FEDERAL TRADE COMMISSION

v.

B. H. STINEMETZ & SON COMPANY.

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

Docket 858—February 5, 1923.

SYLLABUS.

Where a retail clothing establishment located in a high grade retail district, and theretofore enjoying an enviable reputation as an old concern of integrity and high standing dealing in high grade goods exclusively, and being at the time neither insolvent nor threatened with forced action by its creditors, nor contemplating the discontinuance of its business; in announcing and holding a special sale of its goods,

(*a*) Published large and sensational advertisements, both prior to and during said sale, in the daily papers and in its show windows, so worded and displayed as to be calculated to induce the purchasing public to believe that it was compelled by unusual circumstances beyond its control to sacrifice its regular stock of goods regardless of cost;

(*b*) Mingled with said regular stock large quantities of inferior stock bought especially for said sale;

(*c*) Marked its stock, as thus composed, with fictitious cancelled figures purporting to represent the regular or usual selling prices, and with other lower figures equal to, and often largely in excess of, the market value thereof, representing the prices at which offered; and

(*d*) Placarded the store with similar matter announcing other pretended bargains;

With the result that large numbers of the purchasing public were thereby misled and induced to purchase articles so advertised, tagged and placarded, in the mistaken belief that they were securing goods of high quality from its regular stock at prices lower than ordinarily available and lower than their prevailing market value:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the B. H. Stinemetz & Son Company, hereinafter referred to as respondent, has been using unfair methods of competition in commerce within the District of Columbia in violation of the provisions 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," and it appearing to the Commission 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 respondent is a corporation organized and doing business under and by virtue of the laws of the District of Columbia, and conducts a retail business in ladies' garments and furs in the City of Washington, District of Columbia, at the premises known as 1201 F Street Northwest, in said City and District, and at the time of the doing by respondent of the acts and things hereinafter alleged, conducted a retail business in gentlemen's furnishings at said premises in addition to its said business in ladies' garments and furs.

PAR. 2. That on or about the 9th day of January, 1921, respondent caused to be published in various newspapers of general circulation throughout said District and the territory adjacent thereto, certain advertisements which contained statements regarding a special sale of merchandise shortly thereafter to be had and conducted by respondent, substantially to the effect that respondent had turned its entire stock over to financial adjusters who had orders and unlimited authority and power to convert said stock into cash as soon as possible; that to accomplish such purpose said adjusters would, without reservation, offer for immediate sale respondent's entire well-known high quality stock of merchandise at any sacrifice in prices necessary to convert the same into cash in the shortest possible time; that the public would receive most sensational bargains in high grade merchandise at said sale and that the good repute which respondent had enjoyed for over fifty years was a guarantee to the public that all the foregoing statements were true, honest, and free from fictitious exaggeration; that said advertisements and placards were calculated to create, and had the capacity and tendency of creating in the minds of the purchasing public the belief that the goods, wares, and merchandise to be offered and sold at such sale were the stock of respondent's store and of the same quality and standard as the stock habitually carried and sold by respondent and that the prices obtaining at said sale would be lower and more advantageous to the purchaser than the prices usually fixed by respondent in the ordinary course of its business, and that this was to be accounted for by pressure of necessity or unusual conditions requiring of respondent an abnormal sacrifice of values in its commodities; that from time to time after the publication of said advertisements, and preceding and during the course of said sale, respondent caused advertisements of similar import and to similar effect to be published in newspapers of general

circulation in the District of Columbia and further displayed upon the windows of its aforesaid place of business large placards and signs containing statements and assertions similar to the statements and assertions contained in said advertisements; that all said advertisements were published and said placards and signs displayed by respondent with the intention and purpose of misleading and deceiving the public, and had the capacity and tendency to mislead the public, into the belief that respondent, impelled by necessity or the force of unusual conditions requiring such action, had turned over and surrendered its entire stock of merchandise to financial adjusters, who would sell the same at greatly reduced prices and prices far below the fair market value thereof and that said merchandise was all of the same high grade, quality, and value as the merchandise which respondent had, for many years prior to said sale, carried in stock and offered for sale as hereinafter set out. .

PAR. 3. That for many years prior to the publication of said advertisements and the holding of said sale as hereinafter set out, respondent had habitually dealt in merchandise of high quality and value, all of which was well known to the general public in the District of Columbia and elsewhere and respondent had for many years, prior to said advertising and sale, enjoyed a good reputation for probity, fair dealing and reliability among the general public in said District and elsewhere, which reputation respondent still enjoyed at the time of said advertising and sale.

PAR. 4. That for the purposes of its said proposed sale respondent purchased large quantities of merchandise, consisting of gentlemen's furnishings and ladies' garments and furs, hereinafter called sale stock, which said merchandise was inferior in quality and value to the merchandise habitually dealt in by respondent as hereinbefore set out, hereinafter called regular stock; that in preparation for said proposed sale and with the intention of misleading and deceiving the public into the belief that said sale stock was part and parcel of said regular stock and of the same quality and value, respondent intermingled said sale stock with said regular stock and placed the two stocks so intermingled upon counters and tables in its aforesaid place of business and in furtherance of such intended deception respondent attached to the several items of said sale stock, price tags bearing fictitious regular prices in excess of the fair market value of the articles so tagged, which fictitious regular prices were stricken out by means of a line drawn therethrough in such a manner as to leave said price legible, and bearing thereunder a sale price, at which the item so tagged was to be offered at aforesaid proposed

sale, which said sale price was a substantial reduction in amount from said fictitious price, but was in each instance equal to and in many instances largely in excess of the fair market value of the item so tagged; that respondent also in furtherance of aforesaid intended deception attached to its regular stock, which was intermingled with its sale stock as above set out, tags similarly bearing fictitious regular prices, which were higher than the actual regular prices of such stock, stricken out and bearing sale prices thereunder which were substantial reductions from said fictitious prices but substantially equal to the prices at which respondent has theretofore habitually sold said regular stock, and further placed signs and placards over all said merchandise, which signs and placards bore fictitious regular prices stricken out and sale prices opposite thereto in a manner similar to aforesaid price tags.

PAR. 5. That after having done the acts and things in preparation for said proposed sale set out in paragraph 4 hereof, respondent, on or about the 12th day of January, 1921, opened a special sale at its aforesaid place of business and conducted the same continuously for a period of about ten days; that respondent, during said time held out and represented said sale to the general public as a commercial adjustment sale in all respects conforming to the statements and representations made by respondent in its advertising and window posters as hereinbefore set out; that the merchandise offered at said sale consisted of respondent's aforesaid sale-stock and regular stock, intermingled, displayed and price-marked as hereinbefore set out and respondent sold to the general public residing in the District of Columbia and the territory adjacent thereto, large quantities of its aforesaid sale-stock, so intermingled and price-marked as above set out, as and for its aforesaid regular stock, at prices substantially in excess of the fair market value of said sale stock, and further sold large quantities of its said regular stock at aforesaid sale prices purporting to be substantial reductions from the prices usually demanded by respondent for said regular stock, but in fact equal to such usual prices and equal to the fair market value of said regular stock; that large numbers of persons residing in and about the District of Columbia were induced by the misleading statements and representations appearing in aforesaid advertisements and window posters and by the belief thereby created as hereinbefore set out, to attend aforesaid sale and to purchase large quantities of merchandise thereat and said persons so attending said sale were, by the intermingling and deceptive tagging and price marking of the merchandise offered at said sale as hereinbe-

fore set out, induced to purchase and did purchase large quantities of aforesaid sale stock in the belief that said sale stock was part and parcel of, and of equal value with, aforesaid regular stock and sold at a substantial reduction in price, and said persons were similarly induced to purchase and did purchase large quantities of said regular stock in the belief that the prices paid therefor were substantially below the prices at which said regular stock was by respondent usually and habitually sold.

