

Syllabus

21 F. T. C.

IN THE MATTER OF
CAPE COD SHIRT COMPANY, INC.

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

Docket 2296. Complaint, Feb. 11, 1935—Decision, Dec. 11, 1935

- Where a corporation engaged in the manufacture of men's shirts, pajamas, etc., and in the sale thereof under its brand or trade name throughout the several States and particularly in the New England and adjacent States, in competition with others similarly engaged, and customarily marketing its said products, the output of which was substantial and formed an important item of interstate commerce, through selected retail dealers in men's wear, including a substantial portion of such dealers in said New England States; in pursuance of a "resale price maintenance policy",
- (a) in which, dealing separately with each customer, it requested the cooperation of all in (1) maintaining its said resale prices and pushing its price-maintained products, and, (2) preventing and eliminating sales at cut prices; and, (b) incident to the carrying out of which policy it (1) issued circulars and price lists to the trade and cooperated with customers in newspaper advertising, showing suggested uniform resale prices for its said products, (2) requested and insisted that its said selected dealers resell only at suggested resale prices, and (3) made known to them through broadcast, whether sold direct or not, that it would absolutely refuse sale of further supplies of its products to price cutters—
 - (a) Required its said distributors to enter into understandings and agreements with it that the distributor would maintain resale prices of its said branded shirts as suggested and specified by it, and refused to sell its said product to practically all such retailers as would not agree not to resell the same except at its said suggested prices; and
 - (b) Requested and secured the cooperation of dealer-customers in reporting to it names of competitors and other dealer-customers selling its said shirts at resale prices below those fixed by it, and acted on such reports by expressing its appreciation thereof and investigating the same and refusing further supplies to dealers thereby established as price cutters; and
 - (c) Refused to sell its said shirts further to dealer-customers who had failed to resell the same at its said prices and sought to prevent such customers from securing its said product from any other source, and reinstated as distributors thereof those previously cut off from its list of selected dealers for underselling its resale prices, upon the basis of satisfactory assurances that they would thereafter resell its said shirts at its suggested prices;
- With the result of protecting the relatively higher cost and less efficient retailers against the competition of the relatively lower cost and more efficient retailers and of eliminating competition in price among dealers handling its said products, and of thereby preventing retail concerns, and especially the lower cost and more efficient establishment, from selling its products at prices which they might deem adequate and warranted by their costs and selling efficiency, and compelling such portions of the

Complaint

public as required or preferred its said products to pay enhanced prices therefor:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. John L. Hornor for the Commission.

Mr. James P. McGuire of *Hurley & Torphy*, of Fall River, Mass., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 the Cape Cod Shirt Company, a corporation, hereinafter referred to as respondent, has been and is 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 would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and at all times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal place of business at Fall River, in said State. It is, and has been, engaged in the business of manufacturing and selling, among other things, men's shirts, which are trade-marked and known as "Cape Cod Shirts." Respondent's sales of Cape Cod Shirts are made to retail dealers in men's wear located in various States of the Union, particularly in the New England States. Pursuant to such sales, and as a part thereof, shirts are shipped by respondent from its factory at Fall River, Mass., to its customers at their places of business in the other States as aforesaid.

PAR. 2. For more than five years last past, in connection with its sale of Cape Cod Shirts in interstate commerce, as aforesaid, and directly affecting said commerce, respondent has used and is now using a resale price-maintenance policy and system for the purpose of controlling the prices at which retail dealers resold and resell Cape Cod Shirts to the public, and of causing them to sell at prices uniform among said dealers. In carrying out said resale price-maintenance policy and system respondent did and performed, and still does and performs, the following things, and used and still uses the following methods and practices:

(a) Enters into agreements and understandings with its dealer customers that they will sell Cape Cod Shirts to the public at prices fixed by said agreements and understandings and as fixed from time

Findings

21 F. T. C.

to time by respondent. The prices so fixed are to be, and are, uniform as among respondent's dealer customers.

(b) Upon the failure of a dealer customer to maintain the prices so fixed, respondent threatens to refuse, and refuses, further to sell to said customer and seeks to prevent him and prevents him from securing Cape Cod Shirts from any other source.

(c) Seeks and secures the cooperation of its dealer customers in enforcing the observance of the prices so fixed, by requesting them to report to it instances of such price cutting; such dealers do report such instances; and when such reports are received respondent takes action with the purpose and effect of causing the offending dealer thereafter to maintain the price uniformly observed by other dealer customers.

PAR. 3. The result and effect of the use by respondent of the system, methods and practices hereinabove set forth have been and are that retailers of respondent's said products are constrained to sell at prices uniform among them, so that price competition among them is destroyed and prevented; prices to the public are held at an arbitrary and artificially high level; and the public is denied the benefits of competition among said retailers.

