

Complaint.

FEDERAL TRADE COMMISSION

v.

SHOTWELL MANUFACTURING COMPANY.

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

Docket 562.—September 8, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of candy and kindred products gave and offered to give to salesmen of merchants and jobbers handling its products and those of its competitors, with the knowledge of said jobbers but without the knowledge, so far as said corporation was advised, of the retailers and customers who purchased its products from said jobbers, valuable premiums and presents consisting of watches, jewelry, and other personal property, as an inducement for them to push the sale of its goods in preference to similar products of its competitors:

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Shotwell Manufacturing 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, the Shotwell Manufacturing 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 Illinois, having its principal factory, office, and place of business located in the city of Chicago in said State, now and for more than two years last past engaged in the manufacture and sale of candy and kindred products among the several States of the United States, the Territories thereof, and the District of

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Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, the Shotwell Manufacturing Co., in the conduct of its business manufactures such candy and kindred products so sold by it at one of its factories located in the city of Chicago, State of Illinois, and in another of its factories located in the town of Arthur, State of Iowa, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, transporting the same through other States of the United States in and to the said city of Chicago and in and to the said town of Arthur, where they are made into the finished product and sold and shipped to purchasers thereof; that after such candy and kindred products are so manufactured they are continuously moved to, from, and among the 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 in commerce in the said candy and kindred products between and among various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and especially to and through the city of Chicago, State of Illinois, and to and through the town of Arthur, State of Iowa, and therefrom to and through other States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent now and for more than two years last past with the effect of stifling and suppressing competition in the manufacture and sale of candy and kindred products in interstate commerce has given and offered to give valuable premiums and presents consisting of watches, valuable jewelry, and other valuable personal property to the salesmen of merchants and jobbers handling the products of the respondent and similar products of respondent's competitors as an inducement to influence such salesmen to push the sales of respondent's products to the exclusion of similar products of its competitors.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Shotwell Manufacturing Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its attorney, filed its answer herein, and the attorneys for the Federal Trade Commission and the respondent having duly signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that such statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might therewith proceed upon such agreed statement of facts to make its report and findings as to the facts, its conclusions of law, and its order disposing of this proceeding without any further notice to respondent.

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 conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Shotwell Manufacturing 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 Illinois, having its principal factory, office, and place of business located in the city of Chicago, in said State, now and for more than two years last past engaged in the manufacture and sale of candy and kindred products among the several States of the United States, Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Shotwell Manufacturing Co., in the conduct of its business manufactures such candy and kindred products so sold by it at one of its factories located in the city of Chicago, State of Illinois, and in another of its factories located in the town of Arthur, State of Iowa, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, transporting the same through other States of the United States in and to the city of Chicago and in and to the said town of Arthur, where they are made into the finished products and sold and shipped to purchasers thereof; that after such candy and kindred 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 in commerce in the said candy and kindred products between and among various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and especially to and through the city of Chicago, State of Illinois, and to and through

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the town of Arthur, State of Iowa, and therefrom to and through other States of the United States, Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, Shotwell Manufacturing Co., now and for more than two years last past has given and offered to give valuable premiums and presents consisting of watches, valuable jewelry, and other valuable personal property to the salesmen of merchants and jobbers handling the products of respondent and similar products of respondent's competitors as an inducement to influence such salesmen to push the sales of respondent's products in preference over similar products of its competitors.

PAR. 4. That the respondent, in order to carry out its said plan of inducing such salesmen of jobbers and other dealers to push the sale of its products, issued a catalogue, which is annexed to the agreed statement of facts and marked "Exhibit A,"¹ which said catalogue is labeled "Incentives to success, new and enlarged edition; our method of showing appreciation to jobbers' salesmen for their efforts in our behalf," which said catalogue sets out in detail a list of premiums offered to such salesmen of such jobbers, stating therein the scheme and plan of such respondent in furthering, by the offering of such premiums, the sales of its product to the exclusion of the sales of the products of competitors of the respondent company, which said catalogue is made a part of this findings of facts.

