FEDERAL TRADE COMMISSION

v.

SINCLAIR REFINING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND SECTION 3 OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 334.—October 14, 1919.

SYLLABUS.

Where a corporation competitively engaged in refining crude petroleum, buying and selling gasoline, and in transporting and marketing such products, and also engaged in leasing pumps, tanks, and other equipment for the storage and handling of petroleum products in competition with manufacturers and sellers of such equipment, to its retail customers, of whom relatively very few required more than a single pump outfit in the conduct of their business;

Leased to such retailers pumps, tanks, and equipment at a nominal rental, not affording it a reasonable profit on its investment, upon the condition that they should use the same only for the purpose of storing and handling its products, a practice requiring a larger capital investment than many competitors possessed, having for its purpose the furtherance of the corporation's petroleum business, and resulting in loss of customers by competitors:

Held, (*a*) That the use of such leases constituted, under the circumstances set forth, an unfair method of competition in violation of section 5 of the act of September 26, 1914;

(*b*) That the effect of such leases, under the circumstances set forth, might be to substantially lessen competition and tend to create for the corporation a monopoly in the business of selling petroleum products, and that the use of the same constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sinclair Refining Co., hereinafter referred to as the respondent, has been 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 Sinclair Refining Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at the city of Chicago, in the State of Illinois; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline, and the leasing and loaning of oil pumps, storage tanks, or containers and their equipments in various States of the United States and the District of Columbia in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent in the conduct of its business as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil pumps, storage tanks, or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in inter-

state commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices the same are constantly moved from one State to another by respondent and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitors of respondent to various persons, firms, corporations, and copartnerships; that in the conduct of their business as aforesaid competitors of respondent constantly move such products and devices from one State to another and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the past four years.

PAR. 3. That respondent in the conduct of its business, as aforesaid, with the effect of stifling and suppressing competition in the sale of the aforesaid products and in the sale, leasing, or loaning of the aforesaid devices and other equipments for storing and handling the same, and with the effect of injuring competitors who sell such products and devices, has within the four years last past sold, leased, or loaned and now sells, leases, or loans the said devices and their equipments for prices or considerations which do not represent reasonable returns on the investments in such devices and their equipments; that many such sales, leases, or loans of the aforesaid devices are made at prices below the

cost of producing and vending the same; that many of such contracts for the lease or loan of such devices and their equipments provide or are entered into with the understanding that the lessee or borrower shall not place in such devices or use in connection with such devices and their equipments any refined oil or gasoline of a competitor; that only a small proportion of the dealers in gasoline and refined oil under such agreements and understandings deal also in similar products of respondent's competitors, and that only a small proportion of such dealers require or use more than a single pump outfit in the conduct of their said business; that there are numerous competitors in the sale of such products who are unable to enter into such lease agreements or understandings because of the large amount of investment required to carry out such lease agreements as a competitive method of selling refined oil and gasoline; that there are numerous other competitors of respondent engaged in the manufacture and sale of said devices and their equipments who do not deal in refined oil and gasoline, and therefore do not sell or lease said devices and their equipments for a nominal consideration on a condition or understanding that their products only are to be used therein; that the said numerous competitors who were unable to enter into such lease agreements or understandings, as aforesaid, have lost numerous customers in the sale of refined oil and gasoline to respondent because of the business practices of respondent hereinbefore set forth; that the said numerous other competitors of respondent who manufacture and sell said devices and their equipments, but do not sell refined oil and gasoline, as aforesaid, have lost numerous customers and prospective customers for the purchase of their devices and equipments because of the said business practices of respondent, as hereinbefore set forth.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sinclair Refining Co., hereinafter referred to as the respondent, has been using unfair methods of competition in in-

terstate commerce, in violation of the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and 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 Sinclair Refining Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business in the city of Chicago, in the State of Illinois; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline and the leasing of oil pumps and storage tanks and their equipments in various States of the United States and the District of Columbia, in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent in the conduct of its business, as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil pumps, storage tanks, or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that such products are sold, and such devices sold, leased, or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices, the same are constantly moved from one State to another by respondent, and there is conducted by respondent a constant current of trade in such products and devices between the various States of the United States; that there are numerous competitors of respondent who in the conduct of their businesses in competition with respondent purchase similar products and purchase and manufacture similar devices, the said devices being used

to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that such products are sold and the aforesaid devices sold, leased, or loaned by such competitors in competition with respondent to various persons, firms, corporations, and copartnerships; that in the conduct of such business, as aforesaid, respondent's competitors constantly move such products and devices from one State to another and there is conducted by said competitors of respondent a constant current of trade in such products and devices between the various States of the United States; that respondent and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the four years last past.

