doing business as Barr Packing Company, Tennis H. Erickson, individually and doing business as Erickson Packing Company, William P. Condry, H. Y. Hamilton and Samuel B. Randall, individually and as co-partners doing business as Hall Packing Company, John B. Jorgensen, Sr., individually and doing business as Jorgensen Farms, Jack Young, individ-

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ually and doing business as Youngstown Grape Distributors, Ballantine Produce Co., Inc., its officers and directors, Bianco Packing Co., Inc., its officers and directors, Mike Fierro and Vaughn Girazian, individually and as co-partners doing business as G & F Fruit Distributors, and Floyd J. Harkness, Inc., doing business as United Packing Co., its officers and directors, their respective successors and assigns, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of juice grapes, do forthwith cease and desist from entering into or continuing, cooperating in or carrying out any planned and concerted course of action, understanding or agreement between any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

To establish, fix, or maintain the prices or level of prices, or the terms or conditions of shipment, sale or distribution of juice grapes.

*It is further 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 this order.

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 IN THE MATTER OF

## ASSOCIATED CONSTRUCTION PUBLICATIONS ET AL.

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

*Docket 7285. Complaint, Oct. 21, 1958—Decision, Apr. 26, 1962*

Order dismissing without prejudice—the allegations not having been sustained—complaint charging a Detroit association and its 14 member publishers with combining illegally to eliminate competition and to monopolize the advertising business of advertisers using regional construction trade papers, including limitation of membership to one publication in a given area, allocation of territories so as to exclude overlapping in circulation, securing of patronage of advertisers by unlawful means and diverting it from competing publications, and agreements upon prices, discounts, and terms of sale for advertising space.

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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 the parties named in

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the caption hereof and hereinafter more particularly described and designated as respondents, have violated and are violating the provisions of Section 5 of said Federal Trade Commission 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 Associated Construction Publications is a non-profit membership corporation, organized and existing under and by virtue of the laws of the State of Michigan, with its home office and principal place of business located at 2746 Penobscot Building, Detroit, Mich. Said respondent will be hereinafter referred to as respondent ACP. Its officers are as follows: Richard C. Mertz, President, Robert O. Schaefer, First Vice President, Roscoe Laing, Vice President, and Gordon L. Anderson, Secretary-Treasurer. The foregoing individuals, together with Earl P. Keyes, comprise the Board of Directors and Executive Committee of respondent ACP. The business address of all the foregoing individual respondents is 2746 Penobscot Building, Detroit, Mich.

PAR. 2. (a) Respondents Eunice Chapin, Thomas Chapin and Harold C. Chapin are individuals and co-partners trading and doing business under the partnership name of Chapin Publishing Co. The business address of said respondents is 1022 Lumber Exchange Building, Minneapolis, Minn. Said respondents are engaged in the business of publishing a regional construction publication known as CONSTRUCTION BULLETIN.

(b) Respondent Construction Publishing, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its home office and principal place of business located at Peoples Federal Building, Roanoke, Va. Respondent is engaged in the business of publishing a regional construction publication known as CONSTRUCTION. Respondent Kenneth O. Dinsmore is an individual and President of respondent corporation; William Beury is an individual and Vice President of respondent corporation; George C. Stewart is an individual and is Secretary of respondent corporation. The address of said respondents is Peoples Federal Building, Roanoke, Va.

(c) Respondent Construction News, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Arkansas, and its business address is Post Office Box 2421, Little Rock, Ark. Respondent is engaged in publishing a regional construction publication known as CONSTRUCTION NEWS. Respondents Ray Metzger, E. L. Gaunt, Marie Metzger are individuals and President, Vice

President, and Secretary-Treasurer, respectively, of respondent corporation. Respondents' address is Post Office Box 2421, Little Rock, Ark.

(d) Respondent Reports Corporation, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and respondent's business address is 6 South Orange Avenue, South Orange, N.J. Respondent is engaged in publishing a regional construction publication known as CONSTRUCTIONEER. Respondents George C. Stewart, Kenneth O. Dinsmore, and Hermon S. Swartz are individuals and are President, Vice President, and Secretary-Treasurer, respectively, of respondent corporation. Said individual respondents' address is the same as the corporate respondent Reports Corporation, Inc.

(e) Respondents Fred Johnston, Sr., Anna C. Johnston, Fred Johnston, Jr., Jerry Johnston, and Mary Anne Howard are individuals and co-partners trading and doing business as Construction Digest. Respondents' address is 101 East 14th Street, Indianapolis, Ind. Respondents are engaged in publishing a regional construction publication known as CONSTRUCTION DIGEST.

