

Complaint.

5 F. T. C.

FEDERAL TRADE COMMISSION

v.

AUSTIN-WESTERN ROAD MACHINERY COMPANY.

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

Docket 434—June 30, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of road machinery and kindred products, paid and offered to pay, to public officials and employees charged with the duty of purchasing, or recommending the purchase, of such products for the governing bodies served by them, and to their relatives and friends, sums of money as an inducement for said officials and employees to purchase or contract to purchase of it and to refrain from dealing with its competitors; with the result that the cost of its products to its customers was thereby increased, and with a tendency to cause its competitors to do likewise in order to retain their business:

Held, That such payments and offers to pay, 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 Austin-Western Road Machinery Company, 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, The Austin-Western Road Machinery Company, a corporation organized and existing and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the City of Chicago, in the State of Illinois, is now and for more than one year last past has been engaged in manufacturing and selling road machinery and kindred 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 kindred 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 kindred 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 kindred 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 kindred products.

PAR. 4. That in the course of its business of manufacturing and selling road machinery and kindred 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, and its competitors' 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 kindred 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, the Austin-Western Road Machinery

Findings.

5 F. T. C.

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

The respondent having entered its appearance by its respective attorneys, 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. That the respondent, Austin-Western Road Machinery Co. is a corporation, organized and existing and doing business under and by virtue of the laws of the state of Illinois having its principal office and place of business at the city of Chicago in the state of Illinois and is now and has been for more than one year preceding the commencement of this case engaged in manufacturing and selling road machinery and kindred products throughout the various states and territories of the United States and at all times has carried on and conducted its said business in competition with other persons, firms, partnerships and corporations manufacturing and selling similar products in interstate commerce.

PAR. 2. That the respondent, The Austin-Western Road Machinery Co., in the course of its business as described in paragraph 1 hereof, continuously, and for more than two years immediately preceding the issuance of the complaint herein, has been paying, and offering to pay, to public officials, to public employees, and to the relatives and friends of the same, cash payments of money as an inducement to persuade and to cause the said officials and the said employees to purchase, or to contract to purchase for their principals, goods, wares and merchandise from the respondent, and to refrain from dealing or contracting to deal with competitors of the respondent selling the same or similar goods, wares and merchandise.

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 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 1 hereof.

82

Order.

PAR. 4. That the practice of paying or of 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.

CONCLUSIONS.

That practices of respondent as set forth in the above findings of fact are unfair methods of competition in interstate commerce and in 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 its complaint, the answer of the respondent, the testimony and the evidence and the briefs 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."

It is, therefore, ordered, That the respondent, Austin-Western Road Machinery 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, townships, municipalities, and other political subdivisions of the States of the United States, or to their friends or relatives, or to others, to induce or influence such officers and employees to purchase the goods, wares and merchandise sold by the respondent, Austin-Western Road Machinery Co., for the political subdivision represented by them or with which they are connected.

It is further ordered, That Austin-Western Road Machinery Co. shall, within thirty (30) days, after the service upon it of a copy

Memorandum.

5 F. T. C.

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 as hereinbefore set forth.

The Commission also made similar findings and orders as of June 30, 1922, in the cases of The Galion Iron Works & Manufacturing Co. (of Galion, Ohio, Dock. 436), The Good Roads Machinery Co., (of Kennett Square, Pa., Dock. 439), and Acme Road Machinery Co. (of Frankfort, N. Y., Dock. 441), in which the facts involved appear to have been identical, or substantially identical, with those in the preceding case.

STOCKLAND ROAD MACHINERY CO.

87

Complaint.