

FEDERAL TRADE COMMISSION

2.

WAYNE OIL TANK & PUMP CO.

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 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 129.—October 18, 1918.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of outfits and devices for the storage, handling, and automatic measuring of oils, gasoline and other volatile liquids—

I.

- (a) Published and circulated, for the purpose of hindering, embarrassing, and restraining a competitor in the conduct of its business, copies of an item from a newspaper setting forth that such competitor had been found guilty of engaging in a conspiracy in violation of the Sherman law, and that an injunctive decree had been entered against it in the United States district court;
 - (b) Induced the cancellation or rescission of orders and contracts and of intended orders and contracts by customers of competitors;
 - (c) Enticed away salesmen and sales agents of a competitor, for the purpose of injuring said competitor in the conduct of its business, disorganizing its sales force, and eliminating it as a competitor;
 - (d) Represented to its own customers and to customers of competitors, falsely and erroneously, with full knowledge of such falsehood and error, and for the purpose of misleading the public and injuring competitors—
 - (1) That certain outfits and devices manufactured and sold by a competitor were manufactured and sold by it; and, that certain outfits and devices manufactured and sold by it were manufactured and sold by a competitor;
 - (2) That its sales agents and other employees were the sales agents and employees of a competitor; and, that the sales agents and other employees of a competitor were its sales agents and employees; and
 - (3) That it and a competitor were one and the same concern:
- Held:** That such acts constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

II.

(e) Discriminated in price between different purchasers of its commodities in such a manner that the effect of such discrimination might be to substantially lessen competition and tend to create a monopoly:

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

COMPLAINT.

I. The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Wayne Oil Tank & Pump Co., hereinafter referred to as respondent, has been and is, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of 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, Wayne Oil Tank & Pump Co., is now, and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office and place of business located at the city of Fort Wayne, State of Indiana, now and for more than two years last past, engaged in the business of manufacturing and selling automatic measuring oil pumps, tanks, and other outfits and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and that at all times hereinafter mentioned this respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; that William P. Griffin, Henry C. Berghoff, Ralph F. Diserens, and Clayton O. Griffin, all of the city of Fort Wayne, State of Indiana, are the president, vice president, treasurer and general mana-

ger, and secretary, respectively, of the respondent, Wayne Oil Tank & Pump Co., and that J. Gerard Rodman of the city of Memphis, State of Tennessee, Edward P. Hayes, of the city of Wichita, State of Kansas, and R. Tirbue Lawrence, of the city of Minneapolis, State of Minnesota, are selling agents of the said respondent company.

PAR. 2. That the respondent, Wayne Oil Tank & Pump Co., in the conduct of its business, sells large numbers of its outfits or devices throughout the various States and Territories of the United States, the District of Columbia, and foreign countries; that this respondent manufactures such devices or outfits so sold by it in its factory located at Fort Wayne, State of Indiana, 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 and sold and shipped to the purchasers thereof as aforesaid; that after such outfits or devices are so manufactured 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 in commerce in said devices between and among the various States and Territories of the United States and the District of Columbia, and especially from other States and Territories of the United States and the District of Columbia to and through the city of Fort Wayne, State of Indiana, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the respondent, for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce, has published and circulated in various States of the United States and Canada a printed clipping or circular purporting to be a copy of a news item appearing in the Indianapolis News on the 10th day of June, A. D. 1915, wherein it is reported and set forth that a certain competitor of the respondent had

been found guilty of engaging in a combination in violation of the Sherman Anti-Trust Act, and that an injunctive decree had been entered against such competitor by the judge of the United States District Court for the District of Indiana; that the publishing and circulating of such news item was calculated, designed to, and did embarrass, harrass, and restrain respondent's competitor in the conduct of its business.

PAR. 4. That the respondent, for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce, has, by divers means and methods, induced and procured, and attempted to induce and procure, a large number of its customers and prospective customers, and the customers and prospective customers of its competitors, to cancel and rescind orders and contracts for the purchase of pumps, tanks, and other outfits placed and made with competitors of the respondent.

PAR. 5. That the respondent, for more than two years last past, with the purpose, intent, and effect of annoying, embarrassing, and restraining its competitors in the conduct of their business, has systematically and on a large scale induced and enticed and attempted to induce and entice salesmen and employees of its competitors to leave their employment by offering and giving such salesmen and employees employment with the respondent.

PAR. 6. That the respondent, for more than two years last past, by and through its agents, servants, and employees has represented, stated, and held out to customers and prospective customers that—

(a) Certain of the outfits and devices manufactured and sold by its competitors were manufactured and sold by the respondent, Wayne Oil Tank & Pump Co.;

(b) Certain of the outfits and devices manufactured and sold by the respondent, Wayne Oil Tank & Pump Co., were manufactured and sold by competitors of the respondent;

(c) Certain of the agents and salesmen employed by its competitors were the agents and salesmen of the respondent, Wayne Oil Tank & Pump Co.;

(d) A certain competitor company was one and the same company as the respondent, Wayne Oil Tank & Pump Co.;

(e) The products of its competitors were inferior, cheap in quality, no good, and would not properly operate;

(f) Certain of the products manufactured and sold by its competitors had been condemned;

(g) The offices and plant of a certain competitor had been closed by an order of court; and that such statements and representations were false, misleading, and defamatory, and calculated and designed to deceive the trade and general public.

PAR. 7. That the respondent, for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce, by and through its representatives, agents, servants, and employees has caused certain of the outfits, equipment, and devices manufactured and sold by its competitors, to be mutilated, damaged, and broken.

II. The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Wayne Oil Tank & Pump Co., hereinafter referred to as respondent, has violated, 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," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Wayne Oil Tank & Pump Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Fort Wayne, State of Indiana, now and at all times hereinafter mentioned, engaged in the business of manufacturing and selling automatic measuring oil pumps, tanks and other outfits, and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, generally in commerce,

among the several States and Territories of the United States and foreign countries, and that William P. Griffin, Henry C. Berghoff, Ralph E. Diserens, Clayton O. Griffin, J. Gerard Rodman, Edward P. Hayes, and R. Tirbue Lawrence are officers and agents of the said company, as more fully alleged and set forth in paragraphs 1 and 2 of Section I of this complaint.

PAR. 2. That the respondent, for several years last past, in the course of interstate commerce in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of pumps, tanks, and outfits for the storage and handling of inflammable liquids, which products are sold for use, consumption or resale within the United States or the Territories thereof, and the District of Columbia, and the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Wayne Oil Tank & Pump Co., had been and then was 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 then was 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 those respects would be to the interest of the public, and fully stating its charges thereupon; and the respondent having entered its appearance by Hosea, Knight & Phares, 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 its order disposing of this proceeding, without the introduction of testimony in support of the same, and the respondent having waived any and all rights to the introduction of such testimony, the Commission now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Wayne Oil Tank & Pump Co., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Fort Wayne, State of Indiana, now and for more than two years last past engaged in the business of manufacturing and selling automatic measuring oil pumps, tanks, and other outfits and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and that at all times hereinafter mentioned respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Wayne Oil Tank & Pump Co., in the conduct of its business sells large numbers of its outfits or devices throughout the various States and Territories of the United States, the District of Columbia, and foreign countries; that respondent manufactures such devices or outfits so sold by it in its factory located in the city of Fort Wayne, State of Indiana, and purchases and enters into contracts to purchase the necessary materials needed therefor in the different States and Territories of the United States, causing the same to be transported to its factories where they are made into the finished products and sold and shipped to the purchasers thereof as aforesaid; that after such outfits or devices are so manufactured

they are continuously shipped 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 herein mentioned, a constant current of trade in commerce of said devices or outfits between and among the various States and Territories of the United States and the District of Columbia, and especially from other States and Territories of the United States and the District of Columbia to and through the city of Fort Wayne, State of Indiana, and therefrom to and through other States and Territories of the United States, and the District of Columbia.

PAR. 3. That the respondent, Wayne Oil Tank & Pump Co., for the purpose of embarrassing, harassing, and restraining one of the respondent's competitors in the conduct of its business has for more than two years last past published and circulated in the various States of the United States, the Territories thereof and in Canada, a printed clipping or circular which was a copy of a news item which appeared in the Indianapolis News on the 10th day of June, A. D. 1915, wherein it was reported and set forth by the publishers of that paper that the above-referred-to-competitor of respondent had been found guilty of engaging in a combination in violation of the Sherman Anti-Trust Act and that an injunctive decree has been entered against such competitor by the judge of the United States District Court for the District of Indiana.

