*v.*

# THE LEVERING COFFEE CO.

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

Docket 510—May 26, 1920.

SYLLABUS.

Where a corporation engaged in the purchase and sale of coffee, tea, sugar, and cocoa leased coffee urns to proprietors of cafes and

restaurants in various cities, without other consideration than that such proprietors would purchase all or approximately all of their supplies of coffee from said corporation:

*Held*, That the use of such leases constituted, under the circumstances set forth, 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 Levering Coffee Co., hereinafter referred to as the respondent, has within the year last past violated and is violating 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 this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, The Levering Coffee Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at the city of Baltimore, in the State of Maryland, and is now and at all times hereinafter mentioned has been engaged in the business of dealing in coffee and tea, purchasing same in wholesale quantities in the various States of the United States and in foreign countries, causing same to be transported from points outside the State of Maryland to its place of business in Baltimore, Md., where said commodities are resold by respondent in wholesale quantities in the State of Maryland and States adjacent thereto and in the District of Columbia, and there is continuously, and has been at all the times herein mentioned, a constant current of trade and commerce in the commodities dealt in by said respondent, as aforesaid, between and among the various States and Territories of the United States, the District of Columbia, and foreign countries; that said respondent in the conduct of its said business has been in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. That said respondent in the conduct of its business, as set out in paragraph 1 herein, with the purpose, intent, and effect of stifling and suppressing competition in the sale of coffee and tea, has adopted the practice of leasing or loaning coffee urns to customers engaged in the business of conducting lunch rooms and restaurants, upon the expressed agreement that such customers would thereafter purchase from respondent all coffee and tea used by them in the conduct of their respective businesses, and without other consideration.

## 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, The Levering Coffee 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 that respect would be to the interest of the public, and fully stating its charges in this respect and the respondent having filed its answer, admitting that the matters and things alleged in the said complaint are true and thereafter the Commission, pursuant to notice, having proceeded to introduce its evidence in support of its charges before a duly authorized examiner and the respondent having failed to appear and making default, and counsel for the Commission having presented his brief and argument in support of the charges in the said complaint, and the Commission being duly advised in the premises now makes and enters this its report, stating its findings as to the facts and its conclusions.

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Levering Coffee Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland.

with its principal office and place of business located at the city of Baltimore in said State.

PAR. 2. That the respondent, The Levering Coffee Co., is now and for more than one year last past has been engaged in the business of dealing in coffee and tea, and in the conduct of its business purchases the same in wholesale quantities in various States of the United States and foreign countries, causing the same to be transported therefrom in and to the city of Baltimore, State of Maryland, where the same are sold and reshipped in wholesale quantities to customers in the State of Maryland and States adjacent thereto and in the District of Columbia.

PAR. 3. That in the conduct of its business as aforesaid, the respondent, The Levering Coffee Co., for more than four years last past has loaned coffee urns to proprietors of lunch rooms and cafés in the city of Washington, D. C., upon the express condition, agreement, or understanding and without other considerations than that such proprietors would purchase all of their supplies of coffee from said respondent, a copy of such contracts or agreements is attached hereto and made a part hereof, marked "Exhibit A."

PAR. 4. That proprietors of cafés and lunch rooms in the city of Washington, D. C., have during the four years last past obtained coffee urns from the Levering Coffee Co. under and by virtue of the terms and agreements of the above-mentioned and described contracts and without other consideration and have ever since and still do purchase their entire or a large percentage of their supplies of coffee from said the Levering Coffee Co., respondent herein.

PAR. 5. That the respondent, The Levering Coffee Co., is now and for more than four years last past has been selling coffee and tea in commerce aforesaid in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

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 provi-

sions 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."

EXHIBIT A.

This agreement, made this _____ day of _____ 191_ by and between the Levering Coffee Co., of the city of Baltimore, State of Maryland, party of the first part, and _____ of _____, party of the second part.

Witnesseth that the party of the second part does hereby agree to purchase from the party of the first part all of the coffee and tea used by him in the conduct of his business, from the date hereof until this agreement is terminated as hereinafter provided, and to pay promptly all bills owing to the party of the first part as same shall mature.

In consideration whereof the party of the first part does hereby agree to loan to the party of the second part_____

_____

for so long a time or term as the party of the second part continues to purchase from the party of the first part all of the coffee and tea used by him in the conduct of his business, or until this agreement be terminated for any cause whatsoever.

It is understood and agreed that if, at any time, the party of the second part fails to purchase from the party of the first part all of the coffee and tea used by him in the conduct of his business as aforesaid, or in case that said party of the second part fails to settle his accounts due and owing to the said party of the first part promptly as they mature, or when this agreement is terminated for any reason whatsoever, the said party of the first part shall have the right at any time thereafter to repossess themselves of the said coffee urns without notice or proceeding at law, and the said party of the second part hereby agrees peaceably and promptly to deliver up the same to the said party of the first part, their agent or representative without let or hindrance, it being hereby expressly understood and agreed that the title to the said coffee urns, etc., shall at all times remain in the party of the first part, said coffee urns, etc., being hereby loaned but not sold.

And the said party of the second part covenants not to injure or to remove the said coffee urns from the place to which they are delivered, nor in any way to part with their custody or possession without first obtaining the consent in writing of the party of the first part. And the said party of the second part does hereby agree to pay to the said party of the first part the cost of replacing any and all parts of said coffee urns that may become broken or damaged while in his possession.

It is hereby understood and agreed that this agreement shall remain in full force until there is a breach by one of the parties hereto, or until terminated by the parties hereto or either of them, by giving at least five days previous notice thereof in writing; or should the party of the second part fail to settle promptly all of his accounts with the said party of the first part as they mature, the said party of the first part can immediately terminate this agreement without notice, and repossess themselves of the said coffee urns in manner as mentioned above, wherever they may be found. It is also agreed and understood that the continuation of this agreement from time to time is conditioned upon both of the parties hereto remaining in the same business in which they are engaged at the date hereof.

It is hereby declared and understood that no agreement, written or verbal, has been made modifying or altering the above in any particular.

In witness whereof the said parties have hereunto set their hands and seals the day and year aforesaid.

Witness:

_____ _____ (Seal.)
(As to party of first part.)

_____
(As to party of second part.)

By_____ (Seal.)

_____

The undersigned owner and landlord of premises on which the within-mentioned coffee urns are to be placed, in consideration of said coffee urns being delivered on said premises does hereby waive all of his rights against said urns for rent under the lien pledge and privilege or any other law accorded to landlords.

Witness:

_____ _____
(Owner Landlord.)

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent, The Levering Coffee Co., having filed its answer, admitting the allegations in the said complaint and the Federal Trade Commission having thereafter introduced its evidence in support of the charges in the said complaint, and having made and filed its report, containing its findings as to the facts and its conclusions that the respondent has violated 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," which report,

findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondent, The Levering Coffee Co., of Maryland, and its officers, directors, representatives, agents, servants, and employees, cease and desist from directly or indirectly:

1. Leasing or loaning coffee urns to customers upon the agreement, condition, or understanding, either expressed or implied, that such customers will thereafter purchase from the respondent all the coffee used by them in the conduct of their respective businesses.

2. From continuing to operate under any such contracts or agreements heretofore made and entered into.

3. 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.

*It is further ordered*, That the respondent, The Levering Coffee Co., shall file a report in writing with the Commission 90 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

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## FEDERAL TRADE COMMISSION

*v.*

## PAN MOTOR CO., AND SAMUEL C. PANDOLFO.

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

Docket 273.—May 27, 1920.

SYLLABUS.