

Complaint.

IN THE MATTER OF
TOLEDO PIPE THREADING MACHINE COMPANY.

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

Docket 1018—January 13, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of threading, boring and cutting tools, and other similar products; in pursuance of a policy directed to the maintenance of definite resale prices on its products, which policy it defended, and observance of which it insisted upon in letters and circular bulletins to its dealer customers;

- (a) Required assurances from dealers generally that they would observe the resale prices which it suggested, under threat of discontinuance of further relations;
- (b) Made the giving of such assurances in connection with the disposal of stocks previously purchased, and in connection with those ordered, a condition precedent to further sales, or acceptance of such orders, respectively; and
- (c) Sought the cooperation of dealers in making effective its said resale price maintenance plan or policy, and in so doing
- (1) Sought the advice of dealers as to the location of a selling territorial division line for the stated purpose of eliminating price competition among them;
- (2) Manifested to them an intention to act upon all reports they sent in of variations from the resale discounts specified by it, by the elimination of the price cutters;
- (3) Informed them that price cutters reported who would not give assurance of adherence to the suggested resale discounts, had been or would be refused further sales; and
- (4) Employed its salesmen to investigate charges of price cutting by them and advised them thereof:

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

Mr. Alfred M. Craven for the Commission.

Mr. George P. Hahn of Brown, Hahn & Sanger of Toledo, Ohio, for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To

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create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Toledo Pipe Threading Machine Company, 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 Ohio and having its principal offices and factory located at Toledo in said State. Since 1902 respondent has been and still is engaged in the manufacture of pipe-threading, boring and cutting tools, vises, mounts, roller supports, power drives and other similar products, which it sells to wholesale dealers and jobbers of such products throughout the United States. Respondent causes said products when sold to be transported from its said factory in the State of Ohio into and through other States of the United States, to the purchasers thereof.

PAR. 2. For more than two years last past, in the course of its said business, respondent has employed and still employs a system or policy whereby it has established and maintained specified standard resale prices at which its various products shall be resold by jobbers and other distributors handling the same; and respondent has enlisted the active support and cooperation of such jobbers and other distributors of its said products, and of its officers, agents and employees in enforcing the maintenance of said prices.

PAR. 3. Among other means and methods employed by respondent in cooperation with its said distributors, officers, agents, and employees, for the purpose of enforcing the maintenance of said resale prices, respondent for more than two years last past, has used, and still uses the following practices:

(a) It issues price lists and discount sheets in which minimum resale prices for its said products are set forth;

(b) Requests and insists that jobbers and other distributors of its said products shall observe said resale prices;

(c) Makes it generally known to the trade by letters, circulars, salesmen's interviews and by other means that it expects and requires jobbers and other distributors handling its products to maintain and enforce said resale prices;

(d) Solicits and procures from jobbers and other distributors handling respondent's products, reports of instances of nonmaintenance of said resale prices by other jobbers and distributors handling respondent's products;

(e) Requires its traveling salesmen and other agents to report, and they do report, the names of jobbers and other dis-

tributors who sell said products at prices less than said resale prices;

(f) Uses the information received through reports mentioned in (d) and (e) above to induce and compel the observance of said resale prices by jobbers and other distributors so reported to it, by (1) exacting promises and assurances from such distributors that they will hereafter maintain respondent's resale prices, and (2) threatening that if such prices are not maintained no further shipments will be made to them by respondent or others;

(g) In cases where names of jobbers and other distributors who do not maintain in a given territory said resale prices, are not obtainable, respondent threatens to discontinue selling to all jobbers and distributors in said territory;

(h) Causes the words "Don't ship," or other similar notation, to be placed on the orders of jobbers or other distributors who it has ascertained have failed to maintain said resale prices, or by other similar means makes and keeps a record of such instances for the purpose of preventing said distributors from handling said products;

(i) Refuses to sell its products to those jobbers and other distributors who fail to observe and maintain said resale prices or who sell to others failing to maintain the same;

(j) Adds new distributors to its list and reinstates old ones previously cut off for failure to resell at said established prices, upon receiving assurances or promises of said distributors that in future they will maintain said prices;

(k) Utilizes other equivalent cooperative means to maintain its said established resale prices.

PAR. 4. The acts and practices of respondent set forth in the preceding paragraphs have had and still have the tendency to constrain and do constrain all jobbers and other distributors handling respondent's said products to sell the same at the said resale prices fixed and established by respondent and to prevent such distributors from selling said products at such lower prices as they might deem to be adequate and warranted by their respective selling costs and by trade conditions generally, and hence to hinder and suppress all competition in the resale of such products, thus tending to obstruct the free and natural flow of commerce therein, and the freedom of competition in the channels of interstate trade.

PAR. 5. The above acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and con-

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stitute 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, Toledo Pipe Threading Machine Company, a corporation, charging it with the use of 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, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent, before Edward M. Averill, an examiner of the Federal Trade Commission, duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and the Commission being fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Toledo Pipe Threading Machine Company, is now and since 1902 has been a corporation organized and existing under and by virtue of the laws of the State of Ohio. Its principal office and factory is at Toledo, Ohio, where respondent has been since its incorporation and is now, engaged in the business of manufacturing pipe threading, boring and cutting tools, and other similar products, all of which it has sold and continues to sell to dealers located at various points in all of the States of the United States, and to some extent, in foreign countries. The respondent transports or causes to be transported its products when sold, from its factory at Toledo, Ohio, to the purchasers thereof at their various locations throughout the United States and to foreign countries.

In the course and conduct of its business respondent is in competition with other individuals, partnerships and corporations, such as Oster Manufacturing Company, Cleveland, Ohio; Hart Manufacturing Company, Cleveland, Ohio; The Borden Company, Warren, Ohio; Greenfield Tap and Die Corporation, Greenfield, Mass.; and The Nye Company, Chicago, Ill. These competing corporations are engaged in the manufacture of similar devices or devices for per-

forming the same character of work, and sell and transport the same from their respective factories into and through the various States of the United States.

PAR. 2. Respondent's products as a general rule, are sold to the consumer at prices lower than those charged for similar devices by its competitors. They have a good reputation, are regarded as among the best in their class, and are in constant demand. They are used generally by skilled laborers such as plumbers, steam and gas fitters, and other similar workmen employed in assembling pipe and pipe fittings. Respondent's annual sales exceed one million dollars in amount.

PAR. 3. In an official communication to the Commission the respondent stated its selling policy as follows:

From the very inception of our business some twenty years ago, three fundamental lines of action were determined upon—first, the establishing of definite prices for our products to the consumer—second, to market the produce through the well-established jobbers and dealers of the country—third, to see to it that the jobbers and dealers uniformly used the prices established by us for the consumer. The organizers of the business were men of mature experience and the policy above outlined was decided upon because a reasonable price effective to all alike, in any given community, was equitable; and the widest possible distribution could be obtained at the least sales or overhead expense by utilizing the well-established dealer organizations of the country. Then, at the very beginning of our career, we employed missionary salesmen to travel over the country and introduce the tools to prospective users thereof. This was followed by trade journal and other more direct advertising methods. The names of prospective purchasers thus obtained, and orders from actual purchasers, were turned over to jobbers and dealers in the different communities as the nucleus of the larger business to come. A percentage of the price of each tool was named as the compensation of the jobber and dealer for the service he was to perform, viz., that of carrying our tools in stock; distributing same to the consumer; paying for same often before they were resold; and eventually supplying the demands of consumers of all sorts and descriptions in his locality. Always pursuing the same policy the business has grown until there are now approximately about twelve hundred dealers in the United States carrying our tools in stock, sub-

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ject to the demand of the ultimate consumer. It has been our job to constantly widen the sources of supply and to keep those sources actively interested along the lines laid down by ourselves, so that the public would be satisfied. In our experience has been included requests for exclusive agency arrangements; limiting our distribution to one jobber in a community; suggestions that we increase the selling price abnormally; and demands for larger percentages of profit for the dealer. To such requests and demands we have always turned a deaf ear. We still are pursuing the policy of fixing a reasonable price for the consumer, and a reasonable percentage beyond this for the distributor, and are insisting that the distributor shall maintain these prices.

