

**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:

PARAGRAPH 1. That the respondent, Beech-Nut Packing 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 factory, office and place of business located at the town of Canajoharie, State of New York, now and for more than two years last past engaged in the manufacture and sale of chewing gum and food products among the several 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, Beech-Nut Packing Co., in the conduct of its business, manufactures such chewing gum so sold by it, in its factory located at the town of Canajoharie, State of New York, 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, sold and shipped to the 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, the District of Columbia, and foreign countries, and there is continuously, and has been, at all times hereinafter mentioned, a constant current of trade and commerce in the said products between and among the various States and Territories of the United States, and the District of Columbia, and especially to and through the town of Canajoharie, State of New York, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That with the intent, purpose, and effect of stifling and suppressing competition in the manufacture, marketing, and sale of its products in the course of such commerce, and as a means of securing the trade of dealers and obtaining their aid and cooperation in enlarging the sale of its products, and with the purpose of eliminating competition in the selling price among the various dealers in its

products and thereby depriving the dealers of their freedom to sell such products at prices which, in their judgment, would be warranted by trade conditions and for other purposes, the respondent has fixed and maintained certain specified standard prices at which the products manufactured and sold by it shall be resold by the purchaser thereof, and requires its purchasers to agree to maintain or resell such products at such standard selling prices; and that for the purpose of maintaining said standard resale prices and of inducing and compelling its customers to maintain and keep such standard prices, the respondent, for more than three months last past, has refused and is still now refusing to sell its products to customers or dealers who will not agree to maintain such specified standard resale prices, or who do not resell such products 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 alleged that it had reason to believe that the above-named respondent, Beech-Nut Packing Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and 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 Charles Wesley Dunn, its attorney, and having filed its answer, and it having been thereafter duly stipulated between the parties that said complaint shall be deemed amended in certain respects and that respondent's said answer should stand as its answer to said complaint as so amended, and the attorneys for both parties 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 make and enter its report and findings as to the facts, its conclusions of law, 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 of law:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Beech-Nut Packing Co., is a corporation organized and doing business under the laws of the State of New York, and having its principal office and place of business in the town of Canajoharie, State of New York, and is now, and for more than four years last past has been engaged in the business of manufacturing and selling chewing gum and food products throughout the States of the United States, the Territories thereof and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent purchases the component parts of the chewing gum and food products in the various States of the United States, the Territories thereof, and in foreign countries, and has the same transported through said other States and Territories and foreign countries, in and to the town of Canajoharie, and other points in the State of New York, and there said respondent manufactures and puts up, and from there sells and ships to the purchasers thereof in the different States and Territories of the United States and the District of Columbia, and in foreign countries, the said chewing gum and food products, and there is continuously and has been at all times herein mentioned, a constant current of trade and commerce in said chewing gum and food products between and among the several States, Territories, and District of Columbia of the United States, and foreign countries.

PAR. 3. That the quantity of such products so manufactured, sold and distributed by respondent, has been and is substantial, and forms an important item of commerce among

the several States; Territories, and District of Columbia of the United States, and with foreign countries.

PAR. 4. That respondent customarily markets its products principally through jobbers and wholesalers in the grocery, drug, candy, and tobacco lines, who in turn resell to retailers in these lines, all of which wholesale and retail dealers are selected as desirable customers for the reason that they are known or believed to be (a) of good credit standing; (b) willing to resell at the resale prices suggested by respondent and who do resell at such prices, as hereinafter set forth; (c) willing to refuse to sell and who do refuse to sell to jobbers, wholesalers, and retailers who do not resell at the resale prices suggested by respondent, and who do not sell to such jobbers, wholesalers, and retailers as also hereinafter set forth; (d) good and satisfactory merchandisers in other respects. Such jobbers, wholesalers, and retailers are designated by the respondent as "selected" or "desirable" dealers. Respondent also sells "direct" in a few instances to certain large retailers who are selected on the same basis as the aforesaid jobbers, wholesalers, and retailers. The total number of such dealers handling the products of respondent includes the greater proportion of the jobbers, wholesalers, and retailers, respectively, in the grocery trade and a large proportion of the jobbers, wholesalers, and retailers in the drug, candy, and tobacco trades, respectively, throughout the United States.