(f) J. O. Bowen, as Trustee for Margaret E. Bowen, owns and publishes a regional construction publication known as DIXIE CONTRACTOR, with offices at 110 Trinity Place, Decatur, Ga.

(g) Respondent Contractor Publishing Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its home office and principal place of business located at 642 Beaubien Street, Detroit, Mich. This respondent publishes a publication known as MICHIGAN CONTRACTOR AND BUILDER. Respondents Richard C. Mertz, Jane Huey Mertz, and Rena A. Beardsley are individuals and President-Treasurer, Vice President, and Secretary, respectively, of respondent corporation. Respondents' address is 642 Beaubien Street, Detroit, Mich.

(h) Respondent Mid West Records, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its home office and principal place of business located at 2537 Madison, Kansas City, Mo. Respondent is engaged in publishing a regional construction publication known as MID WEST CONTRACTOR. Respondents Elbert E. Smith, Norman D. Smith, and Clifford B. Smith are individuals, and are President, Vice President, and Secretary-Treasurer, respectively, of respondent corporation. Said individual respondents' address is the same as the corporate respondent Mid West Records, Inc.

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(i) Respondent R. O. Schaefer, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee and its home office and principal place of business is located at 425 DeBaliere Avenue, St. Louis, Mo. Respondent is engaged in publishing a regional construction publication known as MISSISSIPPI VALLEY CONTRACTOR. Respondents R. O. Schaefer, R. O. Schaefer, Jr., and Margaret E. Schaefer are individuals and President and Treasurer, Secretary, and Director, respectively, of respondent corporation. Said individual respondents' address is the same as the corporate respondent R. O. Schaefer, Inc.

(j) Respondent Construction Publishing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its home office and principal place of business located at 27 Muzzey Street, Lexington, Mass. Respondent is engaged in publishing a regional construction publication known as NEW ENGLAND CONSTRUCTION. Respondents Hermon S. Swartz, Dorothy Swartz, Richard Nichols, and Charles Goodhue are individuals and President and Treasurer, Secretary, Director, and Clerk, respectively, of respondent corporation. Said individual respondents' address is the same as that of the corporate respondent Construction Publishing Co., Inc.

(k) Respondent Pacific Builder & Engineer, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington, and its home office is located at 2418 Third Avenue, Seattle, Wash. Respondent is engaged in publishing a regional construction publication known as PACIFIC BUILDER & ENGINEER. Respondents Nancy B. Chapin, William Anderson, and Llewellyn Wing are individuals and are President, Vice President, and Secretary-Treasurer, respectively, of respondent corporation. Said individual respondents' address is the same as the corporate respondent Pacific Builder & Engineer, Inc.

(l) Respondent Mountain Publishing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Indiana, with its home office and principal place of business located at 855 Lincoln Street, Denver, Colo. Respondent is engaged in publishing a regional construction publication known as ROCKY MOUNTAIN CONSTRUCTION. Respondents Lewis S. Parsons, Gettie A. Parsons, and James L. Parsons are individuals and President, Secretary, and Treasurer, respectively, of respondent corporation. Respondents' business address is 855 Lincoln Street, Denver, Colo.

(m) Respondent Hles-Ayars Publishing Co. is a corporation organized and existing under and by virtue of the laws of the State of

California, with its home office and principal place of business located at 1660 Beverly Boulevard, Los Angeles, Calif. Respondent is engaged in publishing a regional construction publication known as SOUTHWEST BUILDER & CONTRACTOR. Respondents John D. Bowler, Dean I. Bowler, E. J. Evans, and John D. Bowler, Sr., are individuals and President, Vice President, Vice President and Secretary, and Vice President and Treasurer, respectively, of respondent corporation. Respondents' address is 1660 Beverly Boulevard, Los Angeles, Calif.

(n) Respondent Peters Publishing Co., is a corporation organized and existing under and by virtue of the laws of the State of Texas, with its business address as Post Office Box 1706, Dallas, Tex. It publishes TEXAS CONTRACTOR. Respondents W. A. McDonald, Wm. B. Morrison, and B. R. Pruitt are individuals and President, Vice President, and Secretary-Treasurer, respectively, of respondent corporation. Respondents' address is Post Office Box 1706, Dallas, Tex.

(o) Respondent Western Builder Publishing Co., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin and its business address is 407 East Michigan Street, Milwaukee, Wis. Respondent is engaged in publishing a regional construction publication known as WESTERN BUILDER. Respondents Earl P. Keyes, Dorothy C. Keyes, Emil Hoenig, and Arthur G. Larsen are individuals and President, Secretary, Vice President, and Treasurer, respectively, of respondent corporation. Said individual respondents' address is the same as the corporate respondent Western Builder Publishing Co.

