

Syllabus

IN THE MATTER OF
P. H. HANES KNITTING 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 1134—December 21, 1925

SYLLABUS.

Where a corporation engaged in the manufacture of men's and boys' underwear, and in the sale thereof to jobbers, department stores and others throughout the United States; in pursuance of a merchandising policy, which had for its purpose the increasing of the profits of itself and its dealer customers and included the observance by such customers of the retail prices named by it, made known to customers and the trade through catalogues and price lists, and through cards to be used by customers' salesmen in quoting prices to retail merchants;

- (a) Considered in the selection of customers their willingness and express or implied agreements to maintain its prices, urged customers to do so, and notified them that it would not sell to dealers who did not do so;
- (b) Requested the cooperation of customers in maintaining prices through adhering thereto themselves, and through assisting in ascertaining, and reporting, names of price cutting dealers, in order that it might thereby eliminate such price cutting either by refusing to make further sales to the price cutters or by securing their assurances that they would thereafter observe specified prices;
- (c) Investigated reports of price cutting thus secured or received and refused further sales to the price cutters or secured from them assurances of observance of prices thereafter, and advised informing dealers of the results of its investigations;
- (d) Cooperated with customers in cutting off supplies of price cutters, who did not secure their supplies from it directly;
- (e) Refused to sell to persistent price cutters; and
- (f) Endeavored by letters and agents to induce price cutting customers to promise to observe its prices thereafter as a condition of reinstatement, and reinstated price cutting customers who so promised;

With the result that it secured the cooperation of customer dealers in its price maintenance policy, established prices prevailed, dealers engaged in the distribution and sale of its products were prevented from selling the same at such lower prices as might be deemed by them to be warranted by their respective selling costs, 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.

Complaint

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Mr. Alfred M. Craven for the Commission.

Mr. H. H. Shelton, of Washington, D. C., and *Manly, Hendren & Womble*, of Winston-Salem, N. C., for respondent.

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 North Carolina corporation engaged in the manufacture of underwear and sale thereof to wholesale dealers in the various States, with principal office and place of business in Winston-Salem, N. C., with maintaining resale prices in violation of the provision of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent for more than two years last past has enforced and still enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its aforesaid products shall be resold by wholesale dealers handling same, and respondent has enlisted and secured the support and cooperation of wholesale 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 wholesale dealers handling respondent's products from selling same at prices less than aforesaid resale prices established by respondent:

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

(b) Making it generally known to the trade by letters, circulars, salesmen's interviews and other means that it expects and requires such dealers to maintain and enforce its said prices;

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

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

(e) Employing its salesmen and other employees to investigate the failure of any of such dealers so to do;

(f) Using information received through the above or other means to induce and coerce price cutting dealers, to maintain prices in the future by exacting promises and assurances that they will so do and

by threatening them with refusal of further supplies if they do not so do;

(g) Keeping records of price cutting wholesale dealers, which are used by its officers and employees in connection with the enforcement of its resale prices;

(h) Refusing further supplies to price cutting wholesale dealers until they have given satisfactory promises and assurances that they will thereafter maintain the same;

(i) Cooperating with its wholesale distributors generally in preventing price cutting distributors from obtaining its products from any source;

(j) Informing complaining wholesalers as to action taken by it in regard to price cutting dealers; and

(k) Using other equivalent cooperative means 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 wholesale dealers in the distribution and sale of respondent's products; to constrain said dealers to sell said products at aforesaid prices fixed by respondent and to prevent them from selling said products at such less prices as they may desire, and to deprive consumers of said products of the advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodities under conditions of free competition. Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914."

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 respondent P. H. Hanes Knitting Co., 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. The respondent having filed its answer herein, hearings were had and evidence introduced on behalf of both the Commission and the respondent before John W.

Addison, an examiner of the Federal Trade Commission, theretofore duly appointed.

