

FEDERAL TRADE COMMISSION

v.

MARGARET NEWSON AND GEORGE B. KETCHUM, DOING
BUSINESS UNDER THE NAME AND STYLE OF THE
MODEL MARKET.

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

Docket 737—February 25, 1922.

SYLLABUS.

Where a firm engaged in the sale, partly pursuant to foreign contracts secured by it, of meats and other supplies to coastwise and ocean-going ships of British registry chiefly, paid to the captains of the vessels, without the knowledge or consent of their employers, secret commissions of 5 per cent of the amount of the bills for the purpose of securing and holding business and excluding competitors therefrom; with a tendency to cause competitors to adopt the same method in order to retain their business, and with the result that all competitors were affected, an unfair advantage was taken both of competitors who would not do so and of the employers who received no consideration in return for such payments, and the firm's cost of doing business was increased:

Held, That such payments, 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 Margaret Newson and George B. Ketchum, doing business under the name and style of The Model Market, hereinafter referred to as the respondents, have been and are 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 complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, Margaret Newson and George B. Ketchum, doing business under the name and style of The Model Market, have their principal place of business at Galveston, in the State of Texas.

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PAR. 2. That the respondents, Margaret Newson and George B. Ketchum, are engaged in the business of selling meats, poultry, fish, vegetables and other food products under the name and style of The Model Market, to ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in transporting passengers and commodities between ports in the various States of the United States bordering upon the southeastern and southern coast thereof, and in transporting passengers and commodities from American ports to foreign countries, in due course of commerce among the several States of the United States and with foreign countries; such supplies so sold by respondents being for consumption and use by the purchasers thereof, upon the high seas, in and beyond the territorial jurisdiction of the United States, said business being conducted by respondents in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That the respondents in the course of their business as described in Paragraph 2 hereof, give and have given to captains and other officers of vessels to which they furnish meats, poultry, fish, vegetables and other food products, without the knowledge or consent of their employers and without other consideration therefor, cash commissions and gratuities amounting in some instances to as much as 5 and 10 per cent of the invoices of the supplies purchased, to induce such captains and officers to purchase their requirements of meats, poultry, fish, vegetables and other food products from the respondents. That as a result of the giving of such gratuities, respondents add to their annual cost of doing business the value of the gratuities given, and are compelled to and do add to the selling price of the products sold by them an amount approximating 5 and 10 per cent of the fair market value of such commodities, and which additional amount the customers of the respondents and eventually the public must pay. That as a further result of respondents' said practices all of their competitors are affected, and the giving of cash commissions and gratuities by the respondents as aforesaid has tended to cause competitors of the respondents to give captains and other officers of ships cash commissions and gratuities of substantially like amounts to those paid by the respondents as aforesaid, for the same purposes and with the same effect, as a means of protecting their trade and preventing the respondents from obtaining the business enjoyed by them.

PAR. 4. That, by reason of the facts recited the respondents are using an unfair method of competition in commerce within the in-

tent 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, Margaret Newson and George B. Ketchum, doing business under the name and style of the Model Market, charging them with the use of unfair methods of competition in violation of the provisions of said Act.

The respondents having entered their appearance and filed their answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Warren R. Choate, 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 advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The Model Market is located at the southeast corner of Twentieth and Market Streets, in the City of Galveston, State of Texas, and supplies ships engaged in transporting cargoes in commerce from that port to ports in other States of the United States, and between ports in the United States and ports in foreign countries, with meats, produce and fish, and is in competition with other persons, firms and corporations similarly engaged.

PAR. 2. The Model Market is owned by Mrs. Margaret S. Newson and managed by George B. Ketchum, her son-in-law, and the products handled by this market are meats and produce.

PAR. 3. Fish are also dealt in by the Model Market through the establishment of G. B. Marsans & Co., in which establishment Mrs. Margaret S. Newson has an interest and when fish are among the products sold by the Model Market to ships they are charged to said market by G. B. Marsans & Co., and billed by the Model Market to the vessels on The Model Market bill heads and become sales by said market.

PAR. 4. The business conducted by the Model Market with ships in the supplies of meats, produce and fish amounted in the years 1918 and 1919 to approximately \$100,000.

Conclusion.

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PAR. 5. Portions of the business conducted by the Model Market with ships are under contracts made and executed with the owners of vessels in Great Britain through an agent of respondent, residing in that country, and other portions are secured with what is known in the shipping industry as "free ships" that is, ships not under contract with any particular dealer but "free" to deal in supplies with any one whom the captain of the vessel desires.

PAR. 6. That on all business done with ships prior to about April, 1920, there was paid to the captains a commission or gratuity of 5 per cent of the amount of the bill covering the supplies furnished to the ship.

PAR. 7. That most of the business is done with British ships, some with French ships and a lesser amount with Italian vessels and the remainder with ships of other nationalities.

PAR. 8. That these commissions or gratuities are paid to captains for the purpose of getting their trade; holding it and preventing competitors from obtaining the business.

PAR. 9. That the amount of the gratuity does not appear on any account rendered and is paid to the captain secretly and without any notice to the owners of the vessels or to their agents.

PAR. 10. That the business of the Model Market is under the sole direction and charge of George B. Ketchum, and the commissions or gratuities were paid by him or with his approval and under his authority and that Margaret S. Newson is an elderly lady, taking no active part in the business, leaving all questions and business activities to the decisions of her son-in-law, one of the respondents in the complaint.

PAR. 11. The practice of giving cash commissions and gratuities by the respondents as aforesaid affects all of their competitors and tends to cause them to give captains and other officers of vessels gratuities of substantially like amounts to those given by the respondents for the same purpose and with the same effect, as a means of protecting their trade and preventing the respondents from obtaining the business enjoyed by them.

PAR. 12. That as a result of the giving of cash commissions and gratuities to captains and other officers of vessels as aforesaid, the respondents add to their cost of doing business the value of the gratuities given, and the price of their products to their customers is their cost of doing business plus their profit.

CONCLUSION.

That in this method of selling supplies to coastwise and foreign vessels, the respondents were engaged in commerce as defined by

Section 4 of the Act of Congress, approved September 26, 1914, creating a Federal Trade Commission and defining its powers and duties.

That this method of paying gratuities to captains and other officers of vessels is in violation of the provisions of Section 5 of the above recited act; that in the payment of these gratuities, an unfair method was adopted because it created an unlawful advantage as against those engaged in similar business who would not pay such gratuities; that in the payment of gratuities in this manner to captains and other officers of vessels an unfair advantage was taken of the owners of the vessels and that there was no valuable consideration moving from the captain to the respondents that would support said payments.

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, the testimony and evidence submitted, 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,"

Now, therefore, it is ordered, That the respondents, Margaret Newson, and George B. Ketchum, their agents and employees, cease and desist from directly or indirectly giving to captains or other officers or employees of vessels, without the knowledge and consent of their employers, sums of money or gratuities of any kind as an inducement to purchase or for purchasing from respondents for the owners of vessels, meats, produce, fish, or other supplies.

It is further ordered, That the respondents within sixty (60) days after the service upon them 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.

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FEDERAL TRADE COMMISSION DECISIONS.

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v.

ERNST BISCHOFF COMPANY, INC.