

Syllabus

IN THE MATTER OF
PENICK & FORD, LTD., AND PENICK & FORD SALES
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, AND SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1580. Complaint, Mar. 14, 1929. Decision, Nov. 17, 1930

Where a corporation engaged in sale of canned sirups and molasses to wholesale and retail grocers, largest packer-seller of canned cane sirups and one of the two largest packer-sellers of canned sirups in Mississippi, Louisiana, Arkansas, and Texas, and only "packer-seller" of a complete line of canned cane, corn, and blended sirups and molasses in Southern States; in pursuance of a "100 per cent sales policy" of limiting salesmen, in soliciting retailers for account of their wholesalers, to customers handling its sirups and molasses exclusively and giving it "their whole-hearted cooperation and support",

- (a) Made known adoption of said sales policy to wholesale grocer customers in its southern sales territory and repeatedly stated the same thereto, through letters, circulars, and salesmen;
- (b) Limited its said retail sales assistance to such wholesale grocer customers as sold its canned cane sirups and molasses and did not sell competitive products, and purchased a competitive sirup from a wholesale grocer customer, to secure said grocer's business exclusively; and
- (c) Refused or discontinued such assistance to wholesale grocer customers selling competitive products;

With the result that wholesale grocer customers sold its products and discontinued or failed to undertake sale of those of its competitors, an important competitive advantage in the sale of its merchandise was secured by wholesale grocers dealing exclusively therein, numerous wholesale grocers in several Southern States were caused to comply with said 100 per cent policy, public was deprived of a substantial proportion of previously existing competition between it and its competitors in numerous southern markets through the closing of the outlets for the class of merchandise concerned against its competitors, so large a proportion of the class A wholesale grocer outlets in certain southern jobbing centers was closed as to result in a direct tendency toward monopoly in the aforesaid products, and competition therein in several jobbing centers in the territory involved was lessened, and there was a capacity and tendency for competition to be substantially lessened in other localities:

Held, That such acts and practices under the circumstances set forth, substantially and dangerously lessened and hindered competition in certain localities and sections in the sale and distribution of canned sirups and molasses, to the injury and prejudice of the public, and constituted a violation of section 3 of the Clayton Act, and of section 5 of the Federal Trade Commission Act.

Mr. Eugene W. Burr for the Commission.

Mr. Charles Wesley Dunn, of New York City, for respondents.

Complaint

14 F. T. C.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act and also acting in pursuance of the Clayton Act, the Commission charged respondent Penick & Ford, Ltd., engaged in the manufacture of cane sirup, corn sirup, blended sirups and molasses, and other products, and respondent Penick & Ford Sales Co., Inc., its sales subsidiary and agency, Delaware corporations with principal executive offices in New Orleans and with branch offices in New York City, Memphis, Cedar Rapids, Iowa, and Montgomery, Ala., with contracting or entering into exclusive and tying arrangements in violation of the provisions of sections 5 and 3 of the aforesaid acts, respectively, intimidating or coercing in respect thereof, and with maintaining resale prices, in violation of the provisions of section 5 of the first named act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged, as above set forth, and occupying a dominant position in the manufacture and sale of sirup in certain portions of the country and particularly in certain southern portions thereof, in or about September, 1924, adopted and subsequently pursued their so-called "100 per cent policy of becoming, so far as possible, the exclusive purveyors of the lines of products" dealt in by them to as many wholesale dealers as possible; with intent and effect of securing understandings with numerous customer wholesale dealers obligating such dealers to sell no make or brand in the lines in question other than respondents.

Respondent Sales Co., as alleged, in pursuance of said policy, represented orally and by circulars to wholesale dealers that it would not supply its sales cooperation with and assistance¹ to the retail trade, to those wholesale dealers who declined to and/or failed to adopt respondents' aforesaid policy, discontinued and/or refused such sales assistance to customers or proposed customers, declining or failing to adopt the policy in question, and on certain occasions directed

¹ The complaint, setting forth that respondent Sales Co. sends traveling salesmen from its New Orleans office and its various branches from one State to another in soliciting purchase of its products, sets forth the sales cooperation and assistance referred to, as follows:

