

Complaint

32 F. T. C.

IN THE MATTER OF

PRONTO FILE CORPORATION

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

Docket 3717. Complaint, Feb. 18, 1939—Decision, Jan. 8, 1941

Where a corporation engaged in manufacture of steel card cabinets and in interstate sale and distribution thereof, in competition with others engaged in sale and distribution in commerce of such products—

Stated in and on folders, cards, and circulars which it distributed and caused to be distributed to its dealer-purchasers and prospective purchasers in various States and in the District of Columbia, and in which its products were pictorially and descriptively represented, that same were being offered at a 50 percent reduction in price, and set forth, in juxtaposition to such pictorial representations and descriptions, price in black numerals which was struck through with red lines and for which, in each case, was substituted, in red numerals, price of half as much, and furnished to dealer-customers, for a consideration, and for distribution to consuming public, such cards, and represented, as aforesaid, as generally understood by dealers and consuming public, that price in black, canceled as above set forth, was regular and customary selling price for product to which it applied, and substituted price, in red, a reduced one, facts being prices set forth in red type, as above set forth, constituted usual and customary prices quoted and charged consuming public by it, and black type prices, canceled as aforesaid, were not its regular and customary prices;

With effect of deceiving and misleading substantial portion of purchasing public into erroneous belief that its products were being offered at a reduced price equal to 50 percent of their retail value and usual and customary retail selling price, and with result, as consequence of such misrepresentation of customary selling price of its products and offer thereof at pretended reduced price, that trade was diverted unfairly to it from many competitors who do not misrepresent usual and customary selling price of their products and do not offer same at pretended reduced prices; to the injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Before *Mr. John W. Addison*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Weisman & Doskow, of New York City, 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 Pronto File Corporation, 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. Pronto File Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and having its office and principal place of business at 349 Broadway in the city of New York, State of New York.

PAR. 2. The respondent is now, and has been for more than 1 year last past, engaged in the manufacture, sale, and distribution of steel filing cabinets. Respondent sells said products to dealers and members of the purchasing public situated in various States of the United States, and causes said products when sold by it to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times herein has maintained, a course of trade in commerce in said product among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing steel filing cabinets in said commerce.

PAR. 4. In the course and conduct of its business as described in paragraph 2 hereof, the respondent, in soliciting the sale of and selling its products as aforesaid, has published and caused to be published, and has distributed and caused to be distributed to its dealer purchasers and prospective purchasers located in various States of the United States and in the District of Columbia, folders, cards, and circulars in which its products are pictorially and descriptively represented. It is also stated in and on said folders, cards, and circulars that such products are being offered at a 50 percent reduction in price. In juxtaposition to the pictorial representations and descriptions of each product offered, a price is set forth in black numerals, which are struck through with red lines, and a price of half as much is substituted in red numerals in each case. Such cards are furnished by respondent to its dealer customers for a consideration for distribution to the consuming public.

PAR. 5. Such method of stating the selling price is generally understood by dealers and the consuming public to be a representation that the price in black type and canceled by the red line is the retail value and the regular and customary selling price of the product to which it applies, and the substituted price in red type is a reduced price.

PAR. 6. The aforesaid representations made by the respondent in the manner above described are false and misleading. In truth and in fact the prices set forth in red type as reduced prices are not the result of a reduction of the ordinary and customary retail price, but are the usual and customary prices quoted and charged the consuming public, and the prices in black type and canceled by the red lines are not and were not respondent's regular and customary prices.

PAR. 7. The use by respondent of the above described false and misleading representations has had, and has, the capacity and tendency to, and does, deceive and mislead a substantial portion of the purchasing public into the erroneous belief that respondent's products are being offered at a reduced price equal to 50 percent of their retail value and of the usual and customary retail selling price.

PAR. 8. Among the competitors of respondent doing business in commerce as aforesaid, there are many who do not misrepresent the usual and customary selling prices of their products competitive with the products of respondent, and do not offer products at pretended reduced prices. As a result of respondent's misrepresentations of the customary selling price of these products and its offer of them at pretended reduced prices, trade has been diverted unfairly to respondent from its said competitors in such commerce, and thereby injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices 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 February 18, 1939, issued, and on February 20, 1939, served, its complaint in this proceeding upon respondent Pronto File Corporation, a corporation, charging its with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the

said act. The respondent, on April 3, 1939, filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts agreed to by the respondent and its counsel, Herman L. Weisman, Esq., and Jesse D. Kash, trial attorney for the Commission, and read into the record at a hearing held in New York City on May 16, 1940, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges of the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument. Thereafter, this proceeding regularly came on for final hearing by the Commission on said complaint, answer and stipulation, said stipulation having been approved, and accepted, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pronto File Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business at 349 Broadway in the city of New York, State of New York.

PAR. 2. The respondent is now, and has been for more than 1 year last past, engaged in the manufacture, sale, and distribution of steel card cabinets. Respondent sells said products to dealers and members of the purchasing public situated in various States of the United States and causes said products, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms and individuals selling and distributing steel card cabinets in said commerce.

PAR. 4. In the course and conduct of its business as described in paragraph 2 hereof, the respondent, in soliciting the sale of and selling its products as aforesaid, has published and caused to be published, and has distributed and caused to be distributed to its dealer purchasers and prospective purchasers located in various States of the United States and in the District of Columbia, folders, cards, and circulars in which its products are pictorially and descriptively represented. It is also stated in and on said folders, cards, and circulars that such products are being offered at a 50 percent reduction in price. In juxtaposition to the pictorial representations and descriptions of each product offered, a price is set forth in black numerals, which are struck through with red lines, and a price of half as much is substituted in red numerals in each case. Such cards are furnished by respondent to its dealer customers for a consideration for distribution to the consuming public.

PAR. 5. Such method of stating the selling price is generally understood by dealers and the consuming public to be a representation that the price in black type and cancelled by the red line is the regular and customary selling price of the product to which it applies, and the substituted price in red type is a reduced price.

PAR. 6. The aforesaid representations made by the respondent in the manner above described are false and misleading. In truth and in fact the prices set forth in red type as reduced prices are not the result of a reduction of the ordinary and customary retail price, but are the usual and customary prices quoted and charged the consuming public, and the prices in black type and cancelled by the red lines are not and were not respondent's regular and customary prices.

PAR. 7. The use by respondent of the above described false and misleading representations has had and has the capacity to and does deceive and mislead a substantial portion of the purchasing public into the erroneous belief that respondent's products are being offered at a reduced price equal to 50 percent of their retail value and the usual and customary retail selling price.

PAR. 8. Among competitors of respondent doing business in commerce as aforesaid there are many who do not misrepresent the usual and customary selling price of their products competitive with products of the respondent and do not offer products at pretended reduced prices. As a result of respondent's misrepresentation of the customary selling price of these products and its offer of them at pretended reduced prices, trade has been diverted unfairly to respondent from its said competitors in commerce and thereby injury has been done and is being done by respondent to competition in commerce among

334

Order

and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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, answer of respondent and a stipulation as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Pronto File Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of steel card filing cabinets in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that the prices at which respondent's steel card filing cabinets are offered for sale constitute special or reduced or clearance sale prices when such prices are the usual and customary prices at which such products are offered for sale and sold by respondent in the normal and regular course of business.

It is further ordered, That the respondent shall in 60 days after 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
UNITED FACTORIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4379. Complaint, Nov. 16, 1940—Decision, Jan. 8, 1941

Where a corporation engaged in interstate sale and distribution of oil burners for installation and use in stoves and furnaces; in advertisements of its said products with respect to nature and effectiveness thereof in magazines and newspapers and in circulars, folders, and sales literature circulated among prospective purchasers in the various States and in said district—

- (a) Represented and implied that it had invented a new type oil burner which it was offering and that said burner furnished more heat at smaller cost than did others on the market and burned cheaper oil and was automatic and furnished quick heat at the turn of a valve;

Facts being it was not a new type invention or new type oil burner and did not in its operation in any way involve any new principle, did not furnish more heat at smaller cost or accomplish other results attributed to or claimed for it, was not automatic but needed to be lighted each time used and did not furnish quick heat at the turn of a valve;

- (b) Represented and implied through use of word "guarantee" that if performance of its said product was not as indicated through representations made by it as above set forth defective parts would be replaced or purchase money refunded without cost and unconditionally;

Facts being it required purchaser to conduct experimental tests over a definite period of time after it had received notice from him that burner was not operating as represented or in a satisfactory manner, and time used to make tests required before it would refund purchase price and time consumed in exchange of correspondence in such a manner were usually so great that period of time fixed by it within which burner must be returned to secure refund had expired and purchaser was not entitled thereto under terms and conditions of said guarantee, which was not, as represented, unconditional; and

- (c) Represented and implied through statement "Write Immediately for FREE BURNER OFFER TO AGENTS who will demonstrate and take orders," that agents would be furnished burners without cost to them for making demonstrations in connection with solicitation of orders therefor;

Facts being it did not supply agents with burner without cost and unconditionally for their use as aforesaid but furnished them burners for said purposes only upon payment to it of \$15 regular retail price thereof or after agent had sold burners and such consideration either in services or money was required of each agent before burner was delivered to him;

With effect through use of such acts, practices, and methods of misleading and deceiving substantial portions of purchasing public into erroneous and mistaken belief that said statements and implications were true and of caus-