

FEDERAL TRADE COMMISSION *v.* BALTIMORE
HUB-WHEEL & MANUFACTURING CO., AND
THE HOLLAND-BADEN-RAMSEY CO.

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

Docket No. 197.—April 9, 1919.

SYLLABUS.

Where two jobbers of automobile accessories, with the intent, purpose, and effect of embarrassing, harrassing, hampering, and obstructing retail competitors, threatened a manufacturer of such accessories that, unless it ceased allowing to such retailers the same rate of discount as it allowed to them, they would cease to purchase from it:

Held, That such threats, 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 Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey 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 respondents, Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey Co., are now and were at all times hereinafter mentioned corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland, having each its principal office and place of business in the city of Baltimore, in said State, and are now and for many years last past have been engaged in the purchase and sale of automobile accessories.

PAR. 2. That each of the respondents in the conduct of its business, enters into contracts of purchase for automobile accessories from manufacturers and others, in the different States and Territories of the United States and the District of Columbia, causing the same to be transported to its place of business in Baltimore, Md., whence such accessories are sold by respondents and shipped to the purchasers thereof; that as a part of the transactions of which said purchases and sales are also a part, such automobile accessories are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and to foreign countries, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said automobile accessories between and among the various States and Territories of the United States, the District of Columbia, and to foreign countries.

PAR. 3. That the respondents, Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey Co., are, and for more than two years last past, have been wrongfully and unlawfully engaged in a combination or conspiracy among themselves unfairly to hamper and obstruct competitors engaged in interstate commerce in automobile accessories, by inducing and compelling or attempting to induce and compel manufacturers of automobile accessories, to refuse to recognize such competitors as jobbers or wholesalers entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms and for that reason to refuse to sell them as such in interstate commerce, thus forcing them to buy at prices higher than those made by manufacturers to jobbers.

PAR. 4. That each of the respondents, is, and for more than two years last past has been wrongfully and unlawfully hampering and obstructing or attempting to hamper and obstruct certain competitors, engaged in interstate commerce, by inducing and compelling or attempting to induce and compel manufacturers of automobile accessories to refuse to recognize such competitors as jobbers or wholesalers entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms, and for that reason to refuse to sell them as such

in interstate commerce, thus forcing them to buy at prices higher than those made by manufacturers to jobbers.

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 has reason to believe that the above-named respondents, Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey Co., had been and then were 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 therein; and the respondents having entered their appearance by J. Abner Saylor, their attorney, and having filed their answers 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 named herein as the Baltimore Hub-Wheel & Manufacturing Co. is in fact Robert C. Loock, trading as the Baltimore Hub-Wheel & Manufacturing Co., of which Robert C. Loock is sole proprietor; that the respondent, Holland-Baden-Ramsey 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 Maryland; that each respondent has its principal office and place of business in

the city of Baltimore in said State, and is now and for several years last past has been engaged in the purchase and sale of automobile accessories.

PAR. 2. That each of the respondents, Robert C. Loock, trading as Baltimore Hub-Wheel & Manufacturing Co., and the Holland-Baden-Ramsey Co., in the conduct of its business, enters into contracts of purchase of automobile accessories from manufacturers and others in the different States and Territories of the United States and the District of Columbia, causing the same to be transported to its place of business in Baltimore, Md., whence such accessories are sold by respondents and shipped to purchasers thereof; that as a part of the transaction of which said purchases and sales are also a part, such automobile accessories 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 such automobile accessories between and among the various States and Territories of the United States and the District of Columbia.

PAR. 3. That each of the respondents, Robert C. Loock, trading as Baltimore Hub-Wheel & Manufacturing Co., and the Holland-Baden-Ramsey Co., in the conduct of its business as a jobber in automobile accessories in interstate commerce, as hereinbefore more particularly described, during the past two years has corresponded with a manufacturer of automobile accessories who sold such manufactured goods to jobbers and some retailers, allowing the same per cent of discount to each, and informed such manufacturer that unless it ceased allowing the same discount to said retailers as it allowed to respondent as a jobber, it would cease to purchase such automobile accessories from the said manufacturer, and that each respondent orally advised a representative of the aforementioned manufacturer that unless it ceased to allow the same discount to certain retailers as it allowed to the respondent as a jobber, it would cease to purchase such automobile accessories from the said manufacturer, and that the intent, purpose, and effect of the aforesaid oral representations and the aforesaid letters was

to compel the said manufacturer to cease extending the same discount to the aforesaid retailers that it extended to the respondents.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraph 3, 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."

