

Complaint.

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FEDERAL TRADE COMMISSION

v.

UNITED CHEMICAL PRODUCTS CORPORATION.

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

Docket 717—February 25, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of dyestuffs and finishing materials, paid to employees in charge of the dyeing and finishing departments of customers' and prospective customers' textile mills, without the knowledge or consent of their employers, cash commissions aggregating large sums of money to influence them to induce their employers to purchase its products; with the result that its prices to the purchasing public were increased, and all competitors were affected, either by losing business through their failure to adopt the same method or by being compelled to do so in order to retain their business:

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the United Chemical Products Corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate and foreign 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 respondent is a corporation organized and existing under the laws of the State of New Jersey, with principal office and place of business at Jersey City, in said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling dyestuffs and chemicals, causing same to be transported to the purchasers thereof, from the State of New Jersey, through and into the other States of the United States, in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in Paragraph 2 hereof, gives and has given to dyers and other em-

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ployees of its customers and prospective customers, without the knowledge and consent of their employers, and without other consideration therefor, cash commissions, aggregating large sums of money, to influence such employees to induce their employers to purchase the commodities produced and sold by respondent. That such cash commissions so paid by respondent aggregated approximately 10 per cent of its entire volume of business, which volume of business amounts to approximately \$400,000 per year. That by the payment of such commissions and as a result thereof, respondent adds to its annual cost of doing business approximately \$40,000, and is compelled to and does add to the selling price of commodities sold by it an amount approximating 10 per cent of the fair market value of such commodities, which is in addition to the fair market value of such commodities, and which additional amount the customers of respondent, and eventually the purchasing public, must pay. That as a further result of respondent's said practice, all competitors of respondent are affected, and the payment by respondent of cash commissions, to the extent and for the purposes aforesaid, has tended to cause competitors of respondent to pay employees of customers and prospective customers, cash commissions of approximately like amounts to those paid by respondent as aforesaid, for the same purposes, and with the same effect, as means of protecting their trade and preventing respondent from obtaining the business enjoyed by them.

PAR. 4. That by reason of the facts recited, the respondent has used 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 and an amended complaint upon the respondent, the United Chemical Products Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered its appearance and filed its answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaints before George McCorkle, an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing and the Commission having duly considered the record and being now fully

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advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent is a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business at Jersey City in said State, and engaged in manufacturing and selling dyestuffs and finishing materials used for dyeing textiles and finishing fabrics of cotton, wool, and silk manufacture throughout the various eastern States of the United States in competition with other concerns manufacturing similar products and selling and distributing them in interstate commerce.

PAR. 2. That respondent in the course of its said business during the years 1917, 1918 and 1919, and prior thereto, was engaged in the practice of "giving cash commissions aggregating large sums of money to employees of customers and prospective customers without the knowledge or consent of their employers to influence such employees to induce their employers to purchase the commodities sold by respondent."

PAR. 3. That cash commissions paid by respondent between the 23d day of September, 1918, to the 23d day of September, 1919, amounted to \$30,000 to \$40,000, which was approximately 8 per cent to 10 per cent of the total sales of respondent during said period. The employees receiving said commissions are known as dyers and finishers or overseers, and have charge of the dyeing and finishing departments of and were employed in certain textile mills located in the New England States of the United States, the States of North and South Carolina and Georgia.

PAR. 4. That the said gratuities or cash commissions paid the said employees were based sometimes on the number of pounds and sometimes on the number of barrels of said materials purchased by the said textile mills. In one instance in New York City on an annual purchase of from \$8,000 to \$10,000 by a certain textile plant located in said city, the dyer or finisher employed therein received \$150 per month. Amounts ranging from \$300 to \$500 were given to employees of textile mills at different times during the years above mentioned in the States of New Jersey, New York, and the New England States. In North Carolina during the times hereinbefore mentioned seven employees in different textile mills, operating in said State, received amounts ranging from \$250 to \$600; totaling the sum of \$2,125, and cash commissions of smaller amounts were paid to employees of textile mills located in the States of

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South Carolina and Georgia. For a more detailed statement of the amounts of cash commissions paid employees, their several names, the States in which located and the names of the mills at which they were employed, reference is made to the testimony as appears in Exhibit I.¹

PAR. 5. That the money commissions paid to employees as aforesaid were charged to Overhead Expense by respondent and taken into consideration in fixing the prices to be paid for the products of respondent by its customers and caused said prices generally to be increased to the purchasing public.

PAR. 6. That engaging in said practice of giving commissions to employees of customers as aforesaid affected all competitors of respondent, causing those who did not engage in said practice to lose business and others, whether they desired to do so or not, to pay said commissions to employees of customers in similar or increased amounts for the said purpose and effect in order to protect their trade and prevent respondent from obtaining business enjoyed by them.

PAR. 7. That since September 23, 1919, respondent has ceased to engage in the said practice of paying commissions to employees as set forth in Paragraph Two above.

CONCLUSION.

That the practices of respondent as set forth in the above findings as to the facts are unfair methods of competition in interstate commerce and in 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 and amended complaint of the Commission, the answers of the respondent, and the testimony and evidence submitted, and the Commission having made its findings as to the facts with its conclusion 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, the United Chemical Products Corporation, its officers, directors, agents and employees, cease and desist from directly or indirectly giving to employees of customers or prospective customers, without the knowledge or con-

¹ Not printed.

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sent of their employers and without other consideration therefor, gratuities consisting of cash commissions as an inducement to influence their employers to purchase or contract to purchase from respondent, dyestuffs, finishing material and other chemicals.

It is further ordered, That the respondent, within sixty (60) days after the service upon it 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 hereinbefore set forth.

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FEDERAL TRADE COMMISSION

v.

MARGARET NEWSON, JAMES NEWSON, JR., JEFFREY NEWSON, JR.,