

Complaint.

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—March 29, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of road machinery and kindred products.

- (a) Employed public officials and other public employees, part of whose duty it was to purchase, or recommend the purchase of, similar products, for or by the governing bodies served by them, as its agents for the sale of its products in political divisions other than those served by them, and paid them commissions on sales thereof in such other subdivisions;
- (b) Employed relatives and friends of such public officials and other public employees as its agents for the sale of its products in the political subdivisions served by such public officials and other employees, and paid them commissions as an inducement to persuade and cause such officials and other employees to purchase or contract to purchase its products and to refrain from dealing with its competitors;

With the result that all competitors were affected and the cost of its products was increased, and with a tendency to cause its competitors to do likewise in order to retain their business:

Held, That such employment and such payments, 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 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, theatre 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, MODIFIED 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 Company, 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 conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Austin-Western Road Machinery Company, 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 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, there has been a general practice, on the part of the respondent, the Austin-Western Road Machinery Company, to employ and to pay commissions to public officials and public employees to act as its agents to sell its goods in political subdivisions other than those in which said officials and employees are officially connected.

PAR. 3. That also in the course of its said business, continuously and for more than two years immediately preceding the issuance of the complaint herein, there has been on the part of the said respondent, a general practice to employ and pay commissions to, in the political subdivisions in which public officials and public employees had the power to purchase the kind of goods sold by the respondent, relatives and friends of such officials and employees, as its agents to sell its goods therein, as an inducement to persuade and to cause said officials and employees to purchase or to contract to pur-

Order.

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chase for their principals, goods, wares, and merchandise from the respondent, and to refrain from dealing with or contracting to deal with competitors of the respondent selling the same or similar goods, wares, and merchandise.

PAR. 4. That the said public officials and said public employees, who were so employed or to whom said commissions were paid by the respondent to act as its agents and to sell its goods in political subdivisions other than those with which the said officials and employees are officially connected, or whose relatives and friends were employed by or who received commissions from the respondent, 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.

PAR. 5. That the practice of so employing and paying commissions to said officials and employees, and of so employing and paying commissions to relatives and friends of said officials and employees, for the purpose aforesaid, affects all of respondent's competitors and tends to cause them to do likewise for the same purpose and with the same effect as a means of protecting their trade and preventing the respondent from obtaining the business enjoyed by them.

PAR. 6. That as a result of the said employment and the said payment of commissions 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.

CONCLUSION.

That the 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."

MODIFIED 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 Company, its agents and servants, cease and desist from employing or offering to employ officials or employees of States or political subdivisions of the States of the United States as its agents for the sale of its commodities in any territory other than that which they officially represent (such employment in the territory in which they are officially connected being already prohibited by law), and

2. From directly or indirectly paying, offering, or promising to pay money or other valuable considerations to the relatives of officials having the purchasing power to induce or influence such officials to purchase the commodities sold by the respondent for the political subdivision represented by them.

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

