

Complaint.

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FEDERAL TRADE COMMISSION
v.
THE STANDARD ELECTRIC MANUFACTURING
COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 3
OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AND OF SEC-
TION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 747—January 17, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of electrical appliances consisting chiefly of rotary snap and push button switches sold under the trade names of "national" and "standard," respectively.

I.

- (a) Used contracts in the sale of said switches by which the distributor agreed not to solicit orders for or to sell goods of any kind or character that would conflict or compete with its goods; with the result that competition in the distribution of products of said corporation and of other manufacturers in the territories involved might be substantially lessened thereby;
- Held*, That the use of such contracts, under the circumstances set forth, constituted a violation of Section 3 of the Act of Oct. 15, 1914, and of Section 5 of the Act of Sept. 26, 1914.

II.

- (b) Entered into contracts and agreements with wholesale distributors under which said distributors agreed to maintain in their respective territories the resale prices fixed by it;
- (c) Made known to all jobbers, wholesalers and retailers dealing in its products its wish and request that said prices be strictly observed, notified customer dealers that it would refuse further supplies to price cutters, invited them to report the names of price cutting competitors, refused to sell to those of its dealer customers who themselves supplied price cutters, resumed dealings with price cutters only on the condition that they would thereafter maintain prices, and through the foregoing and other methods sought and secured the assistance of the trade in bringing about the elimination in price competition in its products;
- With the result that it was thereby enabled to prevent wholesale and retail dealers in its products from selling the same at prices and profits commensurate with their varying efficiency and cost of doing business, and succeeded in eliminating practically all competition in the prices paid by the various classes of trade and by the ultimate consumer for its goods;
- Held*, That the use of such a system of price maintenance, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

I.

Acting in the public interest pursuant to the provisions of an Act of Congress approved October 15, 1914, (the Clayton Act), entitled,

“An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” the Federal Trade Commission, having reason to believe that The Standard Electric Manufacturing Company, hereinafter called the respondent, is and has been violating the provisions of Section 3 of said Act of Congress, states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, The Standard Electric Manufacturing Company, is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the City of Chicago in that State. It is, and at all times hereinafter mentioned has been, engaged in the manufacture of electrical appliances, principally rotary snap switches and push button switches and the sale thereof to jobbers and wholesale and retail dealers throughout the United States. In the course and conduct of its said business, respondent continuously has been and now is in competition with other persons, partnerships and corporations similarly engaged in the sale of various electrical apparatus in interstate commerce, and with the trade generally.

PAR. 2. That a considerable portion of respondent's business is confined to the manufacture and sale of rotary snap switches, to which it has adopted and applied the trade name of “National” and push button switches, to which it has applied the trade name of “Standard,” and within the two years last past the respondent, in commerce aforesaid, has made and entered into contracts for the sale of such switches with dealers, to be used, or resold within the United States, containing certain conditions and agreements, as follows:

The party of the second part (purchaser) agrees not to solicit orders for or to sell goods of any kind or character that will conflict with, or in competition with, the goods of the first party (respondent).

PAR. 3. The above alleged acts constitute a violation of Section 3 of the Act of October 15, 1914, being a sale or contract for sale of goods and merchandise on the condition and agreement that the purchaser thereof shall not deal in the goods or merchandise of competitors of the seller, and the effect of such sale or contract for sale and agreement may be to substantially lessen competition or tend to create a monopoly in commerce.

II.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that The Standard Electric Manufacturing Company, hereinafter referred to as the respondent,

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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 of interest to the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. The paragraph numbered one of Count I of this amended complaint is hereby made a part of Count II as if the same were repeated here.

PAR. 2. In the course of its sales of its products, the respondent has adopted and enforced, and still enforces, a system of fixing and maintaining certain specified standard prices at which the articles manufactured and sold by it shall be resold by jobbers, wholesalers and retailers to the consuming public, and in pursuance of this purpose it has adopted and pursued the following practices:

PAR. 3. It has entered into contracts, and agreements, express and implied, with jobbers, wholesalers and retailers by which they have bound themselves to resell the respondent's products only at the resale prices fixed by it; and that the respondent has refused to sell its products to jobbers, wholesalers and retailers unless they would enter into such agreements and contracts, and has ceased to sell to such jobbers, wholesalers and retailers who have not entered into such agreements and contracts, or who have failed to observe and maintain its resale prices.

