

Complaint.

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FEDERAL TRADE COMMISSION

v.

C. D. HIGGINS, TRADING UNDER THE NAME AND STYLE
OF C. D. HIGGINS MANUFACTURING COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 806—June 30, 1922.

SYLLABUS.

Where an individual engaged in the manufacture and sale of razor hones which he sold to barber supply houses and to barbers at \$9 per dozen and \$1.50 each, respectively,

- (a) Sold said hones packed in cartons bearing the legend "(Original) Higgins hone, Price \$3.00 * * *"; and
- (b) Sold said hones branded on one side thereof "Original Higgins hone—Price \$3.00";

The fact being that said marked price did not represent the contemplated retail price of said hones, but was a fictitious price used for the purpose of misleading purchasers at retail as to the value thereof and of permitting retail dealers to sell the same at a substantial profit at a lower figure, thereby deceiving the public into believing that it was obtaining for a lower price a hone worth at least the price marked:

Held, That such misbranding, or misrepresentation of price, 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 C. D. Higgins, trading under the name and style of C. D. Higgins Manufacturing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation 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 in that respect 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, C. D. Higgins, conducts his business under the name of C. D. Higgins Manufacturing Co., in the City of Berkeley, Calif., where he is engaged in the manufacture of hones, which are used for sharpening razors and other cutlery, and selling such hones and causing them to be transported in commerce, to purchasers from the City of Berkeley, Calif., into

the several States of the United States, the District of Columbia and foreign countries, and in the conduct of such business the respondent is in competition with other persons, partnerships and corporations engaged in the sale of hones, in interstate and foreign commerce.

PAR. 2. That the respondent in the course of its business described in Paragraph 1 hereof, sells at wholesale hones manufactured by him, packed singly in cases upon which he conspicuously prints false, fictitious and misleading price marks, well knowing that the prices so marked on such cases are not the prices at which his customers, to whom he sells such hones, sell or expect to sell them, and well knowing that such prices do not represent the true value or the actual and usual retail prices of such hones, and well knowing that said false, fictitious and misleading price marks are used, and will be used, by his customers for the purpose of deceiving the public who purchase such hones and cause them to believe that they are obtaining, at a greatly reduced price, hones which ordinarily sell for a much higher price; that the respondent prints on the cases containing such hones "Price \$3.00," when such hones costs the respondents only a few cents each to manufacture them; that he sells them at wholesale at \$9 per dozen, or 75 cents each, and the persons to whom he sells such hones retail them at \$1.50 each, and send them through the mails at \$1.60 each; that the respondent well knows that the said hones are to be offered at retail, by his customers, at prices much less than those printed on the cases and that said price marks are to be used to mislead and deceive purchasers; that in selling hones so marked the respondent comes in direct competition with other manufacturers of hones who do not mark their hones with such false, fictitious and misleading prices, and the said respondent, while engaged in commerce, by the means aforesaid, aids, abets and assists retailers and other persons to whom he sells such hones to use unfair methods of competition against others similarly engaged, but who do not sell hones marked with such false, fictitious and misleading price marks.

PAR. 3. That by reason of the facts set out in the foregoing paragraphs of this complaint the respondent has been and is using unfair methods of competition in commerce within the intent and meaning 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".

Findings.

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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, C. D. Higgins, trading under the name and style of C. D. Higgins Manufacturing Co., charging him with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent having entered his appearance and filed his answer herein, and having stipulated and agreed in writing that an agreed statement of facts signed by the respondent and W. H. Fuller, Chief Counsel for the Federal Trade Commission, are the facts in this proceeding and may be taken and considered in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Federal Trade Commission may proceed further upon said statement of facts to make its report in this proceeding, stating its findings as to the facts and its conclusion, and entering its order disposing of this proceeding, and thereupon this proceeding came on for final hearing, the respondent and counsel for the Commission not desiring to file briefs or present oral arguments, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, C. D. Higgins conducts his business under the name "C. D. Higgins Manufacturing Company" at 2033 Dwight Way, Berkeley, Calif., and is engaged in manufacturing and selling razor hones, and causes the products sold by him to be transported to the purchasers thereof from the state of California through and into other states of the United States in interstate commerce, and carries on such business in direct and active competition with other persons, firms and corporations similarly engaged. The respondent began to operate this business in July, 1919, and has been conducting it continuously since that date.

PAR. 2. From July, 1919, until the date of the service of the Commission's complaint herein the razor hones manufactured by the respondent were packed in cartons each of which cartons was branded on the face thereof as follows:

(Original) Higgins Hone
Price \$3.00
Manufactured by the
C. D. Higgins Manufacturing Company
1721 Alcatraz Avenue,
Berkeley, Cal.

and each hone manufactured by the respondent was branded on one side thereof as follows:

Original Higgins hone—Price \$3.00.

PAR. 3. Sales of said razor hones have been made by the respondent to customers and purchasers in the states of California, Oregon, Washington, Arkansas, and many other states of the United States. Respondent's sales of hones have been made to barber supply houses at \$9 per dozen, or 75 cents each, and to barbers at \$1.50 each. Said hones were and are usually sold by said barber supply houses at prices substantially less than \$3, the average price for each hone being \$1.50.

PAR. 4. Since the service of the Commission's complaint in this proceeding, the respondent has obliterated from said hones and cartons the price mark "Price \$3.00," and an effort has been made by the respondent to cause dealers to change said marks on the supply which said dealers had on hand at the time of the service of the Commission's complaint in this proceeding.

PAR. 5. The said price of \$3.00 was printed upon said hones and cartons as a false, fictitious and misleading proposed retail price, and does not represent the price at which it was contemplated by the respondent or his customers that said hones would be sold to the ultimate purchasers, and such indicated price was placed upon said hones and containers for the purpose of creating in the minds of the purchasers at retail an erroneous impression as to the value of such hones.

PAR. 6. The said hones so marked with such false and misleading price come into direct competition in interstate commerce with hones which are not so marked. The respondent did not originate the practice herein described but followed a custom which has grown up in the razor-hone trade of marking hones with false and fictitious prices at the request of dealers in order that the misleading prices so marked upon said hones may be reduced or undercut by retail dealers and the hones still sold at a substantial profit and at a price materially less than that marked upon such hones and containers, thereby deceiving the public into believing that it is obtaining for a much less price a hone worth at least the price marked thereon.

PAR. 7. The respondent consented in writing to the entry of an order against him, commanding that he cease and desist from the practice of marking said razor hones, or the cartons containing the same, with any false, fictitious or misleading statement concerning the price or value of said razor hones.

Order.

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CONCLUSION.

The practices of the respondent, under the conditions and circumstances described herein, 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent and agreed statement of facts filed herein, and the Commission having made its findings as to the facts and 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, C. D. Higgins, trading under the name and style of C. D. Higgins Manufacturing Company, his agents, servants, representatives and employees, cease and desist from selling or offering for sale in interstate commerce razor hones upon which, or the cartons containing the same, is marked or imprinted any false, fictitious or misleading prices or representations as to the value of said hones.

It is further ordered, That the respondent within sixty (60) days after the service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which the respondent has complied with the order to cease and desist as hereinbefore set out.

JUVENILE SHOE CO., INC.

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