"Among the methods of promoting and effecting sales of the said described products adopted by the said Sales Co. is that of affording to wholesale dealers, who are customers of respondents, cooperation by making available to such dealers the services of salesmen, employees of said Sales Co., who call upon the retail dealers, customers of said wholesale dealers, in company with the said wholesalers. This cooperation has been effective to increase the sales of respondents and the profits from respondents' products to said wholesale dealers and is highly valued by the customers of said respondents and in numerous instances deemed essential by them."

their aforesaid sales cooperation and assistance particularly in favor of wholesale dealers who adopted the policy and particularly against wholesale dealers, competitors of those immediately before named, but who did not adopt the policy, and canvassed the retail trade through respondent Sales Co.'s salesmen in an effort to reduce the trade in respondents' products enjoyed by respondents' wholesale customers who did not adopt the policy in question but sold, in addition to respondents' products, competing products of other manufacturers, in an effort to break down the trade of customers failing to adopt its policy, and at times warned such wholesalers that the course above described would be followed by respondents.

Respondents further, on occasion, purchased products of competing concerns and resold same below cost, and gave special consideration in other respects to those concerns who adhered to the policy involved, not extended to other customers and used other means and methods of securing the adoption of and the adherence to their said policy.

As a result of the aforesaid methods, as alleged, many wholesalers who formerly bought the products of one or more of respondents' competitors "have ceased to carry any products competing with the respondents' said lines of products, on the ground and/or for the reason that they have become exclusively 100 per cent customers of respondents, and thereby many outlets for products competing with the said products of respondents have been closed, to the consequent serious injury of said competitors' trade between and among the States. Moreover, as a result of the said described methods of respondents in the sale of the said named products, retail dealers have been and are deprived of the benefit of free and unobstructed competition among manufacturers and wholesale dealers in the said named lines of products, and of the opportunity freely to buy brands of products which they had previously bought, and have been restricted to respondents' brands in the said named lines of products. Furthermore, the public has been and is deprived of the benefit of free and unobstructed competition in said named products, competition having been dangerously and substantially hindered and lessened; and in some localities a monopoly has been secured for respondents' said products, while in other localities the tendency of respondents' described methods has been and is to secure a monopoly therein."

Respondents, further as charged, in or about September, 1924, "adopted and have since maintained a policy of fixing and maintaining certain specified uniform resale prices at which their aforesaid products shall be sold by dealers handling the same, and respondents

Complaint

14 F. T. C.

have enlisted the support and cooperation of certain dealers handling the said products and of respondents' officers, agents, and employees in enforcing their methods of maintenance of their resale prices.

"In order to carry into effect their policy in such regard, the respondents have employed the following means for the purpose and with the result of preventing dealers from handling respondents' products at less than the resale prices therefor established by respondents from time to time":

(a) Establishing uniform minimum wholesale and retail resale prices to be observed by dealers handling their products and informing dealers in regard thereto;

(b) Making it generally known to the trade by circulars, letters, salesmen's interviews and otherwise that respondents expect and require dealers to maintain and enforce said minimum prices;

(c) Soliciting and securing, through representatives, assurances from dealers both wholesale and retail that they will maintain such prices;

(d) Using their aforesaid policy of affording sales cooperation and assistance to secure agreements or understandings with wholesale dealers obligating them to observe respondents' minimum prices; respondents representing both in writing and orally that they will not afford such cooperation and assistance to those declining or failing to maintain their prices and at times discontinuing the same with those failing so to maintain their prices;

(e) Directing salesmen and employees of respondent Sales Co. to ascertain and secure information as to price cutting, and report such information to respondent Sales Co.

(f) Securing cooperation of wholesale and retail dealers through reports therefrom containing information as to price cutting dealers;

(g) Declining on occasion to sell their products to wholesale price cutting dealers; and

(h) Using other means and methods for the promotion and enforcement of their aforesaid resale price maintenance system.

As alleged by the complaint the direct effect of respondents' methods, as above set forth, "has been and now is to lessen competition among dealers, in the distribution and sale of respondents' aforesaid products, to constrain said dealers to sell said products at the prices fixed by respondents as aforesaid, and to prevent them from selling said products at such lesser prices as they may, or otherwise might, desire in the exercise of their free and untrammelled judgment, and to deprive the ultimate purchasers of said products of those advantages in price and otherwise which they would obtain

from natural, free and unobstructed competition in commerce in said products," and the acts and practices hereinabove described are all to the prejudice of the public and constitute unfair methods of competition within the intent of section 5 and in violation of section 3 of the Clayton Act.

