

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

Docket No. 152.—July 22, 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 gratuities, entertainment, and 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 Royal Varnish Co., hereinafter referred to as respondent, for more than a year prior to January 1, 1918, used 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 re-

spect 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 Royal Varnish Co., is a corporation, organized and existing and doing business under and by virtue of the laws of the State of Ohio, having its principal office and place of business in the city of Toledo, in said State, and is now and for more than one year last past has been engaged in manufacturing and 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, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling varnish and kindred products throughout the States and Territories of the United States the respondent for more than one year prior to January 1, 1918, systematically and on a large scale gave and offered to give to 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 contract to purchase from the respondent varnish and kindred products, without other consideration therefor, gratuities such as liquors, cigars, meals, theater tickets, valuable presents, and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling varnish and kindred products throughout the States and Territories of the United States the respondent for more than one year prior to January 1, 1918, systematically and on a large scale secretly paid and offered 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, 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 Royal 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 by George P. Hahn, Esq., its attorney, duly authorized to act in the premises, 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, except that respondent denies that said matters and things were done systematically or on a large scale, 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 Royal Varnish Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its home office located at the city of Toledo, in said State of Ohio, now and for more than one year last past engaged in the business of manufacturing and 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, 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, gratuities consisting of liquors, cigars, meals, theater tickets, and other personal property.

PAR. 3. 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' customers 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, entertainment consisting of amusements and diversions of various kinds and descriptions.

PAR. 4. 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' customers 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, sums of money.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 3, 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 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 P. Hahn, Esq., its attorney, duly authorized to act in the premises 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, except that respondent denies that said matters and things were done systematically, or on a large scale, 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, the Royal Varnish Co., 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 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, gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and other personal property.
2. Giving and offering to give to employees of its customers and prospective customers or those of its competitors' customers or prospective customers, as an inducement to in-

fluence their employers to purchase or 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, 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 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 CUDAHY PACKING CO.

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

Docket No. 20.—July 26, 1918.

SYLLABUS.

Where a corporation, engaged in the manufacture and sale of cleansing powder, the sales of which were substantial and formed an important item of commerce—

I.

Sold its product principally to certain jobbers and to a limited extent to certain other selected dealers, both of whom it termed distributing agents, at prices termed "distributing agents' prices"; also sold to concerns other than those designated as distributing agents in the same quantities at higher prices, termed "general sales list prices," occasionally at distributors' prices, and, in some instances, at special prices, such differences in price not being within the provisos of section 2 of the Clayton Act:

Held, That such discrimination in price constituted a violation of section 2 of the act of October 15, 1914.

II.

- (a) Sold its product principally to certain jobbers and to a limited extent to certain other selected dealers, both of whom it termed "distributing agents," at prices termed "distributing agents' prices"; declined generally to sell to concerns other than these so-called distributing agents in the same quantities except at prices higher than those charged its "distributing agents" (the prices charged dealers other than these distributing agents being so high that they did not afford the dealer a net profit on their sale, and especially did not permit them to sell at cut prices and make a profit), though at times it sold at the most favored prices to others than its regular distributors; and sold in some instances at special prices, the differences in the prices charged not being within the provisos of section 2 of the Clayton Act;
- (b) Caused those whom it termed "distributing agents" to resell its product at prices fixed by it, and in pursuance of its price-maintenance plan—
- (1) Published lists showing prices at which goods were to be resold, and stated therein that "distributing agents," or those to whom it sold at the most favorable prices, must conform to its selling policy;
 - (2) Sold only to new customers at its most favorable prices, known as "distributing agents' prices," who, after investigation by its salesmen, were reported as being in harmony with its selling policy;
 - (3) Ceased to sell at its most favorable prices to those dealers who failed to maintain the resale prices fixed by it, though at times it resumed selling them at such prices where they specifically agreed to maintain its resale prices, or where it was otherwise given reason to believe that such dealers would thereafter conform to its price-maintenance plan;
 - (4) Adopted a system of marking to identify each container of its goods and by its salesmen traced dealers selling at less than its fixed resale prices, its salesmen at times in the course of such tracing examining goods in the warehouses of retailers and on occasions impersonating retailers, sometimes with their consent, for the purpose of obtaining information;
 - (5) Refused occasionally to sell its product on any terms to those who failed to maintain its fixed resale price;
- (c) Instructed its salesmen engaged in the solicitation of "turn-over" orders to refuse the same when purchasers desired them filled through a dealer who did not maintain its fixed resale price, and to request the purchaser to order through some other jobber or wholesaler;
- Held*, That such system 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.

I.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Cudahy Packing 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, the Cudahy Packing Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State, and is now and was at all the times hereinafter mentioned engaged in manufacturing a cleansing product called "Old Dutch Cleanser," and in the sale and shipment of such commodity to persons, copartnerships, and corporations in other States, Territories, and the District of Columbia.

PAR. 2. That the respondent, the Cudahy Packing 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 "Old Dutch Cleanser," which product is sold for use, consumption, or resale within the United States and 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 in this line of commerce.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Cudahy Packing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation 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 Cudahy Packing Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State, and is now, and was at all times hereinafter mentioned, engaged in manufacturing a cleansing product called "Old Dutch Cleanser," and in the sale and shipment of such commodity to persons, copartnerships, and corporations in other States, Territories, and the District of Columbia.