PAR. 5. That respondent, in the sale and distribution of its products, has adopted and maintained, and still maintains, a policy known as the "Beech-Nut policy," and requests the cooperation therein of all dealers selling the products manufactured by it, dealing with each customer separately.

PAR. 6. That the purpose and intent of the respondent company in this merchandise policy is, among other things—

(a) To provide a profit for all of its so-called selected distributors which was and is the full profit arbitrarily fixed and established by the respondent according to its system of uniform resale prices, the maintenance of which the respondent requires and enforces upon all of its distributors, both wholesale and retail.

(b) To provide for all its distributors protection in securing such full profit on the products manufactured by respondent.

(c) To obtain the active support and cooperation of all its distributors, both wholesale and retail:

(1) In maintaining its said resale prices and pushing its price-maintained products.

(2) In preventing and eliminating all sales at lower prices than its fixed uniform resale prices.

(3) In preventing wholesale dealers and jobbers from selling its products to retail dealers who sell or have sold, at prices lower than the fixed uniform resale prices at which it requires retailers to resell.

PAR. 7. In order to carry out said beech-nut policy and to secure such cooperation, respondent—

(a) Issues circulars, price lists, and letters to the trade generally showing suggested uniform resale prices, both wholesale and retail, to be charged for beech-nut products.

(b) Requests and insists that the aforesaid selected jobbers, wholesalers, and retailers resell only at the suggested resale prices.

(c) Requests and insists that the aforesaid selected jobbers, wholesalers, and retailers sell only to such other jobbers, wholesalers, and retailers as have been and are willing to resell and do resell at the prices so suggested by the respondent; and requests and insists that such jobbers, wholesalers, and retailers discontinue selling to other jobbers, wholesalers, and retailers who fail to resell at the prices so suggested by respondent.

(d) Make it known broadcast to such selected jobbers, wholesalers, and retailers, whether sold "direct" or not, that if they, or any of them, fail to sell at the resale prices suggested by the respondent as aforesaid, respondent will absolutely refuse to sell further supplies of its products to them, or any of them, and will also absolutely refuse to sell any jobbers, wholesalers, and retailers whatsoever who sell to other jobbers, wholesalers, or retailers failing to resell at the prices suggested by respondent.

PAR. 8. That respondent, in the carrying out of said policy—

(a) Has within the time aforementioned refused and does refuse to sell its products to practically all such jobbers, wholesalers, and retailers as do not resell at the prices so suggested by the respondent;

(b) Has within the time aforementioned refused and does refuse to sell to practically all such jobbers, wholesalers, and retailers reselling to other jobbers, wholesalers, and retailers who have failed to resell at the prices so suggested by the respondent;

(c) Has within the time aforementioned refused and does refuse to sell to practically all so-called mail-order houses engaged in interstate commerce, on the ground that such mail-order houses frequently sell at cut prices, and has within the time aforementioned refused and does refuse to sell to practically all jobbers, wholesalers, and retailers who sell its products to such mail-order houses;

(d) Has within the time aforementioned refused and does refuse to sell to practically all so-called price cutters;

(e) Has maintained within the time aforementioned and does maintain a large force of so-called specialty salesmen or representatives who call upon the retail trade and solicit orders therefrom to be filled through jobbers and wholesalers, which orders are commonly known in the trade as "turnover orders"; that respondent's salesmen, under its instructions, have within the time aforementioned refused and do refuse to accept any such turnover orders to be filled through jobbers and wholesalers who themselves sell or have sold at less than the suggested resale prices or sell or have sold to jobbers, wholesalers, and retailers who sell or have sold at less than such suggested resale prices; and in such cases have requested such retailers to name other jobbers;

