

Syllabus

IN THE MATTER OF
UNDERWOOD CORPORATION

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5797. Complaint, July 12, 1950—Decision, Mar. 2, 1953

Where a corporation, long engaged in the manufacture and interstate sale of fanfold billing machines and carbon rolls, which, in the five years ending in 1950, sold its said machines to the amount of about \$1,000,000, sold carbon rolls for its machines to about \$711,000, and sold carbon rolls for other machines to about \$1,290,000; which had long been engaged in active and substantial competition with others similarly engaged, including those who made, sold, and distributed carbon rolls suitable for use in its own said machines; and which, as thus engaged, had long supplied to numerous purchasers and users of its said machines devices—known as “carbon roll bracket plates”, which were of value in the operation of its said machines—of which it was the sole manufacturer—

- (a) Entered into “loan agreements” with thousands of customers over a period of years, the earlier of which set forth that the equipment loaned, consisting of the aforesaid carbon roll bracket plates for which no rental was charged, was loaned for use exclusively on machines made or marketed by it (or its predecessor), and exclusively with its carbon rolls; and supplemented—at least on occasion—a later form of agreement, in which no mention was made of such condition, by representations of its salesmen, dealers, or agents, that users of the devices were obligated to buy carbon rolls exclusively from it;

Whereby a significant and substantial volume of business was affected, and competitors were foreclosed from a substantial market for carbon rolls suitable for use in its fanfold billing machines;

Tendency and capacity of which leases without rental may have been to substantially lessen competition in the sale of carbon rolls of the type suitable for use in its said machines, in commerce; and

- (b) Represented, during the period involved, through some of its salesmen, dealers, or agents, to users of the devices, that they were obligated to buy carbon rolls exclusively from it;

With tendency and capacity to compel such users to purchase carbon rolls exclusively from it, to the exclusion of purchases from its competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce; and that said corporation, through use of the acts and practices above set forth, violated Sec. 3 of the Clayton Act.

Complaint

49 F. T. C.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Floyd O. Collins for the Commission.

Strauss, Reich & Boyer, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Underwood Corporation, a corporation, is now and has been for more than twenty years last past, as set forth in Count I hereof, while operating under the name of the Underwood Elliott Fisher Company, and under its present name Underwood Corporation, violating Section 3 of an Act of Congress approved October 15, 1914, entitled: "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and is now, and has been for more than twenty years last past, violating Section 5 of the Federal Trade Commission Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint in two counts, stating its charge in that respect as follows:

COUNT I

PARAGRAPH 1. The Underwood Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office located at No. 1, Park Avenue, New York, N. Y. Respondent is a successor in business to the Underwood Elliott Fisher Company, a corporation, and has a selling agent, a New Jersey Corporation, known as Underwood Corporation.

PAR. 2. Respondent has been for more than twenty years last past, engaged in manufacturing and selling fanfold billing machines and carbon rolls. Respondent's income from sales of billing machines in the past five years has been approximately \$1,000,000. Its income from sales of carbon rolls during the same period has been approximately \$2,000,000. Respondent sells its billing machines and carbon rolls to customers located throughout the several States of the United States and in the District of Columbia. Respondent, when sales are made, ships said products or causes the same to be shipped from its place of business across State lines to the purchasers thereof who are located in the several States of the United States and in the District of Columbia. For more than twenty years, respondent has carried on a constant current of trade and commerce in said products as herein described.

PAR. 3. Respondent, in the course and conduct of its business in the manufacture, sale and distribution of said products, has been,

1123

Complaint

or would have been during all the time herein set out, in substantial competition with other firms and corporations except for the restrictive, oppressive, and unlawful contracts, agreements and understanding hereinafter described.

PAR. 4. Some time in the late 1920's, the exact date of which is unknown to the Commission, the respondent invented an attachment which it designated a carbon roll bracket. Said attachment, when used in connection with billing machines, effects a great saving in the amount of carbon paper used and increases to a substantial degree the efficiency of said billing machines. Since the invention, respondent has been the sole manufacturer of said attachments and has refused to sell them to owners of billing machines.

