

Complaint

IN THE MATTER OF
ARNOLD ELECTRIC COMPANY

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

Docket 1308. Complaint, May 12, 1925—Decision, Dec. 23, 1926

Where a corporation engaged in the manufacture and sale of electrically driven drink mixing machines,

- (a) Procured assurances from a large number of its customer dealers whereby they undertook to maintain the resale price specified by it, and removed from its list those who failed to give such assurances; and
- (b) Requested its dealers to cooperate in the maintenance of its resale prices and to report and investigate cases of price cutting in order that it might eliminate the same by refusing further sales to the price cutters or by securing their assurances that in the future they would observe its prices;

With the result that it secured the cooperation of its customers, resale prices fixed by it generally prevailed, dealers engaged in the distribution and sale of its product were prevented from selling the same at such lower prices as they might deem warranted, and competition in respect of such products was suppressed and hindered:

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

Mr. Alfred M. Craven for the Commission.

Hand & Quinn of Racine, Wis., 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 Wisconsin corporation engaged in the manufacture of electrically driven drink-mixing machines and in the sale thereof to dealers in various States, and with principal office and place of business in Racine, Wis., 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 about four years preceding the complaint has enforced and enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its machine shall be sold by dealers handling the same and has enlisted and

Complaint

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secured the support of said dealers and of its own officers, agents, and employees in enforcing said system.

In order to carry out such system respondent has employed and employs the following, among other means, whereby it and those cooperating with it have undertaken to prevent and have prevented dealers handling those products from reselling the same at prices lower than the resale prices established by it:

(a) Establishing uniform minimum prices for the resale of its said machines and issuing price lists and catalogues setting forth the same, to its dealers;

(b) Making it generally known to the trade that it expects and requires its dealers to maintain and enforce said resale prices;

(c) Entering into agreements and understandings with its dealers providing for the maintenance of said prices by them;

(d) Seeking and securing from its dealers reports of and information concerning price cutting on the part of other dealers;

(e) Employing its salesmen and other agents and employees to investigate and secure information relative to price cutting and to report to it in the premises;

(f) Using information secured relative to price cutting through the aforesaid means or otherwise, to induce and coerce price-cutting dealers to observe and maintain its prices in the future, by exacting promises and assurances from them that they will so do under penalty of refusal of further sales by it to them;

(g) Keeping and maintaining lists of its dealers and striking therefrom names of price cutters pending the giving of promises and assurances by them that they will thereafter maintain its prices, and using said lists in the maintenance of its system of resale prices;

(h) Refusing further supplies of its machines to price cutters pending the giving of satisfactory assurances and promises by them as above set forth; and

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

According to the complaint, the result of said acts and practices has been the general maintenance of its resale prices and "has been and now is to suppress competition in the distribution and sale of respondent's machines; to constrain said dealers to sell said machines at aforesaid prices fixed by respondent and to prevent them from selling said machines at such less prices as they may desire, and to deprive the ultimate purchasers of said machines of those advantages in price and otherwise which they would obtain from the natural and unobstructed flow of commerce in said machines 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, Arnold Electric Co., 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.

Respondent, having entered its appearance herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before William F. Dinnen, an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for decision and the Commission having considered the record and being now 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, Arnold Electric Co., is a corporation organized under the laws of the State of Wisconsin, with its principal place of business and factory at the city of Racine, in said State. It is now, and for over twelve years has been, engaged in the manufacture and sale, among other things, of electrically driven drink-mixing machines, which machines are used chiefly in the operation of soda fountains. Since the early part of 1922, its principal article of manufacture in this line has been a drink-mixing machine known as the "Arnold Automatic Mixer."

Respondent sells, and has sold, its drink mixers almost exclusively to dealers who in turn sell them to the users thereof, and these dealers, although jobbers in other lines, are as to respondent's products retail dealers inasmuch as they sell to the ultimate user. In 1923 respondent traveled seven salesmen who solicited orders from dealers over the United States generally and sold its mixers to about 1,000 dealers.

PAR. 2. Respondent causes its mixers, when sold, to be transported in interstate commerce, from Racine, Wis., into and through the various States of the United States to the purchasers thereof.

In the sale and distribution of its products, respondent is, and has been since 1922, in active and direct competition with other persons, firms, and corporations who manufacture drink mixers and who likewise sell and cause same to be transported from the State where manufactured into and through other States of the United States in interstate commerce. Principal among these competitors are: Hamilton-Beach Manufacturing Co., of Racine, Wis.; Gilchrist Co., Newark, N. J.; Wisconsin Electric Co., Racine, Wis.; and Kar-Lac Co., Chicago, Ill. It is estimated that the respondent sells about one-third of the drink mixers sold in the United States.

