

**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.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Mishawaka Woolen Manufacturing 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 3 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 above-named respondent, Mishawaka Woolen Manufacturing Co., is now and was at all the times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the State of Indiana, having its principal office and place of business at the city of Mishawaka, in said State, and extensively engaged at said city in the manufacture of woolen and rubber goods, and in the sale and shipment of such commodities to persons, co-partnerships, and corporations in other States and Territories of the United States and in the District of Columbia.

PAR. 2. That the respondent, Mishawaka Woolen Manufacturing Co., as a means of procuring the trade of dealers and of enlisting their active cooperation in encouraging the sale of its goods and for the purpose of eliminating competition in price among the dealers in its goods and thereby depriving dealers of their right to sell such goods at such prices as they may deem adequate and warranted by their selling efficiency, and for other purposes, has adopted and maintains a system of fixing a schedule of standard prices at which the goods manufactured and sold by it shall be resold by the purchasers thereof, and requires such purchasers to agree to maintain or resell such goods at such standard selling prices, and that for the purposes of maintaining such standard resale prices, and of inducing and coercing its customers to maintain such standard prices, the respondent has

for more than two years last past refused and still refuses to sell such goods to customers who will not agree to maintain such standard selling prices, or who do not resell such goods at the standard selling prices so fixed by the respondent.

PAR. 3. That in furtherance of said system of the maintenance of the resale prices of the goods handled and sold by it, the respondent has systematically entered into, and does systematically enter into, an agreement or understanding with each of its customers that the customer shall report to it instances of "price cutting" on the part of any other customer, and that if the customer so reported be found by respondent to be in fact price cutting, the respondent will refuse to continue to sell its goods to such "price cutters," and that the respondent, acting and cooperating with reporting customers, does thereupon, if it finds upon investigation by it that such report is true, refuses to continue to sell its goods to such "price cutter" and that as a matter of fact, the respondent, acting pursuant to such system and such arrangement or understanding with reporting customers, has during a period of at least two and one-half years last past refused, in many instances, and still does refuse, to continue to sell its goods to customers who violate such agreement to maintain the standard selling prices so fixed by the respondent.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Mishawaka Woolen Manufacturing 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, Mishawaka Woolen Manufacturing Co., is a corporation organized and existing under and by virtue of the laws of the State of Indiana, having its principal office and place of business at the city of

Mishawaka, in said State, and is now and was at all times hereinafter mentioned engaged in manufacturing and selling woolen and rubber goods in commerce among the several States and Territories of the United States.

PAR. 2. That the respondent, the Mishawaka Woolen Manufacturing 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 the goods manufactured, handled, and sold by it, which goods are sold for use, consumption, or resale within the United States or 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.

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, Mishawaka Woolen 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 to such alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Messrs. Angell, Bodman & Turner, its attorneys, and having filed its answer; and the attorneys for both parties having thereafter signed and filed an agreed statement of facts, with exhibits thereto attached, and having stipulated that the same should for the purposes of this proceeding be considered and treated as testimony and evidence herein in all respects as fully as though testified to in a contested proceeding, and said agreed statement of facts and stipulation, together with said exhibits thereto attached, having been duly offered in evidence by the attorneys for the Commission in support of the charges in said complaint, and the respondent having offered evidence

in support of its answer, and the attorneys for the Commission and for the respondent having submitted briefs as to the law and the facts in said proceeding, 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 of law:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Mishawaka Woolen Manufacturing Co., was at all times hereinafter mentioned, and still is, a corporation organized and existing under the laws of the State of Indiana, having its principal office and place of business at Mishawaka in said State.

PAR. 2. That at all of said times respondent was engaged at Mishawaka aforesaid in manufacturing articles of woolen and rubber footwear and in selling and shipping such articles in commerce among the several States of the United States; that other persons and corporations were engaged in manufacturing similar products and in selling and shipping such products in interstate commerce in competition with respondent.

PAR. 3. That at the time of the commencement of this proceeding and during a period of more than two years prior thereto respondent's marketing policy was to distribute its products through retailers, and not through wholesale dealers or jobbers. That during said period substantially all of its products were sold by it directly to retail dealers throughout the United States; that the value of said products exceeded \$10,000,000 annually; and that the number of respondent's said retail customers was approximately 43,000, some of whom were themselves engaged in interstate commerce.

