

Complaint.

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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

place of business located at Milwaukee in said State. For more than two years last past respondent has been, and still is, engaged in the manufacture of hosiery for men, women, and children, which it sells to retail dealers of such products throughout the United States. Respondent causes its said products, when sold, to be transported from its said factory in the State of Wisconsin into and through other States of the United States to the purchasers thereof, and has been and now is in active competition with other individuals, partnerships, and corporations similarly engaged.

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 certain specific standard resale prices at which certain of its products, sold under the brand or trademark of "holeproof" shall be resold by retail dealers throughout the United States, handling the same; and respondent has enlisted the active support and cooperation of its said distributors and of its various agents and employees in enforcing the maintenance of said prices.

PAR. 3. In order to carry out said plan or policy and to secure the cooperation therein of its said retail distributors generally, respondent has 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 resale prices so established by respondent:

(a) It issues price lists to the retail trade in which its various established resale prices for its said Holeproof products are set forth;

(b) It requests and insists that retail dealers handling its said products shall observe said resale prices;

(c) It makes it generally known to the trade by letters, circulars, salesmen interviews, and by other means that it requires all distributors handling its said products to maintain and enforce said resale prices, and that it will refuse further sales to all dealers failing to observe and maintain the same;

(d) It procures from retail dealers handling its said products reports of instances of nonmaintenance of said resale prices by other distributors handling said products;

(e) It requires its traveling salesmen and other agents to report, and they do report the names of retail dealers who are selling, or have sold respondent's said products at prices other than said established resale prices;

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(f) It uses the information received through reports mentioned in (d) and (e) above to induce and compel the observance of said resale prices by all of its said distributors so reported to it, by

(1) exacting promises and assurances from such distributors that they will thereafter maintain respondent's resale prices; and

(2) threatening that if such prices are not maintained no further shipments will be made to such distributors by respondent or others;

(g) It keeps a black-list or other record in which are entered the names of dealers handling its products who have failed to observe and maintain its said resale prices;

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

(i) It adds new retail dealers to its list of distributors upon receiving assurances or promises of said distributors that they will observe and maintain said resale prices;

(j) It seeks and secures the cooperation of its distributors, customers and agents generally in preventing others who have failed to maintain said resale prices from obtaining respondent's said products;

(k) It utilizes a system of numbers stamped on containers of its products to enable it to trace the source of supply of dealers failing to maintain said resale prices in order to prevent such dealers obtaining further goods;

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

PAR. 4. The above acts and practices of respondent have had and still have the tendency to constrain, and do constrain all retail dealers and other distributors handling respondent's said products to sell the same at the said resale prices fixed and established by respondent, as aforesaid, and to prevent such distributors from reselling said products at other prices and especially at prices lower than those fixed and established by respondent and at prices which said several distributors 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 among distributors thereof 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 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, Holeproof Hosiery Company, 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 Web Woodfill, an examiner of the Federal Trade Commission duly appointed.

And thereupon this proceeding came on for decision, and the Commission having duly considered the records and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is now, and has been since 1906, a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business at Milwaukee, in said State, with branches and warehouses, one in the city of New York, State of New York, and another in the city of San Francisco, State of California, where it carries stocks of goods. It is engaged in the manufacture of hosiery for men, women, and children, which it has sold and does sell to retail dealers located in all the States of the United States. Certain of its product has been manufactured and sold and now is manufactured and sold under the brand and trade name of "Holeproof." The findings of facts herein relate only to respondent's said business in Holeproof hosiery. Respondent's customers number between 12,000 and 13,000 retail dealers in hosiery, located in the various States of the United States and it employs between 75 and 100 salesmen who call upon the trade. The volume of business done by respondent in Holeproof hosiery is sub-

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stantial. Its total business in hosiery is approximately 1,000,000 dozen pairs of hose annually.

Respondent transports, or causes its products to be transported when sold, from its factory or one of its branches and warehouses 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 other individuals, partnerships, and corporations, also engaged in the manufacture of hosiery and who sell and transport same from their respective factories in the United States into and through the various States of the United States.

