

Complaint

IN THE MATTER OF
PRO-PHY-LAC-TIC BRUSH 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 1825. Complaint, May 5, 1930—Decision, July 7, 1930

Where a corporation engaged in the manufacture of toothbrushes and in the sale thereof to jobbers and retailers; in enforcing a merchandising system adopted by it, in cooperation with a selected number of jobbers throughout the United States, directed to the fixing and maintaining of specified uniform prices at which its products should be sold by jobbers to retailers and by the latter to purchasing public,

- (a) Entered into contracts, agreements, and understandings with its jobber and retailer dealers looking to the maintenance by them of the resale prices fixed by it and made known to them, together with its policy, as a condition of opening accounts with them or continuing their supply of said brushes;
- (b) Procured and induced groups of dealers in given localities to agree among themselves and with it to observe and maintain the resale prices specified by it;
- (c) Sought and secured information from its dealers touching price cutting on the part of others and used such information to induce and coerce such price-cutting dealers to maintain its prices thereafter; and
- (d) Refused further to supply its brushes to price-cutting dealers unless and until they had given satisfactory promises and assurances that they would in the future maintain and observe its price;

With the result that said resale prices were generally maintained, competition among dealers in the distribution and sale of its said product was suppressed, dealers were constrained to sell the same at the prices fixed by it and prevented from selling the product at such lower prices as they might desire, and purchasers were deprived of the advantage in price otherwise obtainable by them from a natural and unobstructed flow of commerce in said brushes under methods of free competition;

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

Mr. Alfred M. Craven, for the Commission.

Macleod, Calver, Copeland & Dicke, of Boston, Mass., 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 in the manufacture of toothbrushes and in the manufacture of Pro-phy-lac-tic toothbrushes and in the sale and distribution thereof to job-

Complaint

14 F. T. C.

bers and retailers throughout the United States, and with principal office and place of business at Florence, Mass., 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, engaged as above set forth, "for many years, last past, in the course and conduct of its said business, enforced and now enforces the merchandising system adopted by it in cooperation with a selected number of jobbers and retailers throughout the United States, of fixing and maintaining specified uniform prices at which said toothbrushes shall be sold by jobbers to retailers and by retailers to the purchasing public. Respondent enlists and secures, and has enlisted and secured, the support and cooperation of dealers, both jobbers and retailers, 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 said toothbrushes at prices less than the prices specified by respondent":

(a) Fixing uniform minimum prices at which jobbers and retailers shall resell the same and making it generally known to both classes of dealers that it expects and requires all dealers to resell its products at the prices fixed by it as above set forth;

(b) Entering into contracts, agreements, and understandings with both classes of dealers for the maintenance by them of its said resale prices, as a condition of opening accounts with them or continuing their supply;

(c) Procuring and securing groups of dealers in a given locality to agree among themselves and with it to observe and maintain resale prices specified by it;

(d) Seeking and securing from its dealers information and evidence concerning price cutting on the part of other dealers and using information thus obtained to induce and coerce such price cutters to maintain its prices thereafter; and

(e) Refusing further to supply its brushes to price-cutting dealers unless and until they have given it satisfactory promises and assurances of thereafter maintaining and observing its prices.

"As a result of the foregoing acts and practices of respondent", as alleged, "said resale prices have been generally maintained", and "the direct effect and result of the above alleged acts and practices of respondent has been and now is to suppress competition among dealers in the distribution and sale of respondent's said product, Prophylactic toothbrushes; to constrain dealers to sell said product

at the prices fixed by respondent, and to prevent them from selling the product at such less prices as they may desire, and to deprive the purchasers of said product of the advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce in said brushes under methods 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."

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 on the 5th day of May, 1930, issued and served its complaint upon the respondent, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent thereafter filed its answer to the complaint and in said answer states that it does not contest the complaint and consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of law alleged in the complaint.

Thereupon this proceeding came on for decision, and the Federal Trade Commission having duly considered the record and being fully advised in the premises, pursuant to subdivision (2) of Rule III of the Rules of Practice heretofore adopted by the Commission, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Pro-phy-lac-tic Brush Co. is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its principal office and place of business at Northampton, in said State. It was for many years prior to February 19, 1930, engaged in the manufacture of toothbrushes and in the sale and distribution thereof from its factory and principal place of business in the State of Massachusetts to jobbers and retailers throughout the United States. It caused its said toothbrushes when so sold to be transported from its principal place of business in the State of Massachusetts, in interstate commerce, into and through States of the United States other than Massachusetts to its purchasers at their respective points of location. In the course and conduct of

Findings

14 F. T. C.

its said business, respondent was in competition with other individuals, partnerships, and corporations engaged in the manufacture and/or sale and transportation of toothbrushes in interstate commerce between and among the various States of the United States.

