FEDERAL TRADE COMMISSION

v.

NESTLE'S FOOD CO., INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AS EXTENDED BY SECTION 4 OF AN ACT OF CONGRESS APPROVED APRIL 10, 1918.

Docket 274.—November 29, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of condensed milk in export trade in direct competition with other concerns similarly engaged, adopted and used upon its cans of condensed milk shipped into the Republic of Mexico, certain forms of labels upon which the only words indicating origin or place of manufacture were the following: "Henri Nestle, Vesey, Switzerland," with a tendency thereby to deceive and mislead the purchasing public into believing that the condensed milk so labeled was manufactured in Europe—although the corporation had no intention to deceive thereby—and to obtain for such condensed milk an undue preference in the Mexican market over competitors' milk known to be manufactured in the United States:

Held, That such labeling and sales, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Nestle's Food Co., Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

as extended by the provisions of section 4 of an act of Congress approved April 10, 1918, entitled "An act to promote export trade, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, the Nestle's Food Co., Inc., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located in the city of New York in said State, now and during the past year engaged in the business of manufacturing and selling condensed milk in export trade in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business manufactures such condensed milk so sold by it in its factories in the United States, where the same is put up in cans, packed in cases, and shipped to foreign countries for resale and consumption, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in the said condensed milk between the United States and foreign countries, particularly between the United States and the Republic of Mexico.

PAR. 3. That the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of condensed milk in export trade and of acquiring for its product an undue preference which might be given by the purchasing public in Mexico to condensed milk manufactured in Europe, has during the past year adopted and used and still continues to use upon its cans of condensed milk shipped from the United States into the Republic of Mexico for resale and consumption certain forms of labels which tend to deceive and mislead, and which in fact do deceive and mislead purchasers of said condensed milk in the Republic of Mexico into the belief that said condensed milk is manufactured in Europe, and which labels wholly conceal the fact that said condensed milk is manufactured in and shipped from the United States as aforesaid.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein in which it is alleged that it had reason to believe that the above-named respondent, Nestle's Food Co., Inc., has been and now is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," as extended by the provisions of section 4 of an act of Congress approved April 10, 1918, entitled "An act to promote export trade, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance and having filed its answer admitting certain allegations therein contained and denying others, and thereafter having made and executed an agreed statement of facts, which has been filed herein, and in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the evidence in this case in lieu of testimony, and shall forthwith thereupon make and enter its report, findings as to the facts and conclusion and its order disposing of this proceeding, respondent waiving and relinquishing any and all right to the introduction of other and further testimony, the Federal Trade Commission now makes and enters this its report, stating its findings as to the facts and its conclusion as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Nestle's Food Co., Inc., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located in the city of New York, in said State, and is now, and during the past year has been, engaged in the business of manufacturing and selling condensed milk in export trade in direct competition

with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, manufactures such condensed milk, so sold by it, in its factories in the United States, where the same is put up in cans, packed in cases, and shipped to foreign countries for resale and consumption; and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in the said condensed milk between the United States and foreign countries, particularly between the United States and the Republic of Mexico.

PAR. 3. That the respondent, in the conduct of its business in export trade, as aforesaid, has, during the past year, adopted and used upon its cans of condensed milk shipped into the Republic of Mexico certain forms of labels upon which the only words indicating origin or place of manufacture are the following:

HENRI NESTLÉ

VESEY, SWITZERLAND

Wholesale Depot: 6 & 8 Eastcheap, London, E. C.

and that the use of such labels, notwithstanding the absence of any intention on the part of the respondent to deceive, nevertheless does tend to deceive and mislead the purchasing public into the belief that the condensed milk so labeled is manufactured in Europe, the effect whereof is to obtain for such condensed milk an undue preference, which might be given by the purchasing public in Mexico to condensed milk manufactured in Europe over that manufactured by respondent's competitors and known by the said purchasing public to be manufactured in the United States of America.

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth is an unfair method of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a

Federal Trade Commission, to define its powers and duties, and for other purposes," as extended by the provisions of section 4 of an act of Congress approved April 10, 1918, entitled "An act to promote export trade, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, having entered its appearance and filed its answer and thereafter having made, executed, and filed an agreed statement of facts, in which it was stipulated that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and should forthwith thereupon make and enter its report, findings as to the facts and conclusion, and its order disposing of this proceeding, and waiving therein any and all right to the introduction of other and further testimony, and the Federal Trade Commission having made and entered its report, stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," as extended by the provisions of section 4 of an act of Congress approved April 10, 1918, entitled "An act to promote export trade, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent cease and desist from using any labels upon or in connection with condensed milk manufactured by it in the United States and shipped into the Republic of Mexico for resale and consumption which may tend to deceive and mislead the public into the belief that the condensed milk so labeled is manufactured in Europe or elsewhere than in the United States of America, and from using the label described in paragraph 3 of the findings as to the facts hereto annexed, or any label essentially similar thereto upon said condensed milk without clearly and unmistakably indicating thereon that the said condensed milk was manufactured in the United States of America.

Complaint. 2 F. T. C.

FEDERAL TRADE COMMISSION

v.

ORIENT MUSIC ROLL CO.