

FEDERAL TRADE COMMISSION

v.

McKNIGHT-KEATON GROCERY CO., WOOD & BENNETT CO., THE SCUDDERS-GALE GROCER CO., AND RAY L. HOSMER AND THOS. W. WATSON, COPARTNERS TRADING AS RAY L. HOSMER & CO.

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

Docket 253.—September 28, 1920.

SYLLABUS.

Where certain jobbers in competition with a corporation in which retail grocers held stock, but which did not limit its sales to stockholders and did not sell to consumers,

- (a) Protested (in the case of one of their number) to a nationally known manufacturer against selling to it;
- (b) Induced and compelled a manufacturer's agent, to whom all had severally given orders, to withhold its purchase, by threatening to refuse their own, which had arrived and, in the aggregate, far exceeded their competitor's; and

Where certain brokers, induced by the coercion, persuasion, boycott, and threats of said jobbers, who had agreed that such competitor was not conducting its business in accordance with their standards and to prevent it from purchasing from manufacturers and other necessary sources of supply,

- (a) Agreed and conspired with said jobbers
 - (1) To refuse to sell to it upon the usual jobbing terms and prices;
 - (2) To recommend the same course to their principals;
 - (3) To compel it to purchase from and through them, at prices higher than regular jobbers' prices;
- (b) Refused to deliver goods ordered by it from their principal, a nationally known manufacturer, willing to sell to it, representing that it was not entitled to be dealt with as a jobber;

All for the purpose of stifling its competition:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that McKnight-Keaton Grocery Co., Wood & Bennett Co., the Scudders-Gale Grocer Co., and Ray L. Hosmer and Thomas W. Watson, copartners trading as Ray L. Hosmer & Co., hereinafter referred to as the respondents, have been

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and are 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 respondents, McKnight-Keaton Grocery Co. and Wood & Bennett Co., are now and at all the times hereinafter mentioned were corporations organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having each its principal office in the city of Cairo in said State, and are now and for many years last past have been engaged as wholesale dealers in groceries and kindred merchandise; that the respondents Ray L. Hosmer and Thos. W. Watson are now and at all times hereinafter mentioned were copartners, trading as Ray L. Hosmer & Co., having their principal office and place of business in the city of Cairo, State of Illinois, and are now and for many years last past have been engaged as brokers and commission merchants in groceries and kindred merchandise. And the respondent, the Scuders-Gale Grocer Co., is now and at all times hereinafter mentioned was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, and having its principal office and place of business in the city of St. Louis, in the said State, and having also a branch office in the city of Cairo, State of Illinois, and is now and for many years last past has been engaged as wholesale dealer in groceries and kindred merchandise.

PAR. 2. That each of the respondents in the conduct of its business enters into contracts of purchase for groceries and kindred merchandise from manufacturers and others in the different States and Territories of the United States and District of Columbia, causing the same to be transported to its place of business in the city of Cairo, Ill., whence such groceries and kindred merchandise are sold by respondents, and shipped to the purchasers thereof; that as a part of the transactions of which said purchases and sales are also a part, such groceries and kindred merchandise 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 and commerce in said groceries and kindred merchandise between and among the various States and Territories of the United States and the District of Columbia and foreign countries.

PAR. 3. That the said respondents in the conduct of their respective businesses as wholesale dealers or brokers and commission merchants in groceries and kindred merchandise in interstate commerce as aforesaid are and for more than two years last past have been wrongfully and unlawfully engaged, and are now engaged, in a combination or conspiracy among themselves, unfairly to hamper and obstruct a certain competitor, also engaged as a wholesale dealer in groceries and kindred merchandise, by inducing and compelling, or attempting to induce and compel, manufacturers of groceries and kindred merchandise to refuse to recognize such competitor as a jobber or wholesaler entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms, and for that reason to refuse to sell said competitor as such in interstate commerce, thus forcing it to buy at prices higher than those made by manufacturers to wholesalers and jobbers.

PAR. 4. That each of the respondents in the conduct of its business as a wholesale dealer or broker and commission merchant in groceries and kindred merchandise in interstate commerce as aforesaid has been for more than two years last past, and is now, wrongfully and unlawfully hampering and obstructing, and attempting to hamper and obstruct, a certain competitor, also engaged as a wholesale dealer in groceries and kindred merchandise, by inducing and compelling, or attempting to induce and compel, manufacturers of groceries and kindred merchandise to refuse to recognize such competitor as a jobber or wholesaler entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms, and for that reason to refuse to sell said competitor as such in interstate commerce, thus forcing it to buy at prices higher than those made by manufacturers to wholesalers and jobbers.

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 respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., the Scudders-Gale Grocer Co., and Ray L. Hosmer and Thos. W. Watson, copartners, trading as Ray L. Hosmer & Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance by their respective attorneys and filed their answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondents, before an examiner of the Federal Trade Commission theretofore duly appointed.

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And thereupon this proceeding came on for final hearing, and the Commission having heard argument of counsel and duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, McKnight-Keaton Grocery Co. and Wood & Bennett Co., are now, and at all times hereinafter mentioned were, corporations organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having each its principal office in the city of Cairo, in said State, and are now and for many years last past have been engaged in the business of buying and selling in interstate commerce, in wholesale quantities, groceries and products such as are generally dealt in by those engaged in the business generally known as that of wholesale grocers; that the respondents, Ray L. Hosmer and Thos. W. Watson are now, and at all times hereinafter mentioned were, copartners, trading as Ray L. Hosmer & Co., having their principal office and place of business in the city of Cairo, State of Illinois, and are now, and for many years last past have been, engaged as brokers and commission merchants in groceries and kindred merchandise; that the respondent, The Scudders-Gale Grocer Co., is now, and at all times hereinafter mentioned was, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, and having its principal office and place of business in the city of St. Louis, in the said State, and having also a branch office in the city of Cairo, State of Illinois, and is now and for many years last past has been engaged in the business of buying and selling in interstate commerce, in wholesale quantities, groceries and products such as are generally dealt in by those engaged in the business generally known as that of wholesale grocers; that the respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., and The Scudders-Gale Grocer Co., with the exception of the Interstate Grocery Co., hereinafter mentioned, and the New York Store Mercantile Co., comprise the entire number of dealers in said city of Cairo, State of Illinois, engaged in the business of buying and selling in wholesale quantities groceries and products such as are generally dealt in by those engaged in the business generally known as that of wholesale grocers.

PAR. 2. That each of the respondents in the conduct of its business enters into contracts of purchase for groceries and kindred merchandise from manufacturers and others in the different States and Territories of the United States and District of Columbia, causing

the same to be transported to its place of business in the city of Cairo, Ill., whence such groceries and kindred merchandise are sold by respondents and shipped to purchasers thereof; that as a part of the transactions of which said purchases and sales are also a part, such groceries and kindred merchandise 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 and commerce in said groceries and kindred merchandise between and among the various States and Territories of the United States and the District of Columbia and foreign countries.

PAR. 3. That the Interstate Grocery Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, and at all times herein mentioned was engaged in the business of buying and selling in interstate commerce, in wholesale quantities, groceries and products such as are generally dealt in by those engaged in the business generally known as that of wholesale grocers; doing a smaller amount of business than any of the aforementioned respondent wholesale grocers. That its capital stock is owned and held by retail grocers to whom it sells groceries at wholesale and at prices equal to cost plus 5 per cent to cover the cost of doing business; that it also sells to nonstockholding retailers at higher prices, but sells no groceries to consumers.

PAR. 4. That in the year 1917 each of the respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., the Scudders-Gale Grocer Co., and the Interstate Grocery Co., at the same time entered into separate contracts for the purchase of certain amounts of condensed milk with a certain manufacturer's agent in the city of St. Louis, State of Missouri, and that, when in pursuance of said contract all of said milk had been shipped and had arrived at the railroad station in the city of Cairo, State of Illinois, said respondents, whose aggregate purchases of milk far exceeded the amount purchased by the Interstate Grocery Co., for the purpose of stifling and suppressing competition between them and the said Interstate Grocery Co., by means of threats to refuse to accept the condensed milk purchased by each of them, induced and compelled said manufacturer's agent to break its contract of purchase and sale with, and to withhold delivery of said condensed milk from, the said Interstate Grocery Co.

PAR. 5. That in the year 1918 the respondents, Ray L. Hosmer and Thos. W. Watson, copartners, trading as Ray L. Hosmer & Co., who acted as brokers for, and carried in stock the products of, The Postum Cereal Co., of Battle Creek, Mich., refused to deliver certain goods ordered by the Interstate Grocery Co. from the said Postum Cereal

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Co. and which the latter was ready and willing to sell to the Interstate Grocery Co. through the said respondents, and that such refusal on the part of said respondents was accompanied by representations communicated by said respondents to the said Postum Cereal Co., to the effect that said Interstate Grocery Co. was not entitled to be treated and sold as a wholesale grocer, and such refusal was made for the purpose of retaining the good will of the other respondents and of eliminating the Interstate Grocery Co. as a competitor.

PAR. 6. That in the year 1918, the respondent, the Scudders-Gale Grocer Co., having learned that the Interstate Grocery Co. carried a stock of Kellogg's Corn Flakes, for the purpose of cutting off the Interstate Grocery Co.'s supply of that product, sent a written protest to the Kellogg Toasted Corn Flakes Co. against it selling its products to the said Interstate Grocery Co.

PAR. 7. That in the year 1918 and since that time, all of the respondents herein, with the purpose and intent of stifling, suppressing, and preventing competition in commerce between the Interstate Grocery Co. and the respondents, and with the purpose and intent of preventing the said Interstate Grocery Co. from obtaining the goods and commodities dealt in by it from manufacturers and manufacturers' agents and other usual sources from which a wholesale dealer in groceries must obtain said commodities, have secretly agreed and conspired among themselves, and have had secret understandings with each other as follows:

(a) The respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., and the Scudders-Gale Grocer Co. have agreed among themselves that the said Interstate Grocery Co. was and is not conducting its business in accordance with certain tests or standards fixed and established by said respondents, and have agreed and conspired among themselves to state and represent to various manufacturers and their agents, that the Interstate Grocery Co. was not conducting its business in accordance with such tests and standards and have further agreed and conspired among themselves to induce, coerce and compel, by means of boycott and threats of boycott of manufacturers of groceries and food products, and their agents to refuse to deal with or sell to the Interstate Grocery Co. in interstate commerce upon the terms and at the prices offered and charged to its competitors, including respondents and others engaged in similar business, and to compel said company to purchase its supplies from and through respondents, all of whom are competitors of said Interstate Grocery Co.

(b) That the respondents, Ray L. Hosmer and Thos. W. Watson, copartners, trading as Ray L. Hosmer & Co., induced by coercion,

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persuasion, boycott and threats of boycott on the part of the other respondents, have agreed and conspired with the other respondents mentioned herein, to refuse to sell to the Interstate Grocery Co. the products manufactured by their respective principals upon the terms and at the prices offered and charged to competitors of said company and to recommend to their respective principals that they should not sell to the Interstate Grocery Co. at such terms and at such prices, but agreed to compel said Interstate Grocery Co. to purchase said products from and through respondents, who are competitors of said Interstate Grocery Co., at prices higher than those charged to other competitors and others engaged in similar business.

CONCLUSIONS.

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation 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 answers of the respective respondents, the testimony and evidence and the argument of counsel, and the Commission having made its findings as to the facts with its conclusions, and the respondents having 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 above-named respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., and the Scudders-Gale Grocer Co., each forever cease and desist from directly or indirectly combining and conspiring among themselves to induce, or inducing or seeking to compel or compelling manufacturers or manufacturers' agents to break any contract which they may have for the sale of to the Interstate Grocery Co.; and it is

Further ordered, That the respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., the Scudders-Gale Grocer Co., and Ray L. Hosmer and Thos. W. Watson, copartners, trading as Ray L. Hosmer & Co., each forever cease and desist from directly or indirectly combining and conspiring among themselves to induce, or inducing or compelling or seeking to induce or compel manufac-

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turers or manufacturers' agents to refuse to sell to the Interstate Grocery Co. at prices usually offered and charged to wholesale grocers because of its plan of organization or the method of conducting business adopted by said Interstate Grocery Co., and that the said respondents cease and desist from making oral or written statements to manufacturers, manufacturers' agents, or others to the effect that the said Interstate Grocery Co. is not entitled to purchase its supplies at prices usually offered and charged to wholesale grocers because of its plan of organization or the method of conducting business adopted by the said Interstate Grocery Co.; and it is

Further ordered, That each of the respondents, within 30 days from the date of service upon them, respectively, file with the Commission a written report of the manner and extent to which they have complied with the terms hereof.

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L. I. WOLPER AND H. B. WOLPER, COPARTNERS TRADING UNDER THE NAME AND STYLE OF ERRANT-KNIGHT CO., LEWIS GROCERY CO., AND IRA LESTER CO.