

FEDERAL TRADE COMMISSION

v.

COMMONWEALTH COMPANY.

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

Docket 401.—September 14, 1920.

SYLLABUS.

Where a corporation engaged in the sale of groceries by mail, exclusively in combination orders composed of one or more well-known staple articles and others not so well known, to customers having no knowledge of its costs and profits, in advertising said orders

- (a) Set forth prices of the different items as "Our wholesale price to you," which prices, for the well-known staple articles, were less than cost, but for the others were sufficiently in excess thereof to afford a satisfactory profit on the order as a whole;
- (b) Overstated the retail prices ordinarily asked for the different items composing the various orders;

With the effect, taken in connection with other false and misleading statements, of deceiving and misleading the public into believing that it was selling all items on the basis suggested by the prices assigned to the well-known staple articles, and, in general, that it was selling groceries at prices less than those charged by competitors, instead of at the same or higher prices:

Held. That such false and misleading advertising, 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 Commonwealth 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 Commonwealth Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office

and place of business in the city of Chicago in said State, and is now, and for more than a year last past has been, engaged 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 its 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 gives 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.

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, Commonwealth Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having failed to answer said complaint within the time prescribed by law and the rules of practice of the Commission, or at all, due notice was served upon the respondent of the time and place of hearing and thereupon hearings were had before an examiner of the Commission, theretofore duly appointed, and evidence was introduced in support of the allegations of the complaint, and the respondent, by its attorney, Charles B. Stafford, Esq., appeared and stated of record that it would neither submit testimony nor make a defense herein.

Findings.

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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, make this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Commonwealth Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State, and at the time of the issuing of the Commission's complaint and for more than a year last past therefrom has been engaged 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 all of the time herein mentioned respondent in the conduct of its business in the sale of groceries in interstate commerce as aforesaid 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 price 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 gives 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.

PAR. 3. That the respondent in conducting its business solicited the general public, customers, and prospective customers, by means of representations contained in catalogues and other advertising matter of which the Commission's Exhibits 1, 2, 3, 4, 7, and 8 are copies heretofore duly received in evidence, and which respondent caused to be published and circulated through the States and Territories of the United States and the District of Columbia.

PAR. 4. That during the first two months of the conduct of respondent's said business respondent received, as a result of such representations contained in said catalogues and other advertising matter, orders for combinations or assortments of grocery products amounting to from \$6,000 to \$8,000, and was receiving at the end of that time approximately 100 orders a day; and that the various items comprising such orders were sold at the total respective prices for the various combinations or assortments; and that respondent refused to sell separately the items of grocery products comprising such combinations or assortments at the ostensible prices or figures appearing opposite each item of such combinations or assortments so advertised and offered for sale.

PAR. 5. That the prices published in said Exhibits 1, 2, 3, 4, 7, and 8, under the heading "Approximate retail price," were at all times herein mentioned higher than prices ordinarily asked by retail dealers for similar articles of equal or better quality.

PAR. 6. That the figures, ostensible prices, published in said exhibits and appearing under the heading "Our wholesale price to you," have no relation whatever to the articles opposite to which they appear as prices, but are arbitrary figures selected and arranged so as to equal the total price of each combination or assortment, which total price is the only price respondent intended to receive, and did receive, for the grocery products comprising each such assortment so advertised and sold; that such figures, ostensible prices, in so far as they are published and placed opposite to or in connection with the items sugar and flour in said exhibits, except pages 15 to 24, inclusive, in said Exhibit 8, are less than the wholesale prices, or any prices, at which respondent during any time mentioned herein could buy sugar or flour, while figures, ostensible prices, placed opposite some other items named in such combinations or assortments, are in excess of actual prices which would afford respondent a reasonable profit on the sale of such items; and that the only figures published as prices in connection with any given assortment or combination in any of said exhibits which represent actual or bona fide prices are the figures representing totals, and no others.

