

Complaint.

FEDERAL TRADE COMMISSION

v.

THE TAIYO TRADING COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 536.—January 15, 1921.

SYLLABUS.

Where a corporation engaged in the importation and sale of Japanese safety matches, imported and sold the same in containers of the same size, shape, material and appearance as those in which Swedish and American safety matches were sold and marketed in the United States, on the labels of which containers were conspicuously impressed the distinctive and commonly used Swedish words "Sakerhetstandstikor" and "Tandsticksfabriks," and medallion designs resembling, except upon minute inspection, representations of medals awarded Swedish manufacturers of safety matches at various European expositions and by them placed upon the containers of their product, and also inconspicuously the words "Made in Nippon," but nothing prominently suggesting Japan to the ordinary American purchaser; with the natural and probable tendency to mislead the purchasing public into believing that such Japanese matches were of Swedish origin:

Held, That such practices, substantially as described, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Taiyo Trading Co. (Inc.), hereinafter referred to as the respondent, has been and now 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," 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 Taiyo Trading Co. (Inc.), is a corporation organized and 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 in the city of New York, in said State, and is now and has been since December 28, 1918, engaged in the

Complaint.

3 F. T. C.

sale of matches in and among the various States and Territories of the United States and the District of Columbia in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business purchases and enters into contracts for the purchase of matches manufactured in Japan, importing said matches from Japan to the said city of New York, where they are sold and shipped by the respondent to purchasers thereof; that after said matches are so imported they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said matches between and among the various States and Territories of the United States and the District of Columbia, and especially to and through the city of New York, State of New York, and therefrom to and through the other States and Territories of the United States and the District of Columbia.

PAR. 3. That now and for many years last past various brands of matches sold and used throughout the various States and Territories of the United States and the District of Columbia have been manufactured in Sweden and sold, as aforesaid, in boxes or containers of certain peculiar sizes with Swedish inscriptions thereon; that said matches by reason of their use and by reason of the Swedish inscriptions on the said containers or boxes, and by reason of the peculiar sizes of said containers or boxes, have become well known to the trade and purchasing public to be of a certain quality and to be manufactured in Sweden.

PAR. 4. That now and since the 28th day of December, 1918, the respondent with the effect of stifling and suppressing competition in the manufacture and sale of matches in interstate commerce has, in the conduct of its business, sold matches so manufactured in Japan in containers or boxes similar in size and style and material to those containing matches manufactured in Sweden, as aforesaid, and with Swedish inscriptions thereon; that such Swedish inscriptions are calculated and designed to, and do, deceive the trade and general public into the belief that the matches contained in the containers or boxes so inscribed are manufactured in Sweden, whereas in fact such matches are and have been manufactured in Japan.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, The Taiyo Trading Co. (Inc.), charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its attorneys, Black, Varian & Simon, and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondent before Mr. B. L. Shinn, an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission having heard argument of counsel and duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Taiyo Trading Co. (Inc.), is a corporation organized and 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 in the city of New York, in said State; and is now and has been since December 28, 1918, engaged in the sale of matches in and among the various States and Territories of the United States and the District of Columbia, in direct competition with other persons, copartnerships and corporations similarly engaged.

PAR. 2. That now and for many years last past there have been manufactured in Sweden and sold throughout the United States, various brands of safety matches in containers or boxes of the size, shape and material generally used for such matches; that said containers or boxes in which they have been and are marketed in the United States, carry labels which ordinarily contain the certain distinctive Swedish words, "Sakerhets Tandstickor," meaning "Safety Matches," "Tandsticksfabrik," meaning "Match Factory" and "Impregnerade" meaning "Impregnated," associated with the words "Made in Sweden"; that some of the labels upon matches manufactured in Sweden and sold in the United States also bear, in addition to the distinctly Swedish words, pictorial representation in miniature of medals awarded by various European expositions indicating the place and date of such awards.

Findings.

3 F. T. C.

PAR. 3. That the respondent, The Taiyo Trading Co., Incorporated, in the conduct of its business is now, and since December 28, 1918, has been, engaged in the importation from Japan to the city of New York, in the State of New York, of safety matches manufactured in Japan, and in the sale and shipment to purchasers thereof from the city of New York to and through the various States and Territories of the United States and the District of Columbia; that the said matches have been and are sold and marketed in the United States in containers or boxes of the same standard size, shape, and appearance as those in which Swedish and American safety matches are sold and marketed therein, with labels thereon identical, except in respect to their color, with the photostatic reproduction thereof attached hereto and incorporated herein¹; that upon the labels of respondent designated "A," "B," and "D," appear in the most conspicuous position the distinctive Swedish words "Tandsticksfabrik" in combination with the name of a town in Japan expressed in English characters, Takikawa, thereby presenting to the ordinary purchaser in the United States, the appearance of one Swedish word; that at the bottom of labels "A" and "B" there appear the distinctive Swedish words "Sakerhets Tandstickor" associated with the word "Imperial" on the former and "Hughes" on the latter, while on the bottom of label "D" the distinctive Swedish words "Sakerhets Tandstickor" appear alone; that upon label "C," the words "Impregnated Safety Matches" appear at the top, while at the bottom are the distinctive Swedish words "Tandsticksfabriks" in conjunction with the name of a town in Japan expressed in English characters, Seisuisha, thereby presenting to the ordinary purchaser in the United States the appearance of one Swedish word; that upon all of these labels there appear the words "Made in Nippon," in inconspicuous positions and in type smaller than either the Swedish or English words appearing thereon, Nippon being a word not generally understood by the ordinary purchaser as designating Japan; that upon the labels "A," "B," and "D" are impressed certain medallion designs, importing medals or awards, without reference to or indicating place or date thereof, and requiring minute inspection to distinguish the same from similar representations so found, as aforesaid, on the labels of Swedish match containers or boxes; that there is no prominent appearance on any of the said labels of words or designs suggestive of Japan to the ordinary American purchaser, while the shape and appearance of the containers in conjunction with the said labels on which distinctive Swedish words so predominate are clearly suggestive of Swedish manufacture to such purchaser.

¹ Not printed.

PAR. 4. That the use of such distinctive Swedish words and other inscriptions upon the containers or boxes of the same size, shape, material, and appearance as those in which Swedish safety matches have been and are marketed and sold in the United States, for the sale of safety matches manufactured in Japan, is calculated and likely under all the circumstances, and the natural and probable tendency and effect will be, to mislead and deceive the purchasing public in the United States into the belief that the said Japanese matches are of Swedish origin and manufacture.

CONCLUSIONS.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts, with its conclusions that the respondent has violated the provisions 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"; now, therefore,

It is ordered, That the respondent, The Taiyo Trading Co. (Inc.), and its officers, directors, agents, servants, and employees, cease and desist from the importation, sale or other distribution, in the United States of America, of matches manufactured in Japan, in boxes or other containers, with labels or inscriptions thereon bearing or including the words "Tandsticksfabriks" or "Sakerhets Tandstickor," or any other Swedish phrase or phrases, word or words, character or characters, symbol or symbols, verbal or pictorial, indicative or suggestive of Swedish origin or manufacture, on, upon, or in connection with matches made in Japan, or the labels or containers thereof.

And it is further ordered, That the respondent shall, within thirty days from date of service of this order, file with the Commission a

Memorandum.

3 F. T. C.

report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

The Commission has also issued a similar order in the case of Consaco Sales Co. (Inc.) (of New York City, Dock. 570), decided January 21, 1921, involving substantially the same facts as the preceding case.

FLOOD & CALVERT.

205

Complaint.

FEDERAL TRADE COMMISSION

v.

GEORGE D. FLOOD AND W. H. CALVERT, PARTNERS,
STYLING THEMSELVES FLOOD & CALVERT.