

Complaint

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IN THE MATTER OF
CURTISS CANDY 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 1699. Complaint, Oct. 2, 1929—Decision, Feb. 10, 1931

Where a corporation engaged in the manufacture and sale of candy; in pursuance of a merchandising system directed to the fixing and maintaining of certain specified uniform prices at which jobbers should sell its "Baby Ruth" bar,

- (a) Fixed uniform minimum prices for resale by them to retailers and made it generally known to the trade that it expected and required all jobbers handling its said product to resell same at such fixed prices;
- (b) Entered into contracts, agreements, and understandings with jobbers for maintenance by them of its said resale prices as a condition of opening accounts, or continuing their supply of said product;
- (c) Procured and induced groups of jobbers in given localities to agree among themselves and with it to observe said resale prices; and
- (d) Sought and secured from its dealers information concerning and evidence of price cutting and secured from price cutters promises and assurances of future price maintenance or declined to supply them further;

With result of suppressing competition among jobbers in distribution and sale of its aforesaid product, restraining them to sell same at prices fixed by it and preventing them from selling same at such lower prices as they might desire, and of depriving purchasers of the product of the advantage in price which they would have otherwise obtained from a natural and unobstructed flow of commerce in said candy bar under methods of free competition:

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

Mr. Alfred M. Craven for the Commission.

Mr. Irwin N. Walker, of Chicago, Ill., 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 Illinois corporation engaged in the manufacture of candy and confectionery, and in the sale and distribution thereof from its factory at Chicago, to jobbers in other 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, engaged as above set forth, in connection with the sale of one of its said products, to wit, a combination nut and candy bar, by it designated as "Baby Ruth" and long manufactured and sold and extensively so advertised, and very popular

and in great demand throughout the United States, has enforced and enforces a "merchandising system adopted by it fixing and maintaining certain specified uniform prices at which said 'Baby Ruth' shall be sold by jobbers handling the same, and respondent enlists and secures and has enlisted and secured the support and cooperation of said jobbers, and of its officers, agents, and employees 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 jobbers from selling same to the retail trade at prices less than the aforesaid retail prices established by respondent," namely:

(a) Fixing uniform minimum prices at which jobbers shall resell said product to retailers and making it generally known to the trade that it expects and requires all jobbers to resell same at such prices.

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

(c) Procuring and inducing groups of jobbers in given localities to agree among themselves and with it to observe and maintain its said prices.

(d) Seeking and securing from the aforesaid jobbers information concerning and evidence of price cutting by other jobbers and employing its own salesmen, agents, and employees to investigate and secure information relative to said matter.

(e) Using information as set out in paragraph (d) above and otherwise to induce and coerce price-cutting dealers to observe its prices in the future by (1) exacting promises and assurances from them that they will so do, and (2) exacting promises and assurances from jobbers that they will not in the future supply price cutters.

(f) Refusing to supply further said products to price-cutting jobbers unless and until they have given it satisfactory promises and assurances of future price maintenance.

(g) Keeping records, with the aid and assistance of others cooperating with it, for the purpose of enforcing its price-maintenance plan, upon which are entered names of price cutting dealers, "which said record respondent and those cooperating with it use in and about the enforcement of said system of price maintenance."

As a result of such acts and practices, as alleged, "said resale prices have been generally maintained" and "the direct effect and result" thereof have been and now are "to suppress competition among jobbers in the distribution and sale of respondent's said

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product, Baby Ruth; to constrain jobbers 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 of said candy 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" (38 Stat. 719), the Federal Trade Commission, on the 2d day of October, 1929, issued and served its complaint against the respondent Curtiss Candy 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 the 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 final hearing, 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, Curtiss Candy Co., is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business and factory in the city of Chicago, in said State. It is engaged in the manufacture of candy and confectionery and in the sale and distribution thereof, from its factory at Chicago, Ill., to jobbers of such products throughout the United States. It causes its products, when sold, to be transported from its principal place of business and factory in the city of Chicago, Ill., in interstate commerce, into and through States of the United States other than the State of Illinois, to the purchasers thereof at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture and/or sale and transportation of candy and confectionery in interstate commerce between and among the various States of the United States.