PAR. 3. That the respondent, for four years last past, in the conduct of its business as aforesaid, has leased and made contracts for the lease and is now leasing and making contracts for the lease of said devices and their equipments to be used within the United States, and has fixed and is now fixing the price charged therefor on the condition, agreement, or understanding that the lessees thereof shall not purchase or deal in the products of a competitor or competitors of respondent; and that the effect of such leases or contracts for lease, and conditions, agreements, or understandings, may be and is to substantially lessen competition and tend to create a monopoly in the territories and localities where such contracts are operative.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit and having submitted to the Commission, subject to its approval, an agreed statement of facts in said cause, which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and it having been agreed that as to other facts the evidence

to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the Commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the Commission having duly heard evidence on behalf of the Commission and respondent, and the respondent having filed a brief by its attorney, and the Commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the Commission and by the respondent, and being fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the city of Chicago, in the State of Illinois, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter referred to as products, and is largely engaged in refining crude petroleum, and that it is now and has been since January 25, 1917, in connection with the aforementioned business, engaged in the leasing and loaning, but not in the manufacture, of oil pumps, storage tanks, and containers, and their equipment, hereinafter referred to as devices, in various States of the United States, but not in the District of Columbia, in competition with numerous other persons, firms, corporations, and copartnerships similarly engaged; that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Co.

PAR. 2. That the respondent, in the conduct of its business, as aforesaid, and as hereinafter more particularly described, extensively refines petroleum and its products and purchases refined oil and gasoline, all hereinafter referred to as "products," and also purchases oil pumps, storage tanks or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products

and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices, the same are constantly moved from one State to another by respondent, and there is conducted by respondent a constant current of trade in such products and devices between various States of the United States; that there are numerous competitors of respondent, who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitors of respondent to various persons, firms, corporations, and copartnerships; that in the conduct of their business, as aforesaid, competitors of respondent constantly move such products and devices from one State to another, and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent has conducted its said businesses in a similar manner to that above described since January 25, 1917.

PAR. 3. That respondent now leases and loans, and has for the period of its business existence leased and loaned, devices and equipment for storing and handling its products, and that the monetary considerations received by respondent do not represent reasonable returns upon the investment in such devices and equipment; and also that such leases and loans of said devices and equipment are made for monetary considerations below the cost of purchasing and vending the same, when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and

sales policy of the respondent; that respondent's form of contract with the users of such devices and equipment provides in substance that the devices and equipment shall be used for the sole purpose of storing and handling gasoline supplied by respondent, and that the uniform contract used by respondent for leasing such devices and equipment is in form, tenor, and substance as follows:

SINCLAIR REFINING COMPANY.

EQUIPMENT CONTRACT.

This agreement, made and entered into this _____ day of _____, 19____, between Sinclair Refining Company of _____, party of the first part, and _____, of the city of _____, State of _____, party of the second part, witnesseth:

Whereas, party of the second part is now being supplied with gasoline by the party of the first part and desires to install on his premises situated at _____ the following equipment for the better storing and handling of such gasoline:

_____

_____

Now, therefore, in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part (the receipt of which is hereby acknowledged), the above-named parties do hereby agree as follows:

1. The above-described equipment shall be used by party of the second part for the sole purpose of storing and handling the gasoline supplied by party of the first part.

2. The party of the second part agrees, at his own cost, to maintain said equipment in good condition and repair so long as he shall continue to use same.

3. The party of the second part agrees that he will not encumber or remove said equipment, or do or suffer to be done anything whereby said equipment or any part thereof may be seized, taken on execution, attached, destroyed, or injured, or by which the title of the party of the first part thereto may in any way be altered, destroyed, or prejudiced.

4. In the event party of the second part should at any time use said equipment for any other purpose than the storing and handling of gasoline supplied by the party of the first part, or should cease for _____ days to handle gasoline secured from the party of the first part, the right or license of the party of the second part to said equipment shall at once terminate, and thereupon party of the first part shall have the right to enter upon said premises and remove said equipment and every part thereof.

