

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS NOVEMBER 28, 1925, TO NOVEMBER 4, 1926

IN THE MATTER OF

STANDARD OIL COMPANY OF KENTUCKY

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

Docket 1141—November 28, 1925

SYLLABUS.

Where a corporation engaged in the sale of certain nationally advertised and favorably regarded stoves and heaters at uniform delivered prices; in pursuance of a policy directed to the maintenance of the prices fixed by it for the sale of its stoves by its retailer vendees, which prices and policy it made known to said vendees through lists furnished them and through its representatives.

- (a) Declined to make sales to new prospective customers whom its preliminary investigations disclosed as price cutters, and added the names of such dealers to the card index system in which it noted price cutting concerns as concerns not to be sold to;
- (b) Required agreements from customers, binding them to observe its prices and to report the names of other dealers cutting prices;
- (c) Investigated reports of price cutting by dealer customers reported to it by other dealer customers and by its agents;
- (d) Solicited the assistance of dealer customers in its investigations of price cutting; and
- (e) Refused further sales to price cutters, until they had given assurances that they would thereafter respect its prices;

With the result that it thereby secured an advantage for the aforesaid products dealt in by it, over competitive products, a uniform price to the consumer upon the aforesaid products was established, dealers were prevented from selling said products at such lower prices as they found adequate and warranted by their selling costs, and trade conditions generally, and competition in respect of said 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. E. J. Hornibrook for the Commission.

Mr. Charles G. Middleton, of Louisville, Ky., for respondent.

Complaint

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SYNOPSIS OF COMPLAINT

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Kentucky corporation with principal office and place of business in Louisville, Ky., with maintaining resale prices in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent for a number of years last past "has enforced and still enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which said stoves and heaters shall be resold by retail dealers handling same, and respondent has enlisted and secured the support and cooperation of 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 retail dealers handling said stoves and heaters from selling same at prices less than aforesaid resale prices established by respondent."

(a) Fixing uniform minimum prices to be observed by its retail dealer customers and sending them price lists setting forth the same;

(b) Making it generally known to the trade by letters, salesmen's interviews, etc., that it expects and requires such dealers to maintain and enforce its prices and will refuse further sales to those who do not do so;

(c) Entering into informal undertakings and arrangements with retail dealers for the maintenance by them of its prices as a condition to opening accounts with them or continuing to supply them with its said products;

(d) Inviting and procuring from its dealers reports of the failure of dealers to maintain its prices;

(e) Employing its salesmen and other employees to investigate and report as to the failure of any retail dealers to observe and maintain its prices;

(f) Using information received to induce and coerce dealers who fail to observe its prices, to maintain the same thereafter, by exacting promises and assurances from them to that effect and threatening to refuse to supply them further if they do not do so;

(g) Refusing to supply offending dealers further unless and until they have given satisfactory assurances or understandings that they will thereafter observe and maintain its prices;

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(h) Cooperating with its dealer customers and its various agents and employees to prevent dealers who have failed to maintain its prices from obtaining its products from others;

(i) Keeping records of dealers who have failed so to do and using the same in enforcing and maintaining its resale prices;

(j) Entering into contracts, agreements, and understandings with dealers to the effect that they will maintain such prices; and

(k) Using other equivalent cooperative means and methods for the enforcement of its resale prices.

According to the complaint "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 said stoves and heaters; 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 products 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.

Upon the foregoing complaint, the Commission made the following

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, Standard Oil Company of Kentucky, 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 the 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 the facts to

