FEDERAL TRADE COMMISSION
v.
V. VIVAUDOU, INC.

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

Docket 892—October 30, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of toilet preparations, in pursuance of a plan for the maintenance of resale prices on its products; in cooperation with its retailer and jobber customers

(*a*) Made it generally known to the trade that it expected and required its vendees to maintain and enforce the resale prices, which it suggested;

(*b*) Solicited and secured from its vendees names of price cutters, and urged and sought to secure by coercion the observance by them of such prices;

(*c*) Threatened to, and did, refuse to sell to price-cutters;

(*d*) Exacted promises and assurances from offenders as a condition of further supplying them with its products;

(*e*) Promised dealers who reported names of price-cutters, that it would no longer supply them;

(*f*) Listed the names of price-cutters as dealers who would not be supplied pending the giving of satisfactory assurances of future observance of desired prices and delayed and held up their orders;

(*g*) Entered into and attempted to enter into informal arrangements with dealers for the maintenance by them of the desired resale prices, as a condition of opening accounts, and/or of continuing to fill orders;

With the result that those who would not so cooperate were prevented from securing its products at less than at standard uniform prices, which were substantially maintained, and with the capacity and tendency to constrain all dealers handling its products to sell the same uniformly at resale prices fixed by it, to prevent such dealers from securing the same at such lower prices as they might deem adequate or warranted by their respective selling costs and efficiency, and thereby to hinder and suppress all competition in the wholesaling and retailing thereof:

Held, That such a system of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that V. Vivaudou, Incorporated, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Delaware with its main office and principal place

of business in the City of New York, State of New York. Respondent at all times hereinafter mentioned has been and still is engaged in the manufacture of toilet articles and the sale thereof to wholesale and retail dealers throughout the United States. It causes its said products when so sold to be transported from its said place of business in the City of New York to said purchasers at points in various States of the United States. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of toilet articles in interstate commerce, and with the trade generally.

PAR. 2. In the year 1921 respondent fixed certain specified standard prices at which its said products should be resold by the purchasers thereof including jobbers, wholesalers and retailers, and adopted and employed and still employs a system for the maintenance and enforcement of said resale prices wherein respondent secured and still secures the co-operation of aforesaid dealer-customers and other persons in the course whereof respondent has employed and still employs the following means, amongst others, by which it and those cooperating with it, as above set out, undertake to prevent other persons obtaining respondent's products at less than said standard uniform resale prices:

(*a*) Makes it generally known to the trade by letters, personal interviews and by other means that it expects and requires said vendees to maintain and enforce said resale prices;

(*b*) Solicits and secures from said vendees reports of the names of dealers who fail to observe and maintain said resale prices, and upon obtaining such reports urges the offenders to cease selling below said prices, and seeks to coerce said offenders into maintaining said resale prices by methods of intimidation and coercion as hereinafter set out;

(*c*) Threatens to refuse to sell and does refuse to sell its products to dealers who fail to observe and maintain said resale prices or who sell to others who fail to maintain same;

(*d*) Exacts promises and assurances from said offenders that they will thereafter maintain said resale prices as a condition of further supplying them with its said products;

(*e*) Causes the names of such offenders or purported offenders to be enrolled on lists which it keeps for that purpose as purchasers who are not to be supplied with its products until they give assurances or otherwise satisfy respondent that in the future they will maintain the same, and takes various measures to prevent all dealers thus enrolled from obtaining further shipments of its products until it has received such assurances or satisfaction;

(*f*) Enters and attempts to enter into informal arrangements, agreements and undertakings with dealers including said offenders for the maintenance by them of said resale prices as a condition of opening accounts with said dealers or of continuing to fill their orders for its products;

(*g*) Urges dealers to enter into agreements amongst themselves to maintain said resale prices;

(*h*) Seeks information concerning, and applies coercion as set out in the foregoing specifications to, dealers who sell to other dealers who fail to maintain said resale prices.

PAR. 3. The above alleged acts and things done by respondent had and still have the capacity and tendency to constrain all dealers handling respondent's products to uniformly sell the same at said prices fixed by respondent, to prevent said dealers from selling said products at such less prices as they might and may deem to be adequate or warranted by their respective selling costs and efficiency and hence to hinder and suppress all competition in the wholesaling and retailing of said products. Respondent's said practices therefore tended and still tend to restrain the natural flow of commerce and the freedom of competition in the channels of interstate trade.

PAR. 4. 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, the Federal Trade Commission issued and served a complaint upon the respondent, V. Vivaudou, Inc., charging it with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein and having entered into a stipulation in writing as to the facts, in which stipulation it is admitted that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth. Thereupon this proceeding came on for final hearing; and the Commission being duly advised in the premises and upon consideration thereof, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, V. Vivaudou, Inc., is a corporation organized and existing under and by virtue of the laws of the State

of Delaware, with its main office and principal place of business in the City of New York, State of New York. Respondent at all times hereinafter mentioned has been and still is engaged in the manufacture of toilet preparations and in the sale thereof to wholesale and retail dealers throughout the United States. It causes its products, when so sold, to be transported from its said place of business in the City of New York to said purchasers at points in various different States in the United States. In the regular course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of toilet preparations in interstate commerce and with the trade generally.

PAR. 2. In the regular course and conduct of its said business, and for several years last past, respondent from time to time has issued and still issues to the trade, lists wherein are set out the prices of the various toilet preparations manufactured by it, at which prices respondent desires its products to be sold to the ultimate users thereof. These lists are also used as the base prices from which discounts are allowed by respondent to retail dealers and jobbers on their purchases from respondent. The said lists have been and are circulated by respondent throughout the entire trade.

PAR. 3. On or about January 1, 1921, respondent adopted and thereafter employed a system for the maintenance and enforcement of said suggested resale prices, wherein respondent secured the cooperation of its customers, both retail dealers and jobbers, and by which method and system, respondent and those cooperating with it, undertook to prevent and did prevent other persons from obtaining respondent's products at less than said standard uniform resale prices. In carrying out said method and system, respondent and those cooperating with it as above set out employed, amongst others, the following means:

(*a*) Made it generally known to the trade by letters, personal interviews and by other means that it expected and required said vendees to maintain and enforce said suggested resale prices;

(*b*) Solicited and secured from said vendees, reports of the names of retail dealers who failed to observe and maintain said suggested resale prices, and upon obtaining such reports, urged the offenders to cease selling below said resale prices and sought to coerce said offenders into maintaining said resale prices by methods as hereinafter set out;

(*c*) Threatened to refuse to sell and did refuse to sell its products to dealers who failed to observe and maintain said resale prices and who were objectionable to respondent for other reasons;

(*d*) Exacted promises and assurances from said offenders that they would thereafter maintain said resale prices as a condition of further supplying them with its said products;

(*e*) Gave assurances and promises to dealers who reported names of said offenders that no further supplies would be sold to those dealers whose names were so reported;

(*f*) Caused the names of such offenders to be enrolled on lists which it kept for that purpose as purchasers who were not to be supplied with its products until they gave assurance or otherwise satisfied respondent that they would thereafter maintain the suggested prices. Orders from dealers whose names appeared on said lists were delayed or held up partly because they were selling below the suggested resale prices and partly for their credit and other business reasons;

(*g*) Entered into and attempted to enter into informal arrangements, agreements and undertakings with dealers for the maintenance by them, of said resale prices as a condition of opening accounts with said dealers or of continuing to fill their orders.

PAR. 4. As a result of respondent's activities as described in paragraph 3 above, the suggested prices on respondent's products were substantially maintained in some districts during the first six months of 1921.

PAR. 5. On or about the first day of July, 1921, at a meeting of the board of directors of respondent, by informal action of the directors, it was decided that no effort to control resale prices should thereafter be made except that resale prices should be suggested to customers by price lists in the same manner as theretofore had been done.

PAR. 6. The above acts and things done by respondent had the capacity and tendency to constrain all dealers handling respondent's products to sell same uniformly at said resale prices fixed by respondent, to prevent said dealers from selling said products at such different prices as they might deem to be adequate or warranted by their respective selling costs and efficiency, and hence to hinder and suppress all possible competition in the wholesaling and retailing of said products. Respondent's said practices tended to restrain the natural flow of commerce and the freedom of competition in the channels of interstate trade.

CONCLUSION.

The above practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation

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 respondent, and agreed statement of fact filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress, 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, V. Vivaudou, Inc., its officers, agents, representatives, servants, and employees, do cease and desist from adopting and employing, or attempting to employ, any cooperative system or method, whereby respondent or its officers, agents, representatives, servants, or employees, undertake to prevent others from obtaining respondent's products at less than the prices designated by it, and more particularly, from carrying out any said system or method by the following means:

(*a*) Securing from its customers or others names of dealers who do not observe the resale prices fixed by respondent;

(*b*) Enrolling the names of dealers so reported or who come to its attention otherwise, upon lists of undesirable purchasers, who are not to be supplied with its products until they furnish satisfactory assurances of their purpose to maintain such prices in the future;

(*c*) Securing or attempting to secure assurances from other dealers that they will observe the resale prices on respondent's products as fixed by it;

(*d*) Giving assurances to dealers that others who do not observe rspondent's fixd resale prices will be cut off from further supplies of respondent's goods, and requesting cooperation and support in such a course of action;

(*e*) Threatening to refuse to sell or refusing to sell dealers who sell to others who do not observe the resale prices fixed by respondent;

(*f*) Attempting to establish and enforce its resale prices by any other equivalent cooperative means.

It is further ordered, That respondent, V. Vivaudou, Inc., shall, within thirty (30) days after service of this order, file with the Commission a statement showing in detail the manner and form of respondent's compliance with said order.

FEDERAL TRADE COMMISSION