PAR. 2. That the respondent, The Cudahy Packing Co., has adopted and maintains a system of fixing prices at which its product, "Old Dutch Cleanser," shall be resold by such jobbers and wholesalers, with the effect of securing the trade of jobbers and wholesalers and of enlisting their active cooperation in enlarging the sale of its price-maintained product to the prejudice of competitors who do not fix and require the maintenance of the resale prices of their product, and with the effect of eliminating competition in price among the jobbers and wholesalers in its goods, and thereby depriving jobbers and wholesalers of their right to sell such goods at such prices as they may deem adequate and warranted by their selling efficiency, and with other effects; and that the respondent, as means of making effective its system of fixing resale prices and of inducing and coercing its customers to maintain such resale prices, for more than two years last past (a) has entered and does enter into agreements and understandings with jobbers and wholesalers that they shall maintain the resale prices fixed by the respondent; (b) has threatened and does threaten to refuse to sell to jobbers and wholesalers if they fail to maintain the resale prices fixed by the respondent and has refused and does refuse to sell to jobbers and wholesalers who fail to maintain the resale prices fixed by the respondent; (c) has sold and does sell at lower prices such product to jobbers and wholesalers

who agree to maintain the resale prices so fixed by the respondent than it sells or offers to sell such product to jobbers and wholesalers who do not maintain such resale prices, and at a price so high to the jobbers and wholesalers who do not maintain such resale prices that they can not, as is well known to the respondent, make a profit upon the resale thereof; (d) by divers means has induced or compelled and does induce or compel jobbers and wholesalers to refrain from selling its product to other jobbers and wholesalers who do not maintain the resale prices fixed by the respondent; (e) has caused and does cause the diversion of retailers' orders, obtained by its salesmen, from jobbers and wholesalers preferred by such retailers and who do not maintain the resale prices fixed by the respondent to jobbers and wholesale who do maintain such resale prices; (f) has employed and does employ divers other means.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, The Cudahy Packing 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 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 that a proceeding by it in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Thomas Creigh and Gilbert H. Montague, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain other thereof, and particularly denying that respondent has ever violated any of the provisions of the acts of Congress above men-

tioned or of any other law, and the Commission having offered testimony in support of the charges of said complaint, and respondent having rested its case at the close of the Commission's case, and counsel for both parties having waived the filing of briefs or the hearing of argument on the exceptions and on the merits, the Commission, having duly considered the record, and being fully advised in the premises, now makes this its report and findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, the Cudahy Packing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, having its principal office and place of business at the city of Chicago, in the State of Illinois, and is the successor to the Cudahy Packing Co., of Illinois.

PAR. 2. That respondent, the Cudahy Packing Co., is now, and for more than two years last past has been, engaged in commerce among the several States, Territories, and the District of Columbia of the United States, in the manufacture, sale, and distribution of a powdered cleanser known as "Old Dutch Cleanser."

PAR. 3. That respondent, the Cudahy Packing Co., sells Old Dutch Cleanser principally to jobbers, but also, to a limited extent, to certain other selected dealers, both being known as distributing agents, at prices hereinafter referred to as distributing agents' prices, and that it also sells to concerns other than those classified or designated as distributing agents in the same quantities at higher prices than hereinafter referred to as general sales list prices.

PAR. 4. That the amount of Old Dutch Cleanser manufactured, sold, and distributed by respondent, the Cudahy Packing Co., has been and is substantial, that the same forms an important item of commerce among the several States, Territories, and the District of Columbia of the United States, and that in such distribution respondent utilizes the services of about 4,000 of the so-called distributing agents.

PAR. 5. That in pursuance of its price-maintenance plan respondent discriminates, and for more than two years last past has discriminated, between customers in the prices at which it sells "Old Dutch Cleanser" in the course of such commerce, in that it has—

(a) Made sales to jobbers and other wholesalers at both general sales list prices and distributing-agents' prices.

(b) Made sales to cooperative organizations at both general sales list prices and distributing agents' prices.

(c) Made sales among retail organizations at distributing-agents' prices and at general sales list prices and at special prices.

That none of the aforesaid discriminations comes within any of the exceptions or provisos of section 2 of the act approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and that in so far as said discriminations accomplish their purpose, their effect may be and is to eliminate competition in price among jobbers and other dealers in a line of commerce, to wit, in the sale of powdered cleansers, and especially in the sale of "Old Dutch Cleanser."

PAR. 6. That respondent causes, and for more than two years last past has caused, its so-called distributing agents to resell "Old Dutch Cleanser" at general sales list prices:

(a) By repeatedly setting forth in its distributing agents' price list its resale prices, and by stating that distributing agents must conform to the selling policy of the company;

(b) By repeatedly withdrawing, as distributing agents, jobbers, wholesalers, and other dealers classed as distributing agents who fail to maintain the general sales list prices of respondent, and by quoting and in some instances selling jobbers so withdrawn at the general sales list price;

(c) By repeatedly reinstating as distributing agents jobbers, wholesalers, and other dealers withdrawn as aforesaid for failing to maintain the resale price—

(1) Upon the basis of letters from such jobbers, wholesalers, and other dealers to respondent specifically stating that they will agree to maintain the general sales list prices of respondent;

(2) Upon the basis of letters stating in effect that such jobbers, wholesalers, and other dealers understand the selling policy of respondent and will act in harmony therewith; and

(3) Upon the basis of reports from salesmen to the effect that they have interviewed jobbers, wholesalers, and other dealers withdrawn as distributing agents and explained to them respondent's selling policy and that the said jobbers and dealers are in harmony therewith and will conform thereto.

(d) By requiring its salesmen to investigate applications for distributing agents' terms and to report to the home office whether the applicant understands and is in harmony with the selling policy of respondent;

(e) By repeatedly adding to its so-called distributing agents concerns reported as aforesaid by its salesmen as being in harmony with its selling policy.

(f) By refusing in occasional instances to sell to jobbers, wholesalers, and other dealers withdrawn as aforesaid for failing to resell its products at general sales list prices.

PAR. 7. That respondent maintains a large force of specialty salesmen, numbering over 100, whose duty it is to solicit from retailers orders to be turned over to and filled through jobbers or other wholesalers, which orders are customarily designated and known as "turnover orders"; that said salesmen are instructed, in soliciting turnover orders, to refuse to accept such orders where the retailer desires the same filled through a jobber or other wholesaler who sells at less than the general sales list prices of respondent, and to state to the retailer that they can not take an order for delivery through that jobber or other wholesaler, and to request him to name another; and that said salesmen, in soliciting such orders, in pursuance of these instructions, refuse and have refused to accept orders where retailers desired the same filled through jobbers or other wholesalers selling at less than general sales list prices, and request and have requested such retailers to name other jobbers or wholesalers.

PAR. 8. That respondent in frequent instances withdraws, and for more than two years last past has withdrawn, dis-

tributing agents' prices from jobbers and other wholesalers who have—

(a) Sold to other jobbers or wholesalers at less than general sales list prices.

(b) Filled orders pooled by several retailers when the jobbers or wholesalers have sold the same at quantity prices set out in the general sales list.

(c) Filled orders at quantity prices set out in the general sales list where the retailers require more than one delivery upon the quantity specified in the order.

PAR. 9. That respondent utilizes, and for more than two years last past has utilized, a system of key-symbols for identifying the cases containing Old Dutch Cleanser; that repeatedly, when instances of price cutting are reported to it, respondent instructs its salesmen to investigate; that in pursuance of these instructions, the salesmen aforesaid frequently trace the jobber or other wholesaler making the cut price by means of the key-symbols, which enable the identity of said jobber or other wholesaler to be ascertained; that in occasional instances respondent's salesmen, in tracing price cutting, have examined the stocks in the warehouses of retail dealers; have taken key-symbols from cases on the wagons of jobbers and other wholesalers delivering goods; have impersonated retailers, sometimes with their permission, in order to ascertain from jobbers and other wholesalers the prices at which they sell Old Dutch Cleanser, and have impersonated retailers for the purpose of obtaining the key-symbols from cases containing Old Dutch Cleanser.

PAR. 10. That individual jobbers and wholesalers, as shown by their letters, voluntarily state, and have stated, that they will support and cooperate with respondent in pushing its goods, and that they desire to deal with respondent on account of its policy in maintaining resale prices; and that jobbing and wholesale grocery trade associations have adopted resolutions indorsing price-maintained goods, which indorsements would include the goods of respondent company.

PAR. 11. That grocery jobbers and wholesalers handling respondent's goods repeatedly report, and have reported, to respondent price cutting in their respective localities, and in

many such instances report, and have reported specifically, the names of such price cutters.

PAR. 12. That jobbers' and other wholesalers' costs show great divergences, owing to different methods in selling, and also great divergences in the case of different concerns using the same methods of selling, owing to differences in selling expense, turnover, efficiency of management, and other factors.

That the costs of grocery jobbers and wholesalers selling by mail are in some instances as low as $4\frac{1}{2}$ per cent expressed as a percentage of the cost of goods to the jobber, and the costs of cooperative grocery jobbing and wholesaling concerns are in some instances as low as 3 to $3\frac{1}{2}$ per cent, expressed in the form of a percentage of the selling price of the goods.

That expressed in the form of a percentage of the net sales, the total costs or expense of jobbers and wholesalers selling according to customary jobbing methods range from 6.3 per cent to 10.71 per cent, and that the common figure (i. e., the predominant, typical, and most frequent figure and the one around which the figures of all wholesalers center) is 8 per cent; that some of such concerns have interest charges which range from 0.4 per cent to 3.03 per cent on net sales, and that the common figure is 1.5 per cent.

That the gross profits of concerns selling according to customary jobbing methods show at least as great variations as from 7.7 to 17.2 per cent on net sales; and in the majority of instances their gross profit is between 10.5 per cent and 13.4 per cent; that the rate of stock turn of grocery jobbers and other wholesalers selling according to customary jobbing methods varies from about one to twelve times a year.

PAR. 13. That for more than two years prior to January 1, 1918, the gross profit margins (i. e., the difference between the cost of Old Dutch Cleanser from respondent and the price at which jobbers or other wholesalers were required to resell the same) allowed by respondent varied, depending upon the quantity in which the jobber or wholesaler bought, from 11.1 to 13.9 per cent on the said resale

price fixed by the respondent for sales of less than five cases.

That retailers' orders and purchases of Old Dutch Cleanser are in the great majority of instances for less than five cases, and that large orders by them are comparatively exceptional.

PAR. 14. That the gross profit margins of jobbers and other wholesalers handling respondent's goods are adjusted as aforesaid, in order to secure a large number of jobbers and other wholesalers to handle its product, and that the margins aforesaid are greater than necessary to enable many relatively low-cost and efficient jobbers and wholesalers to resell and make a profit.

PAR. 15. That respondent, by its policy of maintaining prices and discriminating and refusing to sell to jobbers and other wholesalers failing to adhere to such prices, endeavors to protect and has protected the relatively higher-cost and less efficient jobbers and other wholesalers, constituting the bulk of the jobbing and wholesale trade, in the gross-profit margins fixed as aforesaid against the competition of relatively lower-cost and more efficient jobbers and other wholesalers.

PAR. 16. That the effect of the price fixing aforesaid has been and is:

(a) To secure for respondent, the Cudahy Packing Co., on its Old Dutch Cleanser the trade of jobbers and other wholesalers, and especially the relatively higher-cost and more inefficient jobbers and other wholesalers, constituting the bulk of the jobbing and wholesale trade, and to enlist their active support and cooperation in enlarging the sale of its price-maintained cleanser, to the prejudice of competing manufacturers who do not fix, require, or enforce the maintenance of resale prices upon their cleansers, thereby protecting such jobbers and other wholesalers against the price competition of other jobbers and wholesalers, and especially the relatively lower-cost and more efficient establishments;

(b) To tend to force manufacturers who do not fix, require, or enforce the maintenance of resale prices and who compete with respondent in the sale of powdered cleansers,

also to inaugurate and enforce a system of maintenance of resale prices upon their powdered cleansers, in order to offset the preference of jobbers and other wholesalers for respondent's price-maintained cleanser and to enable manufacturers who do not maintain resale prices upon powdered cleansers to compete upon more equal terms with respondent;

(c) To eliminate competition in prices among jobbers and wholesalers handling Old Dutch Cleanser, thereby interfering with many such jobbers and other wholesalers, and especially the relatively lower-cost and more efficient establishments, in their sales of such cleanser at such prices as they may deem adequate and as are warranted by their costs, selling efficiency, and existing trade conditions;

(d) To compel the public, or such portion thereof as require or prefer Old Dutch Cleanser, to pay prices therefor based on a gross profit margin fixed, as aforesaid, according to the costs of the relatively higher-cost and less efficient establishments, constituting the bulk of the jobbing and wholesale trade, instead of a price based upon the competition of jobbers and other wholesalers with widely varying stock turns, costs and efficiency.