Immediately after respondent invented the carbon roll bracket, it adopted and thereafter carried on, the policy and practice of calling upon and inducing owners of billing machines to contract with respondent for the use of said attachment and succeeded in securing many hundreds of such agreements. Substantially all of said agreements are in writing and contain, among other things, the following conditions:

It is agreed that the equipment so loaned is and shall remain the sole and exclusive property of Underwood Elliott Fisher Company and is to be used exclusively on equipment manufactured or marketed by Underwood Elliott Fisher Company and exclusively with carbon rolls supplied by said company.

It is also agreed that the Underwood Elliott Fisher Company may terminate the loan of this equipment and retake the same at any time without notice or legal proceedings.

and,

It is agreed that the equipment so loaned is and shall remain the sole and exclusive property of Underwood Corporation.

It is also agreed that Underwood Corporation may terminate the loan of this equipment and retake the same at any time without notice or legal proceedings.

PAR. 5. The effect of said contracts and agreements may be to substantially lessen, injure, destroy and prevent competition in the sale and distribution of carbon rolls in commerce, among and between the various States of the United States and in the District of Columbia, and has resulted in respondent securing substantially all sales in carbon rolls. Said contracts and agreements have a dangerous tendency to completely eliminate competition and create in respondent and absolute monopoly in the sale and distribution of carbon rolls in commerce as is herein described.

PAR. 6. The aforesaid acts of respondent constitute a violation of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for

Complaint

49 F. T. C.

other purposes," approved October 15, 1914, and commonly known and referred to as the Clayton Act.

COUNT II

PARAGRAPH 1. As for Count II of this, its complaint, against respondent Underwood Corporation, a corporation, the Federal Trade Commission adopts and makes as a part hereof by reference as fully as though it were copied herein, all that part of Count I down to and including Paragraph Five thereof and further charges:

PAR. 2. The carbon roll brackets manufactured by respondent greatly increase the efficiency of the billing machines manufactured by respondents, and respondent is the only one from whom said brackets can be obtained. It is necessary for a purchaser or an owner of a billing machine to accept said brackets on respondent's terms or forego their use.

PAR. 3. Respondent, in the course and conduct of its business, in manufacturing and selling its billing machines and carbon rolls, and manufacturing and distributing its carbon roll brackets, has, during all the time herein alleged, employed and carried on, in addition to those hereinbefore alleged, the following unfair methods and practices:

(a) Respondent purposely does not offer to sell and at times refuses to sell or give title to said brackets to purchasers or owners of billing machines who desire to use said brackets so that respondent will be in a position to exact of such purchasers or owners a promise, either express or plainly implied, that carbon rolls necessary for the operation of said brackets are to be bought exclusively from respondent.

(b) When a purchaser or owner of a billing machine makes arrangements with respondent for the use of its brackets, respondent makes it understood by agreement, or by language and conduct produces in such user, the belief that the user is obligated to buy carbon rolls exclusively from respondent.

(c) When respondent discovers or receives information that a user of its brackets is using carbon rolls other than those supplied by respondent, it threatens to retake its brackets, or by the use of such words as "You know we can take the bracket back at any time," or other similar language, produces in the user a fear of losing the use of the brackets and causes the user to refrain from purchasing carbon rolls from anyone other than respondent.

PAR. 4. The acts and practices of respondent as herein alleged are all to the injury of the public and respondent's competitors who sell carbon rolls and tend to compel users of respondent's brackets to pur-

chase carbon rolls exclusively from respondent to the exclusion of purchases from respondent's competitors, have a tendency and effect to, and in fact do, hinder, lessen, and restrain competition in the sale and distribution of carbon rolls and constitute unfair acts and practices and unfair methods of competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of an Act of Congress approved on October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), and to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 12, 1950, issued and subsequently served its complaint in this proceeding upon the respondent, Underwood Corporation, a corporation, charging it with having made agreements and contracts pursuant to which the other parties thereto were furnished by respondent with devices known as carbon roll bracket plates for use without direct charge, but only upon machines manufactured or marketed by respondent and only with carbon rolls supplied by respondent, in violation of the provisions of section 3 of said Clayton Act, and with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of section 5 of the Federal Trade Commission Act. After the issuance of said complaint and the filing of respondent's answer thereto, a hearing was held before a hearing examiner of the Commission theretofore duly designated by it, at which a stipulation, signed by counsel in support of and in opposition to the complaint and comprising all the evidence to be offered in support of and in opposition to the complaint, was received in evidence and duly recorded and filed in the office of the Commission. Subsequently, it was further stipulated by said counsel that the stipulation referred to above may be taken as the facts in this proceeding upon such issues as are not determined by the pleadings, and that the said stipulation and pleadings may serve as a basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding. Thereafter, the hearing examiner having denied respondent's motion to dismiss the complaint without prejudice, the proceeding regularly came on for final consideration by the hearing examiner upon the complaint, the answer thereto, and the said stipulations, and said hearing examiner, on October 19, 1950, filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, both counsel supporting the complaint and for respondent filed with

Findings

49 F. T. C.

the Commission appeals from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including briefs in support of and in opposition to the said appeals and oral arguments of counsel; and the Commission, having entered its order granting the appeal of counsel supporting the complaint and granting in part and denying in part the appeal of respondent, 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 and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Underwood Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office located at No. 1 Park Avenue, New York, New York. Respondent is a successor in business to the Underwood Elliott Fisher Company, a corporation, and has a selling agent, a New Jersey corporation, known as Underwood Corporation.

PAR. 2. Respondent has been for more than twenty years last past engaged in manufacturing and selling fanfold billing machines and carbon rolls. Respondent's sales of billing machines in a five-year period ending in 1950 amounted to approximately one million dollars, its sales of carbon rolls for fanfold billing machines to approximately seven hundred and eleven thousand dollars, and its sales of carbon rolls for other machines to approximately one million two hundred and ninety thousand dollars. Respondent sells its billing machines and carbon rolls to customers located throughout the several States of the United States and in the District of Columbia. Respondent, when sales are made, ships said products across State lines to the purchasers thereof who are located in the several States of the United States and in the District of Columbia. For more than twenty years respondent has carried on a constant current of trade and commerce in said products as herein described.

PAR. 3. In the course and conduct of its business respondent is, and for many years has been, in active and substantial competition with other firms and corporations in the manufacture, sale and distribution of fanfold billing machines and carbon rolls, including carbon rolls suitable for use in respondent's fanfold billing machines.

PAR. 4. In the course and conduct of its business the respondent, for many years, supplied to numerous purchasers and users of its fanfold billing machines devices known as "carbon roll bracket plates." Respondent was the sole manufacturer of these devices, which were of

value in the operation of respondent's fanfold billing machines. Prior to about September 20, 1949, the devices were not sold by respondent, but were supplied as aforesaid, pursuant to one of two forms of "loan agreement" with those by whom they were to be used.

The original form of agreement contained, inter alia, the following provisions:

It is agreed that the equipment so loaned is and shall remain the sole and exclusive property of Underwood Elliott Fisher Company and is to be used exclusively on equipment manufactured or marketed by Underwood Elliott Fisher Company and exclusively with carbon rolls supplied by said company.

It is also understood that the Underwood Elliott Fisher Company may terminate the loan of this equipment and retake the same at any time without notice or legal proceedings.

A later form of agreement contained, inter alia, the following:

It is agreed that the equipment so loaned is and shall remain the sole and exclusive property of Underwood Corporation.

It is also agreed that Underwood Corporation may terminate the loan of this equipment and retake the same at any time without notice or legal proceedings.

Thereafter both forms of agreement were used by respondent until about September 20, 1949, when their use was discontinued, and the devices sold to anyone who wanted them.

PAR. 5. The agreements pursuant to which the devices were supplied to users of respondent's fanfold billing machines, were referred to as "loan agreements"; the agreements themselves refer to "the equipment so loaned"; and the users were not required to pay any license fees or rentals for their use. Nevertheless, from the specific language of the first of the forms mentioned in the preceding paragraph, it is apparent that the "loan" was made in consideration of the user's agreement not to use, in connection with the device, any carbon rolls except rolls supplied by respondent. The second form was supplemented, at least on occasion, by representations of respondent's salesmen, dealers or agents that users of the devices were obligated to buy carbon rolls exclusively from respondent. In each case the actual result was a lease without rental of the device by respondent to the user.

PAR. 6. It was stipulated that respondent's vice-president in charge of domestic sales, if called as a witness, would testify that the total number of "loan agreements" executed by customers on both of the forms of agreement mentioned above was less than 4,000, some of which covered more than one bracket plate.

It was also stipulated that on January 22, 1943, the manager of respondent's New York Branch Office Supply Department stated in

Order

49 F. T. C.

a letter to a customer that "20,000 of the largest institutions in the country have signed this Loan Agreement * * *."

The record shows that the original form was in use at least as early as October 1932. It also shows that as of January 19, 1950, respondent had some 360 of the original form agreements, and presumably a number of new form agreements which had been executed by customers in New York City. As of January 11, 1950, respondent had 31 customers agreements on the original form and some 175 on the new form in Philadelphia.

The Commission is of the opinion that, in view of the foregoing and of respondent's volume of business, the volume of business affected by respondent's use of these agreements was significant and substantial and that their use foreclosed competitors from a substantial market for carbon rolls suitable for use in respondent's fanfold billing machines.

PAR. 7. The tendency and capacity of said leases may have been to substantially lessen competition in the sale of carbon rolls of the type suitable for use in respondent's fanfold billing machines in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. During the period when the said "loan agreements" were in use by respondent, some of respondent's salesmen, dealers or agents represented to users of the devices that they were obligated to buy carbon rolls exclusively from respondent.

The tendency and capacity of such representations was to compel such users to purchase carbon rolls exclusively from respondent to the exclusion of purchases from respondent's competitors.

CONCLUSION

The acts and practices of respondent, as hereinabove found, were all to the prejudice and injury of the public and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act, and through the use of the acts and practices, as hereinabove found in Paragraphs 4, 5, 6, and 7, respondent has violated 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, commonly known as the Clayton Act.

ORDER

It is ordered, That the respondent, Underwood Corporation, a corporation, and its officers, agents, representatives and employees, di-

1123

Order

rectly or through any corporate or other device, in connection with the leasing, selling or contracting for the sale of respondent's carbon roll bracket plates, or any similar devices, in commerce, as "commerce" is defined in 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), do forthwith cease and desist from:

1. Leasing, selling or making any contract for the sale of respondent's carbon roll bracket plates, or any similar devices, on the condition, agreement or understanding that the lessees or purchasers thereof shall not use such devices with carbon rolls other than those acquired from respondent.

It is further ordered, That the respondent, Underwood Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, leasing or distribution of respondent's carbon roll bracket plates, or any similar device, or carbon rolls, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

2. Leasing, selling or making any contract for the sale of respondent's carbon roll bracket plates, or any similar devices, on the condition, agreement or understanding that the lessees or purchasers thereof shall not use such devices with carbon rolls other than those acquired from respondent.

3. Representing, directly or by implication, that the users of said carbon roll bracket plates, or similar devices, are obligated to buy carbon rolls exclusively from respondent.

It is further ordered, That respondent, Underwood Corporation, shall, within sixty (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.

Commissioner Carretta not participating for the reason that oral argument was heard on December 20, 1950, prior to his becoming a member of the Commission.

Syllabus

IN THE MATTER OF

BROWNER & LEFKOWITZ, INCORPORATED ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 6054. Complaint, Oct. 17, 1952—Decision, Mar. 5, 1953

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain ladies' coats in that they were not stamped, tagged or labeled as required by said Act and the Rules and Regulations promulgated thereunder;
- (b) Misbranded certain of said coats in that they were labeled or tagged as containing "Wool Interlining", notwithstanding the fact that said interlinings were not wool as defined by said Act but were composed of reused wool together with substantial quantities of miscellaneous fibers; and
- (c) Further misbranded such coats in that the character and amount of the constituent fibers contained in the interlinings thereof were not separately set forth on the stamps, tags, and labels as required by the said Act and Rule 24 of said Rules and Regulations:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair acts and practices in commerce.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Mr. Bernard L. Baskin, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Browner & Lefkowitz, Incorporated, a corporation, and Benjamin Browner and Herman Lefkowitz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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: