

Syllabus

IN THE MATTER OF
MECHANICAL MANUFACTURING CO., R. O'HARA,
AND W. A. MAYFIELD

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

Docket 1727. Complaint, Dec. 6, 1929—Decision, Mar. 4, 1932

Where a corporation (1) engaged in the manufacture and/or assembling of bumping posts, draft gears, and coupler centering devices, and in the sale thereof to the principal railway lines in the United States, (2) controlled by the principal stockholders of one of the large, well-known meat packers, officers, directors, and family owners of which made up its board, and, (3) including among its stockholders two transportation officials of said meat packing company, in direct charge of latter's traffic negotiations with the railroads, and in control of the freight car routings of its products and those of its subsidiaries, involving a business in meat products and by-products carried on through more than 500 branch distributing warehouses in the principal cities and towns of the United States, and utilization and control of approximately 7,500 refrigerator cars,

- (a) Used the volume of freight traffic thus controlled by aforesaid transportation officials, to induce purchase of its bumping posts, draft gears, and centering devices in preference to those of competitors through promises and assurances of shipments or increased shipments for the lines concerned, and, in some instances, threats of withdrawal of traffic from lines of companies declining such purchases; and

Where aforesaid transportation officials,

- (b) Cooperated with and assisted said corporation in making such sales to the railways, through utilizing their official position to induce and compel railway officials to give undue preference to its said draft gears and bumping posts, by personal interviews and official letters informing traffic and other railway officials that the packing company or "family" or "interests" controlling it and owning the corporation would be favorably disposed to railroads using corporation's gears or bumping posts, "expected their railroad friends" and those carriers whom they "patronized liberally" to buy products on a "reciprocity" basis or "reciprocate" through buying a portion or specified portion of their requirements, and were disappointed or dissatisfied with traffic officials of roads which failed to purchase said articles in substantial or specified numbers, along with the advice that other roads or specified roads were using said articles in substantial quantities; and
- (c) Threatened to and did divert traffic of said packer or its subsidiaries from railways failing or refusing to buy said articles in substantial quantities, and increased shipments to purchasers thereof and informed said corporation's customers, following assignment of license under which it theretofore made certain draft gears concerned, that purchase of such gears by said customers from such licensee would be satisfactory to the corporation;

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With result that creation and employment by said corporation and general officers of such an oppressive and coercive competitive weapon, which prevented prospective customers of said corporation and of its competitors from exercising their free will and judgment in determining most efficient device and one to best serve their needs at lowest net cost over a period of time, injected an unfair and abnormal element in the competitive field involved, all to the injury of the public and competitors, and with a tendency unduly to suppress competition between said corporation and competing draft-gear manufacturers, and reduce latter's efficiency and economy in production and selling, and give concern controlling largest volume of freight traffic an unfair advantage, and thereby hinder and restrain freedom of competition in the natural and customary channels of trade in the industry concerned:

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. Everett F. Haycraft for the Commission.

Mr. Frank L. Horton, of Chicago, Ill., for Mechanical Manufacturing Co., and *Albert H. and Henry Veeder*, of Chicago, Ill., for R. O'Hara and W. A. Mayfield.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Mechanical Manufacturing Co., an Illinois Corporation engaged in manufacture of meat-packing house machinery and equipment and in sale thereof to meat-packing houses in the several States, and in foreign countries, and in manufacture and/or sale of bumping posts, draft gears, and other railway equipment under trade name "Durable" to railway companies for use on railway cars, and respondents R. O'Hara and W. A. Mayfield, with combining or cooperating to secure competitive business through coercion and intimidation of customers, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent company, engaged as above set forth, with majority of its common stock owned and/or controlled by members of the Swift family, principal stockholders of Swift & Co., and by employees of said Swift & Co., including respondents O'Hara and Mayfield, respectively manager and assistant manager of traffic department of said Swift & Co.,¹ and in direct charge of traffic nego-