The individual respondents hereinabove named in their individual capacities and as copartners and/or as officers of respondent corporations promulgate, direct, and control the policies, acts, and practices of the partnerships and corporations with which they are connected.

PAR. 3. Respondent ACP is a non-stock membership corporation, composed of the fifteen respondent publishers hereinbefore named and described. It was organized as an unincorporated association by twelve of its present members in 1938 and incorporated as a Michigan corporation in 1957. It performs functions commonly performed by trade associations and in addition sells advertising space on behalf of its members, employing one or more paid employees for the purpose. Members pay dues, but most of the revenue expended by respondent is obtained from members by special assessment or collected in the form of enrollment fees. The present fee for enrollment as a member is \$5,000.

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PAR. 4. Each respondent publisher named in paragraph 2 hereof is engaged in publishing a paper or magazine commonly classified and referred to as a regional construction magazine or regional construction paper. These are trade papers for the construction industry conveying news, informative data, and advertising to those engaged in the construction industry.

There are in the United States approximately thirty-five regional construction publications. Most of the revenue of said publications is derived from the sale of space for advertising. The remainder is derived from the sale of paid subscriptions.

Magazines published by the respondents are generally recognized by advertisers as being well established and well recognized publications in their regions. Together, respondents enjoy approximately 90% of the nation's regional construction magazine advertising business.

PAR. 5. The respondents are in commerce within the meaning of the Federal Trade Commission Act in that they sell and ship their publications across state lines to subscribers, many of whom are located in states of the United States other than the state of origin of said shipments. They also exchange with each other and in connection therewith transmit and/or ship across state lines news items, advertising plates, and mats.

PAR. 6. For more than two years last past respondents have been engaging in and carrying out, and are continuing to engage in and carry out a combination, agreement, understanding, and planned common course of action to eliminate and restrain competition among and between themselves and with others and to monopolize in themselves the advertising business of those using regional trade papers designed for the construction industry, as an advertising medium. Pursuant to and in furtherance of their unlawful combination, agreement, and planned common course of action, respondents have, among other things, engaged in and used the following acts, practices, and methods:

- (a) Created and organized the respondent ACP as an instrumentality through which to carry out their agreed upon purposes;
- (b) So organized and operated ACP as to limit membership to one publication in any given area;
- (c) Allocated territories to members so as to exclude overlapping in the circulation of their publications;
- (d) Used ACP as a means of securing the patronage of advertisers for themselves and diverting it from competitive publications; and
- (e) Have agreed upon prices, discounts, and terms of sale to be charged or applied for advertising space in their publications.

PAR. 7. The tendency and effect of the acts, practices, and methods of respondents, as herein alleged, are now and have been to unduly restrict and restrain competition; cause injury to competitors; stabilize prices for advertising in members' trade papers; impose a barrier to the establishment and development of new trade papers; and to tend to create in respondents a monopoly in the publication of regional trade papers for the construction industry.

Said acts and practices of respondents are all to the injury of competition and the public and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

*Mr. Lynn C. Paulson*, supporting the compliant.

*Mr. Marshall M. Massey* of *Dykema, Jones, Wheat, Spencer & Goodnow*, of Detroit, Mich.; and *Mr. John J. Hudson* of *Gibson, Dunn & Crutcher*, of Los Angeles, Calif.; *Mr. Robert W. Kroening*, of St. Louis Mo.; and *Baker & Daniels*, of Indianapolis, Ind., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint in the above-entitled and numbered proceeding alleges that Associated Construction Publications, a corporation, its officers and members, engaged in a planned common course of action to monopolize the sale of advertising space in regional trade magazines published by the individual member respondent publications now serving the construction industry in violation of Section 5 of the Federal Trade Commission Act. They deny in substantial part the allegations of the complaint.

