

Complaint.

FEDERAL TRADE COMMISSION

v.

PLANTERS MANUFACTURING COMPANY.

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

Docket 819—March 20, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of containers used for packing fruits and vegetables for shipment to market, under the style of Planters Manufacturing Company, so branded or marked its products, and through years of labor and expense built up a well and favorably known business, which it carried on under said name; and thereafter a concern not theretofore so engaged, with full knowledge of the existence and conduct of the business of said corporation, adopted its name and entered into competition therewith; with the result that customers and the public were confused respecting the identity of the two concerns, and the business of said corporation was thereby obstructed and diminished:

Held, That such appropriation and use of corporate name, 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 Planters Manufacturing Company, hereinafter referred to as respondent, has been and 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," 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 is a corporation organized under the laws of the State of North Carolina, with principal place of business at Mount Olive, in said State; that said corporation was originally organized in August, 1919, under the name of "Mount Olive Oil & Fertilizer Co.," which name was changed by amendment of its charter, in February, 1921, to Planters Manufacturing Company.

PAR. 2. That respondent is engaged, among other things, in the business of manufacturing and selling containers, such as barrels, crates and baskets, for the packing of fruits and vegetables, which business is and has been, carried on by respondent in direct, active competition with other persons; partnerships and corporations en-

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gaged in the manufacture and sale of like containers in the State of North Carolina and other States of the United States, which competitors have caused such containers to be transported to the purchasers thereof from the States where manufactured, through and into other States, in due course of commerce among the States.

PAR. 3. That in 1892 a corporation was organized under the laws of the State of Virginia, with principal place of business at Portsmouth, in said State, with the name of "Planters Manufacturing Company" which corporation has been continuously since its organization, engaged in the business of manufacturing and selling containers including crates, barrels and baskets, for the packing of fruits and vegetables, causing such containers to be transported to the purchasers thereof from the State of Virginia, through and into other States of the United States, including North Carolina, and had succeeded in building up an extensive and profitable business in said State of North Carolina, and particularly in the vicinity of Mount Olive, in said State, and the containers manufactured and sold by it, as aforesaid, were well and favorably known to the trade, in the State of North Carolina and States adjacent thereto, at and for many years prior to February, 1921. That at the time respondent changed its corporate name to Planters Manufacturing Company, it had full and complete knowledge of the existence of the Planters Manufacturing Company, the said Virginia corporation, the nature of the business in which that corporation was engaged, the reputation of its products, its general standing with the trade and the fact that its products were in great demand in the States of North Carolina, South Carolina, Georgia, Florida, and States adjacent thereto.

PAR. 4. That the adoption by respondent of the exact corporate name of the Virginia corporation described in Paragraph Three hereof, was calculated to, and does, mislead and deceive the purchasing public, and by the use of such name respondent has induced packers of fruit and vegetables to purchase containers manufactured by it, upon the mistaken belief that such containers were the product of said Virginia corporation; that confusion in the trade has resulted as to the containers sold by respondent and containers sold by said Virginia corporation.

PAR. 5. That by reason of the facts recited the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of the Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, Planters Manufacturing Company, charging it with unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent, having entered its appearance by M. J. Hatcher, Attorney at Law, and filed its answer, and testimony having been submitted by the Commission, and by the respondent before George McCorkle, an examiner of the Commission, theretofore duly appointed; and thereupon this proceeding came on for final hearing and the Commission having 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 respondent, Planters Manufacturing Company, is a corporation organized under the laws of North Carolina, having its principal office and place of business at the town of Mount Olive in said State; that originally respondent was organized in 1918, under the laws of the said State under the name of Mount Olive Oil & Fertilizer Company, which name was subsequently, by amendment of its charter in February, 1921, changed to Planters Manufacturing Company. Prior to amending its charter as aforesaid, respondent was engaged entirely in ginning cotton and manufactured no oil or fertilizer.

PAR. 2. That since its said charter was amended, respondent has been and is now engaged in manufacturing and selling containers, such as barrels, crates, baskets and other similar products used for packing fruits and vegetables for shipment to market, and respondent has carried on its said business in direct active competition with other firms, partnerships and corporations engaged in manufacturing and selling similar products in interstate commerce.

PAR. 3. That respondent, since its organization in February of the present year, under its corporate title of Planters Manufacturing Company, has been and was at the time of the hearing, in this case, carrying on a successful and growing business reaching out into other states than North Carolina for trade and business. Telegrams to prospective customers residing in other states were sent by respondent soliciting their trade, also communications, the letterheads of which carried its name and business, and information as to freight rates and prices of its commodities. Subsequently, respondent

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shipped to said prospective customers in South Carolina and in other states "packages of samples" of its manufacture such as barrels, baskets, crates and other containers.

PAR. 4. That in 1904, a corporation was organized under the laws of the State of Virginia, under the corporate name of Planters Manufacturing Company, having its principal office and place of business in the City of Portsmouth, State of Virginia, and engaged in manufacturing and selling containers used for packing fruits and vegetables for shipment to market, which products of the said company were similar in all respects to those of the respondent; that from the year 1892 to the date of its incorporation in 1904, the said company was engaged in the same line of business under the firm name of Southern Fruit Packing Company and has continued all the while in the same line of business to the present time. It manufactures its said fruit and vegetable containers at Portsmouth, West Norfolk, Churchland, Bloxon, Cheriton, Driver, Olive Branch and Gloucester Point, in the State of Virginia, and at Youngs Island, South Carolina, besides operating a logging and sawing plant at Hobgood, North Carolina, about 75 miles from the home of respondent, and sells and ships its products throughout the various Eastern States of the United States, and in Texas, and Indiana, selling especially large quantities of its products in the States of North and South Carolina. In 1920, the said company shipped 20 to 25 carloads of its containers to customers at the home town of respondent, and 60 to 75 carloads within a radius of 18 to 20 miles of the town of Mount Olive.

PAR. 5. That the said Planters Manufacturing Company of Portsmouth, Virginia, has spent thousands of dollars in advertising its business by means of circulars, catalogs, newspapers, magazines, etc., also stamping its name on its barrels, and other containers as "Made by the Planters Manufacturing Company" and through years of labor and expense has built a business that is well and favorably known throughout all Eastern States of the United States.

PAR. 6. That the name of the Planters Manufacturing Company of Portsmouth, Virginia, was known to some of the officers and organizers of the Planters Manufacturing Company of Mount Olive, respondent, at the time of its adoption of the Portsmouth Company's name, and the said respondent company engaged as it was in manufacturing the same products as the Planters Manufacturing Company of Portsmouth, selling them in markets formerly largely supplied by the said Portsmouth Company, and with identical names, as above stated, is calculated to and has resulted in confusion to customers and the general public as to the identity of the respective corporations. That officials of the said Portsmouth Company in Virginia, and the

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salesmen of said company while visiting their trade in North and South Carolina have been frequently asked if the Planters Manufacturing Company of Portsmouth had established a branch plant at Mount Olive, North Carolina. That as many as a dozen times bills and accounts for unpaid goods have been received by the Planters Manufacturing Company of Portsmouth, which belonged and should have been sent to the respondent. One of said bills is dated September 26, 1921, from Taylor & Parker for \$53.90 (Exhibit No. 1) ¹; another one, through confusion in the names of said companies, was from the Tide Water Supply Company, and returned by the Planters Manufacturing Company of Portsmouth to the respondent. In a letter to Planters Manufacturing Company of Portsmouth, dated October 5, 1921, the Tide Water Supply Company said:

"GENTLEMEN: Regarding the conversation relative to your account being confused with the Planters Manufacturing Company, Mount Olive, North Carolina, we wish to advise that the first purchase these people made from us the account was posted in error to the Planters Manufacturing Company, Portsmouth, Virginia. This, however, has been reported to the proper parties.

Yours very truly,

TIDE WATER SUPPLY COMPANY,
J. W. BEASLEY,
President & Treasurer."

