

IN THE MATTER OF
**MUELLER COMPANY, A. Y. McDONALD MANUFACTURING
COMPANY, HAYS MANUFACTURING COMPANY, FAR-
NAN BRASS WORKS COMPANY, AND KITSON COMPANY**

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

Docket 3690. Complaint, Jan. 24, 1939—Decision, Apr. 5, 1939

Where five corporations engaged in manufacture and sale of corporation stops and curb stops, principal purchasers of which fittings for water works and gas systems were municipalities and owners of public utilities, who, because of substantial quantity used, bought said products through invitation for bids, for selection therefrom of member of industry for particular purchase, and constituting substantially all the manufacturers of such products and, prior to adoption of practices below set out, in active and substantial competition with each other and with other members of the industry, and which, but for said practices, would still have been in such active substantial competition; with intent of fixing and maintaining prices, suppressing price competition, restraining interstate trade, and eliminating competition between themselves, and suppressing competition and monopolizing said trade—

Entered into and engaged in, and carried out, a wrongful and unlawful agreement, combination, and conspiracy to maintain prices, suppress price competition, eliminate competition between themselves and restrain interstate trade and drive out competitors and monopolize trade aforesaid; and, in pursuance of said understanding, etc., and to carry out the same—

- (1) Agreed to fix and maintain, and did fix and maintain, prices at which said products were sold, and uniform terms and conditions covering sale thereof;
- (2) Agreed to submit, and did submit, in response to requests for bids, uniform and identical bids on such products; and
- (3) Used coercive measures to compel jobbers to maintain the prices thereon;

With result that the capacity, tendency and effect of such agreement, combination, etc., and their said acts and practices done thereunder and pursuant thereto, were to monopolize in themselves business of manufacture and sale of such products, and unreasonably to lessen, eliminate and restrain, and hamper and suppress competition in sale thereof in interstate commerce, and deprive purchasing public of 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 said industry, and otherwise to operate as a restraint of trade and detriment to the freedom of fair and legitimate competition in trade in question, and to obstruct natural flow of trade into channels of commerce:

1360

Complaint

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

Mr. Floyd O. Collins for the Commission.

Cushman, Darby & Cushman, of Washington, D. C., for respondents, with whom also appeared *Gunnison, Fish, Gifford & Chapin*, of Erie, Pa., for Hays Manufacturing Co., and *Ewing & Hecker*, of Cleveland, Ohio, for Farnan Brass Works Co.

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 Mueller Co., a corporation, A. Y. McDonald Manufacturing Co., a corporation, Hays Manufacturing Co., a corporation, Farnan Brass Works Co., a corporation, and Kitson Co., a corporation, hereinafter referred to as respondents, have 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. Respondent Mueller Co. is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its home office and principal place of business at 512 West Cerro Corda Street, Decatur, Ill.

Respondent A. Y. McDonald Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Iowa, with its home office and principal place of business at Dubuque, Iowa.

Respondent Hays Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business at 801 West Twelfth Street, Erie, Pa.

Respondent Farnan Brass Works Co. is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business at 1104 Center Street, Cleveland, Ohio.

Respondent Kitson Co. is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business at 2409 West Moreland Street, Philadelphia, Pa.

Complaint

28 F. T. C.

PAR. 2. All of the respondents herein named are now, and have been since their organization, engaged in manufacturing corporation stops and curb stops, and have been since their organization engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of said corporation stops and curb stops, and cause said products when sold to be shipped from their respective places of business through and into other States of the United States and into the District of Columbia to the purchasers thereof.

PAR. 3. The said respondents now constitute and have, during all the times herein mentioned, constituted substantially all of the manufacturers of curb stops and corporation stops. Prior to the adoption of the practices herein alleged, said respondents were in active and substantial competition with each other and with other members of the industry, and, but for the facts herein alleged, said respondents would now be in active, substantial competition with each other and with other members of the industry.

Said corporation stops and curbs stops are fittings used in water-works systems and gas systems, and the principal purchasers of curb stops and corporation stops are municipalities and owners of public utilities, and these purchasers, because of the substantial quantity used, purchase corporation stops and curb stops through invitations for bids, from which bids is selected the member of the industry from whom purchases of said products will be made for a given time or in a stated quantity.

