

IN THE MATTER OF
AMERICAN SNUFF 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 1100. Complaint, Dec. 17, 1923¹—Decision, June 30, 1927

Where a corporation engaged in the manufacture and sale of Strong Scotch snuff in competition with two concerns, to which it had theretofore conveyed factories and brands formerly owned by it, in compliance with a decree entered, pursuant to a mandate of the Supreme Court, in a suit by the United States against the American Tobacco Co. and subsidiary and affiliated companies, including itself, requiring it to dispose of approximately two-thirds of its business (amounting at the time to over 96 per cent of the snuff manufactured and sold in the United States);

- (a) Employed a cooperative system or plan directed to the maintenance and observance by its jobber customers, and said jobbers' retail dealer customers, of the resale prices fixed by it and made known to such jobbers and dealers through price lists, orders, correspondence, and salesmen's interviews, and in pursuance of the aforesaid scheme or plan, in which it sought and received the cooperation of such jobbers and dealers;
- (1) Entered into agreements and understandings binding them to maintain its said resale prices;
- (2) Refused to sell its products to jobbers, or to make drop shipments thereof to retailers, who respectively either failed to observe its prices or would not agree to maintain the same in the future, or to sell to jobbers who resold to retail dealers who would not so agree, and, with the cooperation of its jobbers, prevented retail dealers falling to maintain such prices and refusing to so agree, from obtaining its products;
- (3) Reinstated upon its list of customers, jobbers and retailers previously refused shipments on account of price cutting, upon their agreeing to maintain prices thereafter;
- (4) Solicited and secured reports and information from jobber customers and retail dealers relative to prices at which others were selling its products, required its salesmen to investigate price cutting thus or otherwise brought to their attention, and notified reporting customers of cooperation and action on its part to stop price cutting so reported;
- (5) Notified jobber customers of instances of price cutting by their retail dealers and that it would refuse to make drop shipments to such dealers, and received and accepted cooperation from the aforesaid jobbers in obtaining agreements from said dealers binding them thereafter to sell its products at its designated resale prices;
- (6) Maintained a "Don't Ship List" upon which it enrolled the names of price-cutting jobbers and retailers, and supplied jobbers with lists of price-cutting retailers to whom it refused to make shipments, notifying them that it would decline to make shipments to or for the account of those who supplied such retailers;
- (7) Removed the names of retailers, entering into agreements and understandings thereafter to maintain its prices or indicating such a purpose, from

¹Amended complaint, June 6, 1924.

the aforesaid list, resumed business relations with them, and notified jobbers to whom it had previously sent such list, of its action;

- (8) Used identifying marks on the containers of its products for the purpose of tracing shipments and identifying price-cutting dealers or those supplying price-cutting dealers, and preventing such dealers from obtaining its products; and
- (9) Secured from jobber customers promises and assurances that they would maintain the same rate of discount from competitors' list prices as maintained on its own products, and refused to sell the same to any jobbers declining to so agree, and, with the cooperation of other jobber customers, prevented such jobbers from securing further shipments of its products; With the result that it was enabled to obtain agreements and cooperation of jobbers and dealers and secure the general maintenance of its prices, and with the effect of suppressing competition among such jobbers and retail dealers in the distribution and sale of its products, constraining them to sell the same at the prices fixed by it, thereby preventing them from selling the same at such lower prices as they might consider warranted by their respective selling costs and trade conditions generally, and unduly suppressing and hindering competition; and

Where said corporation,

- (b) Sought to induce, and induced wholesale and retail dealers to cancel or repudiate their contracts with a competitor and return or put away said competitor's brands, through making and circulating false and misleading statements and representations to the effect, among other things, that a competitor was a "little company", would soon "be out of business", that its product was to be "taken off the market", that its plan to increase the price of one of its brands was for the purpose of inducing large purchases and was a "loading scheme", and that there was no warrant for any increase in price;
- (c) Sought through false and disparaging representations concerning its competitors' products, to dealers in and consumers of snuff, to obtain therefrom, by trade or exchange, competing snuffs found in their possession;
- (d) Stated that "a great many people think snuff is made of trash, cigar stumps, tobacco stems, etc.", but that its snuff was made of the best heavy-bodied leaf tobacco with extraordinary care, and was therefore "absolutely the cleanest, purest form of manufactured tobacco" offered to the trade, and falsely stated that products of competitors contained trash, were made out of cigar stumps, old tobacco chews, tobacco stems, contained opium, copperas, glass, hair, dirt, and similar substances, and would cause blindness, tuberculosis and other injury to the health, misrepresented its brand as one of its competitors, the competitor as owned by it, and the competitor's brand as not the genuine one, and falsely stated that the competitor's brands would soon be off the market, and that the containers for one of said competitor's brands were short weight, and filled with an inferior and fluffier tobacco, therefore requiring a larger container; with the effect of causing consumers to cease using competitive brands and the sales of such brands by merchants to materially decrease;
- (e) Made, published and circulated through advertising cards, signs and other types of advertising matter, and brand names featured thereon, and through oral representations by salesmen and representatives, false and misleading statements to the effect that its product was the only 100 per cent pure snuff