5. The party of the second part shall indemnify and save harmless the party of the first part of and from any liability for loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of gasoline stored in said tank or drawn through said pump.

6. This agreement shall terminate forthwith upon the sale or other disposition of said premises by party of the second part, and in any event upon the expiration _____ months from the date hereof; and in the event that by mutual consent said equipment remains in the possession of party of the second part at the expiration of said period it is agreed that the same shall be used by party of the second part subject to all of the terms and conditions of this agreement, and such may be terminated at any time after the expiration of _____ months from the date hereof by the party of the first part giving ten days' notice to that effect. Upon the termination of this license by whatever means effected, the party of the first part shall have the right to enter upon said premises and remove the said equipment and each and every part thereof: *Provided, however,* That the party of the second part shall have the right and option at such time to purchase said equipment by paying therefor the sum of _____.

This contract is executed in triplicate, and it is agreed that the contract held by the party of the first part is to be considered the original and to be the binding agreement in case the duplicate varies from it in any particular.

In witness thereof the parties hereto have caused this agreement to be executed the day and year first above written.

SINCLAIR REFINING COMPANY,

By _____

Party of First Part.

_____

Party of Second Part.

PAR. 4. That the contracts mentioned in the preceding paragraph also provide that such equipments shall be used by the lessee only for the purpose of holding and storing the respondent's petroleum products; that a small proportion of such lessees handle similar products of respondent's competitors; and that only a small proportion of such lessees as handle similar products of respondent's competitors require or use more than a single pump outfit in the conduct of their said business; that the practice of leasing such devices requires a large capital investment; that many competitors of respondent do not possess sufficient capital and are not able to purchase and lease devices as respondent does as aforesaid, partly by reason of which such competitors have

lost numerous customers to respondent; that the effect of the practice of leasing by contract such equipments, where such contracts contain the said provision restricting the use of the same to the storage and handling of respondent's products as aforesaid may be to substantially lessen competition and tend to create for the respondent a monopoly in the business of selling petroleum products.

CONCLUSIONS.

That the methods of competition and the business practices set forth in the foregoing findings as to the facts are, 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," and are in violation of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to the Commission, subject to its approval, an agreed statement of facts in said cause, which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and it having been agreed that as to other facts the evidence to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the Commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the Commission having duly heard evidence on behalf of the Commission and respondent, and the respondent having filed a brief by its

attorney, and the Commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the Commission and by the respondent and being fully advised in the premises reports and finds as follows: That having made its report and findings, as elsewhere set forth, and having concluded upon such report and findings that the respondent has been guilty of unfair methods of competition in interstate commerce in violation of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that the respondent has violated section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which report, findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That respondent, Sinclair Refining Co., shall cease and desist from—

(1) Directly or indirectly leasing pumps or tanks, or both, and their equipments for storing and handling petroleum products in the furtherance of its petroleum business, at a rental which will not yield to it a reasonable profit on the cost of the same after making due allowance for depreciation and other items usually considered when leasing property for the purpose of obtaining a reasonable profit therefrom and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

(2) Entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipments the same shall be used only for storing or handling the products of respondent and from doing anything having the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

Provided, however, That as to such pumps and tanks and equipments as are now leased by respondent contrary to the orders contained in paragraphs 1 and 2 herein respondent shall have four months from the date hereof to enter into new contracts or agreements with respect to the same which shall not be incompatible with the spirit and intent of this order.

It is also ordered, Under and by virtue of the authority conferred on the Commission by paragraph B of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, that the said Sinclair Refining Co., respondent, shall within 20 days after the expiration of the time allowed within which respondent shall have fully complied with the order to cease and desist, herein above set forth, report in writing to the Federal Trade Commission, fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in the order to cease and desist, and shall set forth in such report in complete detail the plan or plans adopted for the lease, loan, gift, or sale of any oil tanks and pumps for use in storing refined oil or gasoline, which plan or plans are in use or are proposed to be put in use, and also attach to such report any contracts used by the respondents in the conduct of such business.

FEDERAL TRADE COMMISSION

v.

ROYAL EASY CHAIR CO.

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

Docket 239.—November 17, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of reclining chairs, gave and offered to give to employees of customers cash bonuses as an inducement to push the sale of its products with the purchasing public: