

IN THE MATTER OF
**THE I. T. S. COMPANY, THE NATIONAL FEDERATION OF
MASTER SHOE REBUILDERS, ITS OFFICERS AND
MEMBERS**

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

Docket 2802. Complaint, May 15, 1936—Decision, Jan. 22, 1937

Where a corporation engaged in sale at wholesale of rubber heels and soles to shoe findings jobbers and shoe repairers, but not to 5-and-10 cent stores, in competition with those who sell their products to such stores as well as to or through shoe manufacturers, shoe findings jobbers, and shoe repairers; and a voluntary nonprofit trade association of shoe repairers, and individual shoe-repairer members and officers of said association, acting officially and individually—

- (a) United in a common course of action and entered into an agreement, combination, and conspiracy to close the natural channels of distribution of the products of competitors who sell to aforesaid stores, and cause shoe manufacturers, shoe findings jobbers, shoe repairers, and hardware stores to boycott and refuse to deal with such manufacturers of and wholesale dealers in aforesaid products, who sell same to stores aforesaid, and thereby suppress competition among such manufacturers and wholesalers; and in the accomplishment of said end, severally and jointly, as the case might be—
- (b) Circularized channels of trade involved with literature which was falsely derogatory or defamatory as respects those manufacturers and wholesalers of rubber heels and soles who sell to aforesaid stores, and which designated sources of information as to the identity of such manufacturers and wholesalers who sold and who did not sell to stores in question, and circularized such channels with so-called "white lists" and "black lists" of such non-selling and selling manufacturers and wholesalers, and disseminated similar information to channels involved through and by their missionary men and sales force; and
- (c) Made use of other cooperative and individual means to carry out and make effective their aforesaid undertaking;

With result that trade in rubber heels and soles was unduly restrained among the States, competition among manufacturers and wholesalers, retailers and consumers, and manufacturers and wholesalers in their sales to retailers and among retailers in their sales to consumers was substantially suppressed, and consuming public was deprived of benefits that would naturally flow from normal competition among and between aforesaid wholesalers and other manufacturers, wholesalers, and retailers in aforesaid products:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John Darsey for the Commission.

Mr. G. A. Resek, of Lorain, Ohio, for respondents.

Complaint

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 each and all of the respondents named in the caption hereof have been and are 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, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The I. T. S. Company, is a corporation organized under the laws of the State of Ohio, with its office and principal place of business at 135 Maple Street, Elyria, Ohio. L. P. Tufford, C. H. Ingwer, A. G. Smith, and Helen Schuenemann are respectively president, vice president, and general manager, second vice president, and sales manager and secretary and treasurer of said corporation. The respondent is engaged in selling at wholesale rubber heels and soles to retail dealers located in the various States of the United States. Respondent purchases the aforesaid products in which it deals directly from B. F. Goodrich Company. Respondent, upon resale of the aforesaid products to the retail trade, causes said products to be transported from its place of business in Ohio to vendees at their respective points of location in the various States of the United States.

In the course and conduct of its aforesaid business the respondent has been and now is, in competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution, in commerce as herein set out, of similar and like products to be used for the same and similar purposes.

The channels of distribution in the trade commence with the wholesaler and flow through (a) shoe manufacturers, (b) shoe findings jobbers, (c) shoe repairers, (d) 5-and-10¢ stores, (e) hardware stores, to the ultimate consumer. The respondent confines practically all of its sales to the shoe findings jobbers and the shoe repairers and does not sell any of its products to the 5-and-10¢ stores. Some competitors of respondent do sell to the 5-and-10¢ stores as well as to the other four outlets aforesaid.

