

Complaint

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IN THE MATTER OF
FINISHING PRODUCTS 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 2430. Complaint, June 7, 1935—Decision, July 7, 1936

Where a corporation engaged in the manufacture of stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products and in the sale and distribution thereof to various wood finishing and furniture manufacturing concerns throughout the East and Middle Western States—

Gave and offered to give, through its president and vice-president and traveling salesmen, and for several years, gratuities in the form of money to superintendents and finishing foremen of customers and prospective customers, upon whose recommendations its customers and other users relied in the purchase of such products, and who were able to manipulate the same so that where products of equal quality and grade were competitively offered, and even an unequal product, one favored by them could be made to appear superior, without such employers being able to detect or discover such manipulation and without their knowledge, to induce such employee superintendents and foremen to purchase such lacquers, etc., in preference to or to the exclusion of lacquers, etc., made and sold by competitors, and to insure continued use of its said products and to induce such superintendents, etc., not to recommend purchase of those of competitors, or as rewards for having so induced their respective employers to purchase its lacquers, etc., and to cause them so to manipulate such lacquers, etc., that same would be made to appear superior to those of competitors; in pursuance of a policy directed to ethical sale of its products through the regular channels if possible, but, if not, to insuring continued sales through such secret payments;

With result that purchasers of lacquers, stains, fillers, and other furniture finishing products were induced to buy its products instead of those of competitors, who were prevented from competing successfully with it and were caused to suffer loss of business of those purchasers and prospective purchasers of lacquers, etc., whose employees had thus secretly received such monies from it, and trade was diverted to it from them, and with capacity and tendency so to induce, etc.; to the substantial injury of substantial competition in commerce:

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

Before *Mr. W. W. Sheppard* and *Mr. Charles F. Diggs*, trial examiners.

Mr. John L. Hornor for the Commission.

Jones, Hammond, Buschmann & Gardner, of Indianapolis, Ind., for respondent.

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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

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Federal Trade Commission, having reason to believe that Finishing Products Company, Inc., 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 of Congress, and in violation of Section 5 of said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation, organized and doing business by virtue of the laws of the State of Indiana, having its principal office and factory in the city of Indianapolis, State of Indiana; and is now and for more than five years last past has been engaged in the business of manufacturing stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products, and in the sale and distribution thereof to various wood-finishing concerns and furniture manufacturing concerns located throughout the East and Middle-Western States, and causes said products when sold to be transported from its principal place of business in the city of Indianapolis, State of Indiana, to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than five years last past a course of trade and commerce by the said respondent in such stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products, between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent from time to time during a period of more than five years last past has been offering to and giving superintendents, foremen, and other employees of the above mentioned wood-finishing concerns and furniture manufacturing concerns to whom respondent sells its said products, without the knowledge or the consent of their respective employers, substantial sums of money and other things of equal value as inducements to influence said employers to purchase from said respondent the said above described commodities, to recommend such purchases to said employers, to recommend to said employers the use of respondent's products, or as promised gratuities for having induced such purchases by such employers, or for having recommended the use of respondent's products to said employers.

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PAR. 3. The above acts and things done by respondent as aforesaid have tended to induce and have induced the purchase of respondent's products by various wood-finishing concerns and furniture manufacturing concerns, and have tended to divert trade and have diverted trade from competitors of respondent and have thereby injured such competitors of respondent.

PAR. 4. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of the respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute an unfair method 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.

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 June 7, 1935, issued and served its complaint in this proceeding upon respondent, Finishing Products 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 W. W. Sheppard and Charles F. Diggs, examiners of the Commission, theretofore duly designated by it, and in defense of the allegations of the complaint by W. W. Hammond, 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, briefs in support of the complaint and in defense 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, Finishing Products Company, Inc., is a corporation organized and doing business by virtue of the laws of the State of Indiana, having its principal office and factory in the city of Indianapolis, State of Indiana; and is now and for more