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make its report in the proceeding and its findings as to the facts and 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Kentucky with its principal office and place of business in the city of Louisville, in the said State. It has a capital stock of \$17,500,000. It is engaged, among other things, in purchasing from the Cleveland Metal Products Co., a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the city of Cleveland, in said State, certain oil stoves and heaters, and repairs for the same, manufactured by the said last-named company, and designed and adapted for the use of kerosene as a fuel, and the resale of said stoves and heaters to retail dealers located in the States of Kentucky, Georgia, Florida, Mississippi, and Alabama. Said stoves and heaters are for convenience hereinafter referred to simply as stoves. All of the said stoves and repairs so purchased from the Cleveland Metal Products Co. by respondent are purchased through its Louisville office. Said stoves come wrapped in heavy paper and are individually crated, and they are sold to the dealer customers of respondent in the said States in the original package. In some instances it causes said stoves, when sold to dealers as aforesaid, to be transported from Cleveland, Ohio, into and through other States of the United States, to the points and locations of such dealers, in Kentucky, Georgia, Florida, Mississippi, or Alabama, as the case may be. In some instances it causes said stoves, when sold to dealers as aforesaid, to be transported from its head office at Louisville, Ky., into and through other States of the United States, to points of location of such dealers in Georgia, Florida, Mississippi, or Alabama as the case may be. In some instances it causes said stoves, when sold to dealers as aforesaid, to be shipped from warehouses located in Kentucky, Florida, Georgia, Mississippi, or Alabama to the locations of such dealers which are outside of the States in which such warehouses are situated. Respondent maintains warehouses and offices located at Louisville, Ky., Atlanta and Savannah, Ga., Birmingham, Montgomery, and Mobile, Ala., Jacksonville and Tampa, Fla., and Jackson, Meridian, and Vicksburg, Miss. In the course and conduct of

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its said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of kerosene oil stoves and heaters, and repairs thereof, of different makes than those handled by respondent as aforesaid, but of similar design and like character, and who sell and ship their said products to purchasers residing in the territory covered by respondent as aforesaid.

PAR. 2. The respondent has been engaged as aforesaid for several years last past. The respondent generally has the said Cleveland Metal Products Co. ship said stoves in original packages to its warehouses located in the said named States, where they are sold to retailers by salesmen, under district managers, to the retail trade. These district managers and salesmen are in the employ of respondent. These district managers have certain allotted territory over which they have complete jurisdiction as to the sale of said stoves and repairs. The territory allotted to these said district managers is not always confined to one State. In some instances the allotment covers two or more of said States, and the said products are shipped and sold to retail dealers residing outside of the State in which the warehouse of respondent is located. In one instance 42 stoves were shipped from the warehouse at Atlanta, Ga., to Johnson & Co., of Langdale, Ala.; in one instance a stove was shipped and sold by respondent to a customer at Westminster, S. C., from the said Atlanta warehouse; in one instance 12 stoves were shipped from the Atlanta warehouse to J. M. Posey, of Graniteville, S. C.; in one instance 34 stoves were shipped from the Atlanta warehouse to T. L. Crouch, of Lanett, Ala.; in one instance 36 stoves were shipped from the Atlanta warehouse to M. M. Hunt, of Riverview, Ala.; in one instance 71 stoves were shipped from the Atlanta warehouse to Shawmut Mills, Shawmut, Ala.; in one instance 20 stoves were shipped from the Atlanta warehouse to Maxwell Bros. & Jones, of Spartanburg, S. C. Six stoves were shipped by the Jacksonville, Fla., warehouse to six different customers of respondent residing at six different points in the State of Georgia at the instance of the Atlanta office of respondent. The Montgomery, Ala., office of respondent shipped 10 stoves to the Meridian, Miss., office in October, 1924. R. B. Doban, district manager of respondent at Jackson, Miss., shipped said stoves to customers of respondent beyond the limits of the State of Mississippi. Said stoves have been sold and shipped by respondent from its warehouse at Vicksburg, Miss., to the Delta Mercantile Co. of Delta, La. Seventy-two shipments of stoves have been made to the Alabama warehouse from warehouses of respondent located outside of the State of Alabama. Forty-six shipments of stoves have been made

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from respondent's warehouse in Alabama to points outside of the State of Alabama. These shipments occurred from April, 1921, to September, 1924. If one of the warehouses of respondent runs short of stoves, respondent's warehouse in another State is sometimes ordered to ship, and it does ship, respondent's stoves to the warehouse which is temporarily out of stock. The head office of respondent in Louisville, Ky., sometimes increases or decreases the orders of the district managers situated or located in the said States, without consulting said district managers. The freight on said stoves is paid by the warehouse, and it in turn charges the same to the home office at Louisville. Stoves are sold to retail dealers by district managers for respondent before they are received at the warehouses in said States. The sales territory of the Birmingham, Ala., office of the respondent extends into Georgia, Florida, and Mississippi and shipments and sales of said stoves are made from and by the Birmingham, Ala., office to customers in each of the said named States. Sales of these stoves are made to retailers in said States by agents of the respondent before stoves intended to fill the orders of these retailers have been ordered from the Cleveland Metal Products Co. In some instances where a warehouse of the respondent located in one of these said States did not have a supply on hand with which to fill the order of a retailer, the said Cleveland Metal Products Co. has been, by the respondent, directed to ship and has shipped directly from the factory at Cleveland to such retailer in such State.

