

Complaint.

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IN THE MATTER OF
CHERO-COLA COMPANY.

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

Docket 1309—November 7, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture of a soft drink concentrate, and in the sale thereof to bottlers, required its aforesaid bottler vendees to contract to observe certain fixed minimum selling prices, with the effect of substantially restraining competition in the sale of the beverage in question, both in concentrate and bottled form, and of restraining and restricting competition among and between said bottlers, and with the tendency and capacity to restrain competition in commerce:

Held, That the making of such contracts, under the circumstances set forth, constituted an unfair method of competition.

Mr. Richard P. Whiteley for the Commission.

Arnold & Battle, of Columbus, Ohio, 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 the Chero-Cola 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 Georgia, with its principal office and place of business in the city of Columbus, in said State. It is engaged in the manufacture of a certain concentrate which when mixed with water and charged with carbonic acid gas forms a certain beverage, which beverage is by respondent named and designated Chero-Cola. Respondent sells its aforesaid concentrate to various individuals, partnerships, and corporations located at points throughout the various States of the United States. Said vendees, hereinafter called bottlers, are engaged among other things in the business of mixing said concentrates with water, of bottling and charging same with carbonic acid gas, thus producing said beverage Chero-Cola,

and of thereafter selling said Chero-Cola so prepared by them, to owners and operators of soft drink bars, soda fountains, and other dealers, who resell said Chero-Cola at retail to the consuming public. Respondent causes said concentrate when so sold to be transported from its said principal place of business in the city of Columbus, Ga., into and through other States of the United States to said vendees 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 of concentrates, which when mixed with water and charged with carbonic acid gas form beverages, and the sale of such concentrates to bottlers in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its said business respondent has adopted and enforced, and still enforces a system of uniform contracts whereby respondent seeks to and does maintain certain specified uniform prices at which said Chero-Cola shall be resold by respondent's said bottler vendees to aforesaid retail traders, as follows, to wit: Respondent requires every bottler to whom respondent sells its concentrate to enter into a contract with respondent providing for the sale by respondent and the purchase by such bottler of respondent's said concentrate, by the terms of which contract the bottler agrees and binds himself to sell all aforesaid Chero-Cola made up and bottled by him at a certain fixed and uniform minimum price. All said contracts entered into between respondent and its said bottler vendees are identical in their language and provisions, including said provision for the maintenance by the bottler of said fixed minimum price at which he shall sell the Chero-Cola mixed and bottled by him, to his retail vendees.

PAR. 3. The direct effect and result of the above alleged acts and practices of respondent has been and now is to suppress competition in the distribution and sale of said Chero-Cola generally throughout the United States; to constrain respondent's bottler vendees to sell said Chero-Cola at said minimum price fixed by respondent, and to prevent them from selling said Chero-Cola at such less prices as they may desire; to curtail and restrict competition among owners and operators of soft drink bars, soda fountains and other retail dealers, in the sale of Chero-Cola to the consuming public, and thus to deny to the retail trade and consuming public those advantages in price and otherwise which they would obtain from the natural and unobstructed play of competition and flow of commerce in said Chero-Cola under conditions of free competition.

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PAR. 4. For about four years last past respondent has engaged in the practices, under the conditions and circumstances, and with the results all hereinbefore set out.

PAR. 5. Above alleged 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, Chero-Cola Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance by Messrs. Arnold and Battle, its attorneys, duly authorized and empowered to act in the premises, and thereafter having made and executed an agreed statement of facts in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, 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, Chero-Cola Company, is a corporation organized under the laws of the State of Georgia, having its principal office and place of business at Tenth Street and Ninth Avenue, Columbus, Ga.; it is now, and has been for several years, engaged in the manufacture and sale, in interstate commerce throughout the United States, of a soft drink beverage in concentrate form, for which it has adopted the trade name of "Chero-Cola." This concentrate is sold in bulk form to bottlers who add carbonated water, sugar, etc., and then put it in bottles and sell it to dealers and to the consuming public.