PAR. 2. Respondent, National Federation of Master Shoe Rebuilders, is a voluntary nonprofit trade association of shoe repairers, incorporated in 1924 under the laws of Delaware with a certificate to do business in the State of Ohio. George Benson, C. C. Zeigler,

Walter L. Green, and S. L. Orenstein are respectively president, vice president, treasurer, and executive secretary of said association, in charge of and conducting its affairs, and the principal place of business of said association is 1124 Chester Avenue, Cleveland, Ohio. The members of the association are many in number, the membership varying from time to time by the dropping out of old and the addition of new members, so that it is impracticable at any given time to name as parties respondent and bring before the Commission each and all of the members of said association without manifest inconvenience and delay; wherefore, the officers of said association made respondents herein individually and as such officers, are now here made respondents as representing each and all the members of said association.

PAR. 3. In or about the month of January 1935, the respondents, I. T. S. Company, National Federation of Master Shoe Rebuilders, and its officers aforesaid acting individually, united in a common course of action and entered into an agreement, combination and conspiracy to close the natural channels of distribution of the products of competitors of respondent who sell their products to the 5-and-10¢ stores and to cause the natural channels of trade, viz, the shoe manufacturers, the shoe findings jobbers, the repairers, and hardware stores, to boycott and refuse to deal with those manufacturers and wholesale dealers in the aforesaid products who also sell their products to the 5-and-10¢ stores, thereby suppressing competition among manufacturers of, and wholesale dealers in, the products aforesaid, and in such regard have used the following methods and practices:

(a) Respondent, I. T. S. Company, circularized the channels of trade, other than the 5-and-10¢ stores, with letters, pamphlets, literature, and advertisements in trade magazines (all of which it caused to be prepared, published, and distributed) to the following effect, gist, or meaning:

A New Year's resolution every shoemaker and jobber must make for 1935 prosperity: "In 1935 I will not buy rubber heels or soles made by manufacturers selling heels or stick-on soles to the 5-and-10¢ stores." * * * Now is certainly the time to make the New Year's resolution—to refuse to buy any more rubber heels from manufacturers who double-cross you by selling heels and stick-on soles to the 5-and-10¢ stores under some other brand name. You are a swell guy, these manufacturers say, and they are very fond of you and your orders—but they also like those car-load orders from the chain stores. Yet every heel and stick-on sole they sell the 5-and-10¢ stores means that you are cheated out of a heel or tap job. * * * The I. T. S. Company has always been on the side of the shoemaker and jobber. We have never sold to the 5-and-10¢ stores, any chain store, or shoe manufacturer.

* * * * *

Complaint

* * * We know and we'd like to give you the information as to what concerns are selling to the 5-and-10¢ stores, but our legal counsel advises us that it would be unethical for us to do so, that we might be subject to prosecution for unfair competition and instituting a boycott against individual companies. But here's where you can get the information: The secretary, or officers of your local shoe repairers' association, can get this information through—

Mr. S. L. Orenstein, Executive Secretary, The National Federation of Master Shoe Rebuilders, 405 Chester—12th Street Building, Cleveland, Ohio.

* * * Stick to your guns, refuse to buy from any heel manufacturer supplying your worst competition, the 5-and-10¢ stores, with either heels or stick-on soles, and 1935 should be the beginning of more shoe repairing for the repair shops and better profits for you and your fellow shoemakers.

Respondent, I. T. S. Company, also has caused and causes information to the same effect, gist and meaning as that set forth in subsection (a) of this paragraph to be disseminated to the trade in the various States of the United States by its missionary men and sales force.

(b) Respondent, National Federation of Master Shoe Rebuilders, in response to inquiries made of it as the result of the reference to it as a source of information in the printed matter distributed by respondent, I. T. S. Company, and the reference made to it by the missionary men and sales force of I. T. S. Company, as described *supra*, caused to be prepared and forwarded to said inquirers a list of manufacturers and wholesale rubber heel and sole dealers who do not sell their products to 5-and-10¢ stores.

(c) Respondent, I. T. S. Company, persecutes and harasses the shoe findings jobbers who handle the products of manufacturers or wholesalers who sell to 5-and-10¢ stores by continuously urging them by persuasion, intimidation, threats of boycott, to cease handling the products of such concerns.