PAR. 5. That the quantity of such products so manufactured, sold, and distributed by respondent is substantial and forms an important item of commerce among the several States of the United States, and the aforesaid acts were committed with the intention and purpose of restricting and hampering the marketing of the products so manufactured and sold by respondent's competitors.

PAR. 6. That the respondent did not give any notice to the retail merchants or the customers who purchased its products from jobbers to the effect that the respondent was offering and giving premiums to the salesmen of jobbers to push the sale of respondent's products in preference to the sales of other persons, firms, or corporations competing with respondent, and that, so far as respondent knows or is informed, such retail merchants and other customers who purchased respondent's products from jobbers did not know that the salesmen of such jobbers had received premiums or other rewards for pushing the sale of respondent's products.

PAR. 7. That respondent informed jobbers who were handling the products of respondent of the fact that respondent was offering and

¹ Not printed.

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giving to the salesmen of such jobbers premiums, as set out in the exhibit attached to the original agreed statement of facts, to further and push the products of respondent in preference to the products of other competing manufacturers of respondent.

CONCLUSION.

The practices of said respondent under the methods and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce, and constitute a violation 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein wherein it alleges that it had reason to believe that the respondent, Shotwell Manufacturing 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 the 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 and having filed its answer, and the attorneys for the above parties having filed and signed 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 on said statement of facts to enter its report, findings of 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 conclusion, that respondent had 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, Shotwell Manufacturing Co., a corporation existing under and by virtue of the laws of the State of Illinois, and having its principal factory, office, and place of business located in the city of Chicago, said State, its officers, directors, agents, servants, and employees cease and desist:

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(1) From directly or indirectly offering to give or giving valuable premiums or presents or other valuable personal property or any other thing of value to the salesmen of merchants or jobbers handling the products of the respondent and similar products of respondent's competitors as an inducement to influence such salesmen to push the sale of respondent's products to the exclusion of similar products of its competitors.

(2) From publishing or circulating any catalogues, circulars, letters, advertisements, or other printed matter containing lists of premiums, presents, or other things of value to be given to the salesmen of merchants or jobbers handling the products of the respondent and similar products of respondent's competitors as an inducement to influence such salesmen to push the sale of respondent's products over its competitors.

(3) The respondent is directed, after the expiration of 60 days from the time that it is served with a copy of this order, to file with the Commission a written report as to steps that have been taken to comply with the terms of this order.

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v.

HOLLAND PIANO MANUFACTURING CO.

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

Docket 577.—September 8, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of pianos and piano players, at the request of its customer dealers and for the purpose and with the effect of permitting them to make radical and abnormal discounts to ultimate purchasers and still receive customary prices for such instruments, stenciled thereon abnormally and unreasonably high fictitious values, with the tendency and effect of deceiving purchasers and the public into believing that such stenciled prices represented resale values based on cost plus a reasonable profit and that the corporation required or intended its customers to observe the same; having the tendency thereby to impede or suppress competition:

Held, That such false stencilling, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Holland Piano Manufacturing 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, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business at the city of Minneapolis, in the State of Minnesota, and that respondent for more than one year last past has been and now is engaged in the business of manufacturing, selling, and shipping pianos and player pianos to, from, and among the various States of the United

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States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That with the purpose and effect of stifling and suppressing competition in the aforesaid interstate commerce in the sale and distribution of pianos and player pianos, respondent, in the regular course of its said business, stencils or causes to be stenciled on pianos and player pianos of its own manufacture resale prices which are calculated to deceive, and do deceive, the purchasing public and the public generally into the belief that purchasers and prospective purchasers derive greater benefits by purchasing pianos and player pianos manufactured by respondent than they would receive by purchasing pianos and player pianos of equal grade and quality manufactured by competitors of respondent, when in truth and in fact such prices so stenciled are not bona fide resale prices but represent values greatly in excess of values customarily received as resale values for pianos and player pianos of like kind, grade, and quality.

PAR. 3. That such prices are so stenciled on said pianos and player pianos by respondent in the regular course of his said business according to agreements with, or at the request of, customers of respondent, which customers are regularly engaged in the general business of merchandising and shipping pianos and player pianos to, through, and from the States and Territories of the United States; that such stenciled prices appearing on said pianos and player pianos are calculated to deceive, and do deceive, purchasers and prospective purchasers and the public generally into the belief that such stenciled prices represent bona fide resale values based on costs plus reasonable profits, and that respondent, as the manufacturer of such pianos and player pianos, requires, or intends, his said customers to demand or receive, from purchasers, or prospective purchasers, values equal to such stenciled resale prices; when in truth and in fact such stenciled prices do not represent bona fide resale values or values which respondent in any sense demands or intends his said customers to receive from purchasers, or prospective purchasers, but such stenciled prices represent abnormally and unreasonably high fictitious values so stenciled on said pianos and player pianos for the purpose of permitting respondent's said customers to make, and who in fact do make, radical and abnormal discounts therefrom, thus leaving the resale prices to be received, and which are received by said customers, far below such stenciled prices, yet equal to reasonable and full resale values usually received by said customers and other dealers and distributors for pianos and player pianos of equal quality, grade, and kind.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complainant upon the respondent, Holland Piano Manufacturing Co., charging it with the use of an unfair method of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its attorney, hearings were had, and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondent before an examiner of the Federal Trade Commission, heretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Holland Piano Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business at the city of Minneapolis, in the State of Minnesota, and that respondent for more than one year last past has been and now is engaged in the business of manufacturing, selling, and shipping pianos and player pianos to, from, and among the various States of the United States, in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the sale and distribution of pianos and player pianos, respondent in the regular course of its said business, from the date of its organization, in December, 1913, to and until the service upon it of the complaint in the proceeding on March 15, 1920, stenciled on pianos and player pianos of its own manufacture resale prices; that such prices were so stenciled on said pianos and player pianos by respondent in the regular course of its said business at the request of its customers; that such customers were and are regularly engaged in the general business of merchandising and shipping pianos and player pianos to, through, and among the several States and Territories of the United States; that such stenciled prices appearing on pianos and player pianos were calculated to deceive, and did deceive, purchasers and prospective purchasers and the public generally into the belief that such stenciled prices represented piano resale values based on cost plus reasonable profits, and that the respondent as the manufacturer of such pianos and player pianos required or intended its customers to demand or receive from pur-

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chasers or prospective purchasers such stenciled resale prices; that in truth and in fact such stenciled prices did not represent bona fide resale prices or prices which the respondent in any sense required or intended its said customers to receive from purchasers or prospective purchasers; that such stenciled prices represented abnormally and unreasonably high fictitious values, so stenciled on said pianos and player pianos for the purpose of permitting respondent's said customers to make radical and abnormal discounts therefrom; that respondent's said customers did make radical and abnormal discounts from such stenciled resale prices, and received prices for such pianos and player pianos far below such stenciled prices, and said reduced prices were equal to prices usually received by said customers and dealers and distributors of pianos and player pianos of equal quality, grade, and kind manufactured by competitors of respondent.

PAR. 3. That the practice described in the preceding paragraph of these findings has the tendency to impede or suppress competition in the sale of pianos and player pianos in and among the various States of the United States.

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts is, under the circumstances therein set forth, an unfair method 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and evidence and argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated 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":

It is now ordered, That the respondent, Holland Piano Manufacturing Co., and its officers, directors, representatives, agents, servants, and employees, do cease and desist from directly or indirectly stenciling or causing to be stenciled, or in any other manner marking or causing to be marked upon pianos and player pianos manufactured by respondent, fictitious or misleading prices grossly in excess of the

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prices at which such pianos and player pianos are usually sold at retail.

It is further ordered, That the respondent, Holland Piano Manufacturing Co., shall, within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

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