

IN THE MATTER OF
J. W. KOBI 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 1297—June 18, 1926

SYLLABUS.

Where a corporation engaged in the manufacture of preparations for the hair, and in the sale thereof to wholesalers and retailers; in pursuance of a policy directed to the maintenance of uniform prices for the sale of its products at wholesale and at retail,

- (a) Issued and circulated lists indicating the desired resale prices among its vendees and prospective vendees and made it generally known to both wholesale and retail dealers that it expected and required them to sell its product at the prices indicated under penalty of refusal of further sales;
- (b) Solicited and received from customers information and evidence relative to price cutting by other customers and employed its sales representatives and agents to secure and report such information and evidence;
- (c) Made use of information secured as above set forth to induce price cutters thereafter to observe and maintain its prices through threats to discontinue to supply them further and procured promises and assurances from them to do so;
- (d) Refused to supply its products to price cutters pending the giving of satisfactory assurances that they would thereafter observe and maintain said prices; and
- (e) Penalized such customers in some instances through according them less favorable terms or discounts than regularly given to those observing its prices;

With the result that such prices were maintained to a substantial extent, competition in the sale and distribution of its products was lessened and suppressed, customers were prevented from selling the same at such lower prices as they might desire, and purchasers of such products were deprived of the advantage of free competition in the sale thereof:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. James T. Clark for the Commission.

Chadwick, McMicken, Ramsey & Rupp of Seattle, Wash., and
Mr. Daniel N. Dougherty of San Francisco, Calif., 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 Washington corporation engaged in the manufacture of certain hair preparations, named by it respectively, "Gold Glint Shampoo" and "Golden Glint Powder," and in the sale thereof to

wholesale and retail dealers in the various States, with principal office and place of business in Seattle, 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 for about four years last past it has enforced and 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 to retail dealers, and certain specified uniform prices at which its said products shall be resold by retail dealers handling the same, and has enlisted and secured the support of dealers handling the same, and of its officers, agents and employees in enforcing such system.

In order to carry out said system it has employed and employs the following, among other means, whereby it and those cooperating with it, undertake to prevent, and do prevent, dealers handling its products from reselling same at prices lower than the aforesaid resale prices established by it:

(a) Establishing uniform minimum wholesale and uniform minimum retail prices at which dealers handling its said products shall resell same, and issuing to said dealers price lists setting forth such prices.

(b) Making it generally known to the trade by letters, telegrams, interviews with its agents, and by other means, that it expects and requires dealers handling its products to maintain and enforce such prices.

(c) Procuring and receiving from such dealers reports of, information concerning, and proofs of price cutting by others.

(d) Employing its salesmen and other agents and employees to ascertain, investigate and secure such information together with proof, and to report to it in the premises.

(e) Using the information secured as above set forth or otherwise to induce and coerce price cutters to observe and maintain prices in the future, by exacting promises and assurances that they will do so and by threatening that if they do not do so, it will refuse to supply them further with its products.

(f) Using similar means in order to ascertain instances of the sale of its said products by dealers to other dealers who cut prices.

(g) Entering into contracts and agreements with dealers providing for the maintenance of its prices by them.

(h) Refusing further to supply its products to price cutters, unless and until they have given it satisfactory assurances and promises that they will in future observe and maintain its prices.

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(i) In some instances penalizing price cutters by giving them smaller discounts and less favorable terms than it habitually and regularly grants to dealers handling its said products.

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

According to the complaint, "the direct effect and result of the above alleged acts and practices of respondent has been and now is to suppress competition in the distribution and sale of 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 said products of those 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, the Federal Trade Commission issued and served a complaint upon the respondent, J. W. Kobi Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and respondent, before William E. Humphrey, a member of the Federal Trade Commission, duly appointed, and the said Commissioner having filed his findings of fact herein and the respondent having filed its exceptions thereto,

Thereupon this proceeding came on for final decision on the record herein. And the briefs and oral arguments having been filed and made and the Commission 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, J. W. Kobi Co., is a corporation organized and doing business under the laws of the State of Washington, with its principal office and place of business in Seattle, in said

State, and with branch offices in Chicago, Ill., and New York, N. Y. Respondent was incorporated in May, 1917, and has a capital stock of \$25,000. Its business represents an investment of approximately \$125,000.