(d) Respondents use other cooperative and individual means to carry out and make effective their aforesaid undertaking.

PAR. 4. The said agreement, combination, and conspiracy, and the things done thereunder and pursuant thereto, as hereinabove alleged, have had and have the effect of unduly restraining trade among the States of the Union in rubber heels and soles; of substantially suppressing competition among manufacturers and wholesalers, retailers and consumers, and among manufacturers and wholesalers in their sales to retailers, and among retailers in their sales to consumers; and of depriving the public of benefits that would flow from normal competition among and between the respondent, I. T. S. Company, manufacturers, wholesalers, and retailers; and such agreement, combination, and conspiracy, and the things done thereunder and pursuant thereto, as above alleged, constitute unfair methods of

competition within the meaning of an Act of Congress approved September 26, 1914, above entitled, and are to the prejudice of the public interest.

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 May 15, 1936, issued and served its complaint in this proceeding upon the respondents, The I. T. S. Company, The National Federation of Master Shoe Rebuilders, George Benson, C. C. Zeigler, Walter L. Green, and S. L. Orenstein, individually and as president, vice president, treasurer, and executive secretary respectively, of said association, charging them 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 other evidence in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by G. A. Resek and S. L. Orenstein, attorneys for the respondents; and said testimony and other evidence were 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 other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now 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, The I. T. S. Company, is an Ohio corporation with an office and principal place of business at 135 Maple Street, Elyria, Ohio. It is engaged in selling at wholesale rubber heels and soles to retail dealers located in the various States of the United States. It purchases its products principally from B. F. Goodrich Company, and upon resale of the same to the retail trade causes them to be transported from its place of business in Ohio to vendees located in the various States of the United States.

In the course and conduct of its business it has been and now is in competition with other individuals, firms, partnerships, and corpora-

tions engaged in the sale and distribution in commerce as herein set out, of similar and like products, or products to be used for the same or similar purposes.

The channels of distribution in the trade begin with the wholesaler and flow through the shoe manufacturer, the shoe findings jobbers, the shoe repairers, the 5-and-10¢ stores, and hardware stores, to the ultimate consumers. The respondent confines practically all of its sales to the shoe findings jobbers and the shoe repairers and does not sell any of its products to the 5-and-10¢ stores. There are competitors of respondent who sell some of their products to the 5-and-10¢ stores as well as to the other four channels of trade set forth above.

PAR. 2. The respondent, The National Federation of Master Shoe Rebuilders, is a voluntary nonprofit trade association of shoe repairers. It is a Delaware corporation with a certificate to do business in the State of Ohio. George Benson, C. C. Ziegler, Walter L. Green, and S. L. Orenstein are respectively, president, vice president, treasurer, and executive secretary of said association, and have charge of and conduct its affairs. The present place of business of said association is 1124 Chester Avenue, Cleveland, Ohio. The members of the association are many in number, the membership varying from time to time by the dropping out and the addition of new members, making it impracticable at any given time to name the membership of the association. The officers of said association, named *supra* this paragraph, are individual shoe repairers, and as such are members of said association.

PAR. 3. In or about the month of January 1935, the respondents, The I. T. S. Company, The National Federation of Master Shoe Rebuilders, and its officers, acting officially and individually, united in a common course of action and entered into an agreement, combination, and conspiracy to close the natural channels of distribution of the products of competitors of respondents who sell their products to the 5-and-10¢ stores, and to cause the natural channels of trade, viz, the shoe manufacturers, the shoe findings jobbers, the shoe repairers, and hardware stores, to boycott and refuse to deal with those manufacturers and wholesale dealers in the aforesaid products who sell their products to the 5-and-10¢ stores, thereby suppressing competition among manufacturers of, and wholesale dealers in the products aforesaid. The following methods and practices were used to accomplish this end:

