

Complaint.

FEDERAL TRADE COMMISSION

v.

J. V. FALCK SUPPLY COMPANY.

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

Docket 822—February 25, 1922.

SYLLABUS.

Where an individual engaged in the sale of ship chandlery to coastwise and ocean-going ships, including vessels under foreign registry, the business of which it solicited by correspondence and otherwise, paid to the captains of such vessels, without the knowledge and consent of their employers, commissions of five per cent of the invoices as an inducement for them to purchase of him; with the effect of increasing the price of his products over and above their fair market value, of increasing the cost to the public of the service rendered by the employers, and of compelling competitors to adopt the same method in order to retain their business:

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 J. V. Falck, trading under the name and style of J. V. Falck Supply Co., hereinafter referred to as respondent, has been and is 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 that respect on information and belief as follows:

PARAGRAPH 1. That respondent carries on business at Mobile, Ala., under the name and style of J. V. Falck Supply Co., and is engaged in the business of selling ship chandlery supplies for use and consumption upon vessels which reach the port of Mobile, Ala., while engaged in the transportation of passengers and cargoes between ports in various states of the United States, and between ports of the United States and foreign countries; respondent carries on said business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That respondent, in the course of his business as described in Paragraph 1 hereof, gives and has given to captains and other

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officers and employees of vessels to which he furnishes chandlery supplies, cash commissions and gratuities, without the knowledge or consent of their employers or principals, to induce such officers and employees to purchase chandlery supplies from respondent for use and consumption upon the vessels operated by them for the owners thereof, or as a reward for having purchased supplies from respondent, and without other consideration therefor; that respondent expends for cash commissions and gratuities as aforesaid, large sums of money, aggregating approximately 5 per cent of the volume of sales so made, which sums are added to respondent's cost of doing business, and respondent is compelled to and does add to the selling price of the commodities so sold by him, an amount sufficient to cover the amounts so expended, which is in addition to the fair market value of such commodities, and which additional amount the customers of respondent, and eventually the public, must pay; that as a further result of respondent's said practices all of his competitors are affected, and such practices have tended to cause competitors of respondent to give employees of their customers, commissions and gratuities of substantially like amounts to those paid by respondent, as aforesaid, for the same purpose and with the same effect, as a means of protecting their trade and preventing respondent from obtaining the business enjoyed by them.

PAR. 3. That by reason of the facts recited, the respondent is 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 respondent, J. V. Falck, trading under the name and style of J. V. Falck Supply Co., charging him with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent having entered his appearance and filed his answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the said complaint before F. C. Baggarly, 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, J. V. Falck, trading under the name and style of J. V. Falck Supply Co., is an individual having his principal office and place of business in the City of Mobile, State of Alabama.

PAR. 2. The respondent, trading as aforesaid, is now and has since July, 1920, been engaged in the selling of ship chandlery, including steward, deck and engine room supplies, consisting mostly of provisions, paints, oils, marine hardware, oakum, pitch, tar, etc., for consumption and use upon vessels which reach the port of Mobile, Ala., while engaged in the transportation of cargoes between ports in the various States of the United States and in commerce between ports of the United States and ports in foreign countries, and such business has been and is being conducted by respondent in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. The respondent, in the course of his business as described in Paragraph 2 hereof, has solicited the business of and has sold and delivered to vessels of the United States Shipping Board, plying between the ports of Mobile, Ala., and ports in other States of the United States, and has also solicited by correspondence and otherwise, the business of and has sold and delivered to vessels under foreign registry, including British and Norwegian, while said vessels were engaged in commerce, steward or food supplies necessary for the use and maintenance of the officers and crew of such vessels while in port and upon the high seas, and deck and engine room supplies for the use or repair of such vessels, all of which supplies so furnished were necessary in order that said vessels could continue to operate as instrumentalities of commerce.

PAR. 4. The respondent, trading as aforesaid and in the course of his business as heretofore described, has given to captains of foreign vessels, engaged in foreign commerce, and without the knowledge or consent of their employers or principals and without other consideration therefor, cash commissions or gratuities to an amount of 5 per cent of the invoice of sales so made to induce such officers to purchase ship chandlery supplies from respondent for use and consumption upon vessels while engaged in commerce and while operated by said officers for their principals or owners thereof, and particularly gave to captains of foreign vessels for their personal use, sums of money, the same being

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5 per cent of the invoice sales covering ship supplies purchased on the following dates:

July 15, 1920, steamship <i>Sagua</i>	\$80
Oct. 22, 1920, steamship <i>Rochelle</i>	40
Nov. 12, 1920, steamship <i>Harold</i>	10
Nov. 26, 1920, steamship <i>Harold</i>	10
Dec. 15, 1920, schooner <i>Chiquimala</i>	70
Dec. 17, 1920, schooner <i>J. L. Ralston</i>	35
Dec. 31, 1920, schooner <i>Freeman</i>	45
Jan. 5, 1921, schooner <i>Carrie A. Buckman</i>	25
Mar. 28, 1921, steamship <i>Manghioneal</i>	14
Mar. 30, 1921, steamship <i>Bowdon</i>	5
Apr. 29, 1921, schooner <i>Bishop Brooks</i>	40
May 4, 1921, steamship <i>Terrfle</i>	30

Said sums of money allowed and paid to captains of vessels as commissions or gratuities, aggregating 5 per cent of the volume of sales so made is added by respondent to his cost of doing business, and respondent adds to the selling price of the supplies so sold by him, an amount sufficient to cover the amount so expended, which is in addition to the fair market value of such commodities, and which additional amount as paid becomes a charge against the owner or operator of said vessels and ultimately against the public.

PAR. 5. The giving of cash commissions or gratuities causes competitors of the respondent who do not desire to engage in such practices to give commissions or gratuities of substantially like amounts to the officers or employees of said vessels for the purpose of protecting their trade and as a means of preventing respondent from obtaining the business enjoyed by such competitors.

CONCLUSION.

The practices of said respondent, as set forth in the foregoing findings as to the facts are unfair methods of competition in commerce and constitute a violation 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 heard by the Federal Trade Commission upon the complaint of the Commission, the answer 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,"

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Order.

It is now ordered, That the respondent, J. V. Falck, trading under the name and style of J. V. Falck Supply Co., Mobile, Ala., his representatives, agents, servants, and employees, cease and desist from directly or indirectly giving to agents, captains, masters, stewards, engineers or other employees of vessels, engaged in commerce, cash or other gratuities without the knowledge or consent of their employers, as inducements to influence their employers to purchase and as gratuities for purchasing for said employers, ship chandlery or similar supplies necessary or essential in the operation of said vessels as instrumentalities of commerce.

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 it has complied with the order to cease and desist hereinbefore set forth.

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