Respondent on the 19th day of February, 1930, transferred its plant and factory to the Pro-phy-lac-tic Brush Co., a Delaware corporation, which corporation conducts the business theretofore conducted by respondent.

PAR. 2. Respondent for many years prior to February 19, 1930, in the course and conduct of its said business, enforced a merchandising system adopted by it in cooperation with a selected number of jobbers and retailers throughout the United States, for fixing and maintaining specified uniform prices at which said products should be sold by jobbers to retailers and by retailers to the purchasing public. Respondent enlisted and secured the support and cooperation of dealers, both jobbers and retailers, in enforcing said system. In order to carry out said system, respondent employed the following means whereby it and those cooperating with it undertook to prevent and did prevent dealers from selling said toothbrushes at prices less than the prices specified by respondent:

(a) Respondent fixed uniform minimum prices at which jobbers should sell said brushes to retail dealers, and also fixed minimum prices at which retail dealers should sell said brushes to the purchasing public, and made it generally known to both classes of dealers that it expected and required all dealers handling said product to resell the same at such fixed prices.

(b) Respondent entered into contracts, agreements, and understandings with its dealers, both jobbers and retailers, for the maintenance by them of said resale prices as a condition of opening accounts with such dealers, or continuing their supply of said brushes.

(c) Respondent also procured and induced groups of dealers in given localities to agree among themselves and with respondent to observe and maintain the resale price specified by respondent.

(d) Respondent sought and secured from its dealers information concerning and evidence of the failure of other dealers to observe and maintain said resale prices, and used the information thus obtained to induce and coerce dealers who had failed to maintain said prices to maintain same in the future.

(e) Respondent refused to further supply its said brushes to dealers who had failed to maintain said resale prices, unless and until such dealers gave respondent satisfactory promises and assurances that they would in the future maintain and observe such prices.

As a result of the foregoing acts and practices of respondent, said resale prices were generally maintained.

PAR. 3. The direct effect and result of the above alleged acts and practices of respondent were to suppress competition among dealers in the distribution and sale of respondent's said product, Pro-phy-lac-tic toothbrushes; to constrain dealers to sell said product at the prices fixed by respondent, and to prevent them from selling the product at such less prices as they may desire, and to deprive the purchasers of said product of the advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce in said brushes under methods of free competition.

CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce, and constitute a violation of the provisions 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 considered by the Federal Trade Commission and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions 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",

It is now ordered, That the respondent, Pro-phy-lac-tic Brush Co., its officers, agents, and employees do cease and desist from:

(1) Entering into or procuring from any of 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) Procuring groups of dealers in any given locality to agree among themselves and with respondent to observe and maintain any resale prices specified by respondent.

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

Order

14 F. T. C.

(4) Seeking by any manner the cooperation of dealers in making effective any policy adopted by the respondent for the maintenance of prices or cooperating in any manner with any of its dealers in making effective any policy of price maintenance.

It is further ordered, That the respondent, Pro-phy-lac-tic Brush Co., shall within 30 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.

Findings

IN THE MATTER OF
N. SHURE 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 1827. Complaint, May 8, 1930—Decision, July 7, 1930

Where a corporation engaged in the sale of various articles of merchandise, advertised as "Beacon Casco Indian Blankets", "Casco Indian Shawls" and "Oneida Indian Blankets", articles not made by American Indians but woven or knit by machinery in mills or factories, with the capacity and tendency to mislead, deceive, and confuse the purchasing public into believing the same to have been made by hand by Indians:

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

Mr. Robert H. Winn 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, an Illinois corporation, engaged in the sale of sundry articles of merchandise to purchasers in the various States, and with office and place of business in Chicago, with advertising falsely or misleadingly as to nature of manufacture of products dealt in, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that in its advertising in its catalogues it falsely described the blankets and/or shawls, dealt in by it and woven or knit by machinery in mills or factories, as "Beacon Casco Indian Blankets", "Casco Indian Shawls", and "Oneida Indian Blankets", with the capacity and tendency to mislead and deceive the purchasing public into the belief that said articles had been woven or knit by American Indians, to the prejudice of the public and its competitors and in violation of the provision of section 5, as above set forth.

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