PAR. 2. Respondent issues price lists of its Holeproof products from two to four times a year which it sends to dealers and consumers. The price lists sent to consumers show only the prices at which its products are sold to consumers; the price lists sent to dealers show both the wholesale prices to dealers and the retail prices shown on the price lists sent direct to consumers. Respondent requests and insists that retail dealers handling its said Holeproof products, shall resell the same at the prices set forth in said price lists. Dealers selling respondent's Holeproof hosiery at the prices indicated in said price lists realize a gross profit of 50 per cent on the cost prices and $33\frac{1}{3}$ per cent on the selling prices shown in said price lists.

Respondent makes it generally known to the trade by letters, salesmen's interviews, and by other means that it requires all distributors handling its said Holeproof products to maintain and enforce the retail prices set forth in its price lists and that it will refuse further sales to all dealers failing to observe and maintain the same.

Under date of October 25, 1920, respondent wrote to Mayer Brothers:

We hope that you will write us at once that you will sell Holeproof hosiery hereafter at the list prices. (Com. Ex. 20.)

Under date of August 3, 1921, respondent wrote to Muchow Brothers & Pruess:

We hope you will comply with our suggestion in this matter and will appreciate your assurance to that effect. (Com. Ex. 41.)

Under date of November 15, 1921, respondent wrote to A. Slote & Sons:

It is our policy to confine the sale of our products to trade reselling the goods at the regular established prices, and we shall appreciate your promise to maintain these prices hereafter. (Com. Ex. 4.)

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Under date of March 8, 1922, respondent wrote to Wagner, its salesman:

It would certainly be a pretty poor exhibition of salesmanship if we were unable to do business with Richter's and get them to maintain prices. We are positive that if you can not accomplish this it can be done by us directly, so go to Davenport and tell Richter's that we positively will not do business with them again unless they maintain our prices. (Com. Ex. 57-A, 57-B.)

Under date of March 21, 1922, respondent wrote to Willis, salesman:

You had better see them again or write them and tell them that your firm has informed you definitely that unless they stop cutting prices no more orders will be accepted from them. (Com. Ex. 59.)

Under date of July 9, 1922, Wagner, salesman of respondent, wrote to Tabor Mercantile Company:

* * * would ask you to please raise the price to \$1.65 and \$1.60 * * * it certainly is not asking a great deal from a dealer to cooperate with us on our advocated prices. (Com. Ex. 71.)

Under date of July 21, 1922, respondent wrote to Reedy, its salesman:

We dislike, on account of various court rulings, to go on record as insisting that dealers maintain prices, but a salesman can always tell the dealer when he is on the spot, that it is our policy to ship goods only where our customers resell the goods at the suggested figures and in that way you can get dealers back in line. (Com. Ex. 6.)

There are other exhibits consisting of correspondence between respondent and its customers which show, and the Commission finds it to be a fact, that respondent established certain specified uniform prices at which its Holeproof hosiery should be resold by dealers handling same; that respondent insisted and still insists that retail dealers handling its said Holeproof products shall resell the same at the prices established by respondent and that respondent refused and still refuses further sales of its Holeproof products to dealers failing to observe and maintain its established prices for their resale.

PAR. 3. Respondent received from its customers many complaints that others of its customers were not maintaining the prices established by it for the resale of its Holeproof products. Similar reports were also received by respondent from its salesmen. These reports were promptly investigated by respondent. In many instances copies of the advertising matter issued by the dealer complained of accompanied the complaint.

Under date of November 13, 1921, in response to a complaint respondent wrote to the complaining customer as follows:

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We are in receipt of your letter of November 12, and thank you for calling our attention to the price at which another merchant in Poughkeepsie is offering our line. We are taking this matter up at once and trust there will be no further price cutting. Should you have any further intimation that our prices are not being observed in your city will you please let us know. (Com. Ex. 3.)

Under date of June 13, 1922, respondent replied to a complaining customer as follows:

We are surprised to learn of the action of the Higgs Clothing Company in cutting prices. This matter will have immediate attention. (Com. Ex. No. 9.)

Under date of June 20, 1922, respondent in further replying to complaining customer wrote as follows:

Thanks for your letter of June 15, to which you have attached a clipping of the advertisement of the Hibbs Clothing Company in which Holeproof was offered at cut prices. (Com. Ex. 12.)