PAR. 4. Respondent has cooperated with jobbers, wholesalers and retailers and has sought their cooperation to carry into effect its system of maintaining its resale prices fixed by it, by the following means, by which respondent and its distributors, customers and agents have undertaken to prevent others from obtaining the respondent's products at less than the prices designated by it:

(a) Invited reports from customers and dealers, wholesale and retail, of competitors who cut its resale prices;

(b) Used the information in such reports to cut off sales to jobbers, wholesalers and retailers reported as not maintaining its resale prices;

(c) Required monthly reports as to the resale prices at which its customers, jobbers, wholesalers and retailers have sold the respondent's products;

(d) Employed salesmen or agents to assist in such scheme of resale-price maintenance by reporting dealers who do not observe its resale prices; and

(e) Other equivalent cooperative means to maintain its resale prices.

PAR. 5. The acts of respondent alleged in the two last preceding paragraphs tend to constrain all jobbers, wholesalers and retailers handling the respondent's products and merchandise to sell the same uniformly at the prices fixed by respondent to retailers and to the public and to prevent them from selling such products and merchandise at such lower prices as they deem to be adequate and warranted and are adequate and warranted by their respective selling costs and efficiency and thus tend to suppress competition in the sale of such products and unduly to hinder and obstruct the free and natural flow of commerce in the channels of interstate trade.

PAR. 6. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods 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," and an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served an amended complaint upon the respondent, The Standard Electric Manufacturing Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act of Congress approved September 26, 1914, and with a violation of the provisions of Section 3 of said Act of Congress approved October 15, 1914.

The respondent having entered its appearance by its attorney, Harry D. Irwin, and filed its amended answer herein, and the attorneys for both parties having thereafter signed and filed an agreed statement of facts, with the exhibits thereto attached, and having stipulated that the same should be taken in lieu of testimony before the Commission in support of the charges stated in the complaint and in opposition thereto, and that the said Commission might proceed further upon said stipulation of facts to make its report in said proceeding, stating its findings as to the facts and entering its order disposing of the proceeding, and the attorney for the respondent hav-

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ing waived the submission of briefs and argument as to the law and the facts in said proceeding, and the Commission having duly considered the record, and being fully advised in the premises, now makes this its report as to the findings of facts, and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the City of Chicago in that state. It is, and at all times hereinafter mentioned has been, engaged in the manufacture of electrical appliances, consisting, for the most part, of rotary snap switches, to which it has applied the trade name of "National," and push-button switches, to which it has applied the trade name of "Standard"; and the sale thereof to jobbers and wholesale and retail dealers throughout the United States. In the course and conduct of its said business said respondent is now and has been for several years last past in competition with other persons, partnerships, and corporations, likewise engaged in the manufacture and sale of similar products in interstate commerce.

PAR. 2. That respondent on various occasions has made and entered into contracts with certain herein named dealers, to-wit: Brown & Hall Supply Co. of St. Louis, Great Lakes Electric Co. of Detroit, Mich., and Peerless Light Co. of Chicago, Ill., for the sale and distribution of its products. The above-mentioned contracts are herein identified as Exhibit "1" and made a part hereof as though the several contracts were set out verbatim. By the terms of the aforesaid contracts it is mutually agreed that the therein-named distributors, in consideration of bona fide orders to be placed by them calling for specific quantities of respondent's products per month, that they (the aforesaid distributors) would be given certain exclusive selling territories, as follows: Brown & Hall Supply Co. was given the territory which included the states of Missouri, Arkansas, Kansas, Oklahoma, and Texas; Great Lakes Electric Co. was given the state of Michigan; Peerless Light Co. was given the territory which included the states of Illinois, Indiana, and Wisconsin. That said distributors are engaged in competition in their respective territories with the distributors of manufacturers competing with the respondent. That the said contracts further provide that in consideration of the quantity purchased the therein-named distributors were allowed certain mentioned discounts from the standard lists; that the said contracts further provide that—

The party of the second part (distributor) agrees not to solicit orders for or to sell goods of any kind or character that will conflict with or in competition with the goods manufactured by the party of the first part (respondent).

PAR. 3. That in the said contracts goods and merchandise are bought and sold upon the agreement that the therein-named distributors shall not deal in the goods or merchandise of a competitor of said respondent; and that the effect of said contracts may be to substantially lessen competition in the distribution of products of respondent and other manufacturers among the several states specified in the respective contracts.

