

Complaint

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IN THE MATTER OF
WASHINGTON SEA FOOD DEALERS' ASSOCIATION, ITS
OFFICERS AND MEMBERS

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

Docket 2189. Complaint, May 29, 1934—Decision, Jan. 23, 1935

Where an association of brokers, commission merchants, and wholesale and retail dealers engaged in the sale of sea foods in the District of Columbia, together constituting a large and influential factor therein in the sale, and purchase for resale, of said products; and aforesaid brokers, etc., in competition between and among themselves and with other brokers, commission merchants, and wholesale or retail dealers similarly engaged; with intent of eliminating price competition among themselves, and between themselves and other persons and concerns so engaged, entered into and carried out an agreement, combination and conspiracy to fix and maintain prices of said products; and, in pursuance of aforesaid agreement, etc.—

- (a) Fixed and established from time to time, and for designated periods of time, minimum prices to be charged by all association members for various articles of sea food, to designated purchasers or groups or classes of purchasers; and
- (b) Agreed, on the part of the association officers or certain members, to furnish, and furnished, statements or schedules of minimum prices to each association member, and not to sell said articles to any such purchasers or group or class at a price below the aforesaid minimums;

With intent and effect of lessening and restraining competition in said business between and among themselves, and denying to purchasers the benefit thereof, and of lessening, hindering, restraining, and preventing price competition in said business between themselves and all other persons and concerns similarly engaged:

Held, That such acts and practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. John W. Hildrop for the Commission.

Brandenburg & Brandenburg, of Washington, D. C., for R. W. Claxton, Inc., Harry L. Claxton, S. W. Russell, John Neitzey, Mrs. George W. Carroll, Robert M. Meehan, and J. H. Neitzey.

Peysen, Strasburger & Jacobson, of Washington, D. C., for W. H. Carter, Daisy Carter Lanhardt, Potomac Fish Market, Inc., R. L. Faunce, Inc., and Mrs. Emma Thomford.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged

respondent association, an unincorporated association of brokers, commission merchants, and wholesale and retail dealers engaged in the District of Columbia in the sale of sea foods, together constituting a large and influential factor in the purchase and sale of sea foods therein; and respondent members, engaged as aforesaid in the sale of said products to hotels, restaurants, other users thereof, and the consuming public¹; with combining and conspiring to stifle, hinder, and restrain competition in the sale of said products among themselves and between themselves and others, through fixing and establishing from time to time and for designated periods, minimum prices to be charged by all members to designated purchasers or groups or classes thereof, agreeing to furnish and furnishing on the part of the officers or certain members, schedules of such minimum prices, to be thus observed, and not to sell said products to any such purchasers, etc., at lower prices, and agreeing that all members will refuse business dealings with any broker, etc., selling below said minimum prices or with any broker, etc., selling to such price cutting broker, etc.,² with intent and effect of lessening and restraining competition among themselves, and depriving purchasers of the benefit thereof, and of lessening, hindering, restraining, and preventing price competition between themselves, and all other persons, concerns, and associations similarly engaged; all to the injury and prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on the 29th day of May 1934 issued and thereafter served its complaint against the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

¹ Respondents joined in the complaint are set forth in the findings, *infra*, at pages 108, 109.

² Section 3 of paragraph 3 of the complaint relating to boycotting, as to which complaint was dismissed, reads as follows:

3. Have agreed that if any broker, commission merchant, wholesale dealer or retail dealers in sea foods at and within the District of Columbia shall sell any article of sea foods to any such purchasers, or group or class of purchasers, at a price below the minimum price thereof indicated by said statement or schedule of prices, all members of said association will refuse to have business dealings with such broker, commission merchant, wholesale dealer or retail dealer; and will refuse to have business dealings with any broker, commission merchant, wholesale or retail dealer in sea foods, doing business within or without the District of Columbia, who thereafter sells sea foods to the person, firm, association or corporation so selling articles of sea food below said minimum prices, or who continues to have business dealings with such person, firm, association or corporation, and respondents and each of them, acting pursuant to said agreement, have so refused.

Findings

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Respondents having entered their appearance and filed their answers to said complaint a hearing was had before a trial examiner theretofore duly appointed and testimony and evidence received in support of the charges stated in the complaint as well as evidence and testimony received for the respondents. Thereafter this proceeding came on for final hearing before the Commission on the complaint, answers, testimony, and evidence and briefs in support of the complaint and on behalf of respondent and oral arguments, and the Commission having duly considered the same makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Washington Sea Food Dealers' Association is an unincorporated association of brokers, commission merchants, wholesale dealers and retail dealers in the business of offering for sale and selling at and within the District of Columbia fish, oysters, clams, shrimp, and other food products that are usually kept and offered for sale and sold along with them under the name and designation of "sea foods", all of which food products are herein and hereinafter designated and referred to by and under the general designation of "sea foods".

