

Syllabus

IN THE MATTER OF
JOHNSON & JOHNSON

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

Docket 1546. Complaint, Nov. 6, 1928—Decision, June 26, 1929

Where a corporation engaged in the manufacture and sale of medicinal and surgical plasters and toilet specialties, including an antiseptic borated talcum powder for nursery use, and other products; in furtherance of endeavors to maintain the minimum uniform selling price fixed by it for resale of its aforesaid nationally advertised, popular, and largely demanded powder, sold by it chiefly directly to retail dealers consisting principally of some 30,000 drug and department stores, and to a limited extent at the same price through the wholesale trade, with allowance for freight on certain minimum quantity purchases,

- (a) Secured generally from customers promises and assurances to observe and maintain its said price;
- (b) Secured from retail dealer customers and from its selling agents and otherwise information and evidence concerning price cutting by retailer customers and used such information to induce said price cutting customers thereafter to observe its said price;
- (c) Refused further sales of its said product to customers disclosed as price cutters by investigations based upon customers' reports and also upon its own initiative, and secured said price cutters' promises and assurances to immediately maintain and thereafter observe its aforesaid price;
- (d) Sought to ascertain source of supply of dealers cut off by it as price cutters in order to refuse further sales to the supplying dealer or dealers and did so discontinue selling such a supplying dealer; and
- (e) Secured from all retailers in localities involving price cutting by one or more dealers, through its sales agents and with the assistance of favorably disposed dealer customers, a general agreement on the part of all to immediately put its price into effect therein and to observe and maintain the same thereafter;

With the result that its aforesaid suggested minimum resale price was rigidly enforced and maintained as both the minimum and maximum price for the resale of its said product in the eastern section of the United States to which its aforesaid activities, as disclosed, were principally related, and retail dealer customers were prevented therein from selling its said product at such lower prices as might be deemed by them to be warranted by their respective selling costs and by trade conditions generally and competition between retailers in respect of said product was thus suppressed and prevented:

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

Mr. William T. Kelley for the Commission.

Mr. Archibald Cow, of New York City, for respondents.

Complaint

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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 medicinal and surgical plasters, absorbent cotton, surgical dressings, first-aid supplies, ligatures, dental floss, and toilet specialties, and in the sale thereof direct to retail dealers, principally drug and department stores, and to wholesalers, but chiefly directly to some 30,000 retail dealer customers, and with general offices and place of business in New Brunswick, N. J., and branch divisions at Chicago and San Francisco, 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 alleged for more than three years last past, has enforced and enforces a merchandising system adopted by it directed to the fixing and maintaining of uniform minimum retail prices specified by it for the sale of its "Johnson's Toilet and Baby Powder," in the enforcement of which system it enlists and secures the support and cooperation of retail and wholesale dealers, and of its officers, agents, and employees, and employs "the following means whereby respondent and those cooperating with it have undertaken to prevent and have prevented retail dealers handling respondent's said product Johnson's Toilet and Baby Powder from reselling same to the public at prices less than aforesaid minimum resale prices established by" it, to wit:

(a) Fixing uniform minimum prices at which retailers shall resell its said powder to the purchasing public and issuing and sending to them price lists setting forth such uniform minimum prices;

(b) Making it generally known to the trade by letters, circulars, salesmen interviews, and otherwise that it expects and requires such retailers to maintain and enforce said prices and that it will refuse to further supply its product to those failing so to do;

(c) Entering into agreements, understandings, and arrangements with retailers for the maintenance by them of such prices as a condition of opening accounts with them or of continuing their supply of its said product;

(d) Procuring from such dealers reports of the failure of other retailers handling its product to observe and maintain its prices;

(e) Employing its salesmen and other employees to ascertain, investigate, and secure information as to any such failure and as to the sale of its said product by wholesalers to retailers failing to maintain its said prices;

(f) Seeking and securing the cooperation of its retail and wholesale dealers and of its agents and employees in preventing price-cutting retailers from obtaining its product from wholesalers, and tracing source of supply of such retailers in order to prevent them from securing further supplies of its products;

