

Complaint.

IN THE MATTER OF
JOHN B. STETSON COMPANY.

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

Docket 1278—November 6, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture of hats and in the sale thereof to wholesale and retail dealers; in pursuance of a policy directed to the maintenance in different localities of uniform retail selling prices for its hats,

- (a) Held up orders from price cutters until satisfactory assurances had been given by the offending dealers that they would thereafter observe the prices established for their localities;
- (b) Secured, with the cooperation and assistance of dealers inclined to follow established prices, general agreements on the part of all the dealers, to respect such prices, in localities where the same had been cut;
- (c) Received from its dealers reports and information of price cutting on the part of others, investigated such reports, and endeavored to bring about a discontinuance of such price cutting; and held itself out to its dealers as ready and willing so to do;
- (d) Requested and procured from its salesmen and other agents reports and information as to price cutting by its customers and other dealers and acted upon such information by endeavoring to bring about a discontinuance thereof;
- (e) Reported to jobber customers the names of price-cutting former customers with whom it had discontinued business, as undesirable customers; and
- (f) Requested the assistance of dealers and of its agents in ascertaining the sources of supply of noncustomer price cutters, and upon ascertaining the same, advised the jobbers who had been supplying them, of their price cutting, together with the suggestion that such customers were undesirable;

With the result that jobbers advised as above set forth, usually ceased to sell to price cutters reported to them, it secured the cooperation of its dealers, established prices generally prevailed, retail dealers engaged in the distribution and sale of its products were prevented from selling the same at such lower price as they might consider warranted by their respective 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.

Morgan, Lewis & Bockius, of Philadelphia, Pa., for respondents.

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

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create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that John B. Stetson Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business in the city of Philadelphia, in said State. It is engaged in the manufacture of hats, and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said hats when so sold to be transported from its said principal place of business in the city of Philadelphia, Pennsylvania, 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 engaged in the manufacture and/or sale and transportation of hats between and among various States of the United States.

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

(a) Respondent establishes uniform minimum retail prices at which retail dealers handling respondent's said hats shall resell the same, and furnishes to wholesale and retail dealers handling said hats price cards on which said uniform minimum prices are set forth.

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

(c) Respondent procures and receives from dealers handling its said hats reports of, information concerning, and proofs of the failure of retailers to observe and maintain said resale prices.

(d) Respondent employs its salesmen and numerous other agents and employees to ascertain, investigate and secure information as to the failure of any retailer to observe and maintain said resale prices and to report to respondent in the premises.

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

(f) Respondent refuses to further supply with said hats dealers failing to maintain said resale prices and who sell at less than said prices, unless and until such offending dealers have given to respondent satisfactory assurances or promises that they will in future observe and maintain said prices.

(g) Respondent keeps records upon which are entered the names of dealers who sell at less than said resale prices, which said records respondent and those cooperating with it use in and about the enforcement of said system of resale prices.

(h) Respondent seeks and secures the cooperation of both wholesale and retail dealers handling its said hats and of respondent's agents and employees in and about preventing retail dealers who have failed to maintain said resale prices from obtaining respondent's said hats in the future.

(i) Respondent employs a system of identification marks placed in said hats by which it is able to and does trace and ascertain the source of supply of retail dealers who fail to maintain said resale prices, and upon ascertaining said source of supply, respondent through the foregoing means and otherwise seeks to and does prevent such offending dealers from obtaining further supplies of said hats, unless and until such offending dealers give promises and assurances that they will in future maintain said resale prices.

(j) In instances where in a given locality price cutting in the sale of respondent's said hats has become prevalent, respondent secures a general agreement on the part of retail dealers serving such locality to maintain and observe said resale prices in the future.

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

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As a 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 the 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 hats; to constrain said dealers to sell said hats at aforesaid prices fixed by respondent and to prevent them from selling said hats at such less prices as they may desire, and to deprive the ultimate purchasers of said hats of those advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodity under conditions of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondent, John B. Stetson Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act of Congress approved September 26, 1914. The respondent having entered its appearance and filed its answer herein and the chief counsel for the Federal Trade Commission and counsel for respondent having thereafter signed and filed a stipulation containing an agreed statement of facts and having therein stipulated that the said statement of facts shall be taken in lieu of testimony before the Commission in support of the charges stated in the complaint and in opposition thereto, and that said Commission might proceed further upon the said agreed statement of facts to make its report in the proceeding and its findings as to the facts and enter its order disposing of the proceeding without briefs or oral argument:

Thereupon this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is now and since November, 1922, has been a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office at Philadelphia, in said State. It is, and has been during its corporate existence, engaged in the manufacture of hats and the sale thereof, in interstate commerce, to wholesale and retail dealers throughout the United States. The major portion of its products is sold direct to retail dealers and the remainder, approximately one-tenth of its products, is sold to a limited number of jobbers and by them distributed to the retail trade. The greater part of its products thus sold to jobbers is sold to three jobbers—Keith Bros. & Co., of Chicago, and Langenberg Hat Co. and Rothchild Bros. Hat Co., both of St. Louis.

Respondent, at the request of the purchasers and pursuant to orders previously solicited by salesmen, causes to be transported its products when sold, from its factory in Pennsylvania to the purchasers thereof at their various locations in every State of the Union. In the course and conduct of its business, respondent is, and has been for many years, in competition in interstate commerce with individuals, partnerships and corporations also engaged in the manufacture of hats, and who sell and transport same from their respective factories in the United States, in interstate commerce. Respondent is one of the largest hat manufacturers in the United States, its annual sales exceeding \$14,000,000.