Certain of respondents are from time to time, or from time to time act as or perform the duties and exercise the powers usually incident to, officers of such association.

All other respondents hereto are members of said association and all are at and within said District of Columbia, engaged respectively and severally as brokers, commission merchants, wholesale dealers or retail dealers in the business of offering for sale and selling sea foods. They are more particularly designated as follows:

Respondent R. W. Claxton, Inc., is a corporation organized under the laws of the State of Delaware.

Respondent Harry L. Claxton is president of said corporation and is also acting president of respondent Washington Sea Food Dealers' Association.

Respondent S. W. Russell is a wholesale dealer in sea foods.

Respondent John Neitzey is secretary of respondent Washington Sea Food Dealers' Association, and is a broker in the sale of sea foods.

Respondents John F. Javins and Francis H. Javins are partners trading under the firm name and style of Charles H. Javins & Sons, and are retail dealers in sea foods and poultry.

Respondent William B. Spinks is a broker in the sale of sea foods.

Respondents W. H. Carter and Daisy Carter Lanhardt are partners trading under the firm name and style of Lanhardt Sea Food Company and are wholesalers and retailers of sea foods.

Respondent L. C. Atkins is a broker and wholesaler of sea foods trading under the name and style of Buckroe Fish Company.

Respondent Potomac Fish Market, Inc., is a corporation organized under the laws of the District of Columbia, and is a wholesaler and retailer of sea foods.

Respondent Mrs. George W. Carroll is a wholesaler and retailer of sea foods, trading under the name and style of George W. Carroll Company.

Respondent R. L. Faunce, Inc., is a corporation organized under the laws of the District of Columbia.

Respondent Mrs. Sarah E. Faunce is a wholesaler and retailer of sea foods, trading under the name and style of D. M. Faunce Company.

Respondent Mrs. Emma Thomford is a wholesaler and retailer of sea foods, trading under the name and style of E. Thomford & Company.

Respondents Al Lipshultz and Harry Mensh are partners trading under the firm name and style of National Fish Market, and retailers of sea foods.

Respondent Emory Ellis is a wholesaler and retailer of sea foods, trading under the name and style of A. J. Ellis & Son.

Respondent Mrs. Anna Lansburgh is a wholesaler and retailer of sea foods.

Respondent Eacho & Company, Incorporated, is a corporation organized under the laws of the State of Virginia.

Respondents Reilly H. White and Frank Adams are partners trading under the firm name and style of Evans & White, and are wholesalers and retailers of sea foods.

Respondent Albert W. Woodfield is a wholesaler of sea foods trading under the name and style of Albert W. Woodfield & Company.

Respondent J. H. Neitzey is a wholesaler and retailer of sea foods.

Respondent Ludwig Driefer is a retailer of sea foods.

Respondent F. A. Biddle is a broker and wholesaler of sea foods.

PAR. 2. The respondents hereto, other than Washington Sea Food Dealers' Association, organized and created said Washington Sea Food Dealers' Association, for use in the accomplishment of certain purposes of mutual interest to the members thereof, among which purposes is the making and entering into, and the accomplishment

of the purposes of, the certain conspiracy, agreement and understandings hereinafter alleged.

Respondents hereto, other than said association, have been and are engaged as brokers, commission merchants, wholesale or retail dealers, in offering for sale and selling sea foods at and within the District of Columbia to dealers in sea foods, to hotels and restaurants and other users of sea foods, and to the consuming public. In said business said respondents, except as herein otherwise alleged, have been and are in competition between and among themselves and with other brokers, commission merchants, wholesale or retail dealers, in sea foods who at and within the District of Columbia have been and are likewise engaged in the sale of sea foods to dealers in sea foods, to hotels and restaurants and other users of sea foods, and to the consuming public.

PAR. 3. Said respondents, for the purpose of eliminating price competition among themselves, and between themselves and other persons, firms, associations, and corporations likewise engaged in said business at and within the District of Columbia, entered into, have since carried out, and are still carrying out an agreement, combination, and conspiracy among themselves to fix and maintain and by which they have fixed and maintained prices in sea foods. Pursuant to and for the purpose of carrying out said agreement, combination, understanding, and conspiracy, the said respondents and each of them, have acted and done, among other acts and things, the following, to wit:

(a) Fixed and established from time to time, and for designated periods of time, minimum prices to be charged by all members of said association for said several articles of sea food to designated purchasers or groups or classes of purchasers thereof.

