

Complaint.

FEDERAL TRADE COMMISSION

v.

RUSSELL GRADER MANUFACTURING COMPANY.

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

Docket 430—June 30, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of road machinery and kindred products,

(a) Paid, through a commission contract, to concerns, of which public officials charged with the duty of purchasing, or recommending the purchase, of such products for the governing bodies served by them, were members, commissions for the sale of its products; and

(b) Retained such public officials, when engaged in their respective communities in the sale of machinery or in some kindred line of business, for the sale of its products;

With the result that it was thereby enabled, through the services of such officials, to sell its products to the governing bodies of which they were members, and that the cost of its products to its customers was increased, and with a tendency to cause its competitors to do likewise 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 Russell Grader Manufacturing Co., hereinafter referred to as respondent, is now and for more than a year last past has been 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 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, Russell Grader Manufacturing Co., a corporation organized and existing and doing business under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at the city of Minneapolis, in the State of Minnesota, is now and for more than one year last past has been engaged in manufacturing and selling road machinery and similar

Findings.

5 F. T. C.

products throughout the various States and Territories of the United States, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in competition with other persons, firms, copartnerships and corporations manufacturing and selling like products in interstate commerce.

PAR. 2. That in the course of its business of manufacturing and selling road machinery and similar products throughout the various States and Territories of the United States, the respondent is now and for more than one year last past has been giving and offering to give to public officials and to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence said public officials and employees of customers to recommend, purchase or contract to purchase from the respondent road machinery and similar products, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling road machinery and similar products throughout the various States and Territories of the United States, the respondent is now and for more than one year last past has been paying and offering to pay the expenses of public officials and their representatives to the respondent's place of business for the purpose of inspecting the respondent's products, as an inducement to influence said public officials to purchase or contract to purchase from the respondent road machinery and similar products.

PAR. 4. That in the course of its business of manufacturing and selling road machinery and similar products, throughout the various States and Territories of the United States, the respondent is now and for more than one year last past has been secretly paying and offering to pay to public officials, their friends and relatives and to employees of both its customers and prospective customers, sums of money as an inducement to influence said public officials and employees of customers to recommend, purchase or contract to purchase from the respondent road machinery and similar products, or to influence said public officials and customers to refrain from dealing or contracting to deal with competitors of the respondent.

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, Russell Grader Manufacturing Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

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 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. The respondent, Russell Grader Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of Minnesota, with its principal office and place of business in Minneapolis, in said State, and is now and for several years last past has been engaged in manufacturing, selling and distributing road machinery and similar products, in interstate commerce, to counties, townships, municipalities and other political governmental subdivisions, in competition with others similarly engaged.

PAR. 2. That in the course of its business of manufacturing and selling road machinery and similar products in said commerce in and among the States and Territories of the United States, the respondent, Russell Grader Manufacturing Co., has, in many instances, paid a commission through a commission contract, for the sale of its products in the usual form, with firms or corporations of which a public official was then a member, and that thereby, in many instances, sales of its products through the service of such firm or corporation in cooperation with such official have been actually effected by respondent, for and on behalf of the particular county, township or municipality with which such member of said firm or corporation has been or then was officially connected, and that respondent has also, in many instances where a public official has been engaged in his community in the sale of machinery or some kindred line of business, retained such official for the sale of its products in such community; and thereby respondent has, in many instances, been enabled through the services of such official, to sell its product to the governing body of which he was then a member, and has paid 'he regular dealer's commission for such service.

PAR. 3. That the said public officials and the said public employees to whom or to whose relatives or friends the said cash payments were offered or paid by the respondent as aforesaid were such public

Order.

5 F. T. C.

officials and such public employees whose duties, in behalf of the public in whose service they were, required them to purchase, or to recommend the purchase of, for their principals, the kind of goods, wares and merchandise mentioned in paragraph one hereof.

PAR. 4. That the practice of paying or offering to pay sums of money to such public officials and to such public employees or to their relatives or friends for the purposes aforesaid, affects all of the said respondent's competitors and tends to cause them to do likewise for the same purpose and for the same effect as a means of protecting their trade and preventing the respondent from obtaining the business enjoyed by them.

PAR. 5. That as a result of the payment of such sums of money as aforesaid the respondent adds to its cost of doing business the amount of money paid by it as stated in these findings, and the cost of its goods, wares and merchandise to its customers is its cost of doing business plus its profits.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in 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."

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 and printed briefs of counsel, and the Commission being of the opinion that the methods of competition in question are prohibited by 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 having made its report in which it stated its findings as to the facts, with its conclusions that the respondent has violated the provisions of said Act.

It is therefore ordered, That the respondent, Russell Grader Manufacturing Co., its officers, directors, agents, representatives and employees, cease and desist from directly or indirectly paying, offering or promising to pay any money or thing of value, to any officer or employee of counties and other political subdivisions of

77

Order.

the States of the United States, to induce or influence such officers and employees to purchase road machinery or other articles sold by respondent Russell Grader Manufacturing Co., for the political subdivisions represented by them or with which they are connected.

It is further ordered, That respondent Russell Grader Manufacturing Co., shall within thirty (30) days after the service upon them of a copy 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.

Complaint.

5 F. T. C.

FEDERAL TRADE COMMISSION

v.

AUSTIN-WESTERN ROAD MACHINERY COMPANY.