As indicated in this statement, the respondent sells its products to dealers who in most cases are dealers in other products, as well as competitive devices, who sell at retail to the consumers or users of such devices. The respondent also sells direct to any consumers who apply for the privilege of purchasing direct from the manufacturer. But the prices charged such direct purchasers are the same as would be charged by a dealer so that the direct purchaser obtains no financial benefit from this method of purchase.

PAR. 4. The respondent issues periodically to its dealers, price lists or statements which are more accurately described as "discount sheets." These discount sheets contain a list of the products, their weights, and a base list price for each. In addition to the list price the discount sheet states with reference to each item a jobber's discount, which varies between jobbers who regularly carry a specified stock and jobbers who do not carry a specified stock. The price to the jobber is determined with reference to any item by applying the discount rate to the list price and deducting the percentage of the list price determined by the discount rate. The discount sheet also contains what are denominated as "resale discounts," of which there are two classes, one applicable to resales made in certain specified territory which may be generally identified as the western territory, and the rates effective in the remainder, or eastern portions of the country. The price to the consumer which the dealer is expected to apply in accordance with the discount sheet, is determined in the same way that the jobber's discount is ascertained, by the application of the applicable resale discounts. The respondent issues the discount sheet in this form for the reason that the prices of its products both to jobbers and consumers, vary more or less frequently, and if instead of a base list price with discount stated, the respondent should attempt to issue lists with the discounts calculated and

stated in the form of prices, the trouble and expense of rearranging its lists would be very great. It is the practice of the respondent as well as of its dealers, to issue catalogues which are rather elaborate and expensive, sometimes illustrated, and each edition of this catalogue would be rendered worthless by a price change. By quoting prices on the basis of certain discounts from a base list, a price change can be put into effect by the issue of a simple and inexpensive discount sheet. These discount sheets issued by the respondent to its dealers from time to time are communicated to its dealers and the information transmitted by the dealers to their salesmen.

There is no evidence that the prices to the consumer, fixed by the respondent, are unduly high, or that the spread between the price fixed by the respondent to the dealer and the price fixed at which the dealer is expected to resell to the consumer, is unduly large. On the other hand it appears that the devices of the respondent in general sell at lower prices than similar devices of its competitors, and the spread allowed by the respondent to its dealers is lower than that allowed by the competitors of respondent to their dealers.

PAR. 5. Respondent's prices are f. o. b. Toledo, Ohio, net thirty days or two per cent for payment within ten days from the date of invoice. Certain other allowances are made upon terms and conditions definitely stated on the discount sheets.

PAR. 6. The respondent publishes a resale discount effective in territory east of Montana, Wyoming, Colorado, and New Mexico, and Pecos River in Texas; and a slightly higher resale discount for the territory west of that line. Some time during the recent war due to changes in freight rates, the respondent made an effort to establish the Mississippi River as a dividing line because in addition to the jobber discounts respondent makes a maximum freight allowance and at that time the freight charges from Toledo reached the maximum allowance approximately at the Mississippi River. The reason for the division of territory is stated as follows:

Our jobbers' prices carry the same discount in the eastern and western territory. The jobber in the west not only has to pay the excess freight but he has to carry by reason of his long distance from Toledo, an investment in two stocks, one on the road and one on his shelves. Therefore he is entitled to a larger differential to enable him to carry the existing increased expense of doing business.

The jobber in the western territory pays the difference between the actual freight and the allowance made by the respondent, and it is to take care of the extra expense in the western territory that

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the margin to the jobber is increased by raising the resale discount in that territory.

PAR. 7. According to exhibit number six the Mississippi River was adopted as the boundary line between these two discount territories on March 10, 1920. And this division remained effective until the issue of the discount sheet of January 1, 1922 (exhibit number eight). The adoption of the Mississippi River boundary was announced by the respondent to its dealers in a bulletin dated March 10, 1920, as follows:

Owing to radical increase in labor costs as well as the prices of raw material, it is absolutely necessary for us to increase the price of the Toledo #00 ratchet threading device, and the Toledo #0 adjustable threading device. The same necessary increase in price applies to all repair parts including extra dies for these two tools. * * * Please note that the suggested resale or consumer's discount is five points higher west of the Mississippi River than the consumer's price east thereof. Heretofore this difference in resale prices applied in the territory west of the eastern boundary of Montana, Wyoming, Colorado, and New Mexico, but increased transportation costs have moved the line at which our maximum freight allowance does not cover the actual freight cost, several hundred miles farther east. Hence it seems wise to us to support the jobbers in the mid-western States by this suggested preferential in resale discounts. This will also apply to all other tools made by us.

PAR. 8. On March 27, 1920, the respondent issued a supplemental bulletin to its jobbers transmitting its new discount sheet (exhibit number seven), at the conclusion of which it was stated:

If these announcements and the data set out on the discount sheet are not perfectly clear to you, kindly write us for further information. Thanking you for your cooperation and trusting to merit a continuance of your favor, we remain, etc.

On December 27, 1921, respondent issued a bulletin to jobbers transmitting the discount sheet effective January 1, 1922 (exhibit number eight). This bulletin stated in part:

The attention of jobbers south of Virginia and Kentucky and as far west as the eastern boundary of Colorado is also directed to the fact that we have abandoned our previous effort to establish a higher resale schedule in their territory. This differential had seemed justifiable to us but owing to the overlapping into that territory of jobbers east and north thereof

whose published price lists carried the lower scale of discounts, it is impossible of uniform accomplishment. Jobbers are therefore asked to note carefully the boundary line at present established as applying to the eastern scale of prices and the western scale of prices.

The treasurer of the respondent testified that as a result of moving the line east of the Mississippi—

* * * we ran into such a smear of jobbers east and west of the line that were trying to take advantage of the eastern prices as against the western prices that we found our position was untenable so we moved it back to the original line.

This complication arose by reason of complaints made to the respondent by jobbers that other jobbers were not maintaining the established resale discount for the territory in which the sale was made. A reduction of freight rates at about the time of the issue of the discount sheet of January 1, 1922, assisted in the desired readjustment.

