

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

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duties, and for other purposes," the Federal Trade Commission charges that Hills Brothers, 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 and existing under and by virtue of the laws of the State of California, having its main office and place of business in San Francisco, in said State. It is now and at all the times hereinafter mentioned has been engaged in the business of roasting coffees and in the sale of coffees, teas, spices and other similar products to retail dealers in various States of the United States, and it causes said products when so sold to be transported from its said place of business in the State of California to purchasers thereof in various other States, and has been and now is in active competition with other individuals, partnerships and corporations similarly engaged.

PAR. 2. In or about the year 1920 respondent adopted and has since employed a merchandising plan or policy for certain brands of its roasted coffee by which it established a system of resale prices for said products, varying roughly according to the respective transportation charges to different localities, which prices respondent required and still requires its various distributors to observe as the respective minimum prices to be charged by them in reselling said products to the purchasers thereof in their respective localities.

PAR. 3. In order to carry out the said plan or policy, and to secure the cooperation therein of dealers generally, the respondent adopted and employed and still employs the following among other means by which it and those cooperating with it have undertaken to prevent and have prevented other dealers from selling said products at prices less than the said minimum resale prices so established by respondent:

(a) It issues resale price lists to the trade in which lists the various minimum resale prices for its said products are set forth and explained;

(b) It makes it generally known to the trade by letters, circulars, salesmen's interviews, and other means that it expects and requires retail dealers handling its products to maintain and enforce said minimum resale prices;

(c) It enters into informal agreements, understandings, and arrangements with retail dealers for the maintenance of said minimum resale prices in their respective localities as a condition of opening accounts with such dealers or of conducting their supply of its products;

(d) It invites and procures from retail dealers handling its products reports as to the failure of other dealers to observe and maintain said minimum resale prices;

(e) It directs its salesmen and other employees to secure information as to retail dealers who fail to observe said minimum resale prices;

(f) It uses information received through its distributors or employees to induce and coerce such dealers as have failed to observe said prices to maintain the same in the future by exacting promises and assurances from them to that effect, and by threatening that if such prices are not maintained further goods will not be supplied to them by respondent;

(g) It threatens to refuse and does refuse to sell its products to dealers failing to observe and maintain said minimum resale prices;

(h) It favors dealers who maintain said prices by discriminating against competing dealers who fail to observe the same;

(i) It makes a record in the appropriate ledger accounts or otherwise, of all instances coming to its knowledge in which dealers handling its products have failed to observe and maintain said minimum resale prices;

(j) It refuses to supply such dealers with further goods until they have given satisfactory assurances for the maintenance of such prices in the future;

(k) It seeks and secures the cooperation of its distributors generally in preventing other distributors from obtaining respondent's said products, by reason of failure to maintain said resale prices;

(l) It has used and now uses other equivalent cooperative means and methods for the enforcement of said system of minimum resale prices; all with the result that its said prices have been and are generally observed and maintained by distributors handling said products.

PAR. 4. The above acts and practices of respondent have had and still have the capacity and tendency to constrain all dealers handling respondent's said products to sell the same at or above the minimum resale prices fixed by respondent as aforesaid, and prevents such dealers from selling such products at such less prices as they might or may deem to be warranted by their respective costs and efficiency, and hence to hinder and suppress all price competition in the resale of such products in the various localities in which the same are sold; thus tending to obstruct the free and natural flow of commerce in such products and the freedom of competition in this channel of interstate trade.

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PAR. 5. The above acts and practices of the respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Hills Brothers, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein, hearings were had and evidence and testimony were thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for Hills Brothers having submitted briefs and having argued the case before the Commission, the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Hills Brothers, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the city of San Francisco in said State. The respondent company was incorporated in February, 1914, and its capital stock is \$2,000,000. Its officers are A. H. Hills, president; R. W. Hills, vice president; E. M. Cofer, vice president and general manager; G. H. Hills, vice president; E. B. Hills, vice president; R. W. Hills, Jr., vice president, and P. L. Johnson, secretary. Respondent is engaged in the business of importing coffee from Brazil, Central America, Colombia, Hawaiian Islands, and Dutch East Indies, and, after roasting, grading, blending and packing the same, selling it in the United States. At the present time respondent deals only in coffee. It formerly imported and sold teas and spices but has discontinued dealing in those commodities.

PAR. 2. Respondent sells its coffee direct to the retail dealers in food products. In some of the Western States it also sells to a

few jobbers but at the same list price at which it sells to the retail dealers. Respondent also has in some of the Eastern States wholesale dealers to whom it allots exclusive territory in the sale of its coffee. Respondent has about 25,000 customers to whom it sells its coffee. About 54 per cent of these are located within the State of California, and the remaining 46 per cent are located in various other States of the United States but principally in the States of Washington, Oregon, Montana, Idaho, Utah, Colorado, Arizona, New Mexico, Nevada, Wyoming, and Missouri.

Respondent employs about 61 salesmen who visit the retail grocers and other retail dealers selling food products and solicit orders for its coffee. These salesmen are under the general direction of a sales manager who is located at the respondent's principal place of business in San Francisco. Respondent maintains branch offices in Los Angeles, Calif.; Portland, Oreg.; Seattle, Wash.; Butte, Mont.; Salt Lake City, Utah; El Paso, Tex.; and Denver, Colo.; which offices are in charge of branch office supervisors. At its branches respondent also maintains storage facilities, where it keeps a stock of its coffee and from which stock it supplies its customers in the adjacent territory.

Respondent markets its coffee under brands or trade names, among which are Red Can Brand, Blue Can Brand, Restaurant Special, and three brands of bulk coffee. The brand of coffee which respondent advertises most extensively is Red Can Brand, and those in which its volume of sales is the largest are the Red Can Brand and the Blue Can Brand. Coffee sold under the Red Can Brand is packed in vacuum tins in half-pound, one-pound, two-pound, two-and-one-half-pound, five-pound and twenty-pound sizes. Coffee sold under the Blue Can Brand is packed in paper cartons in one-pound, three-pound and five-pound sizes.

Respondent has created a demand for its coffee on the part of the consuming public by means of advertising in the States in which it does business. Respondent advertises extensively, using such mediums as billboards, street car advertising, store and window displays and newspapers. In the year 1923 respondent sold approximately 25,000,000 pounds of coffee, of which about 21,000,000 pounds was Red Can Brand and about 3,500,000 pounds was Blue Can Brand. About 44 per cent of respondent's sales were outside the State of California.

Respondent causes the coffee it sells to be transported from its principal place of business in San Francisco, Calif., or from one of its branch offices and storage houses which are located in various States, through and into various other States of the United States where the purchaser resides.

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PAR. 3. On November 5, 1920, respondent adopted a policy or plan of designating the minimum price at which the retail dealer should sell respondent's coffee to the consuming public. The plan adopted provides that the retail dealer must sell respondent's coffee for not less than five cents per pound above "store cost." "Store cost" is the list price at which the retailer buys the coffee, plus the transportation expense. Respondent's minimum resale price applies only to respondent's Red Can and Blue Can brands of coffee. Respondent's purpose in adopting this resale price policy was to make the price of its Red Can and Blue Can brands of coffee uniform in the various localities in which they were sold, and to prevent price cutting by dealers. The plan does not prevent the retail dealer from charging more than the five-cent margin allowed, but in some instances respondent's salesmen have questioned the wisdom and advisability of retail dealers selling respondent's coffee at higher than the minimum resale price where said retail dealers have offered for sale and sold the coffee at such higher prices. The fixing of a minimum resale price by respondent has the tendency to cause retail dealers to regard the said minimum resale price as a maximum resale price, and the great majority of dealers handling respondent's coffee do sell it at the said minimum resale price and no other.

PAR. 4. Respondent made its minimum resale price plan known to the retail dealer by first issuing a bulletin to all its salesmen, and they in turn informed respondent's customers. Later respondent caused advertisements of its minimum resale price plan to be published in retail grocery trade papers which had wide circulations in the States in which it sold its coffee. It also mailed to each of its customers copies of the advertisement that appeared in the said trade papers. Respondent's salesmen from time to time call to the attention of the retail dealer the minimum resale price plan. Particularly is this done when calling on a dealer to solicit business the first time.

PAR. 5. When respondent makes any change in the price of its Red Can and Blue Can brands of coffee, it notifies its branch offices and salesmen and they in turn notify the retail dealer. Notice is given the retail dealer either by telephone, a personal call, or by mailing a card. In some instances the new price quoted is the price at which the retail dealer is to sell to the consumer. At other times it is the new list price at which respondent sells coffee to the retail dealer. In the latter case the retail dealer adds five cents per pound to the price quoted, to comply with the respondent's minimum resale price plan.

PAR. 6. Respondent enforces its minimum resale price plan by refusing to sell its coffee to a retail dealer who sells Red Can Brand

or Blue Can Brand coffee for less than the minimum resale price established by respondent. When respondent learns that a retail dealer is selling its coffee below the minimum resale price, and the said retail dealer will not, after being solicited by respondent's salesmen, restore the price to that provided in respondent's plan, no more orders for coffee from that retail dealer will be filled by respondent. Since adopting its resale price plan respondent has refused to sell its coffee to approximately 100 retail dealers, located in various States, for failure to maintain the minimum resale price.

PAR. 7. Respondent learns of instances where its minimum resale price is cut, from its salesmen and from competing retail dealers located near the dealer cutting the price. The salesmen report instances of price cutting in their respective territories to respondent, and invite and procure from the retail dealers upon whom they call, reports of the failure of competing dealers to maintain the minimum resale price, which reports the salesmen transmit to respondent. Retail dealers selling respondent's coffee continually advise respondent's salesmen whenever a competitor cuts the minimum price established by respondent, and often telephone to one of respondent's branch offices and report instances of price cutting by competitors. These reports by retail dealers are solicited and requested by respondent's salesmen, who assure the retail dealers that if the offending dealer persists in selling below the minimum resale price respondent will refuse to sell him any more coffee.

PAR. 8. When a retail dealer is reported for failure to maintain the minimum resale price, one of respondent's salesmen calls upon the said dealer and endeavors to obtain a promise from him that he will restore the minimum resale price. The salesman threatens the offending retail dealer that if he does not restore such resale price, and promise to observe it in the future, his name will be taken off respondent's list of customers, and he will be unable to obtain any further supplies of respondent's coffee. Upon promises by the retail dealer of his intention to restore and maintain the minimum resale price the salesman assures him that respondent will continue to fill his orders for coffee, which it does.

PAR. 9. Retail dealers also often voluntarily report instances of failure to observe the minimum resale price by competitors, direct to respondent's main office. Upon receiving such a report respondent writes a letter to the dealer who is not maintaining the price, calling his attention to respondent's resale price plan and requesting the dealer's approval and cooperation. Respondent also writes a letter to the dealer making the report, thanking him for the information, and enclosing a copy of the letter sent the dealer who has failed to

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maintain the price. By this means respondent encourages its dealer customers to report to it all instances of price cutting which come to their attention. Respondent is always prompt to acknowledge and investigate reports of failure on the part of its dealer customers to observe the minimum resale price.

PAR. 10. Whenever a dealer refuses to maintain respondent's minimum resale price and he is refused a further supply of coffee, his name is removed from respondent's list of customers. This is accomplished by placing a sticker on the dealer's ledger folio or ledger card, upon which sticker the words "Do Not Sell" are written. These stickers are also used when a customer is removed from the list for other reasons than the failure to maintain the resale price.

PAR. 11. When a dealer has been refused further supplies of respondent's coffee for failure to observe the minimum resale price, and his name has been removed from respondent's list of customers, his name will not be restored to the list and he can not again buy its coffee from respondent until he has given satisfactory assurances that he will follow the minimum resale price established by respondent in the future. Respondent's Red Can and Blue Can brands of coffee are so well and favorably known in the Pacific Coast and Rocky Mountain sections of the United States that they are almost a necessity for a retail grocer to have in stock at all times.

PAR. 12. Respondent marks on the can in which it packs Red Can Brand coffee the date on which the coffee is packed, in code. The marking is not such a one that it would enable an employee of respondent, or any other person, to identify any can of coffee as being one of a certain shipment. No record is kept of what particular packages, cans, tins or cases are used to fill orders, and it is impossible to identify any particular can or package of coffee as being part of any order.

PAR. 13. The minimum resale price policy and practice of respondent, as applied to its Red Can Brand and Blue Can Brand coffee, as hereinbefore set forth, have the tendency and capacity to and do constrain all retail dealers handling said brands of respondent's coffee uniformly to sell the aforesaid coffee to the public at the prices fixed by respondent for the respective territories in which they are located, and further to hinder and restrict competition between retail dealers handling respondent's said brands of coffee. Respondent's said practices tend to and do unduly hinder and obstruct competition in the sale and distribution of coffee in the course of interstate commerce.

CONCLUSION.

The methods of competition set forth in the foregoing findings are, under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and the evidence, and the Commission having made its findings as to the facts, with 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,"

Now, therefore, it is ordered, That respondent, Hills Brothers, its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly carrying into effect by cooperative methods a system of minimum resale prices at which the articles manufactured by it shall be resold by its distributors and retail dealers, and more particularly by any or all of the following means:

1. Requiring purchasers or prospective purchasers to agree that they will not resell below a minimum price specified by respondent.
2. Utilizing its salesmen for the purpose of enforcing cooperation in its resale price maintenance plan, to report retail dealers who do not observe its suggested minimum resale price, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.
3. Requesting dealers, either directly or through its salesmen, to report competitors who do not observe the minimum resale price suggested by respondent, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported.
4. Requiring from retail dealers previously cut off because of price-cutting, promises or assurances of the observance of respondent's minimum resale price as a condition precedent to reinstatement of said dealers.
5. Requiring from retail dealers charged with price cutting, promises or assurances of the observance of respondent's minimum resale prices as a condition precedent to future sales to said dealers.

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6. Causing retail dealers to be enrolled upon lists of undesirable purchasers who are not to be supplied with the products of the company unless and until they have given satisfactory assurances of their purpose to maintain such minimum resale prices in the future.

7. Utilizing any other equivalent cooperative means of accomplishing the maintenance of minimum resale prices fixed by respondent for its product.

It is further ordered, That respondent, within sixty days after service upon it 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 out.

By the Commission, Commissioner Gaskill dissenting.

Complaint.

IN THE MATTER OF
PURITAN SILK CORPORATION.

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

Docket 1204—January 28, 1925.

SYLLABUS.

Where a corporation engaged in the wholesale distribution of fabrics in competition with concerns which either correctly branded and labeled their products with reference to composition, or failed to brand and label the same at all in that respect; designated and described a fabric composed of cotton and an animal or vegetable fiber and so finished that it had a silklike appearance, but containing no true silk, as "Novelty Silk" and "Puritan Silk" in its circulars, catalogues and advertisements; with the effect of misleading and deceiving the purchasing public with reference to the composition of said fabric and of thereby inducing the purchase thereof:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. Robert O. Brownell for the Commission.

Mr. Arthur M. Kracke of Davis, Ramsay, Kelly & Kracke of Chicago, Ill., 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 duties, and for other purposes," the Federal Trade Commission charges that Puritan Silk Corporation, a corporation, 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, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. That respondent, Puritan Silk Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal or executive offices located in the city of Chicago, in said State. It is now and has been for more than one year last past, engaged in the wholesale distribution of fabrics in interstate commerce. In