

Complaint.

FEDERAL TRADE COMMISSION

v.

SOUTH BEND BAIT COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 729—March 14, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale at fixed uniform list prices, of fishing tackle, artificial bait and other like products of uniform grade or quality, and doing a very substantial part of all such business in the United States, did not consistently extend to purchasers discounts based upon quantity, difference in cost of selling, transportation, or selection of customers in bona fide transactions and not in restraint of trade, but in accordance with certain standards or definitions adopted by it, divided purchasers into four classes which it respectively called jobbers, wholesalers, retailers, and consumers, and varied its discounts accordingly; with the result that discriminations in price between purchasers of its products were brought about, distributor purchasers were favored and consumer purchasers were compelled to pay list prices regardless of the source from which they purchased, and a substantial subsequent lessening of competition in the sale of such products thereby became possible:

Held, That such practices, under the conditions and circumstances set forth, constituted unfair methods of competition in violation of Section 5 of the Act of Congress approved September 26, 1914, and also an unlawful discrimination in price, in violation of the provisions of Section 2 of the Act of Congress approved October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the South Bend Bait Company, 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 under the laws of the State of Indiana, with principal place of business at South Bend, in said State.

Complaint.

4 F. T. C.

PAR. 2. That respondent is engaged in the business of manufacturing and selling fishing tackle, artificial bait, etc., and causes said commodities to be transported to the purchasers thereof from the State of Indiana through and into other States of the United States, in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That the respondent in the course of its business, as described in Paragraph Two hereof, has adopted and put into effect a plan for the allowance of trade discounts in the marketing of its products. That in the furtherance of its said plan it has classified its actual and prospective customers into groups according to a basis of selection adopted by it, that to such of its customers as may come within the classification of one of said groups, respondent allows certain trade discounts, to-wit, 33½ per cent; that to such of its customers as may come within the classification of another of said groups, respondent allows greater trade discounts, to-wit, 40 per cent; that to such of its customers as may come within still another of said groups, respondent allows still higher trade discounts, to-wit, 50 per cent, wholly irrespective of the quantity purchased by a customer in any one of said groups, and respondent thereby makes discriminations in price between its customers.

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.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the South Bend Bait Company, hereinafter referred to as respondent, has been and is violating the provisions of Section 2 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. As grounds for said complaint, said Commission relies upon the matters and things set out in Paragraphs One, Two and Three of Count I of this complaint, to the same extent as though the allegations thereof were set out at length herein, and said paragraphs are incorporated herein by reference and adopted as a part of the allegations of this Count.

PAR. 2. That the use of the plan by respondent as described in Paragraph Three of Count I hereof, has a dangerous tendency unduly to hinder competition in the interstate sale of fishing tackle, artificial bait, etc., and has tended to create for respondent a monopoly in the line of commerce engaged in by it, as described in Paragraph Two of Count I hereof, contrary to the intent and meaning of the provisions of Section 2 of an Act of Congress, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to 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," and an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, South Bend Bait Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act of Congress approved September 26, 1914, and with a violation of the provisions of Section 2 of said Act of Congress approved October 15, 1914.

The respondent having entered its appearance by its attorney and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondent before John W. Bennett, an Examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission having heard argument of counsel and 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. That respondent, South Bend Bait Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located in the city of South Bend, in said State.

PAR. 2. That respondent is now and for more than three years last past has been engaged in the business of manufacturing and selling fishing tackle, artificial bait and other like products, and causing said articles or commodities to be transported to purchasers thereof from

Findings.

4 F. T. C.

the State of Indiana through and into various other States of the United States, the Territories thereof, the District of Columbia and foreign countries, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That the quantity of fishing tackle, artificial bait and similar products sold and distributed as aforesaid is substantial and the same forms an important item of commerce among the several States and Territories of the United States and the District of Columbia. That the total net sales of such fishing tackle and artificial bait in the United States by all manufacturers is approximately \$7,950,000 net per annum, or about one-third of the volume of all "sporting goods" manufactured and sold within the United States. That the respondent sells from 5 to 8 per cent of all such fishing tackle, artificial bait and similar products sold within the United States.

PAR. 4. That during the three years last past the respondent, South Bend Bait Co., in the course of its said business has put into effect a plan for the allowance of trade discounts and the making of prices to purchasers in the marketing of its said products, substantially as follows, to wit: That respondent has classified its customers into four classes, namely, "jobbers," "wholesalers," "dealers" or "retailers" and "consumers"; that respondent sells its said products to "consumers" at fixed or list prices named in catalogues, circulars and other advertising matter issued by respondent and in some cases marked upon the article offered for sale; that respondent sells its said products to purchasers who are "retailers," by it so classified and designated, at a discount of 33½ per cent off said list prices named in said catalogues, circulars, etc., provided that if said "retailers" or "dealers" purchase \$300.00 worth net, or more, of said products at a single purchase, said "retailers" or "dealers" so buying are given a discount of 40 per cent off said list prices so named in catalogues, etc.; that respondent sells its said products to purchasers who are "wholesalers" by it so classified and designated, at a discount of 40 per cent off said list prices so named in said catalogues, regardless of the amount purchased; that respondent sells its said products to purchasers who are "jobbers" by it so classified and designated, at a discount of 50 per cent off said list prices so named in said catalogues, regardless of the amount purchased; that respondent suggests to retailers that they shall sell such products to "consumers" at prices identical with list prices so named in said catalogues, etc.; that respondent suggests to "wholesalers" and "jobbers" that they shall sell to "retailers" at a discount of 33½ off list prices so named in said catalogues, etc.; that respondent insists on the maintenance by "jobbers," "wholesalers" and "retailers" and

"dealers" of such suggested resale prices to the extent of, in one instance, cutting off the supplies of one dealer who failed to maintain said list prices to consumers; that in exceptional cases other and different discounts are given in the sale of its products by respondent to purchasers who are "jobbers," "wholesalers" and "dealers" or "retailers" by it so classified and designated; that respondent in making said classification defines "jobbers" as follows: "that they must be a recognized jobber—meaning that they travel salesmen, issue a catalogue, and conduct a jobbing business, that is, calling on and selling to the retail trade and not doing a retail business"; that respondent in making said classification defines "wholesalers" as "customers doing a combination retail and jobbing business"; that respondent in making said classification defines "retailer" or "dealer" as "a customer who maintains a store, carries stock and sells fishing tackle to the consumer"; that respondent in the making of said classification defines "consumer" as "the user; he is the party who buys the tackle to fish with."

PAR. 5. That sales of said products made by respondent to single or individual customers who are "jobbers" as above classified and designated, for a period of twelve months ending in July, 1921, varied in volume from \$15.92 net, to \$12,351.39 net, and that many sales by respondent to purchasers who were "jobbers" in said period were in volume less than \$300.00 net; that sales of said products made by respondent to single or individual purchasers who were "wholesalers" as above classified or designated by it for a period of twelve months ending July, 1921, varied in volume from \$10.80 to \$635.79 net, and that respondent made many sales to said class of "wholesalers" in said period less in volume than \$300.00 net, and respondent made several sales larger in volume than \$300.00 net; that sales of said products made by said respondent to single or individual purchasers who were "retailers" or "dealers," as by it above classified and designated, varied in volume from 55 cents or less net, to \$312.27 net and that several sales made by respondent in said period to said class of "retailers" or "dealers" were greater in volume than \$300.00 net, while the great bulk of said sales to said "dealers" or "retailers" were less than \$300.00 net in volume during said period; that the average purchase from respondent by purchasers who were "jobbers" by it so designated and classified was \$1,460.00; that the average purchase from respondent by purchasers who were "wholesalers" by it so classified and designated was \$410.00; that the average purchase from respondent by "dealers" or "retailers" by it so classified or designated was \$57.00; that the total volume of sales of said products by said respondent to all purchasers for the eight months ending May

Findings.

4 F. T. C.

31, 1921, were \$427,568.00 net, of which \$9,363.00 net or 2.2 per cent of the whole were made to purchasers who were "consumers" as above classified or designated; \$65,888.00 or 15.4 per cent of the whole to "dealers" or "retailers" as above classified or designated; \$50,499.00 or 18.8 per cent of the whole to purchasers who were "wholesalers" as above classified or designated; and \$301,865.00 net or 70.6 per cent of the whole to purchasers who were "jobbers" as above classified or designated by it; that the said business of said respondent has been and is rapidly expanding in volume of sales; that the total volume of net sales for the year ending September 30, 1912, the first year of its business career, amounted to \$10,546.00; that for the year ending September 30, 1920, the total volume of business had increased to \$399,879.00 net; that for the eight months ending May 31, 1921, the volume of respondent's business totaled \$427,568.00.

PAR. 6. That said plan of trade discounts made and applied by respondent in the sale of its products, as described herein, are discriminations in price between purchasers of respondent's products for use, consumption and resale within the United States; that the tendency and effect of said plan of discounts so made and applied by respondent is to make discriminating prices to purchasers who are distributors, and to compel purchasers who are consumers to pay a fixed or list price for said products of respondent from whatever source said consumers may purchase; that the effect of such discrimination in price by respondent between distributors of its said products may be to substantially lessen competition in the sale of fishing tackle, artificial bait and like products in the sale of such products in interstate commerce.

PAR. 7. That said plan of trade discounts made and applied by respondent in the sale of its said products as described herein, and the resulting discrimination in prices between purchasers, was and is not a discrimination in price between purchasers of said products that made only due allowance for cost of selling or transportation; that cost to respondent of selling and transporting its said products to some purchasers by it so classified and designated as "retailers" or "dealers" has been a less percentage of the selling price of said products than the cost to respondent of selling its said products to some "jobbers" or to some "wholesalers" by it so designated, such latter cost being reckoned also as a percentage of the selling price.

PAR. 8. That said plan of trade discounts made and applied by respondent in the sale of its said products described herein and the resulting discrimination in prices between purchasers was and is not a discrimination in price between purchasers of said products because of difference in quantities of said products sold to said purchasers;

355

Order.

that some purchasers designated and classified as "dealers" or "retailers" and allowed by respondent a trade discount of 33 $\frac{1}{3}$ per cent off said prices made by respondent in its catalogues, etc., actually have purchased at a single purchase or for a fixed period, greater quantities of the said products of said respondent than did some purchasers, by respondent designated as "jobbers," at a single purchase or for a similar fixed period, but said "jobbers" were allowed by respondent trade discounts of 50 per cent off said lists.

PAR. 9. That said plan of trade discounts made and applied by respondent in the sale of its said products as described herein, and the resulting discrimination in prices between purchasers was not a discrimination because of differences in grade or quality, that said respondent sells but one grade or quality of said products; nor a discrimination in price in good faith to meet competition; nor a selection of customers in bona fide transactions and not in restraint of trade.

CONCLUSIONS.

1. That the practices of said respondent as hereinbefore set forth and recited, in the circumstances and under the conditions as hereinbefore set forth, are unfair methods of competition in interstate commerce 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 powers and duties, and for other purposes."

2. That the practices of said respondent as hereinbefore set forth and recited, in the circumstances and under the conditions as hereinbefore set forth, are in violation of Section 2 of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, 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, testimony and evidence, and the argument of counsel, 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," and also the provisions of the Act of Congress approved October 15, 1914, entitled "An Act to supple-

Order.

4 F. T. C.

ment existing laws against unlawful restraints and monopolies, and for other purposes,"

It is now ordered, That the respondent, South Bend Bait Company, its officers and agents and employees, do cease and desist from discriminating in net selling prices by any method or device between purchasers of the same grade, quality and quantity of commodities upon the basis of a classification of its customers as "jobbers," "wholesalers," "retailers" or "consumers" or any similar classification which relates to the customers' business policy, business methods, or to the customers' manner of doing business, in any transaction in, or directly affecting interstate commerce, in the distribution of its products:

Provided, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition; and

It is further ordered, That the respondent, South Bend Bait Company, shall file with the Commission, within ninety (90) days from the date of this order, its report in writing, stating in detail the manner and form in which this order has been conformed to, and shall attach to such report, true copies of all catalogues, advertisements and other printed matter in which are set forth plans of trade discounts or the making of prices to purchasers of the products of said respondent.

BURHAM SAFETY RAZOR CO. (CLARA L. DOLL). 363

Complaint.

FEDERAL TRADE COMMISSION