

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.

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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 the T. M. Sayman Products 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 Missouri with its principal office and place of business in the city of St. Louis, in said State. It is engaged in the manufacture of medicinal preparations, soaps, perfumes and allied products, and the sale thereof to wholesale and retail dealers located at points in the various States of the United States. It causes said products when so sold to be transported from its said principal place of business in the city of St. Louis, Mo., into and through other States of the United States to said purchasers at their respective points of location. It also distributes its said products by means of house-to-house canvassers who sell direct to the consumer in various States of the United States. Said wholesale and retail dealers and canvassers are hereinafter referred to collectively as distributors. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations similarly and otherwise engaged in the manufacture and/or sale of medicinal preparations, soaps, perfumes and allied products in interstate commerce and with the trade generally.

PAR. 2. In the course and conduct of its aforesaid business respondent enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its aforesaid products shall be resold by distributors handling same, and respondent enlists and secures the support and cooperation of distributors and of respondent's officers, agents and employees, in enforcing said system. In order to carry out said system respondent employs the following, among other means, whereby respondent and those cooperating with it, undertake to prevent and do prevent distributors handling respondent's said products from reselling the same at prices less than aforesaid resale prices established by respondent:

(a) Respondent fixes uniform minimum prices at which distributors handling respondent's said products shall respectively

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resell the same, and issues and sends to said distributors price lists in which said uniform minimum prices are set forth.

(b) Respondent makes it generally known to said distributors by letters, circulars, salesmen's interviews, and by other means, that it expects and requires all distributors handling said products to maintain and enforce said minimum resale prices and that respondent will refuse to further sell and supply said products to distributors failing to maintain and enforce said resale prices, or who sell to others who fail to maintain and enforce said prices.

(c) Respondent enters into contracts, agreements, informal understandings and arrangements with distributors and prospective distributors for the maintenance by them of said resale prices as a condition of opening accounts with such distributors or of continuing their supply of said products.

(d) Respondent solicits and procures from distributors handling its said products reports of the failure of other distributors handling same to observe and maintain said resale prices and reports of sales by distributors to other distributors who fail to maintain said prices.

(e) Respondent employs its salesmen and other agents and employees, as well as detectives and others hired specifically for the purpose, to ascertain, investigate and secure information as to the failure of any distributors to observe and maintain said resale prices, and as to the sale of respondent's said products by distributors to other distributors who fail to maintain said prices.

(f) Respondent utilizes a system of markings placed by respondent upon the containers and wrappers in which its said products are packed and shipped, by means whereof the persons referred to in Specification (e) hereof, trace and identify distributors from whom other distributors who fail to maintain said prices secure respondent's said products.

(g) Respondent uses the information received through the means set out in Specifications (d), (e) and (f), or through any other means, to induce and coerce distributors who fail to observe said prices or who sell to others who fail to observe said prices, to maintain said prices in the future and to refrain in future from selling said products to distributors who do not maintain said prices; by exacting promises and assurances from said distributors that they will in future maintain said prices or refrain from so selling, and by threatening said distributors that if they do not maintain said prices or refrain from so sell-

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ing respondent will refuse to further supply them with said products.

(h) Respondent refuses to further supply with said products distributors who offend in either of the particulars set out in the preceding specification unless and until such offending distributors have given satisfactory assurances or undertakings that they will in future observe and maintain said prices or will refrain from selling said products to distributors who do not observe and maintain said prices.

(i) Respondent keeps records upon which are entered the names of distributors who sell at less than said resale prices or who sell to others who fail to maintain said prices, which said records respondent and those cooperating with it use in and about the enforcement of said system of resale prices.

(j) Respondent secures the cooperation of its wholesale dealer customers in and about inducing and persuading retail dealers to maintain said resale prices.

(k) Respondent requires from its aforesaid distributors pledges of cooperation with respondent in and about the maintenance of its said resale prices and in and about preventing distributors who fail to maintain said prices from obtaining respondent's said products.

(l) Respondent uses other equivalent cooperative means and methods for the enforcement of said system of said resale prices.

As the result of said acts and practices respondent's said resale prices are generally maintained.

PAR. 3. For more than two years last past respondent and those cooperating with it have engaged in the above alleged acts and practices, in the manner, under the circumstances, and with the result all hereinbefore set out.

PAR. 4. The direct effect and result of above alleged acts and practices of respondent has been and now is to suppress competition among aforesaid distributors in the distribution and sale of respondent's products; to constrain said distributors to sell said products at aforesaid prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of the advantages in prices and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodities under conditions of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled

"An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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 its complaint upon the respondent, T. M. Sayman Products Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act of Congress approved September 26, 1914.

The respondent having entered its appearance by its president and attorney in fact, T. M. Sayman, and filed its answer herein, and the attorneys for both parties having thereafter signed and filed an agreed statement of facts with the exhibits thereto attached, and having stipulated that the same should be taken in lieu of testimony before the Commission in support of the charges stated in the complaint and in opposition thereto, and that said Commission might proceed further upon the said stipulation of facts to make its report in said proceeding, stating its findings as to the facts and entering its order disposing of the proceeding, and the Commission having duly considered the record and being fully advised in the premises now makes this its report as to the findings of facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent T. M. Sayman Products Company is a corporation organized and existing by virtue of the laws of the State of Missouri, with its factory and office located in the city of St. Louis in said State. T. M. Sayman is president and treasurer, and Luella Sayman, his wife, is secretary of said corporation. Respondent is, and for many years has been, engaged in the business of manufacturing and selling soaps, toilet articles, perfumes, medicines, liniments, and allied products.

PAR. 2. That respondent in the course of its business sells its said products to wholesalers, jobbers and canvassers, located in the various States of the United States, and causes said products, when so sold, to be transported from its factory and principal place of business at St. Louis, Mo., to, into and through other States of the United States, and then and there to be delivered to the purchasers thereof at their respective points of location. In the course of its

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(h) Respondent refuses to further supply with said products distributors who offend in either of the particulars set out in the preceding specification unless and until such offending distributors have given satisfactory assurances or undertakings that they will in future observe and maintain said prices or will refrain from selling said products to distributors who do not observe and maintain said prices.

(i) Respondent keeps records upon which are entered the names of distributors who sell at less than said resale prices or who sell to others who fail to maintain said prices, which said records respondent and those cooperating with it use in and about the enforcement of said system of resale prices.

(j) Respondent secures the cooperation of its wholesale dealer customers in and about inducing and persuading retail dealers to maintain said resale prices.

(k) Respondent requires from its aforesaid distributors pledges of cooperation with respondent in and about the maintenance of its said resale prices and in and about preventing distributors who fail to maintain said prices from obtaining respondent's said products.

(l) Respondent uses other equivalent cooperative means and methods for the enforcement of said system of said resale prices.

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PAR. 4. The direct effect and result of above alleged acts and practices of respondent has been and now is to suppress competition among aforesaid distributors in the distribution and sale of respondent's products; to constrain said distributors to sell said products at aforesaid prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of the advantages in prices and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodities under conditions of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled

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PAR. 2. That respondent in the course of its business sells its said products to wholesalers, jobbers and canvassers, located in the various States of the United States, and causes said products, when so sold, to be transported from its factory and principal place of business at St. Louis, Mo., to, into and through other States of the United States, and then and there to be delivered to the purchasers thereof at their respective points of location. In the course of its

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business, respondent is in direct competition with other persons, partnerships and corporations likewise engaged.

PAR. 3. That in the course of selling and distributing its products, and particularly its soap, respondent adopted, and for many years has enforced, a policy and system of fixing and maintaining certain specified standard prices at which respondent's soap shall be resold by jobbers, wholesalers, retailers and canvassers, and in pursuance of this policy, and for the purpose of compelling wholesalers, jobbers, retailers and canvassers to resell respondent's soap at the prices so fixed and established by respondent, respondent adopted the means and methods, and did the acts and things set forth hereinafter in paragraphs 4 to 13, inclusive.

PAR. 4. That the respondent, in making sales of its products to wholesale grocers and wholesale druggists, entered into agreements in which it was agreed that the purchasers would resell said goods to their retailer customers at prices fixed and determined by respondent. Respondent, in quoting prices to wholesale druggists by letter and by printed statements upon its price lists, advised such wholesalers that Sayman's soap should never be sold to retailers at less than the prices fixed and determined by respondent. Respondent requested said wholesalers (sometimes called jobbers) to cooperate in maintaining both the wholesale and the retail prices, each and both of which were fixed and determined by respondent.

PAR. 5. That the respondent, for the purpose of enforcing and executing said resale price-maintenance plan for the purpose of regulating the prices to be demanded and collected by the wholesaler or jobber from the retailer, and also the prices to be demanded and collected by the retailer from the consumer, requested the cooperation of all the various persons and concerns dealing in respondent's soap and other products. For the purposes of obtaining the aforesaid desired cooperation, respondent provided its customers with printed price lists which contain statements notifying said wholesalers and said retailers that respondent's soap should never be sold at less than those prices fixed and determined by respondent. The wrapper on each bar of soap manufactured and sold by respondent was clearly marked with the retail resale price which respondent required be obtained from the consumer for said product.

PAR. 6. That the respondent attempted to secure and did secure pledges of cooperation from its jobbing customers whereby the said jobbers and wholesalers agreed with respondent that they would maintain the resale prices on soap, as fixed by respondent. Prior to the opening of an account with any wholesaler or jobber, respondent insisted upon obtaining this pledge of cooperation. Respondent's

requests to the wholesaler and jobber for their cooperation in maintaining said resale prices were usually made by letter in which respondent advised such prospective customers of its resale price-maintenance policy, and requested the pledge or assurance of such prospective customers that they would cooperate with respondent for the purpose of maintaining said policy.

PAR. 7. That the respondent required all wholesalers, jobbers and canvassers handling its soap to furnish reports showing the prices at which they had been selling respondent's soap.

PAR. 8. That the respondent warned and threatened wholesalers and jobbers who were price cutters or who were suspected or accused of not maintaining the resale prices fixed by respondent, that continued cutting of or refusal to maintain respondent's fixed resale prices would be followed by respondent's refusal to sell to such wholesalers or jobbers.

PAR. 9. That the respondent invited its customers to report the names of their competitors who failed to adhere to respondent's fixed schedule of resale prices in the sale of respondent's soap. Respondent used the information, secured from competitors of dealers who did not maintain respondent's specified resale prices in the resale of respondent's soap, as the basis for its refusal to sell said dealers.

PAR. 10. That the respondent refused to sell soap to wholesalers and jobbers who failed to maintain respondent's fixed schedule of resale prices in the sale of respondent's soap.

PAR. 11. That the respondent utilized a system of numbers stamped or perforated upon the paper wrapper surrounding each bar of respondent's soap, thus enabling respondent, for any purpose whatsoever, to ascertain the identity of the distributors from whom such soap was purchased; and repeatedly, when instances of price cutting were reported to respondent by wholesalers, retailers or canvassers, or when instances were ascertained in other ways, respondent instructed its distributors or canvassers to investigate, and pursuant to such instructions representatives of respondent have, by means of the numbers perforated in said soap wrappers, obtained the name of the dealer who sold the soap at cut rates and also ascertained the identity of distributors from whom price cutters had purchased respondent's soap; and respondent thereafter refused to supply all such dealers with its soap, whether such dealers were themselves cutting the suggested resale prices or were selling to others who cut the suggested resale prices. In cases where respondent ascertained the name of a retailer that was cutting the suggested resale prices on respondent's soap, respondent reported this fact to the wholesaler

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or jobber supplying such retail dealer and respondent requested such wholesaler or jobber to compel such retail dealer to maintain the suggested resale prices.

PAR. 12. That the respondent refused to sell soap to those of its customers who in turn sold to retailers who failed or refused to maintain respondent's fixed schedule of resale prices.

PAR. 13. That the respondent continued or resumed selling soap to wholesalers and jobber dealers who were price cutters or who were suspected or accused of price cutting, on the condition, understanding or promise of said wholesalers or jobbers that the resale prices specified by respondent would be maintained in the future in connection with sales of respondent's soap.

PAR. 14. That the respondent sought and secured the cooperation and assistance of wholesalers, jobbers, retailers and canvassers in bringing about the elimination of price competition on respondent's soap by the use of the foregoing and other equivalent cooperative methods.

PAR. 15. That as a result of the foregoing methods, policies and practices, respondent was enabled to and did prevent wholesale, jobber and retail dealers handling respondent's soap from selling the same at prices and profits commensurate with their varying efficiency and cost of doing business, or at prices fixed by and acceptable to themselves, and succeeded in eliminating practically all competition in the prices paid by the various classes of trade and by the ultimate consumer for soap of respondent's manufacture.

PAR. 16. That the acts of respondent in devising said plan of resale price-maintenance in connection with its soap and in so fixing said resale prices, and the acts and doings of respondent performed for the purpose of compelling wholesalers, jobbers and retailers to abide by said resale prices so fixed by respondent deprived the purchasing public generally throughout the United States of the benefits which flow from free and unhampered competition among retailers and among wholesalers, and deprived the ultimate purchasers of respondent's soap of the advantages in prices ordinarily obtainable under conditions of free competition.

CONCLUSION.

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent and a stipulation as to the facts, with exhibits thereto attached, wherein and whereby it was agreed that said stipulation as to the facts and exhibits attached thereto should be taken by this Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such stipulation and exhibits to enter its report and findings as to the facts and its order disposing of this proceeding, and the Commission having made and filed its findings as to the facts and its conclusion that respondent has violated 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,"

It is now ordered, That respondent, T. M. Sayman Products Company, its officers, directors, agents, servants and employees cease and desist from carrying into effect any resale price maintenance policy by means of contracts or combinations or by cooperative methods, in which respondent and its distributors, customers and agents undertake to prevent others from obtaining the company's products at less than the prices designated by it—

(1) By entering into agreements of contracts, express or implied, with its customers in which agreements or contracts said customers undertake or agree to resell respondent's products at prices fixed and determined by respondent.

(2) By the practice of requesting customers to report the names of dealers who do not observe such resale prices.

(3) By the practice of reporting to wholesale or jobber customers the names of retail dealers who do not observe such resale prices.

(4) By causing dealers to be listed as undesirable purchasers who are not to be supplied with the products of respondent company, unless and until they have given satisfactory assurances of their purpose to maintain such designated prices in the future.

(5) By employing salesmen or agents to assist in such resale price-maintenance plan, by reporting dealers who do not observe such resale prices.

(6) By utilizing numbers or symbols marked, stamped or perforated upon the wrappers or containers of respondent's products, with a view to ascertaining the names of dealers who sell said products at less than the suggested prices, or who sell to others who sell at less than such prices, in order to prevent such dealers from obtaining the products of the respondent.

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(7) By utilizing any other equivalent cooperative means of accomplishing the maintenance of resale prices fixed by the respondent.

It is further ordered, That the respondent, T. M. Sayman Products Company, shall within sixty days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint.

IN THE MATTER OF
HILLS BROTHERS.

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

Docket 1006—January 28, 1925.

SYLLABUS.

Where a corporation engaged in the importation of coffee and in the roasting, grading, blending, packing, and sale thereof to retail dealers; in pursuance of a policy that the prices fixed by it for two of its widely advertised, and popular brands, the stocking of which was almost a necessity for its retail grocers where sold, should be respected by such retailers as a basis for arriving at uniform minimum retail prices,

- (a) Made known its aforesaid policy and plan to the trade and kept dealer customers advised thereof and of changes in the prices to be observed by them;
- (b) Secured information as to price cutters from its salesmen and from competing retail dealer customers;
- (c) Solicited and requested, through its salesmen, the cooperation of retail dealer customers in securing information as to price cutting, assured them that price cutters would be cut off, and encouraged cooperation, by acting promptly on information given, reminding the accused dealer of its policy, and requesting his future cooperation, and by advising informants of its action;
- (d) Threatened to refuse and refused to sell to price cutters unless and until they gave assurances that they would thereafter respect its prices, placed the words "do not sell" against the names of price-cutters upon its books, and did not restore them to its list of customers until they had given satisfactory assurances on the subject;

With the effect of constraining all retail dealers handling its brands to sell the same to the public at prices fixed by it, of hindering and restricting competition between retail dealers, and of unduly hindering and obstructing competition in the sale and distribution of coffee:

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

Mr. G. Ed. Rowland for the Commission.

Mr. Frank P. Deering of Myrick, Deering and Scott of San Francisco, Calif., 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 create a Federal Trade Commission, to define its powers and