PAR. 4. That the respondent, Wayne Oil Tank & Pump Co., through the acts of numerous of its sales agents, who were acting within the scope of their employment, for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of automatic measuring pumps, tanks, and other outfits and devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, has by divers means and methods induced and procured and has attempted to induce and procure a large number of customers and prospective customers of respondent and a large number of customers and prospective customers or competitors of respondent, to cancel and rescind orders and con-

tracts for the purchase in interstate commerce of pumps, tanks, and other outfits, and patented devices for the storage and automatic measuring of oils, gasoline, and other volatile liquids placed or intended to be placed with competitors of respondent.

PAR. 5. That the respondent, Wayne Oil Tank & Pump Co., through numerous of its district managers, while engaged within the scope of their employment, has within two years last past employed and attempted to employ salesmen and sales agents of a competitor of respondent, well knowing that such salesmen and sales agents were then in the employ of such competitor; that such employing and attempts to employ made by respondent through such district managers, were not preceded by applications from such salesmen and sales agents for employment with respondent; that such employing and attempts to employ such salesmen and sales agents as aforesaid, were done for the purpose of injuring said competitor of respondent in the conduct of its business, for the purpose of disorganizing its sales force, and for the purpose of eliminating it as a competitor of respondent.

PAR. 6. That respondent, Wayne Oil Tank & Pump Co., through certain of its sales agents, has for more than two years last past, for the purpose of misleading the public and for the purpose of stifling and suppressing the business of a certain competitor of respondent, on numerous occasions, falsely and erroneously stated to certain customers and prospective customers of respondent and to certain customers and prospective customers of a competitor of respondent that certain of the outfits and devices manufactured and sold by such competitor of respondent were manufactured and sold by respondent; that certain of the outfits and devices manufactured and sold by respondent were manufactured and sold by such competitor of respondent; that the sales agents of the respondent were the sales agents of such competitor of respondent; and that such competitor of respondent was one and the same company as respondent; and that all such statements and representations were known by respondent to be false and misleading and were calculated and designed to deceive the trade and general public.

PAR. 7. That the respondent, Wayne Oil Tank & Pump 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 pumps, tanks, and outfits for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, which pumps, tanks, and outfits were sold by respondent for use, consumption or resale within the United States, the Territories thereof, and the District of Columbia, and that the effect of such discrimination may be to substantially lessen competition and tend to create a monopoly.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 3, 4, 5, and 6, and each and all of them, are, under the circumstances set forth in the above findings as to the facts, 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 the acts of the respondent as set forth in paragraph 7 in the above findings as to the facts, are, under the circumstances therein related, in violation 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."

ORDER TO CEASE AND DESIST.

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, Wayne Oil Tank & Pump Co., had been and then was 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 had been and then was violating 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," and that a proceeding by it in those respects would be to the interest of the public, and fully stating its charges thereon, and the respondent having entered its appearance by Hosea, Knight & Phares, 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 on such agreed statement of facts to make and enter its report stating its findings as to the facts and conclusions, and its order to dispose of this proceeding, without the introduction of testimony in support of the same, and the respondent having waived any and all rights to the introduction of such testimony, and the Commission having made its report and findings as to the facts, and conclusions, upon the statement of facts as agreed upon, and having concluded upon such findings as to the facts that the respondent has been guilty of 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 violated 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 report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondents, Wayne Oil Tank & Pump Co., of Fort Wayne, State of Indiana, and its officers, directors, agents, servants, and employees, cease and desist from—

1. Embarrassing, harassing, or restraining, or attempting to embarrass, harass, or restrain, any of its competitors in the conduct of its business by publishing or circulating in any of the various States of the United States, or the Territories thereof, or the District of Columbia, a printed clipping or circular which is a copy of a news item which appeared in the Indianapolis News on the 10th day of June,

A. D. 1915, wherein it is reported and set forth that a certain competitor of respondent had been found guilty of engaging in a combination in violation of the Sherman Anti-Trust Act, and that an injunctive decree had been entered against such competitor by a judge of United States District Court of the District of Indiana; or by publishing or circulating in a similar manner, any printed clipping or circular similar in form, purport, or effect, regarding any competitor of the respondent.

2. Publishing or circulating in any of the various States of the United States, or the Territories thereof, or the District of Columbia, a printed clipping or circular which is a copy of a news item which appeared in the Indianapolis News on the 10th day of June, A. D. 1915, wherein it is reported and set forth that a certain competitor of respondent had been found guilty of engaging in a combination in violation of the Sherman Anti-Trust Act, and that an injunctive decree had been entered against such competitor by a judge of the United States District Court of the District of Indiana; or publishing or circulating in a similar manner any printed clipping or circular similar in form, purport or effect, regarding any competitor of the respondent.

3. Stifling or suppressing competition, or attempting to stifle or suppress competition in interstate commerce in the manufacture or sale of automatic measuring pumps, tanks, or other outfits or devices for the storage, handling or automatic measuring of oils, gasoline, or other volatile liquids, or any article manufactured by respondent's competitors, by inducing or procuring, or attempting to induce and procure, by any means or methods, the cancellation or rescission of any order or contract of any customer or prospective customer of any of respondent's competitors for the purchase of such pumps, tanks, or other outfits or patented devices for the storage or automatic measuring of oils, gasoline or other volatile liquids, or any other products manufactured by any of its competitors in competition with respondent.

4. Inducing or procuring, or attempting to induce or procure, by any means or methods, the cancellation or rescission of any order or contract of any customer or prospective customer of any of respondent's competitors for the

purchase in interstate commerce of such pumps, tanks, or other outfits or patented devices for the storage or automatic measuring of oils, gasoline, or other volatile liquids, or any other products manufactured by any of its competitors in competition with respondent.

5. Injuring, or attempting to injure any competitor of respondent in the conduct of its business; disorganizing, or attempting to disorganize the sales force of any such competitor, or eliminating any such competitor, or attempting to eliminate it as a competitor, by, in either case, employing or attempting to employ while engaged in interstate commerce any sales agent or agents or other employees of any such competitors.

6. Defrauding or misleading, or attempting to defraud or mislead, the public, or stifling or suppressing, or attempting to stifle or suppress, the business of any competitor in the course of its trade in interstate commerce by falsely or erroneously stating to any customer or prospective customer of respondent, or any customer or prospective customer of any competitor of respondent, that any of the outfits or devices manufactured or sold by any such competitor of respondent is manufactured or sold by respondent, or, that any outfits or devices manufactured or sold by respondent is manufactured or sold by any such competitor of respondent; or, that any sales agent, or other employee, of the respondent is the sales agent or employee of any competitor of respondent, or, that any sales agent, or other employee, of any competitor of respondent is the sales agent or employee of respondent; or, that any of the competitors of respondent is one and the same company as respondent; or, by doing any other act of similar purport, character, form, or effect.

7. Falsely and erroneously, with knowledge of the falsity and error thereof, stating or representing to any customer or prospective customer of respondent, or any customer or prospective customer of any competitor of respondent, in the course of its trade in interstate commerce, that any of the outfits or devices manufactured or sold by any such competitor of respondent is manufactured or sold by respondent, or, that any of the outfits or devices manufactured or sold by

respondent is manufactured or sold by any such competitor of respondent; or, that any sales agent, or other employee, of the respondent is the sales agent or employee of any such competitor of respondent, or, that any sales agent, or other employee, of any competitor of respondent is the sales agent or employee of respondent; or, that any one of the competitors of respondent is one and the same company as respondent; or, falsely or erroneously, with knowledge of the falsity or error thereof; stating or representing to any customer or prospective customer of respondent or customer or prospective customer or a competitor in the course of its trade in interstate commerce, any other state of affairs with respect to respondent and any of its competitors, of similar purport, character, form, or effect.

8. Discriminating in price in the sale of interstate commerce of pumps, tanks, or outfits for the storage, handling, or automatic measuring of oils, gasoline, or other volatile liquids, or any other goods manufactured or sold by respondent, between different purchasers of such pumps, tanks, or outfits for the storage, handling, or automatic measuring of oils, gasoline, or other volatile liquids, or other goods manufactured or sold by respondent, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly, or where said discrimination is not based on differences in grade, quality or quantity of the commodity sold, or does not merely make due allowance for difference in the cost of selling or transporting the same, or is not made in good faith to meet competition in the same or different communities.