PAR. 3. For a number of years last past in the conduct of its aforesaid business respondent enforced and is still enforcing a merchandising system, adopted by it, of fixing and maintaining certain specified uniform prices at which said stoves and heaters shall be and are resold by retail dealers handling the same, and respondent has enlisted and secured the support and cooperation of respondent's officers, customers, agents, and employees in enforcing said system. Respondent during the aforesaid time, has employed and still employs the following means whereby respondent has undertaken to prevent and has prevented retail dealers handling said stoves from selling the same at prices less than the aforesaid resale prices established by respondent.

Lists containing the prices at which said stoves are expected to be and intended to be sold for at retail are furnished its various customers in said States. Traveling salesmen of respondent, who call upon said retail customers, and take orders for said stoves and repairs from such retail customers, announce to said retail customers the prices at which respondent expects and intends such stoves will be sold for at retail.

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On January 6, 1923, said respondent sent through the United States mail to its customers in said States a bulletin in which it was stated:

In connection with marketing of these stoves, please understand that it is our policy that we insist on each dealer maintaining the list price as a sales price.

The term "price cutter," as used in these findings, refers to retail customers of respondent who do not always charge the full list price fixed by respondent for said stoves when selling the same to the ultimate purchaser thereof.

A card-index system is used by respondent company in its home office at Louisville, Ky., and all of its aforesaid offices for the purpose, among other things, of keeping trace of price cutters. On many of these cards appear the words "Do not sell," together with notations that the dealer is a "Price cutter," and they also show the date when the dealer was cut off. If a dealer is marked "Price cutter" on said cards he is cut off. When the company receives a request from a new dealer to purchase said stoves, the order is first referred to a salesman in the dealer's territory for a report on the dealer. The salesman, after making his investigation, reports to the branch in which the dealer is located whether it is all right for the company to sell the dealer. If the salesman reports that the dealer is a price cutter the company places him on the "D. N. S." list, meaning "Do not sell," and writes the dealer that it has made other arrangements for the disposition of its stoves in that territory and the dealer is not supplied with said stoves. If the salesman reports that the dealer agrees to adhere to the company's resale price policy, a letter is written to him informing him that the company will be glad to fill orders for him. In the same letter the company points out its marketing policy which usually reads as follows:

We presume you understand our policy on the marketing of these stoves, but if such is not the case we would advise that we expect all our dealers to maintain the list price as the retail price, the discounts representing their profit, and know you will agree to cooperate with us along this line for this practically eliminates price cutting.

Respondent receives complaints from some of its dealer customers that another dealer customer is selling below the suggested resale price fixed by the respondent, and in such case the complaint is usually turned over to one of the salesmen of respondent for investigation. If the salesman finds that the dealer is cutting the price, he will recommend that the dealer be placed on the "D. N. S." list, unless the dealer promises to maintain the list price of said stoves, and if the dealer so promises he will then be reinstated. There are many instances where dealers in the said stoves have reported price

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cutters, and the actions described last above have been taken by the respondent. A few of these instances are shown in detail, as follows: On January 18, 1923, the Louisville branch of respondent wrote a letter to Graham & Co., customers of respondent, of Chaplin, Ky., which reads as follows:

Referring to your letter of the 11th inst. regarding price cutting on stoves by dealers in Bloomfield and Springfield, we would be pleased to have you inform us the firms, according to your information, are engaged in this practice. We assure you that we will not tolerate price cutting and it is our object to protect every legitimate dealer. In view of your closing remarks we do not know whether you want us to ship you at once that part of your order which was to have gone forward at once. We appreciate information furnished and will investigate promptly.

A copy of this letter was sent to salesman L. S. Corbin with the following postscript added to the letter which reads as follows:

These people say that some party in Bloomfield is pricing the No. 34 stove at \$27, No. 34 Independent at \$8 and No. 142G oven at \$4 less 25% on all. Please investigate as soon as possible and advise fully. The reason we are asking Graham Bros. & Company whether they want order for immediate shipment to go forward is because our account department is not thoroughly satisfied as to their credit.

A copy of this letter was also sent to salesman S. A. Noe on which appeared the following question:

What do you know about price cutting at Springfield?

Salesman Noe replied to the above question writing to headquarters as follows:

I do not know of instances of price cutting but it might be Mr. Chester at Maude, Ky., that I wrote about a short time ago. I will investigate and advise.

The ledger card of Ray Chester, Maude, Ky., shows the following notation:

Price cutter—See Noe's report 11/29/22—do not ship. G. W. B. 1/2/23.

Another instance where the respondent refused to sell a dealer on complaint from another dealer that the former was a price cutter is shown in a letter written by salesman W. H. Davis, which reads as follows:

Greenville Hardware & Grocery Co. I have received some evidence from G. M. Carter Hardware Co. concerning price cutting by the above company. I will work this out on my next trip here and give you a full report to clear your files on this subject.

The ledger card of the Greenville Hardware & Grocery Co. shows the following notation:

Cut out price cutter. See Davis report 12/22/22.

This ledger card further shows that there were no purchases by the Greenville Hardware & Grocery Co. after July 20, 1922.

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Another instance is disclosed in the following correspondence. On March 24, 1923, H. McGoodwin, district manager for respondent, wrote R. A. Scherer as follows:

We have before us Mr. C. E. Sutterlin's report of the 21st inst. and have carefully noted what he has to say relative to Chestnut Salter of Danville. You are thoroughly conversant with the situation, we are quite positive, and it is, therefore, unnecessary for us at this time to go into the matter. Suffice to say that we have eliminated these people from our active stove dealers and will not consider filling any future orders we may receive from them unless, of course, at some later date we secure absolute assurance that they will maintain prices and handle the line as our other legitimate dealers do.

C. E. Sutterlin's report relative to the Chestnut Salter Hardware Co. reads as follows:

Chestnut Salter Hardware Co., Danville (Mr. Chestnut buyer) handled Kerog's and Blue Ribbon. Sold about 50 last year retail and jobbing—has a new Perf. on floor, using for stool pigeon. Admit they had cut the price and added they would continue to do so suggesting they be eliminated from list of active dealers for at least six months.

In reply to the above letter salesman Scherer wrote Chestnut Salter Hardware Co. as follows:

Chestnut Salter Hardware Co. Your letter of March 24, —B43— in reference to this firm maintaining list price, I called today and Mr. Chestnut advised that they would maintain list prices, but I doubt if he is sincere in his promise. He has on hand 5 No. 34 Perf. stoves from last year and these he claims to sell for \$50 with oven. Tribble & Pickett today complained of this firm quoting prices under list, but could not get no specific case where sales made. I suggest that you eliminate Chestnut Salter Hardware Co. from list of dealers at least for the present until they understand that our policy of maintaining prices must be followed.

The ledger card of the Chestnut Salter Hardware Co. shows the following notations:

Price cutters, cut out, 3-23. Report C. E. S. 3/21/23.

In each case where the respondent becomes apprised that a dealer is cutting prices, it immediately sends its salesmen to investigate, and if such dealer is found to be cutting the price on the said stoves the dealer will be cut off if he does not promise to maintain the prices in the future. The following instances are typical: J. L. Cooper, of the Cooper Hardware Co., of Augusta, Ga., had purchased stoves and heaters from the respondent for four or five years. In the year 1924 his company cut the price on respondent's stoves, and thereafter said company was unable to secure stoves from the respondent for some time. Finally Henry Rhodes, the Augusta, Ga., agent for respondent, called on said J. L. Cooper and told him that his firm could not get stoves or heaters from the respondent unless his company would agree not to cut the price. The said J. L. Cooper, manager of the aforesaid company, then and there agreed that his

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company would maintain the list price on said stoves as fixed by the respondent and since that time his company has been able to obtain from the respondent all stoves and heaters needed. The said Rhodes then and there told the said J. L. Cooper that the only reason that said Cooper Hardware Co. was cut off was because of its cutting prices.

The Tanner Hardware Co. of Winder, Ga., had carried the stoves sold by respondent for several years. Late in October in the year 1924 the Atlanta, Ga., office wrote it that it had been reported as cutting prices of the stoves of the respondent and that it could not get any more goods from respondent.

