

Complaint.

8 F. T. C.

IN THE MATTER OF
DAVID BERNSTEEN AND REPUBLIC PRODUCTS
COMPANY.

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

Docket 1093—July 24, 1924.

SYLLABUS.

Where a concern acquired through a receiver's sale the right to the trade name or brand "Paramount Pennsylvania Auto Oil," under which there had theretofore been sold an extensively advertised, well and favorably known automobile lubricating oil, together with the business concerned and trade name and good will thereof; and thereafter the former owner of said business, acting in behalf of a corporation managed and controlled by him, used a list of names of former customers turned over to him by said receiver for his use during the period of the receivership, to send to such customers circulars captioned "To Our Old Customers Only," inviting them to purchase an automobile lubricating oil therein designated as "Paramount Pennsylvania Automobile Oil"; with the capacity and tendency to mislead and deceive customers of the old business in reference to the identity or source of the oil so advertised and offered to them, and with the effect of enabling said corporation to sell said Paramount Pennsylvania Automobile Oil as and for the Paramount Pennsylvania Auto Oil of said concern, which was practically forced to discontinue its efforts to sell the same:

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

Mr. O. R. Stites 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 David Bernsteen and Republic Products Company, hereinafter referred to as respondents, have been and are 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 Bernsteen for some time prior and up to the incorporation of respondent Republic Products Company, as hereinafter set out, was engaged in the business of selling lubricating oils and allied commodities under the trade name and style Great Lakes Refining Company, and was also further engaged in the sale

of paints, and ingredients entering into the same, and allied products under the name and style Republic Paint and Lead Works. With regard to both said enterprises, respondent Bernstein had his principal place of business in the city of Cleveland, State of Ohio. He sold said products to purchasers located at points in various States of the United States and caused said products when so sold to be transported from his said principal place of business in the city of Cleveland, Ohio, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his said business enterprises said respondent was in competition with other individuals, partnerships and corporations similarly engaged in the sale of like products in interstate commerce. In the year 1921 certain creditors of respondent Bernstein procured the appointment by the District Court of the United States for the Northern District of Ohio, of a receiver for respondent Bernstein doing business under his aforesaid several trade names, and thereafter said receiver under due authorization by said court and for a good and sufficient consideration sold to the Klein Manufacturing Company, a corporation organized under the laws of the State of Ohio, with its principal place of business in the city of Cleveland, in said State, all of the property and assets belonging and appertaining to the business of said Bernstein done under the trade name and style Great Lakes Refining Company, and under the trade name and style Republic Paint and Lead Works, including the good will thereof. Upon said sale being consummated and completed, said Klein Manufacturing Company proceeded to continue aforesaid business enterprise of respondent Bernstein, and in the course thereof has ever since said time sold in interstate commerce the products formerly sold by said Bernstein under said trade names as hereinbefore referred to, in like manner as said Bernstein, before said receivership, had done. During the pendency of said receivership respondent Bernstein, together with others, caused to be incorporated respondent Republic Products Company, a corporation organized under the laws of the State of Ohio with its principal place of business in the city of Cleveland, in said State. Said Bernstein was one of the incorporators of respondent company and became and still is its secretary, in which capacity said Bernstein conducts and manages the business and affairs and dictates and directs the policies of respondent company. Ever since its said organization respondent company under the direction and control of respondent Bernstein, as above set out, has engaged in the sale of lubricating oils and other products to customers located at points in the various States of

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the United States. It causes said products when so sold to be transported from its said principal place of business in the city of Cleveland, Ohio, 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 said business respondent company is in competition with other individuals, partnerships and corporations similarly engaged in the sale of products of like kind in interstate commerce, one of said competitors being aforesaid Klein Manufacturing Company.