¹According to the allegations of the complaint said Swift & Co. "is an Illinois corporation engaged in the meat-packing business with its principal office and slaughtering plants located in the city of Chicago in the State of Illinois and with twenty or more branch slaughtering plants located in other sections of the United States where livestock is produced and is the largest meat packer in the United States. In the course and conduct of

tiations with the railway companies with respect to the transportation of its products and those of its subsidiary corporations, as charged in the course and conduct of its said business, during the past three years, and acting "in cooperation with the said respondents, R. O'Hara and W. A. Mayfield, as traffic department officials of the said Swift & Co.—

"Has sought to induce and compel, and has induced and compelled railway companies to purchase said 'Durable' draft gears and other equipment manufactured and/or sold by said respondent, Mechanical Manufacturing Co., in preference to draft gears and other equipment manufactured and sold by competitors, by the following methods:

"(a) by promises and assurances of certain volume of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and its subsidiary corporations.

"(b) by promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and its subsidiary corporations; and,

"(c) by threats of withdrawal of freight traffic from the lines of said railway companies, by said Swift & Co. and its subsidiary corporations, if said railway companies would not purchase the said 'Durable' draft gears and/or other equipment manufactured and/or sold by said respondent, Mechanical Manufacturing Co."

Respondents O'Hara and Mayfield, as alleged, have cooperated with and assisted said respondent in the sale of its said product to railway companies, "particularly by utilizing their official positions in the said Swift & Co., to induce and compel the officials of railway companies to give undue preference to draft gears and/or other equipment manufactured and sold by the said respondent, Mechanical Manufacturing Co., by means of promises of freight traffic from Swift & Co. and its subsidiary corporations and threats of withdrawal of said traffic if the railway companies would not purchase draft gears and other equipment manufactured and/or sold by said respondent, Mechanical Manufacturing Co."

During times above referred to, as alleged, "other individuals, firms, and corporations located in the various States of the United States have been and still are engaged in the manufacture of draft gears and other railway equipment and in the sale thereof to the

its said business, Swift & Co. and its subsidiary corporations ship large quantities of meat products and by-products from their various slaughtering plants to their distributing depots known as branch houses, located in the principal towns and cities of the United States numbering more than five hundred, utilizing for this purpose refrigerator cars owned by a Swift & Co. subsidiary, the Swift Refrigerator Transportation Co., which owns more than 7,500 cars, causing said cars to be transported over the lines of the various railway companies of the United States."

railway companies of the United States, and the respondent, Mechanical Manufacturing Co., has been and still is engaged in competition in commerce in the sale of its said 'Durable' draft gears and other equipment with said other individuals, firms, and corporations," and foregoing alleged acts and things done by the respondents, as charged, "are all to the prejudice and injury of the public and competitors of the respondent, Mechanical Manufacturing Co., and unduly tend to suppress competition between the said respondent and competing manufacturers of draft gears and other equipment, and to create a monopoly in said respondent in the manufacture and sale of draft gears and other equipment and constitute unfair methods of competition in violation 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. 717), the Federal Trade Commission on December 6, 1929, issued and thereupon served, as required by law, upon Mechanical Manufacturing Co., R. O'Hara, W. A. Mayfield, respondents above named, in which said complaint it is charged that respondents have been and are now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The said respondents, having filed their answers herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on brief and oral argument, a brief having been filed on the part of the Commission, and counsel for the Commission and the respondents having been heard in oral argument and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mechanical Manufacturing Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and has so existed since July, 1889. Said corporation is capitalized at \$1,250,000 and has outstanding 75,000 shares of common stock having a par value of \$750,000, and 5,000 shares of preferred stock having a par value of \$500,000. Said

corporation was engaged at all times hereinafter mentioned in the manufacturing of meat-packing house machinery and equipment and for more than 20 years last past has been engaged in making, selling, and delivering to the principal railways in the United States, bumping posts, one type of which is known as the "Durable" bumping post, and during the year 1929, it assembled or caused to be assembled and sold and delivered to many railroad companies for use on their cars, draft gears and coupler centering devices under the trade name "Durable." Said draft gears, bumping posts, and centering devices when manufactured and sold by said corporation were shipped from the point of manufacture in the city of Chicago, State of Illinois, to the purchasers thereof located in various States of the United States other than the State of Illinois. The said corporation is in competition with manufacturers and distributors of draft gears, bumping posts, and centering devices located in the various States of the United States who sell and distribute their said products in and among the various States of the United States.

Respondents, R. O'Hara and W. A. Mayfield, for several years last past have been and now are manager and assistant manager, respectively, of the transportation department of Swift & Co., Chicago, Ill., more particularly hereinafter described, and as such are in direct charge of the traffic negotiations with railroad companies and control the routing of freight cars carrying products of said Swift & Co. and its subsidiary corporations.

PAR. 2. Swift & Co. with its subsidiaries are well-known large meat packers with headquarters and plants located in the city of Chicago, State of Illinois, and with slaughtering plants located in various States of the United States, shipping its meat products and by-products in refrigerator and freight cars from its several plants to branch distributing houses located in the principal cities and towns of the United States numbering more than 500, utilizing for this purpose approximately 7,500 refrigerator cars which it controls and which are transported over the lines of the various railway companies of the United States. The principal stockholders of said Swift & Co. are members of the Swift family and the Swift estate, which said stockholders own over 65 per cent of common stock and approximately 87 per cent of preferred stock of the said respondent corporation, Mechanical Manufacturing Co. In addition, said respondents O'Hara and Mayfield and other employees of said Swift & Co. own approximately 4½ per cent of the common stock and 0.6 per cent of preferred stock of the said Mechanical Manufacturing Co. Members of the Swift family who are officers and directors of the said Swift company and three employees of said Swift & Co.

make up the board of directors of the said respondent, Mechanical Manufacturing Co.

PAR. 3. Respondent, Mechanical Manufacturing Co., in the course and conduct of its said business during the years 1928 and 1929 in cooperation with respondents O'Hara and Mayfield, as transportation officials of Swift & Co. sought to induce and has induced numerous railway companies of the United States to purchase Durable bumping posts, draft gears and centering devices sold by said Mechanical Manufacturing Co. in preference to draft gears, bumping posts, and centering devices manufactured and sold by competitors, by promises and assurances of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and its subsidiary corporations, and also by promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and its subsidiary corporations, and, in some instances, by threats of withdrawal of freight traffic from the lines of said railway companies by Swift & Co. and its subsidiary corporations, if said railway companies would not purchase the said Durable draft gears or bumping posts manufactured or sold by said respondent Mechanical Manufacturing Co. Said respondent company has not sought to induce railway companies to buy said draft gears, bumping posts, or centering devices since the latter part of November or early part of December, 1929, and since that time has not accepted any orders from railway companies for said draft gears and centering devices, but has continued to take orders and ship some bumping posts.

PAR. 4. Said respondents O'Hara and Mayfield have cooperated with and assisted the said respondent, Mechanical Manufacturing Co., in the sale of its said Durable draft gears, bumping posts and centering devices to railway companies by utilizing their official positions in the said Swift & Co. to induce and compel the officials of railway companies to give undue preference to draft gears and bumping posts manufactured and sold by the respondent, Mechanical Manufacturing Co.

PAR. 5. Said respondents, O'Hara and Mayfield, in seeking to induce railway companies to buy Durable bumping posts and draft gears, as aforesaid, solicited traffic and other officials of railway companies by means of personal interviews and letters written on the stationery of said Swift & Co., signing their names as transportation officials of said Swift & Co., in which said letters and interviews they represented to said traffic and other officials of said railway companies that the Swift "family" or the Swift "interests" owned the Mechanical Manufacturing Co., and that Swift & Co. would be

favorably disposed to railroads using Durable draft gears or Durable bumping posts; that Swift & Co. and the Swift interests "expected their railroad friends" or "carriers that they patronized liberally" to buy said products on a "reciprocity" basis or to "reciprocate" by buying a portion of their requirements of draft gears or bumping posts, sometimes to the extent of 25 to 33 $\frac{1}{3}$ per cent of such requirements, and, also that their principal, Swift & Co., or the Swift interests were disappointed or dissatisfied with traffic officials who failed to get their railroads to order said Durable bumping posts or draft gears in substantial numbers, sometimes indicating the number which would be considered satisfactory to their principals; and also that other railroads, often naming them, were using the Durable bumping posts or draft gears in substantial quantities.

PAR. 6. Said respondents, O'Hara and Mayfield, in seeking to induce railway companies to buy Durable bumping posts and draft gears as aforesaid, threatened to and actually did divert traffic of Swift & Co. or its subsidiaries from railway companies who failed to or refused to buy Durable bumping posts or draft gears in substantial quantities, and also increased shipments of freight traffic from Swift & Co. and its subsidiaries to railway companies who did buy Durable draft gears or bumping posts.

PAR. 7. Respondent, Mechanical Manufacturing Co., by the use of methods of competition described in paragraphs 3, 4, 5, and 6 herein, sold Durable bumping posts to the Sante Fe Railroad during 1928, and sold draft gears to other railway companies during the year 1929 as follows:

	Sets
Wheeling & Lake Erie.....	100
Pere Marquette.....	100
Union Pacific.....	100
New Orleans & Northeastern.....	100
Lehigh Valley.....	200
Chicago, Burlington & Quincy.....	250
Chesapeake & Ohio.....	250 $\frac{1}{2}$
Nickle Plate.....	351
Missouri Pacific.....	500
Rock Island.....	525
Boston & Maine.....	710
Erie.....	1007

The price received for the draft gears was usually \$65 per set of two gears.

PAR. 8. The principal competitors of the respondent corporation during 1929 were the following:

W. H. Miner & Co., Inc., Wilmette, Ill., selling draft gears under the trade name of Miner.

National Malleable & Steel Castings Co., Cleveland, Ohio, selling draft gears under the trade name National.

Cardwell-Westinghouse Co., Chicago, Ill., a merger of the Union Draft Gear Co. and the Westinghouse Co., selling draft gears under the trade names Cardwell and Westinghouse.

Bradford Corporation, New York City, selling draft gears under the trade name Bradford.

Standard Coupler Co., New York City, selling draft gears under the trade name Sessions.

Keyoke Railway Equipment Co., Chicago, Ill., selling draft gears under the trade name Murray.

Waugh Equipment Co., New York City, and Chicago, Ill., selling draft gears under the trade name Waugh.

The foregoing competitors of the respondent corporation during 1929 sold or attempted to sell draft gears to the various railway companies purchasing draft gears during that year, including particularly those companies to whom the respondent corporation sold draft gears as aforesaid.

PAR. 9. In December, 1929, respondent corporation assigned to the Waugh Equipment Co., a New York corporation engaged in the manufacture, sale and distribution of draft gears, its license from one Laughlin to manufacture and sell centering devices. Thereafter, on two occasions, respondent O'Hara notified customers of the respondent corporation that it would be satisfactory for said customer to purchase Waugh draft gears in place of Durable draft gears.

PAR. 10. The aforesaid acts and things done by said respondents are all to the injury of the public and competitors of respondent corporation, and unduly tend to suppress competition between respondent corporation and competing manufacturers of draft gears, in that the respondent corporation cooperating with respondents O'Hara and Mayfield have created and taken advantage of a competitive weapon, oppressive and coercive in nature, which prevents the customers to whom the respondent corporation and its competitors are trying to sell their products, from exercising their free will and judgment in determining which device is the most efficient and will best serve their needs at the lowest net cost over a period of time, and has thus injected an element in the competitive field in which respondent is engaged, which is unfair and abnormal, and tends to reduce the efficiency and economy in the production and sales methods of competing manufacturers and gives to the concern that controls the largest volume of freight traffic an unfair advantage,

and thus hinders and restrains the freedom of competition in the natural customary channels of trade in the draft gear industry.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondents' competitors, are unfair methods of competition in commerce and constitute a violation of section 5 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 respondents, and the Commission having made its findings as to the facts and the conclusion that the respondents have 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 following respondent, Mechanical Manufacturing Co., its agents, representatives, and employees, shall cease and desist the use of the volume of the freight traffic of Swift & Co. and/or its subsidiary corporations in the solicitation of draft gear or other railway equipment business in interstate commerce from railway companies by the following methods:

(a) By promises and assurances of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and/or its subsidiary corporations.

(b) By promises and assurances of an increased volume of freight traffic to be shipped over the lines of said railway companies by Swift & Co. and/or its subsidiary corporations; and/or

(c) By threats of withdrawal of freight traffic from the lines of said railway companies by Swift & Co. and/or its subsidiary corporations, if said railway companies would not purchase draft gears or other railway equipment manufactured and/or sold by said Mechanical Manufacturing Co.

It is further ordered, That said respondents, R. O'Hara and W. A. Mayfield, shall cease and desist cooperating with and assisting the said respondent Mechanical Manufacturing Co., its officers, agents, and employees, or any other affiliated corporation engaged in the manufacture, sale, and distribution of railway equipment, in the sale

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and distribution of said railway equipment, including draft gears, bumping posts, or centering devices in interstate commerce to railway companies, by utilizing their official positions in Swift & Co. to induce and compel officials of railway companies to give undue preference to railway equipment manufactured and/or sold by the said Mechanical Manufacturing Co. or any other affiliated corporation engaged in the manufacture, sale, and distribution of railway equipment, by means of promises of freight traffic from said Swift & Co. and/or its subsidiary corporations, and threats of withdrawal of said traffic if said railway companies did not purchase railway equipment manufactured and/or sold by said Mechanical Manufacturing Co. or any other affiliated corporation engaged in the manufacture, sale, and distribution of railway equipment.

It is further ordered, That the respondents, Mechanical Manufacturing Co., R. O'Hara, W. A. Mayfield, shall individually and separately within 60 days after the service upon them of copies of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF
JOHN F. REICHARD, DOING BUSINESS AS MANCHESTER
CIGAR COMPANY

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

Docket 1459. Complaint, Apr. 22, 1927—Order, Mar. 12, 1932

Consent order requiring respondent individual, cigar manufacturer, to cease and desist use of word "Havana" in connection with sale of his so-called "Havana Cadet" cigar containing no Havana or Cuban tobacco, or from applying word "Havana" to cigars not composed entirely of such tobacco, or using any other name, statement, etc., falsely implying or importing a Havana or Cuban tobacco content for said cigar; as in said order set forth and qualified.

Mr. Henry Miller for the Commission.

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 John F. Reichard, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect, as follows:

PARAGRAPH 1. Respondent is an individual with his place of business in the city of York, State of Pennsylvania. He is engaged in the manufacture of cigars and the sale thereof to wholesale and retail dealers located at points in various States of the United States. He causes said cigars, when so sold, to be transported from his said place of business in the city of York, Pa., into and through other State of the United States to said vendees at their respective points of location. In the course and conduct of his said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of cigars in commerce between and among various States of the United States.

PAR. 2. For many years prior to the date hereof, tobacco has been and is now a commercial export product of the Island of Cuba and the term "Havana" tobacco has for many years meant, and still means, to the cigar trade and to the consuming public, tobacco grown upon the Island of Cuba. Many among said trade and many