

FEDERAL TRADE COMMISSION v. ESSEX VARNISH COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 75.—April 15, 1918.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of varnish and kindred products gave and offered to give to employees of customers and of competitors' customers, in some instances without

the knowledge and consent of their employers, gratuities, entertainment, and money, as an inducement for them (a) to influence their employers to purchase its goods or to refrain from dealing with its competitors, and (b) to adulterate and spoil its competitors' products:

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Essex Varnish Co., hereinafter referred to as respondent, has been, for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof, would be to the interest of the public issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Essex Varnish Co., is a corporation, organized and existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business at the city of Newark, in said State, and is now and for more than one year last past has been engaged in manufacturing and selling varnish, lacquers, and japans throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of varnish, lacquers, and japans, the respondent, for more than one year last past, has been, systematically and on a large scale, giving and offering to give, to employees of both its customers and prospective customers and its competitors' customers and prospective cus-

tomers, as an inducement to influence their employers to purchase or contract to purchase from the respondent, varnish, lacquers, and japans, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, valuable presents, and entertainment.

PAR. 3. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of varnish, lacquers, and japans, the respondent, for more than one year last past, has been, systematically and on a large scale, secretly paying and offering to pay, to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, large sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent, varnish, lacquers, and japans, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

PAR. 4. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of varnish, lacquers, and japans, the respondent has, for more than one year last past, secretly and surreptitiously paid and offered to pay employees of both its customers and prospective customers and its competitors' customers and prospective customers, without the knowledge and consent of their employers, large sums of money to adulterate and spoil for their proper uses varnish, lacquers, and japans sold or offered for sale by its competitors to such customers.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondent, Essex Varnish Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and

that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance and having filed its answer admitting that within the last three years it has done and performed the acts as alleged in the said complaint, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to facts, and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Essex Varnish Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its home office located at the city of Newark, in the said State of New Jersey, now and for more than one year last past engaged in the business of manufacturing and selling varnish, lacquers, japans, and kindred products, generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships and corporations manufacturing and selling like products.

PAR. 2. That within the last three years the respondent has given and offered to give employees of both its customers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent, varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, gratuities consisting of liquors, cigars, meals, theater tickets, and other personal property.

PAR. 3. That within the last three years the respondent has given and offered to give employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence

their employers to purchase or to contract to purchase from the respondent, varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, entertainment consisting of amusements and diversions of various kinds and description.

PAR. 4. That within the last three years the respondent has given and offered to give employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, large sums of money.

PAR. 5. That within the last three years the respondent has given and offered to give employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, large sums of money to adulterate and spoil for their proper uses, varnish, lacquers, japans, and kindred products, sold or offered for sale by its competitors to such customers.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraphs 2, 3, 4, 5 and each and all of them, are under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having entered its appearance and filed its answer admitting that it has in the

last three years done and performed the acts as alleged and contained in the said complaint, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Now, therefore,

It is ordered, that the respondent, Essex Varnish Co., of Newark, N. J., and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly:

1. Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, gratuities, such as liquor, cigars, meals, theater tickets, valuable presents, and other personal property.

2. Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, entertainment, consisting of amusements or diversions of any kind whatsoever.

3. Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their

employers to purchase or to contract to purchase from the respondent, varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, money.

4. Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, to adulterate and spoil for their proper uses varnish, lacquers, japans, and kindred products, sold or offered for sale by its competitors to such customers, money.

FEDERAL TRADE COMMISSION v. STANDARD
CAR EQUIPMENT CO. AND STANDARD CAR
CONSTRUCTION CO.