In a communication addressed by the respondent under date of November 4, 1921 to the N. O. Nelson Manufacturing Company, St. Louis, Mo., the respondent stated in part:

A year or so ago by reason of advance in freight costs it was suggested to us that we move the western territory in so far as our product was concerned, east as far as the Mississippi River, which we accordingly did. We are frank to confess that that move has been more or less unsatisfactory because St. Paul, Chicago, and St. Louis jobbers did not uniformly adopt the western schedule for the territory lying immediately west of the Mississippi River. Now our idea in promulgating a resale price and endeavoring to have it used uniformly by all jobbers in any given territory, is obviously because we want the jobbers selling our tools to have a reasonable margin of profit thereon, and we want to adopt a policy that all jobbers at interest are most likely to be in accord with. In view of your opinion as expressed to our representative, will you not kindly write us a letter setting forth your ideas as to the boundary lines in the United States that should divide the territory in which the eastern and western schedules should apply? We are asking for this suggestion from you because of your location in the territory involved, and will greatly appreciate your advice on this subject.

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The Nelson Manufacturing Company replied, stating that—

There are other jobbers who issue price sheets east of the Mississippi and are also distributed west of the Mississippi using the same price such as Standard Sanitary Manufacturing Company, Chicago and St. Louis branches. It would seem to us inasmuch as most all of the jobbers in the immediate Mississippi valley especially Chicago and St. Louis are soliciting business west of the River, that they would be on the same basis as regard to quoting the trade. Very few if any, go west of the Kansas line and it would seem to the writer this is a more favorable division point because none of the jobbers overlap so much at that point, that is we mean eastern Colorado State line. This we believe would eliminate possible interference and dissatisfaction with the trade who buy in Kansas City, Chicago, and St. Louis.

The respondent sought the advice of the Nelson Company whether the dividing line should be carried from the Mexican border to Canada running straight north and south through the eastern boundary of Colorado, to which the Nelson Company replied that—

You could make the division through the United States the eastern line of Colorado, that is continuing the same south from this line because we believe you will find very few central state line jobbers working west of this line.

PAR. 9. An incident of the confusion arising out of the application of the eastern territory resale discount in the western territory, appears from correspondence between the respondent and the H. Channon Company. The latter, a dealer in Chicago, made a sale of a threading device at Burlington, Iowa, at fifty per cent off the list, f. o. b. Chicago. This was reported to the respondent who evidently, though the letter is not in the file, took the Channon Company to task for this quotation. To which the Channon Company replied on September 16, 1921 (exhibit number twenty-two) admitting the quotation should have been forty-five per cent off list instead of fifty per cent. The respondent replied under date of September 21, 1921, stating in part—

It may be possible that the eastern and western territorial dividing line as established by us is not a logical one, but we very much wish that in your quotations you adhere to our published schedule in this respect until such time as it can be more definitely verified or changed to make same equitable.

It subsequently appeared that the questioned quotation was correct because of the fact that Burlington, Iowa, lies on the Mississippi River.

PAR. 10. It is to be noted that the respondent objected to the introduction in evidence of the documents relating to the variation of the boundary line and the confusion which arose therefrom, alleging that this was a closed incident which had no relation to the issues raised by the complaint. The objection does not seem to be well founded because these documents reveal clearly the policy of the company with reference to resale price maintenance and form a part of the history of this practice on the part of the respondent. It tends to show also the degree of cooperation between itself and its dealers which the respondent sought to establish, not only in the maintenance of the resale discounts but in the location of a division of territory which would remove so far as possible, the likelihood of the lower discount rates of the eastern territory being used to the disadvantage of jobbers in the western territory. Since it is the duty of the Commission to ascertain all pertinent facts with relation to a given practice, the objection was based upon a misconception of the proceedings and was properly overruled.

Prior to the issue of the discount sheet of March 10, 1920, by which the Mississippi River boundary line was established, the W. J. Baird Machinery Company of Detroit, Mich., under date of July 8, 1919, filed with the respondent an order for certain tools, upon which order blank was printed the customary terms of the Baird Company, viz, two per cent tenth to fifteenth of month following shipment, or sixty days net. This invoice in the files of the respondent is marked "Don't ship," the mark being placed there by the treasurer of the respondent. Receipt of this order was acknowledged by the respondent and the attention of the Baird Company was called to the discrepancy in the terms of sale. The Baird Company corrected its order to correspond with the respondent's requirements. The documentary evidence in connection with this incident is not complete, but it is apparent from a letter written by the Baird Company to the respondent on the same date, that the respondent under date of July 9, had called into question price quotations made by the Baird Company to the Ford Motor Company. The Baird Company responded to this communication on July 10, stating that its deviation from the list price was made necessary by a competitive quotation from another jobber. The concluding paragraph of the Baird letter is—

We have your schedule of prices in our possession but had no strict instructions that said prices were to be maintained, and accordingly cut. We assure you it is not our policy to slash prices at any time unless we are confronted with the conditions

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above noted. We certainly desire to sell Toledo tools as they afford our customers good satisfaction, and trust that the course followed meets with your approval. We would like to hear from you regarding the above, and remain, etc.

The respondent replied to this communication as follows:

We acknowledge your letter of July 10, and note with regret that you have seen fit to depart from our published resale prices ing quoting the Ford Motor Company. Under these conditions we have filed your order 12259 marking same canceled, as we will not be able to ship further goods for your account.

To this communication the Baird Company replied on July 16 offering as explanation that the questioned quotation was against the policy and principle of the Baird Company, placing the responsibility upon a salesman acting without authority, and stating that had the writer known of the matter the order would have been returned to the Ford Company regardless of the loss of business. This letter concluded:

In conclusion, all I can say is "kindly reconsider the matter." Assuring you that the writer personally as well as our entire organization heartily upholds your policy and will work with you in every possible manner in order to prove to you that we are worthy of your confidence.

PAR. 11. The treasurer of the company interrogated with reference to this "Don't ship" endorsement stated that the information upon which such action would be taken was usually obtained through the statement of some other jobber who wrote the respondent about an order being placed at less than the resale discount. This complaint the respondent usually investigated by writing the jobber alleged to have done the price cutting. If the report is found to be true the order of the jobber found to be departing from the resale discount was rejected. And further business relations with him was suspended unless it developed that the questioned quotation was purely an error, a matter of mistake on the part of the jobber at fault. He said:

It is only the flagrant violations of our confidence with the individual who blatantly insists that he makes his own prices and does as he pleases, that we cease doing business with.

PAR. 12. Subsequently to the establishment of the Mississippi River boundary and while that dividing line remained, one of the dealers of the respondent at Milwaukee, Wis., wrote the respondent

on July 23, 1921, stating that it had made a quotation to a prospective purchaser at Kenosha, Wis., in accordance with the established resale price applicable in that territory. It appeared that the prospective purchaser had secured quotations from six jobbers and as the respondent was informed by this dealer, two of the six quotations were considerably better than the established resale price. The letter continues:

We are giving you this information in strict confidence because our representative has been instructed to ascertain just what price was quoted by one of the other jobbers and advise Mr. Blank that we would meet the price, providing the name of the jobber was given us. We are giving you this information to forestall any information which may be entered by one of the other jobbers, accusing us of cutting prices. We thought possibly you would have some means of ascertaining the names of the six jobbers referred to above. At any rate we would not want you to make use of our name in this connection.

This communication was acknowledged by the respondent on July 26 as follows:

We are in receipt of your letter of July 22d with reference to the various quotations received by Mr. Blank of Kenosha, Wisconsin, on a Toledo power drive. We do not see how any jobber can afford to quote one of these drives at less than fifty per cent, f. o. b. his stock, and we would very much like to know what jobber it is that is alleged to have made such a price. Certainly it is not conducive to price maintenance for you to agree to meet an alleged lower price. Please keep us informed if any further details come to your knowledge.

PAR. 13. Again in another part of the selling territory a like situation arose. On January 25, 1921, the respondent wrote The Axtel Company, Forth Worth, Tex., stating that the respondent was in receipt of advice that The Axtel Company had been quoting a discount of forty and five per cent from list price, whereas the discount applicable in that territory should be thirty-five per cent. The respondent stated,

This information is not very definite in that it does not tell us to whom these quotations have been made or on what size of our tools that quotation has been made. But we think it wise nevertheless, to call your attention to the matter in order that you may investigate. We should be glad to have you investigate and let us know what the facts are.

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Apparently no reply was received to this communication, and on February 23 the respondent wrote again stating that they had received further information as to the purchaser to whom the questioned quotation had been made. The letter concluded—

You buy number 1 and number 1-A tools at a discount of 40-20 per cent and we submit you can not afford to sell them at 40-5 per cent, or anywhere near that price. The proper quotation covering these tools in your territory ought to be a discount of 35 per cent from list. Will you please investigate the quotation made by you to the two parties named, and let us know if our information is correct. We shall be very glad to have a word of advice from you as to what your future policy in this connection would be.

The Axtel Company replied on March 15, admitting the quotations in question and justifying them upon the necessity of meeting competitive prices, and indicating that under similar circumstances the resale discounts would be cut if necessary. To this the respondent replied as follows:

We duly received your letter of March 15th, containing the information that you had quoted a discount of 40-5 per cent on number one and number 1-A Toledo tools. Needless to say you can not sell these tools at any such price and make any money. Since the receipt of this information there has been nothing shipped for your account but as there are some orders which are now in line we should like to be assured that our suggested resale schedule will be maintained. * * * Trusting that we may have your full cooperation in this respect, we are, etc.

The Axtel Company replied that it always made a special five per cent discount to old customers who bought all their supplies from the Axtel Company, and this they proposed to do whether they ever sold Toledo goods again or not. The respondent replied that—

We are sorry to advise that we can not do business with you on any basis.

There was some subsequent correspondence with reference to a resumption of business relations running through the latter part of 1921, and the respondent on January 24, 1922, acknowledging the receipt of an order from the Axtel Company, said—

We would like to accept this business and put your account back again on to our ledger, but as the matter now stands we

are not willing to do so. If your executives are willing to assure us that tools of our make will be resold at our published resale schedule and no other prices, we will be willing to take the matter under advisement.

The Axtel Company endeavored to obtain acceptance of its order without giving the required assurance. The respondent reiterated its position on February 7, stating—

While we highly value your order and would like to fill it, we can not do so except you are willing to subscribe to our resale policy. * * * Now unless you want to mend your ways and assure us over the signature of a qualified official of your company that it is your intention to absolutely observe our price policy, we care to have no further correspondence or dealings of any nature with you. As we have before stated our very existence depends on our taking and maintaining this position. If however you are now disposed to modify your line of action as outlined to us in your previous correspondence, we will be glad to hear from you further and give you such consideration as you are entitled to.

The Axtel Company questioned the legality of giving such assurances. Examination of the treasurer of the company who was in effect its sales manager, upon the documentary evidence with relation to the Axtel Company, resulted in the following disclosure of the respondent's policy:

Q. Did you ever resume business relations with Axtel and Company?

A. No sir.

Q. You sometimes do resume business relations with people with whom you have discontinued, don't you?

A. Yes.

Q. Under what circumstances?

A. A reasonable indicating that they expect to sell our goods at the proper price.

Q. Well, how do you get such reasonable indications, from personal interviews, or correspondence, or both?

A. From correspondence.

Q. Then in every case where you resume business relations with the parties you have dropped for price-cutting you have some letter from the party that leads you to the reasonable belief that they will maintain your resale price?

A. I believe that can be stated without exception.

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Q. And if you received a letter from a man with whom you have discontinued selling for the reason that he was not maintaining prices, which offered a resumption of business but was evasive and equivocal, you would turn him down, wouldn't you?

A. Very probably.

Q. The fact of the matter is the letter would have to amount to a promise to maintain your resale price, wouldn't it?

A. Yes.

PAR. 14. In April, 1922, the representative of the respondent at its New York office inquired of the home office whether prices had been quoted to a prospective purchaser in Philadelphia. The New York representative in his memorandum stated:

If so, will you make a note to cut them out, as Mr. Blank showed me where they had made a quotation of ten per cent lower than our best price to a user, although they quoted f. o. b. factory. The Fairbanks Company also sent out a quotation of five per cent better than our resale price. I went into this again very thoroughly with Mr. Pierson, manager of the Fairbanks Company and their man who made the quotation, and I do not believe that we will have any further complaint about the Fairbanks Company.

The home office of the respondent informed its New York representative that sales had been made to the Philadelphia purchaser, and concluded:

There was no excuse for its not having adhered to our resale schedule because we have called attention to our mandatory price. We will get the account paid up as rapidly as possible and will then cease having any further relations with it.

To the dealer in question the respondent wrote stating that a report had come to it that the dealer had quoted beyond the resale schedule, and stated:

We have at various times particularly pointed out to you our mandatory resale prices, so that there was no excuse for your quoting any other price. We must ask that you take immediate steps to correct any such quotation that may have been made by you, acknowledging at once the receipt of this letter.

The Philadelphia dealer replied stating that it was unable to locate the questioned quotation and asking whether the respondent could give it the name of the customer to whom the questioned

quotations were reported to have been made, so that identification could be made of the salesman who was responsible therefor, and concluded:

It is not our policy and never has been our policy to sell at cut price. We are not a cut price house and will not tolerate our salesmen doing business this way. Any cooperation you can give us in the way of advising where this has been quoted, will be kept strictly confidential and greatly appreciated.

There was some argumentative correspondence back and forth which resulted finally in a refusal to sell this dealer both for the failure to maintain the resale prices and for neglect to pay bills within the terms of sale. To its New York manager, however, the respondent stated with reference to the disposition of this dealer's account—

The best way to handle this matter will be to file all the correspondence and close the account as soon as we receive settlement for its present indebtedness to us. We will not ship it any more of our tools.

PAR. 15. On May 18, 1922, one of the respondent's dealers wrote protesting the operations of an alleged price-cutter. To which the respondent replied—

We then wrote a letter stating that if the present company was in a position to purchase our product in quantities and would assure us that it would under all circumstances maintain our retail schedule, we would accept business from it as a dealer.

The original of this letter does not appear in evidence. Apparently the respondent wrote the dealer in question on the subject of resale price maintenance because the record shows a letter from this dealer to the respondent assuring the respondent that there were almost daily reports that the standard quotations were too high, indicating that some one in the territory was violating the resale discounts, and stating—

When we can get the definite source of the reason for such comments we shall present the case to you in a way that we can substantiate with more than mere assertion. * * * We shall be pleased to cooperate with you in any way possible to determine the real truth of this matter. Thanking you for bringing this subject to our attention in the perfectly frank way you did, and again assuring you of our absolute loyalty, we remain.

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To which the respondent replied—

We acknowledge your letter of May 20th and thank you for same. We will be glad to have you keep us informed along the lines suggested for our mutual benefit.

PAR. 16. Respondent did not always confine its efforts in resale price maintenance to correspondence or interviews with single jobbers. On certain occasions it adopted the method of circularizing all the dealers in the effected territory, and endeavored to exact from each an assurance of rigid adherence to the applicable resale discounts. Toward the end of the period in which the Mississippi River was the dividing line, viz, July 26, 1921, respondent issued a circular addressed "To Jobbers Quoting and Selling the Trade West of the Mississippi River" calling attention to the fact that the resale discounts applicable to points on the river and east, did not apply to points west of the river, and advising all jobbers that it had been informed that certain jobbers east of the river were quoting consumers west at the eastern scale of prices. The circular continued—

Jobbers having followed the above practice are asked to withdraw such quotations at once and covering all quotations or sales in the territory west of the Mississippi River, use our western resale schedule and make their quotation f. o. b. shipping point, but with freight equalized with nearest point where there is a jobber carrying our tools in stock. Please acknowledge receipt of this bulletin indicating your understanding and willingness to cooperate.

A duplicate of this bulletin dated July 30 was also issued for reasons which are not explained. This bulletin was sent out to all jobbers to whom it applied. The respondent objected to the introduction of these exhibits and to other matters relating to them, arguing that it was a dead issue in which the Commission could have no interest. For the reason previously stated it seems that the objection was properly overruled and the exhibits and evidence properly admitted. A number of replies were received in response to the request for an acknowledgment of the receipt of this bulletin and an indication of the understanding and willingness of the jobbers to cooperate. Some of these were simple statements of acknowledgment of receipt; others were assurances of observances of the suggested prices at all times; others stated that the writers would be "governed accordingly." Others stated "We shall be pleased to maintain the retail schedule as requested." Another stated, "You may be assured we will cooperate with you in this matter."

PAR. 17. Apparently the replies received were not sufficient to satisfy the desires of the respondent because the bulletin was reissued with an addition at the top reading as follows:

The original of this circular was sent to you on July 30. We have not received a response. Kindly let us hear from you at once because we desire to have unanimous action on the part of all jobbers interested.

This was sent to all jobbers who had not responded to the original circular. This produced results in a number of cases. One dealer said, "Care is being taken to comply with the above requirement." Another "Will govern ourselves accordingly." Another stated, "Will be very glad to cooperate on this basis." Another "We most certainly will comply with your request as we are hardly (sic) in favor of such plan." Another said, "We assure you of our willingness at all times to cooperate with you in this respect." Another, "We assure you that prices will be quoted in accordance with your request." To one jobber who made no response to either the first or the second circular the respondent wrote, attaching a copy of the bulletin and stating—

Practically every other jobber in the territory at interest as far east as Chicago, has written us expressing approval of this price schedule and agreeing to maintain it in quoting west of the river. We want and must have the cooperation of your organization in this direction if this western schedule is actually to be made effective.

This particular dealer replied that on legal advice it made no agreements with anyone relative to resale prices, and therefore was unable to accept the circular letter referred to. This dealer, however, while it refrained from giving the assurance called for, in the following December reported that St. Louis jobbers were selling tools at the eastern resale discount price and advising that the Wichita branch of this respondent in order to obtain business would be obliged to meet this competition. To this the respondent replied stating that its Mississippi River boundary line had not proven satisfactory.

Although we have written many letters and have taken the matter up personally on some occasions. We have finally concluded that that boundary line is too arbitrary to be effective.

PAR. 18. The respondent applied the method of general circularization of its dealers in territory in which variations of the resale discount were reported, as the occasion seemed to warrant. A circu-

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lar letter in the following form was sent to all of the jobbers in the Pittsburgh territory on or about May 15, 1922:

Gentlemen: It has been reported to us that two jobbers in your community have recently and very foolishly quoted on Toledo tools at a most decided reduction beyond the resale schedule. Our established price to the consumer is reasonable and the margin of profit provided for the jobber who sells our tools is likewise reasonable; there is absolutely no reason why our resale schedule should not be maintained without deviation at all times. We attach hereto a copy of our resale sheet which contains the list prices and the discount applying thereto. We will appreciate your close cooperation in the absolute maintenance of this schedule and would like an expression from you if you care to give it. We have only one recourse for the jobber or dealer who will not maintain our resale schedule, and that is to cease selling that jobber or dealer.

The purpose of issuing this circular letter was as stated by the treasurer of the respondent—

To curtail any proclivity that may exist on the part of jobbers who had not offended, to meet the prices made by offending jobbers.

The replies to this Pittsburgh circular are not all in evidence. But the treasurer of the respondent stated that while he had no particular recollection he would say that answers were received generally to all of these letters. In further explanation it was stated that this circular would encourage a dealer who wanted to make a reasonable profit and was bothered by claims of lower prices quoted elsewhere, because he would realize that the respondent was endeavoring to create the impression that a stable line of prices would be supported by the respondent. One of the dealers in Pittsburgh to whom this circular went stated that it was adhering to the suggested resale price but was losing business as a result. To which the respondent replied as follows:

We must do all we can to insure the stability of prices in our line in any community where some dealer is foolish enough to inaugurate a destructive price-cutting campaign, and this was the reason for our letter of the 15th. We believe we have the matter well in hand and hope the tendency to get away from our resale schedule is definitely checked.

One of the Pittsburgh dealers apparently was written a special letter making direct charges of violation of the resale discounts.

and arguing the necessity for adherence thereto. The letter concluded:

Our only recourse in matters of this kind is to cease selling the jobber or dealer who will not maintain our resale schedule. We therefore suggest that you investigate this matter thoroughly and let us have a detailed response setting forth all the facts as you can find them, and advising us what we may expect relative to your policy in future. Your immediate attention will greatly oblige.

The dealer in question replied with considerable explanation and concluded:

You may take this as our assurance that your established resale discount of fifty per cent will be absolutely maintained by us in future, and if our competitors are inclined to cut your prices, that would be a matter strictly between themselves and you. This company will in future maintain your established prices to the letter.

The effect of the Pittsburgh circular was stated by the respondent in a letter of May 25, 1922:

I am glad to tell you that the responses received have in the main indicated a strict adherence to our resale schedule. Before the matter is dropped we will have everybody in line although it looks as though we will have to cease selling one of our connections who has not up to the present moment replied to our letter. It is that particular dealer who has been reported to us as "running wild" with his quotations.

It is in evidence that the particular dealer referred to finally made a satisfactory reply which resulted in assurances of resale price maintenance being made by all of the Pittsburgh dealers. And there was no further complaint from that territory.

PAR. 19. The California National Supply Company on November 5, 1921, complained to the respondent that its resale prices were not being maintained and that it was unable to trace the shipments of local jobbers who were varying from the resale discount. To which the respondent replied acknowledging the receipt of this communication, regretting that the identity of the price-cutters could not be obtained, and stating—

Under the circumstances we can not do anything that will be very effective but we will write a letter to each one of the Los Angeles jobbers, sending them a copy of our resale dis-

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count sheet, and ask them all to adhere strictly to this schedule. We attach hereto a copy of the letter we will send out. We hope this will accomplish the desired result, but in the meantime, suppose you have your sales force keep their eyes and ears open, and perhaps they will locate the people who are doing the price-cutting.

The letter referred to, after stating the report of price-cutting and arguing in favor of its maintenance from the point of view of the interest of the jobber, concludes—

May we ask that you go into this matter fully and let us have your response as soon as you have a comprehensive knowledge of the situation.

This letter went to all of the jobbers in Los Angeles and replies were received from some of them, whether from all of them the witness was unable to state. There were no further complaints of price-cutting after the issue of this letter. A number of replies stated "Assuring you that it is our desire to cooperate with you at all times"; "We have always respected your wishes with regard to the retail price of your goods"; "We are adhering to the suggested discounts without variation"; another stated, "We will do everything possible to maintain these retail prices and if we can furnish you any information at any time regarding anyone cutting these prices, you may be assured we will cheerfully do so." One of the Los Angeles dealers upon receipt of this letter, called the attention of the respondent to the fact that previous complaint had been made concerning sales made by the respondent to an oil well supply company, to which the respondent replied—

We are pleased to advise that our files show that at that time we went into this matter exhaustively with the Lacey Company, who admitted having made quotation as charged. * * * At that time they expressed their regret at having made the quotation which they contended was really a clerical error, and promised that there would be no recurrence of like nature. With this unequivocal promise we have continued to sell the Lacey Company. Should there be any later evidence that they have not been adhering to our retail schedule we hope you will not fail to advise us regarding it.

PAR. 20. The Standard Supply and Equipment Company of Pittsburgh, Pennsylvania, was reported to the respondent as having departed from the resale discount. The respondent wrote on May 23, 1922, and the Standard Supply Company replied on June 6, ad-

mitting and justifying the cut. The respondent inquired for further details, advising that the Supply Company's order was being held meanwhile. Apparently an adjustment was reached satisfactory to the respondent. The writer said:

Since this matter has been adjusted to your satisfaction we have been very careful to quote nothing lower than discount you suggest. * * * We shall be very glad to assist you in helping to right matters for you in Pittsburgh.

The respondent acknowledged this letter stating—

We will report to you later if we have anything definite in this case.

The Supply Company placed some orders subsequently which drew from the respondent an inquiry dated June 7, 1922, whether the tools were actually sold at the prices stated and if not, at what prices they were sold, and also inquiring whether the orders originated with the Pittsburgh house. The Supply Company advised in reply that the orders originated in Philadelphia and that the regular resale prices should have been maintained. The respondent queried in response, "Will you kindly tell us if our regular resale prices were secured by you covering the material specified on these orders." The Supply Company wrote that the business was secured at the regular resale prices.

PAR. 21. In November, 1921, the W. D. Allen Manufacturing Company of Chicago, called the attention of the respondent to the cutting of the resale discounts in Chicago, stating that "There are two concerns in Chicago that the writer knows do not hold to the resale price." The respondent replied stating that they could do nothing unless the Allen Company would furnish the names of the jobbers responsible for the variation, saying—

In our mutual interest you ought to do this. We would protect your name and keep you out of it. But we would like to get after any jobber who is cutting the prices on our product because we consider this price-cutting to be a stab at our very life's blood. The only way we can be sure to maintain the interest of the jobber in our product, is to make our tools profitable for him to sell, and the fellow who breaks down our resale schedule is operating against us. Therefore we trust you will let us have all the information you have at your command in this direction.

PAR. 22. The information afforded by this letter was the basis of a general circularization of all Chicago jobbers by bulletin issued

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May we ask that you go into this matter fully and let us have your response as soon as you have a comprehensive knowledge of the situation.

This letter went to all of the jobbers in Los Angeles and replies were received from some of them, whether from all of them the witness was unable to state. There were no further complaints of price-cutting after the issue of this letter. A number of replies stated "Assuring you that it is our desire to cooperate with you at all times"; "We have always respected your wishes with regard to the retail price of your goods"; "We are adhering to the suggested discounts without variation"; another stated, "We will do everything possible to maintain these retail prices and if we can furnish you any information at any time regarding anyone cutting these prices, you may be assured we will cheerfully do so." One of the Los Angeles dealers upon receipt of this letter, called the attention of the respondent to the fact that previous complaint had been made concerning sales made by the respondent to an oil well supply company, to which the respondent replied—

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The respondent acknowledged this letter stating—

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In our mutual interest you ought to do this. We would protect your name and keep you out of it. But we would like to get after any jobber who is cutting the prices on our product because we consider this price-cutting to be a stab at our very life's blood. The only way we can be sure to maintain the interest of the jobber in our product, is to make our tools profitable for him to sell, and the fellow who breaks down our resale schedule is operating against us. Therefore we trust you will let us have all the information you have at your command in this direction.

PAR. 22. The information afforded by this letter was the basis of a general circularization of all Chicago jobbers by bulletin issued

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In our mutual interest you ought to do this. We would protect your name and keep you out of it. But we would like to get after any jobber who is cutting the prices on our product because we consider this price-cutting to be a stab at our very life's blood. The only way we can be sure to maintain the interest of the jobber in our product, is to make our tools profitable for him to sell, and the fellow who breaks down our resale schedule is operating against us. Therefore we trust you will let us have all the information you have at your command in this direction.

PAR. 22. The information afforded by this letter was the basis of a general circularization of all Chicago jobbers by bulletin issued

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April 19, 1922. This bulletin states that one of the respondent's salesmen, Mr. Thornberry, had been in Chicago and reported a very unsatisfactory state of affairs with reference to the sale of the respondent's products. After presenting argument in favor of its policy of resale price maintenance and the protection afforded thereby to the dealers in respondent's products, this bulletin concluded—

Now we propose if it is at all possible, to see that our resale schedules are maintained. The Toledo factory is running full time and is busy, and if we have to we can well get along without Chicago business. We are going to sell our tools to the jobbers who do maintain our prices, who will get a reasonable margin of profit on which to do business. May we not have your cooperation? We want a real show-down in this matter with all the cards on the table. Trusting that we may have a full a (sic) complete reply by return mail, we are, etc.

While dated in 1922 this bulletin was evidently issued in 1921. A considerable number of replies were received by the respondent to this bulletin. One jobber stated, "We ourselves have never sold any Toledo tools at anything different from your sheet." Another stated, "You can absolutely depend upon us not to make any rebates or cut prices in our territory." * * * However, you can be assured that except through an error or mistake you will not have occasion to complain about us, and our books will be open should it become necessary." To one of the jobbers the respondent wrote with reference to the bulletin in question—

We feel quite sure that the jobbers in Chicago and elsewhere will not sell any more Toledo tools by cutting the price, and they will get just as much business by adhering to our resale schedule. What we are trying to develop by this bulletin we sent out is some exact fact or facts as to who is doing this price-cutting because then we believe we will be in shape to stop it.

Another jobber said, "We understand that you insist upon this policy and have endeavored to religiously follow it." Another stated, "We have never cut the price as the margin now derived, based upon last year's cost of doing business, does not reflect any profit on these goods."

PAR. 23. In June, 1922, departure from the resale discounts in Baltimore, Maryland, came to the attention of the respondent, resulting in a form letter sent to all the jobbers in Baltimore. This form letter states—

We are addressing this letter simultaneously to all the jobbers and dealers in Baltimore that sell our tools. Two jobbers have reported to us that somebody is cutting the prices on Toledo tools five per cent or more. One of these jobbers used the expression "Lots of them are doing it."

After arguing in justification of its policy and the reasonableness of its margins the respondent in this form letter stated—

Our only recourse in a matter of this sort is to cease selling the jobber who will not maintain our published resale schedule, a copy of which we attach hereto. Will you please let us have an expression from you as to your attitude in this matter. You will thus greatly oblige.

A number of replies were received by the respondent from Baltimore dealers in response to this form letter. One stated, "We have been and intend to strictly adhere to the new discount sheet." Another said, "We have at all times maintained your regular resale prices." Another, "We have steadfastly maintained your resale schedule though we frequently lose order by so doing. We will heartily appreciate any steps you take to induce all your dealers to maintain this schedule." Another said, "We are more than glad to cooperate with any manufacturer on a suggested resale price basis because we are in the business to make a profit." Another wrote, "We will positively adhere to your selling price and will report to you if we are able to find out what jobber in our city is cutting." One dealer wrote, "You may always rely upon us to govern ourselves as per your remarks and trust we may be able to favor you with considerable business during the year." Another stated that they "Always have in the past lived up to your resale prices and we fully intend to do so in the future."

The circular also brought a reply from one firm which admitted that it had been departing from the resale discount; that this was due to an error; and that the resale discount list was being maintained. To this the respondent replied in part—

If we are to continue to do business with you at all we must have a very specific and definite assurance that hereafter there will be no deviation from our resale schedule under any circumstances.

The dealer in question replied to the effect that it would maintain the resale prices suggested by the respondent. After the distribution of this circular among the Baltimore jobbers there was no further complaint of price-cutting in Baltimore.

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This constitutes the case in support of the allegations of the complaint. The respondent for cause why an order to cease and desist the practices charged should not be issued against it, showed that the prices of its tools to the consuming public were not enhanced by the practice and that its prices were below those of its competitors for similar tools. It also showed that the margin which was allowed to its dealers was less than the amount allowed by competitors to their dealers, and that this margin was not in fact, as much as many jobbers thought to be required in order to show a profit on the handling of the respondent's goods. The argument mistakes the nature of these proceedings. The question is not whether the price of the commodity was unduly enhanced but whether an illegal method was employed by the respondent in endeavoring to secure the maintenance of its suggested resale prices, which had a dangerous tendency unduly to hinder competition among the distributors of the respondent's products. The same disposition may be made of the argument that the removal of the resale discounts and jobbers' discounts would result in an increased price of the respondent's products to the consumer.

The respondent laid stress upon the fact that in but four instances had identical bulletins or form letters been sent to all the dealers in any particular territory. It is apparent from the testimony that this practice would have been used in any other instance in which it had been in the opinion of the respondent, necessary to follow this practice. Some force was sought to be given to the statement that refusals to sell were limited to the W. J. Baird Company, of Detroit, The Axtel Company of Fort Worth, the Jackson Supply Company of Indianapolis, The Foster Supply Company of Philadelphia, and possibly two others. But this statement can not be regarded as controlling in view of the fact that in a number of instances upon receiving definite assurances of the intention of the dealer to maintain the resale price schedule, business relations were resumed. The particular instances cited may be regarded as those in which the dealer for one reason or another, failed to give such assurance. The respondent travels five salesmen but it is no part of their duty to investigate to determine whether prices are being cut in any community, and there is no general duty devolved upon dealers to report price-cutting in their vicinity. It appears that in every instance in which a report of price-cutting was made to the respondent where definite information was not given, the reporting dealer was requested to furnish specific information and was given the assurance that it would be acted upon if furnished. This request was in at least four instances, followed by a general circularization of the

affected territory, resulting in the elimination either by assurances of all concerned of effective resale price maintenance, or a discontinuance of relations with the price-cutter.

While the documentary evidence and the testimony with relation thereto, ends in 1922, there is no suggestion on the part of the respondent of a discontinuance of its policy or methods, or any variation from the conduct evidenced by the previous expressions of the respondent. In a communication to one of its dealers after the commencement of the investigation by the Federal Trade Commission, the respondent stated in part—

We ourselves are firmly convinced that our policy is a just one and legally and ethically sound. We are welcoming the prospect of a final solution of the question.

CONCLUSIONS OF FACT.

Upon the foregoing findings we arrive at the following conclusions of fact:

1. The selling policy of the respondent is based upon the use of a base list price with discounts therefrom, by which are fixed the prices to the jobbers and through the jobbers to the consumers.
2. That the respondent divides the territory of the United States into two selling districts in which different resale discounts to the consumer are established for the purpose of assisting to equalize freight differences favoring the eastern territory.
3. That the respondent established this line at the Mississippi River in 1920 and moved it west to the Colorado line in 1922, making the readjustment for the purpose of eliminating so far as possible, a variation in resale discounts in the western territory.
4. That in locating this line for this purpose the respondent sought and received advice from dealers in the territory affected.
5. That it was the policy of the respondent to take notice of every report from a jobber or dealer of variations from the resale discounts, to make the reporting jobbers or dealers understand that the respondent welcomed such reports, and would enforce its resale price schedule by refusing further sales to the offending dealer if he could be located. That the respondent urged dealers or jobbers making indefinite reports of price-cutting to conduct investigations to determine the identity of the price-cutter and to report such price-cutter to the respondent so that the dealers of the respondent well understood that it was the policy of the respondent to receive reports from its dealers, and to refuse further sales to confirmed price-cutters. That the respondent becoming aware of the identity of a price-cutter refused further relations with such price-cutter unless it appeared

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that the price variation was due to an excusable error, or the respondent received from the offending dealer a definite and positive assurance in writing applicable both to sales already made and such sales as might be consummated in the future, that the respondent's resale discount schedule would be absolutely maintained. That upon a number of occasions the respondent had insisted upon and received such assurances from dealers or jobbers who had varied from the resale discount schedule.

6. That whenever in the opinion of the respondent it was necessary so to do either because of the appearance of a considerable departure from the use of the resale discount schedule or because the price-cutters could not be identified, the respondent both for the purpose of ascertaining the identity of the price-cutters and for the purpose of receiving renewed assurances from its dealers in the affected territory as to resale price maintenance, issued a circular bulletin or form letter to all of its dealers in the affected territory, calling attention to the policy of the respondent for the maintenance of its resale discount schedules; and in effect calling upon each dealer to acknowledge the receipt of the bulletin, circular, or letter in question and to give in writing, assurances operative both as to sales already consummated and applicable to stock in the dealer's hands, as well as to sales not yet consummated, that the dealer would adhere strictly to the respondent's schedule of resale discounts, upon the penalty stated that the respondent would refuse business relations with any jobber or dealer who failed to maintain the respondent's suggested resale prices.

7. That this practice was followed with reference to all dealers in the western territory on one occasion, and another time with reference to all dealers in the Pittsburgh territory. Again with reference to all dealers in the Los Angeles territory, and again with reference to all dealers in the Baltimore territory.

8. That in each instance of individual price-cutting reported to the respondent where the respondent could learn the identity of the price-cutter, if the price variation was not satisfactorily explained to the respondent as a mistake and the dealer in question refused to give assurances in writing applicable both to his stock in hand representing consummated sales and to future sales as well that he would be governed by the respondent's suggested resale price, the respondent refused further sales to such dealer.