(g) Using information received through the means above set out to induce price-cutting retailers to maintain its prices thereafter, by exacting promises and assurances from them that they will so do and by threatening them with refusal of further supply in event of their failure so to do; and

(h) Refusing further supplies of its said product to offending retailers unless and until they give satisfactory assurances or undertaking of thereafter observing its said uniform minimum prices;

According to the complaint, "the direct effect and result of above alleged acts and practices of respondent has been and now is to suppress competition among retail dealers in the distribution and sale of respondent's product, Johnson's Toilet and Baby Powder; to constrain said dealers to sell said product at aforesaid prices fixed by respondent and to prevent them from selling said product at such less prices as they may desire, and to deprive the ultimate purchasers of said product of the advantages in prices and otherwise which they would obtain from the natural and unobstructed flow of commerce in said commodity under conditions of free competition"; all to the prejudice of the public.

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 Johnson & Johnson, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act. Respondent having entered its appearance and filed its answer herein, hearings were had and evidence was thereupon introduced upon behalf of the Commission, and the respondent before an examiner of the Federal Trade Commission theretofore duly appointed. Thereupon this proceeding came on for decision on the record, briefs of counsel for the Commission and counsel for the respondent, and the Commission 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 is now and for many years last past has been a corporation organized and existing under and by virtue of the laws of the State of New Jersey. Its principal office and factory is located at New Brunswick, N. J., where respondent has been for several years last past and is now engaged in the business of manufacturing and selling medicinal and surgical plasters, absorbent cotton, surgical dressings, first-aid supplies, ligatures, dental floss and toilet specialties, including an antiseptic borated talcum powder for toilet and nursery use, sold under the name Johnson's Toilet and Baby Powder. It maintains and operates branch sales divisions at Chicago, Ill., and San Francisco, Calif. Respondent's products are sold to wholesalers and retail dealers located throughout the various States of the United States. Said products are shipped in interstate commerce to such purchasers from respondent's factory at New Brunswick, N. J., or from its said branch sales divisions. In the course of such business respondent is in competition with other concerns engaged in similar business in interstate commerce.

PAR. 2. This proceeding relates only to the merchandising policy of respondent with respect to the product Johnson's Toilet and Baby Powder, hereinafter referred to as talcum powder. Said product is sold to both the wholesale and retail trade at the same price, namely, \$24 per gross, less a discount of 20 per cent. This price is regardless of quantity purchased, except when purchased in quantities amounting to \$50 net, the price includes the freight, otherwise the purchaser pays the freight. Approximately 75 per cent of the amount of respondent's sales of said product are made direct to retail dealers, principally drug and department stores, numbering approximately 30,000. Respondent employs soliciting sales agents through whom it secures orders for its products. The respondent advertised its talcum powder in magazines and periodicals having a national circulation and has created a large and popular public demand for said product.

PAR. 3. The respondent for more than three years prior to the filing of the complaint in this case on November 6, 1928, has endeavored and now endeavors to maintain a fixed uniform selling price for its talcum powder. To that end respondent sent to all its customers on July 22, 1925, a printed communication entitled "Notice Concerning Resale Prices," wherein it specified 20 cents as the minimum price at which its talcum powder is to be resold by retail dealer customers to the public, which price is such as in the opinion of the

respondent affords a "reasonable" profit. In furtherance of respondent's endeavor to prevent retail dealer customers from selling its talcum powder for less than its said specified minimum resale price it has during the times herein mentioned and now does secure and utilize the assistance and cooperation of its customers and of its sales agents, as hereinafter set forth.

PAR. 4. Respondent secures from its retail dealer customers information and evidence concerning other retail dealer customers who sold its talcum powder below its said specified minimum resale price. Also respondent secures through its sales agents and otherwise information and evidence concerning the failure of retail dealer customers to observe and maintain said minimum resale price. The respondent has used information secured through the above means to induce customers who failed theretofore to observe and maintain its said minimum resale price to observe and maintain said price in the future and has secured generally from customers their promise and assurance to observe and maintain said price in the future.

