

FEDERAL TRADE COMMISSION *v.* GREGORY
FURNITURE MANUFACTURING CO.

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

Docket No. 216.—June 23, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of furniture—

- (a) Sold the same to dealers upon the agreement or understanding that they should resell the same at prices suggested by it;
- (b) Refused to sell to dealers because of their failure to adhere to its system of resale-price maintenance; and
- (c) Failed to fill dealers' orders promptly, filled dealers' orders only in part, and otherwise discriminated against dealers because of their failure to adhere to its system of resale-price maintenance;

Held, That a scheme of price maintenance, substantially as 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 Gregory Furniture Manufacturing 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, Gregory Furniture Manufacturing 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 Washington, with its principal office and place of business located at the city of Tacoma, in said State, now, and for more than two years last past, engaged in the business of manufacturing and selling dining-room furniture and

library tables throughout 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, Gregory Furniture Manufacturing Co., in the conduct of its business, manufactures such furniture so sold by it in its factory located at the city of Tacoma, State of Washington, and purchases and enters into contracts of purchase for the necessary component materials needed therefor, in different States and Territories of the United States, transporting the same through other States of the United States in and to said city of Tacoma, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured, they are continuously moved to, from, and among other States and Territories of the United States 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 furniture between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the city of Tacoma, State of Washington, and therefrom to and through other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of its furniture in interstate commerce, the respondent, Gregory Furniture Manufacturing Co., has adopted and maintains a system of fixing prices at which its products shall be resold by dealers, with the effect of securing the trade of dealers 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 resale prices of their product, and with the effect of eliminating competition in price among the dealers in its product, and thereby depriving dealers of their right to sell such product at such prices as they may deem adequate and warranted by their selling efficiency and with other effects; and that for the purpose of maintaining said stand-

and resale prices and of inducing and compelling its customers to maintain and keep such standard prices, respondent has for more than two years last past refused, and is still refusing, to sell its product to customers or dealers who will not agree to maintain such specified standard resale prices, or who do not resell such product at the specified standard selling prices so fixed and determined by the respondent as aforesaid.

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, Gregory Furniture Manufacturing 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 fully stating its charges in that respect, and the respondent having entered its appearance by Raymond J. McMillan, its attorney, and said attorney having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken by the Commission with the same force and effect as if testified to upon a hearing regularly had in this proceeding, and that the Commission might forthwith proceed, upon such agreed statement of facts, to make and enter its report and findings as to the facts, its conclusions, and its order disposing of this proceeding; the Commission having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Gregory Furniture Manufacturing Co., is a corporation organized, existing, and doing business under the laws of the State of Washington, and having its principal place of business in the city

of Tacoma, in said State, and for more than two years last past has been engaged in the business of manufacturing and selling dining-room furniture, and library tables throughout the various States of the United States, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That in the course of its business respondent purchases the necessary component materials needed for the manufacture of said products in different States of the United States, transporting the same through other States in and to said city of Tacoma, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured, they are continuously moved to, from and among other States and Territories of the United States, and there is continuously and has been at all the times hereinafter mentioned, a constant current of trade and commerce in such manufactured products between and among the several States and Territories of the United States.

PAR. 3. That the quantity of such products so manufactured, sold, and distributed by respondent is substantial and forms an important item of commerce among the several States of the United States, and especially among the States of Washington, Oregon, and California; and respondent is the only manufacturer located west of the Rocky Mountains of certain lines of furniture sold by it.

PAR. 4. That respondent sells its products to retail dealers only, and its sales amount to approximately \$250,000 a year.

PAR. 5. That within the two years last past respondent has made a general practice of maintaining resale prices on its products by furnishing from time to time to all retail dealers to whom it sells its products, in connection with its regular printed price list, other typewritten lists with the caption "Minimum selling prices," which typewritten lists contain the retail prices, fixed by respondent, to be charged by such retail dealers upon the resale by them of respondent's products.

PAR. 6. That such retail dealers have been regularly requested by respondent, through its sales manager, to mark all goods bought from respondent with the "minimum sell-

ing prices" applicable thereto as contained in said typewritten lists. The said retail dealers thereupon generally agreed to and did adopt such retail prices suggested by respondent and marked and sold their goods accordingly.

PAR. 7. That the last typewritten list of retail prices issued by respondent was dated May 10, 1918.

PAR. 8. That the purpose of respondent in adopting this method of doing business was to establish uniform retail prices for its various products, according to kind and grade; and the effect was to eliminate competition in price between retail dealers handling respondent's goods.

PAR. 9. That from time to time respondent has received information from retail furniture dealers handling its products and doing business outside of the State of Washington to the effect that other retail dealers handling respondent's products in the same localities were selling said products below the said "minimum selling prices" theretofore fixed by respondent. In such cases it has been respondent's practice to bring the matter to the attention of such price-cutting dealers and to try to persuade them to adhere to the retail prices fixed by respondent as aforesaid. In cases where such dealers have persisted, after admonition, in selling said products at cut prices, respondent has either failed to fill such dealer's future orders promptly, or gradually diminished its sales to such dealers, or discontinued selling to such dealers altogether.

PAR. 10. That from time to time respondent changed its lists of resale prices, and all dealers, on receipt of new price lists containing minimum selling prices, were required by respondent to and did mark all goods on hand, which had been purchased from respondent, with the new prices contained in said lists, and agreed to maintain and did maintain said prices on all sales thereafter made by them to their customers, thus producing uniform retail prices, on goods of the same grade and quality, throughout the trade.

PAR. 11. That respondent from time to time has advanced its prices to dealers and also its minimum selling prices to be charged by retail dealers, and in such cases such increased selling prices were required by respondent to be charged by dealers on all respondent's products whether purchased before or after such price advances were made.

PAR. 12. That the gross profit margins provided and allowed to retail dealers in the minimum selling prices furnished them by respondent as aforesaid had been approximately 80 per cent on all goods manufactured and sold by respondent.

PAR. 13. That the retail dealers in various States to whom respondent sells its products have varying selling expenses on the same volume of business and show varying efficiency management, and the net profit margins of said dealers in handling respondent's goods vary accordingly.

PAR. 14. That respondent has consented to the entry of an order by the Federal Trade Commission directing respondent to cease and desist from the practice of fixing resale prices on its products.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances therein set forth, unfair methods of competition in interstate commerce and 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 respondent, Gregory Furniture Manufacturing 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 respect of such violation would be to the interest of the public, and fully stating its charges, and the respondent having entered its appearance by Raymond J. McMillan, its attorney, and having duly filed its answer, and said attorney having duly signed and filed an agreed statement of facts wherein and

whereby it was stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such agreed statement of facts to enter its report and its findings as to the facts, its conclusions, and its order disposing of this proceeding; 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, Gregory Furniture Manufacturing Co., and its officers, directors, servants, and employees cease and desist from directly or indirectly recommending, requiring, or by any means whatsoever bringing about the resale of its products by dealers according to any system of prices fixed or established by respondent, and more particularly by any or all of the following means:

(1) Securing or entering into agreements or understandings of any kind with dealers handling its products to the effect that such dealers in reselling its products will adhere to any system of resale prices fixed and established by respondent.

(2) Insisting or requesting that dealers mark all or any of the goods bought from respondent according to any system of minimum selling prices or other resale prices fixed and established by respondent.

(3) Failing to fill orders promptly, filling orders only in part, or otherwise discriminating against any dealer because of failure to adhere to any system of resale prices.

(4) Discriminating in any way in favor of any dealer because of adherence to any such system of resale prices.

(5) Refusing to sell to any dealer because of failure to adhere to any system of resale prices.

(6) Carrying out or causing others to carry out a price maintenance policy by any method whatsoever.

**FEDERAL TRADE COMMISSION v. MISHAWAKA
WOOLEN MANUFACTURING CO.**

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

Docket No. 19.—June 30, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of woolen and rubber footwear—

I.

- (a) Established minimum resale prices, below which purchasers of its product were required not to sell, which prices were higher than necessary to afford the more efficient retailers a profit on its product, and in pursuance of the maintenance of said minimum resale prices;
- (b) Procured a majority of its customers when ordering goods to sign agreements specifically agreeing not to sell its products at prices lower than the established resale prices fixed by it;
- (c) Solicited and obtained the cooperation of its customers in reporting instances where its products were being advertised and sold below the resale prices fixed by it;
- (d) Discontinued the sale of its products to those who failed to maintain such resale prices; and
- (e) Maintained a card index of what was termed undesirable customers, this undesirability generally arising from the fact that the customer had persisted in selling the respondent's goods below its fixed resale prices:

II.

Discontinued the making of written contracts with its customers and of soliciting its customers to report instances of price-cutting, but

- (a) Notified customers of the price at which its products must be resold and that it would refuse to sell to any customer who persisted in selling at less than its fixed resale prices;
- (b) Refused to sell, or discontinued selling to such customers as were found to have cut its resale prices; and
- (c) Constantly urged that the dealer take the full profit suggested by it:

Held, That such systems of price maintenance, substantially as described, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.