PAR. 2. Respondent, during its corporate existence, has fixed the prices at which its hats are to be resold by retail dealers, which prices are such as in the opinion of respondent afford a reasonable profit, and has informed its retail dealers of such prices through its traveling salesmen when orders are solicited, but these prices are not the same for the same hats in all parts of the country. The transportation charges which are paid by the retail dealers and the local selling cost are elements which enter into the retail selling price as the price at which the hats manufactured by the respondent are to be sold. The respondent furnishes, on request, to its dealers, cards on which prices are printed for use by the dealers as window cards to indicate to prospective customers the price of the hat to which they are attached.

PAR. 3. Respondent, during its corporate existence, has endeavored and now endeavors to maintain a uniform retail selling price for hats manufactured by it in a given locality, and to that end advises its customers of the prices at which its hats are to be sold, and in some instances where the dealers have deviated from the established

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prices respondent has held up orders from time to time until satisfactory assurances have been given by such dealers that the established prices fixed for the locality in which the dealer is engaged in business will be observed in the future.

PAR. 4. In localities where established prices have been cut by one or more dealers, respondent in certain instances has secured, with the cooperation and assistance of the dealers inclined to follow the established prices, a general agreement on the part of all dealers in the given locality to observe the established prices in the future.

PAR. 5. Respondent, from time to time, has received from its dealers reports and information of price cutting on the part of other dealers and holds itself out to its dealers as ready and willing to investigate such reports and to endeavor to bring about a discontinuance of the price cutting. It is the practice of the respondent to investigate such reports and to endeavor to bring about the discontinuance of the price cutting.

PAR. 6. Respondent also requests and procures from its salesmen and other agents reports and information as to price cutting by its customers and other dealers and requests its salesmen and agents to investigate same and acts upon information thus obtained by endeavoring to bring about a discontinuance of the price cutting.

PAR. 7. The respondent in certain cases has reported to its jobbers the names of dealers with whom respondent has discontinued business on account of price cutting and has suggested to its jobbers that such dealers were undesirable customers. In most of these cases the jobbers, upon receiving said reports, have also ceased to sell to the dealer complained of.

PAR. 8. In cases where a reported price cutter is not a customer of respondent, respondent has often requested the assistance of dealers in ascertaining from what source the price cutter obtained his supplies. Respondent's agents are also requested to and do assist in this behalf. Upon the ascertainment of the source of supply the respondent has communicated with the jobber who has been supplying the price cutter, advising him of the acts of the price cutter complained of, and has suggested that such a customer is undesirable. In most of the cases of this kind the jobber upon receiving respondent's communication has ceased to sell to such price cutter.

PAR. 9. The records of the respondent show that since December 19, 1922, the respondent has discontinued business relations, because of price cutting, with less than one-half of 1 per cent of the number of customers upon its books.

PAR. 10. Respondent has secured the cooperation of its dealers generally in the methods and practices stated in these findings, with

the effect that the established prices generally prevail, by reason of which retail dealers engaged in the distribution and sale of respondent's products are prevented 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 trade conditions generally and thus suppressing and hindering competition in respect to respondent's products in interstate commerce.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and an agreed statement of facts filed herein, 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, John B. Stetson Company, its officers, agents and employees, do cease and desist from—

(1) Entering into contracts, agreements and understandings with its dealers or prospective dealers to the effect that respondent's products are to be resold by them at prices specified or fixed by respondent;

(2) Procuring from its dealers or prospective dealers any promises or assurances that its products are to be resold by them at prices specified or fixed by respondent;

(3) Inviting or requesting its dealers to report the names of dealers who do not maintain respondent's specified resale prices or who are suspected of not maintaining the same;

(4) Acting upon reports or communications from its dealers concerning price cutting by other dealers, or manifesting to its dealers any intention to act thereon;

(5) Requesting the cooperation of its dealers in the ascertainment of the source of supply of a price cutter or suspected price

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cutter, or in any other manner seeking the cooperation of dealers in the maintenance of prices specified or fixed by respondent;

(6) Reporting to its jobbers the names of dealers with whom respondent has discontinued business by reason of price cutting, or suggesting to its jobbers, either directly or indirectly, that any retail dealer is an undesirable customer by reason of his deviation from prices specified or fixed by respondent.

It is further ordered, That the respondent, John B. Stetson Company, shall within sixty days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF
ROSENBUSH & SOLOMON, INC.

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

Docket 1279—November 6, 1925.

SYLLABUS.

Where a corporation engaged in the sale of paints, varnishes, shellac, and substitutes for shellac, sold shellac compounds composed of from 60 to 80 per cent of shellac gum, and from 40 per cent to 20 per cent of resin or other gums, dissolved in alcohol, in containers labeled "White Shellac" or "Orange Shellac," as required by the color, together with the word "compound" in inconspicuous letters; in competition with concerns which sold their products labeled and branded in accordance with the spirit and purpose of a resolution adopted by the National Varnish Manufacturers' Association and other organizations, and designed to prevent the debasement of the term "shellac," confusion in the trade, and deception of purchasers, through providing for the use on labels and in advertising of products not composed exclusively of shellac gum dissolved in alcohol, of the word "compound," in conspicuous letters, with the word "shellac," where the latter content equaled or exceeded one-half of the total solid content, and for the use of the word "substitute" or "imitation" with the word "shellac," in other cases; with the effect of misleading and deceiving a substantial part of the purchasing public into believing the aforesaid compounds to be composed solely of shellac gum dissolved in alcohol, and with the capacity and tendency to induce the purchase thereof in such belief:

Held, That the sale of said compounds, labeled as above set forth, constituted an unfair method of competition.

Mr. William A. Sweet 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 Rosenbush & Solomon Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State. It is engaged in the