

FEDERAL TRADE COMMISSION

v.

ANDREW BLUM, A SOLE TRADER, DOING BUSINESS
UNDER THE NAME AND STYLE OF R. BLUM.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 398—February 4, 1921.

SYLLABUS.

Where an individual engaged in the sale by weight of sponges "loaded" by the addition of foreign substances which did not increase their usefulness or durability, but were added for the sole purpose of increasing their weight; with the knowledge and expectation that the same would be resold to retailers and large consumers without disclosing the fact that their weight had been artificially increased, sold such "loaded" sponges to packers and wholesalers without disclosing the amount of such "loading," thereby enabling such packers and wholesalers to mislead and deceive retailers and consumers who unwittingly bore, in whole or in part, the cost of such "loading";

With the effect of aiding in the misleading and deception of retailers and consumers, of enabling it and its packer and wholesale purchasers to secure business on a false and fictitious basis, and of forcing competitors also to sell "loaded" sponges; to the injury of competitors who did not sell "loaded" sponges and to the injury of the public:

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 R. B. Blaum, hereinafter referred to as respondent, has been and now 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, R. B. Blaum, is a resident of the State of Massachusetts, having his principal office and place of business located at the city of Boston, State of Massachusetts. That for more than one year last past respondent has been and now is

engaged in purchasing sponges in other States of the United States and foreign countries and in the sale and shipment of said sponges to persons, firms, copartnerships, and corporations in other States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent purchases sponges in the State of Florida and other States of the United States and foreign countries and causes the same to be transported through other States of the United States to its place of business in the city of Boston, State of Massachusetts, where the same are sold and shipped to purchasers and dealers in different States and Territories of the United States and the District of Columbia, and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said sponges between and among the various States and Territories of the United States and more particularly from the State of Florida and foreign countries to and through the city of Boston, State of Massachusetts, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent for more than a year last past has knowingly and deceptively engaged in and is now knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, and knowingly and deceptively caused and procured, and is now knowingly and deceptively causing and procuring, others to so load, dope, or saturate sponges with the aforesaid foreign matter, with the intent and purpose of selling and disposing of said sponges by weight, per pound basis, in commerce as aforesaid, thereby deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges doped, loaded, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as, and for, pure unadulterated sponges; that the effect and result of the aforesaid loading, doping, or saturating sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of loading, doping, or saturating sponges with foreign matter as aforesaid is to impair the durability, quality, and purity of said sponges.

Findings.

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PAR. 4. That respondent for more than a year last past knowingly and deceptively purchased and sold, by weight, per pound basis, and is still knowingly and deceptively purchasing, selling, and disposing of, by weight, per pound basis, in commerce as aforesaid, large quantities of sponges, loaded, doped, or saturated with foreign matter such as glucose, sand, molasses, Epsom salts, and lead, with the intent and purpose of deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges loaded, doped, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges, as, and for, pure unadulterated sponges; that the effect and result of the aforesaid purchase and sale of loaded, doped, or saturated sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of purchasing and selling sponges loaded, doped, or saturated with foreign matter, in commerce as aforesaid, is to impair the durability, quality, and purity of said sponges.

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, Andrew Blum, a sole trader, doing business under the name and style of R. Blum, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer herein, 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 theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the attorneys for the Commission and respondent having submitted briefs, and the Commission having heard oral argument, and the Commission, having fully 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 respondent, Andrew Blum, is a sole trader, doing business under the name and style of R. Blum, having his principal office and place of business located at the city of Boston, in the State of Massachusetts, and is now and at all times hereinafter mentioned has been engaged in the business of selling and shipping sponges from the city of Boston, in the State of Massachusetts, to purchasers thereof located throughout the different States of the United States and the District of Columbia, in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of his business respondent, for more than two years prior to the filing of the complaint herein, had been engaged in purchasing from sponge packers located at the city of New York, in the State of New York, and the city of Tarpon Springs, in the State of Florida, sponges whose weight had been artificially increased by said sponge packers by a process of soaking said sponges in a solution of a substance or substances such as salt, Epsom salts, glucose, glycerine, and sugar; that the substance or substances contained in said solution were incorporated into the texture of said sponges and remained in said sponges after said sponges were dried; that the said process of artificially increasing the weight of sponges by the addition of a substance or substances, as aforesaid, is commonly designated and referred to by sponge packers as "loading"; that the sponges whose weight has been thus artificially increased are designated and referred to by sponge packers as "loaded" sponges. When hereinafter mentioned, sponges whose weight has been thus artificially increased are referred to as "loaded" sponges, and the process by which the weight has been artificially increased is referred to as "loading."