At the conclusion of the Commission's case-in-chief, counsel for respondents moved to dismiss the complaint for lack of proof to sustain the charges. The motion was argued orally before the hearing examiner and denied. Thereafter, at further hearings, counsel for respondents offered oral testimony and documentary evidence in opposition to the allegations of the complaint. Proposed findings of fact, conclusions of law and order have been submitted by respective counsel and oral argument had thereon. All proposed findings of fact and conclusions of law not specifically found or concluded herein have been rejected. Upon the basis of the entire record, the undersigned hearing examiner makes the following findings of fact, conclusions of law drawn therefrom and issues the following order:

Initial Decision

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## FINDINGS OF FACT

1. The respondent Associated Construction Publications is a non-profit corporation, which will hereinafter be referred to as ACP, organized and doing business under the laws of the State of Michigan, with its office and principal place of business located at 2746 Penobscot Building, Detroit, Mich. Roscoe Laing, named in the complaint as Vice President of respondent Associated Construction Publications, was not at the time of the issuance of the complaint nor is he now an officer of said corporation, and will, therefore, be dismissed from this proceeding. At the time of the issuance of the complaint herein the officers of ACP were as follows:

Ray Metzger, President

W. A. McDonald, First Vice President

Fred G. Johnston, Jr., Second Vice President, and

Gordon L. Anderson, Secretary-Treasurer

The foregoing individuals, together with Richard C. Mertz, comprise the board of directors of the respondent ACP. The respondent ACP is not a publisher and does not publish a trade magazine and, beginning in 1955 or 1956, it assisted its member regional publications as a group in obtaining so-called "national" advertising as contrasted to regional or local advertising. This is advertising from manufacturers of general industrial equipment, such as trucks and wire rope, which are not solely for the construction industry but can be used in the construction as well as in other industrial fields. This is a market which regional magazines have not in the past been able to penetrate. Individual regional construction magazines are not able to compete with national publications for this business.

2. The respondent members of ACP are as follows:

(a) Respondents Eunice, Thomas, and Harold C. Chapin are co-partners doing business under the trade name of Chapin Publishing Co. The business address of said respondents is 1022 Lumber Exchange Building, Minneapolis, Minn. Said respondents are engaged in the business of publishing a regional construction magazine known as "Construction Bulletin."

(b) The respondent Construction Publishing, Inc., is a corporation organized and doing business under the laws of the State of Virginia with its office and principal place of business located at Peoples Federal Building, Roanoke, Va. Respondent is engaged in the business of publishing a regional construction magazine known as "Construction". The individual respondent Kenneth O. Dinsmore is President of said corporation, William Beury is Vice President, and George C. Stewart

is Secretary of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

(c) The respondent Construction News, Inc., is a corporation organized and doing business under the laws of the State of Arkansas, with its office and principal place of business located in Little Rock, Ark. Its mailing address is Post Office Box 2421 in said city and state. The respondent Construction News, Inc. is engaged in the business of publishing a regional construction magazine known as "Construction News". The individual respondents Ray Metzger and Marie Metzger are President and Secretary-Treasurer, respectively, of said respondent corporation. E. L. Gaunt named in the complaint as an officer of said corporation was not then nor is he now an officer of said corporation and, for this reason, will be dismissed from this proceeding.

(d) The respondent Reports Corporation, Inc., is a corporation organized and doing business under the laws of the State of New Jersey with its office and principal place of business located at 6 South Orange Avenue, South Orange, N.J. Respondent Reports Corporation, Inc. is engaged in the business of publishing a regional construction magazine known as "Constructioneer". The individual respondents George C. Stewart, Kenneth O. Dinsmore and Hermon S. Swartz are President, Vice President, and Secretary-Treasurer, respectively, of said corporation. The address of said individual officers are the same as that of the corporation.

(e) The individual respondents Fred Johnston, Sr., Anna C. Johnston, Fred Johnston, Jr., Jerry Johnston, and Mary Anne Howard are co-partners doing business under the trade name "Construction Digest", located at 101 East 14th Street, Indianapolis, Ind. Said respondents are engaged in the business of publishing a regional construction magazine known as "Construction Digest".

(f) The individual respondent J. O. Bowen, as Trustee for John Mann Bowen, William McGowan Bowen and Margaret Elizabeth Bowen, owns and publishes a regional construction magazine known as "Dixie Contractor", with its office at 110 Trinity Place, Decatur, Ga.

(g) The respondent Contractor Publishing Company is a corporation organized and doing business under the laws of the State of Michigan, with its office and principal place of business located at 642 Beaubien Street, Detroit, Mich. This corporation publishes a magazine known as "Michigan Contractor and Builder". The individual respondents Richard C. Mertz, Jane Huey Mertz and Rena A. Beardsley are President-Treasurer, Vice President, and Secretary, respec-

tively, of said corporation. The address of said officers is the same as that of the corporation.

