FEDERAL TRADE COMMISSION

v.

MALONEY OIL & MANUFACTURING CO.

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

Docket 309—April 27, 1920.

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 not followed by many competitors, 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, both as against competitors engaged exclusively in the petroleum business, and also as against competitors engaged in the manufacture and sale of such equipment:

(*b*) That the use of such leases, under the circumstances set forth, 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 Maloney Oil & Manufacturing 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, Maloney Oil & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at the city of Scranton in said State; 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 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 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 Maloney Oil & Manufacturing Co., hereinafter referred to as the respondent, has been using unfair methods of competition in interstate 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, Maloney Oil & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in the city of Scranton, in said State; 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 monoply in the territories and localities where such contracts are operative.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Maloney Oil & 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 has been and now is violating the provisions 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," and that a proceeding by it in respect of such alleged violation of section 5 of an act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and the respondent having appeared and filed its answer, admitting certain of the allegations of said complaint and denying certain others thereof, and containing certain allegations as affirmative defense, and the Commission having offered testimony in support of the charges of said complaint, and the respondent having rested its case without introducing evidence, and the cause having been duly argued before the Commission, and the Commission

having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the city of Scranton, in the State of Pennsylvania, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, and is largely engaged in refining crude petroleum, and that it is now and has been during the four years last past, in connection with its aforesaid business, engaged in the leasing and loaning but not in the manufacture of oil pumps, storage tanks, and containers, and equipment hereinafter referred to as devices, in various States of the United States in competition with numerous other persons, firms, copartnerships, and corporations also engaged in the business of selling refined oil and gasoline and refining crude petroleum.

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 and also purchases oil pumps, storage tanks, and containers, hereinafter referred to as devices. That respondent has been and now is maintaining numerous storage stations in various States to which it ships from its refineries refined oil and gasoline in bulk. And that the said refined oil and gasoline is thereafter sold and delivered to retail dealers in the said several States. That the respondent, in the course of its said business, leases and delivers said devices to various persons, firms, copartnerships, and corporations in various States other than those in which the said devices are purchased by the respondent; and that in the course of commerce in buying and selling said devices said devices are moved to, through, and among the various States of the United States, and that there is a constant current of trade in the conduct of its said business

in buying and selling said equipment among said various States of the United States.

PAR. 3. That during all of said period respondent, in the course of commerce among the several States and Territories of the United States in the conduct of its business as aforesaid, has been and now is leasing to retailers of its petroleum products said devices for use by such retailers in storing and handling respondent's said petroleum products. That respondent, in leasing such devices as aforesaid during said period, has made and does now make contracts or leases with the said retailers in and by the terms of which the said retailer agrees to use the said device for containing, storing, and vending the products of the respondent exclusively. That the rental or lease charge provided for in such contracts is a nominal sum and that no other consideration for the leasing of such equipments by respondent is provided for by said contracts, and that such devices are leased at nominal rentals as aforesaid to promote and advance respondent's petroleum and gasoline business. That such nominal sums or rentals do not afford a reasonable profit to respondent on the amount invested in such devices. That the respondent leases such equipments in competition in interstate commerce with manufacturers of similar equipments who are engaged in the sale of the same in such commerce.

PAR. 4. That the respondent sells its said products in various States and Territories of the United States in competition with other refiners and wholesale dealers in petroleum products and gasoline, and respondent has practiced the leasing of said devices to retailers in the various States and Territories as aforesaid, as a method of competing with other firms, persons, partnerships, and corporations also engaged in refining and selling in wholesale quantities gasoline, refined oil, and petroleum products.

PAR. 5. That the contracts mentioned herein generally expressly provide that said devices shall be used by the lessees only for the purpose of holding and storing the respondent's said petroleum products, and all of said contracts or leases which the respondent has entered into as aforesaid

have been made on the condition, agreement, or understanding that the lessee or purchaser thereof should use the said device only for the purpose of holding and storing petroleum products purchased from the respondent. That a small number of retail dealers to whom the respondent leases or sells such devices upon the terms and conditions aforesaid handle similar products of respondent's competitors, but a large majority of the retailers to whom the respondent leases or sells such devices upon the terms and conditions aforesaid require and use in their business only a single pump outfit.

