

Complaint.

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FEDERAL TRADE COMMISSION

v.

JOHN W. FOCKE.

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

Docket 627.—March 23, 1921.

SYLLABUS.

Where an individual engaged in the sale of ship chandlery supplies, including steward's supplies, deck, engine, and cabin supplies, gave to captains and other officers of vessels to which he furnished supplies, without the knowledge and consent of their employers, valuable gifts, cash commissions, and gratuities as an inducement to purchase supplies:

Held, That such gifts, 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 John W. Focke, herein-after referred to as the respondent, has been and is using unfair methods of competition 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 this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is engaged in the business of selling ship chandlery including steward's supplies, deck, engine, and cabin supplies, for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in transporting passengers and commodities between ports in various States of the United States bordering upon the eastern and southeastern coast thereof, and in transporting passengers and commodities from American ports to foreign countries in due course of commerce among the several States of the United States and with foreign countries; such supplies so sold by respondent being for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States. Said business is and has been conducted by respondent in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the course of its business as set out in paragraph 1 hereof, gives and has given to captains and other officers of vessels to which it furnishes ship chandlery, valuable gifts and cash commissions to purchase ship chandlery supplies from respondent.

PAR. 3. That by reason of the facts recited the respondent is using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, John W. Focke, charging him with using 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 before an examiner of the Federal Trade Commission theretofore duly appointed, and the respondent having stipulated and agreed that the Commission shall forthwith proceed to make and enter its findings as to the facts, its conclusion and order without the introduction of testimony, the filing of briefs or oral argument on his behalf, 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 conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, John W. Focke, is engaged in the business of selling ship chandlery supplies, including steward's supplies, deck, engine, and cabin supplies, at the city of Galveston, State of Texas, for ships engaged in coastwise and foreign commerce, and causes said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in transporting passengers and commodities between ports in various States of the United States bordering upon the eastern and southeastern coast thereof, and in transporting passengers and commodities between American ports and foreign countries in due course of commerce among the several States of the United States and with foreign nations; that such supplies so sold by the respondent are consumed

Order.

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and used by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, and said business is and has been conducted by respondent in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the respondent, in course of his business as described in paragraph 1 hereof, for several years last past has given to captains and other officers of vessels to which he furnishes ship chandlery supplies, without the knowledge and consent of their employers and without other consideration therefor, valuable gifts, cash commissions, and gratuities, amounting in value to approximately 5 per cent of their invoices, as inducements to purchase for the owners of the vessels operated by them ship chandlery supplies from the respondent.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate and foreign 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.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the testimony, and the Commission having made its findings as to the facts, with its conclusion that the respondent has 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 respondent, John W. Focke, and his agents, servants, and employees, cease and desist from directly or indirectly giving to captains or other officers or employees of vessels valuable gifts, cash commissions, or gratuities of any kind whatsoever as inducements to purchase for the owners of the vessels operated by them ship chandlery supplies from the respondent.

It is further ordered, That the respondent, within 60 days after the service upon him of this order, file with the 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 hereinabove set forth.

McKENZIE OERTING & CO. (McKENZIE OERTING).

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Complaint.

FEDERAL TRADE COMMISSION

v.

McKENZIE OERTING, DOING BUSINESS UNDER THE
NAME AND STYLE OF McKENZIE OERTING & CO.