

Complaint.

FEDERAL TRADE COMMISSION

v.

SPIER-SIMMONS & COMPANY, INCORPORATED.

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

Docket 1091—March 10, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture of textile starches, soluble oils and textile finishing products, and in the sale thereof to owners and operators of textile mills, gave to employees of customers, without the knowledge and consent of their employers, sums of money as an inducement for them to recommend its products to their employers and with the intent and effect of securing and inducing the purchase of its products by such customers in preference to, and to the exclusion of, similar products made by its competitors, in consideration of the sums of money so paid: *Held*, That such gifts of money, under the circumstances set forth, constituted an unfair method of competition.

Mr. William T. Kelley for the Commission.

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 Spier-Simmons & Company, Inc., 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 New York with its principal place of business in the city of New York, in said State, and with branch places of business in the cities of Boston, Massachusetts, and Philadelphia, Pennsylvania. It is engaged in selling textile starches, soluble oils and textile finishing products to owners and operators of textile mills located in various States of the United States, and causes said products when so sold to be transported from its said principal place of business in the city and State of New York or from one of its aforesaid branch places of business into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its aforesaid busi-

Findings.

7 F. T. C.

ness respondent is in competition with other individuals, partnerships and corporations similarly engaged in the sale of textile starches, soluble oils and textile finishing products to owners and operators of textile mills in interstate commerce.

PAR. 2. In the course of its said business for more than two years last past respondent has been promising and giving sums of money as gratuities to employees of aforesaid purchasers of its products without the knowledge and consent of the employers and principals of such employees as inducement to such employees to recommend said commodities of respondent and to secure and induce the purchase thereof by the aforesaid employers and principals of said employees, in preference to the like commodities of respondent's aforesaid competitors. In consideration of said money gratuities said employees have so recommended and secured or induced the purchase of respondent's said commodities by their aforesaid employers and principals, in preference and to the exclusion of, the like commodities of respondent's aforesaid competitors. Respondent still gives said money gratuities in the manner, under the circumstances and with the result all above set out.

PAR. 3. 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, Spier-Simmons & Company, Inc., 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 herein and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and conclusion and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same or in opposition thereto, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation, organized under the laws of the State of New York, with its principal place of business in the city of New York, in said State, and with branch places of business in the cities of Boston, Mass., and Philadelphia, Pa. It is engaged in manufacturing and selling textile starches, soluble oils and textile finishing products to owners and operators of textile mills located in various States of the United States, and causes said products to be transported from its said principal place of business in the city and State of New York, or from one of its aforesaid branch places of business into and through other States of the United States to the purchasers thereof at their respective places of business located in said states. There are other individuals, partnerships and corporations located in various States of the United States likewise engaged in the business of manufacturing and selling textile starches, soluble oils and textile finishing products which they sell to various users of such products and cause to be transported from their several places of business into and through other States of the United States to the purchasers thereof located in the same States in which respondent's customers are located. The volume of business and quantity of products manufactured and sold by the respondent as aforesaid is substantial and forms an important item of commerce among the several States and Territories of the United States. In the course and conduct of its aforesaid business respondent is in competition with other individuals, partnerships and corporations likewise engaged in the manufacture and sale of textile starches, soluble oils and textile finishing products in interstate commerce.

PAR. 2. In the course and conduct of its said business during the years 1922 and 1923 the respondent gave to employees of various owners and operators of textile mills using textile starches, soluble oils and textile finishing products, without the knowledge and consent of their employers, sums of money as inducements to such employees to recommend the products manufactured by the respondent and to secure and induce the purchase thereof by such operators and owners in preference to like commodities manufactured by others. During the period from about August 12, 1922 to April 12, 1923, the respondent gave to one John H. Nulty, of Woonsocket, in the State of Rhode Island, substantial sums of money, transmitted by postal money order and otherwise, for the purpose of inducing said Nulty to recommend the purchase and use by his employers of Tea Gum, a product manufactured by the respondent. Said Nulty

Conclusion.

7 F. T. C.

did so recommend the purchase and use of such product and such product was purchased and used by his employers.

During the period from about November 29, 1922 to May 12, 1923, the respondent gave to one William M. Wayness, of Pittsfield, in the State of Maine, sums of money, transmitted by postal money order and otherwise, for the purpose of inducing said Wayness to recommend the purchase and use by his employers of Dragapole Oil, a product manufactured by respondent. Said Wayness did so recommend the purchase and use of such product and such product was purchased and used by his employers.

On or about August 12, 1922 the respondent gave to one John R. Garrity, of Pittsfield, Maine, sums of money, transmitted by postal money order and otherwise, for the purpose of inducing said Garrity to recommend the purchase and use by his employers of Dragapole Oil, a product manufactured by respondent. Said Garrity did so recommend the purchase and use of such product and such product was purchased and used by his employers.

On or about September 12, 1922, respondent gave to one Arthur H. Healey, of Pittsfield, Maine, sums of money, transmitted by postal money order and otherwise, for the purpose of inducing said Healey to recommend certain fulling oil manufactured by respondent.

All of the aforesaid sums of money were given to the aforesaid persons without the knowledge and consent of their employers.

Said employees above named recommended, secured and induced their employers to purchase the products manufactured and sold by the respondent in preference to and to the exclusion of similar products manufactured by respondent's competitors, in consideration of said sums of money so paid to them and each of them as gratuities.

PAR. 3. There are a large number of manufacturers, situated in the various States of the United States, engaged in the business of manufacturing and selling textile starches, soluble oils and textile finishing products and who cause their products to be transported from their several places of business into and through other States of the United States to the purchasers thereof, who do not promise or give sums of money as gratuities to employees of the purchasers of their said products as inducements to such employees to recommend the purchase and use by their employers of such products or otherwise.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, 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, and the statement of facts agreed upon by the respondent and the counsel for the Commission, 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, 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 the respondent, Spier-Simmons & Company, Inc., its officers, agents, representatives, servants and employees cease and desist from directly or indirectly giving or offering to give to employees of its customers or prospective customers, without the knowledge or consent of their employers, sums of money as inducements to influence their employers to purchase or contract to purchase the products of respondent, or to influence their employers to refrain from purchasing or contracting to purchase the products of respondent's competitors.

It is further ordered, That the respondent, Spier-Simmons & Company, Inc., shall within sixty (60) days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Order.

7 F. T. C.

FEDERAL TRADE COMMISSION

v.

MISHAWAKA WOOLEN MANUFACTURING COMPANY.

Docket 19—March 13, 1924.

MODIFIED 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 the evidence and the trial attorney's report upon the facts, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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," [in its resale price maintenance plan] and the Commission having thereupon made an order herein, dated the 30th day of June, 1919 [see 1 F. T. C. 506 et seq.], and thereafter the proceeding and order having been reviewed by the United States Circuit Court of Appeals for the 7th Circuit, on the petition of the respondent, under the provisions of said Act of Congress approved September 26, 1914, and said United States Circuit Court of Appeals having on the 13th day of September, 1922, rendered a decision on the said petition of respondent, dismissing the same on the authority of Federal Trade Commission *vs.* Beech-Nut Packing Company, 257 U. S. 441, stating in its memorandum opinion, *pur curiam*, that the court approved the finding of the Commission upon the authority of that decision "Inasmuch as the record shows that the condemned practices were substantially identical with those involved" in said Beech-Nut case; and an order having been duly entered on September 16, 1922, by said Court, in accordance with said decision by which it was ordered, adjudged and decreed that the said petition of the respondent be dismissed [see 283 Fed. 1022 or 5 F. T. C. 557]; and the Supreme Court, thereafter, having denied an application by respondent for a writ of certiorari to the Circuit Court of Appeals, upon the assumption that the Federal Trade Commission would modify its order to conform to the Supreme Court's decision in the Beech-Nut case [see 260 U. S. 748 or 5 F. T. C. 557]; and whereas the order of the Commission in this proceeding included a provision that the respondent cease and desist from "(3) Refusing or threatening to refuse to sell to dealers because of their failure to maintain such prices," and whereas the Supreme Court in its decision in the Beech-Nut case

referred to eliminate a similar provision in the Commission's order in that case, holding the order in respect thereof to be too broad,

Now, therefore, be it resolved, That the following modified order be and hereby is made the order of the Federal Trade Commission herein in place of its previous order dated June 30, 1919;

Now, therefore, it is ordered, That the Mishawaka Woolen Manufacturing Company, its officers, directors, agents, servants and employees, cease and desist from fixing or controlling, or attempting to fix or control, the prices at which, or in accordance with which, its products shall be resold, by

(1) Entering into contracts, agreements or understandings with dealers, requiring or providing for the maintenance of such prices;

(2) Cooperating with dealers in obtaining information for the purpose of enforcing the maintenance of such prices;

(3) Employing any equivalent cooperative means, directly or indirectly, to bring about or enforce the resale of its products at such prices.

It is further ordered, That the respondent, Mishawaka Woolen Manufacturing Company, shall within sixty (60) 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 hereinbefore set forth.

412

FEDERAL TRADE COMMISSION DECISIONS.

Syllabus.

7 F. T. C.