PAR. 4. Some time prior to November 30, 1936, the respondents herein for the purpose of fixing and maintaining prices, suppressing price competition, restraining interstate trade, eliminating competition between themselves, suppressing competition and monopolizing said trade in said corporation stops and curb stops, entered into and engaged in, and have since carried out, a wrongful and unlawful agreement, combination and conspiracy to maintain prices, suppress price competition, eliminate competition between themselves, restrain interstate trade, drive out competitors and monopolize said trade and pursuant to and for the purpose of carrying out said understanding, agreement, combination and conspiracy have, among other things, done the following:

(a) Agreed to fix and maintain, and have fixed and maintained, the prices at which said products are sold.

(b) Agreed to fix and maintain, and have fixed and maintained, uniform terms and conditions covering the sale of said products.

(c) Agreed to submit, and have submitted, uniform and identical bids on said products when requests were made for such bids.

(d) Have used coercive measures to compel jobbers to maintain the prices of said products.

PAR. 5. The capacity, tendency, and effect of such agreement, combination, understanding and conspiracy and the acts and practices of the respondents, as set out herein, and many others not specifically described, are and have been to monopolize for said respondents the business of manufacturing and selling corporation stops and curb stops and to unreasonably lessen, eliminate and restrain, hamper and suppress competition in the manufacture and sale of said products in interstate commerce, and to deprive the purchasing public of the advantages of price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said industry, and to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

PAR. 6. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among the respondents in the sale of curb stops and corporation stops in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in the manufacture and sale of curb stops and corporation stops, 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 January 24, 1939, issued and served its complaint in this proceeding upon the respondents, Mueller Co., a corporation, A. Y. McDonald Manufacturing Co., a corporation, Hays Manufacturing Co., a corporation, Farnan Brass Works Company, a corporation, and Kitson Co., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On March 2, 1939, the respondents filed their answers in which answers the respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answers thereto, and the Commis-

sion having duly considered the matter and now 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 Mueller Co. is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its home office and principal place of business at 512 West Cerro Corda Street, Decatur, Ill.

The respondent A. Y. McDonald Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Iowa, with its home office and principal place of business at Dubuque, Iowa.

The respondent Hays Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business at 801 West Twelfth Street, Erie, Pa.

The respondent Farnan Brass Works Co. is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business at 1104 Center Street, Cleveland, Ohio.

The respondent Kitson Co. is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business at 2409 West Moreland Street, Philadelphia, Pa.

PAR. 2. All of the respondents are now, and have been since their organization, engaged in manufacturing corporation stops and curb stops, and have been since their organization engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of said corporation stops and curb stops, and cause and have caused said products when sold to be shipped from their respective places of business through and into other States of the United States and into the District of Columbia.

PAR. 3. The said respondents now constitute and for a number of years last past have constituted substantially all of the manufacturers of curb stops and corporation stops. Prior to the adoption of the practices hereinafter set out, said respondents were in active and substantial competition with each other and with other members of the industry, and, but for said practices, said respondents would now be

in active, substantial competition with each other and with other members of the industry.

Corporation stops and curb stops are fittings used in water works systems and gas systems, and the principal purchasers of curb stops and corporation stops are municipalities and owners of public utilities. These purchasers, because of the substantial quantity used, purchase corporation stops and curb stops through invitations for bids, from which bids is selected the member of the industry from whom purchases of said products will be made for a given period of time or in a stated quantity.

PAR. 4. Some time prior to November 30, 1936, the respondents, for the purpose of fixing and maintaining prices, suppressing price competition, restraining interstate trade, eliminating competition between themselves, suppressing competition and monopolizing said trade in said corporation stops and curb stops, entered into and engaged in, and have since carried out, a wrongful and unlawful agreement, combination and conspiracy to maintain prices, suppress price competition, eliminate competition between themselves, restrain interstate trade, drive out competitors and monopolize said trade and pursuant to and for the purpose of carrying out said understanding, agreement, combination and conspiracy have, among others, done the following acts and things:

(a) Agreed to fix and maintain, and have fixed and maintained, the prices at which said products are sold.

(b) Agreed to fix and maintain, and have fixed and maintained, uniform terms and conditions covering the sale of said products.

(c) Agreed to submit, and have submitted, uniform and identical bids on said products when requests were made for such bids.

(d) Have used coercive measures to compel jobbers to maintain the prices on said products.