PAR. 3. That the total cost of "loading" 1 pound of sponge, including the cost of ingredients and labor, is approximately 20 cents; that the substance or substances added to sponges in the process of "loading" do not add in any way to the usefulness or durability of the sponges and do not enable them better to serve any of the purposes for which sponges are employed; that the sole purpose of "loading" is to increase the weight of the sponges while they are in the channels of commerce before they have reached the ultimate user; that when said sponges are put into use the substance or substances introduced in the process of "loading" are generally washed out and lost.

PAR. 4. That in the conduct of his business respondent, for more than two years prior to the filing of the complaint herein, had been

Findings.

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selling and shipping by weight in interstate commerce the "loaded" sponges purchased by him as aforesaid to purchasers thereof, including, among others, wholesale dealers handling sponges; that respondent in selling said "loaded" sponges to said wholesale dealers did not disclose or make known to said wholesale dealers the amount of matter artificially added to said sponges; that said wholesale dealers did not know the amount of matter artificially added to said sponges; that the "loading" of said sponges was paid for by said wholesale dealers.

PAR. 5. That said wholesale dealers who purchased said "loaded" sponges from respondent in turn resold said "loaded" sponges by weight to purchasers thereof, including, among others, retail dealers, such as dealers in the drug, hardware, and paint and oil lines, and large consumers of sponges, such as garages, painters, decorators, office buildings, and manufacturing concerns; that said wholesale dealers did not disclose or make known to said retail dealers or to said consumers that said sponges were "loaded"; that said retail dealers and said consumers did purchase and pay for by weight said "loaded" sponges as and for sponges whose weight had not been artificially increased by "loading" as aforesaid; that respondent sold said "loaded" sponges to said wholesale dealers with the knowledge and expectation that said "loaded" sponges would be resold by said wholesale dealers to said retail dealers and said consumers in a manner calculated to deceive and mislead and actually deceiving and misleading said retail dealers and said consumers; that the cost of the substance or substances added to said sponges by the process of "loading," and of the labor by which said substance or substances were introduced into said sponges, was ultimately borne, in whole or in part, by said retail dealers and said consumers, without their knowledge.

PAR. 6. That the sale of "loaded" sponges by respondent, as aforesaid, is a fraudulent and deceptive practice and results in injury to the public; that it enables said wholesale dealers who purchase said "loaded" sponges to resell said sponges as and for sponges whose weight has not been artificially increased and in the natural course of business causes such result; that the practice of "loading," as aforesaid, is calculated to and does enable respondent and said wholesale dealers who resell said "loaded" sponges to secure business on a false and fictitious basis to the injury of competitors of said respondent and to the injury of competitors of said wholesale dealers who do not sell "loaded" sponges and to the injury of the public.

Order.

PAR. 7. That the sale of "loaded" sponges by respondent, as aforesaid, has the tendency and capacity to, and does, force competitors of respondent also to sell "loaded" sponges, to the injury of competitors who do not sell "loaded" sponges and to the injury of the public.

CONCLUSIONS.

The practices of the said respondent, 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 and answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusions that the 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, Andrew Blum, a sole trader, doing business under the name and style of R. Blum, and his agents, servants and employees, and each and every one of them, do cease and desist from directly or indirectly:

1. Increasing the weight of sponges intended for sale and subsequent shipment in interstate commerce, by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar or any other substance producing the like effect.

2. Selling for shipment in interstate commerce, or shipping in interstate commerce, any sponges the weight of which has been increased by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

It is further ordered, That the respondent, Andrew Blum, a sole trader doing business under the name and style of R. Blum, shall within 60 days after the service upon him of a copy of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist, hereinbefore set forth.

Commissioners Murdock and Nugent took no part in the final consideration or decision of this case.

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FEDERAL TRADE COMMISSION DECISIONS

Complaint

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