(f) Has within the time aforementioned reinstated and does reinstate as distributors of its products, jobbers, wholesalers, and retailers previously cut off or withdrawn from the list of selected jobbers, wholesalers, and retailers for failure to resell at the prices suggested by the respondent and/or for selling to distributors who do not maintain such suggested resale prices, upon the basis of declarations, assurances, statements, promises, and similar expressions, as the case may be, by said distributors, respectively, which satisfy the respond-

ent that such distributors will thereafter resell at the prices suggested by the respondent and/or will refuse to sell to distributors who do not maintain such suggested resale prices;

(g) Has within the time aforementioned added and does add to its list of new distributors, concerns reported by its representatives as declaring that they intend to and will resell at the prices suggested by the respondent, and/or will refuse to sell to distributors who do not maintain such suggested resale prices.

(h) Has within the time aforementioned utilized a system of key numbers or symbols stamped or marked upon the cases containing "Beech-Nut Brand" products, thus enabling the respondent, for any purpose whatsoever, to ascertain the identity of the distributors from whom such products were purchased; and that repeatedly, within the time aforementioned, when instances of price cutting have been reported to respondent by the selected wholesalers and retailers, or ascertained in other ways, its salesmen and representatives have been instructed by respondent to investigate, and that in pursuance of these instructions salesmen and representatives of respondent have by means of these key numbers or symbols traced the price cutters from whom the goods have been obtained and have thus ascertained the identity of such price cutters, and have also thus traced and ascertained the identity of distributors from whom price cutters have purchased "Beech-Nut Brand" products; and have thereafter refused to supply all such dealers with its products whether such dealers were themselves cutting the suggested resale prices or were selling to dealers cutting the suggested resale prices.

(i) Has within the time aforementioned maintained and does maintain card records containing the names of thousands of jobbing, wholesale, and retail distributors, including the aforesaid selected distributors, and in furtherance of its refusals to sell goods either to distributors selling at less than the suggested resale price, or to distributors selling to other distributors selling at less than the suggested resale prices, has listed upon those cards bearing the names of such distributors, the words "Undesirable—Price Cutters," "Do Not Sell," or "D. N. S." the abbreviation for "Do Not

Sell," or expressions of a like character, to indicate that the particular distributor was not, in the future, to be supplied with respondent's goods on account of failure to maintain the aforesaid suggested resale prices or on account of failure to discontinue selling to dealers failing to maintain such suggested resale prices. When respondent has received declarations, assurances, statements, promises, and similar expressions, as the case may be, by said distributors, respectively, which satisfy the respondent that such distributors will resell at the prices suggested by respondent, and/or discontinue selling to distributors failing to maintain the resale prices suggested by respondent, said respondent has issued instructions to "Clear the record," or directions of similar import, notation of which is made on the cards, and has thereafter permitted shipments of its products to be made to such distributors; and such distributors to whom shipments are thus allowed to go forward constitute the respondent's list of so-called "selected" jobbers, wholesalers, and retailers, and no distributor is thus listed on such card records as one to whom goods are allowed to go forward who fails to maintain the resale prices suggested by respondent or sells to distributors failing to resell at such suggested prices; and when a jobber, wholesaler, or retailer is reported as failing to maintain the suggested resale prices, and/or as selling to distributors who fail to maintain such suggested resale prices, and has been entered in the card records as one to whom shipments should not go forward, respondent notifies those jobbers, wholesalers, and retailers who supply said distributor of this fact, and also notifies its specialty salesmen, and gives similar notices to said jobbers, wholesalers, and retailers and to its specialty salesmen when reinstatements are made in its said list of "selected" jobbers, wholesalers, and retailers.