Also under date of June 20, 1922, this matter was referred by respondent to its representative W. L. Slocum with the instructions that—

It might be advisable for you to take the matter up and give him one more chance to reform. (Com. Ex. 13.)

Under date of June 22, 1922, respondent wrote to the customer making the complaint as follows:

We do not intend to accept any more orders from the Hibbs Clothing Company and we thought you had been informed of our decision. Had Hibbs maintained prices it would have been a rather delicate matter for us to refuse their orders, but as long as they persist in cutting we have no alternative but to cut them out. (Com. Ex. 7.)

Under date of March 24, 1922, respondent replying to a customer complaining of price cutting by Browning-King & Company wrote as follows:

We have already taken this up with them and do not believe that any such ads will be run in the future. If they are we shall be very glad to have you keep us advised. (Com. Ex. 63.)

Under date of July 18, 1922, H. A. Reedy, a salesman employed by respondent wrote to respondent in reference to Womans Toggery, Inc., as follows:

Please find enclosed advertisement from the El Paso paper which is self-explanatory. (Com. Ex. 5.)

Respondent's president testified that complaints of price cutting by dealers in Holeproof hosiery "arose either through a complaint of competitive dealer or through a report of a salesman." Record

page 80. As to reports by salesmen of respondent the president of respondent testified as follows:

Q. Your salesmen are required in the course of their employment to report anything that might have an effect upon your business?

A. Yes sir.

Other exhibits consisting of correspondence between respondent and its customers, and the testimony of its officers show, and the Commission finds it to be a fact, that respondent seeks and secures the cooperation of its salesmen in the field and its distributors in the maintenance and enforcement of the resale prices established by respondent for its Holeproof hosiery products.

PAR. 4. Respondent acting on reports received from dealers and its own salesmen respecting failure to maintain prices established by it for its Holeproof products by other dealers in such products and in pursuance of the representations made by it to the reporting dealers has refused and still refuses to supply dealers against whom such reports have been made further with goods until they have given satisfactory assurance for the maintenance of respondent's established resale prices in the future.

Under date of May 25, 1921, respondent received from Burley's, a customer, a complaint concerning W. L. Goodnow Co., also a customer of respondent. Under date of June 2, 1921, respondent replied to Burley's as follows:

We are taking this matter up with them immediately and unless they maintain our regular prices hereafter we shall certainly decline their future business. (Com. Ex. 22.)

Also on June 2, 1921, respondent wrote to W. L. Goodnow Co. as follows:

We regret very much that you have found it advisable to cut the regular prices on our hosiery. We will thank you therefore to assure us that in the future you will not cut list prices as we will be unable to accept future orders unless we feel that you will retail the goods at regular prices. (Com. Ex. 23.)

On June 8, 1921, respondent's sales manager ordered its New York branch to cancel all unfilled orders of W. L. Goodnow Company. (Com. Ex. 83.)

Under date of June 11, 1921, W. L. Goodnow Company telegraphed respondent as follows:

Gentlemen: It is in our interest to maintain your prices and we hereby give you every assurance that we will do so. (Com. Ex. 27-A, 27-B)

Under date of June 14, 1921, respondent wrote to W. L. Goodnow Company as follows:

We are pleased to inform you that we have today issued instructions to our office and eastern branch to reinstate the orders that have been held up and to give them attention.

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We are doing this with the distinct understanding that hereafter our prices are to be maintained by you. (Com. Ex. 32)

Under date of August 8, 1921, respondent wrote to Muchow Brothers & Pruess, as follows:

We hope you will comply with our suggestion in this matter and will appreciate your assurance to that effect. (Com. Ex. 41)

On August 11, 1921, Muchow Brothers & Pruess wrote to respondent:

We assure you that this will not happen again. (Com. Ex. 39)

On August 12, 1921, respondent replied to Muchow Brothers & Pruess as follows:

We are in receipt of your letter of August 11, and thank you for your assurance that our hosiery will be sold by you hereafter at the suggested retail prices.