PAR. 7. That the column of figures, ostensible prices, as they appear in said exhibits under the often-repeated heading "Our wholesale price to you," is constructed in such a manner that if respondent actually sold such items at the figures, ostensible prices, appearing opposite thereto, respondent would be selling sugar and flour and other staples, the prices of which are well known to the public generally, at prices far below the wholesale cost of such staples, while the figures, ostensible prices, placed opposite such items, the prices

Conclusions.

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of which are not well known to the public generally, are far in excess of the wholesale prices which respondent pays for such items, so that if respondent actually sold said items at the said figures, ostensible prices, appearing opposite each of said items, it would make up on the less-known articles the loss which would be sustained on staples, the prices of which are well known to the public generally.

PAR. 8. That such figures, ostensible prices, as appear under said heading, "Our wholesale price to you," do not show the true price which customers and prospective customers pay for the individual items composing such combination; that if respondent eliminated entirely all such figures, ostensible prices, or substituted any other set of figures therefor whose sum equals such total price, irrespective of how such figures would be arranged with reference to said items, customers and prospective customers would pay no more or no less for such flour or sugar or any other item or all of the items named in such combination or assortment than such customers now pay respondent.

PAR. 9. That each such total price received for said combination or assortment is sufficient to yield respondent a satisfactory profit.

PAR. 10. That respondent does not possess any advantages in buying grocery products which enable it to sell such products at prices lower than other dealers.

PAR. 11. That respondent sells neither sugar at 3 cents a pound nor flour at \$7 per barrel, nor does it sell either of these staples or any other product named as an item in such combinations or assortments at any price which respondent specifies in connection therewith; that the price received for any given combination as a whole is approximately the same or greater than the sum of the prices at which the items composing such combination or assortment ordinarily sell for at retail as separate items; that the price which respondent actually receives for any such item equals the cost of each item plus a portion of the gross profit on the combination or assortment as a whole; that customers and prospective customers have no knowledge of respondent's costs and profits; and the actual price paid by such customers for any item named in said combinations or assortments is further hidden by the figures, ostensible prices, published under the said heading, "Our wholesale price to you."

CONCLUSIONS.

That the methods set forth in the foregoing findings of fact, under the circumstances therein set forth, are unfair methods of competition, 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the statement of the respondent by its attorney, Charles B. Stafford, Esq., that it would not make a defense herein, the testimony and evidence in support of the allegations of the complaint, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions 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":

It is now ordered, That the respondent, Commonwealth Co., its officers, agents, representatives, servants, and employees, do cease and desist, both directly and indirectly:

From circulating or causing to be circulated advertisements offering for sale commodities in combination or assortment lots wherein figures, or ostensible prices, appear opposite to or otherwise in connection with the individual items of such combinations or assortments, when such figures, or ostensible prices, have no true relation to such items, but appear in such amounts as when added will equal the price at which such combinations or assortments are sold as a whole;

From constructing or arranging such ostensible prices in such manner that if the individual items were actually sold at the figures, or ostensible prices, appearing opposite to or otherwise in connection therewith, commodities the prices of which are well known to the public generally would be sold below cost thereof, while commodities the prices of which are not well known to the public generally would be sold sufficiently above the cost thereof to make up on the less-known articles the loss which would be sustained on commodities the prices of which are well known to the public generally;

From misrepresenting the true price at which commodities are actually sold by advertising figures purporting to be prices which for one or more items forming a part of such combination or assortment equal the cost of such items plus a gross profit on the entire combination plus a minus difference between cost and an apparently lower price for staples or other remaining items or item, when such staples or remaining items or item forming part of such combination or assortment are not separately sold at the figures purporting to be prices so advertised;

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From placing opposite to, or in connection with such individual items, figures misrepresenting prices at which said items could be purchased from competitors; and

From circulating any statements or representations having a tendency or capacity to falsely discredit competitors or their methods of doing business, or which deceive or mislead customers, prospective customers, or the public generally as to the actual prices of commodities so offered for sale, or as to the true character of the transaction advertised.

It is further ordered, That the respondent, Commonwealth 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.

PLUNKETT CHEMICAL CO. (WM. H. PLUNKETT).

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Complaint.