PAR. 6. That the above alleged acts and things done by respondent constitute 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, the Federal Trade Commission issued and served a complaint upon the respondent, B. H. Stinemetz & Son Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

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 before Examiners of the Federal Trade Commission theretofore duly appointed. And respondent by its attorneys, having taken part in said hearings and cross-examining the witnesses offered in support of the allegations of said complaint and having been given the opportunity to introduce evidence in its defense, rested without the introduction of any evidence in chief on its behalf.

And thereupon this proceeding came on for final hearing and the Commission 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, B. H. Stinemetz & Son Company, is a corporation organized in the year 1902 under and by virtue of the laws of the District of Columbia, and is the successor to the original firm of B. H. Stinemetz & Son, which firm first commenced business in the City of Washington, District of Columbia, in the year 1856. Respondent conducts and has conducted continuously for

many years last past a retail business in the City of Washington, in the District of Columbia, at premises known as 1201 F Street NW., in said city, selling and offering for sale to the purchasing public ladies' garments and furs, and during the period beginning in the year 1914 to the latter part of June in the year 1921, respondent conducted a retail business at the same premises in men's furnishings in addition to its business in ladies' garments and furs. Respondent's business in said women's wear has always been the principal and greater part thereof. In the year 1903 respondent moved to its present location at 1201 F Street NW., in said City of Washington, District of Columbia, in which premises it has conducted its business continuously since that time. These premises are situated in one of the most favorable localities in the city for a business of the kind conducted by respondent, in a business district given over largely to retailers of ladies' and men's ready-to-wear merchandise of high quality and value, and which business district is so known and recognized by the purchasing public of the District of Columbia and territory adjacent thereto. For many years prior to the holding of the special sale in January, 1921, hereinafter set forth, the respondent in the course of its business habitually dealt in ladies' garments, furs and men's furnishings of high quality and value and was well known to the general public in the District of Columbia and territory adjacent thereto as a concern which dealt exclusively in high quality merchandise and the name "Stinemetz" had enjoyed a good reputation for fair dealing and reliability which had become an asset to respondent and which had been enjoyed by said respondent for many years up to the commencement of the said special sale in January, 1921, hereinafter set forth.

PAR. 2. Respondent in the conduct of its business is, and has been at all times herein mentioned, in direct competition with many persons, partnerships and corporations engaged in similar businesses, in the District of Columbia and territory adjacent thereto; and is, and has been for many years last past, in direct competition with many other persons, partnerships and corporations selling similar goods, wares and merchandise direct to the purchasing public in the District of Columbia, and vicinity and who cause such goods, wares and merchandise to be transported from their said places of business in various States of the United States, particularly in the States of New York and Pennsylvania, in and through various other States of the United States and the District of Columbia to the purchasers thereof in said District of Columbia and territory adjacent thereto. Respondent in the course of its business accepts and

fills C. O. D. orders for its goods, wares and merchandise of reliable purchasers who place such C. O. D. orders at respondent's store. Respondent causes such merchandise when so ordered by the purchaser to be transported from its said place of business in the District of Columbia to, and delivered C. O. D. at points outside of the District of Columbia, principally in the States of Maryland and Virginia.

PAR. 3. Respondent as of January 9, 1921, and January 10, 1921, caused to be published in various daily newspapers of general circulation in, and widely read by the people of the City of Washington, District of Columbia, and near territory, certain large, conspicuous advertisements, which were calculated and had the capacity and tendency to, and did, mislead and deceive the purchasing public into the belief that respondent was forced out of business by unusual conditions and financial difficulties beyond its control; and that so-called mercantile adjusters who had been appointed with unlimited authority and positive orders to convert respondent's entire and complete stock of ladies' garments, furs and men's furnishings into cash at once, would sell same at a special sale to be held shortly thereafter, commencing January 12, 1921.

PAR. 4. In addition to the advertisements hereinbefore mentioned, and others hereinafter referred to, respondent caused to be displayed prior to and during the holding of said proposed special sale other large advertisements in all the show windows of its store at aforesaid premises. Said advertisements completely covered the windows of respondent's said store and were conspicuous and sensational, and were calculated, and had the capacity and tendency to, and did, mislead and deceive the purchasing public of the District of Columbia and territory adjacent thereto into the belief that through pressure of unusual conditions and forces beyond respondent's control, and after sixty-four years of successful business, the contents of its old established store were taken out of respondent's control and would be converted into cash at once, and for any price it would bring; that the entire stock of its said store, represented in said advertisements as "Washington's oldest and most reliable store," would be absolutely sacrificed; that every dollar's worth of its stock of goods, wares and merchandise would be placed on sale at prices lower than the cost to manufacturer, which action was necessary to satisfy creditors and wind up its business.

PAR. 5. Respondent caused to be published in all the leading daily newspapers of general circulation in, and widely read by the people of Washington, District of Columbia, and territory adjacent thereto,

immediately prior to and during the holding of said special sale hereinafter set forth, various other large, conspicuous advertisements concerning said special sale, which advertisements were calculated, had the capacity and tendency to, and did, mislead and deceive the aforesaid purchasing public into the belief that the entire and complete stock would be sold by so-called adjusters for cash at once, regardless of cost, and at a mere fraction of its actual commercial worth and value; that every article in said offering was of the highest quality and standard, and was part and parcel of the well known high-grade stock habitually carried and handled by respondent in the regular course of its business; that the public would receive most sensational, startling and astounding bargains; that all representations made by respondent were genuine and bona fide, and that respondent's good reputation and its years of square dealing were a guaranty to the public against any fictitious exaggeration or deception in any representations by respondent pertaining to said special sale.

PAR. 6. The stock of goods, wares and merchandise customarily carried and dealt in by respondent at its aforesaid place of business prior, and up, to the time of the planning and holding of aforesaid special sale was very much depleted and to a large extent out of fashion. Said stock so customarily carried and dealt in by respondent will be hereinafter referred to as "regular stock." Respondent, a few days prior to and during the circulation and exhibition of the advertisements hereinbefore referred to, and others and for the purpose of the said special sale announced in said advertisements, purchased from various manufacturers and business houses in the City of New York, State of New York, and elsewhere, other large quantities of goods, wares and merchandise exceeding in cost to respondent the sum of $20,000, and consisting of men's furnishings and ladies' garments and furs, which additional stock so purchased will be hereinafter referred to as "sale stock."

PAR. 7. The greater part of the said sales stock was received at said place of business of respondent within a few days prior to the opening, and from time to time during the holding, of said special sale. Respondent in preparation for said special sale caused to be attached to the various articles of said sale stock price tags bearing high, fictitious regular prices which were greatly in excess of the fair value of the article so tagged, and which fictitious regular prices were stricken out by means of a pencil mark in such a manner as to leave the altered price mark legible, and bearing thereunder sale prices at which said articles were offered for sale and sold at said special sale. Said sale prices were a large reduction in amount

from said fictitious regular prices, and were as great as, and in many instances largely in excess of the fair market value of the articles so tagged. A like plan of marking and remarking of respondent's regular stock was carried out in preparation for said special sale. In further preparation for said special sale, respondent mixed and intermingled said sale stock with said regular stock and placed the two stocks so intermingled, mixed and tagged, as aforesaid, upon counters and tables in its aforesaid place of business. And in still further preparation for said special sale, respondent placarded its said store from end to end with conspicuous tags and signs bearing high, fictitious prices as regular prices and also sale prices which had the tendency to and did falsely purport to the public to be large reductions from prices respondent had theretofore in the regular course of its business asked for its merchandise. And in preparation for said sale, respondent also closed its place of business for three days prior to the opening thereof, and increased the number of its employees by engaging the services of Lynch Sales Company, Daniel V. Lynch, President and General Manager thereof, and additional sales people, wrappers and doorkeepers to the number of fifty. Theretofore and prior to said special sale, respondent's employees numbered fifteen.

