

IN THE MATTER OF

U. S. OIL COMPANY, INCORPORATED, ET AL.

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

Docket 1175—April 28, 1926

SYLLABUS.

Where a corporation engaged in the manufacture and sale of textile oils and allied products; and individuals interested therein as sole owners, and as officers, directors, and sales agent; gave and offered to give to employees of purchasers or prospective purchasers, without the knowledge or consent of their employers, sums of money as an inducement for them to recommend or procure the purchase of its products by their employers, or as a reward for so doing; with the effect of inducing the purchase thereof in preference to those of its competitors, and of diverting trade therefrom: *Held*, That such gifts and offers to give, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. E. Wallace and Mr. James M. Brinson for the Commission.
Mr. Charles F. Mitchell, of New Haven, Conn., 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 corporation, organized under the laws of Rhode Island, with principal place of business in Providence, and engaged in the manufacture of textile oils and allied products, and in the sale thereof to owners and operators of textile mills and factories in various States; five individuals, variously constituting its president, vice presidents, secretary-treasurer, and directors; and two individuals employed by it in selling its aforesaid products on a salary and commission basis; with bribing employees of customers in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

According to the complaint, for more than two years prior thereto "the individual respondents made parties to this proceeding and other persons in the employ of respondent corporation have offered and given at divers times during the past three years sums of money to employees of the aforesaid purchasers of respondent corporation's textile oils and allied products, all without the knowledge and consent of the employers and principals of such employees, as inducements to such employees to recommend said commodities of respondent corporation to, and secure or induce the purchase thereof by, their

employers and principals in preference to the like commodities of the competitors of respondent corporation," in consideration of which "money, gratuities, commissions, and rewards, said employees have so recommended, and secured or induced the purchase of, respondent corporation's said commodities"; "all to the prejudice of the public and of respondent's competitors."

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 a complaint upon U. S. Oil Company, Incorporated, W. J. Rooks, G. W. Rooks, J. R. Fox, C. T. Wass, I. W. Sundberg, R. D. Rooks, and James F. Quinn, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act, and thereupon they entered appearances and filed answer. Thereafter formal hearings were duly had before an examiner of the Commission and testimony introduced in support of the complaint and on behalf of respondents, which was reduced to writing and filed, together with other evidence duly received, and this proceeding came on regularly for decision and the Commission having duly considered the record and being now fully advised in the premises, makes this its finding as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, U. S. Oil Company, Incorporated, is a corporation which respondents, W. J. Rooks, G. W. Rooks, C. T. Wass, and others caused to be organized in 1916 under the laws of Rhode Island, with the name "National Oil and Supply Company," having its office and principal place of business at Providence, in said State. They caused this name, in 1917, to be changed to U. S. Oil & Supply Company, and in 1922 to U. S. Oil Company, Incorporated. The said individual respondents now, and since 1916, have been interested or engaged in the manufacture of textile oils and allied commodities and their sale in commerce between the States, conducting their activities in such business through or by means of respondent company under its present and former names. It is now, and during such period of time has been, engaged in the manufacture of said products and their sale and transportation from its place of business to purchasers in various States of the United States, in competition therein with other individuals, partnerships, and corpora-

tions likewise engaged in the manufacture and sale of textile oils and other allied products, from their various places of business in their respective States to purchasers in other States of the United States.

PAR. 2. During the period of several years prior to 1921 respondents, W. J. Rooks and G. W. Rooks, were unable to finance the operations of the respondent, U. S. Oil Company, Incorporated, and because of indebtedness which they were unable to discharge respondent company became and was during such years practically a subsidiary of the Graton & Knight Manufacturing Company, but in 1921 these two individual respondents, W. J. Rooks and G. W. Rooks, acquired the entire ownership of the capital stock of respondent company and ever since such time have retained such ownership and have had and exercised, and now have and exercise, complete dominance in the company and in the control and direction of its policies, operations, and affairs. Prior to 1920, even while the respondent company was such subsidiary, individual respondents, W. J. Rooks, G. W. Rooks, and C. T. Wass, actively supervised and directed its policies including the management of its sales organization and other activities arising from or incidental thereto. Respondent, U. S. Oil Company, Incorporated, in fact has been, particularly since 1921, and now is, though a corporate entity, the business organization or instrumentality by or through which said individual respondents have been and are now conducting their said business in commerce between States of the United States, and all of its policies, methods and practices are now and have been at all of the times hereinafter mentioned in these findings subject to discontinuance, revision or alteration by said individual respondents, W. J. Rooks, G. W. Rooks, and C. T. Wass.

PAR. 3. In the course of said business respondent, U. S. Oil Company, Incorporated, in 1920, when it was then known as the U. S. Oil & Supply Company, entered into an agreement with the respondent, James F. Quinn, by and through respondent W. J. Rooks, after conference between him and respondents, G. W. Rooks and C. T. Wass, and with their concurrence, in pursuance of which respondent, James F. Quinn, was employed to assist, and thereupon proceeded to assist, the respondent, U. S. Oil Company, Incorporated, in handling and marketing the particular product of respondent company, known as fulling and scouring oil, otherwise described as "Perfectol XX" and "Perfectol XXX" and to promote the sales thereof by traveling among and visiting the various mills and factories in other States than Rhode Island and creating or stimulating a demand for such products by personal demonstration of their

merits and the efficiency and economy of their use. In consideration of this service the respondent, U. S. Oil Company, Incorporated, by and through respondent, W. J. Rooks, with the approval of respondents, G. W. Rooks and C. T. Wass, agreed to pay and did pay and thereafter continued to pay respondent, James F. Quinn, until his separation from the company October 31, 1925, a substantial percentage of the gross income of respondent company from all sales of such oil by them through respondent company, by whomsoever solicited or by whatever means effected. This compensation of respondent Quinn in the form of commissions for his service in promoting the sale of such product, amounted in 1920 to \$6,548.58; in 1921, to \$34,202.74; in 1922, to \$51,664.94; and in 1923, to \$60,627.50.

PAR. 4. Supervised, controlled and directed by respondents W. J. Rooks, G. W. Rooks, and C. T. Wass, at all times acting in conjunction with each other in conducting its operations respondent, U. S. Oil Company, Incorporated, by and through respondent, James F. Quinn, has offered and given at divers times since 1921 various sums of money to employees of purchasers or prospective purchasers in the State of Maine, of the fulling and scouring oil of respondent company, without the knowledge or consent of the employers or principals of such employees, as inducement to such employees to recommend or procure, or reward for having recommended or procured, the purchase of such product by their respective employer or employers from respondent company. The employees to whom such money was so offered and given occupied positions and performed duties at the time, in relation to the business of their employers, which required or made it their duty, enabled or permitted them, to recommend, approve or disapprove the purchase of said products by their respective employers in connection with their particular business. In consideration of such gifts or payments of money to them by respondent U. S. Oil Company, Incorporated, through respondent, James F. Quinn, such employees have in some instances recommended or procured the purchase by their respective employers of said product.

PAR. 5. After the employment of respondent, James F. Quinn, by respondent U. S. Oil Company, Incorporated, through respondent, W. J. Rooks, with the concurrence of respondents, G. W. Rooks and C. T. Wass, and as the effect thereof, or due chiefly to his service in promoting the sale of said fulling and scouring oil, the business of respondent company in the sale of such product had a substantial, unusual and progressive increase from 1920 until the latter part of 1923, when the aggregate of its entire business approximated \$750,000. In its issue of July 12, 1923, the American Wool & Cotton

Conclusion

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Reporter, a reputable trade magazine of extensive circulation, charged the respondent, U. S. Oil Company, Incorporated, with the practice of paying money to employees of customers or prospective customers to influence the purchase of the fulling and scouring oil of respondent company by their respective employers. After the publication of such issue of this magazine and circulation of the accusation it conveyed regarding the practice of respondent company, its business so substantially declined that in 1924 it amounted to less than one-half of the said business done by it in 1923.

PAR. 6. The payment of money by the respondent, U. S. Oil Company, Incorporated, through respondent, James F. Quinn, as stated in paragraph 4 of these findings, to employees of purchasers or prospective purchasers in the State of Maine, of the fulling and scouring oil of respondent company without the knowledge or consent of the employers or principals of such employees, as inducement to such employees to recommend or procure or as a reward for having recommended or procured the purchase of such product by their respective employer or employers from the respondent company, had the capacity and tendency, and the effect thereof was, and is, to divert trade from individuals, partnerships, and corporations engaged in the sale, in interstate commerce, in competition with the respondent, U. S. Oil Company, Incorporated, of textile oils and allied commodities, and to induce the purchase of such product of the respondent, U. S. Oil Company, Incorporated, in preference to like commodities offered for sale or sold in commerce between the States by its said competitors.

PAR. 7. Respondents, J. R. Fox, I. W. Sundberg, and R. D. Rooks, neither participated in or had any direct or responsible connection with the employment of James F. Quinn, nor control over or direction of his activities in promoting the sale of the fulling and scouring oil of respondent, U. S. Oil Company, Incorporated, or with the acts or practices of respondents, W. J. Rooks, G. W. Rooks, C. T. Wass, James F. Quinn or the U. S. Oil Company, Incorporated, described in paragraph 4 of these findings.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and evidence and the argument of counsel, and the Commission having made its findings as to the facts and its conclusion drawn therefrom that respondents, U. S. Oil Company, Incorporated, W. J. Rooks, G. W. Rooks, C. T. Wass, and James F. Quinn, have 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,"

Now, therefore, it is ordered, That the respondent, U. S. Oil Company, Incorporated, its officers, directors, stockholders, agents, and employees; respondents, W. J. Rooks, G. W. Rooks, C. T. Wass, and James F. Quinn, as officers or employees of respondent, U. S. Oil Company, Incorporated, and as individuals, and their and each of their agents, employees, and servants, cease and desist from giving, paying, offering, or agreeing to give or pay to an employee, or employees, or purchasers or prospective purchasers without their knowledge or consent, money or other valuable consideration as inducement to such employee or employees to recommend, or procure, or reward for having recommended or procured, the purchase by their respective employer or employers, in commerce between States of the United States, of fulling and scouring oil or other textile oil or oils or allied commodities or any of them, offered for sale or sold by said respondents, or any of them.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondents, J. R. Fox, I. W. Sundberg, and R. D. Rooks.

It is further ordered, That the respondents, U. S. Oil Company, Incorporated, W. J. Rooks, G. W. Rooks, C. T. Wass, and James F. Quinn, 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
THE LONG-KOCH 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 1252—May 4, 1926

SYLLABUS.

Where a corporation engaged in the manufacture and sale of pocketknives or penknives; acting in disregard of the collective action of the great majority of the members of the industry condemning and discontinuing the practice, branded as 10-karat, or 14-karat, knives as the case might be, knives with base metal shells so fitted into and covered by thin gold shells as to give the mountings the appearance and rigidity of one piece of all gold, and so sold the same in competition with truthfully marked and represented genuine gold-mounted penknives or pocketknives with mountings composed of gold exclusively, and with similar knives with mountings not so composed; with the intent and effect of causing its dealer customers to display, offer and sell its aforesaid knives to the consuming public as and for genuine 10-karat, or 14-karat gold-mounted knives, with the capacity and tendency to induce the purchase and sale thereof by many of the trade and purchasing and consuming public as and for such knives, and with the result that trade was unfairly diverted from competitors dealing in genuine gold-mounted knives and those dealing in similar knives, as above set forth: *Held*, That such misbranding, under the circumstances set forth, constituted an unfair method of competition.

Mr. Henry Miller for the Commission.

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 Jersey corporation engaged in the manufacture, sale, and distribution in interstate commerce in wholesale and/or retail quantities of jewelry, including watch chains, cuff links, knives and kindred products and with principal offices and manufacturing plant in Newark, with misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

According to the complaint, respondent, for more than one year prior thereto, caused the mountings of its knives, composed of a metal or metals other than gold, but covered or veneered therewith in whole or in part, to be falsely represented and described by marking or stamping the same "10K" or "14K," respectively, such marks being "intended and calculated by respondent to mislead and deceive the purchaser into the erroneous belief that the complete or entire mounting of said product contains such number of parts or proportions of