

Syllabus.

FEDERAL TRADE COMMISSION

v.

LOUIS WOLPER, JACOB WOLPER, AND ALBERT WOLPER,
PARTNERS, STYLING THEMSELVES ALBEN-HARLEY.

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

Docket 523—July 14, 1921.

SYLLABUS.

Where a firm engaged in the sale of groceries, exclusively in combination orders so priced as greatly to exceed the sum of such prices as retailers would usually obtain for the different items composing the same, in advertising said orders

- (a) Listed certain staple products, such as sugar and flour, at less than cost, but other items in the assortment at figures sufficiently high to afford a satisfactory profit on the order as a whole, thereby deceiving customers as to prices of all;
- (b) Headed one of its advertisements with the words "SUGAR 3¢ a LB." and "ALL CHARGES PREPAID," and made therein such statements as "SUGAR 3¢ a lb.—say it over again * * * A FEW LEADERS IN OUR CATALOG, [Its "Introductory Bargain Book," "sent only to those who have manifested their interest by sending for a trial order"] SUGAR \$3.00 per 100 lbs. * * * FLOUR \$7.00 per barrel * * * OTHER CATALOG BARGAINS, Uneeda Biscuits, per pkg., .02, Quaker Oats, per pkg., .06," prices less than cost, when in fact it sold none of said articles at any such prices, but only in combinations, as stated;
- (c) Featured in said advertisement its "INTRODUCTORY ORDER NO. 2 x 200," including therein "1 bargain catalog free," "1 can sardines in pure oil," "1 lb. baking powder (very best)," and other items, "Wholesale—our price, \$1.82," "Estimated value \$2.82, YOU SAVE APPROXIMATELY \$1.00," the facts being that said "pure oil" was peanut oil, not olive oil, that said "very best" baking powder was an alum and phosphate, not cream of tartar, powder, that other items were also misdescribed as to value or otherwise, and that all of the items in said "Introductory order" could be purchased from retail stores at from 85 cents to \$1.02;
- (d) Made the false statement in said advertisement that, "thousands have been satisfied," and also made therein such statements as, "READ EVERY WORD OF THIS! * * * We must please you or we do not want your money. The Golden Rule is sacred in our establishment. Our enormous business has been built upon it * * *";
- (e) Misrepresented also in catalogs and other advertisements the values, qualities, quantities and kinds of the various articles sold and offered for sale by it in combination with the staples above referred to, and made false and misleading statements regarding its business, and the benefits which would be derived from trading with it; and
- (f) During the period when sugar was difficult to obtain at retail stores, and it was unable to secure it, continuously advertised said staple as one of the articles it was selling, and filled orders so secured, except as to said staple, the estimated value of which as set forth in the particular advertisement it remitted to purchasers;

Complaint.

4 F. T. C.

Held, That such false and misleading advertising and such course of conduct, 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 Louis Wolper, Jacob Wolper, and Albert Wolper, partners, styling themselves Alben-Harley, 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 1, 1919, have been operating a business in the city of Chicago, Ill.; that the business so conducted consists and has consisted of the 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 the 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; that said respondents cause said grocery products to be transported, when sold, from its place of business in Chicago, State of Illinois, through and into various other States of the United States.

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 concerning respondents' said business and alleged benefits which the public might derive from trading with respondents; that among such false and misleading statements are statements to the effect that thousands have been satisfied and more are taking advantage of the extraordinary offer of respondents to sell sugar at 3 cents per pound; that sugar is only one of many leaders in respondents' Introductory Bargain Book; that best flour is sold by respondents at \$7 per barrel; that the Uneda Biscuits are sold at 2 cents per package, and Quaker

Findings.

Oats at 6 cents per package; that in respondents' introductory order No. 2 x 200, the estimated value of the several items is \$2.82 and that the purchaser saved approximately \$1 by purchasing said order at \$1.82, the price named by respondents; whereas the prices obtained by respondents 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. 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 prices 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 is approximately 10 cents per pound; and flour, another staple, is advertised by respondents at \$7 per barrel, whereas the wholesale price for same is 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 coffee, tea, spices, baking powder, canned sardines, etc., so that the sale of the combination or assortment as a whole yields to respondents a satisfactory profit without letting the customers 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, Louis Wolper, Jacob Wolper, and Albert Wolper, partners, styling themselves Alben-Harley, 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, John F. Rosen, and filed their answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Mr. Walter B. Wooden, an examiner of the Federal Trade Commission theretofore duly appointed.