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 respondents, Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey Co., had been, and then were 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 therein; and the respondents having entered their appearance by J. Abner Sayler, their attorney, and having filed their answers 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, 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, Balti-

more Hub-Wheel & Manufacturing Co., is in fact Robert C. Loock, trading as Baltimore Hub-Wheel & Manufacturing Co., and that the respondents have 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," which report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondents, Robert C. Loock, trading as Baltimore Hub-Wheel & Manufacturing Co., and the Holland-Baden-Ramsey Co., cease and desist from—

1. Embarrassing, harassing, hampering, or obstructing competitors engaged in interstate commerce in automobile accessories, and attempting to embarrass, harass, hamper, or obstruct such competitors, or stifling or suppressing competition or attempting to stifle or suppress competition by inducing and compelling, or attempting to induce and compel manufacturers of automobile accessories to refuse to recognize such competitors as jobbers or wholesalers entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms, or from embarrassing, harassing, hampering, or obstructing competitors engaged in interstate commerce in automobile accessories, or attempting to embarrass, harass, hamper, or obstruct such competitors, or stifling or suppressing such competition, or attempting to stifle or suppress such competition by the use of any means similar in purport and effect to that above set forth.

FEDERAL TRADE COMMISSION *v.* NULOMOLINE CO.

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

Docket No. 29.—April 15, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of invert sugar sirup—

(a) published statements to the effect—

(1) That prior to the beginning of the manufacture of its product, invert sugar was not produced on a commercial scale, because it was

impossible to produce inversion without the use of dangerous and expensive acids, alkalies, or enzymes;

- (2) That it was the only concern that had ever produced an acidless invert sugar on a commercial scale;
- (3) That its product differed fundamentally from all other known invert sugars, in as much as it was not inverted with the usual acids or enzymes nor put through any of the well known processes; and,
- (4) That its product was an acidless invert sugar and that no acid was used in its manufacture;

Whereas invert sugar had been made without the use of expensive and dangerous acids and chemicals, and sold commercially for many years before the corporation began making it; the sugar contained in its product was inverted with citric acid; and the process of making it differed in no material respect from that used by other manufacturers, except that it added a small amount of gum arabic not used by others;

- (b) Falsely claimed to have the exclusive right to, and monopoly of, the manufacture of invert sugar sirup;
- (c) Threatened to institute suits against competitors, and customers of competitors, for the alleged infringement of the process claimed in letters patent, held by it, such threats not being made in good faith, intending to bring such suits, but for the purpose of injuring said competitors and of intimidating them, their agents, customers, and prospective customers;
- (d) Made vague and indefinite threats against competitors, without disclosing the alleged rights claimed to be invaded with sufficient particularity to make it possible to act intelligently in reference thereto;
- (e) Informed a competitor that it was infringing a patent about to be issued; and, after the issuance of the patent, without making any inquiry into the process used by such competitor, threatened to begin suit unless the making of invert sugar was discontinued and the equipment and stock turned over to it, with the result that such competitor, although using a different acid, turned over its equipment and stock at cost and ceased to do further business; and
- (f) Notified a prospective competitor contemplating the manufacture of invert sugar commercially, that if it did so an action would be brought against it, such threats being so vague and indefinite as not to disclose whose alleged rights would be invaded, with the result that such prospective competitor abandoned its preparations and plans to engage in the manufacture of invert sugar;

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 Nulo-

moline Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Nulomoline 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 New York, having its principal office and place of business in the city of New York in said State, and is now, and for nearly two years last past has been, engaged in the manufacture of inverted sugar sirup, generally known in trade as "invert sugar," and in the sale and shipment of such product to persons, corporations, or co-partnerships in other States and Territories of the United States and the District of Columbia under the trade name of "Nulomoline."

