

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

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importation, blending, roasting and packing of coffees and in the importation, blending and packing of teas, and sale thereof to wholesalers, jobbers and retailers throughout the various States, with principal and executive offices in Boston, and with factories in Boston and Chicago, and constituting one of the largest importers, packers and sellers of coffees and teas in the United States, with many well known trade names or brands, "nationally known, advertised and demanded, without a continued supply of which said brands, it is difficult, because of the buyers' demand therefor, for a wholesaler, jobber or retailer of coffees and teas successfully to conduct his business", 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.

Respondent, as charged, for more than two years preceding the complaint "has employed, and still employs, a system of fixing and maintaining certain specified standard or uniform prices at which the products, prepared and sold by it in interstate commerce, shall be resold by wholesalers or jobbers to retailers, and by retailers to the consuming public, and pursuant to this purpose, and in order to secure the cooperation of dealers and effect the maintenance of such prices, it has adopted and used, and is now using the following practices:"

(a) Issuing and circulating letters and circulars containing uniform resale prices for its products, to the wholesale and retail trade generally;

(b) Causing it to be quite generally known to the trade by price schedules and through salesmen and other means of advertisements that it expects or requires wholesalers, jobbers and retailers handling its product to maintain and enforce its resale prices, "thereby resulting in a mutual understanding between the respondent and the dealers in its products that such prices would be maintained";

(c) Soliciting and securing from such dealers assurances, promises or understandings that they will do so;

(d) Soliciting and procuring from its dealers reports of price cutting by others;

(e) Instructing or requiring its salesmen or other representatives to inquire into the source of supply of price cutting dealers who do not secure their supplies from it, with the intent and effect of enforcing its resale price schedule;

(f) Using information received through reports to induce, require and/or coerce price cutters to resume and maintain its prices and threatening them with no more sales of its supplies if they fail to do so;

(g) Delaying shipments of orders from customers or dealers reported as price cutters, pending investigation of the alleged price cutting and/or the receipt of assurances directed to future resumption or maintenance of its prices;

(h) Refusing sales to price cutting dealers failing to give such assurances;

(i) Instructing salesmen or other representatives to assist in its scheme of price maintenance by (1) reporting price cutters, (2) calling upon them and exhorting them to restore and maintain prices, (3) threatening to refuse future orders from dealers who did not give assurances to maintain its prices and, (4) ascertaining source of supply of price cutters not dealing directly with it, for the purpose of enforcing its resale price schedule;

(j) Preventing and coercing customers from reselling its products to other dealers to whom it has refused further sales because of their price cutting; and

(k) Following other equivalent cooperative methods to maintain its "said established resale price system";

According to the complaint "respondent's acts and practices * * * had and still have the capacity and tendency to constrain all dealers handling respondent's products uniformly to sell the same at the resale price fixed by respondent and to prevent such dealers from selling said products at such less prices as they might and may deem to be adequate and warranted by their respective costs and efficiency, and hence, to hinder and suppress the usual free and open competition which otherwise would exist among the dealers in respondent's products, thus tending to obstruct the free and natural flow of commerce in such products and the freedom of competition in this channel of interstate trade"; all to the prejudice of the public and respondent's competitor.

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 its complaint upon the respondent, Dwinell-Wright Co., charging it 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 answer to said complaint, hearings were had and evidence was thereupon introduced on behalf of the Commission and of the respondent before Edward M. Averill, an examiner of the Federal Trade Commission, duly appointed. Thereupon this proceeding came on for

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decision and the Commission having duly 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. Respondent, Dwinell-Wright Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal and executive offices located in the city of Boston, in the State of Massachusetts, and with factories located in the city of Boston, in the State aforesaid, in Chicago, in the State of Illinois, and in Portsmouth, in the State of Virginia. Respondent is now, and has been since the year 1899, engaged in the importation, blending, roasting and packing of coffees, and the importation, blending and packing of teas, and in the sale of such products to jobbers and retail dealers throughout the various States of the United States and the District of Columbia. It causes its said products, when so sold, to be transported from its said factories in the States of Massachusetts, Illinois and Virginia, to purchasers located in other States of the United States and the District of Columbia. The respondent is one of the largest importers, packers and sellers of coffees and teas in the United States, and is in active competition in the sale of its coffees with between 500 and 600 individuals, firms, partnerships or corporations engaged in roasting and selling coffee in commerce among the States of the United States.

PAR. 2. The respondent packs, sells and ships, under its own special labels, some 30 to 40 brands of coffee, its principal brands being "White House", "Excelsior", "Tiptop" and "Caraja". These brands are extensively advertised by the respondent, particularly the "White House" brand, which has been, and still is, featured and nationally advertised, and is the largest selling brand handled by the respondent. The respondent travels 75 salesmen, who are either under the direct supervision of the home office in Boston or under the supervision of the branch offices in Chicago and Portsmouth.

The respondent sells to jobbers principally, but also, in certain localities, sells to retailers, and has between 1,500 and 1,800 jobber customers and between 300 and 500 direct retail customers, with a minimum of approximately 100,000 dealers ultimately handling its product. The respondent sells between 19,000,000 and 20,000,000 pounds of coffee per annum, and of this, approximately 12,000,000 pounds are sold under its "White House" brand.

There was imported into the United States during the calendar years 1921 to 1923, inclusive, coffee as follows:

	Pounds
1921 -----	1, 340, 979, 776
1922 -----	1, 246, 060, 667
1923 -----	1, 409, 754, 625

PAR. 3. The respondent, prior to the early part of 1924, as a method of selling its coffee, issued to the jobbers and the retailers whom it sold, two lists containing the prices of its coffees. One list known as the "short list", designated the price at which the respondent sold its coffee to the jobber, the other, known as the "long list", designated the price at which the respondent sold to the retailer. The difference between the two lists represented the gross profit to the jobber. These lists were changed from time to time, as the market on coffee changed.

Since the early part of 1924, the respondent has discontinued the use of two lists and uses only one list, which list contains the price per pound at which the respondent sells its coffee to its direct retail customers; and the price at which the respondent sells to the jobber is based upon a discount of 12½ per cent of the prices set out in the list. The respondent issues no list upon which is either indicated or suggested any price at which respondent's coffees shall be sold by the retailer to the consuming public.

PAR. 4. Respondent, in the course and conduct of its business, by letter and by personal interviews of its salesmen, causes it to be generally known to jobbers that the prices contained in its published price list are the prices at which it expects jobbers purchasing from respondent to sell to the retail trade, and seeks and secures the cooperation of jobbers in the maintenance of said resale prices and in the detection of other jobbers who fail to maintain the same by the use of the following methods:

(a) Respondent, in order to enforce and maintain said specified or designated resale prices, enters into contracts, agreements and understandings with jobbers for the maintenance of said prices, and secures from jobbers agreements, promises, or assurances that they will observe the prices specified or designated by the respondent.

(b) Respondent, as a method of maintaining said specified or designated resale prices, solicits and secures the cooperation of jobbers in ascertaining and reporting to respondent the names of other jobbers who cut prices on respondent's products, and jobbers have in fact so reported such other jobbers to respondent. Respondent, as a method of maintaining said specified or designated resale prices, has also secured from its salesmen reports concerning jobbers who sell respondent's products at less than the resale prices specified or

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designated by respondent. Acting upon information so secured from jobbers and salesmen as to price cutting by competing jobbers, respondent has thereafter refused to sell or threatened to refuse to sell its products to jobbers so reported and found to have cut its specified or designated resale prices.

(c) Respondent, by letters to jobbers and by personal calls from its salesmen, endeavors to, and does, secure the cooperation of jobbers in preventing other jobbers who have been cut off, from obtaining supplies of its coffees.

PAR. 5. Respondent in the course and conduct of its said business suggests to retail dealers, through its jobbers and its salesmen, prices at which its coffee shall be sold and by reports from its salesmen and by reports and complaints from its jobbers keeps in touch with the prices at which retail dealers are selling its products to consumers, and when such resale prices are below the prices suggested by respondent and complaints and reports of such prices have been made to respondent, it seeks and secures the cooperation of its jobber who sold its products to the retailer, by soliciting said jobber to induce the offending retailer to increase the price at which said retailer is selling to the consumer; and when and if said retailer is unwilling to increase his said selling price, the respondent endeavors to induce the jobber to refuse sales of the respondent's products to said retailer, and threatens to, and has, cut off the supply of the jobber, when the jobber refuses to comply with respondent's request and refused to stop selling the offending retailer.

PAR. 6. The 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 retailers in the sale and distribution of respondent's products and to constrain such jobbers and retail dealers to sell said products at prices so fixed by respondent, thereby preventing such jobbers and retail dealers from selling said 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.

CONCLUSION

That the practices of respondents under the conditions and circumstances herein set forth 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, the answer of respondent, the briefs and argument 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",

It is now ordered, That the respondent Dwinell-Wright 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 or suggested 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) Entering into contracts, agreements or understandings with jobbers, or any of them, that respondent's products are to be resold by such jobbers at prices specified or designated by respondent.

(b) Procuring either directly or indirectly from jobbers promises or assurances that the prices specified or designated by respondent will be observed by such jobbers.

(c) Requesting jobbers to report the names of other jobbers who fail to observe the resale prices specified or designated by respondent and acting upon reports so obtained by refusing or threatening to refuse to sell its products to jobbers so reported.

(d) Procuring through the cooperation of its jobber customers promises and assurances from retail dealers that such dealers will observe and maintain the resale prices to consumers determined upon and suggested by respondent for its products.

(e) Utilizing any other equivalent cooperative methods of accomplishing the maintenance and observance of resale prices specified or designated by respondent for its products.

It is further ordered, That the respondent, Dwinell-Wright Co., 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.

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IN THE MATTER OF

JAMES A. McCAFFERTY SONS MANUFACTURING
COMPANY, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 1165. Complaint, Apr. 24, 1924—Decision, June 30, 1927*

Where a corporation engaged in the manufacture and sale of paints and paint products, including a product containing not more than three per cent of carbonate of lead or sulphate of lead, mixed with other ingredients; designated, branded and labeled said product "GOLD SEAL Combination WHITE LEAD"; with the effect of misleading and deceiving the purchasing public into believing the same to be composed of a mixture containing not less than fifty per cent of white lead by weight, and of placing in the hands of retail dealers a means of so misleading and deceiving the public, and with the effect of diverting trade from and otherwise injuring both competitors engaged in the sale of products composed of carbonate of lead or sulphate of lead ground in linseed oil, and by them properly designated and described as "White Lead", and competitors engaged in the sale of products containing only a small percentage of the aforesaid first named ingredients, without designating or describing the same as "White Lead" or "Combination White Lead":

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

Mr. Robert O. Brownell for the Commission.

Fitzgerald, Stapleton & Mahon, 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 New York corporation engaged in the manufacture of paints and paint products and ingredients, and in the sale thereof to wholesale and retail dealers in the various States, and with principal office and place of business in New York City, with naming product 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 respondent named, branded and labeled a product containing not more than three per cent of sulphate of lead or carbonate of lead "Gold Seal Combination White Lead", with the capacity and tendency to mislead and deceive the trade and public into believing that sulphate of lead or carbonate of lead, understood by the trade and public through common usage as being designated by the term