Findings.

4 F. T. C.

And the respondents having waived the introduction of testimony in their behalf, 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 conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents, Louis Wolper, Jacob Wolper, and Albert Wolper, as partners, from August 1, 1919, to June 20, 1920, operated a business in the city of Chicago, Ill., under the firm name and style Alben-Harley, which business consisted of the 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 the said assortments; but respondents refused to sell any of the single items in any of the said assortments, separately, at the prices quoted therefor, but in all cases customers were required to purchase all of the items in one of the several assortments. The respondents, during the period aforesaid, caused said grocery products to be transported, when sold, from their place of business in Chicago, State of Illinois, through and into various other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 2. Said respondents, in the course of their said business, made use of catalogues and other advertising matter, which were given general circulation throughout the States and Territories of the United States and in the District of Columbia, which said catalogues and advertisements contained certain false and misleading statements regarding respondents' said business and the alleged benefits which the public would derive from trading with respondents.

PAR. 3. That one of the said advertisements generally circulated as aforesaid was the following:

DON'T
send a
PENNY

SUGAR 3c a LB.

ALL
CHARGES
PREPAID

SUGAR 3c a LB.—Say it over again.

Sounds Impossible—but it costs only a 2c stamp to prove it. Thousands have been satisfied and more are taking advantage of this extraordinary offer every day.

Sugar is only ONE of the many leaders in our Introductory Bargain Book. By taking advantage of the Introductory trial order offered in this advertisement you become one of our regular customers.

The Object of this trial order is to prove to you that we actually sell High Grade Standard Merchandise at these prices. Even though you don't believe it possible, we ask you to let us prove that we speak the truth. With your order, we will send

31

Findings.

Free, our Introductory Bargain Book, which is sent only to those who have manifested their interest by sending for a trial order.

This bargain book is brimful of unusual Bargains in groceries, shoes, clothing, and other necessary articles.

A FEW LEADERS IN OUR CATALOG:

SUGAR \$3.00 per 100 Lbs

Best Granulated Sugar, per 100 lbs..... \$3.00

Best Granulated Sugar, per 10 lbs..... .30

FLOUR \$7.00 Per Barrel.

Our Best Flour, per bbl..... \$7.00

Our best Flour, per 24½ lbs..... .88

OTHER CATALOG BARGAINS:

Uneda Biscuits, per pkg..... .02

Quaker Oats, per pkg..... .06

REMEMBER:

Our Don't Send a Penny All Charges Prepaid offer is your protection. Just think, without any investment on your part, as soon as we receive the order coupon filled out, we will send you the Introductory Trial Order and our Bargain Book charges prepaid. We want you to become one of our regular customers, and know that after you receive your order you will be glad to be considered a regular customer of the House of Alben-Harley.

IMPORTANT: This trial order is only sold Complete as it stands—no items sold separately. However, you may order as many as 5 trial orders, which is the limit to one customer.

GUARANTEE: Every item you buy from us is guaranteed to be of the highest grade and to please you in every respect or you can return the goods and your money will be refunded at once.

READ EVERY WORD OF THIS!

If we don't satisfy a customer we don't satisfy ourselves. Your good will is worth more to us than your order. We must please you or we do not want your money. The Golden Rule is sacred in our establishment. Our enormous business has been built upon it. No business can succeed without it. We never neglect a customer. All orders shipped at once—no delays—no waiting—no disappointment and we insist that you return any part of the shipment at our expense if the goods do not more than delight you

INTRODUCTORY ORDER NO. 2x200.

	Estimated Value.	Whole—our sale price.
1 lb. Sugar (Pure Granulated).....	\$0.13	\$0.03
1 can Sardines in Pure Oil.....	.25	.19
1 Tube of Concentrated Vanilla Flavor.....	.45	.29
1 lb. Baking Powder (Very Best).....	.60	.39
1 pkg. Ecc-Kon-Omy (Used in place of eggs for cooking and bak- ing. 1 pkg. equals 3 doz. fresh eggs).....	.25	.20
1 Large Box Face Powder (Extra Fine).....	.75	.49
1 Tube Dental Paste (Unexcelled).....	.39	.23
1 Bargain Catalog Free.....		
	\$2.82	\$1.82

Findings.

4 F. T. C.

YOU SAVE APPROXIMATELY \$1.00.

ACT NOW. Cut the high cost of living from this minute on—fill out and mail this order today, and the goods and our Introductory Bargain Book will be sent to you by Parcel Post Prepaid.

REFERENCES: Our satisfied customers or any bank in Chicago.

ALBEN-HARLEY.

Dept. 2x200, Van Buren St. & Racine Ave., Chicago, Ill.
Order Coupon.

Alben-Harley, Dept. 2x200,

Van Buren St., & Racine Ave., Chicago, Ill.

Gentlemen: You may send me your Introductory Trial Order No. 2x200, by prepaid parcel post and include a FREE copy of your Introductory Bargain Book. When the order arrives I will pay my postman \$1.82. It is understood however that if after trying your goods I am not satisfied I can return the balance to you and you will refund my money.

Name.....

ADDRESS.....

CITY..... STATE.....

PAR. 4. The statement in the said advertisement that "thousands have been satisfied" was false, because at the time of the publication of the said advertisement respondents did not have as many as a thousand customers. The statement in said advertisement that "Sugar is only one of the many leaders in our Introductory Bargain Book" was misleading because, while the said advertisement had a tendency to create the impression that sugar might be purchased from respondents at 3 cents per pound, sugar was not sold by the respondents at 3 cents per pound, but in combination with other articles, the total price of which, charged by the respondents, was much greater than the price usually received by retailers for all of the items in the said combination. The statement in said advertisement that "best flour" is sold by respondents at \$7 per barrel was false, because flour was not sold by respondents at \$7 per barrel, but in combination with other articles at an aggregate to cost greater than that at which all of the articles could be purchased for from an ordinary retailer. The statements in the said advertisement that Uneeda Biscuits are sold at 2 cents per package and Quaker Oats is sold at 6 cents per package were false, because Uneeda Biscuits were not sold for 2 cents per package and Quaker Oats was not sold for 6 cents per package, but in combination with other articles, the total price of which, charged by the respondents, was much greater than the price usually received by retailers for all of the items in said combinations. The statements that the estimated value of the several items in respondents' introductory order No. 2x200 is \$2.82, and that the purchaser saved approximately \$1 by purchasing said order at \$1.82, the price named in said advertisement, were false and

misleading, because the real value of the aggregate of the said items ranged from 85 cents to \$1.02, and because all of the items in the said introductory order No. 2x200 could be purchased from retail stores at a price ranging from 85 cents to \$1.02.

PAR. 5. The sardines offered for sale and sold under the above mentioned advertisement, were canned in peanut oil, which is a cheaper oil than olive oil, generally used in canning sardines in oil. The baking powder offered for sale and sold under the above-mentioned advertisement was not of a quality generally termed as being of the "very best," and the price, 60 cents, in the said advertisement appearing under the words "Estimated value," had a tendency to lead and did lead purchasers and prospective purchasers to believe that such baking powder so offered for sale was a cream of tartar baking powder, whereas in truth and in fact, the baking powder sold by respondents was of a cheaper grade, the predominating ingredients being phosphate and alum. The box of face powder offered for sale and sold by respondents in the combination known as their introductory order No. 2x200, was not a large box of face powder, but was of a net weight of only 2.5 ounces. The dental paste offered for sale and sold by respondents in the combination known as their introductory order No. 2x200, was not an unexcelled dental paste, but was made of cheap ingredients, and there are sold generally throughout the United States, for less than 29 cents, dental pastes better than that sold and offered for sale by the respondents in said advertisement.

PAR. 6. The above-mentioned and other advertisements circulated by respondents as aforesaid, misrepresented the values, qualities, quantities, and kinds of the various articles sold and offered for sale by respondents in combination with sugar, flour, Uneeda Biscuits, and Quaker Oats.

PAR. 7. The statement in the said advertisement that the respondents sold sugar at \$3 per 100 pounds was false and misleading because respondents sold 100 pounds of sugar only in combination with other items for which combination the purchaser was required to pay \$139.20.

PAR. 8. That in making up the several combination lots or assortments of grocery products which were advertised and sold by respondents, they listed certain staple products at prices below the then current wholesale prices for such products, as in the case of sugar which was advertised by respondents at 3 cents per pound, whereas sugar was a staple on the market and price concessions for large-quantity purchases, or for any other reason were unobtainable and the wholesale price for the same was approximately 10 cents per pound; and flour,

Findings.