Included in respondent's said products is a certain candy bar, or combination of nut and candy bar, designated by the respondent as "Baby Ruth," which product the respondent has manufactured and sold for many years and which has been very extensively advertised and become very popular and in great demand throughout the United States.

PAR. 2. The respondent has, for many years last past, in the course and conduct of its said business, enforced and now enforces a merchandising system adopted by it, of fixing and maintaining certain specified uniform prices at which said "Baby Ruth" shall be sold by jobbers handling the same, and respondent enlists and secures and has enlisted and secured the support and cooperation of said jobbers in enforcing said system. In order to carry out said system, the respondent has employed and still employs the following means whereby it and those cooperating with it have undertaken to prevent and have prevented jobbers from selling same to the retail trade at prices less than the aforesaid resale prices established by the respondent:

(a) Respondent fixes uniform minimum prices at which jobbers shall resell said product to retail dealers, and makes it generally known to the trade that it expects and requires all jobbers handling said product to resell same at such fixed prices.

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

(c) Respondent also procures and induces groups of jobbers in given localities to agree among themselves and with respondent to observe and maintain the resale prices specified by respondent.

(d) Respondent seeks and secures from its dealers information concerning, and evidence of, the failure of other dealers to observe and maintain said resale prices, and by reason of the information thus secured makes investigations and secures from such reported dealers who are 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 to further supply such dealers.

PAR. 3. The direct effect and result of the above acts and practices of respondent have been, and now are, to suppress competition among jobbers in the distribution and sale of respondent's said product, "Baby Ruth"; to constrain jobbers 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 they would otherwise obtain from a natural and unobstructed flow of commerce in said candy under methods of free competition.

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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 of respondent's competitors, and constitute a violation 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."

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, the testimony and briefs by counsel for the Commission and for the respondent, and the Commission having made its findings as to the facts and its conclusion that said 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, Curtiss Candy Co., its officers, agents, and employees, in connection with the sale or offering for sale of its products in interstate commerce between and among the various States of the United States and in the District of Columbia, 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) Inducing or procuring jobbers in any given locality to agree among themselves to observe and maintain resale prices for respondent's products.

(3) Requesting its dealers to report the names of other dealers who fail to maintain the resale price specified or fixed by respondent.

(4) Seeking by any method the cooperation of dealers in making effective any policy adopted by respondent for the maintenance of prices.

It is further ordered, That the said respondent 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 he has complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

D. G. REDMOND, DOING BUSINESS UNDER THE TRADE
NAME OF MILO BAR BELL 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 1714. Complaint, Oct. 28, 1929—Decision, Feb. 10, 1931

Where an individual engaged in the manufacture and sale of adjustable dumb-bells or bar bells, together with instructions, lessons, and a course in physical culture, invited comparison of before and after pictures of a certain person, in advertising said bar bells and course in said individual's pamphlet "Health, strength, and development, How to obtain them", and stated therein that said person progressed so rapidly through their use that he "increased his chest measurement 12 inches and put 5 inches on his biceps", while growing 8 inches in height, and could not praise the system too highly, facts being that the first picture represented the subject at 14, with a height of 5 feet 3, and the second at 18, with height of 5 feet 11; with capacity and tendency to deceive prospective pupils and buyers into believing the marvelous physical development portrayed and represented due to use of said bar bells and instructions, and thereby divert trade to him from competitors:

Held, That such practices, under the conditions and 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.

Mr. Charles G. Gartling, of Philadelphia, Pa., 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, engaged at Philadelphia in the manufacture of adjustable dumb-bells or so-called bar bells for physical exercise and training, and in the sale thereof together with instructions and mimeographed or printed lessons or courses in physical culture, to purchasers throughout the United States, with advertising falsely or misleadingly as to results attained and attainable, 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, in his advertisements in magazines of national circulation and in catalogues, leaflets, circulars, circular letters, and other trade literature, depicts before and after pictures of one Al Manger, inviting the beholder to contemplate the melancholy picture first presented and "the unbelievable transformation" accomplished in the second, facts being