PAR. 2. That on the 7th day of February, 1916, one Noah W. Taussig, the president of the respondent, Nulomoline Co., made application to the United States Patent Office for letters patent upon a process of making inverted sugar sirup; that in said application and in affidavit thereafter made by him and which was filed with said application in support thereof the said Taussig stated that he was the original, first, and the sole inventor of said process; that thereafter and on the 25th day of April, 1916, upon the said application and the papers filed therewith letters patent of the United States were issued by the United States Patent Office to the said Noah W. Taussig for a process of making inverted sugar sirup; that the said letters patent were procured by the said Taussig for the use and benefit of the respondent, and that immediately upon the issuance thereof, the said Taussig assigned to the respondent all his right, title, and interest in said letters patent, and the respondent ever since has owned and still does own all right, title, and interest in the said letters patent; and the said Noah W. Taussig at the time of the

making of said application for letters patent was, and ever since has been, and still is, the president of the respondent; that the statements in said application for said letters patent and in said affidavit filed therewith to the effect that the said Taussig was the original, first, and sole inventor of inverted sugar sirup were false, and misleading to the officers of the Government in charge of the administration of the United States Patent Office; that, as a matter of fact, the said Taussig was not the original, first, or sole inventor of inverted sugar sirup as the said Taussig well knew when he made such application and filed said affidavit, and he also knew at the same time, what is a fact, to wit, that the use and existence of said process had been for a long time prior thereto a matter of common knowledge to sugar technologists and to manufacturers in various industries; and that with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of inverted sugar sirup in interstate commerce the respondent ever since the issuance of said letters patent has claimed, and is now claiming, to have the exclusive right to, and monopoly of, the manufacture of inverted sugar sirup, and of the process of manufacturing same, as set forth in said letters patent, and has ever since that time upon numerous occasions threatened, and still does threaten, to institute suit against its competitors and manufacturers of inverted sugar sirup for infringement of its said letters patent.

PAR. 3. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of inverted sugar sirup in interstate commerce, and with the intent and purpose of intimidating its competitors, has upon numerous occasions since the issuance of said letters patent, threatened manufacturers of inverted sugar sirup, and persons preparing to engage in the manufacture of inverted sugar sirup, with suits for infringement of respondent's said letters patent; that when such threats were made respondent had no intention of instituting any such suit, and in fact has not instituted any such suit.

PAR. 4. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing com-

petition in the manufacture and sale of inverted sugar sirup in interstate commerce, has upon numerous occasions since the issuance of said letters patent by it threatened to institute against the customers of its competitors suits for infringing its alleged rights under a certain process patent and because they are dealing in the product of a manufacturer of inverted sugar sirup whom the respondent alleged was wrongfully using a secret process of the respondent in the manufacture thereof.

PAR. 5. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of inverted sugar sirup in interstate commerce, and with the intent and purpose of intimidating customers and prospective customers of its competitors, ever since the issuance of said letters patent, has circulated among the dealers handling the products of its competitors, by means of verbal and written communications, threats that it will institute suits against customers of its competitors, and that such threats were and are couched in such vague, indefinite, and general terms as not to convey any specific character of alleged invasion of the respondent's rights.

PAR. 6. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of inverted sugar sirup, since the issuance of said letters patent has on numerous occasions published and caused to be published in trade papers and other publications false and misleading advertisements, in that it therein represented that in the manufacture of its product, nulomoline, no acids are used, and that the same is not inverted by any of the usual processes.

PAR. 7. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of inverted sugar sirup, has at various times since the issuance of said letters patent to it published and caused to be published in trade papers and other publications, false and misleading advertisements, in that it therein represented that prior to the manufacture and sale of its product, nulomoline,

inverted sugar sirup could not be produced without the use of expensive and dangerous acids, such statements being calculated to lead the trade and general public to believe that all inverted sugar sirups not made by the respondent's process contained dangerous acids.