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", and pursuant further to section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", the Federal Trade Commission on March 14, 1929, issued its complaint against Penick & Ford, Ltd., and Penick & Ford Sales Co., Inc.; respondents above named, and caused the same to be served upon respondents in manner provided by law, in which complaint it is charged that respondents had been and were using unfair methods of competition in interstate commerce in violation of the above described statutes.

Respondents having entered their appearance and filed their joint answer to the said complaint, negotiations were entered into for a settlement of the facts and a stipulation resulted, signed by counsel for the Federal Trade Commission and by counsel for respondents, the same being approved and filed by order of the Federal Trade Commission.

Counsel for both parties having waived oral argument and counsel for respondents having moved dismissal, this proceeding came on for determination and, the Commission being fully advised in the premises and upon consideration thereof makes this its report, stating its findings as to the facts and its conclusion, in manner following, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Penick & Ford, Ltd., is a corporation organized under the laws of the State of Delaware in 1920, as successor to another corporation of the same name. Penick & Ford Sales Co. is a corporation organized under the laws of the State of Delaware in 1922. Its stock is owned or controlled by Penick & Ford, Ltd. Certain of its officers and directors are also officers and directors of Penick & Ford, Ltd.

Findings

14 F. T. C.

PAR. 2. Penick & Ford, Ltd., is engaged in the business of packing and selling cane sirup, corn sirup, blended sirups and molasses; also of producing and selling corn products other than sirups. It maintains packing plants in the States of Alabama, Louisiana, Iowa, and Vermont. It sells the entire output of each plant to Penick & Ford Sales Co. It has its principal office in the city of New York, State of New York, and a branch office at each plant.

PAR. 3. Penick & Ford Sales Co. is engaged in the business of selling the sirups, molasses, and other products of Penick & Ford, Ltd., which it purchases at the plant, in each instance, and ships to purchasers from it in the same and other States. It has its principal office in the city of New York, State of New York, and branch offices in the city of Montgomery, State of Alabama, city of New Orleans, State of Louisiana, city of Memphis, State of Tennessee, and city of Cedar Rapids, State of Iowa, conducted by branch managers who supervised its grocery business hereinafter described, in their respective territories, during the times hereinafter defined.

PAR. 4. Penick & Ford Sales Co. sells its canned sirups and molasses to wholesale grocers and also to retail grocers with whom it maintains a direct account. It sells its canned cane sirups almost exclusively in Southern States and principally to wholesale grocers therein. It is and, during the times hereinafter defined, was the largest "packer-seller" of canned cane sirups and one of the two largest packer-sellers of canned sirups in Mississippi, Louisiana, Arkansas, and Texas, severally. It is and, during said times, was the only packer-seller of a complete line of canned cane, corn and blended sirups and molasses in Southern States. It employs salesmen to solicit and take orders for its canned sirups and molasses from the wholesale and retail grocers to whom it sells; also to solicit and take orders for its said products from retail grocers to whom it does not sell, for the account of wholesale grocers named by them (the retail grocers, respectively) and from whom they (the retail grocers, respectively) buy their supplies. In the latter solicitation its salesman is at times accompanied and aided by a salesman of a local wholesale grocer. Such retail sales assistance to wholesale grocers is and has been an important sales method, both to the company and to said wholesale grocers. Without it, said wholesale grocers are put to greater effort and expense in securing an equivalent sale of the company's products. In cases where the volume of business was sufficient its salesman has given such assistance to one wholesale grocer, exclusively. The company conducts, and, during the times hereinafter defined, has conducted its said grocery

business in direct and constant competition with several others engaged in a similar business and both the company and its said competitors (excepting local competitors) pursue and, during said times pursued an interstate commerce business, principally.

PAR. 5. On September 29, 1924, Penick & Ford Sales Co. issued the following circular letter to its wholesale grocer customers in its southern sales territory (comprising the States of Alabama, Georgia, Florida, North Carolina, South Carolina, Louisiana, Texas, Oklahoma, Mississippi, Tennessee, Kentucky, and southern Indiana), namely:

TO OUR CUSTOMERS

DEAR SIRs: For the last two years we have been greatly concerned about the lack of profit in our grocery department which handles canned sirups and molasses, and have known for some time that the trouble lay in the cost to sell our goods.