And 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 1904 has been a corporation, organized under the laws of the State of North Carolina. During said period of time respondent has been and is now engaged in the manufacture of men's and boys' underwear, and the sale and distribution thereof from its factory at Winston-Salem, N. C., to jobbers of dry goods, department stores, chain stores, and to a limited extent to wholesale grocery houses, throughout the United States, having customers in all but four of the various States of the Union. It transports or causes to be transported its products from its factory to its customers, some 500 in number, at their various locations. It is one of the largest manufacturers of knit underwear in the world.

In the course and conduct of its said business it has been and now is in competition with other manufacturers also engaged in the manufacture of men's and boys' underwear, and who sell and transport the same from their respective factories in the United States into and through the various States of the United States, in interstate commerce.

PAR. 2. Respondent in the year 1911, for the purpose of enabling itself and its customers to derive more profit from the sale of its products than they had theretofore derived, decided upon a merchandising system which included as its prominent features the trade-marking of its merchandise, aggressive national advertising, specifying the prices at which its products should be resold by its customers to retail merchants, and understandings with customers to observe the specified prices. Upon deciding on this system the respondent put it into effect and has since said time marketed its merchandise accordingly, with the aid, support, and cooperation of its dealers.

PAR. 3. In futherance of said merchandising system the respondent issued and circulated and has continued to issue and circulate among its dealers and prospective dealers up to the present time, from time to time, catalogues and price lists descriptive of its merchandise and specifying a "suggested" resale price of each of the articles offered for sale. These price lists and catalogues are sent out to all the customers of respondent and others in the trade. Respondent also at

the opening of each selling season of the year, of which there are two in number, distributes to each of its customers a large number of cards showing the specified resale prices of the various articles of merchandise, which cards are to be carried by the salesmen of the various customers, and used by them in quoting prices to retail merchants. The respondent also in respect to the "suggested prices," suggests the cash discounts which the wholesaler should allow.

PAR. 4. The respondent in furtherance of its merchandising system through correspondence and by means of its salesmen requests from its dealers their cooperation in maintaining the prices which it specifies. Included in the cooperation requested is adherence on the part of the dealers to the specified prices and their aid and assistance in ascertaining the names of dealers who vary from the specified prices. Dealers are requested to report the names of price cutters, meaning those varying from the specified prices, and when indefinite reports of price cutting are received by respondent the reporting dealers are urged to make further investigation for the purpose of identifying the price cutter and ascertaining the details of the price cutting and are given to understand that the purpose of securing such information by the respondent is to eliminate price cutting either by refusing further sales of its merchandise to the price cutter or securing from him his assurance that as to future sales specified prices will be observed by him. The respondent has in many instances, upon investigations instituted upon reports received from its dealers, refused further sales to the price cutters, and in many other instances has, by correspondence or by its agents through personal interviews, secured from the price cutters assurances for the observance of its specified prices in the future. In all such cases the respondent reports back to the informant dealer the results of the investigation. Respondent also instructs its agents to investigate and report upon cases of reported or suspected price cutting, and upon such reports takes action either by cutting off the price cutter from its list of dealers or by securing assurances for the observance of its specified prices.

PAR. 5. Respondent cooperates with its dealers in preventing other dealers not observing the resale price from obtaining respondent's merchandise. In October, 1921, respondent discontinued supplying its merchandise to a wholesaler at Charleston, W. Va., who refused to follow the fixed resale prices. In June, 1922, this wholesaler was reported by two of its competitors who were customers of respondent as offering respondent's merchandise to the trade at cut prices. The respondent requested from the reporting dealers their assistance in locating the source of supply of the reported dealer, and wrote

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to one of the reporting dealers under date of July 27, 1922, "We wish to assure you that we will be untiring in our efforts to learn further facts in regard to the source of supply of the Charleston house." As a result of the efforts of respondent and the two dealers cooperating with it respondent procured from a railroad freight clerk at Charleston, W. Va., the case numbers appearing on certain cases or containers of its products which had arrived at that point consigned to the price-cutting wholesaler, and was enabled by these numbers to know that the merchandise had been originally shipped by it to a jobber at Norfolk, Va., who had shipped same to the offending jobber in the original cases. Upon the ascertainment of this fact respondent wrote said customer at Norfolk, Va., protesting against his action in supplying the price cutter of Charleston, and informing him that an order for merchandise on file with respondent would be held up pending an answer. The Norfolk dealer immediately replied stating that he would ship no further supplies to the Charleston dealer.

PAR. 6. Respondent selects its customers for their credit standing and their willingness and expressed or implied agreement to maintain the specified prices. It refuses to sell to dealers who persist in cutting such prices. Through its salesmen and dealers it endeavors to discover customers who do not maintain the specified prices with the purpose of cutting them off or getting them to maintain such prices in the future. By correspondence and through its agents it exhorts and persuades its purchasers not to sell at a less price, and in the same way gives notice that it will not sell to dealers who do not maintain the prices. It endeavors by letters and through its agents to induce customers who have been guilty of price cutting to give pledges or promises as conditions of reinstatement that they will in the future maintain the prices, and it reinstates customers who give such assurances.

PAR. 7. 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 dealers engaged in the distribution and sale of respondent's products are prevented from selling such products at such lower prices as might be deemed by them to be warranted by their respective selling costs, 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 DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the record, 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 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," and the Commission having heretofore, to wit, on December 21, 1925, made and entered its order upon the respondent requiring it to cease and desist from certain practices and the respondent having filed written objections to paragraph 4 of said order, and it appearing to the Commission upon reconsideration of the matter that said order should be modified:

Now, therefore, The Federal Trade Commission under and by virtue of the provisions of section 5 of said act of Congress hereby orders that the order to cease and desist heretofore made and entered in this proceeding on the 21st day of December, 1925, be, and the same is hereby, modified so that as modified said order shall read as follows, to wit:

It is now ordered, That the respondent, P. H. Hanes Knitting Co., its officers, agents, representatives, servants, and employees, cease and desist from:

(1) Entering into contracts, agreements or understandings with dealers or any of them that respondent's products are to be resold by such dealers at prices specified or fixed by respondent;

(2) Procuring, either directly or indirectly, from its dealers, agreements, promises or assurances that the prices fixed by respondent will be observed by such dealers;

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

(4) Cooperating with its dealers or other persons in cutting off or endeavoring to cut off the sources of supply of a dealer not buying direct from respondent on account of such dealer's failure to observe respondent's suggested resale prices.

It is further ordered, That the respondent, P. H. Hanes Knitting Co., 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.

¹ As modified Apr. 7, 1926.

IN THE MATTER OF
FRANKLIN COAL 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 1187—February 5, 1926

SYLLABUS.

Where coal produced at Mount Olive, Ill., and in a small district contiguous thereto, had long come to be well and favorably known to a substantial part of the trade and consuming public, by reason of extensive advertising, wide distribution, and reputed high quality and grade, as "Mt. Olive Coal," or "Mt. Olive District Coal"; and thereafter a coal dealer advertised, designated, and sold coal not mined in the aforesaid district, as Mount Olive District coal, with the capacity and tendency to mislead and deceive a substantial part of the trade and purchasing public in reference to the source of the aforesaid coal and to induce the purchase thereof in such erroneous belief, to the prejudice of competitors dealing in genuine Mount Olive District coal and of those dealing in other coal, truthfully represented:

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

Mr. O. R. Stites for the Commission.

Mr. J. J. Milligan, of St. Louis, Mo., for respondent.

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 Missouri corporation engaged in the purchase and sale of coal in wholesale quantities in interstate commerce, with principal office and place of business in St. Louis, with naming or designating its product misleadingly and advertising falsely or misleadingly 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 advertised in the St. Louis papers, offered for sale, and sold, certain coal as "Mt. Olive Coal" and "Mt. Olive District Coal," in competition with coal mined in "the Mt. Olive section," lying within the counties of Macoupin and Madison, Ill., and known and designated by a substantial part of the purchasing public as, "Mt. Olive Coal"; the complaint charging that the coal so advertised, offered and sold by respondent "is not the product of said Mt. Olive section, but is produced in the counties of Clinton and Bond in the State of Illinois, which said counties lie wholly without aforesaid Mt. Olive district, and said coal derived from said last named source