STYLE OF THE COLE-CONRAD CO.

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

Docket 349.—December 30, 1919.

SYLLABUS.

Where an individual engaged in the sale of groceries by mail in "combination orders" only, the price of which did not include cost of transportation to the residence of the purchaser, and in which

orders the number of items and the quantity of each, but not always the quality and kind, were specified with certainty—

(*a*) advertised different "combination orders" so assembled that each contained one or more staple articles of well-known quality and price, and other articles, constituting the greater part of the order, the quality and retail prices of which were not well known to the general public, and set forth prices alleged to be charged for each item, which prices for the well-known and staple articles were less than the cost thereof, but for the less familiar articles were at such increased amounts as to afford a satisfactory profit on the sale as a whole; thereby misleading the purchasing public into believing that each and every item of groceries was sold at a certain definite price and that the less well-known articles were sold at proportionately as low prices as the staple and well-known articles were represented to be sold;

(*b*) overstated the price that would be charged by his competitors for similar "combination orders" and for the less familiar articles making up said orders;

(*c*) advertised that he was selling his "combination orders" and each item thereof at prices considerably less than those charged by his competitors, when in fact such orders and some individual items thereof could have been purchased from his competitors at prices considerably less than those charged by him, including the cost of transportation to the residence of the purchaser:

Held, That such false and misleading advertising constituted, under the circumstances set forth, unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that J. B. Cohen, trading under the name and style of the Cole-Conrad 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 an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, J. B. Cohen, is a resident of the State of Illinois, having an office for the transac-

tion of business in the city of Chicago, in said State, and is now and for more than a year last past has been engaged under the trade name and style of the Cole-Conrad Co. in the sale of groceries by mail throughout the several States of the United States and the District of Columbia in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That during the year last past, in the conduct of his business in the sale of groceries in interstate commerce as aforesaid, the respondent has adopted the practice of selling its groceries in combination orders consisting of one or more well-known and staple articles combined with others not so well known or familiar to the purchasing public, such combination orders being sold at a fixed aggregate price; that said combination orders are extensively advertised by the respondent in newspapers, magazines, and catalogues, which advertisements set forth the different items of the said combination orders, together with the individual prices of said items, which for the well-known and staple articles are less than cost, but for the less familiar articles are at such increased prices as give the respondent a satisfactory profit upon the aggregate items of the said combination orders, and that the effect of said form of advertisement in connection with other false and misleading statements contained in said advertisements is to deceive and mislead the public into the belief that the other items of groceries composing respondent's said combination orders are sold at the same proportionately low prices as the staple and well-known groceries, and that groceries in general are sold by the respondent at prices very much less than those charged by competitors.

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, J. B. Cohen, trading under the name and style of the Cole-Conrad Co., had been and then was using unfair methods of competition in 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 thereof would be to the interest of the public, and fully stating its charges in that respect; and the respondent having filed his answer to said complaint, and the issues so raised having, pursuant to due notice given to said respondent, come on for hearing before the Commission; and the Commission having appeared and introduced its evidence in support of its charges, and the respondent having failed to appear; and all testimony heard at said hearing having been reduced to writing and, together with the evidence introduced thereat, having been filed in the office of the Commission, the Commission being fully advised in the premises and upon consideration thereof, now makes this its report and findings as to the facts and its conclusions thereon:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, J. B. Cohen, is now and since March 1, 1919, has been continuously engaged in the business of selling in "combination orders" groceries by "mail order" in the manner hereinafter more particularly described as a sole trader under the name of the Cole-Conrad Co., with offices in Chicago, Ill., at which he transacts said business. For a short period of time since March 1, 1919, respondent also conducted such business under the names of the Bayard Grocery Co. and the Kellogg Grocery Co. Respondent was also engaged in the same business during the year 1917, but was ordered by the United States Food Administrator to discontinue it. This order was rescinded on March 1, 1919.

Respondent carries on his business by soliciting the general public and securing from it purchasers for his groceries by means and as the result of representations contained in advertisements which he causes to be published in catalogues and in numerous newspapers, magazines, and other periodicals which are circulated and read throughout the States and Territories of the United States and the District of

Columbia. Between March 1, 1919, and April 28, 1919, respondent, as a result of this method of solicitation, secured approximately 15,000 "combination orders" for groceries from purchasers located throughout the United States. Respondent filled these orders and caused the groceries therein described to be transported to the respective States wherein such purchasers resided, receiving therefor an aggregate amount of $50,000 or $60,000. Respondent is still engaged in filling orders received as a result of the advertisements mentioned above and shipping the groceries therein described in the manner stated. A portion of the advertising above referred to is still being circulated by respondent. In thus carrying on his business, and in thus selling groceries to the general public, respondent is in direct competition with numerous persons, firms, and corporations who are also engaged in selling groceries to the general public by mail order and otherwise.