This excessive cost having been brought about by some of our customers for whom we do retail work, handling lines of competitive brands of cane sirups in direct competition with ours—thereby reducing the volume of business our salesmen can secure for them, which causes a much higher selling cost on our goods.

We are driven to the point where we must in self-defense take some action that will tend to reduce our heavy selling cost. As much as we regret the necessity of changing our sales policy, it is imperative that we do so, and on and after November 1st we will give sales assistance and retail work only to those customers who handle our line of cane sirups and molasses exclusively and give us their whole-hearted cooperation and support.

We find from experience that when a customer handles another line of cane sirups in competition with ours his sales effort is divided; his sales are not increased; and what might result in profit to us is turned into no profit or an absolute loss—and neither manufacturer can make any profit out of the account. In other words, the jobber who divides his cane sirup business and at the same time requires retail sales work is taking all of the cream off of the milk for us; because cane sirup is the only grade which pays sufficient profit to justify the expense of retail work.

We will, of course, gladly furnish all customers with our goods, but retail sales work will be given only to those whose whole support we have on our cane line.

From the inception of this company—for 25 years—it has distributed its products through the medium of the jobber and has never failed to cooperate with them in every possible way. We recognize the right of every jobber to buy his goods from whom he pleases, but on the other hand he will realize that we can not extend sales support which is very expensive where it is not profitable. Therefore we are sure our action in this matter will appeal to every fair-minded man as equitable and just.

The sales policy announced by the aforesaid circular letter was designated by the company and known in the trade as its 100 per cent sales policy. The terms “retail work”, “retail sales work”, “sales assistance”, and “sales support”, used in said letter, are

Findings

14 F. T. C.

synonymous and were intended by the company and construed by the trade to mean the company's employment of its salesmen after November 1, 1924, to solicit orders for its canned cane sirups and molasses from retail grocers only for the account of wholesale grocers who sold its canned cane sirups and molasses and did not sell competitive products.

On November 3, 1927, when the Federal Trade Commission was considering the data secured by it in its investigation preliminary to the issuance of this complaint and upon which it is based, the company issued the following circular letter to its wholesale grocer customers in its said southern sales territory, announcing its withdrawal of said policy, namely:

TO OUR CUSTOMERS

DEAR SIR: We have decided from this day to withdraw our so-called 100 per cent sales policy.

We will continue retail work where justified by valuable business. Retail work will no longer be dependent on whether or not competitive brands are being handled.

PAR. 6. Penick & Ford Sales Co. did not pursue its said 100 per cent sales policy or any similar policy prior to November 1, 1924; it has not pursued said policy or any similar policy since November 3, 1927. It pursued said policy only from November 1, 1924, to November 3, 1927, in its said southern sales territory, with respect to its sale of its canned cane sirups and molasses to its wholesale grocer customers in said territory and principally with respect to its sale of its canned cane sirups to them, as and with the results hereinafter defined. In the pursuit of said policy during the period and in the territory above defined the company took the following action: It repeatedly stated the policy to its wholesale grocer customers, by letter (individual and circular) and through its salesmen; it did retail work for wholesale grocer customers who sold its canned cane sirups and molasses and did not sell competitive products; upon occasion it refused to do or discontinued retail work for some wholesale grocer customers who sold competitive products; during the first half of said period as a rule it refused to do or discontinued retail work for wholesale grocer customers who sold competitive products; and, in order to secure his sale of its canned sirups exclusively, it purchased from a wholesale grocer one lot of 2,500 cases of a competitive sirup which it disposed of as follows: It repacked the sirup contained in 1,920 cases and sold said sirup under the Penick & Ford label; it sold 5 cases to one wholesale grocer, 25 cases to another, and 550 cases to a third, under the origi-

nal label; it purchased said 2,500 cases of a competitive sirup at 23 cents per case below its list price for its similar canned sirup, weight equalized, and sold said 580 cases thereof at 33 cents per case below its said list price. The company's records disclose that during said period it did retail work for approximately 85 per cent of its wholesale grocer customers in said territory, which percentage included its larger wholesale grocer customers in said territory (some of whom maintained branch establishments) who purchased the bulk of the canned sirup and molasses sold by it in said territory during said period; that—

As to Texas: In 1924 the company sold to 125 wholesale grocers and did retail work for 50; in 1925 it sold to 114 and did such work for 50; in 1926 it sold to 122 and did such work for 50; in 1927 it sold to 118 and did such work for 88; 5 out of 6 class A wholesale grocers in Dallas and all class A wholesale grocers in San Antonio were among those receiving such assistance.