(a) The respondent, The I. T. S. Company, circularized the channels of trade, other than the 5-and-10¢ stores, with letters, pamphlets, literature, and advertisements in trade magazines (all of which it

caused to be prepared, published, and distributed) to the following effect, gist, or meaning:

A New Year's resolution every shoemaker and jobber must make for 1935 prosperity: "In 1935 I will not buy rubber heels or soles made by manufacturers selling heels or stick-on soles to the 5-and-10¢ stores". * * * Now is certainly the time to make the New Year's resolution—to refuse to buy any more rubber heels from manufacturers who double-cross you by selling heels and stick-on soles to the 5-and-10¢ stores under some other brand name. You are a swell guy, these manufacturers say, and they are very fond of you and your orders—but they also like those car-load orders from the chain stores. Yet every heel and stick-on sole they sell the 5-and-10¢ stores means that you are cheated out of a heel or tap job. * * * The I. T. S. Company has always been on the side of the shoemaker and jobber. We have never sold to the 5-and-10¢ stores, any chain store, or shoe manufacturer.

* * * We know and we'd like to give you the information as to what concerns are selling to the 5-and-10¢ stores, but our legal counsel advises us that it would be unethical for us to do so, that we might be subject to prosecution for unfair competition and instituting a boycott against individual companies. But here's where you can get the information: The secretary, or officers of your local shoe repairers' association, can get this information through—

Mr. S. L. Orenstein, Executive Secretary,
The National Federation of Master Shoe Rebuilders,
405 Chester—12th Street Building,
Cleveland, Ohio.

* * * Stick to your guns, refuse to buy from any heel manufacturer supplying your worst competition, the 5-and-10¢ stores, with either heels or stick-on soles, and 1935 should be the beginning of more shoe repairing for the repair shops and better profits for you and your fellow shoemakers.

The respondent, The I. T. S. Company, also caused information to the same effect, gist, and meaning as that set forth in subsection (a) of this paragraph, to be disseminated to the trade in the various States of the United States by its missionary men and sales force.

(b) The respondent, The National Federation of Master Shoe Rebuilders, acting by and through its officers in response to inquiries made of it as a result of the reference to it as a source of information in the printed matter distributed by the respondent, The I. T. S. Company, and the reference made to it and its officers by the missionary men and sales force of The I. T. S. Company, as described *supra*, caused to be prepared and forwarded to said inquirers a list (so-called white list) of manufacturers and wholesale rubber heel and sole dealers who do not sell their products to 5-and-10¢ stores.

(c) The respondent, The I. T. S. Company, continuously urged shoe findings jobbers by persuasion, intimidation, and threats of boycott, to cease handling the products of manufacturers or wholesalers of rubber heels and soles who sell their products to the 5-and-10¢ stores.

(d) All of the respondents used other cooperative and individual means to carry out and make effective their aforesaid undertaking.

PAR 4. As a result of the aforesaid agreement, combination, and conspiracy, and the things done thereunder and pursuant thereto, as hereinabove set forth, trade in rubber heels and soles was unduly restrained among the States of the Union; competition among manufacturers and wholesalers, retailers and consumers, manufacturers and wholesalers in their sales to retailers, and among retailers in their sales to consumers, was substantially suppressed; and the consuming public was deprived of the benefits that would naturally flow from normal competition among and between the respondent, The I. T. S. Company, and other manufacturers, wholesalers, and retailers, dealing in rubber heels and soles.