(h) The respondent Mid-West Records, Inc. is a corporation organized and doing business under the laws of the State of Missouri, with its office and principal place of business located at 2537 Madison, Kansas City, Mo. Said corporation is engaged in the business of publishing a regional magazine known as "Mid-West Contractor". The individual respondent Elbert E. Smith is Chairman of the Board of Directors of said corporation and his address is the same as that of the corporation. Norman D. Smith and Clifford B. Smith, named in the complaint as officers of the corporate respondent Mid-West Records, Inc., are not now and were not officers of said corporation at the time of the issuance of the complaint herein and, therefore, will be dismissed from this proceeding.

(i) R. O. Schaefer, Inc., a corporation, alleged in the complaint to be publisher of the regional construction magazine "Mississippi Valley Contractor," is now and was, at the time of the hearings in this proceeding, out of business, and said corporation is no longer publishing said magazine. Therefore, the complaint against said corporation and its former officers R. O. Schaefer, Jr., and Margaret E. Schaefer will be dismissed.

(j) The respondent Construction Publishing Co., Inc., is a corporation organized and doing business under the laws of the State of Massachusetts with its office and principal place of business located at 27 Muzzey Street, Lexington, Mass. Said corporate respondent is engaged in the business of publishing a regional construction magazine known as "New England Construction". Respondents Hermon S. Swartz, Dorothy Swartz, Richard Nichols, and Charles Goodhue are President and Treasurer, Secretary, Director, and Clerk, respectively, of said corporation. The address of the individual respondent officers is the same as that of the corporate respondent.

(k) The respondent Pacific Builder and Engineer, Inc., is a corporation organized and doing business under the laws of the State of Washington, with its office and principal place of business located at 2418 Third Avenue, Seattle, Wash. Said corporate respondent is engaged in the business of publishing a regional construction magazine known as "Pacific Builder & Engineer". The individual respondents Nancy B. Chapin, William Anderson, and Llewellyn Wing are President, Vice President, and Secretary-Treasurer, respectively, of said corporation. The address of the individual respondents is the same as that of the corporation.

(l) The respondent Mountain Publishing Co., Inc., is a corporation organized and doing business under the laws of the State of Indiana, with its office and principal place of business located at 855 Lincoln Street, Denver, Colo. Said corporation is engaged in the business of publishing a regional construction magazine known as "Rocky Mountain Construction". The individual respondents Lewis S. Parsons, Gettie A. Parsons, and James L. Parsons are President, Secretary, and Treasurer, respectively, of said corporation. Their address is the same as that of the respondent corporation.

(m) The respondent Iles-Ayars Publishing Co. is a corporation organized and doing business under the laws of the State of California, with its office and principal place of business located at 1660 Beverly Boulevard, Los Angeles, Calif. Said corporate respondent is engaged in publishing a regional construction magazine known as "Southwest Builder & Contractor". The individual respondents John D. Bowler, Dean I. Bowler, E. J. Evans, and John D. Bowler, Sr., are President, Vice President, Vice President and Secretary, and Vice President and Treasurer, respectively, of said corporation. The address of the individual officer respondents is the same as that of the corporate respondent.

(n) The respondent Peters Publishing Co. is a corporation organized and doing business under the laws of the State of Texas with its office and principal place of business located in Dallas, Tex. Its mailing address is Post Office Box 1706 in said city. Said respondent is engaged in publishing a regional construction magazine known as "Texas Contractor". The individual respondents W. A. McDonald, Wm. B. Morrison, and B. R. Pruitt are President, Vice President and Secretary-Treasurer, respectively, of said corporation. The address of the individual respondent officers is the same as that of the corporation.

(o) The respondent Western Builder Publishing Co. is a corporation organized and doing business under the laws of the State of Wisconsin, with its office and principal place of business located at 407 East Michigan Street, Milwaukee, Wis. Said corporation is engaged in the business of publishing a regional construction magazine known as "Western Builder". The individual respondents Earl P. Keyes, Dorothy C. Keyes, Emil Hoenig, and Arthur G. Larsen are President, Secretary, Vice President, and Treasurer, respectively, of said corporation. The address of the individual officers is the same as that of the corporation.

3. Trade publications for the construction industry generally are either "national" magazines or "regional" magazines. National mag-

azines have nationwide circulation. The circulation of regional magazines is limited to a particular region or area of the United States, such as a state or states. Each of the respondent magazines named in paragraph 2 above is engaged in publishing a magazine generally referred to as a regional construction magazine. Generally, they contain news, advertisements for bids, informative data and advertising of interest to the construction industry. They are circulated to contractors, engineers, architects, companies engaged in construction, mining, such as oil and gas, coal, sand, gravel, and also to federal, state and local public works officials. Their principal income is derived from the sale of advertising space to manufacturers, distributors and dealers of construction equipment. The fourteen respondent publishers are engaged in "commerce" within the meaning of the Federal Trade Commission Act in that they sell and ship their magazines across state lines to subscribers, many of whom are located in states of the United States other than the state of origin of said shipments. They also exchange and ship to each other across state lines, news items, advertising plates and mats. Their course of trade in said magazines, in "commerce", is substantial.

4. Although the complaint alleges there are 35, in his Proposed Findings of Fact, counsel supporting the complaint contends that there are only 26 regional construction magazines in the United States, of which fourteen belong to ACP and the remaining twelve are non-ACP magazines. Counsel further contends that there are ten or twelve national magazines circulated to the construction industry and only four of these are the principal competitors of ACP magazines for advertising from general industrial advertisers. Counsel for respondents do not agree with these contentions. Counsel for respondents offered and there were received in evidence RX-10 and 11. These exhibits purport to list the names of all national and regional construction magazines, showing, among other things, their advertising rates and other information. Most of the information contained in RX-10 was obtained from *Standard Rate and Data*, a reliable advertising publication. There was testimony to substantiate the information contained in RX-10 and 11. These exhibits show that there are approximately seventeen national construction magazines and approximately 119 regional, sectional and local publications in the United States circulated to the construction industry. Upon consideration of all of the testimony and evidence, it is found that there are at least seventy-two regional and local construction publications and seventeen national construction publications circulated to the construction

industry in the United States. All of these magazines compete for construction advertising.

5. The complaint alleges that the respondent publishers of the fourteen regional construction magazines and the individuals alleged to control them, have conspired to restrain competition and create a monopoly in themselves, the advertising business of those using regional construction magazines for advertising purposes. Pursuant to these purposes, the complaint alleges that the respondents have engaged in the following acts and practices:

- (a) Created and organized the respondent ACP as an instrumentality to carry out their agreed upon purposes;
- (b) Organized and operated ACP so as to limit membership to one publication in any given area;
- (c) Allocated territories to members so as to exclude overlapping in the circulation of their publications;
- (d) Used ACP as a means of securing the patronage of advertisers for themselves and diverting it from competitive publications; and
- (e) Have agreed upon prices, discounts, and terms of sale to be charged or applied for advertising space in their publications.

The complaint in the following paragraph (Seven), further alleges that the tendency and effect of these acts and practices has been to unduly restrain competition; cause injury to competitors; stabilize prices for advertising in member publications; impose a barrier to the establishment of new trade papers; and create in respondents a monopoly in the publication of regional trade papers for the construction industry. It was further alleged that these acts and practices amount to unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act. The evidence in the record with respect to paragraph 6 of the complaint and each sub-paragraph thereof, will now be discussed and evaluated.

Was ACP Created and Organized by Respondents As An Instrumentality Through Which To Carry Out Their Agreed Upon Purposes?

6. As found in paragraph 3 above, each of the fourteen <sup>1</sup> respondent magazines involved in this proceeding is a "regional" construction magazine. The respondent Associated Construction Publications was

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<sup>1</sup> The complaint herein was directed against a fifteenth regional magazine, "Mississippi Valley Contractor", and its publishers. However, at the time of hearings herein, said magazine had gone out of business and had ceased publication. It was agreed, therefore, that the complaint against the publishers of this magazine would be dismissed.

organized by the owners and publishers of eleven of the respondent regional magazines, and originally was an unincorporated, non-profit association. The respondent Associated Construction Publications was organized in 1938 at the instance of several advertising men handling construction advertising accounts who were interested in approving the quality of regional construction magazines. These advertising men believed that, if the then existing standards of regional construction magazines were raised, the effectiveness of advertising in regional construction magazines would be improved. At that time, the advertised circulation figures of many of the regional construction magazines were not reliable, the page sizes of the magazines were not uniform, requiring different size advertising plates for different magazines, and the editorial content and general make-up of many of the magazines were inferior to the national construction magazines. Therefore, these advertising men believed that, if the regional construction magazines would improve the quality of their publications, such as furnishing audited circulation figures, establishing uniform page sizes so that the same size advertising plates could be used interchangeably by all regional magazines, and raise the editorial and general content of the magazines, the regional magazines would be more acceptable to advertisers, not only national advertisers, but regional and local advertisers. Accordingly, several advertising men, including Mr. Harvey Scribner, now president of Russell T. Gray Advertising Agency, Chicago, Illinois; Mr. Arnold Andrews, then Advertising Manager of the Bucyrus-Erie Company; Ervin Goes, Advertising Manager of the Koehring Company; George McNutt, Advertising Manager of Le-Tourneau, all manufacturers of heavy construction equipment, and Mr. Jim Costello, of the Giddings Advertising Agency, Milwaukee, Wisconsin, called together representatives of fourteen of the then existing regional construction magazines to outline and discuss their objectives. Several of these advertising men and representatives of regional magazines testified at hearings in this proceeding. The fourteen magazines selected by the advertising men to attend this first meeting were considered by these advertising men to be representative of the best and most satisfactory of the then existing regional construction magazines. In short, the idea for the creation of the respondent ACP came from the advertisers, not the publishers of the regional magazines, and the purpose was to raise the quality of the regional magazines. It was the belief of these advertisers that, by raising the quality and standards of the magazines, their usefulness to the advertiser, reader and publisher would be improved. Duplication of coverage or so-called "overlap" among the magazines was not con-

sidered in the formulation and organization of ACP, nor was it intended to create the ordinary type of trade association among the publishers. Thereafter, the publishers met and discussed the suggestions made by the advertising men. As a result, in 1938, eleven of the fourteen publishers who had attended the first meeting with the advertising men formed ACP as an unincorporated association. Approximately 19 years later, in 1957, ACP was incorporated under the laws of the State of Michigan. During this time the membership in ACP was increased from the original 11 to 15 but, as stated on page 865 hereof, one member magazine, "Mississippi Valley Contractor," ceased publication after issuance of the complaint herein. The by-laws, minutes of annual and semi-annual meetings of ACP and documentary evidence offered and received in evidence at the hearings demonstrate that the principal purpose for the information of ACP was to raise the publishing standards of the regional construction magazines. Originally, the initiation or enrollment fee for each member was \$50, but has since been increased from time to time. The present membership enrollment fee is \$5,000 for each new member. The procedure for admitting new members is provided for in the by-laws. Membership is by invitation only. Proposals for membership are communicated by the secretary to the members. A committee composed of the then current officers of ACP determines the eligibility of the applicant and makes a recommendation with respect to said applicant at the next membership meeting. A three-fourths affirmative vote of the members is required to admit the prospective new member to membership in ACP.

Have Respondents Organized and Operated ACP So As to Limit  
Membership to One Publication in Any Given Area?

7. At the initial meeting called by the advertisers to discuss the raising of standards of regional construction magazines and the formulation of ACP, representatives of fourteen regional construction magazines appeared and eleven of these magazines joined in the organization of ACP. At the initial meeting and at the organization of ACP, the question of overlapping or duplication of circulation between the regional magazines was not discussed. The advertisers who called the meeting had as their prime purpose the raising of standards of the regional magazines and the magazines who were invited to attend the original meeting were selected because, in the opinion of the advertising men, they were the most satisfactory of the then existing regional magazines. There were varying degrees of overlapping and duplication of circulation among and between some of the regional

construction magazines who were original members when ACP was first organized. As an example, the geographical circulation area of *Mississippi Valley Contractor* was overlapped or duplicated by three of the other original members of ACP, *Construction Digest*, *Construction News*, and *Mid-West Contractor*. ACP has not restricted its membership to the original charter members. Since 1938, five regional construction magazines have been accepted to membership in ACP, these being *Construction Bulletin* in 1943, *Constructioneer* in 1945, *Construction* and *Rocky Mountain Construction* in 1953, and *Pacific Builder and Engineer* in 1956. However, one of the important considerations in the selection of the last three magazines to membership in ACP, *Construction*, *Rocky Mountain Construction*, and *Pacific Builder and Engineer* was the growing importance of nation-wide coverage in competing with national construction magazines for general industrial advertising. With the addition of these last three construction magazines, nation-wide circulation coverage was achieved for the first time and made it possible for ACP to begin to compete with national construction magazines for general industrial advertising. Even in the selection of *Construction Bulletin*, *Construction Engineer*, *Construction*, *Rocky Mountain Construction* and *Pacific Builder and Engineer* to membership in ACP, there was some overlap. *Construction Bulletin* overlapped *Mid-West Contractor* with respect to the State of Iowa. *Rocky Mountain Construction* overlapped *Southwest Builder and Contractor* with respect to Arizona and part of Nevada. *Pacific Builder and Engineer* overlapped *Rocky Mountain Construction* in the states of Montana, Wyoming, Utah and Idaho.