As to Arkansas: In 1924 the company sold to 77 wholesale grocers and did retail work for 37; in 1925 it sold to 73 and did such work for 24; in 1926 it sold to 81 and did such work for 24; in 1927 it sold to 83 and did such work for 61; 3 out of 5 class A wholesale grocers in Little Rock were among those receiving such assistance.

As to Louisiana: In 1924 the company sold to 107 wholesale grocers and did retail work for 28; in 1925 it sold to 97 and did such work for 19; in 1926 it sold to 92 and did such work for 19; in 1927 it sold to 80 and did such work for 66.

As to Mississippi: In 1924 the company sold to 77 wholesale grocers and did retail work for 27; in 1925 it sold to 72 and did such work for 31; in 1926 it sold to 66 and did such work for 31; in 1927 it sold to 70 and did such work for 56.

[In construing the 1927 figures it is to be borne in mind that the policy was withdrawn on November 3 and thereafter the company did retail work for its wholesale grocer customers, more generally and regardless of whether or not they sold competitive products; that, as hereinafter stated, the policy had then broken down and was not adhered to by the company.]

As a result of said policy a number of the company's wholesale grocer customers in said territory sold its canned cane sirups and molasses and did not sell competitive products, during said period in part, some of whom had previously sold a competitive product or competitive products. But said policy was not a merchandising success, from the company's standpoint. It resulted in the loss of some wholesale grocer customers; it antagonized others. It progressively broke down, in application, during the second half of said period, and, during the second half of said period, the company increasingly

Findings

14 F. T. C.

departed from it and disregarded it to a large extent. The company's sales to wholesale grocers in said territory declined 26 per cent in 1926 and 35 per cent in 1927, as compared with 1925, as a result of said policy and market conditions, generally. Because of its want of success and in view of the Federal Trade Commission's investigation of it, the company withdrew said policy, as stated. Throughout the entire period when said policy was operative the company did not refuse to sell to any wholesale grocer in said territory because he sold competitive products; the company sold to all wholesale grocers in said territory who desired to buy and were acceptable customers, whether or not they sold competitive products.

PAR. 7. The understanding that wholesale grocer customers of respondent would deal in the canned sirups and molasses of respondent to the exclusion of the merchandise of respondent's competitors was the consideration given for the understanding that respondent's sales assistance or cooperation would be given in aid of the resale (by such customers) of the goods purchased. The 100 per cent policy, under which the said understandings were mutually given, to the extent and during the time that it was carried out, has had certain effects and certain tendencies, as follows:

(a) A lower cost of distribution of respondent's merchandise, other things being equal, has been experienced by wholesale grocers complying with the 100 per cent policy, as contrasted with the costs of those who have dealt also in merchandise competing with that of respondent.

(b) A greater profit in respondent's merchandise, other things being equal, has been attained by wholesale grocers dealing exclusively and thus receiving respondent's sales assistance.

(c) An important competitive advantage in the sale of respondent's merchandise has been offered to and secured by wholesale grocers who have dealt exclusively in respondent's merchandise.

(d) The inducement offered in favor of dealing in respondent's merchandise exclusively has caused numerous wholesale grocers in several southern States to comply with respondent's 100 per cent policy.

(e) Respondent's competitors have lost certain wholesale grocers as customers to whom they had previously sold merchandise and would, but for respondent's 100 per cent policy, have continued to deal with as customers, and thereby have lost certain outlets for trade in various southern States.

(f) The public has been deprived of a substantial proportion of the competition previously existing between respondent and its com-

petitors in numerous southern markets by virtue of the closing of outlets for this class of merchandise against competitors of respondent.

(g) In certain jobbing centers in certain of the southern States so large a proportion of the class A wholesale grocer outlets have been closed to the merchandise of respondent's competitors through respondent's 100 per cent policy, as to result in a direct tendency toward monopoly in canned sirup and molasses lines.

(h) The said policy has substantially lessened competition in said merchandise in several jobbing centers in the said southern territory and had the capacity and tendency to substantially lessen in other localities.

CONCLUSION

Respondent, Penick & Ford, Ltd., is not, and during the period mentioned herein has not been, engaged in interstate commerce and does not and during said times has not sustained the relation of principal toward the respondent, Penick & Ford Sales Co., Inc., as its agent.