PAR. 4. That during a period of more than two years prior to January 1, 1918, respondent pursued a practice of establishing minimum resale prices, hereinafter known as the resale prices, below which all of its retail distributor customers were required not to sell the products manufactured by respondent. That a schedule or list of said resale prices was issued annually or more frequently and furnished by respondent to each of its distributors; that said distributors had notice from respondent and generally understood that respondent's practice was to sell only to those distributors maintaining the

resale prices. That for the purpose of enforcing the maintenance of said minimum resale prices by its said distributors during the period aforesaid respondent employed the following means, to wit:

(1) It procured a majority of its distributor customers to sign agreements in writing in connection with orders submitted by them to respondent for goods, whereby said customers expressly promised not to retail respondent's products either directly or indirectly at lower prices than the resale prices established by respondent. The signing of said agreement was in many instances a condition precedent to respondent's acceptance of an order for goods. And a large portion of respondent's total output of goods was sold subject to such agreements.

(2) It solicited and obtained the cooperation of its customers in reporting instances wherein its products were being advertised or sold below the resale prices thereof. Such reported instances were systematically investigated, and where the report was verified, respondent's regular practice was to request assurances in the form of an agreement in writing or otherwise against repetition of the act complained of, and in the event that sufficient assurance was not furnished, respondent's regular practice was to discontinue selling goods to the party in question. Action taken in any reported instance of price cutting was usually communicated by respondent to the informant who had reported such instance. In this manner informants cooperating with respondent succeeded in many cases in procuring the cutting off of their competitors' supply of respondent's products.

(3) It carried on at its principal office a routine correspondence, based on form letters, with respect to all cases coming to its attention wherein its goods had been sold below the resale price thereof, and in each case notified the customer complained of that unless he maintained the resale prices upon respondent's goods, respondent would cease to supply him with goods; it maintained at said office a card index of all persons reported to have cut prices on its products, which indicated the principal facts in each case, the substance of all correspondence relating thereto, the final status of the case, and which served the purpose of a me-

chanical aid in respondent's system of tabulating and for taking appropriate action in such cases.

(4) It maintained at said office a town card index of all customers and of numerous dealers not customers, of whom many were indicated to be "undesirable" customers. This "undesirability" in many cases arose from the fact that the dealer so designated had persisted in selling respondent's goods below the resale prices thereof.

That respondent's said policy of price maintenance was generally acquiesced in by its customers, and its resale prices were generally maintained.

PAR. 5. That at the time hereinbefore mentioned, retail dealers in respondent's products carried on business at costs ranging from 15 to 30 per cent of their gross sales; that the resale prices of respondent's products were adjusted so as to yield said retail dealers a gross profit margin ranging from a minimum of 24 per cent to a maximum of 30 per cent, depending upon the character of the goods, and that these margins in comparison with the aforesaid costs of 15 to 30 per cent assured the said dealers handling the products manufactured by respondent net profits ranging from zero to 15 per cent of their gross sales, depending on the character of the goods. That dealers generally, and especially the higher cost and less efficient dealers, prefer to handle the price-maintained products of respondent and were and are in sympathy with the respondent's policy and system of resale price maintenance, and materially aided and co-operated with respondent in the execution thereof.

PAR. 6. That at the times hereinbefore mentioned there were a number of competitors of respondent who did not adopt or pursue a policy of resale price maintenance.

PAR. 7. That on the 1st day of January, 1918, and subsequent to the commencement of this proceeding, respondent modified its practice regarding the subject of price maintenance in certain respects, as follows:

(1) It discontinued the use of written agreements with customers providing for the maintenance of resale prices, both in connection with orders for goods and otherwise, and instructed its salesmen to enter into no agreements with customers, oral or written, and to ask for no other assurance regarding price maintenance.

(2) It discontinued the practice of inviting or urging its customers to report instances wherein respondent's goods were being advertised or sold below the resale price thereof.

(3) It discontinued the card index described above (par. 4), but later, as testified to by its president, resumed its use.

PAR. 8. That since January 1, 1918, respondent has continued to notify customers selling its goods below the resale price thereof that if such action is persisted in respondent will furnish no further goods to such customers; that since said date, respondent has refused and still refuses to sell goods to practically all dealers failing to maintain the resale prices thereof.