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, Nulomoline Co., 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 that a proceeding in respect thereto would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance and having duly filed its answer admitting certain of the allegations of the complaint and denying certain others thereof, particularly those alleging that respondent has been and is violating the provisions of the act of Congress above named, and having in addition thereto interposed certain affirmative allegations as a defense which upon motion duly made before the Federal Trade Commission were stricken from respondent's answer, and the Commission having offered testimony in support of the charges of said complaint, and a stipulation having thereafter been duly entered into between the respondent and the Commission, wherein it was agreed that the case of the Federal Trade Commission be closed without the introduction of any further evidence and, without withdrawing any of the denials or defenses contained in its answer, that the respondent waive the taking of any testimony in its behalf in defense in this proceeding and consent to the closing of the case and that the Federal Trade Commission might proceed forthwith to make its findings and order disposing of these proceedings, and 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. The respondent, Nulomoline Co., is a corporation organized under the laws of the State of New York during the year 1910, having its principal office and place of business in the city of New York, and since its organization has been engaged in the manufacture of invert sugar and has made sales and shipments of such products to persons, corporations and copartnerships in other States and Territories of the United States and the District of Columbia, under the trade name of "Nulomoline."

PAR. 2. That Noah W. Taussig, who was then and ever since has been president of the respondent, Nulomoline Co., in the year 1910 sold and delivered to the respondent a certain process for making invert sugar as described in the patent hereinafter mentioned under which process, together with modifications, compounds, derivatives, and variations thereof which respondent claims to have adopted and used, respondent ever since has been and still is engaged in manufacturing and selling in commerce the articles sold by respondent as nulomoline; that nothing in these findings shall be taken to contradict or admit the correctness of the claim of the respondent regarding modifications, compounds, derivatives, and variations.

PAR. 3. That invert sugar is an article well known in commerce and for commercial use is manufactured by dissolving refined cane sugar in water, about 20 per cent of water being contained in the solution, adding a small portion of acid, usually an organic acid such as tartaric, citric, or phosphoric, and heating the solution until the temperature is raised to the point of boiling or thereabouts, and maintaining the temperature at about the point of boiling until the chemical structure of the sugar is so changed that a substantial part of the molecules of sucrose are converted into molecules known in sugar technology as levulose and dextrose, and, if a white or colorless product is desired, then suddenly cooling the solution to prevent discoloration.

PAR. 4. That the chemical action of acid and heat when applied to a solution of refined sugar as described in paragraph 3 has been well known by chemists and sugar technologists for many years. That while it had previously

been known for many years that the action of heat and acid when applied to sugar as above described changed the sugar from a crystallizable sugar to a noncrystallizable sugar, yet the chemical change which caused this alteration in the character of the sugar was not understood until discovered about the year 1830 by a French chemist, Dubrunfaut, who then found that cane sugar was thereby separated or split up into two other sugars, and he named these two sugars "dextrose" and "levulose." That in 1836 another French physicist, Biot, invented an optical instrument known as the "polariscope." Biot found that by placing a tube filled with a solution of cane sugar in the polariscope and passing rays of light through it, the rays of light were refracted and rotated to the right, or "plus," as he called it, and that after treating the sugar with acid as above described that the rotation of the rays of light was to the left, or "minus." The optical properties of the solution after treatment by acid and heat being reversed, he called the treatment the "process of inversion," from which the name "invert sugar" was introduced about the year 1836. About the year 1843 another chemist named Mitscherlich found that inversion of sugar could be accomplished by use of a very small amount of acid, as small as one hundredth of 1 per cent, when the solution was subjected to a high temperature. The acids mentioned by him in connection with this process were inorganic, and powerful organic acids, such as "oxalic" or "phosphoric." Dubrunfaut afterwards discovered, about the year 1856, that by the use of organic acid such as tartaric, oxalic, or phosphoric, to the amount of one hundredth of 1 per cent with relation to the sugar there remained no secondary reaction such as was originally produced by strong mineral acids; that the sugar so treated resulted in a mass of honey-like consistency and that it would be taken for pure white honey. About the year 1885 Herzfeld, who made a study of invert sugar, used a small amount of organic acids, among others, citric and tartaric acid, in water and heated the solution to about 230° to 235° F., and found that by using this high temperature the result produced was very likely to be discolored through the caramelization or de-