than five years last past has been engaged in the business of manufacturing stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products, and in the sale and distribution thereof to various wood-finishing concerns and furniture manufacturing concerns located throughout the East and Middle-Western States, and causes said products when sold to be transported from its principal place of business in the city of Indianapolis, State of Indiana, to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business, and there is now and has been for more than five years last past a course of trade and commerce by the said respondent in such stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products, between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, respondent is, and at all times hereinafter mentioned has been, in competition with other individuals, partnerships, and corporations engaged in the manufacture of stains, lacquers, paints, fillers, sealers, and incidental wood-finishing products and in the sale and distribution thereof in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. The respondent, Finishing Products Company, Inc., in the course of its business as described in paragraph 1 hereof, acting by its president, Walter J. Murray, its former vice-president, Frank A. Metzger, and its traveling salesman, David G. Small, for several years prior to 1935 gave, and offered to give gratuities in the form of money to superintendents and finishing foremen employed by furniture manufacturers and other purchasers of lacquers, stains, fillers, and other furniture-finishing products, in large quantities, without the knowledge or consent of the employers or principals of such employees, to induce such employees to recommend to their respective employers or principals the lacquers, stains, fillers, and other furniture-finishing products manufactured and sold by the respondent, the Finishing Products Company, Inc., and to induce their said employers to purchase such lacquers, stains, fillers, and other furniture-finishing products in preference to, or to the exclusion of, lacquers, stains, fillers, and other furniture-finishing products manufactured and sold by competitors of said respondent, or as rewards to said employees for having induced their respective employers to purchase lacquers, stains, fillers, and other furniture-finishing products manufactured and sold by respondent, the Finishing Products Company, Inc., and to cause said employees to so manipulate these lacquers, stains, fillers, and other furniture-finishing products of the respondent, the Finishing Products Company, Inc., that the Finishing Products Company,

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Inc.'s products would be made to appear superior to the products of respondent's competitors. The Finishing Products Company, Inc., has from time to time appropriated funds which were apportioned and disbursed by Walter J. Murray, its president, Frank A. Metzger, its former vice-president, and David G. Small, its former traveling salesman, as aforesaid, for the purpose of having such officers and salesmen deliver such funds to employees of customers for the purposes aforesaid.

PAR. 3. During the years 1930, 1931, 1932, and 1933, the respondent, Finishing Products Company, Inc., in the course of its business as described in paragraphs 1 and 2 hereof, and for the purposes set out in paragraph 2 hereof, offered to give, and did give, monies or gratuities to superintendents and finishing foremen employed by respondent's customers and prospective customers, as follows, to wit:

1. Through the medium of Walter J. Murray, its president, it offered to, and attempted to, secretly pay monies to the finishing foreman of the Phoenix Chair Company, and to a finishing foreman of the Sheboygan Novelty Company, later known as the Fashion Furniture Company;

2. Through the medium of its president, Walter J. Murray, it secretly paid monies to the superintendent of the Cron-Kills Company, Piqua, Ohio, and to the finishing foreman of the Appleton Chair Company, Appleton, Wis.

3. Through the medium of Frank A. Metzger, its vice-president, it secretly paid monies to the finishing foreman of the Phoenix Chair Company, Sheboygan, Wis.; to the finishing foreman of Joerns Bros., Stevens Point, Wis.; to the finishing foreman of Richardson Bros., Sheboygan Falls, Wis.; to the finishing foreman of the Appleton Chair Company, Appleton, Wis.; to the finishing foreman of the Cron-Kills Company, Piqua, Ohio; to the finishing foreman, and to the superintendent of the Northern Furniture Company, Sheboygan, Wis.; and

4. Through the medium of its salesman, David G. Small, it secretly paid monies to the finishing foreman of the Herman Miller Furniture Company, Zeeland, Mich.

PAR. 4. The aforesaid sales policy of respondent, Finishing Products Co., Inc., was dominated and controlled by Walter J. Murray, its president, which sales policy was to attempt to sell its products through the regular channels, and where this could not be done ethically, respondent sought to secretly pay monies to superintendents and finishing foremen of prospective customers in its efforts to sell its products; also, as a part of its policy, and to insure the continued use of respondent's products by customers, respondent sought to

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secretly pay, and did secretly pay monies to superintendents and finishing foremen of its customers to induce them not to recommend the purchase of similar products of its competitors.

PAR. 5. The customers of respondent and other users of such finishing products rely upon the recommendations of their superintendents and finishing foremen in the purchase of such products. Superintendents and finishing foremen are able to manipulate finishing products so that where products of equal quality and grade are offered for sale in competition (and even where a product is not the equal of another product) a product favored by the superintendents and finishing foremen can be made to appear superior to a competing product; the employers of superintendents and finishing foremen are not able to detect or find out such manipulation.