9. That the respondent sought and secured the cooperation of its dealers in dividing its territory for the purpose of a variation in resale discounts, in order that the location of the dividing line might be a practical means of eliminating variations from the resale dis-

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counts operative in each territory. That the respondent sought the cooperation of its dealers in making reports of price-cutters thereby enabling the respondent to eliminate willful price-cutters from its list of dealers. That the respondent whenever it deemed necessary, exacted from its dealers a written assurance that such dealers would both with reference to consummated sales and sales not yet consummated, cooperate with the respondent in the maintenance of its resale prices.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances herein set forth, are unfair methods of competition in interstate commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the briefs and argument of counsel, 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, Toledo Pipe Threading Machine Company, its officers, agents and employees do cease and desist from maintaining its suggested resale discounts by—

(1) Requiring from dealers assurance that they will be governed by the suggested resale discounts in the disposal of stocks previously purchased, as a condition precedent to subsequent sales to them by respondent.

(2) Requiring from dealers placing orders assurances that the commodities so ordered will be resold at the suggested resale discounts as a condition precedent to the acceptance of such orders.

(3) Requiring from dealers generally assurances that they will be governed by the suggested resale discounts in all resales of respondent's products, under threat of discontinuance of relations.

(4) Seeking the cooperation of dealers in making effective a resale price maintenance policy by seeking the advice of dealers as to the location of a selling territorial division line for the stated purpose of eliminating price competition among dealers; by manifesting to

that the price variation was due to an excusable error, or the respondent received from the offending dealer a definite and positive assurance in writing applicable both to sales already made and such sales as might be consummated in the future, that the respondent's resale discount schedule would be absolutely maintained. That upon a number of occasions the respondent had insisted upon and received such assurances from dealers or jobbers who had varied from the resale discount schedule.

6. That whenever in the opinion of the respondent it was necessary so to do either because of the appearance of a considerable departure from the use of the resale discount schedule or because the price-cutters could not be identified, the respondent both for the purpose of ascertaining the identity of the price-cutters and for the purpose of receiving renewed assurances from its dealers in the affected territory as to resale price maintenance, issued a circular bulletin or form letter to all of its dealers in the affected territory, calling attention to the policy of the respondent for the maintenance of its resale discount schedules; and in effect calling upon each dealer to acknowledge the receipt of the bulletin, circular, or letter in question and to give in writing, assurances operative both as to sales already consummated and applicable to stock in the dealer's hands, as well as to sales not yet consummated, that the dealer would adhere strictly to the respondent's schedule of resale discounts, upon the penalty stated that the respondent would refuse business relations with any jobber or dealer who failed to maintain the respondent's suggested resale prices.

7. That this practice was followed with reference to all dealers in the western territory on one occasion, and another time with reference to all dealers in the Pittsburgh territory. Again with reference to all dealers in the Los Angeles territory, and again with reference to all dealers in the Baltimore territory.

8. That in each instance of individual price-cutting reported to the respondent where the respondent could learn the identity of the price-cutter, if the price variation was not satisfactorily explained to the respondent as a mistake and the dealer in question refused to give assurances in writing applicable both to his stock in hand representing consummated sales and to future sales as well that he would be governed by the respondent's suggested resale price, the respondent refused further sales to such dealer.

9. That the respondent sought and secured the cooperation of its dealers in dividing its territory for the purpose of a variation in resale discounts, in order that the location of the dividing line might be a practical means of eliminating variations from the resale dis-

counts operative in each territory. That the respondent sought the cooperation of its dealers in making reports of price-cutters thereby enabling the respondent to eliminate willful price-cutters from its list of dealers. That the respondent whenever it deemed necessary, exacted from its dealers a written assurance that such dealers would both with reference to consummated sales and sales not yet consummated, cooperate with the respondent in the maintenance of its resale prices.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances herein set forth, are unfair methods of competition in interstate commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the briefs and argument of counsel, 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, Toledo Pipe Threading Machine Company, its officers, agents and employees do cease and desist from maintaining its suggested resale discounts by—

(1) Requiring from dealers assurance that they will be governed by the suggested resale discounts in the disposal of stocks previously purchased, as a condition precedent to subsequent sales to them by respondent.

(2) Requiring from dealers placing orders assurances that the commodities so ordered will be resold at the suggested resale discounts as a condition precedent to the acceptance of such orders.

(3) Requiring from dealers generally assurances that they will be governed by the suggested resale discounts in all resales of respondent's products, under threat of discontinuance of relations.

(4) Seeking the cooperation of dealers in making effective a resale price maintenance policy by seeking the advice of dealers as to the location of a selling territorial division line for the stated purpose of eliminating price competition among dealers; by manifesting to

Order.

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dealers an intention to act upon all reports sent in by them of variations from the resale discounts by the elimination of the price-cutter; by informing dealers that price-cutters reported who would not give assurance of adherence to the suggested resale discounts, had been or would be refused further sales; by employing its salesmen to investigate charges of price-cutting reported by dealers and advising dealers of that fact; by which means consecutively or concurrently applied, the aid and assistance of dealers is sought and obtained in the prevention of departures from respondent's resale discounts.

It is further ordered, That the respondent, Toledo Pipe Threading Machine Co., shall within sixty 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.

Syllabus.

IN THE MATTER OF
T. M. SAYMAN 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 1178—January 26, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of soap and other products to wholesalers, jobbers and canvassers; in pursuance of a policy directed to the maintenance of the wholesale prices at which it desired its said soap to be resold, and also of the retail prices desired by it, which it stamped or marked upon the containers of each bar thereof,

- (a) Made its aforesaid policy and prices generally known to the trade and requested their cooperation in enforcing the same;
- (b) Entered into agreements with customers by which the latter bound themselves to maintain its resale prices, and made pledges of cooperation in the maintenance of its resale prices a condition precedent to the opening of accounts.
- (c) Required its dealer customers to furnish reports showing the prices at which they sold its soap, and threatened price cutters and suspected price cutters with refusal to sell them;
- (d) Invited customers to report the names of price-cutting competing dealers and refused to sell such dealers;
- (e) Impressed numerals upon the wrapper of each bar of its soap as a means whereby its distributors or canvassers might ascertain the names of dealers responsible for price-cutting and the identity of distributors from whom the price-cutters secured their supplies, and thereafter refused further to supply such dealers, irrespective of whether they had been guilty of price-cutting or had merely supplied the price-cutters;
- (f) Refused to sell its said soap to price-cutting wholesalers and jobbers, and also to those of its customers who resold to price-cutting retail dealers; and
- (g) Reported names of price-cutting retail dealers to the wholesaler or jobber supplying the same and requested such wholesaler or jobber to compel said retail dealer thereafter to maintain the suggested resale prices;

With the result that wholesale, jobber, and retail dealers handling its said soap were prevented from selling the same at prices and profits commensurate with their varying efficiencies and costs of doing business, or at prices acceptable to themselves, practically all competition in the prices paid therefor was eliminated, and consumers and the purchasing public generally were deprived of the benefits which flow from free and unhampered competition:

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

Mr. Morgan J. Doyle for the Commission.

Mr. T. M. Sayman of St. Louis, Mo., for respondent.