PAR. 3. Upon commencing to manufacture the Arnold Automatic Mixer in the early part of 1922, respondent fixed minimum resale prices at which the various types of the Arnold Automatic Mixer should be sold by the dealers to the users. It advertised and since said time has continued to advertise extensively in trade papers, having a general circulation among the users or probable users of drink mixers, a description of its mixers together, in all cases, with its specified retail prices. It also made known its specified retail prices to the trade by means of a "confidential price list," which price list described the mixers and contained the prices at which they were to be sold by the retailers to the consumer. The respondent also instructed its salesmen not to make sales to any dealer who would not observe the retail prices specified by it, and to make known to said dealers that the respondent would refuse to do business with any dealer who deviated from such prices. These instructions were carried out by the salesmen of the respondent, who procured from dealers in many cases, oral agreements for the maintenance of the prices specified by respondent.

PAR. 4. In the latter part of the year 1923 the respondent, for the purpose of procuring written agreements from its various dealers to observe the prices specified by it in the resale of its mixers, sent to all of its jobbers (about one thousand in number) a circular letter and to those who did not respond, a second circular letter, and to those who did not respond to the second circular letter, a third circular letter. The purpose of sending these circular letters was to procure written agreements or understandings obligating the dealers to observe in the resale of the mixers, the prices specified by respondent. In the second circular letter, the respondent states:

We are at this time making changes in the distribution of Arnold Automatic Mixers necessary to confine our cooperation entirely with jobbers who are upholding our policy as established and only want an understanding with you that you will cooperate with us. In return we promise to do everything in our power to make your continued association with us most pleasant and profitable.

The respondent received, in answer to the various circular letters above referred to, approximately 700 letters from its customers, which letters were assurances by the writers thereof that they respectively would maintain the prices specified in the confidential price list in the resale of the Arnold Automatic Mixer. The names of the dealers not giving such assurances were removed from respondent's list of customers, as appears from a letter written by respondent under date of October 15, 1923, to one of its representatives, as follows:

We have removed from our lists the names of several hundred jobbers throughout the country who have failed to give us a satisfactory reply to our letters and believe that we have now eliminated to a large extent, the serious matter of price cutting.

PAR. 5. The respondent, in furtherance of its price maintenance policy through correspondence and its salesmen, requests of its dealers their cooperation in maintaining the resale prices which it fixes. Respondent also requests its dealers to aid and assist it in ascertaining the names of dealers who cut prices. Dealers are requested to report the names of price cutters to respondent and are urged to make investigation for the purpose of ascertaining the names of price cutters and are informed by the respondent that the purpose of securing such information is to eliminate price cutting either by the refusal of further sales by respondent or securing from the price cutter his assurance that, as to future sales, the specified prices will be observed.

PAR. 6. Respondent has secured the cooperation of its dealers generally by reason of the methods and practices stated in these findings with the effect that the resale prices fixed by respondent 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, thus suppressing and hindering competition in respect to respondent's products in interstate commerce.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public 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 and the evidence introduced, and the Commission having made its findings as to the facts with 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, Arnold Electric Co., its officers, agents, 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 promises or assurances that the prices fixed by respondent will be observed by such dealers.

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

(4) Seeking the cooperation of dealers in making effective its price maintenance policy, by manifesting to dealers an intention to act upon reports sent in by them of variations from the suggested prices, by the elimination of the price cutter or by informing dealers that price cutters reported who would not give assurance of adherence to the suggested resale prices had been or would be refused further sales.

It is further ordered, That the respondent, Arnold Electric Co., a corporation, shall within 60 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.

Complaint

IN THE MATTER OF
TWINPLEX SALES COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1282. Complaint, Feb. 13, 1925—Decision, Jan. 11, 1927*

Where a corporation engaged in the manufacture and sale of stropers for safety-razor blades, gave and offered to give to employee salesmen of its retail dealer customers, without the knowledge or consent of their employers, cash rewards for each stropper sold as an inducement to devote time and care to the demonstrations and instructions involved in the sale thereof; with the capacity and tendency to injure competitors by diverting trade from their products to its own, deprive such competitors of equal opportunity for the sale and distribution of their products, and mislead and deceive the purchasing public and especially those who sought information and advice from the aforesaid salesmen with their undisclosed interest as to the relative merits of its products and those of its competitors, and thereby destroy the competition in quality, price and service to which the public is entitled:

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

Mr. Robert O. Brownell for the Commission.

Covington, Burling & Rublee, of Washington, D. 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 Delaware corporation engaged in the manufacture of safety razor blades and in the sale thereof in wholesale or retail quantities to purchasers in various States and with principal or executive offices in St. Louis, and with manufacturing plant in Chicago, with subsidizing secretly customers' salesmen, 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 a year preceding the complaint, "for the purpose and with the effect of depriving competitors of access to equal opportunities to compete in the channels of trade in the sale and distribution in interstate commerce of safety razor blade stropers, has offered to give and has given sums of money to salesmen in the employ of retail merchants, without the knowledge or consent of their respective employers or principals and without other consideration therefor, to induce said salesmen to sell respondent's product or as a gratuity for selling respondent's product to the exclusion