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Order.

PAR. 2. In the course of its aforesaid business, the Chero-Cola Company has required, and does require, the bottlers to whom it sells its said beverage to sign a contract, in which the following provisions appear:

17. It is agreed that the success of the Bottler's business is of utmost importance both to the Company and the Bottler, and that a known and necessary requisite to the success of a business of this nature is in requiring and receiving a price sufficient to cover costs, not only of materials but to cover shrinkage, and ordinary manufacturing and marketing expenses and other necessary expenses and costs.

So it is here agreed, in order to return to the Bottler a fair and just margin based on post-war cost and conditions, a net selling price of forty cents per dozen 7 oz. bottles of Chero-Cola beverage should be maintained. A subsequent return of pre-war cost and conditions may make possible a net selling price of thirty-five cents, or increased costs and taxation may necessitate a higher revisal. The fixed minimum selling prices here agreed to are arrived at after due calculation as to costs, and are not arbitrarily intended in restraint of trade.

PAR. 3. The foregoing provision in contracts made between respondent and its bottlers, set out in paragraph 2 hereof, fixing a uniform minimum price at which said bottlers shall sell to the retail trade and the consuming public, imposes a restraint upon the said bottlers and the retail trade, and has the capacity and tendency to restrain substantially, and actually does restrain substantially, competition in the sale of Chero-Cola in interstate commerce, both in the concentrate and bottled form.

PAR. 4. The contracts between respondent and its bottlers, by their terms, are for the resale of respondent's goods and as they fix the price at which said goods shall be sold by the bottlers they restrain and restrict competition among and between the said bottlers and have the tendency and capacity to restrain substantially competition in interstate commerce.

CONCLUSION.

The practices of said respondent, Chero-Cola Company, 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 and an agreed state-

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ment 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, Chero-Cola Company, its officers, agents, representatives, servants and employees, do cease and desist from directly or indirectly requiring the bottlers to whom it sells its beverage to agree to maintain a resale price at which said beverage is to be sold by said bottlers.

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

Syllabus.

IN THE MATTER OF

CALIFORNIA RETAIL FUEL DEALERS' ASSOCIATION,
ITS OFFICERS AND EXECUTIVE COMMITTEE AND
MEMBERS.

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

Docket 1098—November 11, 1925.

SYLLABUS.

Where a state association of retail fuel dealers, which recognized as a "legitimate" retail coal dealer, a dealer engaged in buying coal for the purpose of resale to the public in retail quantities, and maintaining an office and yard, and displaying a sign, with a stock of coal and scales and equipment for properly weighing the same, and which included in its membership a majority of the so-called legitimate retail coal dealers in the state; and members of such association; in pursuance of a conspiracy to prevent cooperative associations from obtaining adequate supplies of coal for their business from the producers, or their representatives, at the prices charged the members or other competitors,

- (a) Ascertained the sources of supply of the aforesaid cooperative associations and remonstrated with the coal operators who supplied them and protested against the sale and transportation of coal to said associations; and
- (b) Published the names of operators furnishing a cooperative association with coal, in their official organ which circulated among the members and retail coal dealers generally in the state, and which included in its purposes the bringing of information to association members and other retail fuel dealers as to the activities of "illegitimate" coal dealers;

With the capacity and tendency to influence the members and other dealers to refrain from purchasing coal from the operators so named, and to influence producers and their representatives to refuse to ship or sell coal to the cooperative associations, and with the result that in some cases shipments already in course of transportation to a cooperative association were diverted to other dealers, recognized by said association as legitimate, to the serious inconvenience and prejudice of such cooperative association:

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

Mr. James M. Brinson for the Commission.

Mr. John W. Preston of San Francisco, Calif., for California Retail Fuel Dealers' Association, its officers, executive committee and members and other respondents.

Senior & Senior of Salt Lake City, Utah, for Liberty Coal Co. and J. S. Critchlow, individually and as agent of Liberty Coal Co.