

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

Docket 569.—November 1, 1920.

SYLLABUS.

Where a firm engaged in the sale of groceries by mail, exclusively in combination orders which were of comparatively small size, and so priced that each order yielded a satisfactory profit, and equaled or exceeded the sum of such prices as retailers would usually obtain for the different items composing the various assortments,

- (a) Falsely advertised that it was regularly engaged in the sale of groceries at wholesale and that purchasers from it saved from 30 per cent to 50 per cent on their purchases;
- (b) Listed certain staple products such as sugar and flour, at prices below their wholesale cost, and other items at prices greater than current retail prices, without letting purchasers know that sugar and flour were priced on a different basis from the other commodities, thereby deceiving them as to prices of all:

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 Edward Perlman and Samuel Gerber, copartners, trading under the name and style of Liberty Wholesale Grocers, 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 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 are now, and since August, 1919, have been operating a business in the city of Chicago, in the State of Illinois; that the business so conducted consists and has consisted of the manufacture and sale in commerce among the several

Complainant.

3 F. T. C.

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 said assortments, but respondent refuses 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 and representations concerning respondents' said business and alleged benefits which the public might derive from trading with respondents; that among such false and misleading statements and representations are statements and representations to the effect that respondents are regularly engaged in the business of merchandizing groceries at wholesale; and that purchasers from respondents save from 30 to 50 per cent on goods purchased from them; when in truth and in fact respondents are in no sense engaged in the business of merchandizing groceries at wholesale, but sell goods direct to consuming purchasers in comparatively small combination lots, and the prices paid by respondents for the goods so 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.

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 price for such products, as in the case of sugar, which is advertised by respondents at 3 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 since August, 1919, has not been less than approximately 9½ cents per pound; and flour, another staple, is advertised by respondents at \$7.50 per barrel, whereas the wholesale price for same since August, 1919, has not been below approximately \$12.75 per barrel, but when these items are included in the combination lots offered by respondents, other items in said combinations are listed at prices greater than the current retail prices for same, as in the case of baking powder, bluing, apple jelly, etc., so that the sale of the combination or assortment as a whole yields to respondent a satisfactory

profit, without letting the purchasers 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 the respondents, Edward Perlman and Samuel Gerber, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answer, wherein they admit that the matters and things alleged in said complaint are true in the manner and form alleged, and wherein respondents stipulate and agree that the Commission shall take said answer as the evidence in this case and in lieu of testimony, and shall forthwith and thereupon make and enter its report, stating its findings as to the facts and its conclusions, and its order to cease and desist from the methods of competition complained of, disposing of this proceeding without the introduction of testimony or presentation of argument, and the Commission having duly considered the record and being 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 are now, and since August, 1919, have been, operating a business in the city of Chicago, in the State of Illinois; that the business so conducted consists and has consisted of the manufacture and 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 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 and representations concerning respondents' said business and alleged benefits which the public might derive from trading with respondents; that among such false and misleading statements and representations

Order.

3 F. T. C.

are statements and representations to the effect that respondents are regularly engaged in the business of merchandizing groceries at wholesale; and that purchasers from respondents save from 30 to 50 per cent on goods purchased from them; when in truth and in fact respondents are in no sense engaged in the business of merchandizing groceries at wholesale but sell goods direct to consuming purchasers in comparatively small combination lots, and the prices paid to respondents for the goods so 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.

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 price for such products, as in the case of sugar, which is advertised by respondents at 3 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 since August, 1919, has not been less than approximately $9\frac{1}{2}$ cents per pound; and flour, another staple, is advertised by respondents at \$7.50 per barrel, whereas the wholesale price for same since August, 1919, has not been below approximately \$12.75 per barrel, but when these items are included in the combination lots offered by respondents, other items in said combinations are listed at prices greater than the current retail prices for same, as in the case of baking powder, bluing, apple jelly, etc., so that the sale of the combination or assortment as a whole yields to respondent a satisfactory profit, without letting the purchasers know that sugar and flour were being sold on any other basis than that of the other commodities.

CONCLUSIONS.

The practices of said respondents, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce, and constitute a violation 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 proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondents admitting that the matters and things alleged in said complaint are true in the manner and form alleged, and agreeing

that the Commission shall take said answer as evidence in this case in lieu of testimony, and dispose of this proceeding without the introduction of testimony or the presentation of argument; and the Commission having made and filed its findings as to the facts and its conclusions that respondents have 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 ordered, That the respondents, Edward Perlman and Samuel Gerber, 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 combination, or assortment, are not separately sold at the figures purporting to be prices so advertised;

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 statement or representations having a tendency or capacity to falsely discredit competitors or their methods of doing business or which deceive or mislead customers, prospective

Order.

3 F. T. C.

customers, or the public generally as to the actual prices of commodities so offered for sale, or as to the true character of the transactions advertised.

It is further ordered, That respondents, Edward Perlman and Samuel Gerber, shall within 60 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.

•

WHOLESALE GROCERS ASSOCIATION (OF EL PASO) ET AL. 109

Complaint.

FEDERAL TRADE COMMISSION

v.

WHOLESALE GROCERS ASSOCIATION OF EL PASO,
TEX., ET AL.