

Complaint.

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FEDERAL TRADE COMMISSION

v.

BIG FOUR GROCERY COMPANY.

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

Docket 547—March 30, 1921.

SYLLABUS.

Where a corporation engaged in the sale of groceries by mail, exclusively in combination orders so assembled that each assortment contained one or more items, the quality and retail prices of which were well known to the purchasing public, and other items, the greater part of the assortment, the quality and retail prices of which were not well known, in advertising said orders

- (a) Set forth prices of the different items, which for the staple articles were less than cost, but for the others were sufficiently high to afford a satisfactory profit on the assortment as a whole, thereby deceiving customers as to prices of all;
- (b) Falsely represented that the prices both of assortments and items composing the same, were less than those of its competitors for similar assortments and items; and
- (c) Advertised that it was selling sugar at 4½ cents a pound, flour at \$7.98 a barrel, Fels Naptha soap at 2 cents a bar, and Quaker Oats at 4 cents a package, the fact being that it sold none of the items in the assortments at the prices specified, but only in combination orders:

Held, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Big Four Grocery Co., hereinafter referred to as the respondent, has been and 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 amended complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the Big Four Grocery Co. is a corporation organized, existing, and doing business under and by virtue of the

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laws of the State of Illinois, having its principal office and place of business located at the city of Chicago, in said State, now and at all times hereinafter mentioned engaged in the business of selling groceries and similar articles throughout the States and Territories of the United States and the District of Columbia from one central office by advertisements, catalogues, parcel post, express, and other means in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the respondent, Big Four Grocery Co., transports and causes to be transported the merchandise so sold by it through various States of the United States in and to other States of the United States, where the same are delivered to the purchasers thereof, and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in said merchandise between and among the various States of the United States and the District of Columbia, and more especially from other States and Territories of the United States and the District of Columbia to and through the city of Chicago, State of Illinois, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That said respondent in the course of its said business makes 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 respondent's said business and alleged benefits which the public might derive from trading with respondent; that among such false and misleading statements are statements to the effect that respondent sells sugar at $4\frac{1}{2}$ cents per pound and flour at \$7.98 per barrel; that in respondent's Trial Order No. 2 the estimated retail value of the several items is \$3.64 and that purchasers save approximately \$1.65 by purchasing said order at \$1.99 from respondent; whereas the prices obtained by respondent 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. 4. That the several combination lots or assortments so advertised by respondent are sold by it and for certain fixed prices for such combination lots or assortments as a whole; that said fixed

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prices are sufficient in amount to yield respondent a profit on the combination lot or assortment as a whole, respondent refusing to sell separately the items comprising any such given assortment; that the various items and quantities thereof comprising each said combination lot or assortment are listed and arranged in such advertisements so that appearing opposite to or in connection with such items are figures, ostensible prices, which have no relation to the actual prices at which respondent sells such items, either separately or in combination, but are of such arbitrary amounts and arrangement that when added appear to equal the total price, or the one and only price so advertised, which respondent expects to receive or does receive; that the arrangement and positions of said items with reference to said figures or ostensible prices are such that opposite to or in connection with staples the prices of which are well known to the public generally, such as flour and sugar, are placed figures, ostensible prices, far below the wholesale cost thereof or of any cost at which respondent could secure such staples at any time herein mentioned; and opposite to or in connection with items, the prices of which are not well known to the public, are placed figures, ostensible prices, of sufficient amounts to give respondent a satisfactory profit on each item of such combination lots or assortments and to cover the loss respondent would sustain if it actually sold said staples at the prices advertised; that the method of advertising thus employed by respondent has a capacity to deceive and does deceive purchasers and prospective purchasers into the belief that respondent is selling staples and other groceries at prices far below its competitors, when in truth and in fact the prices obtained by respondent 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.

PAR. 5. That the respondent, Big Four Grocery Co., for more than six months last past in commerce aforesaid has published and printed in the advertisements circulated, as aforesaid, price lists comparing the prices charged by it to the average retail price charged by its competitors; that the average retail price lists so advertised and published are false and misleading and are calculated and designed to and do mislead the trade and general public into the belief that such average retail prices are higher than they are in truth and in fact, thereby imputing respondent's competitors with the purpose of charging more than a fair price for their groceries.

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 an amended complaint upon the respondent, Big Four Grocery Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having failed to answer said amended complaint within the time prescribed by law and the rules of practice of the Commission, or at all, due notice was served upon the respondent of the time and place of hearing, and thereupon hearings were had before an examiner of the Commission theretofore duly appointed, and testimony was introduced and evidence received in support of the allegations of the amended complaint, and the respondent, by its attorney, Charles B. Stafford, appeared and stated of record that it would neither submit testimony nor make a defense herein.

And thereupon this proceeding came on for final hearing, 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 the respondent, the Big Four Grocery Co., at the time of the issuance of the amended complaint herein, was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business located at the city of Chicago, in said State, and at the time of the issuance of the amended complaint herein and for more than one year therefrom has been engaged in the business of selling and shipping grocery products, in combination or assortment lots, from the city of Chicago, in the State of Illinois, to purchasers thereof located throughout the various 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 during all of the time herein mentioned the respondent in the course of its business as aforesaid has conducted and now conducts the same through the medium of advertisements, catalogues, and other printed and written matter, published and circulated through the various States and Territories of the United States and the District of Columbia.

Findings.

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PAR. 3. That combinations or assortments of grocery products sold by the respondent as aforesaid contain many different items of groceries; that one or more of the items of groceries contained in each combination or assortment consist of staple articles the quality and retail prices of which are well known to the purchasing public; that the remaining articles in each combination or assortment, which constitute the greater part of said combination or assortment, consist of articles the quality and retail prices of which are not well known to the purchasing public.

PAR. 4. That in said advertisements and catalogues published and circulated by the respondent as aforesaid are printed and set forth the prices alleged to be charged by the respondent for each item comprising each combination or assortment of groceries; that the prices alleged to represent the sale prices of said staple articles are less than the prices at which the respondent purchases said articles; that the alleged sale prices of these articles of which the quality and prices are not known to the purchasing public, are sufficiently high to enable the respondent to make a satisfactory profit on the aggregate items comprising each combination or assortment; that said advertisements and catalogues have the tendency and capacity to, and do, mislead and deceive the purchasing public into the belief that the respondent sells each and every item of groceries contained in said combinations or assortments at a certain definite price and that those articles of which the quality and price are not well known to the purchasing public are sold by the respondent at prices as low, proportionately, as the prices which respondent represents as the selling price of said staple articles, whereas, in truth and in fact, the respondent does not sell any separate article comprising said combinations or assortments of groceries at a definite price, but sells only the said entire combinations or assortments at such a definite price as will allow respondent a satisfactory profit thereon, and will not sell separately any article mentioned in any of its combinations or assortments of groceries.

PAR. 5. That in said advertisements and catalogues, published and circulated as aforesaid, the respondent has, at all times herein mentioned, represented that the prices of its combinations or assortments of groceries, and the prices of individual items thereof are less than the prices at which such combinations or assortments, and such individual items are sold by its competitors; whereas, in truth and in fact, similar combinations or assortments of better quality and similar individual items of better quality could have been purchased at considerably less prices from competitors of the respondent.

Order.

PAR. 6. That in said advertisements and catalogues, published and circulated as aforesaid, the respondent has at all times herein mentioned represented that it is selling sugar at $4\frac{1}{2}$ cents a pound, flour at \$7.98 a barrel, and Fels Naptha soap at 2 cents a bar, and Quaker Oats at 4 cents a package; whereas, in truth and in fact, the respondent does not sell the aforesaid staples or any other product named as an item in said combinations or assortments at prices which respondent specifies in connection therewith.

CONCLUSIONS.

That the methods set forth in the foregoing findings of facts, 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 amended complaint of the Commission, the statement of the respondent by its attorney, Charles B. Stafford, Esq., that it would not make a defense herein, the testimony and evidence in support of the allegations of the complaint; 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, Big Four Grocery Co., its officers, agents, representatives, servants, and employees, do cease and desist, both directly and indirectly, in the course of interstate commerce, from:

1. Publishing or circulating, or causing to be published or circulated, catalogues or other advertising matter wherein there are offered for sale combinations or assortments consisting of well-known products, the prices and quality of which are well known to the purchasing public, and unknown products, the prices and quality of which are unknown to the purchasing public, when said well-known products are quoted at prices below cost and said unknown products quoted at sufficiently increased prices to offset the alleged reduced prices and sufficient to render a profit on such combinations or assortments.

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2. Publishing or circulating, or causing to be published or circulated, catalogues or other advertising matter wherein is set forth any false or misleading statement or representation concerning the prices at which groceries are offered for sale by respondent or concerning the prices at which its competitors sell groceries or concerning the business methods employed by its competitors.

It is further ordered, That the respondent, within 60 days after the date of service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

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FEDERAL PRESS, INC., AND C. W. PARKER.