Cheek & Wall of Statham, Ga., had been a customer of respondent for several years last past. In the spring of 1924, a representative of respondent called on said firm and asked J. B. Cheek, a member thereof, whether his firm was going to maintain the resale price fixed by respondent. He was told by the said Cheek that his firm would not maintain such prices. The said representative of respondent told the said Cheek that he had information that his firm was selling below the list prices. Then afterwards, in December, 1924, said Cheek ordered a stove for his firm from respondent and received a letter from respondent stating that other arrangements had been made for the handling of the stoves in Statham.

The Woodruff Hardware Co. of Winder, Ga., had been handling respondent's stoves since 1919. Early in the year 1924, said firm sold one of respondent's stoves for less than the list price, and J. P. Tanner of the Tanner Hardware Co. of Winder, Ga., a competitor of the said Woodruff Co. reported the Woodruff Company as a price cutter to the Atlanta office of the respondent. On February 6, 1924, after such report had been made by the said J. P. Tanner, the Atlanta office of respondent refused to sell stoves to the Woodruff Hardware Co. W. H. Jennings, manager of the said Woodruff Hardware Co., on or about April 3, 1924, went to the Atlanta office of the respondent and had an interview with the manager of the stove department there, and then and there orally agreed with him to sell respondent's stoves at the list price, and since that time his said firm has been able to get and are getting all of respondent's goods needed. The said Woodruff Hardware Co. has, since said oral agreement, maintained the said resale prices fixed by respondent.

Pike Hutchins, manager, of the Woodruff Hardware Co. at Statham, Ga., was told by Sam Wood, agent for the respondent, that all retailers who did not sell at the list price of respondent would be cut off.

C. F. Barratt of Barratt Hawkins Co. of Jefferson, Ga., was told by G. R. Walker, a representative of respondent, that his firm would have to agree to sell respondent's stoves at the list price or be cut off.

The Palmour Hardware Co. of Jefferson, Ga., has handled respondent's stoves for a period of about 10 years. About one and one-half years ago, G. R. Walker, representing respondent, called upon Ben T. Palmour of the said Palmour Hardware Co. and informed him that he understood that his firm was selling the Woodruff Hardware Co. of Statham, Ga., and stated that if that were the fact the Palmour Hardware Co. could get no more stoves from respondent. The said Palmour Hardware Co., through its representative, Ben T. Palmour then and there agreed with said G. R. Walker that his firm would maintain the list price in all sales of respondent's stoves.

Israel Goldenberg of Griffin, Ga., has handled respondent's stoves for a period of about five years. Someone reported to respondent that he was not maintaining the list price on said stoves. He had cut the price and a day or two after cutting the price, Douglas C. Sander, a representative of respondent, called on the said Goldenberg and told him that if he had cut the price he could not get any more stoves unless he would agree to thereafter follow the list price. The said Goldenberg then went to Atlanta, Ga., and saw Kessler, sales manager for respondent, and he then and there orally agreed with the said Kessler to follow the list price of respondent's stoves. Since that time he has followed the list price and has had no trouble in getting the goods of respondent.

H. Marshall of H. Marshall Furniture Co., Lincoln, Ga., was asked by a salesman of respondent to report to respondent any cases of price cutting on their stoves which came to his notice.

S. L. Backer of Macon, Ga., of the Union Furniture Co., at the time said firm entered into business relationship with respondent, was given to understand by an agent of respondent that his firm was expected to maintain the list price on its stoves.

George W. Easton of St. Petersburg, Fla., handled the stoves of respondent for six years. He cut the price of respondent's stoves and as agent of respondent called on him and told him that if he cut the price he could get no more stoves. After cutting the price, as aforesaid, he ordered more stoves from a salesman of respondent but they were never shipped to him.

E. T. Smith Hardware Co. of Arcadia, Fla., had handled respondent's stoves and heaters for many years. It was cut off in the year 1923 because it cut the price. An agent of respondent told him that unless he agreed to sell at the list price he would get no more stoves.

The Sperchi Furniture Co. of Atlanta, Ga., was cut off by the respondent because it did not maintain the list price of respondent's stoves.

Respondent forced some of its dealer customers to agree in writing to maintain the list price on said stoves and to report the names of

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any other dealers who were cutting the price. The following is an example of these agreements:

Standard Oil Co., Louisville, Ky.: We as dealers selling New Perfection Puritan Oil Stoves or Puritan Heaters hereby agree to maintain the list price on these stoves as the retail price of any and all sales made by us. We also agree to report to you any cases where we find any other dealer selling at a price less than the list price as a retail price. We feel that each dealer handling this line is entitled to the dealer's discount and profit and we are willing to cooperate to that end.

Yours Very truly,

FORBES MFG. CO.,
H. L. BARS.

The New Perfection Puritan Oil Stoves and Puritan Oil Heaters mentioned in the letter quoted last above are manufactured by the said Cleveland Metal Products Co. and sold by this respondent as described in paragraph 1 hereof.

PAR. 4. Respondent's adoption and enforcement of its policy of resale price maintenance as hereinbefore set forth has secured for stoves manufactured by the said Cleveland Metal Products Co., advantages in competition over the stoves of other manufacturers sold in said territory because of the fact that dealers in such stoves prefer to sell stoves upon which the manufacturer or distributor suggests, maintains, and enforces uniform resale prices and because of the fact that certain other manufacturers and distributors, competitors of respondent, do not require their dealers to maintain resale prices.

PAR. 5. Respondent's policy of maintaining resale prices upon the stoves manufactured by the said Cleveland Metal Products Co., in the manner and by the methods hereinbefore set forth, has had the effect of establishing a uniform price upon such stoves purchased by the consumer from any dealer; said policy has also had the effect of preventing dealers from selling such stoves at lower prices such as might be found by them adequate and warranted by their respective selling costs and by trade conditions generally and thus suppressing and hindering competition in respect to respondent's said stoves in interstate commerce.

PAR. 6. Respondent is one of the largest distributors of oil stoves in its territory, described in paragraph 1 hereof. It does an annual business in said oil stoves amounting to \$1,000,000. The said Cleveland Metal Products Co. nationally advertises its said stoves and so advertises the same in the aforesaid territory of respondent. The sales and deliveries of said stoves made by respondent in said territory are at a uniform delivered price to the purchasers thereof. The trade in said territory of respondent considers the said stoves so made and manufactured by the Cleveland Metal Products Co. as of high quality, and dealers in said stoves find their business success in this line promoted by the ability to furnish their customer with such stoves.

CONCLUSION

The practices of the 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, 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, Standard Oil Co. of Kentucky, its officers, agents, and employees, do cease and desist from:

(1) Entering into contracts, agreements, or understandings with its dealers or prospective dealers to the effect that respondent's stoves and heaters, manufactured by the Cleveland Metal Products Co., 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 said stoves or heaters 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 on said products or who are suspected of not maintaining the same;

(4) Acting upon reports or communications from its dealers concerning price cutting on said products 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 said products on the part of a price cutter or suspected price cutter, or in any other manner seeking the cooperation of dealers in the maintenance of prices specified or fixed by respondent on said products.

It is further ordered, That the respondent, Standard Oil Co. of Kentucky 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.

IN THE MATTER OF
CLAYTON F. SUMMY COMPANY

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

Docket 1174—December 7, 1925

SYLLABUS.

Where a corporation engaged in the publication of sheet music and music books of an educational character and in the sale of a large proportion of said publication to music teachers and of the balance to retailers and schools; in disregard of the collective action of members of the industry, acquiesced in by it, denouncing and discontinuing such practice, and seeking to profit by such action; marked its said publications with a price one-third higher than that at which they were expected to be and usually were resold by retailers, and so listed the same in its catalogues, together with advertisements that teachers purchasing from it directly received a discount of one-third off from list price; with the result that ultimate consumers were misled and deceived as to the usual selling prices of such publications, music teachers and other purchasers were misled into believing that they were obtaining such publications at a discount and were enabled, more particularly in suburban and rural districts, to exact the full marked up price from pupils and customers, to whom they sold its publications in such districts, dealers, schools and teachers were enabled to defraud ultimate purchasers of such publications, and a preference was created for the same over those of competitors, who did not use such a price marking system and were put in the position of being forced to adopt a similar practice or compete at an unfair disadvantage:

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

Mr. E. J. Hornibrook for the Commission.

Burry, Johnstone & Peters of Chicago, Ill., for respondent.

SYNOPSIS OF COMPLAINT ¹

Reciting its action in the public interest pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Illinois corporation, engaged in the printing, publishing or sale of sheet music and musical scores and compositions of various kinds to wholesalers, retailers, schools, music teachers and users thereof at points in the various states, and with principal office and usual place of business in Chicago, with misrepresenting prices in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that it sells its aforesaid musical publications with purported retail

¹ As amended.