PAR. 2. Amongst the products formerly sold by respondent Bernstein under the trade name, Great Lakes Refining Company, the sale whereof was carried on and continued in the regular course of business by the Klein Manufacturing Company after the aforesaid purchase of the assets and business of said Bernstein, as hereinbefore set out, was a lubricating oil named and called by said Bernstein "Paramount Auto Oil," under which said name said oil was by said Bernstein sold in interstate commerce in the course of his business hereinbefore referred to, and in and under said name was listed in catalogues, price lists and other trade literature by said Bernstein and by him advertised in sundry newspapers, trade journals and other publications of general circulation in the various States in which said Bernstein did business. Said Klein Manufacturing Company after aforesaid purchase from said receiver continued to sell aforesaid lubricating oil under said name "Paramount Auto Oil" and to list and advertise said oil under said name as said Bernstein had theretofore done. Upon its organization respondent Republic Products Company, under the management, direction and control of respondent Bernstein, as hereinbefore set out, began, and still continues, to sell in interstate commerce a lubricating oil under the name "Paramount Auto Oil." Respondent Bernstein acting for and on behalf of respondent company chose said trade name for said last named lubricating oil with the purpose and intention of selling same in interstate commerce as and for the "Paramount Auto Oil" of aforesaid Klein Manufacturing Company. In furtherance of said intention and purpose and the better to effectuate same, respondent Bernstein caused respondent company to solicit business with the former customers of said Bernstein with whom he had theretofore dealt under the trade name Great Lakes Refining Company, as hereinbefore set out, and in connection with said solicitation and the carrying out of said purpose and intention, respondent Bernstein made use of a list of said customers abstracted from amongst the effects of his said former business and used the same, and respondent company since its organization has used the same in and about the

marketing and sale of lubricating oil under the name "Paramount Auto Oil," as hereinbefore set out. As a further means of effecting aforesaid purpose and intention, said Bernstein chose and selected the name "Republic Products Company," in which name he procured and brought about the incorporation of the respondent company, as hereinbefore set out, for the reason that many of his aforesaid former customers were familiar with said Bernstein's aforesaid former trade name of Republic Paint & Lead Works. By reason of the abstraction and retention of said list of customers by said Bernstein, said Klein Manufacturing Company, since aforesaid purchase from said receiver, has been and still is unable to identify or discover a large number of aforesaid former customers of respondent Bernstein who dealt with him under and in connection with his aforesaid trade name, the Great Lakes Refining Company, and said Bernstein and respondent company have been, and still are, enabled to solicit and secure the business of aforesaid customers in and about the sale of lubricating oil under the name "Paramount Auto Oil," as hereinbefore set out, in all respects as though respondent company and respondent Bernstein were engaged in the uninterrupted prosecution of said Bernstein's former business done under aforesaid trade name, Great Lakes Refining Company.

PAR. 3. The acts and practices of respondents hereinbefore set out, have the capacity and tendency to and do mislead and deceive the trade and public, including aforesaid customers of the Great Lakes Refining Company, into the belief that the lubricating oil sold by respondent company under the name "Paramount Auto Oil" is the "Paramount Auto Oil" sold by the Klein Manufacturing Company, and to purchase respondent company's said product in that belief. Further said acts and practices prevent the aforesaid Klein Manufacturing Company from securing and enjoying the benefit of the business formerly transacted by respondent Bernstein under the trade name Great Lakes Refining Company and the good will connected therewith, and which good will and business were purchased by said Klein Manufacturing Company from said receiver for a good and sufficient consideration as hereinbefore set out.

PAR. 4. The above alleged acts and practices done and engaged in by respondents are all to the prejudice of the public and respondents' 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.

Findings.

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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 issued and served a complaint on the respondent, Republic Products Company and its secretary, David Bernstein, charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent having filed its answer herein, evidence was thereupon introduced in support of the allegations of the complaint before an examiner of the Federal Trade Commission. Thereupon this proceeding came on for final hearing, and the Commission having duly considered the complaint, the answer thereto and the evidence adduced and being 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. The respondent, Republic Products Company, is a corporation organized and existing under the laws of Ohio, with its principal place of business located at Cleveland, Ohio. Respondent, David Bernstein, is now and has been since its incorporation, secretary of the aforesaid Republic Products Company, in which capacity he manages the business and dictates and directs the policies of the said company. Respondent corporation is engaged in selling lubricating oil to purchasers located in the several States of the United States. In the conduct of its business the respondent corporation sends circulars and price quotations by mail to prospective purchasers. It receives orders by mail for its product and in fulfillment of such orders causes its product to be shipped from Cleveland, Ohio, and from Freedom, Pa., into and through the several states direct to the aforesaid purchasers. The principal product sold by the respondent corporation is automobile lubricating oil which it advertises and sells under the trade name or brand "Paramount Pennsylvania Automobile Oil." In the conduct of its business, as above described, the respondent corporation is in competition with other persons, firms and corporations likewise engaged in selling and shipping lubricating oil in interstate commerce.

PAR. 2. For some years prior to November, 1920, respondent Bernstein conducted a business in Cleveland, Ohio, said business being that of selling lubricating oil and other commodities including house paint, roofing cement and linseed oil. In the conduct of his business,

as described herein, respondent Bernstein made most of his sales by mail order, however, he also employed a number of traveling salesmen who sold respondent's commodities by personal solicitation. In the conduct of his business, as described herein, respondent Bernstein operated as the Great Lakes Refining Company, Republic Paint & Lead Works, National Linseed Company, Industrial Refining Company.

One of the products sold by the respondent Bernstein operating as the Great Lakes Refining Company was lubricating oil. The said oil was advertised and sold under the trade name or brand "Paramount Pennsylvania Auto Oil." It was extensively advertised under the name of the Great Lakes Refining Company, by circulars, circular letters and pamphlets and became well and favorably known to consumers throughout the United States.

PAR. 3. In November, 1920, the United States District Court for the Northern District of Ohio appointed a receiver for the respondent Bernstein, doing business as the Great Lakes Refining Company, and under the various other trade names mentioned in paragraph 2. The receiver took over the entire business and assets of the respondent Bernstein and continued to operate said business as it had been conducted prior to the receivership.

PAR. 4. On February 21, 1921, the receiver entered into a contract with respondent Bernstein whereby the said receiver agreed to lend to the respondent Bernstein the list of names of customers of the Great Lakes Refining Company. Respondent Bernstein was given the right by this contract to circularize the persons whose names appeared on said list for the purpose of selling them lubricating oil during the term of the receivership. The aforesaid list of names came into the possession of the respondent Bernstein who solicited orders and still solicits orders from said customers for "Paramount Pennsylvania Automobile Oil" in behalf of the Republic Products Company.

PAR. 5. Among the aforementioned circulars sent by the respondent corporation to the former customers of the Great Lakes Refining Company was a circular sent to each of such customers under date of May 1, 1922, which was headed as follows: "To Our Old Customers Only."

PAR. 6. During the month of March, 1921, the Klein Manufacturing Company, an Ohio corporation, with its principal office in Cleveland, purchased from the aforementioned receiver the merchandise then on hand which had come into his hands as receiver for respondent Bernstein. In April, 1921, another contract was entered into by the receiver and the Klein Manufacturing Company whereby the

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receiver sold to the said company the balance of the assets of respondent Bernsteen, including the office furniture, books, advertising matter, et cetera. The contract provided further that the receiver was to convey, and did convey to the Klein Manufacturing Company, all right, title, interest and financial use in and to the good will of the Great Lakes Refining Company, including the right to use the trade names and trade-marks which had been used in connection with the business of the aforesaid Great Lakes Refining Company, both prior and subsequent to the appointment of the aforementioned receiver.

PAR. 7. The Klein Manufacturing Company, after acquiring the business assets of respondent Bernsteen, as set forth in paragraph 6, continued the said business of the Great Lakes Refining Company and endeavored to sell Paramount Pennsylvania Auto Oil under the name of the Great Lakes Refining Company. The Klein Manufacturing Company was unable to send advertising matter and solicit business from the former customers of the Great Lakes Refining Company because it was unable to discover or secure the names of such former customers. The Klein Manufacturing Company then made an effort to sell Paramount Auto Oil by employing salesmen who had formerly sold this oil for the respondent Bernsteen prior to the receivership. These salesmen were unable to secure and are still unable to secure any appreciable amount of business for the reason that customers of the Great Lakes Refining Company had already purchased "Paramount Pennsylvania Automobile Oil" from the respondent corporation, in response to circular letters, pamphlets, and circulars sent to them by the respondent corporation.

