FEDERAL TRADE COMMISSION

v.

DUDLEY D. GESSLER.

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

Docket 878—May 19, 1923.

SYLLABUS.

Where an individual engaged in the sale of dyes, dyestuffs and chemicals gave and offered to give to employees of customers or prospective customers, responsible for the purchase of such products, without the knowledge or consent of their employers, sums of money aggregating annually more than 10 per cent of his sales, with the intent and effect of inducing the purchase of his goods, and with the result of increasing the price thereof, and with a tendency to cause competitors to do likewise in order to prevent him from obtaining their business:

Held, That such gifts and offers to give, 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 Dudley D. Gessler, hereinafter referred to as respondent, has been and now 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 complaint stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. Respondent is an individual, who at all times hereinafter mentioned has been and now is engaged in the business of selling dyes, dyestuffs and chemicals used in connection with said dyes, at some of said times under his own name and at others under the trade name and style of the Keystone Chemical Company, with his principal place of business in the city of Philadelphia, State of Pennsylvania. He sells the aforementioned commodities to the operators of textile mills and other industries located in various States of the United States, and causes said products when so sold to be transported from his said place of business in the city of Philadelphia to said purchasers at various points in various States of the

United States. In the course and conduct of his said business, respondent is in competition with other persons, partnerships, and corporations similarly engaged in selling dyestuffs and chemicals in interstate commerce, and with the trade generally.

PAR. 2. In the course and conduct of his said business, respondent has for more than two years last past from time to time offered and given, and from time to time still offers and gives, cash commissions or gratuities in substantial amounts to superintendents, foremen and other employees of the aforementioned operators of textile mills and other industries, said employees having charge or supervision of the purchase of dyes, dyestuffs and chemicals used in connection therewith for use in said establishments, in order to induce said employees to purchase the aforementioned commodities from respondent or to recommend such purchase to their respective employers or as promised rewards for having induced such purchases by their employers. Said commissions or gratuities were and still are given to said employees by respondent without the knowledge or consent of their respective employers and the effect thereof has been and still is to secure preference for respondent's said commodities over and to the exclusion of similar commodities of respondent's aforesaid competitors.

PAR. 3. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said 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 an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent Dudley D. Gessler, charging him with the use of 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, a statement of facts was agreed upon by counsel for the Commission and respondent, to be taken in lieu of evidence, 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 findings as to the facts and conclusion:

PARAGRAPH 1. Respondent is an individual who at all times hereinafter mentioned has been and now is engaged in the business of selling dyes, dyestuffs and chemicals used in connection with said dyes, at some of said times under his own name and at others under the trade name and style of the Keystone Chemical Company, with his principal place of business in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent sells the above-described commodities to the operators of textile mills and other industries located in various States of the United States and causes said products when so sold to be transported from his said place of business in the city of Philadelphia to said purchasers at various points in various States of the United States. In the course and conduct of his said business, respondent is in competition with other persons, partnerships, and corporations similarly engaged in selling dyestuffs and chemicals in interstate commerce, and with the trade generally.

PAR. 3. Respondent, from time to time, for two years prior to the issuance of the complaint herein on April 28, 1922, in the course and conduct of his said business, gave, and offered to give, to certain superintendents, foremen and other employees of the above-mentioned operators of textile mills and other industries who had charge or supervision of the purchase for use in such mills and industries of dyes and dyestuffs and chemicals used in connection therewith, substantial cash commissions and sums of money which ranged from $30 in some instances to $500 in other instances per year and amounted in the aggregate to more than $2,900 annually, or more than 10 per cent of respondent's sales.

PAR. 4. Respondent gave and offered to give such cash commissions and sums of money to such superintendents, foremen and other employees without the knowledge or consent of their respective employers in order to induce and with the effect of inducing such employees to purchase the above-described commodities from respondent and recommend such purchases to their respective employers and as promised rewards for having induced such purchases by their employers.

PAR. 5. Respondent's practice of giving and offering to give cash commissions and sums of money, as above described, secures preference for respondent's said commodities over and to the exclusion of similar commodities of competitors of respondent and tends to cause competitors to give, and offer to give, cash commissions and sums of money of substantially like amounts to employees of their customers and prospective customers 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. The cash commissions and sums of money so given, as aforesaid, are part of the cost of transacting business; and the price charged for the commodity so sold is an amount equal to the cost of doing business plus a profit.

CONCLUSION.

The above-described acts and things done by respondent are all to the prejudice of the public and respondent's said 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.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto, and a stipulation as to the facts filed herein, and the Commission having made its findings as to the facts and its conclusions 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 respondent, Dudley D. Gessler, and his agents, servants, employees and representatives cease and desist from, directly or indirectly, giving or offering to give to superintendents, foremen or other employees or representatives of customers or prospective customers without the knowledge or consent of their employers, cash commissions, sums of money, or other things of value, in order to induce such employees or representatives to purchase on behalf of their employers the products of respondent or to recommend such purchase to their employers, or as promised rewards for having induced such purchase by their employers.

It is further ordered, That respondent, Dudley D. Gessler, shall within thirty (30) days after the service upon him of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

FEDERAL TRADE COMMISSION