

Complaint

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IN THE MATTER OF

ATLANTA WHOLESALE CONFECTIONERS ASSOCIATION, ITS OFFICERS AND MEMBERS

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

Docket 1364. Complaint, Feb. 20, 1926—Decision, Mar. 30, 1927

Where an association of wholesalers or jobbers dealing in candies or confectionery, and members thereof; in pursuance of a conspiracy to prevent chain stores, and jobbers dealing principally in products other than confectionery and candy (held by them to be "illegitimate" dealers and not entitled to deal in such products) from obtaining the same from the manufacturers or other sources,

- (a) Held meetings for the interchange of information concerning, and the discussion and adoption of plans and measures for carrying out, the same;
- (b) Wrote letters to manufacturers of candy, confectionery and allied products selling the same to "illegitimate" dealers, representing that all of the "legitimate" dealers in the products concerned in the city involved were members of the association and that others were "illegitimate" dealers and should not be permitted by said manufacturers to purchase such merchandise, and made similar representations in personal interviews with said manufacturers and their agents;
- (c) Threatened to cancel and canceled orders given said manufacturers, on account of sales by them to "illegitimate" dealers;
- (d) Falsely represented by letters to and interviews with, said manufacturers and their agents, that the "illegitimate" dealers were selling their goods below their suggested prices and were thereby demoralizing the market; and
- (e) Gave the representative of a manufacturer orders conditioned upon his thereafter refusing to deal with certain competitors of the members classified by them as "illegitimate" dealers;

With the result that many competitors were hindered and many others prevented from purchasing confectionery, candy and allied products, and competition in the purchase and sale thereof was hindered and suppressed: *Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Messrs. A. A. Meyer and E. L. Meyer, of Atlanta, Ga., for respondent *Harry L. Schlesinger*, and *Candler, Thomson & Hirsch*, of Atlanta, Ga., for all other respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Atlanta Wholesale Confectioners Association, its officers

and members, purchasing the confectionery and allied products dealt in by them, for the most part from manufacturers in other States and, but for the matters and things alleged, naturally and normally in competition with one another in price and otherwise, and in competition with other individuals and concerns similarly engaged, with uniting in a common course of action and cooperating and confederating together and with others to confine distribution to so-called regular and legitimate channels of trade, and to themselves as wholesale dealers in the chain of distribution, to prevent so-called irregular and illegitimate dealers from obtaining supplies directly from the manufacturers, and thereby to suppress competition and especially competition in price in the sale and distribution of the products concerned in Georgia, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce.¹

As alleged by the complaint, respondents have done and still do, among others, the following acts and things:

"(a) Hold meetings for the interchange of information concerning and the discussion and adoption of plans and measures for the carrying out of their said undertaking.

"(b) Notify aforesaid manufacturers of said undertaking and its said purposes and seek to and do induce and procure many said manufacturers to abide by and adhere thereto.

"(c) By threats of boycott, by boycott, and otherwise seek to and do persuade, induce, and compel many aforesaid manufacturers to sell aforesaid products which they manufacture to the members of respondent association only, and to refrain from selling said products to so-called irregular or illegitimate dealers.

"(d) Seek for and ascertain instances of sales by aforesaid manufacturers to aforesaid so-called irregular or illegitimate dealers, and thereupon by threats of boycott, by boycott and otherwise seek to and do persuade, induce and compel such manufacturers to refrain from selling and supplying goods to such dealers in future.

"(e) Seek for and secure the names of so-called irregular or illegitimate dealers and supply said names to aforesaid manufacturers,

¹ According to the complaint, "respondents regard and designate the channel of distribution commencing with the manufacturer, flowing thence to the wholesaler, from the wholesaler to the retailer, and from the retailer to the consuming public as the only regular and legitimate channel of distribution of aforesaid products in which they deal and which is by them regarded and denominated the regular or legitimate channel of distribution. Channels of distribution originating with the manufacturer which do not flow through the wholesale dealer, but go direct to dealers doing both a wholesale and retail business, or a retail business only, are by respondents regarded and designated as irregular and illegitimate channels of trade, and aforesaid dealers acquiring goods through said so-called illegitimate channels are by respondents regarded and designated irregular and illegitimate dealers."

and by the means and methods in these specifications above set out, persuade, induce and compel said manufacturers to cease dealing with and to refuse to open accounts with the dealers so reported.

“(f) Use other cooperative and individual means to carry out and make effective their aforesaid undertaking.”

According to the complaint, “the effect and result of the above alleged acts and practices of respondents has been and now is to close sundry outlets within the State of Georgia for the direct and immediate sale by manufacturers in other States of goods shipped by them into said State; to regulate such commerce by eliminating therefrom aforesaid so-called irregular and illegitimate dealers, and manufacturers who sell to such dealers, and by restricting said commerce to such manufacturers and to such dealers as will, and do, abide by and adhere to respondents’ undertaking hereinbefore described; to substantially lessen, hinder and suppress competition in the sale and distribution of confectionery and allied products in the State of Georgia; to obstruct the natural flow of commerce in the channels of interstate trade, and to deny to dealers in and consumers of said commodities in said State those advantages in price and otherwise which they would obtain from the natural flow of commerce in said commodities under conditions of free and unobstructed competition; wherefore, said acts and practices are all to the prejudice of the public and of respondents’ competitors, and constitute unfair methods of competition in commerce within the meaning and intent 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, Atlanta Wholesale Confectioners Association, its officers and members, S. L. Sugarman, individually and as president of said association, A. B. Tenenbaum, individually and as secretary of said association, Brower Candy Co., A. B. Tenenbaum, J. L. Tenenbaum, and J. P. Tenenbaum, partners doing business under the trade name and style Tenenbaum Bros., Sugarman-Hirsch Co., Cohen Bros. Co., T. S. Lewis Co., and Harry L. Schlesinger, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearances and filed answers therein, hearings were had and evidence was thereupon introduced

on behalf of the Commission and the respondents before William W. Sheppard, an examiner of the Federal Trade Commission, theretofore duly appointed.

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, Atlanta Wholesale Confectioners' Association, hereinafter called the "Association," is and has been since September 30, 1921, a voluntary unincorporated association of wholesalers or jobbers of candy and confectionery, having their respective places of business in the city of Atlanta, State of Georgia. The members of respondent association purchase products in which they deal from manufacturers thereof located in States other than the State of Georgia, and said manufacturers ship said products when so purchased from their respective places of manufacture in such other States to respondents at their respective places of business. The said members of the association sell and distribute their merchandise to retail dealers throughout the State of Georgia.

PAR. 2. Respondents S. L. Sugarman and A. B. Tenenbaum are president and secretary, respectively, of said association. The members of said association are, respondents Brower Candy Co., Sugarman-Hirsch Co., and Cohen Bros. Co., corporations organized under the laws of the State of Georgia, respondents A. B. Tenenbaum, J. L. Tenenbaum, and J. P. Tenenbaum, partners doing business under the trade name and style Tenenbaum Bros., and respondent Harry L. Schlesinger. Respondent T. S. Lewis Co., was a corporation organized under the laws of the State of Georgia, and a member of said association from the time of its organization until the time of the dissolution of the said T. S. Lewis Co. Said T. S. Lewis Co. was dissolved by order of the Superior Court of Fulton County, State of Georgia, duly made and entered on August 10, 1926. Respondents Harry L. Schlesinger and Brower Candy Co., in addition to dealing in products of manufacturers as set forth in paragraph 1 hereof are manufacturers of confectionery and candy. All of the respondent members of said association are, and since September 30, 1921, have been, in competition with one another and with many other persons, partnerships, and corporations at Atlanta, State of Georgia, also engaged in the purchase of confectionery and candy from aforesaid manufacturers, and the resale thereof in the State of Georgia.

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PAR. 3. The respondent association was organized in September, 1921, with the above-named respondent jobbers and one other, the Griffith Candy Co., constituting its membership. W. A. Brower, of the respondent Brower Candy Co., was the first president of the association, one Craddock Goins was the first secretary of said association. Regular semimonthly meetings have been held since the organization of the association and minutes of said meetings were regularly kept from the time of the organization of the association down to December, 1922, but not since that time.

PAR. 4. At the time of the organization of said association, confectionery, candy, and allied products were purchased by many dealers located at Atlanta, Ga., from manufacturers located in States other than Georgia and shipped by said manufacturers to said purchasers thereof, and by said purchasers sold and distributed to the retail trade in Atlanta and throughout the State of Georgia. The dealers referred to were of the following classes:

- (1) Jobbers dealing principally in confectionery and candy;
- (2) Jobbers dealing principally in drugs;
- (3) Jobbers dealing principally in cigars and tobacco;
- (4) Jobbers dealing principally in ice cream;
- (5) Chain stores.

PAR. 5. Upon the organization of said association, the members thereof, with the exception of Harry L. Schlesinger, conspired and confederated together and have ever since conspired and confederated together to prevent all of the dealers described in paragraph 4 hereof, except those dealing principally in confectionery and candy, from obtaining such merchandise from the manufacturers thereof and from any other sources. It was agreed by and between the members thus conspiring and confederating that all such dealers not dealing principally in confectionery and candy were "illegitimate" dealers and were not entitled to purchase and deal in candy and confectionery, and it was further agreed by and between said conspiring and confederating members, with the exception of Harry L. Schlesinger, that jobbers who dealt principally in confectionery and candy were "legitimate" dealers and that all of the "legitimate" dealers located in the city of Atlanta were members of said association.

PAR. 6. In order to accomplish and effectuate the purposes and object of said conspiracy, as in paragraph 5 hereof set forth, the respondents other than the said Harry L. Schlesinger, have—

(a) Held meetings for the interchange of information concerning, and the discussion and adoption of plans and measures for the carrying out of their said conspiracy.

(b) Written letters and caused the president and secretary of said association to write letters to manufacturers selling candy, confec-

tionery, and allied products to the so-called "illegitimate" dealers, in which letters it was represented that all of the classes of distributors mentioned in paragraph 4 hereof, except class (1), comprising the members of the association, were "illegitimate" dealers and should not be permitted by said manufacturers to purchase such merchandise and that all of the "legitimate" dealers in the city of Atlanta, Ga., were members of said association.

(c) Made the same representations as in subdivision (b) above in personal interviews with said manufacturers and their agents.

(d) Threatened to cancel and did cancel orders to said manufacturers for merchandise, giving as the reason therefor the sale by such manufacturers to so-called "illegitimate" dealers.

(e) Falsely represented in letters to, as well as by personal interviews with, said manufacturers and their agents that the so-called "illegitimate" dealers were selling goods below the prices suggested by such manufacturers, and were thereby demoralizing the market.

(f) On or about July 23, 1922, all the respondent members, with the exception of Harry L. Schlesinger, gave to the sale representative of a manufacturer orders for merchandise to be filled by said manufacturer only on the condition that the manufacturer would thereafter refuse to sell merchandise to certain competitors of said members classified by them as "illegitimate" dealers.

PAR. 7. As a result of the conspiracy and confederation and the acts done in pursuance thereof, mentioned in paragraphs 5 and 6 hereof, many of respondents' competitors have been hindered and many others have been prevented from purchasing in interstate commerce, confectionery, candy, and allied products and competition in interstate commerce in the purchase and sale of confectionery, candy, and allied products has been hindered and suppressed.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings as to the facts are to the 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 answers thereto, and the evidence introduced on behalf of the Commission and respond-

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ents, and the brief of counsel for the Commission, filing of briefs and oral arguments having been waived by respondents, and the Commission having made its findings as to the facts, and its conclusion that respondents 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,"

It is now ordered, That this proceeding as to respondent Harry L. Schlesinger be and the same is hereby dismissed for the reason that the evidence does not sustain the charges in the complaint against said respondent, and that the proceeding against respondent T. S. Lewis Co. be and the same is hereby dismissed for the reason that said respondent corporation was dissolved by order of the Superior Court of the County of Fulton, Ga., duly made and entered on the 10th day of August, 1926.

It is further ordered, That respondents Brower Candy Co., Sugarman-Hirsch Co., Cohen Bros. Co., A. B. Tenenbaum, J. L. Tenenbaum, and J. P. Tenenbaum, partners, doing business under the trade name and style, Tenenbaum Bros., their officers, agents, and employees, and respondent Atlanta Wholesale Confectioners Association, its officers, members, and employees, do cease and desist from:

(1) Cooperating, confederating, or agreeing among themselves, or with each other, or others, to hinder or prevent any manufacturer or dealer from selling, or any jobber, dealer, or other person from purchasing, in interstate commerce, confectionery, candy, or other products.

(2) Any attempt or effort, through respondent Atlanta Wholesale Confectioners Association, or other association, or by concert of two or more respondents to hinder or prevent by persuasion, inducement, intimidation, withdrawing, or threatening to withdraw patronage, or by any other method or device, any person, firm, or corporation from purchasing or selling in interstate commerce confectionery, candy, or other products.

It is further ordered, That respondents Brower Candy Co., Sugarman-Hirsch Co., Cohen Bros. Co., A. B. Tenenbaum, J. L. Tenenbaum, and J. P. Tenenbaum, partners, doing business under the trade name and style, Tenenbaum Bros., and respondent Atlanta Wholesale Confectioners' Association, shall, within 60 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.

ACME FOUNTAIN PEN CO.

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