FEDERAL TRADE COMMISSION
v.
CUPPLES COMPANY.

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

Docket 571—June 8, 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 "Sakerhets Tandstickor" 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 Cupples Co., 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, Cupples Co., is a corporation existing and doing business under and by virtue of the laws of the State of Missouri, having its principal place of business located at the city of St. Louis, in said State; that said respondent is now and for more than one year last past has been engaged in importing safety matches of the strike-on-the-box kind of Japanese manufacture and engaged in selling, distributing, and disposing of said safety

matches of Japanese manufacture of the character and in the manner hereinafter mentioned in competition with manufacturers, distributors, jobbers, and dealers in safety matches of similar kind, among the several States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That, in the conduct of its business, respondent imports from Japan safety matches of Japanese manufacture and transports the same through other States of the United States in and to the city of St. Louis, State of Missouri, and its other branch offices located in various States of the United States where said safety matches are sold, distributed, and shipped to purchasers thereof; that there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between Japan and the various States and Territories of the United States and the District of Columbia and more particularly from Japan, to and through the city of St. Louis, State of Missouri, United States of America, and from there to and through other States of the United States and Territories thereof and the District of Columbia.

PAR. 3. That the aforesaid safety matches of Japanese manufacture, imported and sold by respondent for more than one year last past in commerce as aforesaid, are put up in boxes bearing the brand "The Best Black Eagle" with wording on the box or label pasted on said box bearing distinctive Scandinavian words; that the use of the labels bearing Scandinavian words on said boxes of safety matches made in Japan and sold and disposed of in commerce as aforesaid by respondent is calculated and designed to deceive the purchasing public into the belief that said matches are of Scandinavian origin and manufacture; that the sale and distribution by respondent in commerce as aforesaid of safety matches bearing labels of Scandinavian words have the effect of suppressing competition in interstate commerce in the sale of safety matches of the strike-on-the-box kind and are calculated and designed to deceive the purchasing public and do deceive the purchasing public into the belief that respondent's matches are of Scandinavian origin and to purchase and pay for said safety matches as and for safety matches of Scandinavian origin and manufacture.

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, Cupples Co., 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 and filed its answer herein, and attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken as the facts for this proceeding by the Commission and in lieu of testimony herein, and that the Commission should forthwith proceed upon such agreed statement of facts to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and the parties having waived any and all rights they may have to require the introduction of such testimony or to file briefs or make oral argument in the above-entitled matter, and the Commission, having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Cupples Co., is a corporation existing and doing business under and by virtue of the laws of the State of Missouri, having its principal place of business located in the city of St. Louis, in said State; that said respondent for more than one year prior to May 23, 1919, engaged in importing safety matches of the strike-on-the-box kind of Japanese manufacture, and thereafter, as well as theretofore, has been engaged in selling, distributing, and disposing of said matches of Japanese manufacture of the character and in the manner hereinafter mentioned in competition with manufacturers, distributors, jobbers, and dealers in safety matches of similar kind among the several States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, 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 shape, size, 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; "Tandsticks fabrik," meaning match factory; and "Impregnerade," meaning impregnated, associated with the words "Made in Sweden"; that some of the labels upon matches manufac-

tured in Sweden and sold in the United States also bear, in addition to the distinctly Swedish words, pictorial representations in miniature of medals awarded by various European expositions, indicating the place and date of such awards; and that the labels of which photostatic copies are hereto attached[1] and made part hereof are now and for many years last past have been used in the United States upon the containers or boxes of safety matches manufactured in Sweden.

PAR. 3. That in the conduct of its business respondent imported prior to May 23, 1919, from Japan safety matches of Japanese manufacture and transported the same through other States of the United States in and to the city of St. Louis, State of Missouri, and its other branch offices located in various States of the United States, where said safety matches were sold, distributed, and shipped to purchasers thereof; that there is continually and has been at all times herein mentioned a constant current of trade and commerce in said products between the city of St. Louis, State of Missouri, United States of America, and from there to and through other States of the United States and the Territories thereof and the District of Columbia. That the aforesaid safety matches of Japanese manufacture imported by respondent prior to May 23, 1919, and sold by respondent for more than one year last past in commerce as aforesaid have been and are marketed and sold 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 bearing the distinctive Swedish words "Tandsticksfabrik," meaning match factory, and "Sakerhets Tandstickor," meaning safety matches, a photostatic copy of which label is hereto attached and incorporated herein;[1] that upon the label so used by respondent appear the words "Made in Nippon," but in an inconspicuous position and Nippon being a word not generally understood by the ordinary purchaser as designating Japan; and that thereon are impressed certain medallion designs importing medals or awards without reference to or indicating date or place thereof and requiring minute inspection to distinguish the same from similar representations so found as aforesaid on the labels of Swedish matches or boxes; that there is no prominent appearance on said label of respondent of design or words suggestive of Japan to the ordinary American purchaser, while the shape and appearance of the containers in conjunction with the said label on which distinctive Swedish words so appear 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 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 effect will be to mislead and deceive the purchasing public in the United States into the belief that the Japan matches are of Swedish origin and manufacture.

CONCLUSION.

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, and upon an agreed statement of facts, wherein and whereby it was duly stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such agreed statement of facts to enter its report and findings as to the facts and its orders disposing of this proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that 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," and which said report is hereby referred to and made part hereof: Now, therefore,

It is ordered, That the respondent, Cupples Co., and its officers, directors, agents, servants, and employees, cease and desist from the 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 "Sakherhets Tandstickor," or any other Swedish phrase or phrases, word or words, character or characters, symbol or sym-

bols, verbal or pictorial, indicative or suggestive of Swedish origin or manufacture.

And it is further ordered, That the respondent shall within 30 days from date of service of this order file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.