4 F. T. C.

another staple, was advertised by respondents at \$7 per barrel whereas the wholesale price for the same was \$12.75 per barrel, but when these items—that is to say, sugar and flour—were included in the combination lots offered by respondents, other items in said combinations were listed at prices greater than the current retail prices for the same as in the case of coffee, tea, spices, baking powder, canned sardines, etc., so that the sale of the combination or assortment as a whole yielded to respondents a satisfactory profit and enabled the respondents to obtain for such combination prices greater than the items could be purchased for at an ordinary retail store; but the advertisements so circulated as aforesaid, were worded in such a manner as to mislead purchasers and prospective purchasers into believing that the items other than flour, sugar, Uneeda Biscuits, and Quaker Oats, were offered for sale by the respondents in such combinations at prices below cost, as in the cases of sugar, flour, Uneeda Biscuits, and Quaker Oats.

PAR. 9. During the period from August 1, 1919, to June 20, 1920, when the respondents were engaged in business as aforesaid, sugar was difficult to obtain at retail stores throughout the United States and although the respondents continuously advertised sugar as one of the articles which they were selling at numerous times in the period aforesaid, they did not have a supply of sugar and were unable to secure sugar to fill the orders received by them in answer to their various advertisements and in such cases the respondents filled such orders excepting as to sugar and remitted to purchasers the estimated value of the sugar as set forth in the particular advertisement.

PAR. 10. The business conducted by the respondents under the firm name, Alben-Harley, was a continuation of the same business conducted under each of the following trade names, to wit: Errant Knight Company, Lewis Grocery Company, and Ira-Lester Company. The trade name Errant Knight Company was abandoned in May, 1919, and the trade names Lewis Grocery Company and Ira-Lester Company were abandoned in August, 1919. The business conducted under the respective trade names Errant Knight Company, Lewis Grocery Company, and Ira-Lester Company was similar to the business conducted under the trade name Alben-Harley, and the methods of doing business and the methods of advertising used under those prior trade names was similar to that used under the name Alben-Harley, excepting that the Errant Knight Company, Lewis Grocery Company, and Ira-Lester Company advertised sugar at 5 cents per pound instead of 3 cents per pound.

The Federal Trade Commission, after having made a preliminary investigation of the methods of competition in commerce used by the

31

Order.

Errant Knight Company, Lewis Grocery Company, and Ira-Lester Company, issued on the 2d day of September, 1919, its complaint against such said firms charging them with a method of competition similar to that charged in the complaint in this proceeding.

CONCLUSIONS.

That the practices of the said respondents, under the conditions and circumstances described in the foregoing findings, 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.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of the respective respondents, the testimony and evidence, and the Commission having made its findings as to the facts with its conclusions, that the 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 now ordered, That the respondents, Louis Wolper, Jacob Wolper, and Albert Wolper, and each of them, doing business under the firm name and style of Alben-Harley, or under any other trade name, or individually, or in association with anyone, do cease and desist from:

1. Advertising through newspapers or circulars, catalogues, magazines, or by any other means whatsoever, any article for sale in interstate commerce, at a price advertised unless they sell such article at such advertised price.

2. Falsely representing through newspapers, circulars, catalogues, magazines, or by any other means, the value, quantity, quality, or kind of any article advertised for sale in interstate commerce and falsely representing the price generally charged by retailers for such article.

3. Publishing or circulating or causing to be published or circulated advertising matter or catalogues or other printed matter of any kind whatsoever, wherein there is offered for sale in interstate commerce, at a definite price, any combination or assortment consisting of well-known staple articles and also little-known articles in which combination or assortment the known staple articles are quoted at reduced prices with the intent, tendency, or effect to mislead and deceive the

Order.

4 F. T. C.

public into believing that the prices quoted for the little-known articles in the said combination or assortment are likewise reduced, when as a matter of fact such last-named prices as quoted are higher than would ordinarily be charged by retailers for the said little-known articles and high enough to more than offset the alleged reduced prices quoted for the said well-known staple articles.

And it is further ordered, That the said respondents, and each of them, shall within sixty (60) days from the day of the date of the service upon them of a copy of this order file with the Commission a report in writing setting forth the manner in which this order has been conformed to.

THE SILVEX CO. ET AL.

41

Complaint.

FEDERAL TRADE COMMISSION

v.

THE SILVEX CO. AND AIRCRAFT & MOTOR PRODUCTS CO.