PAR. 5. Respondent within the time mentioned in complaint maintained and does maintain a record or file, designated by it and by its salesmen as a "Black List" in which are entered the names of dealers handling its products with whom respondent refuses to deal, including the names of dealers who have failed to observe and maintain the resale prices established by respondent for the sale of its Holeproof products.

Under date of December 19, 1921, respondent wrote to Willis, one of its salesmen, as follows:

As per your request of December 17, we are instructing our office to put Bing Clothing Company of Parsons, Kansas, on the "Black List" and will not accept any more of their orders. (Com. Ex. 51)

Under date of February 23, 1922, respondent wrote to Wagner, one of its salesmen, as follows:

It will be necessary for you to get for us definite assurance from Mr. Greer that he is going to maintain the advertised price or we will be compelled to put him on the "Black List." (Com. Ex. 54)

PAR. 6. Respondent has during the time mentioned in the complaint utilized numbers upon the boxes and packages containing its Holeproof products in an attempt to trace the source of supply of a dealer who failed to observe respondent's resale prices, and cooperating with one of its customers who was a competitor of the dealer complained of sought to cut off the supply of Holeproof products of the dealer who failed to observe and maintain said resale prices.

Under date of April 3, 1922, respondent wrote to its customer who had complained that another customer of respondent had failed to maintain respondent's resale prices, as follows:

On every box of merchandise that has left here since about December 1st we have marked a number on the cover of the box as per sample of box top

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enclosed. If it will be possible for you to get hold of one of these boxes or part of a box showing this number we will then be able to find out definitely where he is obtaining the merchandise and will then be able to cut off his source of supply. (Com. Ex. 84.)

PAR. 7. Respondent has used the methods set forth in the foregoing paragraphs of these findings wherever found necessary to enforce its policy of resale price maintenance, and has enlisted and obtained the cooperation of its dealers and agents in an active effort to maintain its price maintenance policy by means of such methods, with the effect that dealers handling respondent's products generally throughout the United States have sold and do sell such products to the consuming public 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 the respective selling costs and by 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 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 answer of respondent, the testimony and evidence submitted, the trial examiner's report upon the facts and exceptions thereto, 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, Holeproof Hosiery Company, its officers, agents, representatives, servants and employees cease and desist from carrying into effect its policy of procuring and enforcing resale prices at retail upon its Holeproof products in the hands of customers by cooperative methods in which the respondent and its distributors, customers and agents undertake to prevent others

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from obtaining the respondent's Holeproof products at less than the prices designated by it:

1. By inviting or soliciting directly or through its agents or employees from its dealer customers, reports or communications, oral or written, concerning price cutting by retail dealers, competitors of the dealers so reporting or communicating;

2. By investigating through its officers, agents or other employees, alleged instances of price cutting by retailers reported to it by its customers;

3. By communicating with retailers reported to it by its customers as having sold its Holeproof products at prices less than resale prices established by the respondent, and threatening to refuse further goods to such dealers;

4. By acting upon reports or communications from its dealer customers concerning price cutting by retail dealers, competitors of the dealers so reporting or communicating by:

(a) Refusing or threatening to refuse further shipments of Holeproof products to the dealers so reported, unless and until such dealers have given specific assurance that they will maintain respondent's established prices in the future;

(b) Recording upon any list maintained by it, the names of any retail dealers reported to it by any customer as having sold Holeproof products at prices less than the retail prices established by respondent with the word "Black List" or other words intended to convey the intelligence that the dealer so reported is not to be sold any goods unless and until such dealer has given specific assurance that he will maintain respondent's established prices in the future;

(c) Utilizing numbers placed upon boxes or packages containing its Holeproof products for the purpose of ascertaining the source of supply of any dealer reported to it as having sold said products at prices less than the retail prices established by respondent in order to cut off the supply of such products from the dealer so reported.

5. By utilizing any other equivalent cooperative means for accomplishing the maintenance of the resale prices established by the respondent for its Holeproof products.

