

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 prohibited by the terms of any statute of the United States.

FEDERAL TRADE COMMISSION *v.* E. J. BRACH & SONS.

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

Docket No. 121.—July 18, 1918.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of candy published and circulated advertisements falsely stating and holding out that it was selling and offering to sell its products at prices below cost:

Held, That such advertisements 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 E. J. Brach & Sons, 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 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 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, E. J. Brach & Sons, 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 Illinois, having its principal factory, office, and place of business located at the city of Chicago, in said State, now and for more than two years last past engaged in the manufacture and sale of candy and similar products among the several 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. 2. That the respondent, E. J. Brach & Sons, in the conduct of its business manufactures such candy so sold by it, in its factory located at the city of Chicago, State of Illinois, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, causing the same to be transported to its factory, where they are made into the finished product, sold, and shipped to the purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in the said products between and among the various States and Territories of the United States and the District of Columbia, and especially to and through the city of Chicago, State of Illinois, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the respondent, within the last year, for the purpose, intent, and effect of stifling and suppressing competition in the sale of candy in interstate commerce, has circulated and published throughout the States of the United States and the Territories thereof certain advertisements in which it was stated, set forth, and held out that this respondent was selling and offering to sell candy at cost, or at and for a price less than cost, and that such statements were false and misleading and calculated and designed to and did deceive and mislead the trade and general public.

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, E. J. Brach & Sons, 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 by Fisher, Boyden, Kales & Bell, its attorneys duly authorized to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, but denying that the same were committed with the knowledge of the managing officers of the respondent corporation, and thereafter the respondent having entered into an agreed statement of facts, whereby it was stipulated and agreed that the Commission should take such agreed statement of facts as the evidence in this case, and in lieu of testimony herein and proceed forthwith upon the same to make and enter its report stating its findings as to the facts and conclusions and its order, and the said agreed statement of facts having been heretofore duly filed, the Commission now makes its findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, E. J. Brach & Sons, is now, and for more than two years last past has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal factory, office, and place of business located at the city of Chicago, in said State.

PAR. 2. That the respondent, E. J. Brach & Sons, is now, and for more than two years last past has been, engaged in the business of manufacturing and selling candy generally in commerce throughout the States of the United States, Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That the respondent, E. J. Brach & Sons, during the period of one year prior to the 30th day of April, A. D. 1918, while selling candy in commerce aforesaid at and for prices above cost of the same, published and caused to be published certain printed advertisements which were circulated among dealers in candy throughout the various States of the United States, in which said advertisements it was stated and held out that the respondent was selling and offering to sell candy at and for prices less than cost.

PAR. 4. That the advertisements mentioned and described in the foregoing paragraph herein were circulated and caused to be circulated by the sales department of the respondent, and the same was done without the knowledge of the managing officers of the respondent corporation, and that the said respondent is not now selling or offering to sell candy in commerce aforesaid at and for prices less than cost.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 3, and 4, 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 respondent having entered its appearance by its attorneys, Fisher, Boyden, Kales & Bell, duly authorized to act in the premises, and having filed its answer admitting that certain of the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth, and thereafter having made and entered into an agreed statement of facts, wherein it was stipulated that the Commission should forthwith proceed upon such agreed statement of facts to make and enter its report, stating its findings as to the facts and conclusions and its order, and the Commission having made such report, which said report is hereby referred to and made a part hereof.

Now, therefore, it is ordered, that the respondent, E. J. Brach & Sons, of Chicago, State of Illinois, and its officers, directors, representatives, agents, servants, and employees cease and desist from directly or indirectly publishing and circulating advertisements or printed circulars, or letters, or similar devices, in which it is stated and held out that it is selling and offering to sell in interstate commerce candy at and for prices less than cost, while actually selling such candy in interstate commerce at and for prices equal to or above the cost of production.

FEDERAL TRADE COMMISSION *v.* TWIN CITY
VARNISH CO. OF ILLINOIS.

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

Docket No. 169.—July 18, 1918.

SYLLABUS.

Where a corporation engaged in the sale of varnish and kindred products paid and offered to pay to employees of customers and of competitors' customers, sums of money, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors:

Held, That such payments and offers to pay, 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 Twin City Varnish Co. of Illinois, 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, Twin City Varnish Co. of Illinois, is a corporation, organized and existing and doing business 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 is now and for more than one year last past has been engaged in selling varnish and kindred products 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, co-partnerships and corporations selling like products.

PAR. 2. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the sale of varnish and kindred products, 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 and kindred products, or to influence such customers to refrain from dealing, or contracting to deal with competitors of the respondent.

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, the Twin City Varnish Co. of Illinois, 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 by George W. Weber, its president, and having filed its answer admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth, 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, the Commission makes this report and findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Twin City Varnish Co. of Illinois, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its home office located at the city of Chicago, in said State of Illinois, now and for more than one year last past engaged in the business of selling varnish 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 for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers and its competitors' cus-

tomers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish and kindred products or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, large sums of money.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 1 and 2, 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 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 George W. Weber, its president, and having filed its answer admitting that the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth, 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 rights 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, the Twin City Varnish Co. of Illinois, and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly.

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

FEDERAL TRADE COMMISSION *v.* THE ROYAL
VARNISH CO.