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on the market, containing no copperas, alum, alfalfa, opium or dope, and sold in full weight containers, all in conjunction with the aforesaid misrepresentations of competitor's products, for the purpose of injuring such competitors and with the effect of misleading and deceiving the public into believing the various misrepresentations above set forth; and

- (f) Sold a brand containing no ingredient other than tobacco labeled "Dental", together with a depiction of a tooth, and other matter, all so closely simulating a former brand or formula containing an ingredient calculated to be beneficial to teeth and gums and so represented to the purchasing public, as to confuse and mislead purchasers familiar with the original product as to the character and contents of the latter; and in its advertising and orally, made false representations to purchasers and consumers to the effect that its said Dental brand was prepared especially for the teeth and would cure pyorrhea and other diseases of the teeth and gums, together with false and disparaging statements to the effect that competitors' brands would destroy the teeth, cause pyorrhea, bleeding gums, tuberculosis and other maladies, the fact being that its said brand stood on no different basis in the foregoing respects than any other Strong Scotch snuff; with the result that many consumers purchased such brand in reliance upon such representations and refrained from purchasing competitors' brands, and the consuming public was misled and deceived into benefiting it by increased sales, and into correspondingly decreasing those of its competitors:

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

Mr. William A. Sweet for the Commission.

Mr. Morton E. Finch, of Memphis, Tenn., *Mr. S. P. Smith*, of Birmingham, Ala., and *Mr. Edward S. Rogers*, of Chicago, Ill., 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 Jersey corporation engaged in the manufacture of snuff and other tobacco products, and in the sale thereof to wholesale and retail dealers in various States, and with principal office and place of business in Memphis, with maintaining resale prices and disparaging and misrepresenting a competitor, and its products, with the intent and effect of intimidating and inducing said competitor's customers to cancel contracts with it for the purchase of its products and to return and cease dealing therein, and of inducing prospective customers thereof to refuse dealing therewith, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than two years preceding the complaint "has enforced and still enforces a merchandising system adopted by it of fixing and maintaining certain specified uniform prices at which its aforesaid products, and especially said snuff, shall

be resold by wholesale and retail dealers handling same; and respondent has enlisted and secured the support and cooperation of wholesale and retail dealers and of respondent's officers, agents, and employees in enforcing said system.

"In order to carry out said system respondent, during aforesaid time, has employed and still employs the following, among other means, whereby respondent and those cooperating with it have undertaken to prevent and have prevented wholesale and retail dealers handling respondent's products from selling same at prices less than aforesaid resale prices established by respondent":

(a) Fixing uniform minimum prices for the sale of its products by retailers to the public, and, by a system of discounts, for the sale thereof, by wholesale dealers to retail dealers;

(b) Publishing its resale prices to wholesalers and retailers handling its products, through correspondence, salesmen and other agents, and notifying them that they must observe and maintain the same, and that it will refuse further sales of its products to price cutters or to those wholesalers supplying price cutting retailers;

(c) Refusing further sales to price cutters or those supplying same, pending the giving of promises and undertakings to maintain prices in the future;

(d) Securing from wholesale and retail dealers names of price cutting dealers or those selling thereto;

(e) Requiring its traveling salesmen and other agents to search for and investigate price cutting and report names of offenders to it;

(f) Marking containers of their products with numbers and symbols in order to trace the same and identify price cutting dealers or those selling thereto, and use thereof by its salesmen and other agents in so identifying offending dealers, in the course of the investigations and searches made by them;

(g) Visiting offending dealers so identified, and exacting promises and undertakings that they will thereafter maintain its prices as a condition of being further supplied with its products, refusing to supply further those declining to give such promises or undertakings, and continuing, in many instances, to supply those giving the same;

(h) Listing names of offending dealers, who are not to be supplied pending the giving of promises and undertakings by them, as above set forth, and "which lists are used by respondent and those cooperating with it in and about the enforcement of said resale price system";

(i) Supplying wholesalers with names of price-cutting retailers, and advising them no longer to supply the same with its products;

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(j) Requiring and exacting through salesmen and agents from dealers selling its products and similar products of other manufacturers, promises and/or undertakings not to sell the latter at prices lower than its own specified uniform prices, as a condition of obtaining its products for resale, and refusing to sell and supply its products to such dealers failing to make or enter into such promises or undertakings; and

(k) Using other equivalent cooperative means and methods to compel the maintenance of its said resale prices.

According to the complaint "the effect and result of above alleged acts and practices of respondent has been and now is to suppress competition among wholesale and retail dealers in the distribution and sale of respondent's snuff and other 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 consumers of said products of the 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 of respondent's competitors 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."

Respondent further, as charged, for about two years preceding the complaint "has made, published and circulated for more than two years last past, and continues to make, publish and circulate, in interstate commerce, by written statements, and by oral representations of its salesmen and agents, false, misleading, disparaging and unfair reports, assertions, statements and representations concerning the said United States Tobacco Co. [theretofore referred to as one of its competitors], its officers, policies and products, which have the purpose and effect of intimidating and inducing the customers of the said United States Tobacco Co. to cancel contracts already made with it for the purchase of its products and to return and cease to deal in such products, and of inducing prospective customers of said United States Tobacco Co. to refuse to purchase or contract to purchase its said products, among which statements and representations are the following:

"(a) That the products of said United States Tobacco Co. contain opium, glass, hair, dirt and similar substances;

"(b) That said United States Tobacco Co. connived at price cutting, planted pace-setters, and procured the cutting of prices through secretly encouraging 'cut-throat' jobbers;

"(c) That the financial condition of the said United States Tobacco Co. was such that it could not make good its guarantees;

"(d) That the contents of the 6-ounce bottle of snuff manufactured and sold by said United States Tobacco Co. weighs less than 6 ounces;

"(e) That respondent made other similar statements and representations disparaging the said United States Tobacco Co. and its products.

"That the said statements and representations have the tendency and capacity to mislead and deceive purchasers and prospective purchasers with respect to the United States Tobacco Co. and its said products, and that the effect thereof has been and is to injure and embarrass the said United States Tobacco Co. in its business and to hinder and restrain competition in the manufacture and sale, in interstate commerce, of snuff and other tobacco products. Wherefore, said acts and practices of respondent are all to the prejudice of the public and of respondent's competitors 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 an original complaint upon the respondent, American Snuff Co., on or about December 17, 1923, and an amended complaint, on or about June 6, 1924, and after the close of the testimony, on motion of the chief counsel of the Commission, duly granted, the complaint was further amended to conform to the evidence. Said complaint and its amendments charge respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answers to the original complaint and the first amendment, 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, duly appointed. Thereupon this proceeding came on for decision and the Commission having duly

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considered the record 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. The respondent is a corporation formed in 1900 under the laws of the State of New Jersey with a capitalization of \$15,000,000. During all the times herein mentioned respondent has been and still is engaged in the manufacture and sale of Strong Scotch snuff, having one factory at Memphis, Tenn., and another at Clarksville, Tenn. Its executive offices are situated at Memphis, Tenn. It ships its product when sold from its said factories into and through various States of the United States, principally into the States of Texas, Oklahoma, Arkansas, Mississippi, Alabama, North Carolina, West Virginia, Virginia, and points in Tennessee. Its annual output is approximately 11,000,000 pounds. Its product is marketed under various brand names, the chief of which are "Garrett," "Honest" and "Dental." It sells its said products to jobbers and through jobbers to retail dealers throughout the above territory. It makes drop shipments directly to retail dealers for the account of jobbers upon orders solicited from retail dealers by its salesmen and jobbers' salesmen which are submitted to the jobbers for acceptance.

In the course and conduct of its business, respondent is in competition with other corporations, partnerships and individuals also engaged in the manufacture and sale of Strong Scotch snuff, and who sell and transport their products from their respective factories or places of business in the United States into and through the various States of the United States.

PAR. 2. Upon its organization in 1900, respondent consolidated the snuff businesses of the Atlantic Snuff Co., the George W. Helme Co., the Continental Tobacco Co., and the American Tobacco Co. The Atlantic Snuff Co. in turn was a consolidation of W. E. Garrett Co., Stewart Ralph & Co., Dental Snuff Co., Bruton & Condon Co., and Crain & Co. The Continental Tobacco Co. included the old Lorillard Co. and the Bowers Snuff & Tobacco Co. Up to December, 1911, respondent was a subsidiary of the American Tobacco Co. and manufactured and sold over 96 per cent of the snuff produced in the United States, amounting approximately to 29,000,000 pounds annually. In December, 1911, by a decree of the Circuit Court for the Southern District of New York, entered pursuant to the mandate of the Supreme Court of the United States, in the suit of the United States against the American Tobacco Co. and its subsidiary and affiliated companies, including this respondent, the American Snuff

Co., the respondent herein, was required to dispose of approximately two-thirds of its business.

Pursuant to that decree two new corporations were formed, the George W. Helme Co. and Weyman-Bruton Co. (now the United States Tobacco Co.). There were conveyed to the George W. Helme Co. as of December 1, 1911, the factories formerly owned and operated by respondent, at Helmetta, N. J., and Yorklyn, Del., together with the brands of snuff manufactured therein, amounting to approximately 9,800,000 pounds annually. Among these brands "Railroad Mills", "Lorillard", "Buttercup", and "Maccoboy". The factories at Spottswood, N. J., Chicago, Ill., and Nashville, Tenn., together with the brands manufactured therein, were conveyed to the Weyman-Bruton Co. Among the brands so conveyed, are "Copenhagen," manufactured at the Chicago factory, and "Bruton" and "Rooster", Strong Scotch snuffs, manufactured at the Nashville factory. The brands conveyed to the Weyman-Bruton Co. amounted in the aggregate to approximately 9,000,000 pounds annually. This respondent retained the factories at Memphis, and Clarkesville, Tenn., and the Strong Scotch brands made therein. These brands were chiefly "Garrett", "Honest" and "Dental", and amounted in the aggregate to approximately 10,500,000 pounds annually.

There are several distinct types of snuff, chief of which are:

(1) Scotch snuff, which consists of tobacco leaf and stems finely powdered or ground and is divided into several classes, the most important of which is Strong Scotch snuff which consists of powdered tobacco leaf and stems with nothing whatever added. There are also sweet Scotch, salt Scotch, hightoast Scotch and hightoast salt Scotch. Of these the Strong Scotch is the largest seller;

(2) Maccoboy snuffs, designated in some instances by consumers as black snuff;

(3) Chewing snuffs, sometimes known as Swedish, which are ground much less fine than the Scotch snuffs and contain a large amount of moisture.

These various types of snuff enjoy their chief popularity in particular sections of the country. Sweet snuff is popular along the Atlantic seaboard from Norfolk to the southern end of Florida. The heavy Strong Scotch snuff belt includes Texas, Arkansas, Louisiana, Oklahoma, Mississippi, Tennessee, Alabama, the western end of Florida, and the northern portion of Georgia, while the Maccoboy trade lies principally from Central Georgia south into the southeast section of Alabama. The chewing snuffs are popular where there is Scandinavian population, particularly in the Northwestern States.

Said division of factories and brands brought about a situation whereby the George W. Helme Co.'s brands consisted almost entirely of (a) sweet and Maccoboy snuffs, which were sold principally in the Southeastern States and along the Atlantic seaboard, and (b) also Strong Scotch snuff having its chief sale in the West Virginia territory, while the business of Weyman-Bruton Co. consisted of (a) chewing snuff which had its chief sale in the Northwest, and (b) Strong Scotch snuffs manufactured at the Nashville factory and having their principal sales in western North Carolina, eastern and central Tennessee, a part of Kentucky, northern Georgia and Alabama from the north almost down to the coast. The brands retained by the respondent, being Strong Scotch only, had their principal sales in Texas, Arkansas, Louisiana, Oklahoma, Mississippi, and Tennessee. At the time of the disintegration aforesaid (December 11, 1911) the sales of the brands of snuff retained by respondent approximated 95 per cent of the snuff business in the States of Arkansas, Louisiana, Texas, and Oklahoma, and 85 per cent of the snuff business in Mississippi; far the greater portion of this business, 80 to 85 per cent being in the Garrett brand. The only territory where respondent had any substantial competition was the middle Southern States aforesaid, where it was in competition with the brands of Weyman-Bruton Co. and the Helme Co., and also the West Virginia territory, where it was in competition with the Strong Scotch business of the Helme Co.

Respondent maintains throughout its aforesaid territory a force of salesmen under the immediate direction of division managers. Its territory west of the Mississippi River in turn is under the direction and in charge of one of respondent's vice presidents, the remaining territory is under the direction and in charge of another of respondent's vice presidents. Many of the respondent's division managers of salesmen, as well as salesmen, were in its employ prior to the disintegration in 1911 and thereafter remained with the respondent in the same capacities. Conferences for the purpose of discussing sales and marketing plans are held by the respondent's officers with its sales force at Memphis, Tenn., annually, and from time to time in the respective districts where such sales force operates.

PAR. 3. Respondent publishes and issues price lists which designate the prices at which its snuff is to be resold by jobbers in case lots of 48 packages each to retail dealers, and which also designate the prices at which retail dealers shall sell the various single packages to consumers, as "Thirty-five cent sellers", "Twenty-five cent sellers", "Ten-cent sellers", and "Five-cent sellers". From the list price per case respondent gives to jobbers a trade discount of 10

per cent on shipments for stock and allows a cash discount of 2 per cent. The resale prices designated by respondent for jobbers from their stock are these list prices per case, less 2 per cent discount for cash. On drop shipments by respondent direct to retail dealers for the account of jobbers respondent gives to the jobbers a trade discount of 10 per cent and 4 per cent and 2 per cent cash discount. The resale prices designated by respondent for jobbers on drop shipments are these list prices, less 5 per cent trade discount and 2 per cent cash discount. These price lists are sent by respondent to jobbers and are put in the hands of jobbers' salesmen. These prices and discounts are also made known to the jobbers by respondent through correspondence and salesmen's interviews. Jobbers thus know that the resale prices designated by respondent are the prices at which said jobbers are to resell respondent's snuff out of their stock less 2 per cent for cash, and that drop shipments are to be billed by said jobbers at said prices less 5 per cent trade discount and 2 per cent for cash.

Retail dealers are informed by respondent through correspondence and salesmen's interviews what its designated resale prices to consumers are and initial orders for its snuff solicited from retailers by respondent's salesmen to be shipped through jobbers are written up under instruction from respondent as "Garrett Bottles, 35¢", etc., so that said retailers are informed of respondent's designated resale prices when such orders are placed.

PAR. 4. Respondent has sought and received, and still receives, the cooperation of its jobber customers and of retail dealers in maintaining its designated resale prices. Respondent enters into agreements and understandings with its said jobber customers and with retail dealers to maintain its designated resale prices. Respondent refuses to sell its products to jobbers who fail to maintain its designated resale prices and who will not enter into agreements to maintain the same in the future. It also refuses to make drop shipments of its product to retail dealers who fail to maintain its designated resale prices, and who will not agree to maintain the same in the future. In carrying out its purpose to maintain the resale prices designated by it, and as a part of the cooperative system between the respondent and its customers, respondent refused to make shipments to between 50 and 60 jobbers, and to make drop shipments to hundreds of retail dealers who failed to maintain its designated resale prices, and has also refused to sell its product to those jobbers who sell to retail dealers who will not agree to maintain its designated resale prices. Through the cooperation of its jobber customers, respondent has prevented retail dealers who have failed to main-

tain its designated resale prices and who refused to agree to maintain the same in the future from obtaining its product.

Respondent reinstates on its list of customers jobbers and retailers who have previously been refused shipments on account of price-cutting when such jobbers and retailers enter into agreements with respondent that they will maintain its designated resale prices in the future.

PAR. 5. Respondent has solicited and secured and still solicits and secures from its jobber customers and from retail dealers reports and information concerning prices at which other jobbers and retail dealers are selling its products. These reports are received by respondent in correspondence and from interviews with its salesmen. Its salesmen are required to make daily reports of instances of price-cutting which come to their attention or are brought to their attention by respondent's customers. Respondent's salesmen are instructed to investigate reports received from respondent's customers concerning price-cutting by other customers, and do investigate the same. Respondent's customers who so report instances of price-cutting receive from it assurances of cooperation and action on its part to stop such price-cutting. Respondent notifies its jobber customers of instances of price-cutting by retail dealers who are customers of such jobbers, and that it will refuse to make drop shipments to said retail dealers, and receives and accepts cooperation from such jobbers in obtaining agreements from such retailers that they will in the future sell respondent's product at its designated resale prices.

PAR. 6. As a part of its cooperative system and as a means of maintaining its designated resale prices respondent keeps a list designated "Don't Ship List", upon which it enrolls the names of jobbers and retail dealers to whom it refuses to sell its product for the reason that they resell the same at less than respondent's designated resale prices. Respondent supplies jobbers with lists containing the names of retailers to whom it refuses to make drop shipments of its products for the reason that such retailers sell the same at less than respondent's designated resale prices, and notifies such jobbers that it will decline to make shipments to or for the account of jobbers who supply such retailers. When the retailers whose names were enrolled on respondent's "Don't Ship List" enter into agreements and understandings to maintain its designated resale prices in the future, or indicate their purpose to sell at said prices, such dealers are removed from said list and business relations with them are resumed. Jobbers to whom such lists had previously been sent are notified of such action by respondent.

PAR. 7. As a part of its cooperative system and as a means of maintaining its designated resale prices respondent has used and still uses certain identifying marks or symbols on the containers in which its products are shipped to trace shipments for the purpose of identifying dealers who sell its products at less than its designated resale prices, or who sell to other dealers who sell such products at less than its designated resale prices, and for the purpose of preventing any dealer who fails to maintain its said designated resale prices from obtaining its products.

PAR. 8. Respondent secured from certain of its jobber customers promises and assurances that they would maintain the same rate of discount from the list prices of respondent's competitors' products that they maintained on respondent's products. Respondent refused to sell its products to any jobbers who refused to enter into such agreements and understandings, and through the cooperation of its other jobber customers prevented jobbers who would not so agree from obtaining further shipments of its products.

PAR. 9. Jobbers throughout the territory in which respondent's products are sold are informed and know that their accounts will be closed and further shipments refused by respondent if they sell its products at less than the resale prices so designated by it. Retail dealers throughout said territory are informed and know that they will not receive drop shipments of respondent's products if they sell same at less than respondent's designated resale prices. In localities in which the sales of respondent's brands "Garret" and "Dental" predominate, by reason of the acts of respondent in closing the accounts of and refusing to make shipments to between fifty and sixty jobbers and drop shipments to hundreds of retail dealers for the account of jobbers, for failure to observe its designated resale prices, a condition was brought about and still prevails whereby respondent was and is able to obtain agreements and the cooperation of its jobbers and dealers to maintain specific uniform resale prices, thus fixed, and through such agreements and cooperation of dealers respondent's said resale prices were and are generally maintained.

PAR. 10. The direct effect and result of the above acts and practices of respondent in cooperating with its jobber customers and with retail dealers has been and now is to suppress competition among such jobbers and retail dealers from selling respondent's products at respondent's products and to constrain such jobbers and retailers to sell said products at prices so fixed by respondent, thereby preventing such jobbers and retail dealers from selling respondent's products at such lower prices as they might deem to be warranted by their respective selling costs and by trade conditions generally, and to unduly suppress and hinder competition in interstate commerce.

PAR. 11. During the times mentioned in the complaint and commencing shortly after December, 1911, the date of the court decree referred to in paragraph 2 hereof, respondent, by letters and personal exhortation to its sales managers and salesmen, instructed them, frequently upon pain of dismissal from its employ for failure to carry out said instructions, to persuade or induce or attempt to persuade or induce wholesale and retail dealers to cancel or repudiate their contracts for snuff with respondent's competitor, Weyman-Bruton Co., and to procure the return by dealers of said competitor's brands of snuff found in the possession of such dealers by causing the same to be packed up and shipped back to said competitor. Respondent, by written statements and by oral representations of its salesmen, pursuant to the aforesaid instructions, through the territory in which its competitor's snuff was sold, made and circulated false and misleading statements and representations concerning its said competitor, among which were the following: That said competitor was a "little company"; that it would soon "be out of business"; that its product was to be "taken off the market"; that its plan to increase the price of its "Rooster" brand of snuff was for the purpose of inducing large purchases of said snuff and was "a loading scheme"; and that there was no warrant for any increase in the price of snuff, and thereby procured the cancellation by wholesale and retail dealers of a great number of contracts with the Weyman-Bruton Co. for the purchase of its snuff and the return by such dealers of the snuff manufactured by the Weyman-Bruton Co. then in such dealers' stores, and induced other dealers to take the snuff products of the Weyman-Bruton Co. off their shelves and either put them out of sight of prospective customers or pack them up and send them back to Weyman-Bruton Co.

Said acts and the false and misleading statements and representations of respondent and its salesmen were made for the purpose of securing cancellation of orders for its said competitor's product and of otherwise interfering with the normal flow of interstate commerce in snuff and resulted in the cancellation of such orders in great numbers by merchants who had placed same with the Weyman-Bruton Co. for its snuff.

PAR. 12. During the period referred to in the complaint herein, respondent from time to time in addition to its regular sales force, placed throughout the territory in which Strong Scotch Snuff is principally used an augmented force of salesmen. These salesmen called upon merchants and consumers throughout the territory. Very soon after the court decree of December, 1911, referred to in paragraph 2 hereof, respondent's officers and sales managers placed

in the hands of its salesmen a circular letter, with an inclosure, by means of which each of respondent's salesmen has been and still is told that "a great many people think snuff is made of trash, cigar stumps, tobacco stems, etc.," but that respondent's "Garrett" snuff is made of the best heavy bodied leaf tobacco; that extraordinary care is used in the handling of the tobacco from which said snuff is made, and "for this reason it is absolutely the cleanest, purest form of manufactured tobacco that is offered to the trade." Commencing immediately after the respondent began to issue this circular letter and inclosure, and continuing up to the time of the several hearings herein, the salesmen of the respondent, with its knowledge, in certain territories in which the brands of snuff manufactured by its competitors are sold, made and circulated false and misleading statements concerning the brands of snuff made by said competitors. Among these statements were the following: that the products of the Weyman-Bruton Co. and the George W. Helme Co. contained trash and were made out of cigar stumps, old tobacco chews, tobacco stems, contained opium, copperas, glass, hair, dirt, and similar substances, and would cause blindness, tuberculosis and other injury to the health. Respondent's salesmen, in certain other territories, further falsely stated and represented that the Weyman-Bruton Co. was in fact owned by respondent, that its brands of snuff would soon be off the market, that respondent's Brand "Honest" was really "Honest Bruton" and the "Bruton" brand of the Weyman-Bruton Co. was not genuine "Bruton", because it had been made by Bruton & Condon, a partnership of which Mr. Condon, now respondent's president, was a member and could be made by no one except Mr. Condon and his employees remaining in respondent's employ. Respondent's salesmen further falsely stated that the 6-ounce bottles in which the Weyman-Bruton Co. packed its Rooster snuff were short weight, and that Rooster being made of lower grade tobacco the snuff flour is fluffier and consequently requires a larger container. These false and misleading statements were made over a long period of years by respondent's salesmen, with its knowledge and consent, to dealers in and consumers of snuff of various sections throughout the territory covering the states from Kentucky to the Gulf of Mexico, and from Texas to the Atlantic Ocean, in which respondent had competition in the sale of Strong Scotch Snuff. These acts of respondent and its salesmen had and have the effect of causing consumers to cease using the brands of snuff made by respondent's competitors, and of causing sales of said brands by merchants to materially decrease.

Respondent in the course and conduct of its business in interstate commerce has caused and still causes its salesmen and agents to visit

dealers in and consumers of snuff, and to seek by means of false and disparaging representation concerning its competitors' snuff to obtain from such dealers and consumers, by trade or exchange, competing snuff found in their possession.

