

IN THE MATTER OF
SHAKESPEARE 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 1719. Complaint, Nov. 5, 1929—Decision, May 19, 1930

Where a corporation engaged in the manufacture of fishing tackle, extensively advertised, along with the specified price for each item, in magazines of national circulation and through catalogues sent to the public and trade, and in the sale thereof to mail order houses, retail hardware dealers, retail sporting goods dealers, and other retailers throughout the United States; in enforcing a merchandising system for the maintenance by retailers of certain minimum prices fixed by it for reels, sale of which constituted, in amount, the principal part of its total sales,

- (a) Made it generally known to dealers that it expected and required all those handling said reels to sell the same at such fixed prices and that it would refuse to sell to a dealer found to be deviating therefrom;
- (b) Entered into contracts, agreements, and understandings with and procured promises and assurances from dealers for the maintenance by them of said prices as a condition of opening accounts with them or of continuing their supplies of its products; and
- (c) Sought and secured from dealers information concerning and evidence of price cutting by others and investigated and procured from dealers concerned promises and assurances to maintain prices in the future, or declined further to supply the same or to sell to those failing to maintain its prices;

With the result that cooperation of its dealers was generally secured, prices fixed by it generally prevailed, and dealers engaged in the distribution and sale of its products were prevented from securing the same at such lower prices as might be deemed by them warranted, and competition in respect of its said products in interstate commerce was thus suppressed and hindered:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and constituted unfair methods of competition.

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 Michigan corporation engaged in the manufacture of fishing tackle, including lines, reels, baits, and other items, and in the sale and distribution thereof from its principal place of business at Kalamazoo, to mail order houses, retail hard-

ware dealers, retail sporting goods dealers, and other retailers throughout the United States, 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 many years last past in the course and conduct of its said business has "enforced and now enforces a merchandising system adopted by it of fixing and maintaining certain specified minimum prices at which the reels which it manufactures and sells shall be sold to the consuming public by its dealers, and respondent enlists and secures and has enlisted and secured the support and cooperation of its said dealers in enforcing said system.

"In order to carry out said system, respondent has employed and still employs the following means whereby it and those cooperating with it have undertaken to prevent and have prevented dealers from selling same to the consuming public at prices less than the aforesaid prices established by respondent:"

(a) Fixing minimum uniform prices at which its dealers shall resell its products to consumers and making it generally known to the trade that it expects and requires all dealers handling said products to sell the same at said prices and that it will refuse to sell to a dealer found to be cutting the same;

(b) Entering into contracts, agreements, and understandings with and procuring promises and assurances from dealers for the maintenance by them of said resale prices as a condition of opening accounts with them or of continuing their supplies of its products;

(c) Making it generally known to the trade through agents and by correspondence that it will refuse to sell to price cutters, and securing information from dealers concerning price cutting by other dealers and exacting from reported dealers investigated by reason of information thus secured and found and believed to have cut its prices, promises, and assurances thereafter to maintain the same, and, in the event of failure to obtain such promises and assurances, declining further to supply such dealers.

As a result of said acts and practices by respondent, its said resale prices, as alleged "have been and are generally maintained" and the direct effect of said acts and practices, as charged, "has been and now is to suppress competition among dealers in the distribution and sale of respondent's said products; to constrain dealers to sell said products at the prices fixed by respondent, and to prevent them from selling the products at such less prices as they may desire, and to deprive the ultimate purchasers of said products of the

advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce in said products under methods of free competition."

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" (38 Stat. 719), the Federal Trade Commission on the 5th day of November, 1929, issued and served its complaint upon the respondent, Shakespeare 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 said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for decision and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Shakespeare Co., is a corporation organized and existing under the laws of the State of Michigan with its principal place of business and factory at the city of Kalamazoo in said State. It is now and has been for a number of years engaged in the manufacture of fishing tackle including lines, reels, baits, and other items, and the sale and distribution thereof from its principal place of business, Kalamazoo, Mich., to mail order houses, retail hardware dealers, retail sporting goods dealers, and other retail dealers throughout the United States. It causes its said products when sold, to be transported from its principal place of business into and through States of the United States other than Michigan in interstate commerce to said dealers, about 5,000 in number, at their respective points of location. In the course and conduct of its said business respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and transportation of similar items of fishing tackle in interstate commerce between and among the various States of the United States.