PAR. 9. That individual jobbers and wholesale dealers, as shown by their letters, have made statements to the effect that they will support respondent and cooperate with it in its selling policy and that they prefer to deal with respondent and will push its products on account of its refusal to supply goods to price cutters or to distributors supplying such price cutters; and that jobbers and wholesale dealers generally

prefer to handle and push respondent's goods on which there is a constant fixed margin of profit, rather than the goods of manufacturers competing with the respondent who do not suggest resale prices and/or maintain the same by any means whatsoever.

PAR. 10. That the distributors handling respondent's goods have repeatedly reported to respondent instances of price cutting in their respective localities and in many cases have reported specifically the names of such price cutters and requested respondent to discontinue selling to them or selling to distributors selling to them; and that respondent has approved and furthered such action on the part of distributors handling its products by repeatedly expressing its appreciation of such notification in its letters of reply to such distributors; and has aided and abetted its distributors in such reporting of price cutters by repeatedly requesting its distributors to supply the names of such price cutters; and that upon receiving such reports respondent has instructed its salesmen to investigate, and when such salesmen have confirmed the reported price cutting, has refused to supply the price cutter with further goods or to supply goods to distributors continuing to sell to such price cutters after notice to that effect.

PAR. 11. That respondent, in the distribution of its products sells "Beech-Nut Brand Pure Food Products" through wholesale and retail grocery dealers and its chewing gum and candy principally through wholesale and retail drug, candy, and tobacco dealers, and that the cost of wholesale and retail grocery, drug, candy, and tobacco dealers handling the products manufactured by the respondent, as estimated by respondent's vice president, together with gross and net profit margins allowed such dealers under the suggested resale prices of the respondent, are as set out in the following table:

Table showing the range of costs of wholesale and retail dealers handling pecan products in comparison with the gross and net profit margins of such wholesale and retail dealers under respondent's suggested prices.

Class of dealer.	Range of costs of doing business on gross sales.	Profit.			
		Gross profit margins allowed under respondent's suggested resale prices.		Net profit margin allowed under respondent's suggested resale prices.	
		Excluding cash discount.	Including cash discount.	Excluding cash discount.	Including cash discount.
Wholesale:	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Grocery	5-9	10 and 14.5	12 and 16.5	1- 9.5	3-11.5
Drug	12-12.5	20	22	8- 8.5	10-10.5
Candy	10-16	20	22	4-10	6-12
Tobacco	5-9	20	22	11-15	13-17
Retail:					
Grocery	12-20	22-37	24-39	2-25	4-27
Drug	25-30	40	42	10-15	12-17
Candy	20-30	40	42	10-20	12-22
Tobacco	20-30	40	42	10-20	12-22

¹ Excluding cash discount, 10 per cent in less than carload lots and 14.5 per cent in carload lots; including cash discounts (2 per cent), 12 per cent in less than carload lots and 16.5 per cent in carload lots.

² Depending on product and quantity purchased.

PAR. 12. That these divergencies in the cost of doing business of both wholesalers and retailers are due respectively (a) to general differences in the character of the business of different types of wholesalers, i. e., grocery, drug, candy, and tobacco, on the one hand, and of different types of retailers, grocery, drug, candy, and tobacco on the other; and (b) to individual differences as among the wholesalers of each type, on the one hand, and as among retailers of each type, on the other; in location of establishment, rate of turnover, efficiency of management, selling expenses, including use or nonuse of credit, use or nonuse of delivery service, etc.; and in numerous other economic factors of a similar character.

PAR. 13. That respondent constantly urges that wholesale and retail distributors of its products shall take the full profit suggested by respondent and circulates both wholesale and retail price lists showing suggested resale prices and gross profit margins to the said distributors under said prices.

PAR. 14. That the aforesaid gross-profit margins are so adjusted as to induce a large number of jobbers and wholesalers and also of retailers, to handle respondent's products; and these margins are greater than are necessary to enable the relatively lower cost and more efficient jobbers and wholesalers and relatively lower cost and more efficient retailers, as set forth in paragraph 11, to resell and make a profit.