PAR. 8. The exhibition of the aforesaid placards, conspicuous signs and tags and the arrangement and display of the said sales stock and regular stock, tagged, mixed and intermingled as aforesaid, in conjunction, and contemporaneous, with the publication of the newspaper advertisements hereinbefore mentioned, were calculated, had the capacity and tendency to, and did, mislead and deceive the purchasing public of the District of Columbia and territory adjacent thereto into the belief that aforesaid intermingled merchandise was all of the said regular stock of respondent's store and of the same high quality and standard; that said sales prices were a great reduction, were lower and more advantageous to the purchaser than the prices usually fixed by respondent in the regular course of its business and were far below the prevailing market price thereof, and were below the cost of manufacturer and a sacrifice to respondent; that this was to be accounted for by respondent's having been compelled, by necessity and the force of unusual conditions beyond its control, in order to satisfy creditors and wind up its business, to surrender its entire stock, consisting exclusively of high-grade merchandise, to financial adjusters for conversion into cash at once.

PAR. 9. Respondent opened said special sale at its aforesaid place of business on the morning of January 12, 1921, and conducted the

same continuously, displayed, advertised and represented as hereinbefore set forth for an indefinite period of at least ten days and continued to conduct its said business without interruption in both men's and women's departments until the latter part of June, 1921, at which time it discontinued its men's furnishing department by sale in bulk of its entire stock of men's furnishings then on hand and thereafter continued and devoted its entire business activity to women's wear. Large numbers of the purchasing public in the City of Washington, District of Columbia, and adjacent territory were induced to attend said sale by the aforesaid false, misleading and deceptive representations made by respondent in its said newspaper advertisements, window posters, etc. During said sale respondent's regular stock and sale stock were advertised and represented as aforesaid and were on exhibition, mixed and intermingled, tagged and placarded and priced as aforesaid and large numbers of persons were induced by the aforesaid false, misleading and deceptive advertising displaying, placarding, marking and representations of respondent to purchase large quantities of aforesaid sales stock at aforesaid sale prices and said persons were similarly induced to purchase large quantities of said regular stock at aforesaid sale prices. Said purchases combined amounted during the first ten days of said special sale to the sum of $33,216.51.

PAR. 10. Respondent was not at the time of said advertisements and sale insolvent, or bankrupt and forced action was not threatened or taken against respondent by any of its creditors and its business stock of goods, wares and merchandise was not out of its control or possession and respondent did not intend or contemplate the discontinuance of its business or the winding up of its affairs at said sale; that the goods, wares and merchandise offered and sold at the said sale did not consist entirely of respondent's regular stock but the greater part of said goods, wares and merchandise offered and sold at said sale, consisted of sale stock much inferior in quality and value to said regular stock and was displayed, marked and represented to the public as said regular stock and of the same quality and value; that the advertised and purported reduction in selling price of the various articles of said goods, wares and merchandise offered and sold at said sale were reductions from fictitious prices as hereinbefore found and that the sale prices attached to the various articles so offered and sold were equal to the regular market value of the articles and in a great many instances were in excess of the market value of the articles so tagged.

CONCLUSION.

The actions, conduct and practices of respondent, as set forth in the foregoing findings as to the facts 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 submitted, the Trial Examiner's Report upon the Facts and the Exceptions thereto, and the Commission having made its Findings as to the Facts with its Conclusion that 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,"

Now, therefore, it is ordered, That the respondent, B. H. Stinemetz & Son Company, a corporation, its officers, agents, solicitors, representatives, servants and employees, cease and desist from:

(1) Representing that any specially advertised sale is made under conditions or circumstances compelling reductions in selling prices below levels which would be established in the uncontrolled exercise of voluntary discretion, when such representations are not true in fact.

(2) Representing that goods offered in any specially advertised sale at reduced prices are its regular stock or a part thereof, when such representation is not true in fact.

(3) Representing that goods offered in any specially advertised sale are reduced in price when the alleged reduction is in truth no more than a reduction from a fictitious price created for the purpose of presenting an appearance of reduction.

It is further ordered, That the respondent, B. H. Stinemetz & Son Company, a corporation, shall within sixty (60) days after the service upon it of a copy of this order file with the Federal Trade 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.

FEDERAL TRADE COMMISSION