CONCLUSION.

That the acts and conduct set forth in paragraph 5 of the foregoing findings are, and each of them is, under the circumstances therein set forth, in violation of 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 that the methods of competition set forth in the findings are, and each of them is, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions 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 by Thomas Creigh and Gilbert H. Montague, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain other allegations thereof, and particularly denying that respondent has ever violated any of the provisions of the acts of Congress mentioned in said complaint or any of the provisions of any other law; and the Commission having offered testimony in support of the charges of said complaint, and respondent having rested its case at the close of the Commission's case, and the Commission, on the date hereof, having made and filed its report containing its findings as to the facts and its conclusions that 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," and 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," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered that respondent, the Cudahy Packing Co., and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly recommending, requiring, or by any means whatsoever bringing about, the resale by dealers of Old Dutch Cleanser according to any system of prices fixed or established by respondent, and more particularly by any or all of the following means:

1. Entering into contracts, agreements, or understandings with such dealers to the effect that such dealers, in reselling Old Dutch Cleanser, will adhere to any system of prices fixed or established by respondent;

2. Securing from such dealers contracts, agreements, or understandings that they will adhere to any such system of prices;

3. Refusing to sell to any such dealers because they fail to adhere to any such system of prices;

4. Discriminating in prices against such dealers because they fail to adhere to any such system of prices;

5. Discriminating in prices in favor of such dealers because they adhere to any such system of prices:

Provided, That nothing herein contained shall prohibit respondent from issuing price lists or printing prices in its advertising or upon containers of Old Dutch Cleanser so long as respondent shall refrain from directly or indirectly recommending, requiring, or by any means whatsoever bringing about, the resale of Old Dutch Cleanser at such prices; and

Provided further, That nothing herein contained shall prohibit respondent from selling to or soliciting orders from dealers directly at such prices, or at any other prices fixed by the party through whom such orders are filled.

FEDERAL TRADE COMMISSION *v.* STANLEY BOOKING CORPORATION.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF
SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26,
1914, AND OF THE ALLEGED VIOLATION OF SECTION 3 OF AN
ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 140—September 10, 1918.

SYLLABUS.

Where a corporation engaged in the business of exhibiting, leasing, licensing, booking, and dealing in moving-picture films generally—

- (a) Procured the cancellation of contracts between competitors and the producers of films;
- (b) Procured films which competing exhibitors had previously announced would be shown by them and, for the purpose and with the effect of hindering, harassing, and embarrassing such competitors, exhibited the same in advance of the dates announced and for a lower price of admission;
- (c) Made contracts for the lease and sale of films upon the condition, agreement, or understanding that the lessees or purchasers thereof would not exhibit, use, or deal in the films of its competitors;
- (d) By threats and intimidation induced the owners and operators of moving-picture theaters to pay it a commission on films booked by producers and exchanges other than itself;
- (e) Induced independent exhibitors to book through it by means of threats that unless they did so their supply of films would be cut off; and

(f) Induced producers and exchanges to cease supplying competitors with films, by means of threats that unless they did so it would withdraw its patronage:

Held, That such acts constituted unfair methods 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 Stanley Booking Corporation, 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:

PAR. 1. That the respondent, the Stanley Booking Corporation, 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 New York, having its principal office and place of business located in the city of Philadelphia, State of Pennsylvania, now, and for more than two years last past engaged in the business of exhibiting and dealing in moving-picture films, among the various 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, Stanley Booking Corporation, in the conduct of its business acts in the capacity of a booking agency, which agency procures and books moving-picture films for various exhibitors of moving-picture films on a commission basis, and purchases and leases moving-picture films from producing companies of moving-picture films in various States of the United States, the Territories thereof, and the District of Columbia, causing the same to be transported through and to other States and Territories of the United States and the District of Columbia, where the

same are exhibited and displayed to the general public; that after such films are so purchased or leased they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said films between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially through and to the city of Philadelphia, State of Pennsylvania, and therefrom to and among other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the respondent, Stanley Booking Corporation, in the conduct of its business, leases or purchases certain advertising matter to accompany said moving-picture films from designers and manufacturers of such advertising matter, causing the same to be transported to the various exhibitors of moving-picture films in the States and Territories of the United States and the District of Columbia; that after such advertising matter is so leased or purchased it is continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said advertising matter between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially through and to the city of Philadelphia, State of Pennsylvania, and therefrom to and among other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 4. That the respondent, Stanley Booking Corporation, in the conduct of its business owns, operates, and controls numerous theaters in various cities throughout the States of the United States, the Territories thereof, and the District of Columbia, wherein moving-picture films are exhibited and displayed to the public, and within the last year with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce, has by divers means and methods caused contracts for the exhibition of certain mov-

ing-picture films made and entered into by and between certain of its competitors similarly engaged and producers of moving-picture films to be canceled and broken, all of which was calculated and designed to, and did, hinder, harrass, and embarrass such competitors in the conduct of their business.

PAR. 5. That the respondent, Stanley Booking Corporation, within the last year, with the purpose, intent, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce, has procured certain moving-picture films which had been announced and advertised for exhibition and display by certain of its competitors, and has exhibited and displayed the same in advance of the dates so advertised and announced by such competitors at theaters in the neighborhood of and in close proximity to those of such competitors, at and for a price of admission less than that advertised and announced by its competitors aforesaid.

