

Complaint.

5 F. T. C.

FEDERAL TRADE COMMISSION
v.
WRIGHT AND GOWAN COMPANY, INC.

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

Docket 847—June 27, 1922.

SYLLABUS.

Where a corporation engaged in the sale to coastwise vessels and to ocean-going vessels under foreign registry, the business of which it solicited, of ship chandlery supplies required by them in order to operate as instrumentalities of interstate and foreign commerce, which supplies it secured from different states and delivered to said vessels in the original packages; paid to the captains, stewards and engineers of such vessels, without the knowledge or consent of their employers or principals, and without other consideration therefor, cash commissions usually amounting to from 2 to 5 per cent of the invoices as an inducement for them to purchase of it, or as a reward for so purchasing; 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 gifts, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Wright-Gowan Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate 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 to the Commission 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 is a corporation, organized and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business in the City of Brunswick, in said State, at which place respondent is engaged in a general ship-chandlery business, in the course of which it sells deck, engine and subsistence supplies and other articles to and for consumption upon vessels which reach and touch at said city of Brunswick while engaged in the transportation of passengers and freight from various ports in the United States and in foreign countries to other ports in the United States and in foreign countries; that in the con-

duct of its said business, respondent is in competition with other persons, partnerships and corporations engaged in similar ship chandlery business.

PAR. 2. That respondent, in the course of its aforesaid business, has for more than one year last past given, and still gives, to officers and employees of aforesaid vessels, without the knowledge or consent of the employers or principals of said officers and employees, and without the knowledge or consent of the owners or charterers of said vessels, cash commissions and gratuities, to induce such officers and employees to purchase from respondent deck, engine and subsistence supplies, and other articles for consumption upon the vessels operated by them for and on behalf of their said principals and the owners and charterers of said vessels; that respondent similarly gives cash commissions and gratuities to such officers and employees as a reward for having purchased such supplies and other articles, and respondent gives all said commissions and gratuities upon the sole consideration of such purchases; that respondent spends large sums of money for aforesaid commissions and gratuities, which said sums aggregate about five per centum of the volume of such sales; that said sums are added to respondent's cost of doing business and respondent adds to the selling price of the commodities so sold by it, an amount approximately equal to the amount so expended in such commissions and gratuities, which amount is in addition to the fair market value of said commodities and is paid by the purchasers of said commodities and eventually by the public; that the aforesaid practices of respondent have tended to induce and have induced, and still tend to and do induce the hereinbefore mentioned competitors of respondent to give commissions and gratuities to officers and employees of vessels in like manner as given by respondent, and for the same purpose and with the same effect, in order to protect their trade, and to prevent respondent from winning over and obtaining the same.

PAR. 3. That the above alleged acts and things done by respondent, constitute an unfair method of competition in interstate 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, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties and for other purposes,"

Findings.

5 F. T. C.

the Federal Trade Commission issued and served a complaint upon the respondent, Wright-Gowen Company, Incorporated, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent, Wright-Gowan Company, Incorporated, having entered its appearance and filed its answer, hearings were had and evidence was thereupon introduced in support of the allegations of the said complaint and on behalf of the said respondent before 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, Wright and Gowan Company, Incorporated, inadvertently styled in the complaint Wright-Gowan Company, Incorporated, is a corporation organized under the laws of the State of Georgia in December, 1909, with an authorized capital stock of \$76,000. Its principal place of business and executive offices are located in Brunswick, Ga.

PAR. 2. The respondent, Wright and Gowan Company, Incorporated, is now and has for more than two years last past been engaged in the selling of ship chandlery, including steward, deck and engine room supplies for consumption and use upon vessels which reach the port of Brunswick, Ga., while engaged in the transportation of passengers and 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, purchased steward, deck and engine room supplies for the maintenance of the crew and the use and repair of such vessels in the States of Maine, Massachusetts, Connecticut, New York, Indiana and Florida, and said supplies were transported in interstate commerce in and through other States of the United States to the State of Georgia, for the purpose of selling and delivering same to vessels doing a coastwise and interstate commerce business and later were delivered by the said respondent in original packages on the deck of said vessels for the maintenance of said crews and the use or repair of said vessels.

PAR. 4. 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 engaged in coastwise trade plying between the ports of Brunswick, Ga., and ports in other States of the United States and has also solicited the business of and has sold and delivered to vessels under foreign registry, including British, Norwegian, Spanish, Italian and Danish, while said vessels were engaged in commerce, ship chandlery, including steward, deck and engine room supplies necessary for the maintenance of the officers and crews of such vessels and for the use or repair of such vessels while in port and upon the high seas, all of which supplies so furnished were necessary and essential in order that said vessels could continue to operate as instrumentalities of commerce.

PAR. 5. The respondent, in the course of its business as heretofore described, has given to captains, stewards and engineers of vessels engaged in commerce, and without the knowledge or consent of their employers or principals and without other consideration therefor, cash commissions in sums of money as gratuities to induce such officers to purchase ship chandlery from respondent for the maintenance of said crews and for the use or repair of said vessels operated by them for their principals or owners thereof, and for the account of such principals or owners of such vessels, and as an inducement or reward for the purchase of such ship chandlery or supplies, particularly gave to captains, stewards and engineers of vessels for their personal use and without other consideration therefor, the following sums of money as commissions on invoice sales covering such ship chandlery or supplies purchased on the following dates:

Date.	Name of vessel.	Officer to whom given.	Gratuity paid.	Per cent of invoice.
1919.				
Sept. 6	Steamship Naperlan.....	Captain.....	\$120.00	5
	do.....	Steward.....	40.00	2
11	Steamship Kilsnop.....	Captain.....	63.00	5
22	Steamship Ashbee.....	do.....	95.00	4
	do.....	Steward.....	15.00	2
Oct. 9	Steamship Western Front.....	Captain.....	54.00	5
15	Steamship Lake Pepin.....	Steward.....	25.00	2
21	Steamship Novian.....	do.....	40.00	2
	do.....	Captain.....	100.00	5
Nov. 10	Steamship Lake Erie.....	Steward.....	28.00	2
12	Steamship Nortonian.....	do.....	25.00	2
	do.....	Captain.....	65.00	5
15	Tug Belans.....	do.....	10.00	5
21	Steamship Alexandrian.....	Steward.....	27.00	2
	do.....	Captain.....	67.00	5
Dec. 31	Steamship Western Front.....	Engineer.....	20.00	Special.
	do.....	Steward.....	20.00	Special.
	do.....	Captain.....	175.00	8
1920.				
Jan. 13	Steamship Nortonian.....	Steward.....	33.25	2
	do.....	Captain.....	80.00	5
15	Schooner Helen Swanzy.....	do.....	50.00	4
17	Schooner J. L. Ralston.....	do.....	16.00	5
24	Steamship Lake Michigan.....	Steward.....	50.00	Special.
	do.....	Captain.....	40.00	Special.
31	Steamship Wb Kah.....	Steward.....	10.00	Special.

Findings.

5 F. T. C.

Date.	Name of vessel.	Officer to whom given.	Gratuity paid.	Per cent of invoice.
1920.				
Feb. 4	Steamship Naperian.....	Steward.....	\$27.50	2
	do.....	Captain.....	70.00	5
11	Bark Ariel.....	do.....	105.00	5
Mar. 23	Steamship Nessian.....	Steward.....	34.00	2
	do.....	Captain.....	88.00	5
26	Steamship Calispell.....	do.....	24.00	5
31	Schooner Carrie A. Bucknam.....	do.....	26.50	2
Apr. 10	Steamship Blackmoor.....	do.....	27.00	5
13	Steamship Banicaa.....	Steward.....	18.00	4
	do.....	do (?).....	1.00	(?) 5
22	Schooner Mount Whitney.....	Captain.....	34.00	4
26	Bark Calcutta.....	Steward.....	55.00	2
	do.....	Captain.....	83.00	3
May 29	Steamship Naperian.....	Steward.....	50.00	2
	do.....	Captain.....	135.00	5
31	Steamship Ashtabula.....	do.....	85.00	4
June 5	Schooner Sherewog.....	do.....	32.00	4
17	Schooner Outiz.....	do.....	18.50	5
22	Barge Northern No. 30.....	do.....	5.75	3
24	Schooner Outiz, to Artau for interpreting.....	do.....	7.40	2
July 6	Tug Barrerfork.....	Captain.....	6.50	5
14	Tug Vonezdorf.....	do.....	46.50	5
16	Steamship Lake Finn.....	Steward.....	7.50	2
23	Steamship Wihaha.....	do.....	5.50	2
24	Steamship Delaware.....	Captain.....	107.50	5
Aug. 3	Steamship Boxbutte.....	Steward.....	60.00	14
	do.....	Captain.....	200.00	Special.
12	Steamship McClintic (tug).....	do.....	60.00	5
26	Tug Pylos.....	do.....	11.00	5
Sept. 3	Steamship Tona.....	do.....	36.30	5
4	Steamship Buchanan.....	do.....	10.00	Special.
	Barge Smith & Terry No. 1.....	do.....	4.00	5
8	Steamship Delaware.....	do.....	85.00	5
13	Steamship Maruba.....	do.....	4.00	5
21	Bark Dione.....	do.....	40.00	Special.
	do.....	Steward.....	10.00	Special.
22	Steamship Furlough.....	do.....	3.50	2
	Barkentine F. A. Duggan.....	Captain.....	40.00	3
27	Tug A. J. Stone.....	do.....	3.30	5
	Steamship Scottish American.....	do.....	20.00	Special.
28	Tug A. J. Stone.....	Steward.....	2.00	Special.
Oct. 7	Steamship Lake Glebe.....	Captain.....	3.50	5
	Tug Pylos.....	do.....	1.50	Special.
	Schooner R. L. Hull.....	do.....	57.00	5
8	Steamship Maruba.....	do.....	9.00	5
	Tug Pylos.....	do.....	2.50	5
9	Steamship Point Loma.....	Steward.....	20.00	14
	do.....	Captain.....	65.00	5
16	Steamship Scottish American.....	do.....	43.00	5
	do.....	Engineer.....	8.00	2
	Steamship Western Ally.....	Steward.....	10.00	Special.
18	Steamship Lenape.....	Captain.....	37.50	5
	do.....	Steward.....	15.00	2
	Schooner Freeman.....	Captain.....	10.00	5
19	do.....	Steward.....	3.00	Special.
	Steamship Lenape.....	Captain.....	3.25	5
	Barge Northern No. 32.....	do.....	10.00	5
	Steamship Lake Germania.....	do.....	60.00	5
	do.....	Steward.....	20.00	2
21	Steamship Western Ally.....	Captain.....	132.00	5
22	Steamship Aragon.....	do.....	19.50	5
23	Steamship Albanian.....	do.....	100.00	5
	do.....	Steward.....	40.00	2
25	Schooner Haupauge.....	Captain.....	40.00	5
Nov. 29	Schooner Davery.....	do.....	6.50	5
6	Schooner C. M. Page.....	do.....	30.00	5
6	Steamship War Pundit.....	do.....	95.00	5
	do.....	Steward.....	37.50	2
9	Steamship Kokomo.....	do.....	36.00	5
	Bark Killena.....	do.....	18.50	5
9	Steamship Bledsoe.....	Steward.....	47.50	2
10	do.....	Captain.....	65.00	14
	Steamship Scottish-American.....	do.....	40.00	5
17	Schooner B. A. Van Brunt.....	do.....	18.00	5
24	Schooner Chas. D. Stamford.....	do.....	15.00	5
19	Tug Richmond.....	do.....	12.50	5
24	Steamship Ronda.....	do.....	9.50	5
29	Schooner P. M. Brooks.....	do.....	40.00	5
	Schooner Dorothy.....	do.....	45.00	5

Findings.

Date.	Name of vessel.	Officer to whom given.	Gratuity paid.	Per cent of invoice.
1920.				
Dec. 2	Steamship Chattanooga.....	Steward.....	\$11.50	2
	do.....	Captain.....	21.00	3
4	Schooner Maud M. Maury.....	do.....	12.50	4
	Barge Northern No. 29.....	do.....	10.00	4
	Steamship British Fern.....	do.....	25.00	5
	do.....	Steward.....	10.00	2
6	Steamship Lake Cochecon.....	do.....	20.00	2
8	Steamship Nessian.....	do.....	17.50	2
	do.....	Captain.....	45.00	5
11	Motor ship Erris.....	do.....	52.50	4
	do.....	Steward.....	10.00	1
15	Schooner Kielberg.....	Captain.....	7.50	3
	Schooner Scotia Maiden.....	do.....	10.00	-----
23	Schooner M. P. Pattison.....	do.....	13.00	5
28	Steamship Scottish-American.....	do.....	22.55	5
31	Steamship Scottish Bard.....	do.....	33.00	5
	Schooner C. C. Mengle.....	do.....	21.00	4
	(C. B. Gowen, manager.)			
1921.				
Jan. 8	Schooner Florence Howard.....	do.....	5.00	5
	Tug Barrenfork.....	do.....	5.00	5
10	Schooner Haupange.....	do.....	17.50	5
12	Steamship Cherry Leaf.....	do.....	32.50	5
13	Schooner Olga.....	do.....	24.00	5
15	Schooner Willemoes.....	do.....	43.50	5
	Steamship Scottish-American.....	do.....	54.50	5
20	Barkentine Emanuel.....	do.....	19.25	5
	Schooner Sally Wren.....	do.....	12.00	3
	Bark Lorenz.....	do.....	22.50	5
21	Schooner J. E. Drake.....	do.....	7.00	5
24	Bark Svennen.....	do.....	17.00	5
28	Steamship Oranuan.....	Captain and steward..	12.25	7
	Bark Holthe.....	Captain.....	22.50	5
	Bark Saga.....	do.....	20.00	5
Feb. 4	Steamship Scottish American.....	do.....	33.00	5
7	Schooner C. M. Page.....	do.....	17.00	5
10	Steamship Mount Shasta.....	do.....	47.50	5
11	do.....	do.....	5.00	5
14	Steamship Pearlton.....	do.....	2.00	Special.
15	Bark Bertha.....	do.....	27.00	5
	Schooner Mount Whitney.....	do.....	63.00	5
16	do.....	Steward.....	15.00	2
18	Steamship Scottish Bard.....	Captain.....	27.00	5
21	Schooner Commack.....	do.....	17.50	5
23	Schooner Mary G. Maynard.....	do.....	7.50	5
26	Steamship Scottish-American.....	do.....	37.00	5
Mar. 1	Bark Arsis.....	do.....	85.00	5
17	Steamship Nevissian.....	do.....	45.00	5
21	Schooner Horace A. Stone.....	do.....	7.50	5
Apr. 4	S. W. Hathaway.....	do.....	9.00	5
30	Schooner J. E. Bachman.....	do.....	12.00	5
May 2	Schooner Edna Hoyt.....	do.....	8.00	5
5	Schooner Virginia Dare.....	do.....	4.50	Special.
9	Schooner Stevens.....	do.....	3.00	5
June 23	Steamship Ashtabula.....	do.....	95.00	5
27	Schooner M. V. Hall.....	do.....	7.50	5
30	Bark Oakhurst.....	do.....	23.00	5
July 1	Schooner Virginia Dare.....	do.....	5.00	5

Said sums of money given as commissions or gratuities by said respondent to captains, stewards, and engineers of vessels is added by respondent to its cost of doing business and said respondent adds to the selling price of the ship chandlery or supplies so sold by it, an amount sufficient to cover the amounts so expended, which is in addition to the fair market value of such ship chandlery or supplies, and which additional amount becomes a charge against the owner or operator of said vessel and ultimately against the public.

Order.

5 F. T. C.

PAR. 6. The giving of cash commissions or gratuities by respondent compels 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, the testimony and evidence submitted, the trial examiner's report upon the facts, and the exceptions thereto, 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, Wright and Gowen Company, Incorporated, Brunswick, Ga., 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 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 SALT PRODUCERS ASSOCIATION ET AL.

67

Complaint.