

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

Docket 692—July 9, 1921.

SYLLABUS.

Where a corporation engaged in the importation and sale, chiefly to wholesalers, of a certain brand of Swiss watch, to the importation of which it had the exclusive right,

- (a) Fixed prices below which said watches should not be resold, and enforced maintenance thereof by verbal agreements and assurances procured from the majority of its customers, usually as a condition precedent to acceptance of an order;
- (b) Endeavored to ascertain and to cut off from certain customers, who had secured independently a supply of said watches and were advertising and selling the same at prices below those fixed by it, their source of supply;
- (c) By threats of damage and infringement suits and by intimidation induced such customers to sell to it the larger part of their said watches, thereby taking them off the market;
- (d) By further threats and intimidation attempted to prevent such customers from advertising such watches for sale in trade journals at said lower prices; and
- (e) Attempted to and did induce publishers of certain trade periodicals to refuse the advertisements of such customers listing said watches at such lower prices:

Held, That such practices, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from the preliminary investigation made by it, that Paul Forbriger and August Bentkamp, partners, styling themselves Paul Forbriger & Co., hereinafter referred to as respondents, have been and are 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 respondents constitute a partnership and carry on business at New York, N. Y., under the firm name of Paul Forbriger & Co., and are engaged in the business of selling watches at

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wholesale, causing watches sold by them to be transported to the purchasers thereof, from the State of New York, through and into various other States of the United States, and carry on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondents, in the course of their business as described in paragraph 1 hereof, purchase from a manufacturer in Switzerland, watches known as the "Inventic," under an agreement with such manufacturer that respondents would have the exclusive right to sell such watches to the jobbing trade in America; which watches they resell to jobbers at prices of about \$1.35 and \$1.40 each, and require jobbers to whom they sell such watches to maintain the prices of about \$1.65 and \$2.00 in reselling same to retail dealers, and undertake to maintain and enforce such retail prices by refusing to sell additional watches to jobbers who fail or refuse to resell such watches to retail dealers at the prices fixed by respondents.

PAR. 3. That certain jobbers to whom respondents had sold "Inventic" watches were able to secure from a dealer in London, England, a quantity of the "Inventic" watches, and proceeded to resell same at prices below those sought to be maintained by respondents as aforesaid, whereupon respondents attempted to cut off from such jobbers their foreign source of supply by intimidation and threats of suits for damages, and have prevented such jobbers from advertising the sale of such watches at the lower prices in certain trade journals, by inducing the publishers of such journals to refuse the advertisements of such jobbers.

PAR. 4. That by reason of the facts recited the respondents are 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 respondents, Paul Forbriger and August Bentkamp, partners, styling themselves Paul Forbriger & Company, 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 their attorney, a hearing was had, and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondents before an examiner of the Federal Trade Commission duly appointed.

And thereupon this proceeding comes on for final hearing, the Commission and respondents having, through their respective attorneys, waived the filing of briefs as to the law and the facts in such proceeding, and also waived oral argument before the Commission on the law and the facts, and respondent Paul Forbriger having personally stipulated of record that the Commission might forthwith proceed to make its findings and order, and the Commission, having carefully considered the record and being fully advised in the premises, now makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondents, Paul Forbriger and August Bentkamp, were, for a period of more than two years prior to August, 1920, partners, carrying on business in the city of New York, N. Y., under the firm name and style of Paul Forbriger & Company, and were engaged in the importation and sale of watches, shipping such articles in commerce, in and among the several States of the United States, in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That respondents, in the course of their business, during the period above indicated in paragraph 1, purchased from one Ed. Kummer, Ltd., of Bettlach, Switzerland, a manufacturer, watches known as the "Inventic," under an agreement with such manufacturer that respondents should have the exclusive right to sell such watches to the jobbing trade in America. That respondents' marketing policy was to distribute the watches so procured and imported from Switzerland through wholesalers or jobbers and not through retailers, and that during the said period substantially all such articles were sold by them directly to jobbers and wholesalers throughout the United States, some of whom were themselves engaged in interstate commerce.

PAR. 3. That during a period of more than two years prior to August, 1920, respondents pursued a practice of establishing minimum resale prices, hereinafter called simply resale prices, below which wholesale customers were required not to sell the watches procured from respondents; that a schedule or list of said resale prices was issued annually or more frequently and furnished by respondents to its wholesale customers, and that said customers had notice from respondents and generally understood that respondents' practice was to sell only to those wholesalers maintaining the resale prices.

PAR. 4. That for the purpose of enforcing the maintenance of such resale prices by their wholesale customers, during the period aforesaid, respondents procured from a majority of their customers verbal

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agreements and assurances in connection with orders submitted to respondents for goods, whereby said customers expressly promised not to resell respondents' watches, either directly or indirectly, at lower prices than the resale prices indicated by respondents; that the effecting of such an understanding or agreement was in many instances a condition precedent to respondents' acceptance of an order for goods; and that respondents' said policy of price maintenance was generally acquiesced in by their customers and such resale prices were generally maintained.

PAR. 5. That during the times hereinbefore mentioned, to wit, in the latter part of 1919, certain jobbers and wholesalers—among whom were Singer Bros., New York City; N. Shure Co., Chicago; and Samuel Weinhaus, Pittsburgh, Pa.—all customers to whom respondents had sold Inventic watches, secured from a dealer in London, England, a quantity of the Inventic watches and proceeded to advertise and sell same at prices below those established by respondents as aforesaid; that thereupon respondents attempted to ascertain and to cut off from such jobbers their foreign source of supply, and by intimidation and threats of suits for damages and infringement of alleged patents induced such jobbers to sell the bulk of such watches to respondents, thereby taking them off the market. That during the same period respondents attempted by further threats and intimidations to prevent such jobbers from advertising such watches for sale in trade journals at the lower prices, and attempted to and did induce publishers of certain trade periodicals—notably, The Novelty News and The Jewelers Circular—to refuse the advertising of such jobbers listing Inventic watches at prices lower than those established by respondents.

PAR. 6. That in August, 1920, respondent August Bentkamp retired from the firm of Paul Forbriger & Co., selling his interest therein to respondent Paul Forbriger; that respondent Paul Forbriger thereupon continued said business in New York City, N. Y., under the former firm name, and has since August, 1920, imported and sold Inventic watches in the United States, in the same manner and upon the same terms and conditions as heretofore, and has continued to require jobbers and wholesalers to whom such watches are sold, to maintain the resale prices set by respondent, in selling same to retail dealers.

PAR. 7. That respondent Paul Forbriger, through his attorney, voluntarily made the following stipulation of record:

"That respondent personally consents that an order may be made in this proceeding to the following extent:

"1. In the nature of a finding that there has been attempted interference with trade advertising on the part of competitors.

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"2. And a finding to the effect that there was an attempt to establish resale prices of watches referred to in this proceeding."

CONCLUSION.

That the methods of competition set forth and described in the foregoing findings of fact in paragraphs 3, 4, 5, and 6 constitute, under the circumstances set forth therein, 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."

ORDER TO CEASE AND DESIST.

This proceeding having been duly heard by the Federal Trade Commission upon the complaint of the Commission, the testimony and the evidence, and the Commission having made its findings as to the facts, with its conclusion that the respondent had 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 ordered, That the respondents, Paul Forbriger and August Bentkamp, their agents, representatives, servants, and employees, cease and desist, directly or indirectly:

(1) From indicating to wholesalers or jobbers the prices at which "Inventic" watches shall be re-sold;

(2) From entering into or requiring purchasers to enter into any agreement or understanding whatever to the effect that in reselling such watches the purchaser shall adhere to, obey, or observe prices fixed or established by respondents;

(3) From interfering or attempting to interfere with the advertising and sale of such watches by others lawfully acquiring same, at prices lower than those established by respondents;

(4) From carrying out a resale price maintenance policy by any other means.

It is further ordered, That the respondents, Paul Forbriger and August Bentkamp, shall within 60 days from the date of service 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.

Complaint.

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FEDERAL TRADE COMMISSION

v.

MORGAN RAZOR WORKS.