PAR. 5. The capacity, tendency and effect of such agreement, combination, understanding and conspiracy and the acts and practices of the respondents done thereunder and pursuant thereto are and have been to monopolize for said respondents the business of manufacturing and selling corporation stops and curb stops and to unreasonably lessen, eliminate and restrain, hamper and suppress competition in the sale of said products in interstate commerce, and to deprive the purchasing 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 said industry, and to otherwise operate as a restraint of trade

and a detriment to the freedom of fair and legitimate competition in said trade and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents and each of them are all to the prejudice of the public 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 answers of respondents in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they and each of them waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

Now, therefore, it is hereby ordered, That the respondents Mueller Co., a corporation, A. Y. McDonald Manufacturing Co., a corporation, Hays Manufacturing Co., a corporation, Farnan Brass Works Company, a corporation, and Kitson Co., a corporation, their successors, officers, agents and employees, in connection with the offering for sale, sale and distribution of fittings used in water works systems and gas systems, commonly known, and referred to, as corporation stops and curb stops, in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Doing and performing by agreement, combination or conspiracy between and among any two or more of said respondents, or any of said respondents and any other member or members of the industry, the following acts and things:

a. Fixing and maintaining the prices at which said products are sold.

b. Fixing and maintaining uniform discounts, terms and conditions covering the sale of said products.

c. Submitting uniform and identical bids on said products.

d. Using coercive methods to compel jobbers to maintain prices for said products.

1360

Order

2. Selling or offering for sale said products at prices, discounts or terms or conditions of sale which have been arrived at through or pursuant to any agreement, conspiracy or combination between and among any two or more of said respondents, or any of said respondents and any other member or members of the industry,

It is further ordered, That the respondents and each of them shall within 60 days after service upon them of a copy 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF

ALLEN B. WRISLEY COMPANY, ALLEN B. WRISLEY DISTRIBUTING COMPANY, ALSO TRADING AS REGAL SOAP COMPANY, AND KARL MAYER, GEORGE A. WRISLEY AND WRISLEY B. OLESON, TRADING AS KARL MAYER & COMPANY

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

Docket 3021. Complaint, Dec. 24, 1936—Decision, Apr. 6, 1939

Where a corporation, its subsidiary, and three individuals, partners, and officers and employees of said corporations, engaged, as case might be, in manufacture, offer, and sale of many kinds of soaps, and in branding, stamping, or imprinting on certain of their said soaps certain brands, and in labeling, wrapping, and packaging product in question and distributing same, and in substantial competition with others engaged in manufacture and sale of genuine olive oil soaps in commerce among the various States, and also with those thus engaged in manufacture and sale of soap, oil content of which is not wholly olive oil—

Made use of words "Oliv-ilo," "Olive Oil," "Olive," and "Oliv," in names, brands, designations, and descriptions of certain of their said soaps, through such names and designations as "WRISLEY's Oliv-ilo pronounced Oliv-eye-lo," "ROYALE OLIVE OIL PURE Allen B. Wrisley Co., Chicago," "PURITO OLIVE OIL CASTILE," "PALM and OLIVE SOAP," etc., facts being six of the seven brands thus involved and designated contained from 5 to 15 percent of olive oil or olive oil fats only, and its "Del Gloria Castile, Spanish Process" contained, for a time, 36 percent of said product and thereafter approximately 51 percent, and none of said soaps were genuine olive oil soap, as understood and preferentially bought and used by substantial number of consuming public as soap containing as fatty ingredient, to exclusion of all other oils or fats, the more costly olive oil, and considered by manufacturers, dealers, and public generally, by reason of qualities of said oil, as high-quality soap free from substances harmful to skin or delicate fabrics and possessing desirable qualities not obtained in other soaps, and as such preferentially purchased and used for many purposes by substantial portion of purchasing and consuming public, and long considered by medical profession as having qualities requisite and desirable for use in the bathing of infants and sick and ailing, and in medicinal preparations, and prescribed and recommended by it for such purposes;

With result that they were enabled to and did sell their soaps at prices substantially less than those at which competitors who imported or manufactured and sold genuine olive oil soaps, with their more costly olive oil ingredient, could and did sell their products, and with effect of misleading and deceiving substantial portion of trade and purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of their said soaps by reason of such belief, and of thereby diverting unfairly trade to themselves from competitor manu-