PAR. 2. Respondent is engaged in the business of manufacturing and selling preparations used in the dressing of the human hair, under the names of "Golden Glint Shampoo" and "Golden Glint Powder." Such preparations are sold by respondent to retail dealers and to jobbers or wholesalers throughout the United States, being shipped to such dealers from respondent's place of business in Seattle, Wash., in interstate commerce. In the conduct of such business, respondent is in competition with many persons, partnerships and corporations likewise engaged in interstate commerce. There are approximately 290 manufacturers of shampoo in the various States of the United States with whom it is in competition in the manufacture and sale of its products. Sales of its products amount approximately to \$300,000 a year. Respondent's business is growing rapidly.

PAR. 3. The great bulk of respondent's sales are made to jobbers or wholesalers in hair goods or to drug and barber supply houses. Some sales are made to hairdressers and to beauty parlors for their own consumption. Shampoos and powders sold by respondent to jobbers are put up in dozen or gross lots of individual packages. Wholesale hairdressers to whom respondent sells distribute respondent's products to proprietors of beauty parlors for their own consumption and for sale to the public. When intended for the former, these articles are put up in lots of one dozen powders and in lots of three dozen shampoos and three dozen powders, in a plain cardboard box, devoid of decoration or advertising, and considered by respondent as not suitable for resale. When intended for resale, these articles are put up in lots of one dozen each, in ornate cardboard packages, with descriptive printed matter. The amount sold to hairdressers for resale constitutes a small percentage of respondent's total sales. As a rule, respondent does not sell through traveling salesmen, although at one time it had two such salesmen. It has brokers or sales agents to represent it in sales matters in New York, Chicago, and Detroit. Many orders are received through the mails. Respondent has about 2,500 accounts upon its books, scattered throughout the United States. As a rule, orders from retail dealers received by respondent are sent by it to jobbers to fill, and therefore such retail accounts appear only temporarily on respondent's books, unless the retailer insists upon being supplied direct.

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Respondent advertises its products nationally in magazines, newspapers, and periodicals throughout the United States.

PAR. 4. In connection with the distribution and sale of its products as aforesaid, it is respondent's purpose and policy to secure the maintenance of uniform resale prices at which its wholesale or jobber customers and its retail customers, respectively, shall resell its products. In pursuance of this policy respondent procures the cooperation of its customers, wholesale and retail, and of its agents and employees, by the following methods and means:

(a) Respondent has issued and circulated to its vendees and prospective vendees, wholesale and retail, from time to time, price lists on which are indicated the resale prices at which it desires its products to be sold.

(b) By means of letters from respondent to dealers and through the representations by its sales agents, or brokers, in New York City, following its instructions, the respondent has made it generally known to both wholesale and retail dealers in its products that it expects and requires them, when selling its products, to sell them at the resale prices indicated by respondent for each class, on penalty of being refused further sales by respondent.

(c) Respondent has solicited and received from its customers information and evidence concerning the cutting by other customers of its said resale prices.

(d) Respondent has employed its sales representatives and the agents to secure and report to it information and evidence concerning the failure of dealers to observe and maintain its resale prices, and procure such information of price cutting by dealers through competing dealers.

(e) Respondent has used information secured through the means set out in subparagraphs (c) and (d) above hereof to induce customers, who have failed theretofore to observe its resale prices, to observe and maintain them in the future, and for this purpose respondent has advised and threatened, through correspondence and by its agents, that unless such customers maintain such resale prices respondent will refuse thereafter to supply them with its products, and has procured promises and assurances from such customers that they will in the future maintain such prices. In one case, a customer at the solicitation of the respondent entered into a written contract for the observance of its resale prices for 1923-1924, except for one sale not to exceed in duration two weeks, during the life of the contract. This contract was not renewed.

(f) Respondent has refused to supply its products to its customers who failed to maintain its resale prices unless such customers gave

satisfactory assurances or promises that they would in the future observe and maintain said prices.

(g) In some instances the respondent has penalized customers who have failed to observe and maintain its resale prices, by giving such dealers less favorable terms or similar discounts than it accords regularly to other customers who buy its products in the same quantities and who maintain respondent's resale prices.

PAR. 5. The effect of respondent's policy and practices as set forth in the preceding findings has been to secure the maintenance of its resale prices by its customers to a substantial extent, and to lessen and suppress competition in the sale and distribution of respondent's products, thereby preventing its customers from selling its products at such less prices as they may desire and depriving purchasers of said products and the advantage of free competition in the sale thereof.

CONCLUSION

1. The practices of the respondent in furtherance of its policy of procuring the maintenance of its resale prices for its products as designated by it, as set forth in the foregoing findings, under the conditions and circumstances described therein, have a tendency to, and do, to a substantial degree, unduly lessen and restrict competition between the distributors of respondent's products, wholesalers and retailers.

2. Said policy and practices so described are unfair methods of competition in interstate commerce and constitute a violation of section 5 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 respondent, and testimony and evidence submitted, the trial examiner's report upon the facts and exceptions thereto, and briefs and oral argument, 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,"

Now, therefore, it is ordered, That the respondent, J. W. Kobi Co., its officers, directors, agents, employees, and successors, do cease and desist from carrying into effect, or attempting to carry into effect, its

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policy of securing the maintenance of resale prices for its products, by cooperative methods in which the respondent and its distributors, customers and agents, undertake to prevent the sale of its products for less than said resale prices—

1. By seeking or securing or entering into contracts, agreements or understandings with customers or prospective customers, that they will maintain the resale prices designated by it.

2. By soliciting customers to report the names of other customers who fail to observe such resale prices.

3. By utilizing any other equivalent cooperative means of accomplishing the maintenance of such resale prices.

It is further ordered, That the respondent, J. W. Kobi Co., 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.

Commissioner Nugent made the following statement in connection with the foregoing order:

I dissent from the action of the Commission in striking out a paragraph of the aforesaid order, prepared and submitted to the Commission by the chief counsel with the recommendation that it be adopted.

Said paragraph reads as follows:

By employing sales agents to assist in such plan by reporting dealers who do not observe such resale prices and by procuring information of price cutting by dealers through competing dealers.

Syllabus

IN THE MATTER OF

J. L. HEAPS, TRADING UNDER THE NAME CIVIL
SERVICE CORRESPONDENCE SCHOOL

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

Docket 1354—June 30, 1926

SYLLABUS.

Where an individual engaged in conducting a correspondence school for those who wished to take civil service examinations for such positions as departmental clerkships, railway mail clerkships, etc., and in no way connected with the United States Civil Service Commission or the United States Government or authorized to act in their behalf,

- (a) Used the words "Civil Service" as a part of his trade name and displayed the same on his letterheads and other stationery, and in his advertising matter;
- (b) Placed pictorial representations of the Capitol, "Uncle Sam", a scroll surmounted by an eagle, and the shield of the United States, inclosed in a frame of red, white and blue, upon the front cover of his catalogues, and made statements therein and in his advertisements implying that he was connected with the aforesaid commission and engaged in behalf of the Government in securing needed employees;
- (c) Falsely represented in his catalogues that examinations by said commission to secure such employees were pending and that by reason of his possession of knowledge not enjoyed by others in reference to the matters herein concerned his courses were of particular value; and
- (d) Represented in his catalogues and advertisements that his courses consisted of questions and answers similar to those that would be propounded by the commission in its examinations and implied that customers and students would promptly secure employment by successfully passing the same, the fact being that the questions propounded were entirely different, that students could have obtained from the commission without charge sample sheets and descriptions of the examinations and any other information properly communicable in advance to applicants, that the relative weight or credit given by the commission for the successful passing of many subjects was erroneously set forth in said catalogues, and that employees of the kind herein concerned were not needed at the time, and that said individual could not and did not secure prompt employment for his students;

With the effect of misleading and deceiving many persons into believing him to be connected with the aforesaid commission and acting for the Government and of inducing persons who otherwise would not have done so, to purchase his courses of instruction, in the belief that by so doing and completing the same they would promptly become eligible for and secure employment with the Government:

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

Mr. E. J. Hornbrook for the Commission.