

IN THE MATTER OF
HOUBIGANT, INCORPORATED

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

Docket 1250—April 2, 1926

SYLLABUS.

Where a corporation engaged in the sale of perfumery and toilet articles to retail dealers, with some six thousand customers, and constituting one of the largest perfumery dealers in the United States; in pursuance of a policy directed to the maintenance of the prices fixed by it for the resale of its merchandise to the consuming public, which prices it set forth in its catalogues together with the phrase "Established Selling Prices," and terms and conditions of sale,

- (a) Secured promises and agreements from customers for the resale of its articles and merchandise at such established prices and generally sold its merchandise upon such promises;
- (b) Secured from all its dealers in localities where price cutting was occurring, agreements thereafter to observe established prices, acting at times upon its own initiative, but more often upon the complaint of a customer dealer and in cooperation with dealers disposed to observe its prices;
- (c) Requested dealers to investigate and report price cutting in order that it might eliminate the same by refusing further sales to the price cutter or by securing his assurance that he would observe established prices in the future;
- (d) Refused further sales to price cutters in many instances and in many instances secured assurances of future observance of its prices as a result of investigations made by it in response to reports of price cutting received from its dealers, and notified reporting dealers of action taken;
- (e) Requested and procured from salesmen and other agents, reports and information as to price cutting by its dealers and acted upon such information by refusing further sales to the price cutter or securing his assurance that he would thereafter observe established prices;

With the result that retail dealer customers generally throughout the United States sold its articles of merchandise to the consuming public at its established prices, dealers were prevented from selling the same at such lower prices as they might consider warranted by their respective costs of operation, and competition in the merchandise in question 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.

Hornblower, Miller & Garrison (*George S. Hornblower* and *A. DeWitt Mason* of counsel), of New York City, 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 New York corporation engaged in the sale of perfumes and other toilet articles to retail dealers, both directly and through distributing agents appointed by it, with principal office and place of business in New York City, 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 more than two years last past "has enforced, and still enforces, a merchandising system adopted by it of establishing and maintaining certain specified uniform prices at which its said toilet articles shall be resold by retail dealers handling same, and respondent enlists and secures 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 said 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 respondent's said toilet articles from reselling same at prices less than aforesaid resale prices established by respondent:

(a) Establishing uniform minimum prices at which retail dealers shall resell its products and issuing and sending to dealers handling its products, price lists containing the same;

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

(c) Securing and receiving from such dealers reports of the failure of other dealers so to do;

(d) Securing and receiving advertisements of retail dealers for the purpose of ascertaining whether they are maintaining its said prices;

(e) Securing the cooperation of its salesmen and other agents and employees in preventing price cutting dealers from obtaining its products and causing its salesmen and other agents and employees to investigate reported price cutting and to seek for instances of price cutting and report to it, for the aforesaid purpose;

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

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(g) Reporting facts ascertained and action taken to complaining and reporting dealers;

(h) Making only partial shipments on orders from price cutting dealers or suspected dealers, in some instances;

(i) Threatening to refuse and in some instances refusing, further supplies to price cutting dealers pending satisfactory assurances or undertakings by them of future observance and maintenance of its prices;

(j) Entering into agreements or understandings with groups of dealers who have failed to maintain said resale prices in their respective communities for the restoration of such resale prices or the establishment of uniform resale prices in the given community satisfactory to respondent and to the group of dealers doing business in such community, and the maintenance thereof in the future;

(k) Maintaining a system of card indices and lists of price cutters, from information obtained as above set out and otherwise, and furnishing such information to its agents and employees in enforcing its said system of resale price maintenance;

(l) Exacting promises and assurances from dealers that they will maintain its prices as a condition of opening accounts with them or of continuing to supply them; and

(m) Using other equivalent cooperative means and methods for the enforcement of its said system;

With the result that its said resale prices "have been and now are generally maintained"; the complaint further alleging that "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 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 the ultimate purchasers 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, the Federal Trade Commission issued and served its complaint upon the respondent, Houbigant, Incorporated, 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 entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before William C. Reeves, an examiner of the Federal Trade Commission theretofore duly appointed. Thereupon this proceeding came on for decision on the record, briefs and oral argument, and the Commission being fully advised in the premises, makes this its findings as to the facts, and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is now and since 1920 has been a corporation, organized under the laws of the State of New York, with its principal place of business at the city of New York, in said State. During its corporate existence, respondent has been and is now engaged in the sale of perfumery and toilet articles, and the distribution thereof in interstate commerce from its principal place of business, to dealers throughout the United States. Since August, 1922, it has sold and distributed its merchandise exclusively to retail drug stores and department stores. Orders for its merchandise are solicited by means of traveling salesmen, some 25 in number at the present time, and also by means of catalogues. Respondent transports or causes to be transported, its merchandise when sold, from its principal place of business in the State of New York, to its customers located in the various States of the United States, and has at the present time about 6,000 customers, some in every State of the United States. Its annual sales amount to several million dollars, and it is one of the largest perfumery dealers in the United States.

PAR. 2. In the course and conduct of its said business respondent is and has been during its corporate existence in competition with other corporations, partnerships, and individuals also engaged in the business of selling perfumery at wholesale and transporting same in interstate commerce from their respective locations in the United States, throughout the various States of the United States.

PAR. 3. Respondent since August 15, 1922, has sold its merchandise in accordance with a policy adopted by it, of fixing and main-

taining the prices at which its various articles of merchandise should be resold to the consuming public by the retail merchants handling such articles. In carrying out said policy respondent has sought and secured the assistance and cooperation of its retail dealers, and of its officers, agents, and employees. Respondent's efforts in behalf of price maintenance, have during said period of time received the approval and adoption by its leading dealers in all the cities of the country.

PAR. 4. In pursuance of its price maintenance policy, respondent on September 15, 1922, issued a catalogue in which were described the several hundred articles sold by it, together with a sum set opposite to each of said articles, which sum was designated as the "retail price" of such article. Said catalogue also contained the terms or conditions upon which said articles were offered for sale. Among these terms or conditions as designated, was the phrase "Established selling prices," which had reference to the designated retail prices appearing in the catalogue as heretofore in this paragraph mentioned, and respondent, in the course and conduct of its business, has sold and does sell much of its merchandise upon orders made by the vendees, based solely upon the catalogue. Respondent has continued since August 15, 1922, to issue to the trade similar catalogues, all of them containing the retail prices and term or condition of sale above mentioned. Respondent's catalogues are widely distributed to its customers and prospective customers.

PAR. 5. In furtherance of said price maintenance policy, the respondent has secured generally, promises and agreements from its customers for the resale of its articles of merchandise at the established prices, and respondent generally sells its merchandise upon promises obtained from or agreements and understandings arrived at, with its customers, for the resale of its merchandise at the established prices.

Respondent sometimes on its own initiative, but more often upon the complaint of a dealer of price cutting on the part of other dealers in a given locality, has through its agents and with the assistance of dealers favorable to the observance of the established prices, secured from all its dealers in the given locality a general agreement between and among said dealers and the respondent for the maintenance in the future of the established resale prices.

PAR. 6. Dealers are requested by respondent to report the names of price cutters, meaning those selling respondent's products at a price below that fixed by respondent, and to make investigations for the purpose of identifying price cutters and ascertaining the details of the price cutting, and such dealers 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 a price cutter or securing from him, his assurance that the established prices will be observed by him in the future. Respondent has in many instances, as a result of investigations instituted upon reports received from its dealers, refused further sales to persons found to have been cutting prices, and in many other instances has by correspondence or by its salesmen through personal interviews, secured from the price cutters assurance for the observance of the established prices in the future. In such cases it is the practice of the respondent to report back to the informant dealers the result of the investigation.

The respondent also requests and procures from its salesmen and other agents, reports and information as to price cutting by its dealers and acts upon the information thus obtained by refusing sales to the price cutter or securing his assurance that he will observe the established prices in the future.

PAR. 7. The effect of the enforcement of respondent's price maintenance policy by the methods hereinbefore mentioned, is that retail dealers handling respondent's articles of merchandise, generally throughout the United States, have sold and do sell such articles to the consuming public at the uniform established prices fixed by respondent, thereby preventing such dealers from selling respondent's articles of merchandise at such lower prices as might be deemed by them to be warranted by their respective costs of operation and thus suppressing and hindering competition in respect to respondent's merchandise in interstate commerce.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances set forth herein, are unfair methods of competition in 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 record and the briefs and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of section 5 of an act of Congress approved September 26, 1914, entitled

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"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, Houbigant, Incorporated, its officers, agents, representatives, servants and employees do cease and desist from directly or indirectly carrying into effect a system of uniform resale prices in which respondent, its customers and agents undertake to prevent others from obtaining the company's products at less than the prices designated by it—

(1) By 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) By procuring either directly or indirectly from its dealers promises or assurances that the resale prices fixed by respondent will be observed by such dealers;

(3) By requesting dealers to investigate and report to respondent the names of other dealers who do not maintain respondent's designated resale prices;

(4) By acting upon reports or communications from dealers concerning price cutting on respondent's products by other dealers, by securing assurances that respondent's designated resale prices will be observed.

It is further ordered, That the respondent, Houbigant, Incorporated, 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

WILLIAM F. SCHIED AND H. H. BARD, COPARTNERS,
DOING BUSINESS UNDER THE TRADE NAMES AND
STYLES OF AMERICAN SPECIALTY COMPANY AND
AMERICAN SEED 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 1333—April 9, 1926

SYLLABUS.

Where a firm engaged in the sale of snap dress fasteners and of vegetable and flower seeds through agents, mostly school children, whom it solicited to act for it through the offer of various premiums for the sale of a specified number of cards of fasteners or packages of seeds, as the case might be,

- (a) Misrepresented the number of cards or packages required by them to be sold to entitle the agent to a premium in that it sent an additional number to be sold and remitted for, to those agreeing to act as its agents in response to such solicitation, upon the pretext of insuring the delivery of the premium post paid, insured, delivery of which premium it advised its agents, it could not otherwise guarantee;
- (b) Misrepresented the nature, quality and origin of the seeds dealt in by it in the advertising matter furnished its agents, making such false statements as that its seeds had been carefully selected and tested, had been tested by the agricultural departments of many of the leading states, had always received the highest recommendations, were prize winning seeds, were "best by test", "fresh new seeds direct from the grower—sure to grow";
- (c) Supplied the seeds in packages upon which appeared the trade name under which it conducted its seed business, together with the legend "Quality seeds from * * * Lancaster, Penn., the Garden Spot of America," and furnished agents with pamphlets containing statements to be made by them in dealing with prospective customers, such as "You can not get seeds of equal fine, fresh quality from the finest farming district in the world such as Lancaster County, Pennsylvania, produces at a smaller price," and in their catalogues and other advertising matter made such statements as "Lancaster County, Pennsylvania, the banner county of the United States is truthfully termed 'The Garden Spot of America' * * * clearly, then, this is the place to buy seeds," "You can bring right into your own garden and plant there the seeds that have helped to produce the bumper crops of Lancaster County," "Sow seeds from the Garden Spot of America and get the big crops," the fact being that the seeds dealt in by it were not grown in Lancaster County, but were purchased by it from seed growers in other parts of the United States;