PAR. 13. During all the times mentioned in the complaint, in the course and conduct of its business and concurrently with the false and disparaging statements referred to in paragraph 12 herein, respondent has made, published and circulated, through advertising cards, signs and various other types of advertising matter and the brand names and labels featured thereon, and by oral representations of its salesmen and representatives, false and misleading statements in connection with the sale of snuff products manufactured and sold in interstate commerce by it, among others, that its product is the only 100 per cent. snuff, or the only 100 per cent pure snuff on the market, or the only snuff made of 100 per cent pure tobacco; that respondent's product contains no copperas, alum, alfalfa, opium or dope, and that the contents of its containers are not short weight, which latter statements and representations, while true in themselves, were made in conjunction with the misrepresentations of competitors' products as set forth in these findings, and for the purpose of injuring its competitors and had and still have the capacity and tendency to, and did and still do mislead and deceive the public into the belief that the products of respondent's competitors are impure and do contain copperas, alum, alfalfa, opium or dope, and that the contents of competitors' containers are short weight, none of which is true.

The use by respondent in such advertising matter and in the oral representations of its salesmen and agents of the term "only 100 per cent" and other like terms, had and still has the capacity and tendency to, and did and still does mislead and deceive the purchasing public into the erroneous belief that the snuff products manufactured and sold by other manufacturers are not pure as such term is usually known and understood.

PAR. 14. During the times referred to in the complaint the respondent has branded and labeled and still brands and labels certain of its snuff "Dental". This formula or brand of snuff was originated in about the year 1879, and was acquired by the respondent by purchase in about the year 1900. At the time this snuff was originated, and for some time thereafter, it contained some ingredient, other than tobacco, calculated to preserve or be beneficial to the teeth and gums, and was so represented to the purchasing public. The labels on the containers of this snuff contained the word "Dental" together with a depiction of a tooth, and the words "Dental Panacea" and "It possesses a virtue that will Preserve The Teeth".

Thereafter the aforesaid ingredient was entirely eliminated from said snuff and during the times mentioned in the complaint said snuff has contained no ingredient other than tobacco. After the acquisition of this brand by the respondent the label on the containers was changed so that said label then contained and now contains the word "Dental", together with a depiction of a tooth, and in place of the words, "Dental Panacea", the words "Dental Brand", and in place of the words, "Preserve the Teeth", the words "Preserves its Flavor".

This new label is so like the original label on said brand of snuff in arrangement of lettering and design, in coloration and general appearance, as to cause the one to be mistaken for the other, and to confuse and mislead purchasers familiar with the former product as to the character of the contents of the present containers.

In the course and conduct of its said business in connection with the sale of its Dental brand of snuff respondent through advertising matter and oral representations of its salesmen has falsely represented and still does falsely represent to purchasers and consumers of snuff that its Dental brand of snuff is prepared especially for the teeth and will cure pyorrhea and other diseases of the teeth and gums, coupled with the false and disparaging statements that respondent's competitors' brands of snuff will destroy the teeth, cause pyorrhea, bleeding gums, tuberculosis and other maladies. So far as good or harm to the teeth or health is concerned, respondent's brand of Dental snuff stands on no different basis than any other Strong Scotch snuff. These false representations respecting respondent's Dental brand, coupled with false representations concerning competitors' brands, have been made principally in the territory in which respondent sold Dental snuff, and not its other brands.

Relying upon respondent's aforesaid representations concerning its Dental brand of snuff, and the false representations of respondent's salesmen that the brands of its competitors will cause pyorrhea and other diseases of the teeth and gums, many consumers of snuff have purchased and continue to purchase respondent's Dental snuff in the belief that it will cure toothache and other maladies, and have refrained and continue to refrain from purchasing the brands of snuff manufactured by respondent's competitors. Users of snuff in purchasing respondent's Dental snuff refer to it as "Tooth Dental".

The use of the word "Dental", together with the depiction of a tooth upon the labels on the containers of respondent's said product, had and still has the capacity and tendency to, and did and still does mislead and deceive the public into the erroneous belief that said product has a special merit in respect to the teeth not possessed by the

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products of its competitors, and influences purchasers of snuff to purchase respondent's Dental snuff in such belief in preference to the brands of its competitors.

The effect of the respondent's representations, including the use of the word "Dental", and the depiction of the tooth upon its labels on the containers of its snuff has been to mislead and deceive the consuming public to benefit respondent by increased sales of Dental snuff, and to correspondingly decrease the sales of its competitors.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in interstate commerce and constitute a violation of 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".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amendments thereto, the answer of respondent, the briefs and arguments of counsel, 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",

(1) *It is now ordered*, That the respondent, American Snuff Co., its officers, agents, representatives, servants, employees, and successors cease and desist from, directly or indirectly, carrying into effect its policy of securing the observance, or maintenance of resale prices, designated by it for its products, by cooperative methods in which the respondent and its distributors, customers and agents undertake to prevent the sale of its products at less than such resale prices, by—

(a) Procuring or entering into contracts, agreements, or understandings, express or implied, with wholesale or retail dealers that respondent's products are to be resold by such dealers at prices designated by respondent or that such dealers will cooperate with the respondent to secure the observance by others of such designated resale prices;

(b) Causing wholesale and retail dealers to be enrolled upon lists of undesirable customers who are not to be supplied with respondent's

products unless and until such dealers have given satisfactory assurance of their purpose to sell said products in the future at the prices designated by respondent;

(c) Utilizing numbers and symbols placed upon cases containing its products with a view to ascertaining the names of wholesale and retail dealers who sell its products at less than its designated prices, or who sell to others who sell its products at less than such prices in order to prevent such dealers from obtaining its products;

(d) Seeking and securing the cooperation of wholesale and retail dealers in carrying into effect the maintenance of its designated resale prices by soliciting reports of the names of other dealers who fail to observe said resale prices, and by refusing after investigation of such reports to make further shipments and sales of its products to dealers found to be selling the same at less than its said resale prices unless and until said dealers give promises or assurances of their adherence to said prices in the future;

(e) Procuring promises or agreements from its jobber-customers, or prospective customers as a condition of selling its products to them, that they will not give a greater discount in selling the snuff products manufactured by respondent's competitors than they give on respondent's product;

(f) Utilizing any other equivalent cooperative methods of accomplishing the maintenance and observance of resale prices thus fixed by respondents for its products.

(2) *It is further ordered*, That the respondent, its officers, agents, representatives, servants and employees, cease and desist from—

(a) Making, publishing or circulating written or oral statements or representations that the snuff products of its competitors are made of trash, inferior tobacco, cigar stubs, old tobacco chews, tobacco stems; that they contain opium, copperas, glass, hair, dirt or similar substances, that they will cause blindness, tuberculosis; will destroy the teeth, cause pyorrhea, bleeding gums or other maladies; or other statements or representations of like import, when such are not the facts;

(b) Making, publishing or circulating written or oral statements or representations concerning its competitors, or any of them, that they will soon be out of business, that their products are to be taken off the market, that they are controlled by respondent, that the contents of six-ounce bottles of snuff manufactured and sold by the United States Tobacco Co., one of its competitors, weighs less than six ounces, or statements and representations of like import, when such are not the facts;

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(c) Making, publishing and circulating in connection with the sale of its snuff products, statements and representations that the same are "the only real refined tobacco," "the only 100 per cent pure tobacco," "the only pure snuff" that is made, "the only 100 per cent pure snuff in the world," or statements and representations of like import, when such are not the facts;

(d) Persuading or inducing, or attempting to persuade, or induce, customers of its competitors to cancel or repudiate contracts for the purchase of the products of said competitors and to return to its competitors products already purchased and delivered, or inducing or attempting to induce consumers of snuff not to use, or to desist from the use of, the snuff products of its competitors;

(e) Causing its salesmen and agents to visit dealers in or consumers of snuff to seek, by means of false and disparaging representations of competitors' snuff, to obtain from them by trade or exchange competing snuff found in the possession of any such dealer or consumer.

(3) *It is further ordered*, That the respondent, its officers, agents, representatives, servants and employees, cease and desist from—

(a) Using the word "Dental" and the depiction of a tooth, or either of them, alone or in connection with any other word or words, in the brand name or on the labels on the containers of any of its snuff products to represent, describe or define such product, when its said product contains no ingredient other than tobacco;

(b) Making, publishing or circulating written or oral statements or representations in connection with the sale or distribution of any of its snuff products that such product will cure toothache, pyorrhea, bleeding gums, neuralgia or other like maladies, when such product contains no ingredient other than tobacco.

It is further ordered, That the respondent shall within 60 days after 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 had complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
DWINELL-WRIGHT 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 1111. Complaint, Jan. 12, 1924—Decision, June 30, 1927

Where a corporation engaged in the importation, blending, roasting and packing of coffees, including certain extensively advertised and featured brands, and in the sale thereof, and constituting one of the largest importers, packers and sellers thereof; in pursuance of a policy directed to securing the observance or maintenance of the prices designated or suggested by it for the resale of its products by its jobber and retail dealer customers,

- (a) Entered into and secured contracts, agreements and understandings with jobbers for the maintenance by them of such prices;
- (b) Solicited and secured the cooperation of jobbers in ascertaining names of price cutting jobbers and in the maintenance of its resale prices;
- (c) Acted upon information secured from jobbers and salesmen as to price cutting jobbers, by refusing or threatening to refuse to sell the latter its products;
- (d) Endeavored to secure and secured the cooperation of jobbers by letters and by personal solicitation, in preventing those cut off, from obtaining supplies thereof;
- (e) Sought and secured the cooperation of jobber customers in inducing price cutting retail dealers to whom they sold, to increase their prices, and endeavored to induce jobbers to refuse sales of its products to such retailers unwilling to increase their prices; and
- (f) Threatened to cut off and cut off supplies of jobbers refusing to cease selling offending retail dealer price cutters;

With the result that competition among jobbers and retailers in the sale and distribution of its products was suppressed, they were constrained to sell its products at the prices fixed by it and thereby prevented from selling the same at such lower prices as they might deem warranted by their respective selling costs and trade conditions generally, and competition was unduly suppressed and hindered:

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

Mr. William A. Sweet for the Commission.

Breed, Abbott & Morgan, of New York City, 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 Massachusetts corporation, engaged principally in the