

Syllabus

IN THE MATTER OF

C. LEE COOK MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 5649. Complaint, Apr. 15, 1949—Decision, Sept. 30, 1949

Where a corporation which (1) was engaged in the manufacture and competitive interstate sale and distribution of metallic packings and metallic packing replacement and repair parts, for use on compression machinery of all types, made by others; (2) sold its said packings to compression engine manufacturers for use as original equipment, and its said product and parts to them and their purchaser customers for replacement and repair; (3) had long maintained, throughout the United States, and particularly throughout the oil and gas fields of the Southwest, an extensive sales and service organization, which sold said replacement and repair packings and replacement and repair parts both for metallic packings of its own make and for replacement and repair of such packings and packing parts made by others; and, (4) with the exception of several who specialized in metallic packings for railway locomotives, was the largest manufacturer of such packings in the United States, and occupied a dominant position in the industry and particularly so as respects such packings and parts for gas compressors and booster pumps used by the oil and gas industry—

- (a) Made sales and contracts for sale for such packings and packing replacement and repair parts, and fixed prices for such products or discounts from or rebates upon said prices on the condition, agreement or understanding that the purchaser should not use or deal in the metallic packings or parts or other goods or products of a competitor;
- (b) Allowed discounts from and rebates upon prices, in such sales and contracts for sale, to purchasers in consideration of their agreement to purchase its metallic packings as standard, factory, or original "full line" equipment for all engines of certain types made by said purchasers, to the exclusion of other sellers;
- (c) Allowed discounts from and rebates upon prices, in such sales and contracts for sale, to purchasers in consideration of their agreement to purchase from it their entire requirements of replacement and repair parts, including renewal rings, for makes of metallic packings other than those made by it and which had been installed on the manufacturing purchasers' engines, to the exclusion of other sellers, including the original manufacturers of said packings needing repair or replacement parts;

Effect of which sales and contracts for sale of said corporation's metallic packings and metallic packing replacement and repair parts, and of the fixing of prices or discounts from or rebates upon the prices for such products, on the aforesaid condition, agreement or understanding, might tend to substantially lessen competition in the line of commerce in which said

Complaint

46 F. T. C.

corporation and its customers were engaged; and might tend to create a monopoly in it in the sale and distribution in commerce of such packings and packing replacement and repair parts:

Held, That such acts and practices, under the circumstances set forth, constituted a violation of the provisions of section 3 of the aforesaid Clayton Act.

Mr. William C. Kern for the Commission.

Mr. J. Bond Smith, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that C. Lee Cook Manufacturing Co., hereinafter referred to as respondent, has violated the provisions of section 3 of said act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in such respects as follows:

PARAGRAPH 1. Respondent, C. Lee Cook Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, having its principal office, factory, and place of business at 916 South Eighth Street, Louisville, Ky., and branch offices and places of business located at Baltimore, State of Maryland; Boston, State of Massachusetts; Chicago, State of Illinois; Cleveland, State of Ohio; Houston, State of Texas; Los Angeles and San Francisco, State of California; Mobile, State of Alabama; New Orleans, State of Louisiana; New York, State of New York; Portland, State of Oregon; Seattle, State of Washington; Tulsa, State of Oklahoma; and Montreal, Province of Quebec, Canada.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, distribution and sale of metallic packings and metallic packing replacement and repair parts for use on compression machinery of all types manufactured by companies other than respondent. A large portion of respondent's said business is concentrated in the manufacture, distribution and sale of metallic packings and metallic packing replacement and repair parts suitable for packing and use on reciprocating rods of machinery units in which gaseous substances are being either compressed or expanded, typical of which is the machinery known as gas-driven compression machinery and used in the oil and gas industry, in booster pump equipment of transmission pipe lines, and in refineries.

Respondent is now, and for many years last past has been, engaged in the sale of such metallic packings and replacement and repair parts thereof to manufacturers of such compression machinery and to purchasers of such machinery from such manufacturers located throughout the several States of the United States and the District of Columbia. In the course and conduct of its business aforesaid, respondent transports the said products, or causes the same to be transported, from the State and place of their manufacture to its customers and purchasers thereof located in States other than the place of manufacture thereof, and there is now, and has been for many years last past, a constant current of trade and commerce in said products between and among the various States of the United States, the territories thereof, and in the District of Columbia.

PAR. 3. Commerce in the sale and distribution of metallic packings has two main divisions; first, the sale of metallic packings to compression-engine manufacturers for use as original equipment; second, the sale of metallic packings and metallic packing replacement and repair parts for replacement and repair of original equipment, such sales being made to compression-engine manufacturers, which service their engines and which enjoy a considerable replacement and repair business from the purchasers and users of their said engines, and to the purchasers of the engines from the engine-manufacturing companies. Respondent maintains, and for many years last past has maintained, an extensive sales and service organization throughout the United States and particularly throughout the oil and gas fields of the southwestern part of the United States which organization not only performs service and repair functions but in connection therewith is active in selling replacement and repair metallic packings and metallic packing replacement and repair parts not only for metallic packings of respondent's make and manufacture, but for the replacement and repair of metallic packings and metallic packing parts manufactured by persons, firms, and corporations other than respondent. Respondent, exclusive of several manufacturers specializing in metallic packings for the railway locomotive industry, is the largest manufacturer of metallic packings in the United States, and occupies a dominant position in the industry and particularly in the manufacture of metallic packings and metallic packing replacement and repair parts for use on gas compressors and booster pumps used by the oil and gas industry. There are now, and have been for many years last past, only four engine manufacturing companies in the country engaged in the manufacture of gas-driven compressors; and

respondent for more than ten years last past has had contracts in force with each of said companies containing the restrictive covenants and agreements hereinafter described.

There are in the United States, and have been during the time respondent has been in business, other corporations, firms, partnerships, and individuals who have been and are engaged in the sale of metallic packings and metallic packing replacement and repair parts suitable for use in compression machinery, including gas-driven compressors and booster pumps used by the oil and gas industry and steam engines used by other industries, with which but for the restrictive covenants and agreements of respondent's contracts of sale and the discounts and rebates from respondent's list prices made upon restrictive conditions contained in said contracts of sale, as hereinafter set forth, respondent would have been, and would now be, in substantial competition in the sale of metallic packings and metallic packing replacement and repair parts.

PAR. 4. In the course and conduct of its business described in paragraphs 1, 2, and 3, respondent in the course of such commerce has made sales and contracts for the sale, and is still making sales and contracts for the sale, of metallic packings and metallic packing replacement and repair parts, and has fixed and still is fixing prices charged therefor, or discount from or rebate upon said prices upon the conditions, agreements, and understandings that the purchasers thereof shall not use or deal in the metallic packings, or metallic packing replacement and repair parts, or other goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the respondent. Included in such sales and contracts for sale, but not limited thereto, have been and are those in which discounts from and rebates upon its prices have been allowed and given to some of its purchasers in consideration of the agreement by said purchasers to purchase as standard, factory, or original "full line" equipment on all engines of certain types manufactured by said purchasers, the metallic packings used thereon from the respondent to the exclusion of other sellers and of other prospective and potential sellers. Included likewise in such sales and contracts for sale, but not limited thereto, have been and are those in which discounts from and rebates upon its prices have been allowed and given to some of its purchasers in consideration of the agreement by such purchasers to purchase of respondent their entire requirements of replacement and repair parts, including renewal rings, for makes of metallic packings other than those manufactured by respondent and installed on said manufacturer purchaser's engines, to the exclusion of other sellers

and of other prospective and potential sellers, including the original manufacturer of said compressor packings needing repair or replacement parts.

PAR. 5. The effect of said sales and contracts for sale, or the fixing of said prices or discounts from or rebates upon said prices as aforesaid, on such conditions, agreements, and understandings, may be to substantially lessen competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers of respondent are engaged; or tend to create a monopoly in respondent in the commerce aforesaid, of metallic packings and metallic packing replacement and repair parts.

PAR. 6. The aforesaid acts of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" approved October 15, 1914 (Clayton Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), the Federal Trade Commission on April 15, 1949, issued and subsequently served upon the respondent, C. Lee Cook Manufacturing Co., a corporation, its complaint in this proceeding, charging said respondent with having made sales and contracts for the sale of metallic packings and metallic packing replacement and repair parts, and with having fixed prices charged for such products, or discounts from or rebates upon said prices, on the condition, agreement, and understanding that the purchasers thereof should not use or deal in the metallic packings or metallic packing replacement and repair parts, or other goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the respondent, C. Lee Cook Manufacturing Co., in violation of the provisions of section 3 of said Act.

