

Syllabus

IN THE MATTER OF
LETELLIER-PHILLIPS PAPER 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 3434. Complaint, May 21, 1938—Decision, Aug. 8, 1938

Where a corporation which was engaged in buying, packing, and selling waste paper, rags, and other waste materials, and had long had dominant control of the waste-paper business in the South and Southwest generally, and particularly in Louisiana, Texas, and Mississippi, so that large consumers of waste paper and waste materials in such section were dependent, to a large degree, upon it for their necessary supplies thereof, and other and smaller dealers therein were likewise dependent upon it for an outlet for their supplies of such materials; with intent, tendency, or effect of creating and maintaining in itself a monopoly in the trade territory in which it operated—

- (a) Threatened to discontinue all business relations with other waste-material dealers with whom it did a large business located in various States, should they continue purchasing from or selling to certain of its competitors located in the Southern States;
- (b) Threatened to cease supplying mills and other large consumers of waste products in the Southern States, dependent to a great extent upon it for their necessary supply thereof, with such materials in the event said consumers purchased such materials from certain of its competitors; and
- (c) Threatened to come into the territories of other dealers located in various States and enter into active competition with them if they persisted in purchasing from and selling to certain of its competitors located in such Southern States;

With capacity, tendency and effect, as a result of said acts and practices and others of similar nature, of monopolizing in its business of buying, packing, and selling waste paper, rags, and other waste materials in aforesaid States, unreasonably lessening, eliminating, restraining, and suppressing competition in industry in question, depriving purchasing and consuming public of advantages which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition therein, and otherwise operating as a restraint of trade and a detriment to the freedom of fair and legitimate competition in industry in question, and of obstructing natural flow of trade in channels of commerce between and among the several States and in the District of Columbia:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of competitors and the public and hindered and prevented competition in sale of aforesaid products and dangerously tended so to do, and unreasonably restrained commerce therein and constituted unfair methods of competition.

Complaint

27 F. T. C.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Gerard A. Rault for the Commission.

Mr. Paul J. Ganucheau, of New Orleans, La., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Letellier-Phillips Paper Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. Letellier-Phillips Paper Co., Inc., is a corporation created and existing under the laws of the State of Louisiana, with its principal office and place of business located at 617 South Front Street, New Orleans, La.

PAR. 2. Respondent is now and has been for more than 4 years last past engaged in the business of buying, packing, and selling waste paper, rags, and other waste materials of various kinds.

Respondent purchases said materials in various States of the United States and causes same to be transported to its warehouses located in the State of Louisiana. When sold, respondent causes said waste materials to be transported from its warehouses located in the State of Louisiana to its customers located in the various States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said waste materials bought, sold, and distributed by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the purchase, sale, and distribution of similar waste materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent for many years has had dominant control of the waste-paper business in the South and Southwest generally and particularly in the States of Louisiana, Texas, and Mississippi. As a result of this dominant control, large consumers of waste paper and waste materials in these sections of the country are dependent to a large degree upon respondent for their necessary supply of these

Complaint

materials. As a further result of said dominant control, other and smaller dealers of waste materials are dependent upon respondent for an outlet for their supplies of these materials.

PAR. 5. In the course and conduct of said business and for the purpose of creating and maintaining a monopoly in the waste-paper and other waste-material business in the Southern States, respondent has unfairly disparaged competitors and has endeavored to carry out its monopolistic purposes hereinabove stated by threats, intimidation, and attempts to boycott competitors. To further said purposes, respondent has, among other things:

(a) Communicated, through its officers, with other waste-material dealers with whom respondent does a large business located in various States of the United States, and threatened said dealers that respondent would discontinue all business relations with them should they continue purchasing from and selling to certain of respondent's competitors located in the Southern States;

(b) Communicated, through its officers, with mills and other large consumers of waste products in the Southern States dependent to a great extent upon respondent for their necessary supply of waste materials, and threatened said large consumers that respondent would cease to supply them with waste materials if said consumers purchased waste materials from certain of respondent's southern competitors;

(c) Communicated, through its officers, with other dealers located in various States of the United States, and threatened said dealers that respondent would come into their territories and enter into active competition with them if they persisted in purchasing and selling to certain of respondent's competitors located in the Southern States.

PAR. 6. The capacity, tendency, and effect of said acts and practices of respondent hereinabove set out and others of a similar nature are and have been to monopolize in said respondent the business of buying, packing, and selling waste paper, rags, and other waste material in the Southern States; to unreasonably lessen, eliminate, restrain, hamper, and suppress competition in said industry; to deprive the purchasing and consuming public of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in such industry; to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said industry, and to obstruct the natural flow of trade in the channels of commerce between and among the several States of the United States.

Findings

27 F. T. C.

PAR. 7. The acts and practices of respondent as herein alleged are all to the prejudice of competitors of respondent and of the public; have a dangerous tendency to and have actually hindered and prevented trade in the sale of waste materials in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained interstate commerce in said waste materials, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 21st day of May 1938 issued, and on the 24th day of May 1938 served, its complaint in this proceeding upon respondent, Letellier-Phillips Paper Co., 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, 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. Letellier-Phillips Paper Co., Inc., is a corporation created and existing under the laws of the State of Louisiana, with its principal office and place of business located at 617 South Front Street, New Orleans, La.

