

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

Docket 352.—October 25, 1920.

SYLLABUS.

Where a firm engaged in the sale of groceries by mail, exclusively in combination orders to customers with no knowledge of its costs and profits, in advertising said orders

- (a) Set forth prices of the different items as "Our wholesale price," 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 entire order and equaled or exceeded the usual retail prices on the order as a whole;
- (b) Overstated the retail prices ordinarily asked for the different items composing the various orders;
- (c) Advertised that for \$1 a customer could secure a "get acquainted order," as specified, "Catalogue FREE," not otherwise obtainable, offering "Bargains not available elsewhere, including sugar at 3 cents a pound, * * * flour \$7 per barrel, and many others"—prices far less than wholesale cost—when in fact it sold none of those articles separately at such prices, but only in combinations as above stated, thereby deceiving customers and the public:

Held, That such false and misleading advertising, 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 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., hereinafter referred to as respondents, have been 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 pro-

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ceeding 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 are now, and since February 1, 1919, have been, operating a business in the city of Chicago, Ill.; that the business so conducted consists and has consisted of the sale in commerce among the several States and Territories of the United States and the District of Columbia, of sugar, flour, cereals, canned goods, spices, and other grocery products, in combination lots or assortments at stated prices for the several items contained in each of the said assortments, but respondents refuse to sell any of the single items in said assortments separately, at the prices quoted, but in all cases customers are required to purchase all of the items in one of the several assortments had.

PAR. 2. That said respondents in the course of their said business, make use of catalogues and other advertising matter which is given general circulation throughout the States and Territories of the United States, and in the District of Columbia, which said catalogues and advertisements contain certain false and misleading statements concerning respondents' said business and alleged benefits which the public might derive from trading with respondents; that among such false and misleading statements are statements to the effect that respondents sell goods direct to consumer at wholesale prices; that purchasers from respondents will save at least 30 per cent on each order, after paying freight charges; that respondents by their enormous and gigantic buying power and by controlling complete outputs of large factories, are able to sell goods at prices lower than those of other dealers, whereas, the prices obtained by respondents for the goods sold in combination lots or assortments as a whole are substantially the same or greater than the prices which retail grocers generally obtain for like assortments as a whole, and respondents do not possess any advantage in buying grocery products which enable them to sell such products at prices lower than those of other dealers.

PAR. 3. That in making up the several combination lots or assortments of grocery products which are advertised and sold by respondents, they list certain staple products at prices below the current wholesale prices for such products, as in the case of sugar, which is advertised by respondents at 5 cents per pound, whereas sugar is a staple on the market and price concessions for large quantity purchases, or for any other reason, are unobtainable, and the wholesale price for same is approximately 9½ cents per pound; and flour, another staple, is advertised by respondents at \$8.36 per barrel, whereas the wholesale price for same is approximately \$12.75 per barrel, but

when these items are included in the combination lots offered by respondents, other items in said combination are listed at prices greater than the current retail prices for same, as in the case of breakfast cocoa, spices, baking powder, canned sardines, etc., so that the sale of the combination or assortment as a whole yields to respondents a satisfactory profit, without letting the customers know that sugar and flour were being sold on any other basis than that of the other commodities.

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 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., hereinafter referred to as respondents, 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 appearances by John F. Rosen, Esq., their attorney, and filed their answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint, before an examiner of the Commission theretofore duly appointed, and the respondents appeared and waived their right to introduce evidence.

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 conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That L. I. Wolper and H. B. Wolper are copartners, trading under the name and style of Errant-Knight Co., Lewis Grocery Co., and Ira Lester Co., with their principal office and place of business in the city of Chicago, State of Illinois; that respondents are now and since February 1, 1919, have been engaged in the business of selling grocery products in "combination" or assortment lots throughout the States and Territories of the United States and the District of Columbia; that such grocery products are transported by respondents through parcel post, express, and other means to customers located in the various States and Territories of the United States and District of Columbia in direct competition with other persons, firms, copartnerships, and corporations.

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PAR. 2. That respondents in conducting their business, solicit 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 to 8, inclusive, are copies heretofore duly received in evidence in this proceeding and are made a part hereof, and which respondents caused to be published and circulated through the States and Territories of the United States and the District of Columbia.

PAR. 3. That during the first four months of the conduct of respondents' said business, respondents 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 approximately \$10,000 per month; and that the various items comprising such orders were sold at specified respective prices for the various combinations or assortments as a whole; and that respondents refuse to sell separately the items of grocery products comprising such combinations or assortments so advertised and offered for sale.

PAR. 4. That the prices published in said exhibits 5, 6, and 7¹ under the headings "Estimated 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. 5. That the figures, ostensible prices, published in said exhibits 5, 6, and 7, under the heading "Our Wholesale Price," 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 price specified for each combination or assortment as a whole, which is the only price respondents 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 1 to 8¹ are less than the wholesale prices, or any prices, at which respondents 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 far in excess of actual prices which would afford respondents a reasonable profit on the sale of such items; that the only way in which respondents sell any of the articles so advertised is in combination with all other articles composing any given assortment or combination; and that the only figures published in any of said exhibits which represent actual or bona fide prices are the figures representing totals, and no others.

¹ Not printed.

PAR. 6. That the column of figures, ostensible prices, as they appear in said exhibits under the often repeated heading, "Our Wholesale Price," is constructed in such a manner that if respondents actually sold such items at the figures, ostensible prices, appearing opposite thereto, respondents 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 of which are not well known to the public generally, are far in excess of the wholesale prices which respondents pay for such items, so that if respondents actually sold said items at the said figures, ostensible prices, appearing opposite each of said items, they 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. 7. That such figures, ostensible prices, as appear under said heading, "Our Wholesale Price," do not show the true price which customers and prospective customers pay for the individual items composing such combination; that if respondents 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 such 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 respondents.

PAR. 8. That each such specified price received for said combination, or assortment, as a whole, is sufficient to yield respondents a satisfactory profit.

PAR. 9. That respondents do not possess any advantages in buying grocery products which enable them to sell such products at prices lower than other dealers.

PAR. 10. That part of respondents' plan of selling such combinations or assortments of grocery products is:

(a) To word and arrange their advertisements so as to induce prospective customers to obtain respondents' "free" catalogue by sending respondents \$1, in return for which respondents offer to and do mail an assortment of grocery products advertised as "Get Acquainted Order C22" and consisting of "1 pound pure baking powder, $\frac{1}{4}$ pound pepper, $\frac{1}{4}$ pound cinnamon, $\frac{1}{2}$ pound breakfast cocoa, catalogue FREE";

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(b) To create the impression in the minds of prospective customers that such catalogue contains "bargains" in staple grocery products "not available elsewhere" by displaying in said advertisements headlines announcing "sugar 3 cents a pound" and "flour \$7 a barrel," followed by the further announcement that—

In our catalogue you will find bargains not obtainable elsewhere, including sugar at 3 cents a pound, \$3 per 100 pounds; flour \$7 per barrel; and many others. Our catalogue is sent only to people who send us a trial order. No item in this advertisement is sold separately. You must buy the entire order complete.

(c) To insert one "order" in such advertisements, which "order" includes neither sugar nor flour, but the advertisement is arranged so as to feature, and frequently repeat, the words "sugar" and "flour," so as to induce prospective customers to expect that they will be permitted to purchase sugar at 3 cents per pound and flour at \$7 per barrel from respondents, provided they first purchase respondents' "Get Acquainted Order No. C 22," and receive therewith such catalogue, as announced in said advertisements, of which said Exhibit No. 1 is a copy.

PAR. 11. That respondents sell neither sugar at 3 cents a pound nor flour at \$7 a barrel nor do they sell either of these staples or any other product named as an item in such combinations, or assortments, at any price which respondents specify in said exhibits; 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 respondents actually receive 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 respondents' 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."

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 answer of the respondents, and the testimony and evidence, and the Commission having made its findings as to the facts with its conclusions, that the respondents have 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 respondents, 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., their 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 said 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 scheme or device 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 for 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 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 respondents, L. I. Wolper and H. B. Wolper, shall, within sixty days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

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FEDERAL TRADE COMMISSION

v.

EDWARD PERLMAN AND SAMUEL GERBER, TRADING
UNDER THE NAME AND STYLE OF LIBERTY WHOLE-
SALE GROCERS.