(b) The officers of said association or certain members thereof designated for that purpose have agreed to furnish and have furnished statements or schedules of said minimum prices to each member of said association, and have agreed not to sell any of said articles of sea food to any such purchasers, or group or class of purchasers, at a price below the minimum price thereof indicated by said statement or schedule of prices.

PAR. 4. Respondents combined constitute a large and influential factor in the business of selling sea foods at and within the District of Columbia. The effect of said conspiracy, agreement and understanding between and among respondents is by them and each of them intended to be, and is, to lessen and restrain competition in said business between and among respondents, and to deny to purchasers the benefit thereof.

Respondents combined constitute a large and influential factor in the purchase of sea foods for resale at and within the District of Columbia. The effect of said conspiracy, agreement and understanding between and among respondents is by them and each of them intended to be, and is, to lessen, hinder, restrain and prevent price competition in said business between respondents and all other persons, firms, associations and corporations engaged in the same, like or similar business in the District of Columbia.

PAR. 5. The Commission finds that the charge of boycotting as contained in section 3 of paragraph 3 of the complaint is not sustained by the testimony.

CONCLUSION

The above acts and practices of respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the pleadings, testimony, and evidence introduced, and the brief of counsel for the Commission and of the respondent, and the Commission having made its findings as to the facts and its conclusion drawn therefrom:

It is now ordered, That the respondents in the caption set out, their agents, representatives, servants, employees, and officers in connection with the buying, offering to buy, selling, offering for sale and distributing in the District of Columbia, or in interstate commerce between and among the several States of the United States, of fish, oysters, clams, shrimp, and other food products that are usually kept and offered for sale and sold along with them under the name and designation of "sea foods", cease and desist from entering into and carrying out any agreement, combination, and conspiracy among themselves and each other to fix and maintain prices in sea foods and from establishing and fixing from time to time or for designated periods of time minimum prices to be charged by all of the respondents herein for any article of sea food to designated purchasers or groups or classes of purchasers thereof and from printing, writing, mimeographing, circulating, distributing, or furnishing statements or schedules of set minimum prices to and among the respondents mentioned in the caption hereof and from

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agreeing among themselves or one with the other not to sell any of said articles of sea food to any purchaser or group or class of purchasers at a price below the minimum price thereof, indicated by said statement or schedule of prices and also from conspiring and agreeing among themselves or with each other to, by any means or methods, lessen and restrain competition in said business between and among respondents and to deny to purchasers the benefit thereof or to restrain and prevent price competition in said business between respondents and all persons, firms, associations and corporations engaged in the same, like or similar businesses in the District of Columbia.

The Commission being of the opinion that the charge of boycotting as contained in section 3 of paragraph 3 of the complaint is not sustained by the testimony, it doth so decide and doth order that said charge as contained in said section 3 of paragraph 3 of the complaint be and the same is hereby dismissed as to all of the respondents mentioned in the caption hereof.

It is further ordered, That the respondents shall within 60 days after service upon them of a copy 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 hereinabove set forth.

Complaint

IN THE MATTER OF
UNITED REMEDIES, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2245. Complaint, Nov. 8, 1934—Order, Jan. 25, 1935*

Consent order requiring respondent, its officers, etc., in connection with the sale or offering in interstate commerce of a hair dye, to cease and desist forthwith from representing through radio broadcasts, labels, printed advertisements, or otherwise, that said preparation or any other preparation for coloring the hair can cause gray hair to disappear like magic and end gray hair handicaps, and from using words of similar tenor, unless in conjunction therewith and in equally conspicuous fashion, it is explained that the preparation is a hair dye and that the effect of its use can be maintained only by repeated and regular applications, in accordance with the natural growth of the hair.

Mr. James M. Brinson for the Commission.

Soelke, Koehn & Loewy, of Chicago, Ill., 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, having reason to believe that United Remedies, Inc., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its place of business in the city of Chicago, in said State.

PAR. 2. Respondent is and for some time past has been engaged in the business of selling a preparation for coloring the human hair, to which it has given the trade name of "Kolor-Bak", and which is a part of a trade mark registered in the Patent Office. Respondent sells its preparation to and through retail drug stores, department stores, and other retail outlets located throughout the United States in States and Territories other than the State of Illinois. When such sales are made, it is contemplated that shipment shall be made,