

Complaint.

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FEDERAL TRADE COMMISSION

v.

MORGAN RAZOR WORKS.

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

Docket 703—July 12, 1921.

SYLLABUS.

Where an individual engaged in the manufacture and sale of razor strops under the brands "WILDBERD," "IMPORTED NIZHNI NOVGOROD GOODS," and "NORTHERN LIGHT," which brands as trade names for such products were first adopted and applied by him and which had come, through his advertising and the efforts of his salesmen, to be well and favorably known to the trade generally, and to individual users, so that a demand was created therefor, and he acquired the exclusive right to the use of said names west of the Rocky Mountains, and thereafter a competitor wrongfully appropriated and applied said trade names to its own products;

With the effect of enabling it to obtain the benefit of said individual's reputation and advertising and to forestall the extension of his trade in such brands:

Held, That such wrongful appropriation and use of brands or trade names, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Morgan Razor Works, 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 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," 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 Morgan Razor Works, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, having its principal office and place of business in the city of Portland, State of Oregon, and is now and since the latter part of 1917 has been engaged in selling razors and razor strops and in the shipment thereof from its place of business in Portland to purchasers in other States of the United States, and in foreign countries, in competition with other persons, firms, copartnerships, and corporations similarly engaged, and particularly in competition with the J. S. Torrence Sales Co.

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PAR. 2. That the J. S. Torrence Sales Co., an unincorporated company having its principal office and place of business in the city of San Francisco, State of California, is now and since the summer of 1914, has been engaged in selling razors and razor strops and in the shipment thereof from the State of California to purchasers in other States of the United States; that during the years 1914, 1915, and 1916, the J. S. Torrence Sales Co. adopted and commenced to market razor strops under the unregistered trade names of "WILD-HERD," "IMPORTED NIZHNI-NOVGOROD POODS," and "NORTHERN LIGHT," and since that time has built up and established under those names a valuable good will and business in such products.

PAR. 3. That the respondent, the Morgan Razor Works, in the course of its business as aforesaid, with full knowledge of the existence of the J. S. Torrence Sales Co., and well knowing that this company had established and built up a valuable good will and business in razor strops under the aforesaid names, shortly after beginning business in 1917 adopted said names for its products, and has ever since continued to use, brand and sell razor strops under those names; that the use of said names by the respondent is calculated and designed to and does deceive the trade and general public and customers and prospective customers and mislead them into the belief that the razor strops sold by the respondent are the products of the said J. S. Torrence Sales Co. and to hinder and embarrass the said J. S. Torrence Sales Co. in the conduct of its business in interstate commerce.

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, Morgan Razor Works, a corporation, 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 attorney, 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, Morgan Razor Works, before 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 conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The J. S. Torrence Sales Co. is an unincorporated company having its principal office and place of business in San

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Francisco, Calif., and J. S. Torrence, the proprietor, conducts his business as an individual, under the designation above. He also does business under the name of Manganese Fiber Razor Strop Co., which is also unincorporated, and under these names Torrence is engaged in the business of manufacturing and selling razor strops and in shipping same from San Francisco, Calif., to purchasers in the states of Oregon, Washington, Idaho, Utah, and Nevada.

PAR. 2. The Morgan Razor Works is a corporation organized under the laws of the State of Oregon, with its principal office and place of business in the city of Portland, Oreg. J. Canby Morgan is the president, its business being the manufacture of razors and razor strops and the selling and shipping same in interstate and foreign commerce to the Orient, to Canada, and to various States of the United States west of the Rocky Mountains. The company was organized in the year 1917.

PAR. 3. In the year 1914, J. S. Torrence Sales Co. adopted and commenced to market razor strops under the unregistered trade names of "WILDHERD," "IMPORTED NIZHNI-NOVGOROD POODS," and "NORTHERN LIGHT," and advertised these names in magazines and by printed circulars and by letters to individual customers and prospective customers, and circulated the same by means of the United States mail among the various States of the United States west of the Rocky Mountains.

PAR. 4. On or about September 9, 1915, the J. S. Torrence Sales Co. employed as the superintendent or foreman of its manufacturing plant, one Charles P. Wagner, the said Wagner being an expert razor-strop manufacturer, and the said Wagner remained in the employ of the Torrence Sales Co. until about June, 1917, when the said Wagner resigned and severed his connection with the Torrence Sales Co., and entered the employ of the Morgan Razor Works, where he remained in the capacity of superintendent until about March, 1919, and on or about that time he severed his connection with the Morgan Razor Works and commenced the manufacture of razor strops for himself under the name of Wagner Razor Strop Co.

PAR. 5. Shortly after Wagner entered the employ of the Morgan Razor Works, the latter company commenced to manufacture razor strops bearing the names "WILDHERD," "NORTHERN LIGHT," and "NIZHNI-NOVGOROD POODS," and sold and transported the same between and among the various States of the United States west of the Rocky Mountains.

PAR. 6. The J. S. Torrence Sales Co. through its advertising and the efforts of its salesmen, during the years 1915 and 1916, had caused its brands "WILDHERD," "NORTHERN LIGHT," and "IMPORTED

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NIZHNI-NOVGOROD POODS" to be well and favorably known to the trade generally, to its customers and prospective customers, and to individual users in the various States of the United States, west of the Rocky Mountains, and had created a demand for its goods under these three brands.

PAR. 7. In September, 1917, having learned that the respondent was using the three brands, the J. S. Torrence Sales Co. wrote the Morgan Razor Works, asserted a prior right on behalf of the J. S. Torrence Sales Co. to the use of the three names in question, and requested the respondent to desist from using said three brands. The Morgan Razor Works, however, continued to use the said three brands until some time in the year 1920, when after an investigation commenced by the Federal Trade Commission, the respondent ceased to use the said three brands.

PAR. 8. The J. S. Torrence Sales Co. and the Morgan Razor Works are engaged in active competition in interstate commerce with each other and with other persons, firms, copartnerships, and corporations engaged in the manufacture and sale of razor strops.

PAR. 9. That the J. S. Torrence Sales Co. first adopted and used the brands "WILDBERD," "NORTHERN LIGHT," and "IMPORTED NIZHNI-NOVGOROD POODS" as distinctive trade names for its products, namely, razor strops, and that through its advertisements, the efforts of its salesmen, and the quality of its goods, put out under such brands, the J. S. Torrence Sales Co. acquired a right to the exclusive use of said brands or trade names in the various States of the United States west of the Rocky Mountains.

PAR. 10. That the appropriation and use of said brands or trade names by the respondent was wrongful, and enabled the respondent to obtain the benefit of the reputation and advertisement and to forestall the extension of the trade in such brands acquired by the J. S. Torrence Sales Co.

CONCLUSION.

That 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 and 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

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its conclusion that the respondent has violated the provisions 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."

It is now ordered, That the respondent, Morgan Razor Works, and its agents, servants, and employees and each and every one of them do *cease and desist* from directly or indirectly labeling, marking, or branding razor strops manufactured by it with the names, "WILD-HERD," "NIZHNI-NOVGOROD POODS," and "NORTHERN LIGHT," or any or either of such names, and sold between and among the various States of the United States west of the Rocky Mountains.

It is further ordered, That the respondent, Morgan Razor Works, shall, within 30 days after the service upon it of a copy of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

The Commission has also issued a similar order in the case of Wagner Razor Strop Co. (of San Francisco, Calif., Docket 704), decided July 12, 1921, involving the same wrongful appropriation and use of the same brands or trade names as in the preceding case.

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