PAR. 2. The respondent advertises its said products extensively in magazines having national circulation among the public and also by means of catalogues sent to the public and other catalogues sent to the trade. In all such advertisements respondent specifies and advertises the consumer's price for each item advertised. Among the items of respondent's manufacture and sale as aforesaid are many different types and kinds of reels, the sale of which constitute in amount the principal part of respondent's total sales.

PAR. 3. For many years last past the respondent has determined upon and fixed certain minimum resale prices for its said reels, which price it publishes to the trade as the price which must be obtained by retailers from the purchasing public. As to such specified minimum price for its reels respondent has for many years last past enforced a merchandising system for the maintenance by retailers of such prices and has enlisted and secured the support and cooperation of its said dealers in enforcing said system. In order to carry out said system respondent has employed and still employs the following means:

(a) Respondent makes it generally known to its dealers that it expects and requires all dealers handling said reels to sell same at such fixed prices and that it will refuse to sell a dealer found to be deviating therefrom.

(b) Respondent enters into contracts, agreements and understandings with and procures promises and assurances from dealers for the maintenance by them of said specified minimum prices as a condition of opening accounts with them or continuing their supplies of said products.

(c) Respondent seeks and secures from its dealers information concerning and evidence of the failure of other dealers to observe and maintain said specified minimum price and by reason of the information thus secured makes investigations and procures from such reported dealers found or believed by respondent to have not maintained the specified prices, promises and assurances that they will in the future maintain same. Failing to obtain such promises and assurances respondent declines further to supply such dealers. Respondent refuses to sell its products to dealers who will not maintain such specified minimum prices.

PAR. 4. Respondent has secured the cooperation of its dealers generally by reason of the methods and practices stated in paragraph 3, with the effect that the said resale prices fixed by respondent generally prevail, by reason of which dealers engaged in the distribution and sale of respondent's products are prevented from selling

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such products at such lower prices as might be deemed by them to be warranted, thus suppressing and hindering competition in respect to respondent's products in interstate commerce.

CONCLUSION

The practices of the respondent, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and 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 respondent, testimony and evidence introduced and briefs and oral 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, Shakespeare Co., its officers, agents, representatives, and employees in connection with the sale or offering for sale its products in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(1) Entering into or procuring from its dealers contracts, agreements, understandings, promises or assurances that respondent's products, or any of them, are to be resold by such dealers at prices specified or fixed by respondent.

(2) Requesting its dealers to report the names of other dealers who do not maintain respondent's resale prices or who are suspected of not maintaining same.

(3) Seeking by any methods and cooperation of dealers in making effective any policy adopted by the respondent for the maintenance of prices.

It is further ordered, That the respondent shall within 30 days after the service 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.

Complaint

IN THE MATTER OF

MARIETTA MANUFACTURING 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 1686. Complaint, July 15, 1929—Decision, May 27, 1930

Where a corporation engaged in the manufacture of a product for interior walls, wainscoting, ceilings, table tops, and other like purposes, and in the sale thereof to jobbers, contractors, builders and, to a lesser extent, the ultimate user, designated said product as "SANI-ONYX, a vitreous marble", "SANI-ONYX" (or "SANIONYX") and made such statements in advertising same under said names in newspapers and periodicals of national circulation and in catalogues, leaflets and other like literature circulated among the trade and public, as "SANI-ONYX, a vitreous marble, truly modern is this new material for bathroom and kitchen walls * * * offers distinctive surface textures with colors of rare and exquisite beauty. No substitute or makeshift * * * a superior product fused from rock ingredients", the fact being that its aforesaid "SANI-ONYX" was not a product of nature, but was made chiefly of silica, in slab form, in a great variety of colors, capable of being used in place of natural or quarried onyx or marble in similar form, resembling in some of its colors the aforesaid stones, and with other features and characteristics in common between said artificial slab products and slabs of natural onyx and/or marble, permitting use of the former as a substitute for the latter; with tendency and capacity to deceive purchasers of its products into believing same to be onyx and/or marble and to cause purchase by them thereof in such belief:

Held, That such practices, under the circumstances set forth, were to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Lockwood, Lockwood, Goldsmith & Galt and Roemler, Carter & Rust, of Indianapolis, Ind., 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, an Indiana corporation engaged in the manufacture of a product for use for interior walls, wainscoting, ceiling, tops of tables and counters and for other like purposes and simulating the appearance of marble and designed and used as a substitute therefor, and in the sale thereof to jobbers, contractors, builders, and the public generally, and with principal place of business at Indianapolis, with naming product misleadingly and advertising falsely or mislead-