PAR. 6. The aforesaid acts and things done by the respondent have tended to induce, and have induced, purchasers of lacquers, stains, fillers, and other furniture finishing products to purchase the products of respondent in the place and stead of products of respondent's competitors; they have tended to prevent, and have prevented, competitors of respondent from competing successfully with respondent; they have tended to cause, and have caused, respondent's competitors to suffer the loss of the business of those purchasers and prospective purchasers of lacquers, stains, fillers, and other furniture finishing products whose employees have secretly received in the manner hereinbefore mentioned, such monies from the respondent; they have tended to and have diverted trade to respondent from its competitors, and have thereby done substantial injury to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce among the States of the United States 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, testimony and evidence taken before W. W. Sheppard, and Charles F. Diggs, examiners of the Commission heretofore duly designated by it in support of the charges of said complaint and in

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opposition thereto, briefs filed herein by John L. Horner, counsel for the Commission, and by W. W. Hammond, 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 the respondent, Finishing Products Company, Inc., its officers, agents, servants, representatives, and employees, in connection with the sale and offering for sale of lacquers, stains, fillers, and other wood-finishing products in interstate commerce forthwith cease and desist from giving and offering to give, directly or indirectly, to superintendents, and finishing foremen, and other persons employed by furniture manufacturers and other purchasers of lacquers, stains, fillers, and other furniture finishing products, without the knowledge and consent of such employers, sums of money or gratuities of any kind whatsoever to induce such employees to recommend to their respective employers or principals, the lacquers, stains, fillers, and other wood-finishing products manufactured and sold by the respondent, Finishing Products Company, Inc., or to induce their said employers to purchase such lacquers, stains, fillers, and other wood-finishing products in preference to, or to the exclusion of lacquers, stains, fillers, and other wood finishing products manufactured and sold by competitors of said respondent, Finishing Products Company, Inc., or as rewards to said employees for having induced their respective employers to purchase lacquers, fillers, stains, or other wood-finishing products manufactured and sold by the respondent, Finishing Products Company, Inc., or as a reward for protecting the products of the respondent, Finishing Products Company, Inc., from competition by the products of competitors of the respondent, Finishing Products Company, Inc.

And it is further ordered, That the respondent, Finishing Products Company, Inc., shall, within 60 days after the date of the service upon it 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 as hereinbefore set forth.

Syllabus

IN THE MATTER OF
POTOMAC DISTILLING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2443. Complaint, June 19, 1935.—Decision, July 7, 1936*

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, cordials, and other spirituous beverages, including the rectifying of alcoholic spirits through use of a still or stills employed by it in production of gin through redistillation of alcohol, bought by it, over juniper berries and other aromatics, and in selling said whiskies, etc., in substantial competition with (a) other corporations and individuals and concerns engaged in manufacture by distillation of whiskies and other spirituous beverages, and in sale thereof among the various States and in the District of Columbia, and (b) with other corporations, etc., engaged in business of purchasing, rectifying, blending, and bottling whiskies, etc., and in sale thereof in commerce as aforesaid—

Represented to customers, through use of word "Distilling" in its corporate name, printed on its stationery and advertising and on the labels attached to the bottles in which it sold and shipped its said products, and through the featuring of such name when accompanied by words "Bottled By", and in various other ways, and furnished such customers with means of representing to their vendees and to ultimate consuming public, that it was a distiller and that the whiskies and other spirituous beverages thus contained and labeled were by it made through process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture of the liquor was complete, as long definitely understood by wholesale and retail liquor industry and ultimate purchasing public from word "Distilling";

Notwithstanding fact that it was not a distiller and did not distill whiskies, etc., thus bottled, labeled, sold, and transported by it, nor own, operate, nor control any place or places where such beverages were made by process of distillation from mash, wort, or wash, but purchased its distilled spirits requirements from distillers and then rectified, bottled, and sold same in commerce to its wholesale and retail customers;

With effect of misleading and deceiving dealers and purchasing public into belief that it was a distiller and that the whiskies, etc., sold by it were made and distilled by it from mash, etc., as aforesaid, and of inducing dealers and purchasing public, on the part of a substantial portion of which there is a preference for purchase of spirituous liquors prepared and bottled by distillers, to buy the whiskies and other spirituous beverages bottled and sold by it, and of thereby diverting trade to it from competitors who do not, through their corporate or trade names or otherwise, misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies and other spirituous beverages, and with capacity and tendency so to mislead and deceive, etc.; to the substantial injury of substantial competition: