

IN THE MATTER OF
PUBLIC SERVICE CUP COMPANY

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

Docket 1373. Complaint, Mar. 29, 1926—Decision, Feb. 20, 1928

Where a corporation engaged in the manufacture of paper drinking cups and dishes, together with containers, folders, trays, etc., and in the sale thereof through jobbers exclusively; in pursuance of a policy directed to the maintenance of the prices fixed by it for the resale of its products to retailers,

- (a) Requested and secured promises from new customers for the resale of said products at such prices;
- (b) Advised customers by letter and through salesmen that it expected and required rigid adherence thereto and that it would discontinue sales to price cutters;
- (c) Refused to sell its products to price cutters, or to resume dealing therewith unless or until they gave satisfactory assurances that they would thereafter respect its prices;
- (d) Requested customers, by letter and through salesmen, to cooperate in the maintenance of its said prices and to notify it of price cutting, and advised customers that it would require price cutters to respect its prices thereafter under penalty of being refused further sales of its products, and wrote customers complaining of price cutting, whether voluntarily or at its request, that it would investigate the matter and require the offender to stop the practice, and thereafter notified the customer of its action in the premises; and
- (e) Instructed salesmen to report price cutting to it, and investigated the same whether thus brought to its attention or through customers, and threatened offenders with discontinuance of further sales, and did discontinue sales to those failing to give satisfactory assurances as to their future conduct, and advised customer competitors concerned of its action;

With the effect of requiring all customers uniformly to sell its product to the public at the prices named by it, and with the tendency and capacity to hinder and restrict competition between them, and with the tendency to and with the effect of unduly hindering and obstructing competition in the sale and distribution of its products:

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

Mr. T. B. Dixon and *Mr. G. Ed. Rowland* for the Commission.
Briesen & Schrenk and *Battle, Miller, Levy and Van Tine* 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 paper drinking cups, dishes and like products and in the sale thereof to wholesale and retail dealers in various States, and with principal office and place of business in New York City, with maintaining resale prices in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than three years last past, in the course and conduct of its aforesaid business, "has enforced, and still enforces, a merchandising system adopted by it of establishing and maintaining certain specified uniform prices at which its said products shall be resold by dealers handling same, and respondent enlists and secures the support and cooperation of said dealers and of respondent's officers, agents and employees in enforcing said system. In order to carry out said system, respondent during said 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 dealers handling respondent's said products from reselling same at prices less than aforesaid resale prices established by respondent":

(a) Establishing uniform minimum prices for the resale of its products by dealers handling the same and issuing to said dealers price lists setting forth the aforesaid prices;

(b) Making it generally known to the trade by letters, telegrams, interviews with its agents and by other means that it expects and requires such dealers to maintain and enforce said prices;

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

(d) Seeking and securing from such dealers reports of information concerning and evidence of price cutting by other dealers;

(e) Employing its salesmen and other agents and employees to ascertain, investigate and secure information concerning price cutting, together with proofs thereof, and to report to it;

(f) Using information secured as above set forth, and otherwise, to induce and coerce price cutting dealers to observe and maintain prices in the future by exacting promises and assurances from them to that effect and threatening them, in the event of their failure so to do, with refusal of further supplies;

(g) Exacting promises and assurances from dealers, to maintain its said resale prices, as a condition of opening new accounts with them or of continuing their supply of its said products;

(h) Refusing, in many instances, to further supply said products to price cutting dealers; and

(i) Using other equivalent, cooperative and individual means and methods for the enforcement of its said system of resale prices;

The result of the aforesaid acts and practices has been, as alleged, that its said resale prices have been and now are generally maintained, and, furthermore, as charged, a direct effect and result thereof "has been and now is to suppress competition in the distribution and sale of respondent's said 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 the ultimate purchasers of said products of those 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 constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Public Service Cup Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and the respondent before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondent having submitted briefs and having argued the case before the Commission, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Public Service Cup Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the

city of New York, in said State. Its capital stock is \$200,000. Respondent is engaged in the business of manufacturing and selling paper drinking cups and paper dishes under the trade name "Lily" cups and "Lily" dishes, together with containers, holders, trays, etc.

PAR. 2. Respondent sells its products to jobbers in various States of the United States and the District of Columbia, and causes such products, when sold, to be transported to the respective purchasers thereof from New York, N. Y., through and into various other States of the United States and the District of Columbia, where the purchaser resides. In the conduct of its said business respondent has been and is now in competition with other persons, partnerships, and corporations, engaged in the manufacture and sale of paper drinking cups, paper dishes, containers, holders, trays, etc., in commerce between and among the various States of the United States, and the District of Columbia.

PAR. 3. Respondent distributes its entire output through jobbers, which jobbers resell the articles to retail dealers and various users thereof throughout the United States. It has about 1,000 accounts to which it sells. It employs traveling representatives who call on the jobbers to which it sells and who solicits orders for its products. The paper cups and dishes manufactured and sold by respondent are used by soda fountains, soft-drink stands, and also in offices and other places for the convenience of the public, in place of china dishes or glassware. They are made in various sizes, such as 5-ounce, 7-ounce, 8-ounce, 10-ounce, and 12-ounce, and are sold under the trade name "Lily" cups and "Lily" dishes.

PAR. 4. In connection with the distribution and sale of its products as aforesaid respondent has adopted and enforces a system of uniform resale prices at which its customers shall resell said products. Respondent publishes and distributes among its customers two price lists, one setting forth the prices which the customer pays for respondent's products, and the other setting forth the prices at which the customer shall resell to the retailer. Upon receiving an order from a new customer respondent writes a letter to the customer acknowledging the order and enclosing copies of the two price lists, and requests the customer to give his assurance that he will adhere strictly to the resale prices. Many customers of respondent in reply have given such assurances. In 1923, and for some time prior thereto, respondent sent to its customers in addition to the letter above mentioned, a printed card to be signed by the customer and returned, which card contained the following:

This will acknowledge receipt of your schedule of prices dated ——— and revised resale prices dated ——— by which we will be guided.

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Said cards were signed and returned by some, but not all, of respondent's customers. The use of these cards has been abandoned by respondent.

PAR. 5. Respondent requests its customers to report to it any instances of price cutting on its products which come to their attention. Many of respondent's customers in response to these requests have sent in complaints of competitors selling respondent's products at prices less than those named by respondent. In some instances such complaints from customers are voluntary on the part of the customer. In every instance, whether at its request or voluntary, respondent writes the customer making such complaints assuring him that it will investigate the case, and require the offending customer to stop such price cutting. Respondent always investigates such instances, either through salesmen or by letter to the offending customer, and requests said customer to give assurances that it will not sell in the future below the prices named by respondent. If the customer agrees to abide by its resale prices in the future respondent continues to sell him, but if he does not give satisfactory assurances as to his future conduct, respondent refuses to fill any further orders received from him.

PAR. 6. Respondent instructs its salesmen to report to it any instances of price cutting on its products which come to their attention in their territories. It also requires its salesmen to investigate and report to it on dealers suspected of not maintaining its resale prices. Respondent's salesmen request its customers to call to their attention any instances of price cutting on respondent's products by their competitors, and assure said customers that respondent will require such price-cutting competitors to sell at the resale prices named by respondent, or it will refuse to sell them any more of its products. When customers are reported to respondent for failure to maintain the resale prices named by it, salesmen are directed to call on the offending customers and endeavor to secure their promise to maintain the resale prices in the future. The salesmen threaten the offending customers that if they do not restore such resale prices and promise to observe them in the future, they will be refused further orders of respondent's products.

PAR. 7. Respondent enforces its resale price plan by refusing to sell its products to customers who sell Lily cups and Lily dishes for less than the resale prices established by respondent. When respondent is advised that a customer is selling its products below the resale prices named by it, and the customer will not, after being warned by respondent or its salesmen restore the prices to those

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established by respondent, no more orders from the customer for its products will be filled by respondent. Respondent advises its customers by letter and through its salesmen that it expects and requires a rigid adherence to the resale prices set by it, and that if said prices are not maintained, it will discontinue selling its products to the customer who fails to maintain them. Respondent has refused to sell its products to many customers who have failed to maintain the resale prices named by it.

PAR. 8. Respondent, by letters and through its salesmen and representatives, requests the cooperation of its customers in maintaining its resale prices, and when it refuses to sell a customer for failure to maintain its prices, it notifies its other customers, who are competitors of the customer who has been cut off, of the fact. When a customer has been refused further supplies of respondent's products for failure to observe the resale prices named by it, said customer can not again buy its products from respondent until he has given satisfactory assurances that he will follow the resale prices established by respondent in the future.

PAR. 9. The resale price policy and practices of respondent, as applied to its products, as hereinbefore set forth, have the tendency and capacity to and do require all customers handling respondent's products uniformly to sell the aforesaid products to the public at the prices named by respondent, and further to hinder and restrict competition between customers handling respondent's said products. Respondent's said practices tend to and do unduly hinder and obstruct competition in the sale and distribution of its products in the course of interstate commerce.

CONCLUSION

The methods of competition set forth in the foregoing findings are, under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, and briefs and oral argument by counsel, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the pro-

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visions 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,"

Now, therefore, it is ordered, That the respondent, Public Service Cup Co., its officers, directors, agents, servants, and employees, cease and desist from, directly or indirectly, carrying into effect, or attempting to carry into effect, by cooperative methods a system of uniform resale prices at which the articles manufactured by it shall be resold by its customers and distributors, and more particularly by any or all of the following means:

(1) Seeking and securing contracts, agreements or understandings with customers or prospective customers that they will maintain the resale prices named by it.

(2) Requesting dealers, either directly or through its salesmen, to report competitors who do not maintain the resale prices suggested by respondent, or acting on reports so obtained by refusing or threatening to refuse sales to customers so reported.

(3) Utilizing its salesmen for the purpose of enforcing cooperation in its resale price maintenance system, to report customers who do not observe its suggested resale prices, or acting on reports so obtained by refusing or threatening to refuse sales to customers so reported.

(4) Requiring from customers previously cut off because of price cutting, promises or assurances of the maintenance of respondent's resale prices as a condition precedent to reinstatement.

(5) Requiring from customers charged with price cutting, promises or assurances of the maintenance of respondent's resale prices as a condition precedent to future sales to said dealers.

(6) Utilizing any other equivalent cooperative means of accomplishing the maintenance of uniform resale prices named by respondent for its products.

It is further ordered, That respondent, Public Service Cup Co., within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

SAMUEL DACH, DOING BUSINESS UNDER THE TRADE
NAME AND STYLE COLUMBIA NOVELTY 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 1489. Complaint, Feb. 19, 1927—Decision, Feb. 20, 1928

Where an individual engaged in the sale of liquid perfume and miscellaneous novelties or premiums therewith, directly to the consuming public; advertised certain articles offered as premiums for the purchase of a certain number of bottles of the perfume, for subsequent resale by the vendees thereof (mostly children), in circulars, magazines and newspapers of general circulation, as a "ring watch", studded with 14 brilliant sparkling reproduction diamonds, or, in some cases, with "blue-white raysola diamonds," and a penknife (offered as part of a "school box and outfit"), as a "gold fountain pen and gold knife", the fact being that the so-called ring watch contained neither watch, nor diamonds of any kind, but consisted of a ring with a simulation of the face of a watch, with no precious stones but only particles of glass, and that the pen and knife contained no gold whatever, but were made of a base metal shell or covering simulating gold in color only; with the capacity and tendency to mislead and deceive members of the purchasing public into purchasing said perfume and premiums in the erroneous belief thereby induced as to the nature of the latter, to the prejudice of the business of its competitors and the public: *Held*, that such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. Henry Miller for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged at East Boston, Mass., in the sale of perfumery direct to consumers residing at points in various States, with advertising falsely or misleadingly 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 about two years last past, in advertisements by him in newspapers, periodicals and other publications of general circulation throughout the United States and in certain sections thereof, through which advertisements he sought and se-