

Complaint.

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FEDERAL TRADE COMMISSION

v.

BECKWITH-CHANDLER COMPANY ET AL.

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

Docket 769—November 3, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of varnish, acting through its sales manager and traveling salesmen, gave and offered to give to foremen finishers and to other employes of automobile painting establishments and of other large purchasers of varnish, without the knowledge or consent of their employers, cash gratuities as an inducement for them to influence their employers to purchase from it in preference to, or to the exclusion of, its competitors, or as a reward for having done so, with the effect of increasing the cost of its product to the public, over and above its fair market value, by the amount of said cash gratuities, and with the tendency to cause competitors to do likewise in order to prevent it from obtaining their business:

Held, That such gifts and offers to give, 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 Beckwith-Chandler Company, C. W. Slocum, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey, and Halsey Tolman, hereinafter referred to as the 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 the respondent, Beckwith-Chandler Company, is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Newark, in said State.

PAR. 2. That the respondent, Beckwith-Chandler Company is engaged in the business of manufacturing and selling varnish, and causes varnish sold by it to be transported to the purchasers thereof from the State of New Jersey through and into other States of the United States, and carries on such business in direct, active competi-

tion with other persons, partnerships and corporations similarly engaged. That respondent C. W. Slocum, is the vice president and general manager of sales of the respondent, Beckwith-Chandler Company. That the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, are traveling salesmen employed by said respondent, Beckwith-Chandler Company to sell its products throughout the several States of the United States.

PAR. 3. That respondent, Beckwith-Chandler Company, in the course of its business as described in paragraph 2 hereof, acting through its traveling salesmen, the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, which traveling salesmen are directed by the respondent, C. W. Slocum, gives and has given cash commissions and gratuities to foremen finishers and other employees of manufacturers of automobiles, carriages and other purchasers of varnish in large quantities, without the knowledge or consent of the employers or principals of such employees, to induce such employees to recommend to their respective employers or principals, the varnish manufactured and sold by the respondent, Beckwith-Chandler Company, and to induce their said employers to purchase such varnish in preference to or to the exclusion of varnish manufactured and sold by competitors of said respondent, or such cash commissions and gratuities are given to said employees as rewards for having induced their respective employers to purchase varnish manufactured and sold by said respondent, Beckwith-Chandler Company. And as a means of carrying out its general plan of giving cash commissions and gratuities, as aforesaid, said respondent, Beckwith-Chandler Company, has from time to time appropriated funds which were apportioned and disbursed by the respondent, C. W. Slocum, between and to the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, and to Roy Hunt, a former employee of respondent, Beckwith-Chandler Company, traveling salesmen as aforesaid, for the purpose of having such traveling salesmen deliver such funds to employees of customers for the purpose aforesaid.

PAR. 4. That the amounts of the cash commissions and gratuities given by said respondent, Beckwith-Chandler Company, as set out in paragraph three hereof, are added to its annual cost of doing business, and as a result thereof said respondent adds to the selling price of varnish sold by it, an amount sufficient to compensate it for the cash commissions and gratuities paid out by it as aforesaid, which

Findings.

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amount is in addition to the fair market value of such varnish, and which additional amount customers of the said respondent, and eventually the public, must pay. That as a further result of the giving of such cash commissions and gratuities by the respondent, Beckwith-Chandler Company, as aforesaid, all its competitors are affected, and such competitors are thereby induced to also pay out such commissions and gratuities, in order to enable them to compete successfully with such respondent and protect their trade or suffer the loss of business with the purchasers of varnish whose employees have received such commissions and gratuities.

PAR. 5. That the use by each and all of said respondents, severally and in their common action, of the practices set out in the foregoing paragraph hereof, is an unfair method of competition in commerce, within the 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, Beckwith-Chandler Company, C. W. Slocum, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, 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 appearance and filed their answers herein, and having stipulated and agreed that a statement of facts signed and executed by the respondents and Adrien F. Busick, Acting Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, are the facts in this proceeding and shall be taken by Federal Trade Commission as such and in lieu of testimony, and that the said Federal Trade Commission shall forthwith proceed upon said agreed statement of facts and the answers herein to make and enter its findings as to the facts, its conclusion and order disposing of this proceeding, without the introduction of testimony, the respondents waiving any and all rights they may have to the introduction of same.

And thereupon this proceeding came on for final hearing, and the respondents and counsel for the Commission not wishing to file briefs or present oral argument, 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. The respondent, Beckwith-Chandler Company, is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Newark, in said State, and is engaged in the business of manufacturing and selling varnish, and causes varnish sold by it to be transported to the purchasers thereof from the State of New Jersey through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged. The respondent, C. W. Slocum, is the vice president and general manager of sales of the respondent, Beckwith-Chandler Company. The respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, are traveling salesmen employed by said respondent, Beckwith-Chandler Company, to sell its products throughout the United States.

