

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

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of the products of said competitors," with the capacity "to injure competitors who do not engage in such practice by unduly hindering and otherwise obstructing the sale of their products and by unfairly and unlawfully diverting said trade to the said respondent," and with the effect of depriving competitors "of access to equal opportunities in the channels of trade for the sale and distribution of their products" and with the further capacity "of deceiving and misleading the purchasing public as to the relative merits of the competitors' products, especially those of the purchasing public who seek information and advice from such salesmen having an undisclosed interest in the sale of respondent's product, thereby destroying the advantage of competition in quality, price and service to [which] the purchasing public is entitled," all to the prejudice of the public and 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 respondent, Twinplex Sales 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 herein, an agreed statement of the facts in this proceeding was signed and filed by counsel for respondent and counsel for the Commission, and it was further stipulated and agreed by them that the Commission might proceed further upon said agreed statement of the facts to make its report in the said proceeding, stating its findings as to the facts and its conclusion based thereon, and entering its order disposing of the said proceeding.

The Federal Trade Commission, having considered the record herein 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, Twinplex Sales Co., is a corporation organized and doing business under the laws of the State of Delaware, with its principal or executive office located in the city of St. Louis, State of Missouri, and with a manufacturing plant, known as the Floyd Manufacturing Co., located in the city of Chicago, State

of Illinois. It is now and for several years has been engaged in the manufacture of stropplers for safety razor blades, and the sale of same to wholesale and retail customers located in various States of the United States. It causes its said products, when so sold, to be transported from its said place of business in the city of Chicago, State of Illinois, into and through other States of the United States to the said purchasers thereof. In the regular course of its said business, respondent has been at all times hereinafter mentioned, and still is, in competition with other persons, partnerships, and corporations manufacturing and selling safety razor blade stropplers in interstate commerce between and among the various States of the United States.

PAR. 2. In order to display the qualities of the stroppler manufactured and sold by respondent, a salesman in a retail store must demonstrate its use to purchasers and also give them instructions thereon. To induce such salesmen to devote time and care to this demonstration and instruction, respondent offers to give and gives them cash rewards for each stroppler sold. Respondent incloses with each stroppler a folder containing instructions in the use of the stroppler, and a coupon which is arranged for the signatures of the purchaser and of the salesman. Upon the receipt of the coupon, properly signed, respondent sends to the salesman whose name appears thereon, the said cash reward. There are more than 1,300 clerks in the various States of the United States who have received or are now receiving the cash rewards paid by the respondent as aforesaid.

PAR. 3. Prior to January 1, 1925, respondent paid cash rewards in the manner aforesaid in paragraph 2 hereof, to salesmen who were employed in stores where the owners or managers of the said stores were opposed to the practice of a manufacturer giving premiums to the said salesmen and did not know that the said salesmen were receiving premiums or rewards as aforesaid from respondent.

PAR. 4. Prior to January 1, 1926, in an advertising magazine called "Edgewise" respondent had explained its reward plan for paying rewards to salesmen, and had sent copies of this magazine, from time to time, to its trade throughout the United States, and to others who might become customers. The executive officials of respondent had not authorized or approved the payment of rewards to salesmen without the knowledge and consent of their employers, and when protests had been made to them by such employers, they had taken steps to prevent the payment of further rewards unless the employer subsequently consented to such payment.

PAR. 5. On or about January 1, 1925, after learning that rewards had been paid to certain salesmen without the knowledge and consent

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of their employers, respondent instituted a method of operation whereby any retail salesman, before becoming eligible to receive rewards from respondent, was required to file with respondent an application, signed by a responsible official of the company for which he worked, containing the company's consent to the payment of such rewards, when earned by the salesman. This method of operation is now in full force and effect.

PAR. 6. The said acts and practices of respondent as carried on prior to January 1, 1925, in giving cash rewards to salesmen employed by retailers, whose employers did not know that the salesmen were receiving such rewards, and who were opposed to the giving of such rewards by manufacturers, had the capacity and tendency to injure the respondent's competitors by diverting trade from their goods to those of respondent, and to deprive the said competitors of the equal opportunity for the sale and distribution of their products; and the said acts and practices of respondent had the further tendency and capacity to mislead and deceive the purchasing public as to the relative merits of the products of respondent and its competitors, especially those of the purchasing public who seek information and advice from the salesmen who have an undisclosed interest in the sale of respondent's product, thereby destroying the competition in quality, price and service to which the public is entitled.

CONCLUSION

The acts and practices of respondent, as carried on prior to January 1, 1925, under the conditions and circumstances set forth in the foregoing findings, are all to the prejudice of the public and of respondent's competitors, and constitute methods of competition in interstate commerce in violation of the provisions 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 respondent, and an agreed statement of the facts filed herein, and the Commission having made its findings as to the facts and its conclusion that respondent has violated 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",

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Order

It is now ordered, That the respondent, Twinplex Sales Co., its officers, agents, representatives, servants, and employees do cease and desist from offering to give or giving to salesmen employed by dealers in the products made by respondent any premium, reward, or bonus whatsoever, conditioned upon the sale of respondent's products by said salesmen, without the full knowlegde and consent of the employers of the said salesmen.

It is further ordered, That respondent shall, within 30 days after the service of this order, file with the Commission a report in writing setting out the manner and form in which it has complied with the said order.

IN THE MATTER OF

W. HARRIS THURSTON & COMPANY, INCORPORATED

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

Docket 1313. Complaint, May 20, 1925—Decision, Jan. 15, 1927

Where a "fine cotton goods converter", engaged in the sale to shirt and garment manufacturers, of an all cotton fabric resembling silk in appearance,

- (a) Offered and sold said fabric through advertisements in trade journals and other publications, circulars, cards and other advertising literature, and through traveling salesmen under its trade-mark "Nusylk"; and
- (b) Supplied its traveling salesmen and customers with cards and display cards, respectively, and with labels in the case and at the request of the latter, and employed labels, tags and bands for its said fabric, upon which various cards, labels, tags, and bands the words "Nusylk" and "Imported" (and "English" in the case of said customer labels) were conspicuously printed and the words "Superfine" and "Cotton" were printed in relatively small and inconspicuous letters;

With the result that its customers' retail dealer vendees were enabled to offer and sell products made from the aforesaid fabric under the name "Nusylk", without sufficient notice as to the nonsilk content thereof, and with the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into believing said fabric and shirts or other articles made therefrom to consist in whole or in part of silk and thereby divert trade from competitors dealing in silk, cotton, and mixed silk and cotton, shirts, truthfully advertised and described:

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

Mr. James M. Brinson for the Commission.

Cullen & Dykman, of Brooklyn, N. Y., 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 importation of cotton shirt fabrics, and in the sale thereof to purchasers in the various States, and with principal office and place of business in New York City, with naming product misleadingly, misrepresenting product, advertising falsely or misleadingly and 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, in that it offered and sold to shirt manufacturers an imported fabric dealt in by it made entirely of cotton and with the appearance of silk, under the trade name "Nusylk," through