PAR. 4. Respondent's said policy and system of resale price maintenance, and the said methods and practices used to make the same effective, have been and are to the prejudice of the public, and constitute unfair methods of competition in commerce within the intent and meaning of the act of Congress above entitled.

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 February 11, 1935, issued and served its complaint in this proceeding upon respondent, Cape Cod Shirt Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by John L. Hornor, attorney for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by James P. McGuire, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission

on the said complaint, the answer thereto, testimony and evidence, brief in support of the complaint, filing of brief and oral argument having been waived by James P. McGuire, counsel for the defense; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Cape Cod Shirt Company, Inc., is a corporation, organized and doing business under the laws of the State of Massachusetts and having its principal office and place of business in the city of Fall River, Mass., and is now, and for more than five years last past has been engaged in the business of manufacturing and selling men's shirts, pajamas, etc., throughout the States of the United States, particularly that portion known as New England, and the States adjacent thereto, in direct competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. In the conduct of its business the said respondent manufactures and packs its products in the city of Fall River, Mass., and from there sells and ships to the purchasers thereof in the different States and territories of the United States, and in the District of Columbia, the said men's shirts, pajamas and other products, and there is continuously and has been at all times herein mentioned, a constant current of trade and commerce in said men's shirts, pajamas and other products, between and among the several States, territories, and in the District of Columbia, of the United States.

PAR. 3. The quantity of such products so manufactured, sold and distributed by respondent has been and is substantial, and forms an important item of commerce among the several States, territories, and the District of Columbia, of the United States.

PAR. 4. Respondent customarily markets its products principally through retail dealers in men's wear lines, who in turn resell to the consuming public, all of which retail dealers are selected as desirable customers.

The total number of such retail dealers handling the products of respondent includes a substantial portion of the retail dealers in the men's wear goods throughout that part of the United States commonly known as the New England States.

PAR. 5. Respondent, in the sale and distribution of its products, has adopted and maintained, and still maintains, a policy known as "Resale price maintenance policy", and requests the cooperation

therein of all dealers selling the products manufactured by it, dealing with each customer separately.

PAR. 6. The purpose and intent of the respondent company in this merchandise policy is, among other things to obtain the active support and cooperation of all its retail distributors—

(1) Maintaining its said resale prices and pushing its price-maintained products; and

(2) Preventing and eliminating all sales at lower prices than its fixed uniform resale prices.

PAR. 7. In order to carry out said resale price maintenance policy and to secure such cooperation, respondent—

(a) Issues circulars, price lists, and list to the trade generally, and cooperates with its customers in newspaper advertising, showing suggested uniform resale prices to be charged for Cape Cod products;

(b) Requests and insists that the aforesaid selected retail dealers resell only at the suggested resale prices; and

(c) Makes it known through broadcast to such selected retail dealers, whether sold direct or not, that if they, or any of them, fail to sell at the resale prices suggested by the respondent as aforesaid, respondent will absolutely refuse to sell further supplies of its products to them, or any of them.

PAR. 8. Respondent, in carrying out said policy—

(a) Has required its distributors to enter into an understanding and agreement with respondent that the distributor would maintain the resale price of "Cape Cod Shirts" at the resale prices suggested and specified by the respondent.

(b) Has, within the time aforementioned, refused and does refuse to sell its products to practically all such retailers as would not agree to resell said products at the prices so suggested by the respondent;

(c) Has, within the time aforementioned, refused and does refuse to sell its products to practically all so-called price cutters;

(d) Has, within the time aforementioned, refused and does refuse to further sell to dealer-customers who have failed to resell at the prices so suggested by respondent, and sought and does seek to prevent the dealer-customers from securing "Cape Cod Shirts" from any other source;

(e) Has, within the time aforementioned, utilized a system whereby customer-dealers were, and are, requested to, and do, cooperate with the respondent in reporting to the respondent the names of competitors and other dealer-customers who were, and are, selling (or were suspected of selling) "Cape Cod Shirts" at resale prices below the prices fixed by the respondent for the sale of its products; and

(f) Has, within the time aforementioned, reinstated, and does reinstate, as distributors of its products, dealer-customers previously

cut off or withdrawn from the list of selected dealer-customers for failure to resell "Cape Cod Shirts" at the prices suggested and fixed by the respondent, upon the basis of the declarations, assurances, statements, promises and other similar expressions, as the case may be, by said distributors, which satisfy the respondent that such distributors will thereafter resell "Cape Cod Shirts" at the prices suggested and fixed by the respondent.