CONCLUSION

The aforesaid acts and practices of the respondents, The I. T. S. Company, The National Federation of Master Shoe Rebuilders, its officers and members; George Benson, C. C. Zeigler, Walter L. Green, and S. L. Orenstein, are 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, 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 answers of respondents, testimony and other evidence taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said 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 ordered, That the respondents, The I. T. S. Company and its officers; The National Federation of Master Shoe Rebuilders, its officers, both individually and in their official capacity, and its individual members, and their respective agents, representatives, and employees, or any group of such respondents or their agents, either with or without the cooperation of persons not parties hereto, do forthwith cease and desist from:

Order

24 F. T. C.

1. Combining and conspiring or cooperating and confederating together, among themselves or with others, to close natural channels of trade to manufacturers and wholesalers of rubber heels and soles who sell to the 5-and-10¢ stores;

2. Circularizing the channels of trade of the rubber heel and sole industry with literature falsely derogatory or defamatory to manufacturers and wholesalers of rubber heels and soles who sell to the 5-and-10¢ stores, and which designates sources from which information may be obtained disclosing the identity of manufacturers and wholesalers of the said products who sell to the 5-and-10¢ stores, or who do not sell to the 5-and-10¢ stores;

3. Publishing or circularizing the channels of trade of the rubber heel and sole industry with lists (so-called "white lists" or "black lists") containing the names of manufacturers and wholesalers of said products who do or do not sell to the 5-and-10¢ stores;

4. Disseminating information to the channels of trade of the rubber heel and sole industry through and by their missionary men and sales force, that certain manufacturers and wholesalers of the said products sell or do not sell to the 5-and-10¢ stores;

5. Using any other cooperative or coercive means to suppress competition in the sale and distribution of rubber heels and soles, or to close the natural channels of trade in such products to manufacturers and wholesalers who sell to the 5-and-10¢ stores.

It is further ordered, That the respondents shall, within 60 days after service upon them 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 this order.

Syllabus

IN THE MATTER OF

F. L. McWETHY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2853. Complaint, June 26, 1936—Decision, Jan. 22, 1937*

Where an individual engaged in the manufacture, sale and distribution of a pharmaceutical preparation which was known as "McWethy's Home Treatment," and was in the form of pills and made up in packages sold for \$5.00, but, in some instances, to old customers for \$3.50—

Misrepresented, in advertising his said product in newspapers and in periodicals of interstate circulation which, in the main, reached readers in rural communities and small towns, that said preparation was an effective or valuable remedy or treatment for bladder, prostatic, kidney, and bowel troubles, and that it reached the underlying causes thereof and would cure or rid one of all such ailments, and that delay in taking such medicine might make it too late for one to treat his bladder ailment effectively, and misrepresented the functioning thereof through numerous statements of one sort and another of foregoing tenor, such as "Suffered 12 years. Bladder trouble now gone. * * * I have just finished two treatments and after 12 years of suffering, I can truthfully say I am free from bladder trouble," " * * * not only for the bladder, but helps the kidneys, liver, and bowels as well," "Now then why not get after this ailment and get rid of it?," etc., facts being said "Home Treatment" is not an effective remedy for such troubles and does not relieve systemic causes of kidney, bladder, and bowel ailments and troubles as represented, and aforesaid representations with respect to nature, value and effect of preparation in question were grossly exaggerated, misleading, and deceptive, and such product does not and will not accomplish results claimed therefor;

With capacity and tendency to lead purchasers and prospective purchasers of his said so-called "Home Treatment" into the belief that it constituted an effective or valuable remedy or treatment for such various ailments, and would reach the underlying causes of such troubles and cure or rid one of all such ailments, relieve weakened condition of the bladder due to enlarged prostate gland or to deranged condition of the kidneys, be beneficial in effect upon acid or rheumatic conditions of the blood, enable one, through action thereof, to avoid Bright's disease, and that delay might make it too late, etc., and to purchase his said product in substantial quantities in and on account of erroneous belief that his said various representations were true, and with result of thereby unfairly diverting trade to him from competitors, including manufacturers and distributors, and sellers and distributors of like and similar products, who truthfully advertise and represent the character and nature and therapeutic value of their respective products and do not advertise and otherwise represent, as the case may be, that such products have merit or therapeutic value which they do not have; to the injury of competition in commerce among the various States;