PAR. 4. That in the course of selling and distributing its products, respondent has adopted and for several years last past has enforced and still enforces a policy and system of fixing and maintaining certain specified standard prices at which the articles manufactured by respondent shall be resold by jobbers, wholesalers, and retailers, and in pursuance of this policy, respondent has adopted and carried out the following methods:

(a) Respondent has entered into contracts and agreements with the wholesale distributors described in paragraph 2, under which contracts said distributors agree to maintain in their respective territories "such regular prices for 'National' snap switches and 'Standard' push button switches * * * as may be in accordance with the list to be furnished" by the respondent.

(b) Respondent has indicated and made known to all jobbers, wholesalers, and retailers purchasing and selling its products, its wish and request that certain specified prices be strictly observed in the resale of said products.

(c) Respondent has required all dealers handling its products to furnish monthly reports showing the prices at which they have been selling respondent's products.

(d) Respondent has warned and threatened dealers suspected or accused of not maintaining respondent's resale prices that continued refusals to maintain same would be followed by respondent's refusal to sell them.

(e) Respondent has informed its wholesale and retail dealers that those among them who do not maintain respondent's specified resale prices would be refused further supplies of respondent's goods.

(f) Respondent has invited its customers, both wholesale and retail dealers, to report their competitors who fail to adhere to respondent's fixed schedule of resale prices.

(g) Respondent has used the information secured from competitors of dealers who do not maintain respondent's specified resale prices as the basis for refusing to sell said dealers.

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(h) Respondent has refused to sell wholesale and retail dealers who have failed or refused to maintain respondent's fixed schedule of resale prices.

(i) Respondent has refused to sell those of its distributors and dealers who in turn sell to other distributors and dealers who fail or refuse to maintain respondent's fixed schedule of resale prices.

(j) Respondent has continued or resumed sales to wholesale and retail dealers suspected or accused of price cutting on the condition and understanding that the resale prices specified by respondent should be maintained in the future.

(k) Respondent has sought and secured the assistance of the trade in bringing about the elimination of price competition on respondent's products by the use of the foregoing and other equivalent co-operative methods.

PAR. 5. That as the result of the foregoing methods, policies, and practices, respondent has been enabled to prevent wholesale and retail dealers handling its products from selling same at prices and profits commensurate with their varying efficiency and cost of doing business, and has succeeded in eliminating practically all competition in the prices paid by the various classes of trade and by the ultimate consumer for goods of respondent's manufacture.

CONCLUSION.

That the methods of competition described in the foregoing Findings of Fact in paragraphs 2, 3, 4, and 5 constitute under the circumstances set forth therein 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."

That the contracts described in paragraphs 2 and 3 of the foregoing Findings of Fact constitute under the circumstances set forth therein a violation of the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the amended answer of the respondent, and a stipulation as to the facts, with exhibits thereto attached, wherein and whereby it was agreed

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that said stipulation as to the facts and exhibits attached thereto should be taken by the Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such stipulation and exhibits to enter its report and findings as to the facts and its order disposing of this proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusion that respondent has violated 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," and that respondent has violated Section 3 of the Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,"

Now, therefore, it is ordered, That the respondent, The Standard Electric Manufacturing Co., its officers, directors, agents, servants and employees, cease and desist from carrying into effect a policy of fixing and maintaining uniform prices at which the articles manufactured by it shall be resold by its distributors and dealers, by cooperative methods in which the respondent and its distributors, dealers and agents undertake to prevent others from obtaining respondent's products at less than the prices designated by it—by

1. Entering into contracts, agreements or understandings with distributors or dealers, requiring or providing for the maintenance of specified resale prices on goods manufactured by the respondent.

2. Attaching any condition express or implied to purchases made by distributors or dealers to the effect that such distributors or dealers shall maintain resale prices specified by respondent, or require others to maintain such prices.

3. Requesting distributors to report dealers who do not observe the resale prices suggested by respondent, or acting on reports so obtained by refusing, or threatening to refuse to sell to dealers so reported.

4. Requiring promises or assurances as to the maintenance of resale prices by distributors or dealers previously cut off as a condition of reinstatement.

5. Utilizing any other equivalent cooperative means of accomplishing the maintenance of uniform resale prices.

It is further ordered, That the respondent, The Standard Electric Manufacturing Co., its officers, directors, agents, servants and employees, cease and desist from entering into contracts, agreements or understandings, or making sales subject to the condition, agreement or understanding that the purchaser of respondent's goods

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shall not deal in the goods, wares or merchandise of any competitor of respondent; and

It is further ordered, That the respondent, The Standard Electric Manufacturing Co., shall file with the Commission, within ninety (90) days after the service upon it of a copy of this order, its report in writing stating in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

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