

FEDERAL TRADE COMMISSION *v.* CHESTER KENT & CO., INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914; AND SECTION 2 OF THE ACT OF CONGRESS, APPROVED OCTOBER 15, 1914.

Docket No. 27.—April 30, 1918.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a proprietary medicine—

- (a) sold the same to dealers upon the agreement or understanding that they should resell the same at a fixed price, and
- (b) refused to sell the same to dealers who resold it at less than the price so fixed:

Held, That a scheme of price maintenance, substantially as described, 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 Chester Kent & Co., hereinafter referred to as respondent, has been, and is, 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, Chester Kent & Co., is now and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business in the city of Boston, in said State, and is now and for more than two years last past has been engaged in the business of a wholesale chemist, selling and distributing at wholesale, various brands of proprietary medicines to dealers throughout the States and Territories of the United States, and the District of Columbia.

PAR. 2. That the respondent, Chester Kent & Co., as a means of procuring the trade of dealers and of enlisting their active cooperation in encouraging the sale of its medicines and for the purpose of eliminating competition in price among the dealers of its medicines and thereby depriving dealers of their right to sell such medicines at such prices as they may deem adequate and warranted by their selling efficiency and for other purposes has adopted and maintains a system of fixing a schedule of standard prices at which the medicines sold by it shall be resold by the purchasers thereof,

and requires such purchasers to agree to maintain or resell such medicines at such standard selling prices, and that for the purposes of maintaining such standard resale prices, and of inducing and coercing its customers to maintain such prices, the respondent has for more than two years last past refused and still refuses to sell such medicines to customers who will not agree to maintain such standard selling prices, or who do not resell such medicines at the standard selling prices, or dispose of the same to dealers who resell them below such standard selling prices so fixed by the respondent.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Chester Kent & Co., hereinafter referred to as respondent, has been and is violating the provisions of section 2 of the act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, Chester Kent & Co., is now and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business in the city of Boston, in said State, and is now and for more than two years last past has been engaged in the business of a wholesale chemist, selling and distributing at wholesale, various brands of proprietary medicines to dealers throughout the States and Territories of the United States, and the District of Columbia.

PAR. 2. That the respondent, Chester Kent & Co., for several years last past in the course of interstate commerce, has discriminated in price and is now discriminating in price between different purchasers of proprietary medicines distributed and sold by it, which proprietary medicines are sold for use, consumption, or resale within the United States or the Territories thereof, or the District of Columbia, and that the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

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, Chester Kent & Co. (Inc.), 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 has been and is violating the provisions of section 2 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," and fully stating its charges in this respect, and the respondent having entered its appearance by Tower, Talbot & Hiler, its attorneys, and having filed its answer denying that since the 26th day of December, A. D. 1917, it has done the acts alleged in the said complaint and having signed and filed an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts 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, the Commission now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Chester Kent & Co. (Inc.), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at the city of Boston, State of Massachusetts, and is now and for more than two years last past has been engaged in selling and distributing at wholesale proprietary medicines to dealers throughout the States and Territories of the United States and the District of Columbia.

PAR. 2. That for more than one year prior to the 26th day of December, A. D. 1917, the respondent, Chester Kent & Co. (Inc.), sold a certain brand of proprietary medicine, to wit, vinol, to dealers upon the agreement or understanding that the same should be resold by the dealers at and for the price of \$1 a bottle.

PAR. 3. That for more than one year prior to the 26th day of December, A. D. 1917, the respondent, Chester Kent & Co. (Inc.), refused to and did not sell a certain brand of proprietary medicine, to wit, vinol, to dealers who resold the same for less than the price of \$1 a bottle.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 3, and each and all of them are under the circumstances herein set forth unfair methods of competition in interstate commerce and 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent having entered its appearance by Tower, Talbot & Hiler, its attorneys, and having filed its answer and agreed statement of facts wherein it is stipulated that the Commission shall forthwith proceed upon said agreed statement of facts 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 part hereof:
Now, therefore,

It is ordered that the respondent Chester Kent & Co. (Inc.), of Massachusetts, and its officers, directors, agents, servants, and employees cease and desist from, directly or indirectly:

1. Indicating to dealers the prices for which its proprietary or patent medicines shall be resold;
2. Securing from dealers agreements to adhere to such prices;
3. Refusing to sell to dealers who fail to adhere to such prices;
4. Refusing to sell to dealers who fail to adhere to such prices upon the same terms as to dealers who do so adhere;
5. Furnishing or affording any advantage to dealers who adhere to such prices while refusing similar treatment