PAR. 2. Respondent advertises and sells his groceries only in "combination orders." These orders consist of a combination of anywhere from 3 to 14 different items of groceries. The number of items and the quantity of each is specified with certainty in each order, but the quality and kind is not always described with certainty. Respondent advertises 33 different "combination orders" for which he charges prices ranging from $1.99 up to $259.16. Each order is so made up with reference to the nature of the items of groceries included therein that it will contain one or more staple articles, the quality and retail price of which are more or less well known to the general public and other articles constituting the greater part of the "combination orders," the quality and retail price of which are not so well known. That in said advertisements published by the respondent as aforesaid the various items of the different "combination orders" are set forth, together with the prices alleged to be charged for each item; that the prices set forth for the well-known and staple articles are less than the cost thereof, but the prices set forth for the less familiar articles are at such increased amounts as to enable the respondent to make

a satisfactory profit on the sale; and that such advertisements have the capacity to and do mislead the purchasing public into the belief that each and every item of groceries is sold at a certain definite price, and that the less familiar articles are sold by the respondent at proportionately as low prices as the staple and well-known articles are represented to be sold, whereas, in truth and in fact, respondent does not sell any separate article of the groceries so advertised by him at a definite price, but sells only the said complete "combination order" at such a definite price for the whole thereof as will allow him a satisfactory profit on the sale and will not sell separately any article mentioned in any of his orders or in any part of his advertisements.

PAR. 3. Respondent in said advertisements has been representing that the prices of his "combination orders" and of the items of the less familiar articles of groceries, enumerated therein, are less than the prices at which similar articles or combinations of articles of groceries are sold by competitors, whereas in truth and in fact such articles and combinations of articles of groceries could have been purchased from the respondent's competitors at prices considerably less than those represented by him as being charged by his said competitors.

PAR. 4. Respondent in said advertisements has been representing that he is selling his "combination orders," and each item thereof, at prices considerably less than those charged by his competitors, when in fact and in truth such orders and individual items of groceries could have been purchased from respondent's competitors at prices considerably less than those charged by respondent, including the cost of transportation to the residence of the purchaser thereof, whereas purchasers of respondent's groceries are compelled to defray the cost of such transportation.

CONCLUSIONS.

The acts and conduct of the respondent set forth in the foregoing findings as to the facts are unfair methods of competition in commerce within the meaning and 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 above-named respondent, J. B. Cohen, trading under the name and style of the Cole-Conrad Co., had been and then was using unfair methods of competition in 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 thereof would be to the interest of the public, and fully stating its charges in that respect, and the respondent having filed his answer to said complaint, and the issues so raised having pursuant to due notice given to said respondent come on for hearing before the Commission; and the Commission having appeared and introduced its evidence in support of its charges and the respondent having failed to appear; and all testimony heard at said hearing having been reduced to writing and, together with the evidence introduced thereat, having been filed in the office of the Commission, and the Commission being fully advised in the premises and upon consideration thereof having made and filed its report containing its findings as to the facts and its conclusions that the 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, J. B. Cohen, trading under the name and style of the Cole-Conrad Co., with offices at Chicago, Ill., cease and desist from selling or offering to sell groceries or any other article of merchandise or commodity of whatsoever kind, character, or description in commerce among the several States or in any Territory of the

United States or the District of Columbia by means of advertisements for combination orders of groceries in which the individual items are set forth, together with the prices thereof, which for the well-known and staple groceries are at or less than cost, but for the less familiar articles are at such increased amounts as render a satisfactory profit upon the aggregate items of such combination orders, or by means of any other false, misleading, deceptive, or unfair statements or representations in magazines, newspapers, periodicals, or catalogues, or made or put forth in any other manner howsoever, where such statements or representations have a tendency or capacity to discredit competitors or their method of doing business, or are calculated or designed to mislead or deceive respondent's customers or prospective customers, or the customers or prospective customers of competitors or the public generally, as to the true character of the transaction, or to create a false impression to the effect that respondent is selling his groceries or other commodities or any individual item of either thereof at prices as low as or lower than those charged by competitors.

FEDERAL TRADE COMMISSION

v.

PLOMO SPECIALTY MANUFACTURING CO. AND RIVERSIDE REFINING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF