

Complaint.

FEDERAL TRADE COMMISSION.

v.

DESOTO PAINT MANUFACTURING COMPANY.

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

Docket 753—August 12, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints, stains, varnishes, and other similar products, gave to professional or contracting painters purchasing its "Heavy Body Paints," arbitrary discounts without the knowledge of their customers, as an inducement to said favored class to use, and to recommend to the purchasing public generally and particularly to owners of buildings contracting with them, the use of, its products, and to refuse to use those of its competitors:

Held, That such discrimination in 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 the DeSoto Paint Manufacturing 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 and existing under the laws of the State of Tennessee, with its principal place of business in the City of Memphis in said State.

PAR. 2. That respondent is engaged in the business of manufacturing, selling and distributing paints, stains, varnishes, etc., and causes such products, sold by it to be transported to the purchasers thereof from the State of Tennessee, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged. Respondent markets its products direct to professional or contracting painters, and also through dealers, who resell same to contracting painters and the consuming public generally; its business aggregates several hundred thousand dollars each month and

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constitutes a substantial portion of the whole trade and commerce in paints, stains, varnishes, etc., in the States of the United States adjacent to Tennessee.

PAR. 3. That respondent, in the course of its business as described in Paragraph 2 hereof, makes an arbitrary selection from among its purchasers of certain of its products known as "DeSoto Heavy Body Paints," to which purchasers rebates or bonuses are paid; that to professional or contracting painters respondent gives, or causes to be given, one certificate for each gallon of paint purchased, which certificates are redeemed by respondent at the rate of 20 cents for each gallon of colored paints purchased and 10 cents for each gallon of white paint purchased, and which certificates are not given to purchasers other than professional or contracting painters; that such certificates are given to professional or contracting painters, as aforesaid, to induce them to use respondent's products in their contract work, and to refuse to use the products of competitors of respondent, and to induce such professional or contracting painters to recommend respondent's products to the purchasing public generally, and particularly to owners of buildings contracting with them, thereby aiding in the sale of respondent's products, to the exclusion of the products of competitors of respondent, which practice has the capacity to allow such contracting painters to obtain from their customers the full retail price for respondent's products, and in addition thereto, to secretly receive from respondent a bonus or gratuity.

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.

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," the Federal Trade Commission issued and served a complaint upon the respondent, DeSoto Paint Manufacturing Company, charging it with the use of unfair methods of competition in commerce in violation of the said Act.

The respondent having entered its appearance by its 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 the testimony so taken was reduced to writing and filed in the office of the Commission.

And thereupon this proceeding came on for final hearing and the Commission having heard argument of counsel, and having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its principal place of business in the City of Memphis in said State.

PAR. 2. Respondent is engaged in the business of manufacturing, selling and distributing paints, stains, varnishes and similar products, and causes such products sold by it to be transported to the purchasers thereof from the State of Tennessee, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged. Respondent markets its said products direct to professional or contracting painters, and also through dealers who resell same to contracting painters and to the consuming public generally; and its business aggregates more than three hundred thousand dollars each year.

PAR. 3. Respondent, in the course of its business as described in Paragraph 2 hercof, makes an arbitrary selection from among its purchasers of certain of its products known as "DeSoto Heavy Body Paints" to which purchasers rebates or bonuses are paid, as follows, to wit: To professional or contracting painters respondent gives, or causes to be given, one certificate for each gallon of paint purchased, which certificates are redeemed by respondent at the rate of 20 cents for each gallon of colored paints purchased and 10 cents for each gallon of white paint purchased, but to purchasers other than professional or contracting painters respondent neither gives nor causes to be given such or similar certificates. Respondent gives such certificates to professional or contracting painters, as aforesaid, to induce them to use respondent's products in their contract work, and to refuse to use the products of competitors of respondent, and to induce such professional or contracting painters to recommend respondent's products to the purchasing public generally, and particularly to owners of buildings contracting with them, thereby aiding in the sale of respondent's products, to the exclusion of the products of competitors of respondent. This practice has the capacity to enable and allow and does so enable and allow such contracting

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painters to obtain and such contracting painters do so obtain from their customers the full retail price for respondent's products, and in addition thereto, without the knowledge of their customers, a bonus or gratuity from respondent.

PAR. 4. Respondent, during the year 1921 and prior to the 15th day of October therein, issued certificates as described in Paragraph 3 hereof to the value of \$2,072.30 and during the same period expended \$798.50 for the redemption of similar certificates submitted to it for redemption in the regular course of its business.

PAR. 5. The discrimination in price between purchasers of DeSoto Heavy Body Paint made by respondent as described in Paragraph 3 hereof is not on account of any difference in grade, quality, or quantity of said paint sold, is not occasioned by reason of any difference in the cost of selling or transportation, and is not a discrimination made in good faith to meet competition. Said professional or contracting painters are not required to carry any stock of paints to meet the requirements of their work nor are they required to buy respondent's paint in quantity exceeding one gallon in order to entitle them to one of said certificates and to the redemption thereof by respondent.

PAR. 6. Respondent's certificates as described in Paragraph 3 hereof prior to some time in the year 1919 required the painter to secure, upon each certificate offered to respondent for redemption, the signature and address of one of respondent's agents or dealers to a statement in the certificate that said painter was a professional painter and had used one gallon of DeSoto Heavy Body Paint. Some time during the year 1919 respondent changed the statement in the certificate to be signed by its agent or dealer so as to state that the painter offering the certificate for redemption is a professional painter and has bought one gallon of DeSoto Heavy Body Paint from said agent or dealer. Notice of this change has not been fully impressed upon painters and some of them understand that they are still entitled to secure cash for the certificates from respondent on all DeSoto Heavy Body Paint used by them no matter whether the paint is bought by them or by the owner of the property on which the paint is used, and in some instances respondent redeems certificates offered for redemption by painters who have not in fact bought the paint but have merely applied it in the course of their work by the day for contractors or for the owners of the property to which the paint was applied.

PAR. 7. Respondent stipulates that each painter, offering certificates to respondent for redemption as described in Paragraphs 3 and 4 hereof, shall sign his name to a statement in the certificate

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and fill in blanks therein showing the name of the owner of the property upon which said painter applied DeSoto Heavy Body Paint and the number of coats of said paint that he applied thereon. The information thus stipulated for, if supplied, could be used by respondent as the basis for appeals through circulars or other advertising media to the owners of the property upon which respondent's paint has been used and to the painters who applied the same to make further purchases of respondent's paint when the property should need repainting. Respondent, however, in some instances redeems certificates in which said information has not been fully supplied; and respondent has not made any systematic use of the information thus supplied for the advertising purposes aforesaid.

CONCLUSION.

The practices of the said respondent, under the circumstances and conditions set forth in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitutes a violation of the provisions of Section 5 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 argument of counsel, and the Commission having made its findings as to the facts with its conclusion that 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, DeSoto Paint Manufacturing 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 "professional or contracting painters," or any similar classification which relates to the customers' form of business, policy, or business methods, in any transaction in, or directly affecting interstate commerce, in the distribution of its products:

Provided, That nothing herein contained shall prevent discrimination in prices between purchasers of commodities on account of differences in grade, quality or quantity of the commodity sold, or

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that makes only due allowance for differences in the cost of sale or transportation, or discrimination in prices in the same or different communities made in good faith to meet competition, or the selection of customers in good faith and not in restraint of trade.

And it is further ordered, That respondent, DeSoto Paint Manufacturing 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 classified lists of customers, price lists, circulars and catalogues, advertisements and other printed matter in which are set forth the classifications of its said customers and trade discounts, cash discounts or prices of its products offered or given by respondent to the purchasers of said products.

SIMONS, HATCH & WHITTEN CO.

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