

Complaint.

FEDERAL TRADE COMMISSION

v.

COWLEY PACKING COMPANY, INC.

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

Docket 829—February 25, 1922.

SYLLABUS.

Where a corporation engaged in the sale of ship chandlery to coastwise and ocean-going ships, including vessels under foreign registry, the business of which it solicited, paid to the captains of such vessels, without the knowledge or consent of their employers or principals, commissions approximating 5 per cent of the invoices as an inducement for them to purchase of it; with the effect of increasing the price of its 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 the Cowley Packing Company, Inc., hereinafter referred to as the 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 the respondent is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business at Mobile, in said State.

PAR. 2. That respondent is engaged in the business of selling meats for 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 in the United States and foreign countries; respondent carries on said business 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 captains and other offi-

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cers and employees of vessels to which it furnishes meats, without the knowledge or consent of their employers or principals, cash commissions and gratuities and lavish entertainment, including dinner and theater parties, lodging accommodations and other forms of amusement and entertainment, to induce such officers and employees to purchase from respondent, meats for consumption upon the vessels operated by them for the owners thereof, or as a reward for having purchased such meats from respondent, and without other consideration therefor, that respondent pays out for such cash commissions and gratuities and for entertainment so furnished by it, large sums of money, such cash commissions and gratuities amounting in the aggregate to 5 per cent of the volume of sales so made by it, and in addition thereto \$50 to \$75 per month for entertainment, as aforesaid, 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 meats so sold by it, an amount sufficient to cover the amount expended, which is in addition to the fair market value of such meats and which additional amounts the customers of respondent, and eventually the public, must pay; that as a further result of respondent's said practices all of its 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. 4. 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, the Cowley Packing Company, Incorporated, charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before F. C. Baggarly,

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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 respondent, Cowley Packing Company, Incorporated, is a corporation, organized under the laws of the State of Alabama, on the 25th day of May, 1920, with an authorized capital stock of \$5,000. Said respondent maintains its principal place of business and executive offices in the city of Mobile, State of Alabama.

PAR. 2. The respondent is now and has since its incorporation been engaged in the business of selling meats or provisions at retail in the city of Mobile, Ala., and for consumption and use upon vessels which reach the port of Mobile, 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 its business, as described in paragraph 2 hereof, has solicited the business of and has sold and delivered to vessels plying between the ports of Mobile, Ala., and ports in other States of the United States, and has solicited the business of and has sold and delivered to vessels under foreign registry, including Norwegian, Swedish, and Danish, 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, 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, in the course of its 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 approximating 5 per cent of the invoice of sales so made, to induce such officers to purchase meats or provisions 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 vessels for their personal use, sums of money in cash, the same

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

Dec. 31, 1920. Steamship Bratland.....	\$523.39
Feb. 18, 1921. Steamship Bratland.....	36.94
Apr. 29, 1921. Steamship Elka 3.....	152.75
May 25, 1920. Steamship Harold.....	242.45
May 29, 1920. Steamship Harold.....	79.60
July 15, 1920. Steamship Harold.....	269.94
July 28, 1920. Steamship Harold.....	309.08
July 11, 1920. Steamship Harold.....	305.90
Dec. 18, 1920. Steamship Harold.....	578.00
Dec. 10, 1920. Steamship Harold.....	261.00
Jan. 19, 1921. Steamship Harold.....	446.65
Dec. 13, 1921. Steamship Honduras	223.05
Dec. 31, 1921. Steamship Honduras	265.95
Jan. 2, 1921. Steamship Honduras	245.80
Jan. 28, 1921. Steamship Honduras	222.95
Feb. 23, 1921. Steamship Honduras	193.55
Mar. 7, 1921. Steamship Honduras	193.92
Apr. 8, 1921. Steamship Honduras	219.15
Mar. 2, 1920. Steamship Imperator.....	200.79
Mar. 1, 1921. Steamship Imperator.....	459.36
Feb. 25, 1921. Steamship Startford.....	110.15
Apr. 6, 1920. Steamship Thorgerd.....	487.70

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

Martin A. Blomberg, an officer of the respondent corporation, has from time to time entertained in his home, officers or employees of vessels engaged in commerce. The evidence does not disclose that such entertainment was in the nature of a gratuity or an inducement to said officers or employees to purchase supplies from said respondent corporation for the account of the principals or owners of such vessels.

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.

Memorandum.

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 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,"

It is now ordered, That the respondent, Cowley Packing Company, Incorporated, Mobile, Ala., its officers, agents, representatives, 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 consisting of meats or provisions 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.

The Commission also issued findings and order involving commercial bribery on the part of a ship chandlery concern in the case of Amory & Moore, Inc. (Docket 780, Aug. 9, 1921.)

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FEDERAL TRADE COMMISSION

v.

THE MENNEN COMPANY.