PAR. 15. That respondent, by its policy of maintaining resale prices and refusing to sell jobbers, wholesalers, and retailers failing to adhere to such prices, and refusing to sell to jobbers, wholesalers and retailers selling to other jobbers, wholesalers, and retailers failing to adhere to such prices, protects and has protected the relatively higher cost and less efficient jobbers and wholesalers and retailers against the competition of relatively lower cost and more efficient jobbers, wholesalers, and retailers, as shown in paragraph 11.

PAR. 16. That the effect of the said price-maintenance system enforced as aforesaid has been and is—

(1) To secure for the respondent, the Beech-Nut Packing Co., on the sales of the products manufactured by it, the trade of jobbers, wholesalers, and retailers and including especially the relatively higher cost and more inefficient jobbers and the relatively higher cost and more inefficient retailers as heretofore set out and to enlist their active support and cooperation in enlarging the sale of the price-maintained products manufactured by respondent 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 jobbers, wholesalers, and retailers, respectively, handling the products manufactured by the respondent, thus preventing jobbers, wholesalers, and retailers, respectively, and especially the lower cost and more efficient establishments, from selling 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 or prefer 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 respondent, also to inaugurate, maintain, and enforce a system of resale prices upon their products in order to offset the preference of jobbers, wholesalers, and retailers, respectively, 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 the respondent, and thereby tending to compel the public generally to pay enhanced prices for the products of such competing manufacturers also.

PAR. 17. That the merchandising conduct of respondent, heretofore defined and as herein involved, does not constitute a contract or contracts whereby resale prices are fixed, maintained, and enforced.

CONCLUSION.

That the methods of competition set forth in the foregoing findings are, 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, wherein it alleged that it had reason to believe that the respondent, Beech-Nut Packing Co., has been and now is using unfair methods of competition 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 therein 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 duly entered its appearance by Charles Wesley Dunn, its attorney, and having filed its answer, and it having been thereafter duly stipulated between the parties that said

complaint should be deemed amended in certain respects and that respondent's said answer should stand as its answer to said complaint as so amended, and the attorneys for the above parties having signed and filed an agreed statement of facts wherein and whereby it was duly stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein and that the Commission might proceed upon said statement of facts to enter its report and findings as to the facts, its conclusions of law, 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 respondent, Beech-Nut Packing Co., its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly recommending, requiring, or by any means bringing about the resale of beech-nut products by distributors, whether at wholesale or retail, according to any system of prices fixed or established by respondent, and more particularly by any or all of the following means:

1. Refusing to sell to any such distributors because of their failure to adhere to any such system of resale prices;
2. Refusing to sell to any such distributors because of their having resold respondent's said products to other distributors who have failed to adhere to any such system of resale prices;
3. Securing or seeking to secure the cooperation of its distributors in maintaining or enforcing any such system of resale prices;
4. Carrying out or causing others to carry out a resale price-maintenance policy by any other means.

FEDERAL TRADE COMMISSION *v.* RUUD MANUFACTURING CO. AND PITTSBURGH WATER HEATER CO.

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

Docket No. 255.—June 30, 1919.

SYLLABUS.

Where two corporations, engaged in the manufacture and sale of water heaters, and having the exclusive right under certain patents to manufacture and sell such products, under the terms of an exclusive license agreement between them—

- (a) Sold their products under contracts, agreements, or understandings whereby the purchasers agreed to adhere to and maintain resale prices fixed and determined by the manufacturers; and
- (b) Refused to sell to dealers because they failed to adhere to such system of fixed prices:

Held, That a scheme of price maintenance, substantially as described, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Ruud Manufacturing Co. and the Pittsburgh Water Heater Co., hereinafter referred to as respondents, have been and now are 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, the Ruud Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business located at the city of Pittsburgh in the State of Pennsylvania, and is now and was at all times hereinafter mentioned, engaged in the manufacture of instantaneous automatic gas