PAR. 9. That the aforesaid gross profit margins were and are so adjusted as to induce a large number of retailers to handle the products of the respondent; and these margins were and are greater than would be necessary to enable the relatively lower cost and more efficient retailers, as referred to in paragraph 5 above, to resell and make a profit.

PAR. 10. That respondent constantly urges that retail distributors of its products shall take the full profit suggested by respondent, and publishes price lists showing the suggested resale prices and the gross profit margins to said retail distributors under such prices.

PAR. 11. That the effect of the said price maintenance system enforced as aforesaid has been and is—

(1) To secure for respondent, Mishawaka Woolen Manufacturing Co., on the sales of the products manufactured by it, the trade of retailers, and especially the relatively higher cost and more inefficient retailers as heretofore set out, by affording such dealers the assurance that said resale prices were and are universally maintained, and to enlist their active support and cooperation in enlarging the sale of its price maintained products to the prejudice of competing manufacturers who do not fix, require or enforce the maintenance of resale prices upon their products.

(2) To eliminate competition in prices among retailers handling the products manufactured by respondent, thus interfering with such retailers, and especially the relatively lower cost and more efficient establishments, in their sales of

respondent's products at prices which they may deem adequate and which are warranted by their costs and selling efficiency as heretofore set out, whereby such portions of the public as require the products of the respondent are compelled to pay enhanced prices therefor.

(3) To tend to force manufacturers who do not fix, require, or enforce the maintenance of resale prices and who compete with the respondent also to inaugurate, maintain, and enforce a system of resale prices upon their products in order to offset the preference of retailers for the price-maintained products of respondent, thus enabling such manufacturers as do not now maintain such resale prices to compete upon more equal terms with respondent and thereby tending to compel the public generally to pay enhanced prices for the products of such competing manufacturers also.

PAR. 12. That the allegation contained in Part II of the complaint in this proceeding that the respondent has violated section 2 of the Clayton Act is not sustained by the evidence.

CONCLUSION.

That the methods of competition described in the foregoing findings of fact in paragraphs 4, 5, 8, 9, and 10 constitute, under the circumstances set forth therein, 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 respondent, Mishawaka Woolen 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 to such

alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Messrs. Angell, Bodman & Turner, its attorneys, and having filed its answer; and the attorneys for both parties having thereafter signed and filed an agreed statement of facts, with exhibits thereto attached, and having stipulated that the same should for the purposes of this proceeding be considered and treated as testimony and evidence herein in all respects as fully as though testified to in a contested proceeding, and said agreed statement of facts and stipulation, together with said exhibits thereto attached, having been duly offered in evidence by the attorneys for the Commission in support of the charges in said complaint, and the respondent having offered evidence in support of its answer, and the attorneys for the Commission and for the respondent having submitted their briefs as to the law and facts in said proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusion 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, Mishawaka Woolen Manufacturing Co., its officers, directors, agents, servants, and employees, cease and desist from fixing or controlling, or attempting to fix or control, the prices at which or in accordance with which its products shall be resold, by—

(1) Entering into contracts, agreements, or understandings with dealers requiring or providing for the maintenance of such prices;

(2) Cooperating with dealers in obtaining information for the purpose of enforcing the maintenance of such prices;

(3) Refusing or threatening to refuse to sell to dealers because of their failure to maintain such prices;

(4) Employing any other means directly or indirectly to bring about or enforce the resale of its products at such prices.

**FEDERAL TRADE COMMISSION v. BEECH-NUT
PACKING CO.**

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

Docket No. 88.—June 30, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of chewing gum and food products—

- (a) Indicated to distributors the prices at which the same should be resold, which prices provided such a large margin of profit for the distributors that all dealers, however inefficient, could make a profit on its sale;
- (b) Refused to sell its products to distributors who failed to adhere to its system of resale prices and to distributors who sold to other distributors who did not maintain such prices;
- (c) Adopted a system of marking its goods which enabled it to ascertain where goods sold at cut prices had been purchased and to cut off the seller from further purchases of goods from it or from distributors handling its products; and
- (d) Secured and sought to secure the cooperation of distributors in maintaining and enforcing its system of resale prices, especially by having them report to it all distributors who failed to adhere to its resale prices:

Held, That a scheme of resale-price maintenance, substantially as described, constituted an unfair method of competition in violation 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 Beech-Nut Packing 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, issue this complaint, stating its charges in that respect, on information and belief as follows: