

Complaint.

IN THE MATTER OF
JAMES HEDDON'S SONS.

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

Docket 1188—June 2, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture of fishing tackle and in the sale thereof to jobbers and to retailers; in pursuance of a policy directed to the observance of the prices fixed by it for the sale of its products at wholesale and at retail, which prices it incorporated in the price lists which it issued to the trade from time to time, and which policy it made known as it did its practice of penalizing price cutters through less favorable discounts, followed by a discontinuance of relations, if necessary,

- (a) Entered into, and procured from dealers, agreements and assurances binding them to observe said prices, as a condition precedent to doing business with them;
- (b) Requested its dealer customers to report the names of price cutters or persons suspected as such; and
- (c) Sought their cooperation in making its aforesaid policy effective by advising them of its intention to act upon reports sent in by them of price cutting, by the penalization of the price cutter through less favorable discounts, or his elimination, or by informing them that price cutters reported to it who would not give assurance of adherence to the suggested resale prices had been or would be refused further sales;

With the result that its prices were generally observed by both jobbers and retailers, dealers were prevented from selling its products at such lower prices as they might consider warranted by their respective selling costs and by trade conditions generally, and competition in respect of its products was suppressed and hindered:

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

Mr. Alfred M. Craven for the Commission;
Langworthy, Stevens & McKean 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 James Heddon's Sons, a corporation, hereinafter referred to as

Complaint.

9 F. T. C.

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 Michigan with its principal office and place of business in the city of Dowagiac, in said State. It is engaged in the manufacture of fishing tackle, artificial bait and allied products, and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said products when so sold to be transported from its said principal place of business at Dowagiac, Mich., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations likewise engaged in the manufacture and/or sale of similar products in interstate commerce.

PAR. 2. In the conduct of its aforesaid business respondent, during the three years last past, has enforced, and still enforces, a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its aforesaid products shall be resold by dealers handling same, and respondent enlists and secures the support and cooperation of wholesale and retail dealers and of respondent's officers, agents and employees in enforcing said system. In order to carry out said system respondent during aforesaid time has employed, and still employs, the following, among other means whereby respondent and those cooperating with it have undertaken to prevent and have prevented dealers handling respondent's said products from reselling same at prices less than aforesaid resale prices established by respondent:

(a) Respondent fixes uniform minimum prices at which retail dealers handling respondent's products shall resell same to the purchasing public, and by a system of discounts from said prices fixes prices at which wholesale dealers may procure said products from respondent and wholesale prices at which such wholesale dealers shall resell said products to retail dealers, and respondent issues and sends to dealers handling its said products price lists in which said uniform minimum prices and discounts are set forth.

(b) Respondent makes it generally known to the trade by letters, circulars, interviews with respondent's agents, and otherwise, that respondent expects and requires dealers handling said products to maintain and enforce said resale prices, and that

Complaint.

respondent will refuse to sell and supply said products to dealers failing to maintain and enforce said resale prices.

(c) Respondent exacts promises from and enters into undertakings with dealers for the maintenance by them of said resale prices as a condition of opening accounts with such dealers or of continuing their supply of said products.

(d) Respondent holds itself out as ready at all times to cooperate with dealers, and it does so cooperate, in enforcing and maintaining said resale prices, and solicits and secures from dealers handling respondent's said products reports of the names of other dealers who fail to observe and maintain said resale prices.

(e) Respondent secures the cooperation of its salesmen and other agents and employees in preventing dealers who fail to maintain said resale prices from obtaining respondent's said products and to that end causes said salesmen and other agents and employees to investigate instances of reported failure to maintain said prices and to seek for instances of such failure and to report to respondent in the premises.

(f) Respondent uses the information received through the means set out in specifications (d) and (e) hereof, or by any other means, to induce and to coerce dealers who fail to observe said prices to maintain said prices in the future, by exacting promises and assurances from said dealers that they will in the future maintain said prices, and by threatening such dealers that if they do not maintain said prices respondent will refuse to further supply them with said goods.

(g) Respondent either refuses to further supply with said products dealers who fail to maintain and observe said prices or continues to supply such offending dealers only at discounts less favorable than the discounts theretofore accorded them.

(h) Respondent refuses to further supply with goods the offending dealers referred to in specification (g) hereof at said discounts theretofore accorded them unless and until said offending dealers promise and undertake with respondent to thereafter maintain said resale prices.

(i) Respondent in order to intimidate and coerce hostile or reluctant dealers on the one hand and to encourage cooperating dealers on the other, informs its dealer customers generally of the names of dealers failing to maintain said resale prices and the punitive action taken by respondent in the premises.

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

Findings.

9 F. T. C.

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

PAR. 3. The direct effect and result of above alleged acts and practices of respondent has been and now is to suppress competition among retail dealers in the distribution and sale of respondent's products; to constrain said dealers 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 price 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, the Federal Trade Commission issued and served a complaint upon the respondent, James Heddon's Sons, 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 William C. Reeves, an examiner of the Federal Trade Commission, duly appointed.

Thereupon this proceeding came on for final decision 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 is now and has been for 15 years a corporation organized and existing under the laws of the State of Michigan, with its principal place of business at Dowagiac, in said State. It is now engaged and has been engaged during its corporate existence in the manufacture of fishing tackle, which includes rods, reels, wooden and metal baits, and many other articles. The articles manufactured by respondent are sold by it to jobbers of hardware and sporting goods, about 200 in number, and also to retail merchants,

about 1,000 in number, throughout the United States. The major portion of its products is sold to jobbers. Respondent transports or causes its products to be transported when sold from its factory to the purchasers thereof at their various locations throughout the United States. In the course and conduct of its business, respondent is in competition with many other individuals, partnerships, and corporations also engaged in the manufacture of fishing tackle, and who sell and transport same from their respective factories in the United States into and through the various States.

PAR. 2. Respondent issues to the trade from time to time price lists descriptive of its products, in which price lists are specified the prices to be charged the ultimate consumer by the retail merchant. These prices also constitute the list prices of respondent in dealing with its customers, namely, the jobbers and retail merchants. The prices charged by respondent to jobbers and retail merchants are fixed by discounts from these list prices. During the years 1921, 1922, and 1923 the discount to the jobber was 50 per cent from the list price, and the discount to retailers was from 33½ per cent to 40 per cent, according to the amount of the purchase. These discounts were maintained by the respondent in all its direct sales to jobbers and retailers, and suggested to the jobbers as the terms upon which they should sell retail merchants.

The giving of these discounts is not determined by any proper or usual definition of the word "jobber." Discounts given to jobbers, meaning concerns which carried stock, traveled salesmen and sold to retailers respondent's products in large quantities, were withdrawn for the reason that the jobber had not been observing the discount required of him to be observed in his sales to retail merchants.

Respondent's system of discounts to jobbers was used by it for the purpose and with the effect of maintaining uniform resale prices for its products. Under date of March 22, 1921, the president of the respondent wrote to its attorney, and among other things inquired:

In cases where goods have been heretofore sold by us at a discount of 50 per cent, could we arbitrarily refuse to sell them at less than 33½ per cent from list, so as to eliminate the opportunity for price cutting? (Com. Ex. No. 105.)¹

The president of the respondent testified that discounts to jobbers and retailers varied according to the quantity purchased and the disposition of the purchaser to observe the resale prices fixed by respondent, and that if jobbers cut the prices for respondent's goods, their discount would be reduced from 50 per cent to 33½ per cent.

Findings.

9 F. T. C.

PAR. 3. Respondent had as early as March, 1921, understandings with all jobbers to whom it sold its goods that same would be resold by such jobbers to the dealers or retailers at the prices fixed by respondent. The president of respondent, writing to his attorney under date of March 22, 1921, says:

We have two prices on our goods, one to the jobber, and one to the dealer. It is tacitly understood that when jobbers re-sell our goods our suggested prices to the dealer will be observed by them. (Com. Ex. No. 105.)

