

FEDERAL TRADE COMMISSION *v.* CHICAGO
FLEXIBLE SHAFT CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF
SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15,
1914.

Docket No. 22.—July 18, 1918.

SYLLABUS.

Where a manufacturer of horse-clipping and sheep-shearing machines, which were sold to more than two-thirds of the jobbers and wholesalers who handled such machines, offered to pay and paid at the end of each six months a rebate of 7 per cent of the purchase price thereof to such dealers as had not during such six-month period "bought, sold, received, or quoted, either directly or indirectly," machines of like character, or parts thereof made by any other manufacturer, with the effect of substantially lessening competition; *Held*, That such payments and offers to pay, under the circumstances set forth, constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Chicago Flexible Shaft Co., hereinafter referred to as the respondent, has violated and is violating the provisions of section 3 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," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Chicago Flexible Shaft Co., is now and was at all the times hereinafter mentioned a corporation organized, existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the city of Chicago, in said State, and extensively engaged in the manufacture of various commodities, among which are horse-clipping and sheep-shearing machines, and in the sale and shipment of said commodities to persons, copartnerships, and corporations in other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 2. That the above-named respondent, the Chicago Flexible Shaft Co., for several years last past in the course of interstate commerce, has sold and made contracts for sale and is now selling and making contracts for sale of large quantities of sheep-shearing and horse-clipping machines, for use and resale within the United States, and has fixed, and is now fixing, the prices charged therefor, or discount from, or rebate upon such prices, on the condition, agreement, or understanding that purchasers thereof shall not use or deal in the sheep-shearing or horse-clipping machines, or parts thereof, of a competitor or competitors of the respondent; and that the effect of such sales and contracts for sales, or such conditions, agreements, or understandings may be and is to substantially lessen competition and to tend to create a monopoly in the sheep-shearing and horse-clipping machine industry.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged it had reason to believe that the above-named respondent, the Chicago Flexible Shaft Co., has been and now is violating the provisions of section 3 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 Winston, Strawn & Shaw, its attorneys duly authorized to act in the premises, and having filed its answer admitting certain of the matters and things alleged and set forth in the said complaint, and denying others therein contained, and the cause having been referred to William J. Dowd, an examiner of the Federal Trade Commission, with instructions to hear the testimony in the case and report his findings to the said Commission, and the said examiner, pursuant to notice, having held hearings in this matter in the city of New York, State of New York, on the 26th and 27th days of June, 1918, and the matter having been continued by him for fur-

ther hearing at the city of Chicago, State of Illinois, on the 5th day of July, 1918, at which time and place the parties hereto having appeared before the said examiner and entered into an agreed statement of facts, wherein it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and upon the same forthwith proceed to make and enter its report, stating its findings as to the facts and its conclusions and its order, and the said agreed statement of facts having been heretofore duly filed with this Commission, the Commission now makes this its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Chicago Flexible Shaft Co., is now, and for more than four years last past has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and factory located at the city of Chicago, in said State.

PAR. 2. That the respondent, Chicago Flexible Shaft Co., is now, and for more than four years last past has been, engaged, among other things, in the business of manufacturing and selling horse-clipping and sheep-shearing machines and the parts thereof, generally in commerce throughout the States of the United States, the Territories thereof, and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That during the period from October 15, 1914, to October 1, 1917, there were approximately 603 jobbers and wholesalers in various localities throughout the United States dealing in horse-clipping and sheep-shearing machines and the parts thereof.

PAR. 4. During the period from October 15, 1914, to October 1, 1917, the respondent, Chicago Flexible Shaft Co., sold to approximately 493 of the jobbers and wholesalers described aforesaid horse-clipping and sheep-shearing machines

and the parts thereof for use, consumption, and resale within the United States, the Territories thereof, and the District of Columbia under the terms of a so-called "jobbers' premium offer," in which, among other provisions, the following was contained:

We respectfully advise that on shipments made during the year beginning August 1 we will pay the premium named below on your paid purchases of our horse-clipping machines and sheep-shearing machines and the parts thereof, provided you shall have complied with the conditions named below. The continuation of our business relations is not dependent upon your complying with the conditions named below, but your right to receive the premium is dependent upon your strict compliance with those conditions. Whether you win the premium or not is therefore wholly optional with you.

That one of the conditions named in said premium offer was as follows:

That during neither of the periods of six months named below you shall have bought, sold, received or quoted either directly or indirectly any horse-clipping machines, sheep-shearing machines or parts thereof made by any other manufacturer.

That it was further provided in said premium offer that the respondent would pay on or about January 15 and June 15 in each year a premium of 7 per cent, to its customers on all the paid purchases of horse-clipping machines, sheep-shearing machines and parts thereof bought from the respondent if the customer absolutely complied with the condition hereinabove set forth.

That during said period from October 15, 1914, to October 1, 1917, the respondent did semiannually pay to its customers who had observed and complied with the terms of the premium offer, the 7 per cent offered in said premium offer.

PAR. 5. That during the period from October 15, 1914, to October 1, 1917, the respondent, Chicago Flexible Shaft Co., paid to various purchasers of its horse-clipping and sheep-shearing machines and parts thereof throughout the States of the United States, the Territories thereof, and the District of Columbia approximately \$49,323.25 in discounts from the price charged for said machines and parts in consideration of the purchasers having, during said period, not used or dealt in the horse-clipping and sheep-shearing

machines and parts thereof of any competitor or competitors of the respondent, Chicago Flexible Shaft Co.

PAR. 6. That the effect of the allowing and paying of discounts, as more fully described and set forth in paragraphs 4 and 5 herein, may be to substantially lessen competition or tend to create a monopoly in the sheep-shearing and horse-clipping machine industry.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 3 to 6, inclusive, and each and all of them, are, under the circumstances therein set forth, in violation of the provisions of section 3 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent having entered its appearance by Winston, Strawn & Shaw, its attorneys duly authorized to act in the premises, and having filed its answer admitting certain of the allegations in the said complaint and denying others therein contained, and thereafter having entered into an agreed statement of facts, wherein it was agreed and stipulated that the Commission should proceed forthwith 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 further 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 the provisions of section 3 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," which said report is hereby referred to and made a part hereof. Now, therefore,

It is ordered that the respondent, Chicago Flexible Shaft Co. of Illinois, and its officers, directors, repre-

sentatives, agents, servants, and employees, cease and desist from directly or indirectly selling or contracting to sell horse-clipping and sheep-shearing machines and parts thereof for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia, or any place under the jurisdiction of the United States, or fix a price charged therefor or discount from or rebate upon such price on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the horse-clipping and sheep-shearing machines and parts thereof of any competitor or competitors of the Chicago Flexible Shaft Co. of Illinois.

Provided, however, That nothing herein contained shall now or at any time hereafter be construed as being res adjudicata as between the Federal Trade Commission or any other department of the Government of the United States and the respondent that any provision of the so-called premium offer other than the ones quoted in paragraph 4 of the findings of this Commission is illegal or