PAR. 8. The circulars, pamphlets, and other advertising matter sent by respondent corporation to the customers of the Great Lakes Refining Company, and the adoption and use of the name "Paramount Pennsylvania Automobile Oil" in simulation of the trade name "Paramount Pennsylvania Auto Oil" of the Klein Manufacturing Company, trading as the Great Lakes Refining Company, had the capacity and tendency to mislead and deceive customers of the Great Lakes Refining Company into the belief that the lubricating oil so advertised and offered for sale was identical to that which they had previously purchased from the Great Lakes Refining Company and enabled the respondent corporation to sell its product as and for that of the Great Lakes Refining Company. The respondent corporation's practices, as hereinbefore described, practically forced the Klein Manufacturing Company, trading as Great Lakes Refining Company, to discontinue its efforts to sell aforesaid Paramount Pennsylvania Automobile Oil.

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Order.

CONCLUSION.

The acts and practices of the respondent corporation and respondent Bernstein as hereinabove set forth, and under the conditions and circumstances set forth in the foregoing findings as to the facts, are unfair methods of competition in 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 thereto and the testimony and evidence submitted, the trial examiner's report upon the facts, 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,"

Now, therefore, it is ordered, That the respondent, Republic Products Company, a corporation organized and existing under the laws of Ohio, David Bernstein, its secretary, its agents, servants, representatives and employees cease and desist from:

1. Making use of, by advertisement or otherwise, the word "Paramount" alone or in combination with other words, or in any way whatsoever, in connection with the sale or offering for sale of lubricating oil in interstate commerce unless the said oil is the product of the Klein Manufacturing Company trading as the Great Lakes Refining Company.

2. Representing or suggesting in connection with the sale or offering for sale of lubricating oil in interstate commerce that the Republic Products Company and the Great Lakes Refining Company are one and the same company, or that the Republic Products Company is the successor of the Great Lakes Refining Company and is selling the product formerly sold by the Great Lakes Refining Company.

Syllabus.

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IN THE MATTER OF
STANDARD OIL COMPANY OF KENTUCKY ET AL.

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

Docket 1038—July 25, 1924.

SYLLABUS.

Where the retail gasoline dealers in and near a certain city, in pursuance of a combination and conspiracy to fix, maintain, and enforce a certain resale price,

- (a) Invited and urged dealers serving the aforesaid market to maintain such price, and threatened to cut off, and cut off the source of supply of dealers who did not do so;
- (b) Threatened gasoline refiners and distributors serving such market, with boycott, should they supply dealers failing to observe the desired price, and did so boycott one of their number for so doing; and

Where said refiners and distributors, in response to such boycott and threats thereof,

- (c) Refused to supply dealers who would not maintain the desired price, or discriminated against them in the matter of service;

With the result that the business of such dealers was seriously impaired or they were compelled to discontinue the same, outlets for the disposal and sale of gasoline in said territory were eliminated, regulated, and restricted, the market for gasoline brought into the State was unduly hindered, obstructed and burdened, and the public concerned was deprived of competition in the sale of gasoline and compelled to pay a higher price therefor:

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

Mr. Eugene W. Burr for the Commission.

Humphrey, Crawford & Middleton of Louisville, Ky., and *Mr. T. M. Shackleford, jr.*, of Tampa, Fla., for Standard Oil Co. of Kentucky and other respondents.

Mr. W. J. Guthrie of Pittsburgh, Pa., for Gulf Refining Co. and other respondents.

Mr. Harry T. Klein and *Mr. F. L. Williams* of New York City for The Texas Co. and H. G. Thompson.

Mr. T. M. Shackleford, jr. of Tampa, Fla. for Spencer Mitchell Service Station.

Mr. W. T. Martin of Tampa, Fla. for William C. McFadden and other respondents.

Mr. Guy B. Zewadsky of Tampa, Fla. for A. Murray Allen.

Mr. Allen T. Stuart of Tampa, Fla. for R. R. Sturdivant and C. M. Stokes, jr.