In the year 1921 the respondent issued generally to the trade a circular letter announcing a price maintenance policy, pertinent portions of which are as follows:

PRICE MAINTENANCE POLICY.

In announcing a policy of maintaining prices on Heddon's "Dowaglac" Tackle we are prompted by a desire to protect the jobber who is investing his time and money in stock with the expectation of receiving a legitimate margin of profit in return.

It is well known that in some instances the ambition to make a sale rather than a profit has led to price cutting, not only on our line, but on all others. We want you to have your full margin on Heddon products and are not only willing, but are desirous, of making use of any and all means that will afford you such protection.

In view of these various matters we feel that we can with fairness ask for the cooperation of all who are jobbing our line. We want to cooperate with you in every possible way toward building up a mutually profitable volume of business. (Com. Ex. No. 114.)

Writing to one of his salesmen in reference to this policy, under date of November 4, 1921, the sales manager of respondent says:

We now have the assurance of every large jobber in the country that our policy is to be maintained and on the other hand we must and are morally obligated to follow out our own policy in each and every case. (Com. Ex. No. 96.)

PAR. 4. In the year 1922 respondent adopted and made effective the plan of procuring from its dealers as a condition of supplying them with its products verbal promises to maintain the prices specified by respondent. Under date of May 20, 1922, respondent's president wrote to one of its jobbers which purchased respondent's products up to an amount of from \$20,000 to \$30,000 per year, expressing his intention of putting into effect a plan of procuring such verbal promises. A portion of the letter is as follows:

Now, as to the future:

I wish to assure you that we are giving these questions very earnest and daily consideration and our present state of mind is that we will begin on July 1st with a discount of 40 per cent from list to the dealer; 50 and 5 per cent discount to the jobber, and although the margin to the jobber under these

discounts will not be as large, theoretically, as at the present time, owing to the fact that we shall cease to do business with Tryon and several other jobbers who have a well established reputation for price cutting and in fact will exact from each jobber we sell for 1923 a verbal promise to maintain our resale price, we believe that there will be very little price cutting on our line another year. As rapidly as we may get complaints that any jobber is cutting prices for 1923 business, we shall immediately put him on our 33¼ per cent list and we do not care who this hits. (Com. Ex. No. 12.)

Shortly after the writing of this letter and under date of July 13, 1922, respondent issued a circular letter to the trade announcing the "Heddon policy for 1923." In this circular letter respondent advised the trade as follows:

In order that we may have a better understanding with our jobbing distributors and believing that closer contact will prove mutually profitable, we shall not book any jobbing business in 1923 until we have had a personal interview with both your buying and selling departments. (Com. Ex. No. 103.)

One of the investigating attorneys for the Commission testified, which testimony was not contradicted, that the secretary and treasurer of respondent made the following statement to him in reference to the object of the personal interview mentioned in the above-quoted matter:

Mr. Stolley stated he was not in active charge of the business here and that business was in charge of Mr. Wooster and Mr. Heddon. However, he recalled the stockholders' meeting which he attended or of which he was a member, or board of directors' meeting that that subject matter had been discussed and that they had decided upon a policy for 1923 in which policy they were to extract a promise from every distributor that he would maintain the suggestive resale prices for Heddon's goods. I further recall that he stated that such a promise had been extracted from various distributors, the larger ones having been visited by Mr. Heddon and Mr. Wooster and the smaller ones by the salesmen. He referred slightly to the mail-order houses, I think Montgomery-Ward and Sears Roebuck. I had the exhibits I selected from the files regarding the selling of these two concerns and he stated that that was typical of what the company was doing, namely, that if they did not agree to maintain the prices they would be cut off or they would not be sold Heddon's goods.