After the issuance of the complaint, and on June 10, 1949, the respondent filed its answer, in which answer it admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; and the Com-

Findings

46 F. T. C.

mission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, C. Lee Cook Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its principal office, factory, and place of business located at 916 South Eighth Street, Louisville, Ky., and branch offices and places of business located in Baltimore, Md.; Boston, Mass.; Chicago, Ill.; Cleveland, Ohio; Houston, Tex.; Los Angeles and San Francisco, Calif.; Mobile, Ala.; New Orleans, La.; New York, N. Y.; Portland, Oreg.; Seattle, Wash.; Tulsa, Okla.; and Montreal, Province of Quebec, Canada.

PAR. 2. The respondent is now, and for many years last past has been, engaged in the manufacture and in the distribution and sale of metallic packings and metallic packing replacement and repair parts, for use on compression machinery of all types, manufactured by companies other than the respondent. A large portion of the respondent's business is concentrated in the manufacture, and in the distribution and sale, of metallic packings and metallic packing replacement and repair parts suitable for packing and use on reciprocating rods of machinery units in which gaseous substances are being either compressed or expanded, typical of which is the machinery known as gas-driven compression machinery used in the oil and gas industry, the machinery in booster pump equipment of transmission pipe lines, and the machinery in refineries.

The respondent is now, and for many years last past has been, engaged in the sale of such metallic packings and replacement and repair parts thereof to manufacturers of such compression machinery, and to purchasers of such machinery from such manufacturers, located throughout the several States of the United States and in the District of Columbia. In the course and conduct of its business as aforesaid, the respondent transports its products, or causes the same to be transported, from the State and place of their manufacture to its customers and purchasers of such products located in States other than the place of manufacture thereof, and there is now, and for many years last past there has been, a constant current of trade and commerce in said products between and among the various States of the United States, the territories thereof, and in the District of Columbia.

PAR. 3. Commerce in the sale and distribution of metallic packings has two main divisions; first, the sale of metallic packings to compression engine manufacturers for use as original equipment; and second, the sale of metallic packings and metallic packing replacement and repair parts for replacement and repair of original equipment, such sales being made to compression engine manufacturers, which service their engines and which enjoy a considerable replacement and repair business from the purchasers and users of their said engines, and to the purchasers of the engines from the engine manufacturing companies. The respondent maintains, and for many years last past has maintained, an extensive sales and service organization throughout the United States, and particularly throughout the oil and gas fields of the southwestern part of the United States, which organization not only performs service and repair functions but in connection therewith is active in selling replacement and repair metallic packings and metallic packing replacement and repair parts both for metallic packings of the respondent's make and manufacture and for the replacement and repair of metallic packings and metallic packing parts manufactured by persons, firms, and corporations other than the respondent.

Except for several manufacturers specializing in metallic packings for the railway-locomotive industry, the respondent is the largest manufacturer of metallic packings in the United States, and it occupies a dominant position in the industry, particularly in the manufacture of metallic packings and metallic packing replacement and repair parts for use on gas compressors and booster pumps used by the oil and gas industry. There are now, and for many years last past there have been, only four engine manufacturing companies in the country engaged in the manufacture of gas-driven compressors; and for more than ten years last past the respondent has had contracts in force with each of said companies containing the restrictive covenants and agreements hereinafter described.

There are in the United States, and during the time the respondent has been in business there have been, other corporations and firms, partnerships and individuals also engaged in the sale of metallic packings and metallic packing replacement and repair parts suitable for use in compression machinery, including gas-driven compressors and booster pumps used by the oil and gas industry and steam engines used by other industries. At all times mentioned herein the respondent has competed with such other corporations and with such firms, partnerships and individuals in the sale and distribution of metallic

Findings

46 F. T. C.

packings and metallic packing replacement and repair parts in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business as described in Paragraphs One, Two, and Three hereof, the respondent has made sales and contracts for the sale, and is still making sales and contracts for the sale in commerce, of metallic packings and metallic packing replacement and repair parts, and has fixed and still is fixing prices charged for such products, or discounts from or rebates upon said prices on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the metallic packings, or metallic packing replacement and repair parts, or other goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the respondent. Included in such sales and contracts for sale, but not limited thereto, have been and are those in which discounts from and rebates upon prices have been allowed and given to purchasers in consideration of the agreement by such purchasers to purchase as standard, factory, or original "full line" equipment for all engines of certain types manufactured by said purchasers, the respondent's metallic packings, to the exclusion of the metallic packings of other sellers and of other prospective and potential sellers. Included likewise in such sales and contracts for sale, but not limited thereto, have been and are those in which discounts from and rebates upon prices have been allowed and given to purchasers in consideration of the agreement by such purchasers to purchase from the respondent their entire requirements of replacement and repair parts, including renewal rings, for makes of metallic packings other than those manufactured by the respondent, which have been installed on said manufacturer purchasers' engines, to the exclusion of other sellers and of other prospective and potential sellers, including the original manufacturers of said packings needing repair or replacement parts.

PAR. 5. The effect of the respondent's sales and contracts for the sale of its metallic packings and metallic packing replacement and repair parts, and of the fixing of prices or discounts from or rebates upon the prices for such products, on the aforesaid condition, agreement or understanding may be to substantially lessen competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers of the respondent are engaged; and may tend to create a monopoly in the respondent in the sale and distribution in commerce of metallic packings and metallic packing replacement and repair parts.

CONCLUSION

The acts and practices of the respondent, as hereinabove set out, constitute a violation of the provisions of section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondent's answer thereto, in which answer said respondent admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act) :

It is ordered, That the respondent, C. Lee Cook Manufacturing Co., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale or distribution in commerce, as "commerce" is defined in the aforesaid Clayton Act, of metallic packings or metallic packing replacement and repair parts, do forthwith cease and desist from :

(1) Selling or making any contract for the sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use or deal in the metallic packings or the metallic packing replacement and repair parts, or other goods or merchandise, of a competitor or competitors of the respondent.

(2) Fixing the price charged for any such products, or granting a discount from or rebate upon the price therefor, on the condition, agreement, or understanding that the purchaser of such products shall not use or deal in the metallic packings or the metallic packing replacement and repair parts, or other goods or merchandise, of a competitor or competitors of the respondent.

(3) Enforcing or continuing in operation or effect any condition, agreement or understanding in or in connection with any existing sale or contract for the sale of any such products, which condition, agreement, or understanding is to the effect that the purchaser of such prod-

Order

46 F. T. C.

ucts shall not use or deal in the metallic packings or the metallic packing replacement and repair parts, or other goods or merchandise, of a competitor or competitors of the respondent.

It is further ordered, That the respondent shall, within 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.

Syllabus

IN THE MATTER OF

M. B. WATERMAN AND COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5426. Complaint, Mar. 12, 1946—Decision, Oct. 7, 1949*

Where an individual engaged in the interstate sale and distribution of crucifixes crosses, religious medals, "glowlights", ladies' and men's jackets and various other articles; in advertising his said products through circulars and in newspapers, comic books, magazines and other periodicals of general circulation—

- (a) Represented directly and by implication that his crucifixes were hand carved of wood and that the images on certain of them would glow all during the night; when in fact they were machine made of paper pulp, sawdust and glue; and the images advertised to glow by night were coated with some undisclosed material, which, if exposed to strong light, would glow faintly for possibly thirty minutes but would not glow again until again exposed to light;
- (b) Represented that his "glowlights" could be used to spot objects and give signals in the dark, that they would make excellent night lights, and that they were made of metal or leather frames, with leather or composition handles; the facts being that the section of the article which corresponded to a bulb and lens of a flashlight was coated with a phosphorus material and, if exposed to a bright light, would give off a faint glow for a few minutes, but would not throw a beam of light or give a light enabling one to spot objects or give signals in the dark; and it was not made, as represented by the advertising depictions, of metal, leather or composition, but entirely of cardboard;
- (c) Represented that his crosses, which he referred to as "Replica Virginia Lucky Stones" were curios formed by nature and found in the mountains of Virginia; when in fact they were not even very good imitations of the original Virginia Fairy Stones, but were merely plastic crosses formed in the same general shape as said stones;
- (d) Falsely represented that his St. Christopher's medals, which were merely gold washed, were 10 K. gold filled; and that his jackets were tailored and styled in California or by a California manufacturer or designer; and, through use of the trade name Bernard's of California," that he was operating in and had a place of business in said State; and
- (e) Represented that certain articles of merchandise were given free as a gift or gratuity and without cost to the recipient; when in fact in some cases the cost was included in the price of other articles, the purchase of which he required before one could receive the so-called gift, in other cases he gave the "free" articles only to those who had rendered certain services in connection