

Complaint

IN THE MATTER OF
SESSIONS CLOCK COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2682. Complaint, Jan. 9, 1936—Decision, Feb. 27, 1936*

Where a corporation engaged in the manufacture of spring and electric clocks under various trade names, shipped certain of its clocks in cartons, the label of which contained the legend "Midland—Mahogany—60 Cycles Only—Sessions Synchronous Electric Clock", and was displayed by retail dealers so as to be observed by customers; notwithstanding fact that product involved was not made of mahogany; with result that its customers, chiefly retail, and said retailers' own countless customers bought clocks by reason of such false, deceptive and misleading statement and representation, and prospective sales of products of competitors were thereby diverted from them to it:

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. T. H. Kennedy for the Commission.

Mink & Beach, of Bristol, Conn., for respondent.

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 Federal Trade Commission having reason to believe that Sessions Clock Company, a corporation, has been or is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Sessions Clock Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business at Forestville in said State. It is now and for more than two years last past has been engaged in the manufacture of clocks and in the selling thereof between and among the various States of the United States and in the District of Columbia and has caused and still causes such clocks when sold by it to be transported from its place of business in Connecticut aforesaid to purchasers (chiefly

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retailers) thereof, some located in the State of Connecticut and others located in the various other States of the United States and in the District of Columbia and there has been for more than two years last past and still is a constant current of trade and commerce by respondent in clocks manufactured by it between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business respondent is now and for more than two years last past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of clocks between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business described in paragraph 1 hereof, respondent for more than two years last past has by means of catalogs, labels, advertising matter and by other means represented and still represents that the cases of the clocks manufactured and sold by it to be "mahogany" when in truth and in fact such clock cases are and have been made of woods other than mahogany wood; that is to say wood other than that from the tree of the genus *Swietenia* of the tree family *Meliaceae*. There is a preference on the part of a substantial number of retail dealers in clocks and on the part of a substantial portion of the purchasing public for clocks the cases of which are made of mahogany. The aforesaid representation by respondent that the cases of the clocks sold by it are made of mahogany wood has had and still has a capacity and tendency to mislead and deceive and has misled and deceived and still misleads and deceives retailers and the purchasing public into the erroneous belief that the cases of clocks so designated are and have been made of mahogany wood and to purchase respondent's clocks in such erroneous belief. The aforesaid representation by the respondent has placed and still places in the hands of retailers of clocks the means of misleading and deceiving the purchasing public.

PAR. 3. There are among the competitors of respondent mentioned in paragraph 1 hereof, manufacturers of clocks the cases of which are made of mahogany wood who truthfully represent such cases to be made of mahogany wood. By the representations made by respondent as set out in paragraph 2 hereof trade has been and still is diverted to respondent from such competitors. Thereby substantial injury has been done and still is being done by respondent to substantial competition in interstate commerce.

PAR. 4. The above acts and things done by respondent are all to the injury and prejudice of the public and competitors of respondent in interstate 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.

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 January 9, 1936, issued its complaint in this proceeding, and on January 11, 1936, said complaint was served upon Sessions Clock Company, the respondent, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent answered said complaint, and in said answer admitted the allegations of the complaint and the facts therein set forth to be true and stated that it waived hearing on the charges set forth in the complaint, that it refrained from contesting proceeding, and that it consented that the Commission make, enter, issue and serve upon it without hearing or other intervening procedure, findings as to the facts and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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, Sessions Clock Company, is and has been since 1902 a corporation duly organized and existing under the laws of the State of Connecticut, having at all said times its principal factory and place of business at Forestville in said State.

PAR. 2. Respondent is and has been since 1902 engaged in the manufacture of spring and electric clocks. The trade names of said clocks have been and are: "Midland-Electric", "Moline-Electric", "Milan-Electric", "Moffitt-Electric", "No. 81M-Electric", "No. 80M-Electric" and "Westminster 21-Electric", and throughout said period has been and still is engaged in the sale of said clocks to various individuals, firms and corporations, chiefly retailers located in the District of Columbia and in the various States of the United States other than the State of Connecticut, and has caused and still causes its said clocks when so sold by it to be transported, in commerce,

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from its principal factory and place of business at Forestville, Conn., to, into and through said other States and the District of Columbia to the said individuals, firms and corporations, chiefly retailers, to whom the said clocks were sold by the respondent.

PAR. 3. During the times above mentioned and referred to other corporations, firms, and individuals located in the various States of the United States have been engaged in the manufacture and sale of products similar to those of respondent above referred to, which products, when sold, are shipped or caused to be shipped by said competitors to corporations, firms and individuals, chiefly retailers, located in the various States of the United States other than the State or States of origin of such shipments and in the District of Columbia. The respondent during the aforesaid times was and still is in competition in commerce in the sale of its products with said other corporations, firms and individuals likewise engaged in the manufacture, sale and distribution of products similar to those of respondent hereinabove described.