PAR. 6. That the respondent has practiced the leasing or selling of such devices upon the terms and conditions aforesaid for the purpose of obtaining and holding customers and of preventing its competitors from obtaining as customers the retail dealers with whom it has entered into such contracts or leases as aforesaid.

PAR. 7. That many competitors of the respondent do not sell or lease such devices to retail dealers upon the terms and conditions referred to herein, and such competitors have lost numerous customers to the respondent as a result of the respondent's practice of offering and leasing said devices to such retail dealers upon the terms and conditions aforesaid.

CONCLUSIONS.

That the practice of leasing such devices at a nominal rental and of selling said devices for a nominal consideration is an unfair method of competition in interstate commerce as against the competitors of respondent engaged in the manufacture of such devices and in the sale of the same for profit in the territory wherein the respondent leases such devices and also as against competitors of respondent engaged in the business of refining crude petroleum and selling at wholesale refined oils, gasoline, and petroleum products who do not invest in or make use of such devices for the purpose and on the terms and conditions aforesaid.

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 herein unfair methods of competition in interstate commerce within the meaning 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 constitute a violation of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraint and monopolies, 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, Maloney Oil & 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 has been and now is violating the provisions 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," and that a proceeding by it in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance and filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and containing certain allegations as affirmative defense, and the Commission having offered testimony in support of the charges of said complaint, and the respondent having rested its case without introducing evidence, and the cause having been duly argued before the Commission, and the Commission having duly considered the record and being fully advised in the premises, and having made and filed its report, findings, and conclusions, which said report, findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Maloney Oil & Manufacturing Co., forever cease and desist from:

(1) Directly or indirectly leasing pumps or tanks, or both, and equipment for storing or handling petroleum products in furtherance of its petroleum business, at a rental which will not yield to it a reasonable profit on the cost of 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 in 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 equipment, 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 provisions of this order, respondent shall be required, four months from the date of service hereof, to enter into new contracts or agreements with respect to same which shall not be incompatible with the purport 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 Maloney Oil & Manufacturing Company, respondent, shall within 30 days after the expiration of the time allowed for the respondent to comply with the order to cease and desist, report in writing to the Federal Trade Commission, fully stating and setting forth the nature of the changes made in the conduct of its business with

respect to such 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, what 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 respondent in the conduct of such business.

The Commission has also issued similar orders in other cases involving substantially the same facts, as shown by the following:

TABLE.

Date.	Dock. No.	Respondent.	Location.	Stipulation or trial.
1919.				
Oct. 14	314*	C. L. Smith Oil & Gasoline Co.....	St. Louis, Mo.....	Trial.
14	336*	Iowa Oil Co.....	Dubuque, Iowa...	Do.
Apr. 27	131	Atlantic Refining Co.....	Philadelphia, Pa..	Do.
27	134	Standard Oil Co. of New York....	New York City...	Do.
27	311	Sterling Oil Corporation.....	Buffalo, N. Y.....	Do.
27	312	Pavania Oil Co.....	Warren, Pa.....	Do.
27	313	Red "C" Oil Mfg. Co.....	Baltimore, Md....	Do.
27	316	Kendall Refining Co.....	Bradford, Pa.....	Do.
27	320	Gulf Refining Co.....	Pittsburgh, Pa....	Do.
27	331	Elmer E. Harris & Co.....	Buffalo, N. Y.....	Do.
27	333	Suor Oil Products Corporation....	.....do.....	Do.
27	337	Standard Oil Co. of New Jersey...	New York City...	Do.
27	373	The Texas Co.....	.....do.....	Do.
1920.				
June 3	132*	The Standard Oil Co. of Ohio.....	Columbus, Ohio...	Stipulation and trial.
3	318*	Paragon Refining Oil Co.....	Toledo, Ohio.....	Do.
3	323*	The Canfield Oil Co.....	Cleveland, Ohio...	Do.
3	327*	The Lily White Oil Co.....	Lima, Ohio.....	Do.

* Modified Sept. 27, 1920.

FEDERAL TRADE COMMMISSION

v.

THE CHAMBERLIN CARTRIDGE & TARGET CO.