8. Since the formation of ACP in 1938 only two applications for membership have been denied and neither of these applications was denied by reason of overlapping or duplication of circulation coverage. The first application to be rejected was the application of Mr. Maurice Baker of Lansing, Michigan, for his magazine, *Michigan Roads and Construction*, in 1947. Mr. Baker was one of the principal Commission witnesses. Mr. Baker testified that, in his opinion, his application was denied by reason of the fact that his magazine duplicated the circulation coverage of *Michigan Contractor and Builder*, an ACP magazine. A preponderance of the evidence shows that one of the reasons for the rejection to membership was due to the inferior quality of his magazine, *Michigan Roads and Construction*, in comparison to *Michigan Contractor and Builder*, a competing ACP magazine. Another reason was that some of the ACP members acquired a personal dislike for Mr. Baker by reason of his alleged threats to institute antitrust proceedings if his magazine was not admitted to membership in ACP. Some of the members charac-

terized such threats as blackmail. Several members of ACP testified at the hearing concerning Mr. Baker's application. They testified that the principal reason for the rejection of Mr. Baker's application for membership in ACP was due to the overall inferiority of Mr. Baker's magazine, *Michigan Roads and Construction*. Their testimony was corroborated by the testimony of several advertisers of construction equipment who testified at the hearing. Each of these witnesses who testified concerning the quality of Mr. Baker's magazine, *Michigan Roads and Construction*, testified that it is inferior in quality to its competitor *Michigan Contractor and Builder*, the ACP publication. The evidence does not sustain the contention by counsel supporting the complaint that Mr. Baker's magazine would have been admitted to membership in ACP had it not duplicated the territory of *Michigan Contractor and Builder*. The other application for membership in ACP which was rejected was the application of *Pacific Builder and Engineering Review* for its California Supplement in 1951. This was Mr. Roy Fellom's publication. Mr. Fellom testified in support of the complaint and his testimony will be discussed more in detail later on in this decision. The circulation of *California Supplement* covered northern California. At that time there was no ACP magazine which covered the northern California area. Consequently, it cannot be found that duplication of territory with a competing ACP publication determined the rejection of either of these magazines to membership in ACP.

Has ACP Allocated Territories to Members So As to Exclude Overlapping In the Circulation of Their Publications?

9. As previously found, the regional magazines selected by the construction equipment advertisers to attend the first meeting which led to the organization of ACP were selected by reason of their being some of the better regional magazines and not by reason of the fact that there was no overlapping or duplication of circulation coverage between any of them. The reason for their selection according to the testimony of the advertisers who were responsible for the organization of ACP was the fact that these magazines were, in the opinion of these advertisers, the best regional magazines being published at that time from the standpoint of quality, and the raising of the quality and standards of these regional construction magazines was the primary purpose for the organization of ACP. So, the fact that the territorial coverage of some of the ACP magazines overlapped and duplicated coverage of some of the other ACP magazines is an indication that

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ACP was not formed on the basis of one member magazine in a given area. The members today remain predominantly the original publications. The trade territories covered by each of the ACP regional construction magazines are controlled by and coincide with the trade territories of the construction equipment dealers in the particular area. This is also true of regional construction magazines generally, irrespective of membership in ACP. With some exceptions, one of the characteristics of most regional magazines is their intensive coverage of their circulation area. Their territorial coverage remains constant because the dealers' territories remain stable. The original individual magazines which became members of ACP had been in existence for many years prior to the organization of ACP in 1938 and, as has been found, there was overlapping and duplication of coverage between some of the ACP magazines at the time ACP was formed and continues today. The ACP brochure (CX-55), which was published and distributed to advertisers in 1958, shows circulation overlap in all of the following states:

<i>State</i>	<i>ACP members with advertised circulation in that area</i>	<i>Circulation in the area</i>
Arizona	Rocky Mountain Construction	705
	Southwest Builder and Contractor	258
Arkansas	Construction News	1,309
	Mississippi Valley Contractor	367
Illinois	Construction Digest	3,685
	Mississippi Valley Contractor	2,149
	Western Builder	214
Iowa	Mid-West Contractor	1,182
	Construction Bulletin	712
Michigan	Michigan Contractor and Builder	3,021
	Western Builder	224
Nevada	Rocky Mountain Construction	95
	Pacific Builder and Engineer	94
	Southwest Builder and Contractor	63
Mississippi	Construction News	861
	Mississippi Valley Contractor	462
Missouri	Mississippi Valley Contractor	1,790
	Mid-West Contractor	1,563
	Construction News	1,451
Tennessee	Construction News	894
	Mississippi Valley Contractor	419

10. The evidence shows that advertisers do not object to the present degree of overlapping existing between some of the ACP member magazines because a certain amount of overlapping is unavoidable. Of course, advertisers object to a large degree of overlapping, especially where the dealer is participating in the cost of advertising because it