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

By the Commission, Commissioner Humphrey dissenting.

held before a trial examiner duly appointed by the Commission, testimony was heard and evidence taken in support of the charges stated in the complaint and in opposition thereto. The said trial examiner having made his report upon the facts, oral argument was made and briefs filed before the Commission by counsel for the respondent and for the Commission. Thereupon this proceeding came on for final hearing, and the Commission being duly advised as to the premises, and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Louis Leavitt, is an individual with his principal place of business in the City and State of New York. He is, and for more than a year last past has been, engaged in the manufacture of paint and paint products, and ingredients thereof, and the sale of the said products to wholesale and retail dealers located at points in various States of the United States. He causes the said products, when so sold, to be transported from his said place of business in the City of New York, State of New York, into other States of the United States to said purchasers at their several points of location. In the regular course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of paint products and ingredients therefor, in interstate commerce.

PAR. 2. Among the products which are so manufactured by respondent in the regular course of his business, is one which he has designated, branded and labeled as "Gold Seal Combination White Lead." It is composed of not more than 3 per cent of sulphate of lead mixed with other ingredients. The percentage of sulphate of lead used by respondent in making this product varies from time to time, but does not exceed, on the average, 3 per cent of its total ingredients. Respondent sold this product in the regular course of his business, as described in paragraph 1 hereof, to retail dealers and jobbers in different States of the United States, and it is by ~~them~~ resold to the purchasing public generally.

PAR. 3. The term "white lead" is commonly understood and used by both the ~~trade~~ and the purchasing public to designate either sulphate of lead or ~~carbonate~~ of lead. The term "Combination White Lead" is commonly understood and used by both the trade and the purchasing public to designate ~~a~~ mixture of genuine white lead with other ingredients in which ~~mixture~~ the white lead is not less than 50 per cent, by weight. White lead has been used for many

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the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of paint and paint products and ingredients in interstate commerce.

PAR. 2. In the course and conduct of his aforesaid business respondent has sold and still sells a product named, branded and labeled by him, "Gold Seal Combination White Lead." The term "white lead" is commonly used by the trade and general public to designate sulphate of lead or carbonate of lead. Respondent's said product has not in the past contained, and does not now contain, sulphate of lead or carbonate of lead in an amount greater than 1 per centum of the total ingredients of said product.

PAR. 3. The designation, labeling and branding of his said product by respondent as set out in paragraph 2 hereof, had and has the capacity and tendency to mislead and deceive the trade and public into the belief that sulphate of lead or carbonate of lead was and is, in point of quantity, the predominant or principal ingredient in respondent's said product, and to cause the trade and public to purchase same in that belief.

PAR. 4. There are a number of manufacturers and distributors of paint and paint products selling their products in competition with respondent who do not misbrand or falsely label as white lead their white-lead compound products containing small proportions of sulphate of lead or carbonate of lead; and there are also a number of manufacturers and distributors of paint and paint products selling their products in competition with respondent who label, brand, advertise and sell as "white lead" products which contain sulphate of lead or carbonate of lead as the predominant or principal ingredient.

PAR. 5. The above alleged acts and things done by 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, Louis Leavitt, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act. Said respondent having entered his appearance and made answer to the said complaint, hearings were

held before a trial examiner duly appointed by the Commission, testimony was heard and evidence taken in support of the charges stated in the complaint and in opposition thereto. The said trial examiner having made his report upon the facts, oral argument was made and briefs filed before the Commission by counsel for the respondent and for the Commission. Thereupon this proceeding came on for final hearing, and the Commission being duly advised as to the premises, and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Louis Leavitt, is an individual with his principal place of business in the City and State of New York. He is, and for more than a year last past has been, engaged in the manufacture of paint and paint products, and ingredients thereof, and the sale of the said products to wholesale and retail dealers located at points in various States of the United States. He causes the said products, when so sold, to be transported from his said place of business in the City of New York, State of New York, into other States of the United States to said purchasers at their several points of location. In the regular course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of paint products and ingredients therefor, in interstate commerce.

PAR. 2. Among the products which are so manufactured by respondent in the regular course of his business, is one which he has designated, branded and labeled as "Gold Seal Combination White Lead." It is composed of not more than 3 per cent of sulphate of lead mixed with other ingredients. The percentage of sulphate of lead used by respondent in making this product varies from time to time, but does not exceed, on the average, 3 per cent of its total ingredients. Respondent sold this product in the regular course of his business, as described in paragraph 1 hereof, to retail dealers and jobbers in different States of the United States, and it is by them resold to the purchasing public generally.

PAR. 3. The term "white lead" is commonly understood and used by both the trade and the purchasing public to designate either sulphate of lead or carbonate of lead. The term "Combination White Lead" is commonly understood and used by both the trade and the purchasing public to designate a mixture of genuine white lead with other ingredients in which mixture the white lead is not less than 50 per cent, by weight. White lead has been used for many

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years both alone and as the principal ingredient of high grade paints, and this fact is generally known to the purchasing public.

PAR. 4. Among the competition of respondent referred to in paragraph 1 hereof, are several who manufacture and sell genuine white lead and advertise, brand and label their products as "White Lead" and as "Pure White Lead." There are also among the said competitors others who manufacture and sell products which contain small percentages of genuine white lead and who do not designate, label, or brand their products as "White Lead" or "Combination White Lead," but who use truthful designations and labels.

PAR. 5. The designation, branding and labeling of his said product by respondent, as set out above, has the capacity and tendency to mislead and deceive the trade and the public into the belief that his product contains either sulphate of lead or carbonate of lead or the two in combination as its principal and predominant ingredient, "to the extent of not less than fifty per cent by weight of the product," and to cause them to purchase the said product in that belief, thus diverting trade from the respondent's aforesaid competitors who truthfully label their products.

CONCLUSION.

The practices of respondent, under the circumstances set forth in the foregoing findings as to the facts, constitute unfair methods of competition in interstate commerce, and their use is 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.¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the testimony taken and evidence adduced before the trial examiner, and the Commission having made its findings as to the facts and its conclusion that 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, Louis Leavitt, his agents, representatives, servants and employees, do cease and desist from, directly or indirectly—

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(1) Designating and describing a product sold by respondent in commerce among the several States of the United States, by means of brands, labels, or otherwise, by use of the terms "Gold Seal Combination White Lead," or "Combination White Lead," unless the product so designated and described actually contains sulphate of lead or carbonate of lead or the two in combination as its principal and predominant ingredient "to the extent of not less than 50 per cent by weight of the product."

(2) Using and employing any other designation, brand or label, upon the containers of products sold by respondent in commerce among the several States of the United States, which falsely represent the relative quantity of genuine white lead contained in said products.

And it is further ordered, That the said respondent, within 60 days from the receipt of this order, shall file with the Commission his report in writing, setting out the manner and form in which he has complied with this order, and shall attach to said report two copies of any new form of label which he may have adopted in such compliance.

Complaint.

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IN THE MATTER OF

W. C. BLICKENSTAFF, OTHERWISE KNOWN AS W. C. BLICK, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF STANDARD FOUNTAIN PEN COMPANY.

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

Docket 1264—June 24, 1925.

SYLLABUS.

Where an individual engaged in the purchase of pens from the manufacturers, and in the sale thereof to wholesale peddlers, itinerant vendors and retail dealers,

- (a) Supplied his dealer customers with coupons purporting to be "worth \$1.01 if used to-day," and to entitle the bearer upon the payment of 49 cents "to one regular \$1.50 standard self-filling fountain pen * * *," (and with similar coupons, but with higher figures for his more expensive pens), the fact being that the pretended prices were greatly in excess of the true values of such pens and of the prices at which it was contemplated by said individual and his customers that they should be, and at which they actually were, sold; with the result that purchasers among whom said coupons had been distributed by such dealer customers pursuant to his instructions and sales plan, were led to believe that they were getting at a considerably reduced price a pen worth the amount therein stated, and were thereby induced to buy the same from such dealer customers; and trade was thus diverted from competitors who did not so misrepresent the prices or values of their pens;
- (b) Sold pens with pen points which he caused to be stamped "14K," the fact being that said points were not made of, and did not possess the durability or other desirable characteristics of, 14 carat gold, but were composed of an alloy simulating gold in appearance but containing no substantial amount thereof; with the result that many purchasers were induced to buy such pens from said dealer customers, and trade was diverted from competitors who did not thus misrepresent the quality of their pens or pen points;

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

Mr. Edward J. Hornibrook for the Commission.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that W. C. Blickenstaff, otherwise known as W. C. Blick, doing business