PAR. 6. That the respondent, Stanley Booking Corporation, with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce, has leased and sold and made contracts for the leasing and sale of moving-picture films within the year last past on the condition, agreement, or understanding that the lessee or purchaser thereof shall not exhibit, use, or deal in moving-picture films produced, handled, or dealt in by competitor or competitors of the lessor or seller.

PAR. 7. That the respondent, Stanley Booking Corporation, with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce, has for more than one year last past, by divers threats and different methods of intimidation, compelled the owners and operators of numerous moving-picture theaters in different States of the United States, the Territories thereof, and the District of Columbia, to pay this respondent a sum equal to 10 per cent of the cost of all moving-picture films of various producers booked directly from said producers, exhibited and displayed by them in their various theaters.

PAR. 8. That the respondent, Stanley Booking Corporation, with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce for more than one year last past, has compelled the owners and operators of numerous theaters exhibiting and displaying moving-picture films in different localities within the States of Pennsylvania, New Jersey, and Delaware, to book such films exhibited by them through this respondent by threatening to cut off their supply of such moving-picture films.

PAR. 9. That the respondent, Stanley Booking Corporation, with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce within the last year, has, by threats of withdrawal of its patronage and divers methods of intimidation, compelled producers of moving-picture films and exchanges handling moving-picture films to cease supplying certain of its competitors with moving-picture films.

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 Stanley Booking Corporation, 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 will be to the interest of the public and fully stating its charges in this respect, and the respondent having entered its appearance by Stern & Wolf, its attorneys, duly authorized and empowered 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 W. T. Roberts, an examiner for the Federal Trade Commission, with instructions to hear the testimony in the case and re-

port his findings to the said Commission, and the said examiner pursuant to notice having held a hearing in this matter in the city of Philadelphia, State of Pennsylvania, on the 19th and 20th days of August, 1918, at which time and place the parties hereto, after the said examiner having heard part of the testimony offered by the Federal Trade Commission, before the said examiner 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, Stanley Booking Corporation, 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 New York, with its principal office and place of business located at the city of Philadelphia, in the State of Pennsylvania.

PAR. 2. That the respondent, Stanley Booking Corporation, is now and for more than four years last past has been engaged in the business of exhibiting, leasing, licensing, booking, and dealing in moving-picture films 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 the respondent, Stanley Booking Corporation, in the conduct of its business acts in the capacity of a booking agency, which agency procures and books moving-picture films by means of contracts for various exhibitors of moving-picture films on a commission basis, the said films being purchased and leased from the producing companies of moving-picture films and film exchanges representing such producing companies, the said films are then caused to

be transported, and the respondent further causes certain advertising matter to accompany the moving-picture films to be transported along with the said films through and to other States and Territories of the United States and the District of Columbia, where the same are exhibited and displayed to the general public.

PAR. 4. That the respondent, Stanley Booking Corporation, in the conduct of its business has employed and used the following unfair methods of competition within three years last past and prior to February, 1918:

(a) Cancellation of contracts for the exhibition of certain moving-picture films made and entered into by and between certain of its competitors similarly engaged and the producers of moving-picture films.

(b) Procured certain moving-picture films which had been announced and advertised for the exhibition and display by its competitors and has exhibited and displayed the same in advance of the dates so advertised and announced by such competitors at theaters in the neighborhood of those of such competitors at and for a price of admission less than that advertised by its competitors, all of which was calculated and designed to and did hinder, harass, and embarrass such competitors in the conduct of their business.

(c) Has made contracts for the leasing and sale of moving-picture films on the condition, agreement, or understanding that the lessee or purchaser thereof shall not exhibit, use, or deal in moving-picture films produced, handled, or dealt in by a competitor or competitors of respondent, the effect of which may be to substantially lessen competition or tend to create a monopoly.

(d) By divers threats and different methods of intimidation has induced the owners and operators of certain moving-picture theaters to pay this respondent a sum equal to 10 per cent of the cost of all moving-picture films of various producers booked *directly* from said producers or exchanges.

(e) By threatening to cut off the supply of moving-picture films to certain of its competitors has by such threats induced said competitors to book and obtain moving-picture films through this respondent.

(f) By threats of withdrawal of its patronage has induced the producers of moving-picture films and film exchanges handling moving-picture films to cease supplying certain of its competitors with moving-picture films.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are 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 by Stern & Wolf, 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 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, Stanley Booking Corporation, of New York, and its officers, directors, representatives, agents, servants, and employees, cease and desist from directly or indirectly:

(a) Procuring the cancellation of contracts for the exhibition of moving-picture films made and entered into by and between its competitors and the producers of moving-picture films.

(b) Procuring moving-picture films which have been announced and advertised for exhibition and display by its competitors and exhibiting and displaying the same in advance of the dates so advertised and announced by such competitors at theaters in the neighborhood of those of such competitors, where the procuring of moving-picture films and exhibition of same is done to hinder, harass, and embarrass competitors.

(c) Making and entering into contracts for the leasing and sale of moving-picture films on the condition, agreement, or understanding that the lessee or purchaser thereof shall not exhibit, use, or deal in moving-picture films produced, handled, or dealt in by a competitor or competitors of respondent.

(d) Making threats and employing methods of intimidation to induce and compel owners and operators of moving-picture theaters to pay it, the respondent, a sum equal to 10 per cent of the cost of moving-picture films booked directly from the producer of said films or the film exchanges, or to pay to it, the respondent, any sums whatsoever on moving-picture films booked directly from the producer of said films or from the film exchanges.

(e) Making threats against independent exhibitors of moving-picture films that unless such exhibitors book through this respondent their supply of moving-picture films will be cut off.

(f) Threatening producers of moving-picture films and film exchanges with the withdrawal of this respondent's patronage in order to induce the said producer and film exchanges to cease supplying certain of their competitors with moving-picture films.

FEDERAL TRADE COMMISSION *v.* E. E. GRAY CO.

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

Docket No. 166.—September 25, 1918.

SYLLABUS.

Where a corporation engaged in the sale and distribution of coffees, with the purpose and effect of confusing, misleading, and deceiving the purchasing public, sold a mixture of "Santos" and "Columbian" coffees, under the name or brand "M and J," in competition with genuine Mocha and Java coffees, without so qualifying such trade name or brand as to show that the coffee sold was not composed of Mocha and Java coffee:

Held, That the use of such trade name, 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 E. E. Gray Co., hereinafter referred to as respondent, has been and now 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 now and at all times hereinafter mentioned the respondent, E. E. Gray Co., is and was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal factory, office, and place of business in the city of Boston, State of Massachusetts, and that said corporation is now and for more than two years last past has been engaged in the business of purchasing large quantities of coffee in different States of the United States and in foreign countries, and causing the same to be transported from the point

of purchase through other States of the United States to its factory located at Boston, Mass., where said coffee so purchased and transported is now and for more than two years last past has been roasted and packed by respondent and then sold and shipped by respondent to purchasers in various States and Territories of the United States and in the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in direct competition with other persons, firms, copartnerships and corporations engaged in the purchase and sale of coffee, respondent is now and for more than two years last past has been engaged in purchasing, roasting, packing, selling, and shipping from its factory in Boston, Mass., to purchasers in various States and Territories of the United States and in the District of Columbia, certain grades, blends, or mixtures of coffee composed of what are generally known as "Santos" coffee and "Columbia" coffee, which grades, blends, or mixtures respondent is now and for more than two years last past has been packing, selling and shipping to purchasers in various States and Territories of the United States and in the District of Columbia under the trade name, trade-mark, or brand "M & J" coffee; that after such grades, blends, or mixtures of "Santos" coffee and "Columbia" coffee are roasted and packed under the trade name, trade-mark, or brand "M & J" coffee, they are continuously moved to, from, and among the other States of the United States, and there is continuously and has been at all times hereinafter mentioned, a constant current of trade in commerce in said coffee between and among the various States of the United States, and especially to and through the city of Boston, State of Massachusetts, and therefrom to and through the District of Columbia.

PAR. 3. That the aforesaid trade name, trade-mark, or brand "M & J" coffee, so used by respondent in the sale of coffee composed of Santos and Columbia coffees, is now and for more than two years last past has been used by the respondent company with the intent and purpose of confusing and deceiving and misleading the public into the belief that the said coffee so sold under the said brand, trade name, or

trade-mark was and is composed wholly of Mocha and Java coffees and that the natural result of the use of said brand, trade name, or trade-mark was and is to confuse, mislead, and deceive purchasers thereof and the public into the belief that said coffee so sold under said trade name, trade-mark, or brand is Mocha and Java coffees and that the use of said trade name, trade-mark, or brand does deceive purchasers thereof and the public into the belief that said coffee so sold under said trade name, trade-mark, or brand "M & J" coffee is Mocha and Java.

PAR. 4. That the respondent is now and for more than two years last past has been wrongfully using the aforesaid trade name, trade-mark, or brand "M & J" coffee with the purpose, intent, and effect of suppressing and stifling competition in the sale of Mocha and Java coffees in interstate commerce.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein in which it is alleged that it had reason to believe that the above-named respondent, E. E. Gray 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 this respect will be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by Barry & Bucknam, its attorneys, duly authorized and empowered 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 it being desirous to bring the matter to a conclusion as expeditiously as possible, an agreed statement of facts was entered into, 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 to be taken in

lieu of testimony and upon the same shall forthwith make and enter its report, stating its findings as to the facts and its conclusion 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 conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, E. E. Gray Co., 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 Massachusetts, having its principal office and place of business located at the city of Boston in said State.

PAR. 2. That the respondent, E. E. Gray Co., is now and for more than two years last past has been engaged in the business of purchasing, roasting, packing, selling, and shipping generally in commerce throughout the States of the United States, Territories thereof, and the District of Columbia, certain grades, blends, and mixtures of coffee, composed of "Santos" and "Columbian" coffee, the same being packed and sold under the trade name, trade-mark, or brand "M & J" coffee in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That the aforesaid trade name, trade-mark, or brand "M & J" as applied and so used by respondent in the sale of coffee composed of "Santos" and "Columbian" coffee does confuse, deceive, and mislead the public into the belief that the said coffee so sold under the said brand, trade name or trade-mark, is composed wholly of Mocha and Java coffees and that the natural result of the use of said brand, trade name, or trade-mark is to confuse, mislead, and deceive purchasers thereof and the public into the belief that the said coffee so sold under the said trade name, trade-mark, or brand is Mocha and Java coffees and that the use of the said trade name, trade-mark, or brand does deceive purchasers thereof and the public into the belief that the said coffee so sold under the said trade name, trade mark, or brand "M & J" is Mocha and Java coffee.

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts is under the circumstances therein set forth an unfair method 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 by Barry & Bucknam, its attorneys, duly authorized and empowered to act in the premises and having filed its answer admitting certain of the matters and things alleged and contained therein and denying others and having entered into an agreed statement of facts 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, and the Commission having made and filed its report containing its findings as to the facts and its conclusion 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 thereof. Now, therefore,

It is ordered, that the respondent, E. E. Gray Co., of the city of Boston, State of Massachusetts, and its officers, directors, agents, servants, and employees cease and desist from employing, using or applying the trade name, trade-mark, or brand "M & J" in the sale and advertising of coffee composed of "Santos" and "Columbian" coffees or any other grades of coffee (except Mocha and Java) unless such trade name, trade-mark, or brand "M & J" is so qualified as to show that the coffee sold under said trade name, trade-mark, or brand is not composed of Mocha and Java coffees. Such qualifying words shall be set forth dis-

tinctly, definitely, and clearly, so that the natural result of the use of the said brand, trade name, or trade-mark will not confuse, mislead, and deceive purchasers thereof and the public into the belief that the said coffee so sold under the said trade name, trade-mark, or brand is Mocha and Java coffees.

**FEDERAL TRADE COMMISSION *v.* AMERICAN
AGRICULTURAL CHEMICAL CO. AND THE
BROWN CO. (INC.)**

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF ALLEGED VIOLATION OF SECTION 7 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 79.—October 8, 1918.

SYLLABUS.

Where manufacturers offered to purchase, and purchased, raw materials used in the manufacture of their products at prices unwarranted by trade conditions and so high as to be prohibitive to small competitors in certain areas, such prices being calculated, designed, and tending to destroy such small competitors, whereby competition in bidding for such raw materials was to be eliminated; and

Where a manufacturer willfully caused its trucks to collide with automobiles of its competitors which were following such trucks for the purpose of spying upon its business and customers, such collisions being calculated and designed to damage and damaging such automobiles as to hinder, delay, and embarrass said competitors in their business;

Held, That such acts constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

I. The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the American Agricultural Chemical Co. and the Brown Co., hereinafter referred to as the respondents, have been and are 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, American Agricultural Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at the city of New York, in the State of New York, and that the respondent, The Brown Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at the city of Trenton, in the State of New Jersey; that these respondents are now and have been at all times hereinafter mentioned engaged in the business of manufacturing fertilizer and refining animal fats and selling their products throughout the States and Territories of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business, respondents purchase large amounts of raw materials in different States of the United States, and cause the same to be transported through other States to their factories where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States and Territories of the United States and the District of Columbia; that after such products are so manufactured, they are continuously moved to, from and among other States of the United States, and there is continuously and has been at all times hereinafter mentioned, a constant current of trade in commerce in said products between and among the various States of the United States, and especially to and through the cities of New York, State of New York, and Trenton, State of New Jersey, and therefrom to and through other States of the United States.

PAR. 3. That the respondents, American Agricultural Chemical Co. and The Brown Co., with the purpose, intent, and effect of stifling and suppressing competition in the

manufacture and sale of their products in interstate commerce, for more than one year last past, while conducting their business generally at a profit, have, in certain local areas, purchased and offered to purchase raw materials necessary in the manufacture of their product at and for prices unwarranted by trade conditions and so high as to be prohibitive to small competitors in such areas; that such prices were calculated and designed to, and did, punish certain competitors in such areas who refused to become a party to a working arrangement offered by respondents to their competitors generally whereby competition in bidding for such raw materials was to be eliminated.

PAR. 4. That the respondents, through and by their agents, servants, and employees, have interfered with the business of certain of their competitors by willfully causing certain of respondents' trucks to collide with automobiles owned and operated by said competitors; that such interference was calculated and designed to, and did, so damage the machines of the competitors as to hinder, delay, and embarrass said competitors in the conduct of their business.

II. And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the American Agricultural Chemical Co., hereinafter referred to as respondent, has been and is violating the provisions of section 7 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," issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, American Agricultural Chemical Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located in the city of New York, State of New York, and that The Brown Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at the city of Trenton, State of New Jersey, and both of said corporations for many years have been, and still are, engaged in the business of manufacturing fertilizer and re-

fining animal fats and selling their products throughout the States and Territories of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That for several years last past the said corporations, in the conduct of their business, have and still do purchase large amounts of raw materials in different States of the United States and cause the same to be transported through other States to their factories where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States and Territories of the United States and the District of Columbia; that after such products are so manufactured, they are continuously moved to, from, and among other States of the United States and there is continuously and has been at all times herein-after mentioned, a constant current of trade in commerce in said products between and among the various States of the United States and especially to and through the cities of New York, State of New York, and Trenton, State of New Jersey, and therefrom to and through other States of the United States.

PAR. 3. That the respondent, American Agricultural Chemical Co., a corporation engaged in commerce as aforesaid, did, during the year 1917, acquire the whole of the stock of the said, The Brown Co., a corporation also engaged in commerce as aforesaid, and that the said respondent, American Agricultural Chemical Co., ever since the time of said acquisition of said stock, has owned and still does own, the whole of the stock of the said The Brown Co., and that the effect of such acquisition may be to substantially lessen competition between the respondent, American Agricultural Chemical Co., and the said The Brown Co., or to restrain such commerce aforesaid in certain sections and communities or tend to create a monopoly in such line of commerce.

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 respondents have been

and are 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 Federal Trade Commission in the said complaint having alleged that it had reason to believe from a preliminary investigation made by it, that The American Agricultural Chemical Co., respondent, has been, and is violating the provisions of section 7 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, The American Agricultural Chemical Co., having entered its appearance by Gifford, Hobbs & Beard, its attorneys, and having filed its answer admitting certain of the matters alleged and set forth in the complaint and denying others therein contained, 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 conclusions, and to enter its order disposing of this proceeding, without the introduction of testimony in support of the same, said respondent, The American Agricultural Chemical Co., forever waiving and relinquishing any and all right to the introduction of such testimony; and The Brown Co. (Inc.) (in the complaint designated as The Brown Co.), having entered its appearance by Gifford, Hobbs & Beard, its attorneys, and having filed its answer admitting certain of the matters alleged and set forth in the complaint, and denying others therein contained, 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 conclusions, and to enter its order disposing of this proceeding, without the introduction of testimony in support of the same, said respondent,

The Brown Co. (Inc.), forever waiving and relinquishing any and all right to the introduction of such testimony:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The American Agricultural Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located in the State of Connecticut, but with an office and place of business located in the city of New York and State of New York, and that the respondent, The Brown Co. (Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located in the city of Trenton, in the State of New Jersey; that the respondent, The American Agricultural Chemical Co., is now and has been at all times hereinafter mentioned engaged in the business of manufacturing fertilizer and refining animal fats and selling its products throughout the States of the United States and in the District of Columbia, but not in any of the Territories of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; and that the respondent, The Brown Co. (Inc.), is now and has been at all times hereinafter mentioned engaged in the business of refining animal fats and selling its products throughout the States of the United States, but not in any of the Territories of the United States nor in the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business, respondent, The American Agricultural Chemical Co., purchases large amounts of raw materials in the States of New York and Pennsylvania, for its rendering business, but no purchases of such raw materials are made in other States direct by said The American Agricultural Chemical Co., respondent; that said material so purchased direct by The American Agricultural Chemical Co., respondent, are transported from the point of purchase to its plants located in the State of New York, where they are made or manufactured into

the finished product and then sold and shipped to purchasers in various States and in the District of Columbia, but not in any of the Territories of the United States; that after such products are so manufactured they, or part thereof, are continuously moved to, from and among other States of the United States, and there has been at all times hereinafter mentioned a constant current of trade in commerce in said products between and among various States of the United States, and especially to and through the city of New York and other cities of the State of New York, and therefrom to and through other States of the United States.

PAR. 3. That in the conduct of its business The Brown Co. (Inc.), respondent, purchases large amounts of raw materials in the States of New Jersey and Pennsylvania and causes the same to be transported from the points of purchase to its factories in the city of Trenton, N. J., and in the city of Philadelphia, Pa., where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States of the United States, but not in any of the Territories of the United States nor in the District of Columbia; that after such products are so manufactured they are continuously moved to, from and among the State of New Jersey and the State of Pennsylvania and various other States of the United States, but not in any of the Territories of the United States, nor in the District of Columbia, and that there is continuously and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States of the United States, and especially to and through the city of Trenton, State of New Jersey, and city of Philadelphia, State of Pennsylvania, and therefrom to and through various other States of the United States, but not in any of the Territories of the United States, nor in the District of Columbia.

PAR. 4. That the respondent, The American Agricultural Chemical Co., and The Brown Co. (Inc.), with the purpose, intent, and effect of suppressing competition in the manufacture and sale of their products in interstate commerce for more than one year last past, while conducting their business

generally at a profit, have in certain local areas, particularly in the city of Philadelphia, State of Pennsylvania, and in Atlantic City, State of New Jersey, purchased and offered to purchase raw materials necessary in the manufacture of their rendering products at and for prices unwarranted by trade conditions and so high as to be prohibitive to small competitors in such areas; that such prohibitive prices were calculated and designed to and did tend to destroy certain small competitors in such areas, particularly in Philadelphia and Atlantic City, aforesaid, whereby competition in bidding for such raw materials was to be eliminated.

PAR. 5. That respondent, The Brown Co. (Inc.), through and by its agents, servants, and employees, has willfully caused certain of its trucks to collide with automobiles owned and operated by said competitors at times when the automobiles of said competitors were following trucks of the said respondents, The Brown Co. (Inc.), for the purpose of spying upon the business and customers of The Brown Co. (Inc.); that such collisions were calculated and designed to and did so damage the machines of the competitors as to hinder, delay, and embarrass said competitors in the conduct of their business.

PAR. 6. That the respondent, The American Agricultural Chemical Co., a corporation engaged in commerce as aforesaid, did during the year 1917 acquire the whole of the capital stock of the said The Brown Co. (Inc.), a corporation also engaged in commerce as aforesaid, and that the said respondent, The American Agricultural Chemical Co., ever since the time of its said acquisition of said stock has owned and still does own the whole of the capital stock of the said The Brown Co. (Inc.); that prior to its acquisition as aforesaid of the stock of The Brown Co. (Inc.) the respondent, The American Agricultural Chemical Co., was not engaged in the city of Trenton, State of New Jersey, nor in the city of Philadelphia, State of Pennsylvania, in the collection or purchase direct of raw materials in the cities of Trenton, N. J., or in Philadelphia, Pa.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraphs 4 and 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 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, The American Agricultural Chemical Co., having entered its appearance by Gifford, Hobbs & Beard, its attorneys, and having filed its answer and agreed statement of facts wherein it is stipulated and agreed 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 conclusions, and to enter its order disposing of its proceeding without the introduction of testimony in support of the same, said respondent, The American Agricultural Chemical Co. forever waiving and relinquishing any and all right to the introduction of such testimony; and The Brown Co. (Inc.), respondent (in the complaint designated as Brown Co.), having entered its appearance by Gifford, Hobbs & Beard, its attorneys, and having filed its answer and agreed statement of facts wherein it is stipulated and agreed 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 conclusions, and to enter its order disposing of its proceeding without the introduction of testimony in support of the same, said respondent, The Brown Co., forever waiving and relinquishing any and all right to the introduction of such testimony; and the Commission having made and filed its report stating its findings as to the facts and its conclusions, that the respondents, The American Agricultural Chemical Co., and The Brown Co. (Inc.), have 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 respondents, The American Agricultural Chemical Co., and The Brown Co. (Inc.), and their respective officers, directors, agents, servants, and employees, cease and desist from purchasing and offering to purchase raw materials in the manufacture of their rendering products at and for prices unwarranted by trade conditions and so high as to be prohibitive to small competitors, particularly in the city of Philadelphia, State of Pennsylvania, and in Atlantic City, State of New Jersey; and Now, therefore,

It is further ordered, That the respondent, The Brown Co. (Inc.), and its officers, directors, agents, servants, and employees, cease and desist from causing any of the trucks of said respondent to collide with automobiles owned and operated by any competitor of said respondent at times when the automobiles of such competitor may be following the trucks of the said respondent, The Brown Co. (Inc.), for the purpose of spying upon the business and customers of The Brown Co. (Inc.).

FEDERAL TRADE COMMISSION *v.* GEOGRAPHICAL PUBLISHING CO.

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

Docket No. 174.—October 8, 1918.

SYLLABUS.

Where a publisher of maps—

(a) copied and appropriated the context, subject matter, statements,