LEAD INDUSTRIES ASSOCIATION

Graybar Building, 420 Lexington Avenue

New York, N. Y.

August 14, 1935.

To Members of the Lead Industries Association:

We are enclosing herewith a release of the Federal Trade Commission, wherein the trade practice rules for the Wholesale Tobacco Distributors Industry is listed, as our members may be interested in having for their records a copy of this document.

Very truly yours,

Secretary.

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C O P Y

For IMMEDIATE RELEASE, Friday, July 19, 1935.

FEDERAL TRADE COMMISSION
Washington.

Trade Practice rules for the Wholesale Tobacco Distributors Industry were agreed upon for that industry in a Trade Practice conference held at the Federal Trade Commission July 19, 1935, between a committee representing the Wholesale Tobacco Distributors and officers of the Trade Practice Conference Division of the Commission. At the conclusion of the conference, the Trade Practice Rules agreed upon by the Industry were submitted to the Commission for its consideration. If approved by the Commission, they will constitute a Trade Practice Agreement for the Wholesale Tobacco Distributors and will be formally promulgated.

In addition to the Group I rules which the Industry approved, violation of which would constitute a violation of law, the Conference adopted two Group II, or voluntary, rules, one of which includes the hours, wages and general labor provisions of the Code of Fair Competition for the Wholesale Tobacco Trade under the National Recovery Administration, as approved June 9, 1934.

Rules agreed upon by the Industry and which were submitted to the Commission for its consideration and approval are as follows:

GROUP I RULES

RULE 1

The practice of using nationally advertised and well known brands of cigarettes, tobacco products or allied lines as "loss leaders" to influence the sale of other less well known merchandise, the sale of which merchandise is used to recoup the loss sustained on the said brands of cigarettes, tobacco products or allied lines with the tendency or capacity to deceive or mislead purchasers or prospective purchasers, is an unfair trade practice.

RULE 2

Where a manufacturer by contract has granted a wholesale distributor an exclusive territory for the distributing of his product, the willful interference by any means with said contractual relationship by any other wholesale distributor of the same product, with the purpose and effect of unduly hampering or embarrassing the said exclusive wholesale distributor in his business, is an unfair trade practice.

RULE 3

Price discrimination as between purchasers of cigars, cigarettes, and other tobacco products, whether in the form of discounts, services, or otherwise, contrary to Section 2 of the Clayton Act, is an unfair trade practice.

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RULE 4

For any member of the Industry to hold himself or itself out to the public as a wholesaler when such is not the fact, or in any other manner to misrepresent the character of his business, with the tendency and capacity to mislead and deceive, is an unfair trade practice.

RULE 5

The selling of products of the industry below cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice.

The term "cost" as used herein, shall mean the invoice or replacement cost, whichever is lower, of the article or product to the distributor or vendor, plus each distributor's or vendor's cost of doing business. The "cost of doing business" is hereby defined as including all costs incurred in the conduct of such business, namely, labor (including salaries of managers and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, credit losses, all types of licenses, taxes, insurance, and any other items of expense ordinarily coming within the term "cost of doing business."

RULE 6

The sale or offering for sale by a wholesaler of any nationally advertised product or trade-marked item of the Wholesale Tobacco Industry, the prices of which are known to the purchasing public, at reduced prices, under a misrepresentation as to his ability to sell said goods at said reduced prices, and also when the quantity of said goods is entirely inadequate to supply the reasonable trade of the said wholesaler, with the tendency or capacity to mislead or deceive customers or prospective customers, is an unfair trade practice.

RULE 7

The making of or causing or permitting to be made or published any false, untrue or deceptive statement by way of advertising or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the trade, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 8

The imitation of the trade marks, trade names, slogans or other marks of identification of competitors, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 9

Branding or making or packing any tobacco products in any manner which is intended to or does deceive or mislead purchasers with respect to brand, grade, quality, quantity, origin, size, substance, character, nature, material content, or preparation of such tobacco products, is an unfair trade practice.

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RULE 10

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contract, questionable credit standing or by other false representatives, or the false disparagement of the grade or quality of their goods, with the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 11

The secret payment or allowance of rebates, refunds, commissions, credits, unearned discounts, or excess allowances, whether in the form of money or otherwise or secretly extending to certain purchasers special services or privileges, not extended to all purchasers under like terms and conditions, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 12

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value, to agents, employees, or representatives of customers, or prospective customers, or to agents, employees, or representatives of competitor's customers, or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase, or contract to purchase industry products from the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

Rule 13

Wilfully inducing, or attempting to induce the breach of existing contracts between competitors and their customers by any means or device whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means with the purpose and effect of unduly hampering or harassing them in their businesses, is an unfair trade practice.

RULE 14

The circulation of threats of suit for infringement of patents or trade-marks among customers of a competitor, not made in good faith but for the purpose of harassing and intimidating customers, is an unfair trade practice.

RULE 15

Publishing and circulating false and misleading price lists, having the tendency and capacity to mislead purchasers or prospective purchasers, is an unfair trade practice.

RULE 16

The practice of courcing the purchase of several or a group of products as a condition to the purchase of one or more products under the exclusive control of the seller where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

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RULE 17

The practice of knowingly withholding from or inserting in any quotation or invoice any statement that makes it untrue in any material particular, is condemned by the industry.

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GROUP II RULES

RULE 1

The selling of merchandise at wholesale over the same counter used for selling at retail is calculated to deceive the Trade and purchasing public and condemned by the industry.

RULE 2

The evasion of the payment of state taxes on cigarettes and other tobacco products through interstate transactions, is condemned by the industry.

RULE 3

The Wholesale Tobacco Trade approves of the labor provisions set forth in its Code of Fair Competition under the National Recovery Act, approved June 9, 1934, together with an amendment thereto dated September 5, 1934. The said labor provisions are set forth in Article III - Hours: Article IV (as amended) - Wages: Article V - General Labor Provisions.

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The conference of the Wholesale Tobacco Distributors was held at the request of the National Association of Tobacco Distributors. Twelve directors of that Association participated in the conference. It was said by attendants at the conference that the National Association of Tobacco Distributors represent 95% of that industry in the United States. This industry represents an investment of approximately $150,000,000 and has an annual sales volume of approximately one billion dollars. The industry has approximately sixty thousand employees.

Members of the Board of Directors of the National Association of Tobacco Distributors attending the conference were:

Henry Pinney of H.E. Shaw Co., Worcester, Mass.; Edward Harris, of Hamilton, Harris & Co., Indianapolis, Ind.; John Loughran of D.Loughran Co. Inc., Washington, D. C.; Clarence Hunter, of J. P. Manning Co., Boston, Mass.; George B. Scrambling Co., Cleveland, Ohio; C. B. Leidersdorf, of Lewis-Leidersdorf Co., Milwaukee, Wis.; Arthur M. Kisig, of Metropolitan Tobacco Company, New York City; Lloyd Black of Goldsmit-Black, Inc., Pittsburgh, Pa.; Edmund C. Dearstyne of Dearstyne Bros., Albany, N.Y.; Joseph Kolodny, of Jersey City Tobacco Company, Jersey City, N.J.; Hyman Godman, of the Standard Cigar & Tobacco Co., Washington, D. C.; Allan C. Davis, of F. A. Davis & Sons, Baltimore, Md.