PAR. 4. Respondent has shipped in interstate commerce certain of its clocks in cartons bearing labels upon which the following statement with respect to the clocks contained therein appears:

Midland—Mahogany—60 Cycles Only—Sessions Synchronous Electric Clock.

Respondent's products have been received by retailers in the course of the business transactions of the respondent hereinabove described and have been displayed to the purchasing public in their places of business in the various States of the United States, other than the State of Connecticut and the District of Columbia and the clocks have been displayed to the purchasing public by said retailers in connection with the display of said cartons in such a way that the customers of said retailers observe the statement above referred to appearing on the label of the cartons. The representation is thereby conveyed not only to retailers but to ultimate purchasers and prospective purchasers of respondent's product that the products of respondent and, especially the Midland Electric Clock, are constructed with cases made of mahogany wood. As a matter of fact no mahogany wood is used in the construction of the case of the Midland Electric Clock and the aforesaid representation by the respondent that the case of said clock is made of mahogany wood is untrue.

PAR. 5. As a result of the above-described representation respondent's customers, chiefly retailers and countless customers of said retailers, have purchased respondent's product through the false, deceptive and misleading statement and representation of respondent.

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ent, and prospective sales of respondent's competitors' products have been diverted from respondent's competitors thereby.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors and 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 come on for final hearing by the Federal Trade Commission upon respondent's answer admitting the allegations of the complaint and the facts therein set forth to be true and stating that said respondent desires to waive hearing on charges set forth in the complaint, that it refrains from contesting the proceeding and that it consents that the Commission may make, enter, issue, and serve upon it without hearing or other intervening procedure findings as to the facts and an order to cease and desist from the methods of competition alleged in the complaint and the Commission having found the facts and arrived at its conclusion drawn therefrom and served and filed said findings as to the facts and said conclusion and being fully advised in the premises;

It is now ordered, That respondent, Sessions Clock Company, a corporation, its officers, agents, representatives, and employees in connection with the advertising, offering for sale and sale in interstate commerce of clocks cease and desist from:

Advertising or in any way otherwise representing directly or by implication by means of catalogs, labels, advertising matter, stickers, or labels attached to containers of its products or in any manner or by any means whatsoever that the cases of clocks manufactured or sold by the respondent and not made from wood derived from trees of the genus *Swietenia* of the *Meliaceae* family, otherwise known as mahogany, are mahogany.

It is further ordered, That the respondent, Sessions Clock Company, shall within 30 days from the date of service upon it of this order file with the Commission a report in writing setting forth the manner and form in which it has complied with the order herein set forth.

IN THE MATTER OF
THE GOODYEAR TIRE & RUBBER COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 2116. Complaint, Mar. 1, 1935¹—Decision, Mar. 5 1936

DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2—SAVING PROVISOS—QUANTITY DISCOUNTS OR PRICES—WHETHER JUSTIFIED—COST AS CRITERION—ANNUAL SALES VOLUME AS BASIS FOR DISCOUNT

In arriving at a price on account of quantity sold, some standard of comparison is necessary and that is the relation between price and quantity, and in arriving at this relation, factors that go to make up price because of quantity are to be taken into account and given reasonable weight in determining whether a price discrimination is legal or illegal, and a difference in price is not on account of quantity within the meaning of the proviso in question, unless it is based on a difference in cost and is reasonably related to and approximately no more than such difference, since otherwise the discrimination would create an unjust preference and unfair competitive conditions. Thus, while quantity sales are cheaper than small sales and, to this extent, economically justified, quantity discount based on the amount of annual sales constitutes price discrimination in violation of the provisions of the section unless it can be shown that it represents and fairly approximates lower costs.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—SAVING PROVISOS—QUANTITY DISCOUNTS OR PRICES—WHETHER JUSTIFIED—QUANTITIES INVOLVED—WEIGHT—ECONOMIC UTILITY OF LARGE PURCHASES AS DICTATING ULTIMATE BOUNDS

In weighing the question of quantity under the proviso in question and the effect to be given same, it is clear that said proviso could only have been intended to preserve to the large buyer the inherent economies of large purchases and that quantity discounts are exempted because they involve some economic utility that should be preserved so that a difference in quantity under the proviso does not permit discrimination in price without limit or restraint but constitutes only a factor which must be given reasonable weight in determining whether the discriminatory price is warranted. The quantity proviso, interpreted to mean that a manufacturer could discriminate with respect to quantity to any extent he desired, would render the section meaningless and ineffective.

DISCRIMINATION IN PRICE—CLAYTON ACT, SEC. 2—SAVING PROVISOS—QUANTITY DISCOUNTS OR PRICES—WHETHER JUSTIFIED—COST AS CRITERION—APPLICATION—RULE OF REASON—EQUALITY TO PURCHASERS AS UNDERLYING PRINCIPLE

In weighing a discount as respects the legality thereof under the quantity proviso, the discount is not to be condemned merely because it does not mathematically accord with cost differences, and such differences, where remote and unsubstantial, may be disregarded. The problem is a practical one

¹Amended.