The acts and things done by respondent, Penick & Ford Sales Co., Inc., in pursuance of its so-called 100 per cent policy, under the circumstances described in the foregoing findings, have substantially and dangerously lessened and hindered competition in certain localities and sections in the sale and distribution of canned sirups and molasses. They are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce. Said acts and things constitute violations 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", and also of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", known as the Clayton Act.

ORDER TO CEASE AND DESIST

This matter having been considered by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, a stipulation as to the facts duly approved and filed, certain motions of respondents to dismiss and a memorandum by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that respondent Penick & Ford Sales Co., Inc., has violated section 5 of the provision of an

Order

14 F. T. C.

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, Penick & Ford Sales Co., Inc., shall cease and desist from its so-called 100 per cent policy, being the policy of omitting or refusing to afford to customers or prospective customers of said respondent its sales assistance and/or its cooperation in the sale by said customer of said respondent's canned sirups and molasses, in cases where said customers or prospective customers have dealt in products competing with one or more of respondent's said products or in cases where said customers or prospective customers have refused, declined or neglected to assure said respondent that they have not dealt in or that they would not deal in any product competing with any of the aforesaid products sold by respondent, and

It is further ordered, That respondent, Penick & Ford Sales Co., Inc., shall cease and desist from the following methods heretofore employed in pursuance of said so-called 100 per cent policy, to wit:

(a) From declaring its said 100 per cent policy by circulars, correspondence and/or oral communications to and with customers or prospective customers and from stating thereby, or in any other manner, that sales assistance and/or cooperation will not be given to such customers as do not comply with said respondent's said 100 per cent policy and/or to such customers as deal in any product or products of competitors of said respondent; and

(b) From actually in practice making respondent's said sales assistance and/or its sales cooperation with any or all of its customers conditional upon the compliance by said respondent's customer or customers with its said 100 per cent policy; and from actually declining or refusing to afford or extend said sales assistance and/or cooperation to any actual or prospective customer upon the ground or for the reason that such customer has refused, neglected or failed to comply with said 100 per cent policy and/or upon the ground or for the reason that such customer has refused, neglected or failed to deal in the canned sirups or molasses of respondent to the exclusion of products competing with the said products sold by respondent.

It is further ordered, That the respondent, Penick & Ford Sales Co., Inc., 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 hereinabove set forth.

ORDER DISMISSING PENICK & FORD, LTD., AND RESALE PRICE
MAINTENANCE CHARGES

This matter coming on for final determination upon the pleadings, stipulation between the parties approved by this Commission and motions to dismiss on behalf of respondents, and the Commission being further informed by memorandum of counsel for the Commission and being fully advised in the premises,

It is hereby ordered, That Penick & Ford, Ltd., a manufacturing corporation, not engaged in interstate commerce, be and the same is hereby dismissed.

It is further ordered, That the charges of unlawful resale price maintenance alleged in the complaint be and the same are hereby dismissed.

Complaint

14 F. T. C.

IN THE MATTER OF
M. J. GROPPER & SONS, 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 1722. Complaint, Mar. 17, 1930—Decision, Nov. 17, 1930

Where a corporation engaged in the sale of glass marbles so manufactured as to simulate onyx, to toy jobbers, chain stores, and mail-order houses, designated said marbles as "National Onyx Agates" and "National Onyx Marbles" in circulars, advertisements, price lists and other printed matter, and on the containers thereof described said articles as "Onyx", with the result of furnishing customers with a means of representing said product to ultimate purchasers as composed of onyx, and with capacity to mislead customers, and ultimate purchasers from such customers, as to composition of said products:

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. PGad B. Morehouse for the Commission.

Brill, Bergenfeld & Brill, 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 sale of marbles to toy jobbers, chain stores and mail-order houses throughout the various States, from its principal place of business in New York City or from the factory of the company for which it was sole distributor, at Ottawa, Ill., with advertising falsely or misleadingly, and misbranding or mislabeling, 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, describes and represents its said marbles as "National Onyx Agates" and "National Onyx Marbles" in its circulars, advertisements, price lists, and other printed matter, the fact being that the products in question are not made of onyx, but of glass so made as to simulate the same, and further describes and designates said articles on the containers thereof as "Onyx" marbles, thereby furnishing its said customers with the means whereby the product may be and is falsely represented to the purchaser as composed of onyx.