PAR. 2. The respondent, Beckwith-Chandler Company, in the course of its business as described in Paragraph One hereof, acting by its traveling salesmen, the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, which traveling salesmen were directed by the respondent, C. W. Slocum, for several years prior to 1921, gave and offered to give gratuities in the form of money to foremen finishers, painters and other persons employed by automobile and carriage painting establishments, automobile manufacturers, and other purchasers of varnish in large quantities, without the knowledge or consent of the employers or principals of such employees, to induce such employees to recommend to their respective employers or principals, the varnish manufactured and sold by the respondent, the Beckwith-Chandler Company, and to induce their said employers to purchase such varnish in preference to or to the exclusion of varnish manufactured and sold by competitors of said respondent, or as rewards to said employees for having induced their respective employers to purchase varnish manufactured and sold by said respondent, Beckwith-Chandler Company. The Beckwith-Chandler Company has from time to time, appropriated funds which were apportioned and disbursed by the respondent, C. W. Slocum, between and to the respondents, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, and to Roy Hunt, a former employee of respondent, Beckwith-Chandler Company, traveling salesmen as aforesaid, for the purpose of having such traveling salesmen deliver such funds to employees of customers for the purpose aforesaid.

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PAR. 3. During the period September, 1919, to January 1, 1920, the following amounts were given as gratuities to such employees by the respondent, Beckwith-Chandler Company, through the salesmen named, in the manner and for the purposes set forth in Paragraph 2 hereof:

J. F. Young.....	\$475
A. F. Adams.....	680
Halsey Tolman	90
R. Hunt.....	564
C. H. Bull.....	350
W. D. Ramsey.....	1,960
M. D. Campbell.....	160

Prior and up to September 15, 1919, this same plan had been in effect and was used in the same manner and for the same purposes.

In addition to the above amounts, the following sums of money were furnished by the respondent, Beckwith-Chandler Company, to its salesmen, to be given by them as gratuities to employees of customers in the manner and for the purposes aforesaid:

Halsey Tolman	\$204
A. F. Adams.....	404
M. D. Campbell.....	325
J. F. Young.....	520
W. D. Ramsey.....	1,112
A. N. Merrill (approximately).....	500

PAR. 4. The amounts of money given by said respondent, Beckwith-Chandler Company, as set out in Paragraph 3 hereof, were added to its annual cost of doing business and as a result thereof, said respondent added to the selling price of varnish sold by it, an amount sufficient to compensate it for the sums of money paid out by it as aforesaid, which amount was in addition to the fair market value of such varnish and which additional amount was paid by customers of the said respondent and eventually the general public purchasing the commodities upon which such varnish was used.

5. The methods of competition set out in the preceding paragraphs tend to induce competitors of the respondent, Beckwith-Chandler Company, to maintain similar practices, in order to enable them to compete successfully with such respondent and protect their trade or suffer the loss of business with the purchasers or prospective purchasers of varnish whose employees have received such gratuities.

CONCLUSION.

The practices of each and all of said respondents, severally and in their common action, under the conditions and circumstances de-

scribed in the foregoing findings, are unfair methods of competition in commerce among the States of the United States, 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 power 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 answers of the respondents, and an agreed statement of facts, and the Commission having made its findings as to the facts, with its conclusion 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, Beckwith-Chandler Company, and its officers, agents, servants, representatives and employees, and C. W. Slocum, A. F. Adams, C. H. Bull, M. D. Campbell, A. N. Merrill, John F. Young, W. D. Ramsey and Halsey Tolman, cease and desist from giving or offering to give, directly or indirectly, to foreman finishers, painters and other persons employed by automobile and carriage making establishments, automobile manufacturers and other purchasers of varnish, without the knowledge and consent of such employers, sums of money or gratuities of any kind whatsoever to induce such employees to recommend to their respective employers or principals, the varnish manufactured and sold by the respondent, Beckwith-Chandler Company, or to induce their said employers to purchase such varnish in preference to or to the exclusion of varnish manufactured and sold by competitors of said respondent, Beckwith-Chandler Company, or as rewards to said employees for having induced their respective employers to purchase varnish manufactured and sold by said respondent, Beckwith-Chandler Company.

It is further ordered, That the respondents, and each of them, within sixty (60) days after the date of the service upon them respectively, of this order, file with the Commission a report in writing setting forth in detail the manner and form in which each of them has complied with the order to cease and desist as hereinbefore set forth.

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FEDERAL TRADE COMMISSION DECISIONS.

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v.

SAMUEL E. BERNSTEIN.