

Complaint

15 F. T. C.

IN THE MATTER OF
HELENA RUBINSTEIN, INCORPORATED

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

Docket 1884. Complaint, Dec. 12, 1930—Decision, Oct. 19, 1931

Where a corporation engaged in the manufacture of cosmetics and toilet preparations and in the sale and distribution thereof to retailers throughout the United States; in pursuance of a merchandising system adopted by it and directed to fixing and maintaining prices specified by it for resale of its products, in cooperation with its dealers,

- (a) Fixed uniform prices at which its dealers should resell its products to the public and made it generally known to the trade that it expected and required all dealers handling said products to resell same at such fixed prices; and
- (b) Entered into contracts, agreements, and understandings with its dealers for the maintenance by them of said resale prices as a condition of opening accounts with them or continuing their supply of its products;

With the result that competition among its dealers in the distribution and sale of its products was suppressed, dealers were constrained to sell the same at the prices fixed by it and prevented from selling said products at such lower prices as they might desire, and purchasers thereof were deprived of the advantages in price which they would otherwise obtain from a natural and unobstructed flow of commerce under methods of free competition:

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. Henry M. Flateau, 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 manufacture of cosmetics and toilet preparations and in the sale and distribution thereof to retailers, and to some extent to wholesalers, and with principal office and place of business in New York City, with maintaining resale prices, in violation of the provisions of section 5 of such act, prohibiting use of unfair methods of competition in interstate commerce.

Respondent, as alleged, for many years last past, has enforced and enforces a merchandising system adopted by it directed to the fixing and maintaining of uniform minimum resale prices specified

by it for the sale of its said products, in the enforcement of which system it enlists and secures support and cooperation of retail and wholesale dealers, and of its officers, agents, and employees, and employs "the following means whereby it and those cooperating with it undertake to prevent and endeavor to prevent dealers from selling its products to the public at prices less than aforesaid retail prices established by" it, to wit:

"(a) Respondent fixes uniform minimum prices at which its products shall be resold to the public by its dealers and makes it generally known to the trade that it expects and requires all dealers handling said products to resell same at such fixed prices.

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

"(c) Respondent seeks and secures from dealers handling said products, information concerning and evidence of the failure of other dealers to observe and maintain said resale prices, and also employs its own salesmen and agents and employees to investigate and secure information and evidence of the failure of dealers to maintain said prices. The information thus obtained by respondent is used by respondent in exacting promises and assurances from price-cutting dealers that they will in the future maintain said resale prices, and in discontinuing business with those refusing to give such promises and assurances.

"(d) Respondent refuses to further supply said product to dealers who have failed to maintain said resale prices unless and until such dealers have given respondent satisfactory promises and assurances that they will in the future maintain and observe such resale prices."

According to the complaint, as a result of said acts and practices, said resale prices have been and are generally maintained, and, further, "the direct effect and result of said 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 products; to constrain dealers to sell said products 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 products of the advantage in price which otherwise they would obtain from a natural and unobstructed flow of commerce of said products under methods of free competition," 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" (38 Stat. 719), the Federal Trade Commission on the 12th day of December, 1930, issued its complaint against the respondent, Helena Rubinstein, Inc., 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, testimony was heard and evidence was received in support of the charges of the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing on briefs and oral argument of respective counsel, 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 Helena Rubinstein, Inc., is a corporation organized and existing under the laws of the State of New York with its principal place of business in the City of New York in said State. It is engaged and has been engaged since its incorporation in the manufacture of cosmetics and toilet preparations, and the sale and distribution thereof from its principal place of business to retailers of such products throughout the United States.

It causes its products, when sold, to be transported from its principal place of business in interstate commerce into and through States of the United States other than the State of New York to the purchasers thereof at their respective locations. In the course and conduct of its said business respondent has been and is in competition with other individuals and corporations located in the United States and engaged in the manufacture, sale, and transportation of cosmetics and toilet preparations in interstate commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. 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 prices fixed and specified by it at which its products shall be sold by the dealers purchasing such products from respondent, and respondent

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enlists and secures and has enlisted and secured the cooperation of its 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 who are co-operating with it have undertaken to prevent and have prevented dealers from selling said products to the public at prices less than the prices specified and established by the respondent:

(a) Respondent fixes uniform prices at which its dealers shall resell said products to the public and makes it generally known to the trade that it expects and requires all dealers handling said products to resell same at such fixed prices.

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

PAR. 3. The direct effect and result of the above acts and practices of respondent have been and are to suppress competition among its dealers in the distribution and sale of respondent's products, to constrain dealers to sell said products at the prices fixed by respondent and to prevent them from selling such products at such lower prices as they may desire, and to deprive the purchasers of said products of the advantage in price that they would otherwise obtain from a natural and unobstructed flow of commerce in said products under methods of free competition.

CONCLUSION

The practices of the said respondent under the conditions and circumstances of the foregoing findings are to the prejudice of the public and of respondent's competitors 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 the respondent, the testimony and briefs, and oral argument by respective counsel, 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",

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It is now ordered, That the respondent, Helena Rubinstein, Inc., 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 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.

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 it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

LENAPE HYDRAULIC PRESSING AND FORGING
COMPANY

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

Docket 1964. Complaint, July 10, 1931—Order, Oct. 24, 1931

Consent order requiring respondent to cease and desist from making representations in catalogues, advertisements or otherwise, through words, diagrams, etc., falsely implying that the steel nozzles offered and sold by it in interstate commerce are seamless and made in one piece; all as in said order more particularly set forth.

Mr. Harry D. Michael for the Commission.

Mr. Dwight B. Galt, of Washington, D. C., for respondent.

COMPLAINT

Acting in the public interest, 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 charges that Lenape Hydraulic Pressing & Forging Co., a corporation, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act, and states its charges as follows:

PARAGRAPH 1. That respondent, Lenape Hydraulic Pressing & Forging Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and has its factory and principal place of business at Lenape, in the State of Pennsylvania.

PAR. 2. That said respondent is now and has been engaged for several years last past in the manufacture of forged steel products and in the sale thereof in interstate commerce in and among the various States of the United States, and said respondent causes and has caused its said products when so sold to be transported in interstate commerce from its said place of business in Pennsylvania, to, into, and through States of the United States other than Pennsylvania to persons, firms, and corporations to whom or to which said products are or have been sold. That one of the products so manufactured, sold, and transported in interstate commerce by respondent as aforesaid is known and described by respondent as forged steel