PAR. 9. Dealer-customers selling respondent's merchandise have repeatedly cooperated, and do cooperate with the respondent in reporting to the respondent instances of price cutting of "Cape Cod Shirts", in their respective localities, and in many cases have reported specifically the names of such price cutters, and have requested, and do request respondent to discontinue selling to said price cutters; and respondent has approved and furthered such action on the part of the dealer-customers selling its products, by expressing its appreciation of such notification by letters of reply to such dealer-customers. Upon receipt of such reports, respondent has investigated, and when the reported price cutting has been confirmed, it has refused to supply the price cutters with further goods.

PAR. 10. Individual dealer-customers, as shown by their letters and otherwise, have made statements to the effect that they will support respondent and cooperate with it in its selling policy, and that they prefer to deal with respondent, and will push its products on account of its refusal to supply goods to price cutters.

PAR. 11. The respondent, by its policy of maintaining resale prices and refusing to sell retail dealers failing to adhere to such prices, protects and has protected the relatively higher cost and less efficient retail dealer against the competition of relatively lower costs and more efficient retail dealers.

PAR. 12. The result of the fixing of said prices, as aforesaid, has been and is to eliminate competition in prices among retailers handling products manufactured by the respondent, thus preventing retailers, and especially the lower cost and more efficient establishments, from selling respondent's products at prices which they may deem adequate and which are warranted by their costs and selling efficiency heretofore set out, whereby such portions of the public as require or prefer the products of the respondent are compelled to pay enhanced prices therefor.

CONCLUSION

That the methods of competition set forth in the foregoing findings are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of an Act of Congress, approved September 26, 1914, entitled "An

Order

21 F. T. C.

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 respondent, testimony and evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief filed herein by John L. Hornor, counsel for the Commission, filing of brief and oral argument having been waived by James P. McGuire, counsel 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 ordered, That respondent, Cape Cod Shirt Company, Inc., its officers, directors, agents, servants and employees, cease and desist from carrying into effect a policy of fixing and maintaining uniform prices at which the articles manufactured, sold and shipped by it in interstate commerce, shall be sold by its customers or dealers, by—

(1) Entering into contracts, agreements and understandings with customers or dealers, requiring or providing for the maintenance of specified resale prices on products manufactured by respondent;

(2) Requesting dealers to report competitors who do not observe the resale prices suggested by respondent, or acting on the reports so obtained by refusing, or threatening to refuse, sales to dealers so reported;

(3) Requesting or compelling salesmen or agents to assist in such policy by reporting dealers who do not observe the suggested resale price, or acting on reports so obtained by refusing, or threatening to refuse sales to dealers so reported;

(4) Refusing to sell its products to dealers previously cut off, unless and until they have given satisfactory assurance of their purpose to maintain respondent's resale prices, as a condition of reinstatement; and

(5) Utilizing any other cooperative means of accomplishing the maintenance of uniform resale prices fixed by the respondent.

It is further ordered, That the respondent, Cape Cod Shirt Company, Inc., shall file with the Commission within 60 days after the service upon it of a copy of this order, its report in writing, stating 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

HARRY SACHNOFF, DOING BUSINESS UNDER THE
TRADE NAME OF PARK ROW PEN COMPANY, AND
ARGO PEN-PENCIL COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2332. Complaint, Mar. 15, 1935—Order, Dec. 11, 1935*

Where an individual engaged in the business of assembling fountain pens, the parts of which it purchased from various jobbers, and in the sale of such pens, and pencils, at wholesale, in competition with the products of other dealers, assemblers and manufacturers; and a corporation similarly engaged, the stock of which was owned by said individual, his wife and son, who constituted, respectively, its president, treasurer, and secretary; in the course and conduct of their aforesaid businesses—

- (a) Held themselves out as manufacturers of such pens and pencils, and made use of corporate stationery, advertising matter, and invoices upon which were printed the words "Manufacturers of Pens and Pencils", and "Factory, Passaic, N. J.", notwithstanding the fact they neither owned controlled nor operated a plant or factory in which their said products were made, and said corporation did not own, operate or control a factory in said city; and
- (b) Caused pen points placed in certain of the fountain pens assembled and sold by them to be stamped or imprinted "DURIGOLD 14", notwithstanding the fact that said pen points were not made of gold or gold alloy and were not of 14-carat fineness, but, thinly gold-plated, were manufactured from stainless steel and chrome, and their cost was only a small proportion of what the price of the solid 14-carat points would have been;

With capacity and tendency to mislead and deceive many among the purchasing public and trade as to the composition of said fountain pen points, and into believing that in dealing with said individual and corporation they were patronizing a manufacturer and thereby benefiting through elimination of the middleman's profit:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Morton Nesmith for the Commission.

COMPLAINT

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