PAR. 2. Respondent is now, and has been for more than 4 years last past, engaged in the business of buying, packing, and selling waste paper, rags, and other waste materials of various kinds.

Respondent purchases said materials in various States of the United States, and causes same to be transported to its warehouses located in the State of Louisiana. When sold, respondent causes said waste materials to be transported from its warehouses located in the State of Louisiana to its customers located in the various States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said waste materials bought, sold, and distributed by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is in active and substantial competition with other corporations, and with partnerships and individuals, engaged in the purchase, sale, and distribution of similar waste materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent for many years has had dominant control of the waste-paper business in the South and Southwest generally, and particularly in the States of Louisiana, Texas, and Mississippi. As a result of this dominant control, large consumers of waste paper and waste materials in these sections of the country are dependent, to a large degree, upon respondent for their necessary supply of these materials. As a further result of said dominant control, other, and smaller, dealers in waste materials are dependent upon respondent for an outlet for their supplies of these materials.

PAR. 5. In the course and conduct of said business, and for the purpose of creating and maintaining a monopoly in the waste paper and other waste material business in the Southern States, respondent has unfairly disparaged competitors, and has endeavored to carry out its monopolistic purposes hereinabove stated, by threats, intimidation, and attempts to boycott competitors. To further said purposes, respondent has, among other things:

(a) Communicated, through its officers, with other waste material dealers, with whom respondent does a large business, located in various States of the United States, and threatened said dealers that respondent would discontinue all business relations with them should they continue purchasing from, and selling to, certain of respondent's competitors located in the Southern States;

(b) Communicated, through its officers, with mills and other large consumers of waste products in the Southern States dependent, to a great extent, upon respondent for their necessary supply of waste materials, and threatened said large consumers that respondent would cease to supply them with waste materials if said consumers purchased waste materials from certain of respondent's Southern competitors;

(c) Communicated, through its officers, with other dealers located in various States of the United States, and threatened said dealers that respondent would come into their territories and enter into active competition with them if they persisted in purchasing from, and selling to, certain of respondent's competitors located in the Southern States.

Order

27 F. T. C.

PAR. 6. The capacity, tendency, and effect of said acts and practices of respondent hereinabove set out, and others of a similar nature, are, and have been, to monopolize in said respondent the business of buying, packing, and selling waste paper, rags, and other waste materials in the Southern States; unreasonably to lessen, eliminate, restrain, hamper, and suppress competition in said industry; to deprive the purchasing and consuming public of the advantages they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in such industry; to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said industry; and to obstruct the natural flow of trade in the channels of commerce between and among the several States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of competitors of respondent and of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in the sale of waste materials in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained interstate commerce in said waste materials; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent is violating the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Letellier-Phillips Paper Co., Inc., its officers, representatives, agents, and employees, directly, or through any corporate or other device, in connection with its business of buying and selling waste materials in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Threatening, intimidating, or boycotting competitors, or attempting to intimidate or boycott competitors, because such competitors purchase from, or sell to, certain other competitors of the respondent;

741

Order

2. Threatening to discontinue, or discontinuing, business relations with waste material dealers because such dealers purchase from, or sell to, certain competitors of respondent;

3. Threatening to discontinue, or discontinuing, business relations with mills and other large consumers of waste materials, because said mills and other large consumers purchase such materials from certain of respondent's competitors;

4. Threatening that respondent will go into the trade territory of other dealers in waste materials located in various states of the United States, with whom it is not in direct competition, if such other dealers purchase from, or sell to, certain of the respondent's competitors;

for the purpose, and with the tendency or effect, of creating and maintaining in the respondent a monopoly in the trade territory in which it operates.

It is further ordered, That the respondent shall, within 60 days after 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 this order.

IN THE MATTER OF

FRED A. STOCK, TRADING AS STOCK'S NU-TONE TONIC

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

Docket 3448. Complaint, May 27, 1938—Decision, Aug. 9, 1938

Where an individual engaged in sale and distribution of a medicinal preparation designated "Stock's Nu-Tone Tonic"—

Represented, in advertising the same through radio broadcasts and other means, that said preparation constituted a tonic which toned up the digestive organs and promoted healthful sleep and a hearty appetite, and a remedy or treatment for underweight or weak or run-down condition and that tired feeling, and that use thereof would bring back the color to one's cheeks and make one feel strong, healthy, and more vigorous, and that thousands had been helped to health by it, and that it was a competent remedy in treating the common cold;

Facts being the therapeutically significant ingredients thereof were not such as to make the same dependable as a competent remedy in the treatment of the pathological condition mentioned, product was not a tonic and inclusion of word "tonic" in name thereof and references thereto as such were false, misleading, and deceptive, and it did not have the qualities or properties claimed therefor, would not bring back color to one's cheeks, help boys and girls who are thin, had not helped thousands of others to health, and various other representations made therefor were false and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all such statements and representations were true, and with the result that a substantial number of the purchasing public, induced by such representations, bought its said product and trade was diverted unfairly to him from competitors engaged in the sale and distribution of products designed for similar usage, and who truthfully advertise and represent the properties and effects of their respective products and the results that may be obtained from the use thereof; to the injury of competition in commerce:

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

Mr. Merle P. Lyon for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Fred A. Stock, an individual, trading as Stock's Nu-Tone Tonic, hereinafter referred to as the respondent, has violated the provisions of the 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: