

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-

form minimum price or prices, at or for which said product purchased from it by its so called distributors, has been and is resold to retail dealers and at or for which said retail dealers purchasing directly from respondent, or from distributors, resell to the consuming public. Respondent has enforced, and enforces adherence to and maintenance of the prices designated and fixed by it for the resale of its product by wholesale and retail dealers and their acquiescence in, and compliance with, any and all requirements of the system maintained for its distribution and sale, by employment of the following among other methods ”:

(a) Designating and fixing uniform minimum prices to be observed by said distributors in reselling to retailers and entering into agreements with them for the maintenance of such prices as a condition to initial and all subsequent sales by respondent to them;

(b) Designating and fixing such prices for observance by retailers purchasing either directly from it or its distributors and entering into agreements with such retailers for maintenance of such prices as a condition to direct purchases from it or purchases of its product, with its knowledge and approval, from its distributors;

(c) Soliciting and securing cooperation of wholesale and retail dealers selling its product in maintaining its said system of merchandising and enforcing the general and continued maintenance of its designated resale prices by wholesale and retail dealers;

(d) Warning and threatening its distributors that failure to sell its said product to retailers at the price designated by it, or sale to price cutting retailers would be followed by refusal of further sales to the offending distributors;

(e) Requesting and expecting its distributors and retail dealers handling its product, to report to it any price-cutting distributor or retail dealer, and securing cooperation of such wholesalers and retailers by compliance with its aforesaid requests, through reports by them to it of such price cutting;

(f) Requesting its distributors to refuse to sell its product to any price-cutting wholesaler or retailer or to any dealer selling to any such price cutters;

(g) Visiting centers of distribution for its product and requesting information as to price cutting by distributors or retailers;

(h) Refusing to sell to distributors believed from information obtained by its officers or from distributors or retailers to have cut prices;

(i) Soliciting and receiving assurances from wholesale and retail dealers refused further sales on account of price cutting, that if again supplied they would maintain the designated resale price and

reopening accounts with said distributors and selling or permitting sales by its distributors to the aforesaid retailer;

(j) Notifying its other distributors of any and all price-cutting distributors and dealers and seeking and obtaining cooperation of wholesale and retail dealers generally in preventing its product from being obtained by price-cutting wholesalers or retailers;

The aforesaid acts and practices resulted, as alleged, in the general maintenance of the resale prices designated and fixed by respondent for its product, and each and all of such acts and practices "has and have had and has and have the tendency to coerce or constrain all wholesale and retail dealers handling its product to sell the same uniformly at the price or prices designated and fixed by respondent for the sale to retail dealers and to the public, and to prevent said wholesale and retail dealers from selling such product at such lower price or prices as they might from time to time consider adequate and warranted, and have been and are adequate and warranted by their respective selling cost, efficiency and other conditions or considerations relating thereto and thereby has and have had and has and have the tendency to hinder and suppress competition in the sales of such product of respondent by its distributors, wholesale dealers, and by retail dealers, and each and all of said practices of respondent has and have had and has and have a tendency unduly and dangerously to restrain competition and trade in commerce among the various States of the United States"; 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondent Maryland Pharmaceutical Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act of Congress. The chief counsel for the Federal Trade Commission and counsel for respondent, having thereafter signed and filed a stipulation, waiving answer by respondent to the complaint, testimony and evidence, briefs and arguments, and containing an agreed statement of the facts in lieu of testimony and evidence, and it having been provided in said stipulation that the Commission may forthwith make and file its report, stating its findings as to the facts and conclusion drawn therefrom, and issue its order disposing of the proceeding,

thereupon, this proceeding came on for 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is now, and for more than 20 years last past has been, a corporation organized and existing under and by virtue of the laws of Maryland, with its principal office and place of business at Baltimore, in said State. It has been and is engaged in the manufacture and sale in commerce among various States of the United States, of a cough remedy known and described as "Rem," which it causes to be transported, when sold to purchasers, in the various States of the United States, in competition with individuals, partnerships, and corporations engaged in like commerce, in the sale of cough remedies.

PAR. 2. In the course of the conduct of its said business, respondent has sold and sells said product to and distributes it through wholesalers who are called distributors, and in turn sell to retail dealers, but to some extent respondent sells direct to retail dealers, principally so-called chain stores. It has adopted for the distribution and sale of its product, "Rem", and for more than five years last past, has maintained a policy and system under and in pursuance of which it has designated and fixed, and now designates and fixes certain uniform price or prices, at or for which said product purchased from it by its so-called distributors, has been and is resold to retail dealers and at or for which said retail dealers purchasing directly from respondent, or from distributors, resell to the consuming public.

It has been and is the practice of respondent, in the conduct of said system and the execution of such policy to enter into agreements and to have understandings with its distributors, and retail dealers, by, under, or in accordance with which it undertakes to sell to them, and they severally undertake to buy its product "Rem", on condition that the said distributors will resell it to retail dealers, and that said retail dealers, whether purchasing directly from respondent or indirectly through its distributors, will resell it to the consuming public, at the price or prices designated and fixed by respondent for its said resale by distributors and retail dealers, respectively.

PAR. 3. There has been and now is by means of the agreements and understandings mentioned in paragraph 2 hereof, practically

Order

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complete cooperation between respondent, its distributors and retail dealers, in adherence to and maintenance of the price or prices designated and fixed by respondent for the resale of its said product, with the effect that distributors of respondent and retail dealers engaged in the sale of said product have been and are prevented from selling it at such lower price or prices as might be deemed by them to be warranted by their respective selling costs and by trade conditions. Respondent thereby has been enabled to suppress and prevent and has suppressed and prevented competition in interstate commerce, on the one hand, between its distributors in their sale of its product to retail dealers, and on the other hand, between retail dealers in its sale to the consuming public.

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 its complaint and an agreed statement of the facts, answer to the complaint having been waived, and the Commission having made and filed its report, stating 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 respondent Maryland Pharmaceutical Co., 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 designated or fixed by respondent for its product "Rem"—

(1) By entering into contracts or agreements or having understandings with its distributors, or any of them, to the effect that they will not sell said product for less than the resale price designated or fixed by respondent.

(2) By entering into contracts or agreements or having understandings with retail dealers, or any of them, that said product will

not be sold by them to the consuming public for less than the retail price designated or fixed by respondent.

(3) By procuring either directly or indirectly from distributors or any of them, or from retail dealers, or any of them, the promise or assurance to observe and maintain the resale price or prices designated or fixed by respondent for said product.

(4) By seeking in any manner the cooperation of distributors or retail dealers in the observance and maintenance of resale price or prices designated or fixed by respondent for said product.

It is further ordered, That the respondent Maryland Pharmaceutical 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.

Complaint

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IN THE MATTER OF
NON-PLATE ENGRAVING COMPANY, INC.

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

Docket 1283. Complaint, Feb. 14, 1925—Decision, June 29, 1929

Where a corporation engaged in producing and selling business and social stationery, with imprints produced by a process which (1) involved sprinkling ordinary wet, type printing, with a chemical, followed by baking, and resulted in a raised letter effect so closely simulating genuine engraving as to be readily distinguishable only by an expert, and (2) was named "thermography" by an association of the trade;

- (a) Described its product as "Non-Plate Engraving" and set forth in its advertising matter, on letterheads, and on other literature the words "NON-PLATE ENGRAVING COMPANY, INC. Engraved and Embossed Effects Without Copper Plates or Steel Dies"; and
- (b) Represented that its said "Non-Plate Engraving" will meet all social requirements and result in a saving of half the time and cost of work done with a plate;

With the capacity and tendency to deceive the public into the mistaken belief that the stationery in question was genuine engraved stationery, i. e., as long known and understood by the public, stationery upon which impressions had been made from inked engraved plates or dies:

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

Mr. Richard P. Whiteley for the Commission.

Mr. George Seagrave Franklin, 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 printing social and business stationery, including invitations, announcements, calling and business cards, letterheads, envelopes, and allied products, by a special process, and in the sale of its said stationery products to persons, firms, and corporations in various States, and with principal office and printing plant in New York City, with using misleading corporate name and 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.