PAR. 5. The respondent as a result of investigations instituted upon reports received from its customers and also as a result of investigations made upon its own initiative has in some instances refused further sales of talcum powder to customers found to have been selling said product below its specified minimum resale price and in many instances has through its sales agents secured from customers who sold said product below said resale price their promise and assurance to immediately put said price into effect and to observe and maintain same in the future.

PAR. 6. The respondent sought to ascertain the source of supply of dealers who were barred from buying talcum powder direct from it because of sales below its specified minimum resale price, for the purpose of refusing further sales of said product to the dealer or dealers supplying the dealer or dealers who sold for less than its said specified minimum resale price, and in one instance did discontinue direct sales to a dealer suspected of selling said product to another dealer who sold below its suggested minimum resale price.

PAR. 7. The respondent, through its sales agents and with the assistance and cooperation of retail dealer customers favorable to the observance of its specified minimum resale price, has secured from all retail dealers in localities where respondent's talcum powder has been sold by one or more dealers for less than said resale price a general agreement on the part of all dealers in said localities to immediately put said price into effect and to observe and maintain same in the future.

Order

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PAR. 8. The evidence upon which the foregoing findings of fact rest relate principally to the activities of the respondent throughout the eastern section of the United States. Throughout this section respondent's suggested minimum resale price of 20 cents was rigidly enforced and maintained and this price was, generally speaking, both the minimum and the maximum price at which respondent's talcum powder was sold to the public. The practices of the respondent as set out in these findings of fact prevented its retail dealer customers from selling respondent's talcum powder at such lower prices as might be deemed by them to be warranted by their respective selling costs and by trade conditions generally and thus suppressed and prevented competition between retail dealer customers in respect to said product.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and evidence submitted, and briefs 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",

Now, therefore, it is ordered, That the respondent, Johnson & Johnson, its officers, directors, agents, representatives, and employees do cease and desist from carrying into effect or attempting to carry into effect a policy or system of securing the maintenance of resale prices for its product, Johnson's Toilet and Baby Powder—

(1) By entering into contracts, agreements, or understandings with dealers to the effect that said product will not be sold by them or any of them for less than the minimum resale price specified by respondent.

(2) By procuring either directly or indirectly from dealers or any of them their promise or assurance to observe and maintain the resale price specified by respondent.

(3) By acting upon reports or communications from dealers concerning sales at prices below respondent's specified minimum resale price by other dealers.

(4) By in any manner seeking the cooperation of dealers in the maintenance of resale prices specified by respondent.

It is further ordered, That the respondent, Johnson & Johnson, 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.

IN THE MATTER OF
MARYLAND PHARMACEUTICAL 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 1618. Complaint, May 9, 1929—Decision, June 27, 1929

Where a corporation engaged in the manufacture of a cough remedy under a brand name and in the sale thereof through wholesalers, and to some extent directly through retailers, principally chain stores; in pursuance of a policy directed to the resale of its said product by said wholesalers or distributors and retailers at the prices respectively fixed by it, entered into agreements and understandings therewith obligating them to resell its said product at the prices designated and fixed by it for resale to retailers and, by the latter, to the consuming public, whether purchased directly from it or through said distributors; with the result that there was practically complete cooperation between it, its distributors, and retailers in adhering to and maintaining its said prices, distributors and retailers engaged in the sale of said product were prevented from selling the same at such lower price or prices as might be deemed by them to be warranted by their respective selling costs and by trade conditions, and it was thereby enabled to and did suppress and prevent competition in interstate commerce between its distributors, on the one hand, in the sale of its products to retailers, and between retailers, on the other hand, in the sale thereof to the consuming public:

Held, That such practice, under the circumstances set forth, constituted an unfair method of competition.

Mr. James M. Brinson for the Commission.

Mr. Sidney L. Nyburg, of Baltimore, Md., 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 Maryland corporation engaged in the manufacture of a cough remedy under the name "Rem" and in the sale thereof through wholesalers or distributors, who resell to retail dealers, and to a certain extent directly to retailers, principally chain stores, and with principal office and place of business at Baltimore, 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, "has adopted for the distribution and sale of its product, 'Rem', and for more than five years last past, has maintained a system, under and in pursuance of which it has designated and fixed, and now designates and fixes certain uni-