

Order

IN THE MATTER OF
AMERICAN TOBACCO COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 4827. Order, April 9, 1952

Order modifying, in accordance with stipulation of counsel and order of the Court of Appeals for the Seventh Circuit on March 11, 1952, Commission's original order issued on June 20, 1951, 47 F.T.C. 1393—which required respondent, “and its officers, representatives, agents, and employees”, to cease and desist from specified misrepresentation in connection with the offer and sale of its Lucky Strike cigarettes—so as to delete from said order the words above quoted, as below set forth.

Before *Mr. John L. Hornor*, hearing examiner.

Mr. John R. Phillips, Jr. for the Commission.

Chadbourne, Wallace, Parke & Whiteside, of New York City, and
Covington, Burling, Rublee, O'Brian & Shorb, of Washington, D. C.,
for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said amended complaint, the Trial Examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act, and having issued an order to cease and desist; and

The American Tobacco Company, a corporation, the respondent, having filed in the United States Court of Appeals for the Seventh Circuit its petition to review and set aside the order to cease and desist issued herein; and thereafter counsel for respondent and the Commission having entered into a stipulation filed in said Court on March 10, 1952, providing that said petition to review shall be dismissed without hearing on the merits; that upon said dismissal the Commission shall modify said order to cease and desist by eliminating therefrom the words “and its officers, representatives, agents and employees” after the words “IT IS ORDERED that the respondent, The American Tobacco Company, a corporation”; and that said voluntary dismissal of said petition to review shall be without prejudice to any subsequent application by respondent to the Commission for any

Order

48 F. T. C.

modification of any other provisions of said order to cease and desist and shall not be construed by the Commission to limit its power to make any such modification pursuant to section 5 of the Federal Trade Commission Act and Rule XXVII of the Commission's Rules of Practice; and the Court having on March 11, 1952, entered an order dismissing the petition to review, without hearing upon the merits, in accordance with the terms of the stipulation of counsel; and

Thereafter, the Commission having reconsidered the matter, and being of the opinion that its order should be modified so as to accord with the aforesaid stipulation of counsel and order of the United States Court of Appeals for the Seventh Circuit;

It is ordered, That the respondent, The American Tobacco Company, a corporation, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its Lucky Strike brand of cigarettes, do forthwith cease and desist from representing, by any means, directly or by implication:

(1) That among independent tobacco experts, Lucky Strike cigarettes have twice as many smokers as all other brands of cigarettes combined; or that any greater proportion or number of independent tobacco experts or of any other group or class of people smoke Lucky Strike cigarettes than is the fact.

(2) That independent tobacco experts who smoke Lucky Strike cigarettes do so because of their knowledge of the grades or quality of the tobacco purchased by the respondent for use in the manufacture of Lucky Strike cigarettes.

(3) That Lucky Strike cigarettes or the smoke therefrom contains less acid than do the cigarettes or the smoke therefrom of any of the other leading brands of cigarettes.

(4) That Lucky Strike cigarettes or the smoke therefrom is less irritating to the throat than the cigarettes or the smoke therefrom of any of the other leading brands of cigarettes.

(5) That Lucky Strike cigarettes or the smoke therefrom is easy on one's throat or will provide any protection against throat irritation or coughing.

(6) That Lucky Strike cigarettes or the smoke therefrom contains less nicotine than do the cigarettes or the smoke therefrom of any of the four other leading brands of cigarettes.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this modified order, file with the Commission a report, in writing, showing in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF
MALLEABLE CHAIN MANUFACTURERS INSTITUTE
ET AL.

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

Docket 5657. Complaint, May 18, 1949—Decision, Apr. 10, 1952

Where an unincorporated trade association and its eight corporate members, who manufactured over two-thirds of the malleable iron chain produced in the United States—

Unlawfully combined and conspired between and among themselves and others to restrain and eliminate competition in the sale and distribution of said product in commerce; and pursuant to said combination and conspiracy—

- (a) Cooperatively effected agreements to fix and maintain, and did fix and maintain, prices at which various types of malleable iron chain were sold and offered for sale by said member manufacturers; and

Where said Institute, in the course of said combination and conspiracy—

- (b) Functioned through its "Classification Committee", "Factors Committee" and "Committee on List Prices", the activities of which were, respectively, to establish standards and specifications of products, to devise factors or multipliers to be applied against average costs for the purpose of determining selling prices, and to propose for use by its members list prices for malleable iron chain; and

Where each of said member manufacturers, as a part of the aforesaid combination and conspiracy—

- (c) For pricing purposes maintained two geographic territories or divisions—namely, the Western or Pacific Coast Territory and an Eastern Territory—which were substantially identical for all and within which their trade discounts were substantially identical; with the result that delivered price quotations and prices calculated in accordance with said zone delivered price system were identical for all customers of the same class located in the same geographic zone;
- (d) Adopted and used the practice of allowing freight charges to destination on shipments of various types of malleable iron chain in excess of 100 pounds, which aided in the attainment of identical delivered prices; and

Where one member, one of the largest manufacturers of malleable iron chain in the United States and a leader in the industry—

- (e) In many instances announced and published prices and changes in prices and in trade discounts on certain items, determined by a formula or system previously agreed upon by all, which were thereafter followed by the other member manufacturers; and

Where said corporate members—

- (f) Filed and exchanged among their competitor members, and through the medium of said Institute, current or future prices or conditions of sale, and made bids and quoted prices consistent with such price information; and
- (g) Similarly exchanged information which concerned prices charged particular customers and volume of product, sales and shipments, where the identity