PAR. 5. Under date of September 26, 1922, the sales manager of respondent wrote to a salesman covering the California territory, using the following language:

Honeyman Hdw. Co.'s order has not been received and any of these orders which come in will be held pending your arrival, as we will not accept any orders until you have had a chance to call on them and outline our policy for 1923, etc., all of which we talked over with you when you were here last. In other words, we want your "O. K." (Com. Ex. No. 77.)

The president of respondent testified that the "O. K." referred to in this letter of the sales manager included a favorable report as to

Findings.

9 F. T. C.

the disposition of the prospective customer to maintain resale prices fixed by respondent. In obtaining the necessary information the salesman was by respondent directed to and did interview prospective customers for the purpose among other things of obtaining his promise to observe the specified resale prices in accordance with the plan adopted and put into effect by respondent as heretofore recited in paragraph 4 of these findings.

PAR. 6. In May of 1922, respondent, after having investigated a report made by one of its jobbers to the effect that Wilson & Co., of Chicago, was cutting prices, notified the latter that its jobbing discount had been withdrawn and that it had been placed upon the dealers' list which entitled it to a discount of $33\frac{1}{3}$ per cent instead of a discount of 50 per cent. This was done notwithstanding Wilson & Co. was in fact a jobber and had handled during the preceding year some \$6,000 worth of respondent's products. This reduction to a less favorable discount resulted in a discontinuance of business. In the following year Wilson & Co. was reinstated upon its agreement, among other things, to maintain respondent's suggested prices in the future.

PAR. 7. Respondent has received from dealers many complaints that other dealers were cutting prices and has earnestly requested such complaints, giving their customers to understand that they welcome such reports and would investigate same, and if upon investigation the alleged price cutter was found guilty that he would be reduced to a less favorable discount or his supply would be discontinued. Under date of June 10, 1922, the Shapleigh Hardware Co., a very heavy jobber of respondent's products, sent to respondent a copy of a circular letter which it had sent to its salesmen, in which the following language appears:

As you know we have steadily maintained the regular selling schedule on Heddon merchandise namely, on orders amounting to \$300.00 net, discount is SZ%, anything less than his No. -O/N%. We have in some instances run across certain parties who were not maintaining this schedule. Wherever we could get definite positive proof of this that we could submit the factory the offender has been removed from Heddon's list. (Com. Ex. No. 16.)

Respondent, in acknowledging this letter and in reference to the circular letter enclosed, says:

Again referring to the letter which you wrote your salesmen, this exactly sets forth our ideas and wishes and we certainly thank you for this cooperation. (Com. Ex. No. 17.)

Under date of April 15, 1922, respondent addressed a communication to the Shapleigh Hardware Co., making the following request:

I wish you would send to our office, marked for the writer, all information your salesmen forward to you with reference to cutting our prices.

And again, under date of May 2, 1922, respondent wrote to the same jobber:

We solicit your continued cooperation in bringing to our attention, and furnishing conclusive proof where possible, on instances similar to the Wilson case.

Numerous other instances of similar character appear in the record.

PAR. 8. It was the respondent's policy, as indicated by many of the exhibits, to advise its customers generally of the fact that it discontinued relations with customers after giving them less favorable discount by reason of the failure on the part of such customers to observe respondent's resale prices. Under date of April 18, 1922, respondent wrote to one of its jobbers:

In reference to the two jobbers whom we advised we were taking from our list, we have written to all of the leading jobbers on our list advising them of the action we have taken, and for their information again reviewing our jobbing and resale discounts, giving the terms under which we allow special 40 per cent discount from list.

We surely hope that this will strengthen the spines of some of them who we believe are needing it. (Com. Ex. No. 5.)

The president of respondent testified that the object of sending communications to respondent's jobbers from time to time reciting that certain other jobbers had been eliminated from handling respondent's goods because they cut prices, was to create increased good will with jobbers who maintained the suggested resale prices.

Such information was also conveyed by respondent to salesmen with instructions to make reference to same in their sales talks and interviews with prospective customers.

PAR. 9. The selling policy of respondent is based upon the use of a base list price with discounts therefrom, by which are fixed the prices to jobbers and consumers of respondent's products. Respondent insists upon the observance of such prices and to that end procures from its dealers generally agreements, understandings and promises that the resale prices fixed by it shall be observed.

PAR. 10. Respondent solicits and secures from its dealers reports of price cutting on the part of other dealers and gives its dealers generally to understand that such reports are welcome and will be investigated, and that it will discontinue business relations with price cutters or give them less favorable discounts. Acting on such reports, and in pursuance of the representations made by it to reporting dealers, respondent does investigate such reports and upon ascer-

Order.

9 F. T. C.

taining same to be true refuses further goods to the price cutter or reduces him to a less favorable discount; and in order to intimidate and coerce dealers who cut, or threaten to cut, respondent's resale prices and to encourage dealers who agree to and do maintain its resale prices, respondent informs its customers generally of the action taken by it in reference to persons or concerns found to be deviating from respondent's resale prices.

Persons cut off or reduced to a less favorable discount for price cutting are reinstated only upon giving satisfactory assurance of the future observance of the resale prices fixed by respondent.

PAR. 11. Respondent has enlisted the cooperation of its dealers generally in an active effort to maintain respondent's price maintenance policy, by means of the methods mentioned in these findings, with the effect that both jobbers and retailers handling respondent's products generally throughout the United States have sold and do sell such products at the uniform prices fixed by respondent, thereby preventing such dealers from selling respondent's products at such lower prices as might be deemed by them to be warranted by their respective selling costs and by the trade conditions generally and thus suppressing and hindering competition, in respect to respondent's products, in interstate commerce.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances set forth herein, 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, 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, James Heddon's Sons, a corporation, its officers, agents, representatives, servants and employees, cease and desist from:

(1) Entering into or procuring from dealers contracts, agreements, understandings, promises or assurances that respondent's

199

Order.

products are to be resold by them at prices specified or fixed by respondent;

(2) Requesting its dealers to report the names of persons who do not maintain respondent's resale prices, or who are suspected of not maintaining same;

(3) Seeking the cooperation of dealers in making effective its resale price maintenance policy by advising dealers of its intention to act upon reports sent in by them of variations from its suggested prices, by the elimination of the price cutter or by informing dealers that price cutters reported who would not give assurances of adherence to its suggested resale prices had been or would be refused further sales.

It is further ordered, That the respondent, James Heddon's Sons, a corporation, 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.

9 F. T. C.

IN THE MATTER OF
HOLEPROOF HOSIERY COMPANY.

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

Docket 1048—June 9, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture of hosiery, and in the sale thereof to retail dealers; in pursuance of a policy directed to the observance of the prices fixed by it for the sale of its product at retail, which prices it incorporated in price lists sent to dealers and consumers, and which policy it made generally known to the trade, together with its purpose to refuse further sales to those who did not observe its prices,

- (a) Invited its dealer customers to report prices cutting by competitors to it;
- (b) Investigated such cases and threatened those concerned with refusal to supply them further with its goods; and
- (c) Made such reports the grounds for (1) refusing to make further shipments of its products to dealers reported or threatening so to do, unless or until such dealers gave specific assurances that they would thereafter maintain its prices, (2) recording upon a "black list" the names of retailers so reported, as dealers not to be sold unless and until they gave assurances as aforesaid, and (3) utilizing numbers placed upon the boxes or packages of its product for the purpose of ascertaining and cutting off sources of supply of dealers so reported;

With the result that its prices were generally observed, dealers were prevented from selling its products at such lower prices as they might consider warranted by their respective selling costs, and by trade conditions generally, and competition in respect of its products was suppressed and hindered:

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

Mr. William A. Sweet for the Commission.

Bottum, Hudnall, Lecher & McNamara of Milwaukee, Wis., 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 Holeproof Hosiery Co., 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 Wisconsin, and having its principal office and