composition of the levulose. In a work gotten up by Herzfold and published in 1887 he described the different processes that had been used for manufacturing invert sugar, and the uses of invert sugar in preserving fruits and in the manufacture of wines and for other purposes. The method of Herzfold for the manufacture of invert sugar to be used as artificial honey was to make a solution of sugar with about 23 per cent of water and eleven one-hundredths of 1 per cent of tartaric acid, with relation to the dry weight of sugar and to maintain a boiling temperature until the solution acquired a golden yellow color, this color being required to make the product look like honey. Later it was discovered that this discoloration might be checked as soon as or before it became perceptible by rapidly cooling the sugar solution as soon as inversion should have proceeded sufficiently. The process of rapidly cooling is one of the features covered by the patent issued in 1889 by Great Britain to Dr. Alfred Wohl and Dr. Alexander Kollrepp. This patent mentions the different acids which may be used, specifying the respective proportions and temperatures required to produce inversion of various solutions of sugar. Among the organic acids it mentions citric and tartaric and specified the proportion of the acids which may be used, as 0.045 per cent of tartaric and 0.06 per cent of citric acid, when the solution to be treated was an 80 per cent solution of sugar. The patent specified that with the proportion above named the inversion may be completed by employing a temperature of 100 to 110° C. and digesting the solution for an hour.

PAR. 5. That the respondent has published or caused to be published statements and representations as follows: (a) That nulomoline is the only invert sugar manufactured in the United States; (b) that until about 1910 the artificial manufacture of invert sugar did not get beyond the laboratory, inasmuch as it was found impossible to produce inversion without the use of dangerous and expensive acids, alkalis, or enzymes; (c) that the Nulomoline Co. is the only concern that has ever produced an acidless invert sugar on a commercial scale; (d) that nulomoline differs fundamentally from all other invert sugars known to com-

merce and to scientific men, inasmuch as it is not inverted with the usual acids or enzymes, nor is it put through any of the well-known processes; (e) that by a special process the dextrose is kept in suspension and the final congealed mass is of the appearance of lard with the proportions of dextrose and levulose the same at the top as at the bottom of the barrel; (f) that nulomoline is an acidless invert sugar; (g) that there is absolutely no acid used in its manufacture; (h) that before the manufacture of nulomoline invert sugar could not be produced without the use of expensive and dangerous acids.

PAR. 6. That invert sugar has been manufactured without the use of expensive and dangerous acids and chemicals and sold commercially for many years. That it was so made in France in the days of Maumone shortly after 1869 by the use of simple acids; that an invert sugar, water white so far as possible to perceive, has been made commercially in this country since about 1893. That the sugar contained in nulomoline is inverted with citric acid; that in nine specimens of nulomoline sold in commercial channels it was found on analyses being made that there was an average of $0.0533\frac{1}{2}$ per cent of acid calculated as citric; that the process of inverting the sugar contained in nulomoline differs in no material respect from other processes used in the manufacture commercially of invert sugars except that one-seventh of 1 per cent of gum arabic is added to the solution; but the effect of this small amount of gum arabic is probably negligible for the following reasons, viz: If the gum arabic has completely combined with the small proportion of citric acid with which the lime present would make it combine, there would be no gum arabic left; if the gum arabic had risen to the surface all of it might have been skimmed off, some might be left mechanically; after a complete reaction had taken place between citric acid and gum arabic, gum arabic would no longer be present in the solution, but there would be a mixture of araban, arabanese, some of the other sugars, and probably gum arabic acid and the majority of the calcium present would be present as calcium citrate.

PAR. 7. That on April 25, 1916, Letters Patent No. 1,181,086 were issued by the United States Patent Office to Noah W. Taussig, covering said process sold by the said Noah W. Taussig to the respondent Nulomoline Co. in 1910. That since the issuance of said letters patent respondent became and still is the owner thereof.

PAR. 8. That in the year 1916 the respondent made vague or indefinite threats against a competitor engaged in the manufacture or business of dealing in invert sugar sirup, which did not disclose to such manufacturer against whom the threat was made the right which respondent claimed had been or was about to be invaded with sufficient particularity to enable him to either desist or abstain from such act or intelligently consider the justice of the threat.

PAR. 9. That in the year 1916, respondent informed another competitor that in making invert sugar it was infringing a patent for which respondent had applied and which respondent expected to have issued to it soon; that after the issuance of said patent respondent threatened said competitor that it would commence suit against it unless the competitor did stop making invert sugar, but that respondent would refrain from such suit if such competitor would cease making invert sugar and turn over its equipment and stock of goods to the respondent; that as a result the said competitor dismantled its plant and turned over its equipment and stock of goods to the respondent at cost price and ceased to do further business. That said competitor was not using the same acid as an inverting agent as that used by respondent; that respondent made no inquiry of said competitor as to the method by which said competitor was inverting its sugar, but asserted that by making invert sugar such competitor was infringing respondent's letters patent.

PAR. 10. That in the year 1916, the attorney for the respondent, acting within the scope of his authority as such attorney, notified a prospective competitor which was making arrangements to manufacture invert sugar commercially, not to embark upon the enterprise of infringing upon the rights of the respondent and that action would be taken against that concern if it should proceed; that such threat was so vague and indefinite as not to disclose to the party

against whom it was made the right which respondent claimed was about to be invaded; that as a result of said threat, said prospective competitor feared that it would be subjected to litigation if it proceeded to make invert sugar and accordingly abandoned its preparation and plan so to do.

PAR. 11. That in the year 1916 one of the officers of the respondent stated to a trade representative and purchasing agent that if a customer of a competitor of the respondent, which customer was a member of the trade organization represented by such purchasing agent, continued to buy invert sugar from such competitor, such competitor was liable to be prosecuted.

CONCLUSIONS.

That the acts and conduct set forth in paragraphs 5, 8, 9, 10, and 11 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 respondent having entered its appearance and having duly filed its answer admitting certain allegations of the complaint and denying certain others thereof, particularly those alleging that respondent has been and is violating the provisions 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 having in addition thereto interposed certain affirmative allegations as a defense which, upon motion being made before the Federal Trade Commission, were stricken from respondent's answer, and the Commission having offered testimony in support of the charges of said complaint, and a stipulation having thereafter been duly entered into between the respondent and the Commission wherein it was agreed that the case of the Federal Trade Commission be closed without the introduction of any further evidence and,

without withdrawing any of the denials or defenses contained in its answer, that the respondent waive the taking of any testimony in its behalf in defense in this proceeding and consent to the closing of the case and that the Federal Trade Commission might proceed forthwith to make its findings and order disposing of these proceedings, 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," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, the Nulomoline Co., and its officers, directors, agents, servants, employees, and representatives, each and all of them, cease and desist from, directly or indirectly—

1. Claiming to have the exclusive right to the manufacture of invert sugar sirup.

2. Claiming to have the exclusive monopoly of the manufacture of invert sugar sirup.

3. Threatening to institute suits against other manufacturer or manufacturers of invert sugar sirup for the infringement of the process claimed in respondent's letters patent without in good faith intending to institute such suit or suits, and in fact following up such threat or threats with suit or suits brought within a reasonable time, unless such acts may be desisted from.

4. Threatening to institute suit or suits against person or persons preparing to engage in the manufacture of invert sugar sirup, for contemplated infringement of respondent's patent without reason for believing in good faith that such person or persons intend infringing the process claimed in respondent's letters patent.

5. Making threats against others engaged in the manufacture of or business of dealing in invert sugar sirup, or against others contemplating or preparing to engage in the manufacture of or business of dealing in invert sugar sirup with vague or indefinite threats which do not disclose to the party against whom such threat is made the right which respondent claims

has been or is about to be invaded with sufficient particularity to enable him to either desist or abstain from such act or intelligently consider the justice of such threat.

6. Making threats against customer or customers of competitors to institute suit or suits for infringement of respondent's process patent.

7. Making threat or threats against customer or customers of competitors, except in good faith, to restrain them from some particular act or acts therein described with such particularity as to render possible intelligent action by such customer or customers upon such threat or threats.

8. Publishing or causing to be published in trade papers, circulars, or other publications, or by public addresses or otherwise, articles, advertisements, or other representations that in the manufacture of nulomoline no acids or chemicals are used and that the sugar contained in nulomoline is not inverted by any of the usual processes, or that prior to the manufacture of nulomoline invert sugar could not be produced without the use of expensive and dangerous acids or chemicals, or suggesting or intimating that other invert sugars contain dangerous acids. Nothing, however, in this paragraph shall interfere with the assertion of any fact which respondent may be able to establish, nor the assertion in good faith of rights claimed by respondent under Letters Patent No. 1,181,086, such latter assertion to be made consistently with the provisions of paragraph 3 hereof.