PAR. 7. That for 25 years before the organization of the respondent, under the name of Planters Manufacturing Company, the Planters Manufacturing Company of Portsmouth, Virginia, enjoyed a large trade in the State of respondent, shipping, as before stated, as many as 25 carloads of containers annually to the town of Mount Olive, and as many as 75 to 100 carloads within a radius of 18 miles of respondent's place of business, but since the adoption of its name by respondent in the spring of 1921, the trade and custom of the Planters Manufacturing Company of Portsmouth, in North Carolina and particularly in the immediate neighborhood of respondent's plant, has been seriously affected. Instead of 25 carloads of containers in 1920 shipped by the Portsmouth Company to Mount Olive, none has been shipped in 1921; instead of 68 "carload customers," some of whom used as many as 20 cars in North Carolina and South Carolina supplied by the said Portsmouth Company, in 1920, scarcely none was supplied by the said company in 1921 in said sections. That said conditions were brought about in part by reason of respondent's adopting the name of the Planters Manufacturing Company of Portsmouth, and likewise the confusion of customers and the general public as to the identity of the two corporations as evidenced by the bills and accounts received through the United States mail by the

¹ Not printed.

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Portsmouth Company which belonged to respondent, in consequence of which the interstate trade and commerce of the Planters Manufacturing Company of Portsmouth, Virginia, was directly affected and obstructed.

PAR. 8. That respondent, at the hearing of this case, at the close of the testimony offered by the Commission and by the respondent, stated and agreed to the issuance of an order by the Commission directing respondent to "adopt a name not in conflict with other manufacturing companies in the same line of business."

CONCLUSION.

That the acts and conduct of the respondent, under the conditions and circumstances above set forth, are unfair methods of competition in commerce and in violation 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."

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 briefs of counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion 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,"

It is now ordered, That the respondent, Planters Manufacturing Company of Mount Olive, North Carolina, its officers and agents cease and desist from using as a part of the corporate name of respondent the word "Planters" or any word or combination of words likely to be confused with the name of the Planters Manufacturing Company of Portsmouth, Virginia,

And it is further ordered, That said respondent shall file within sixty (60) days from the date of service of this order a report with the Commission setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

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FEDERAL TRADE COMMISSION

v.

UNION SOAP COMPANY.

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

Docket 848—April 3, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale, to peddlers exclusively, of an inferior grade and quality of toilet soap, sold the same in wrappers and containers bearing legends misrepresenting the composition thereof, as well as its own name and place of business, and bearing also fictitious and exaggerated pretended resale prices, which it knew had been and were to be used to mislead and deceive the purchasing public respecting the grade and quality thereof:

Held, That such mislabeling, or misrepresentation of composition, business identity, and price, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Union Soap Co., hereinafter referred to as 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," 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 is a corporation organized under the laws of the State of Indiana, with principal place of business at Indianapolis, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling soap, and causes soap sold by it to be transported to the purchasers thereof from the State of Indiana through and into other States of the United States and carries on its said business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in Paragraph 2 hereof, manufactures and sells laundry and toilet soaps of inferior grade and quality, usually upon special orders from peddlers, house to house canvassers, street fakers, fair workers, auctioneers and other itinerant vendors of merchandise; that respondent markets its said products under various misleading and fanciful

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brand names, among which are "Olive Cream Castile", "Cucumber Cream", "Almond Cream", "Hot Springs Mineral", etc., although all of said soaps are made of the same ingredients except for a slight variation in the use of coloring matter and perfume; that each of said soaps contain approximately the following proportions of the various ingredients, viz, water, 33 per cent; coconut oil, 15 per cent; caustic lye, 25 per cent; silica, 7 per cent; filler, 20 per cent; that soaps so sold by respondent are packed in boxes, three cakes to the box, each cake wrapped in individual wrappers, upon which boxes and wrappers are printed what purports to be proposed resale prices, but which prices are false, fictitious and misleading; in that such prices are greatly in excess of the prices at which respondent or its vendees contemplate that such soap will be resold, and are greatly in excess of the actual prices at which such soaps sell in the usual course of retail trade; that said soaps are sold by respondent with full knowledge that the price marks on the boxes and wrappers are to be used for the purpose of misleading and deceiving the purchasing public and to induce the public to purchase said soaps when offered for sale at prices substantially below those printed on said boxes and wrappers, upon the mistaken belief that such soaps are being sold at a greatly reduced price; that among soaps so sold by respondent at prices ranging from 1 cent to 2 cents per cake, are soaps packed in boxes three cakes to a box, upon which boxes are printed, "Price 75¢", and upon the individual wrappers of each cake "Price 25¢", and other grades are packed in boxes six cakes to a box, upon which boxes are printed "Price \$1.00"; that in the sale of its products in boxes and wrappers so marked, respondent comes in direct competition with other manufacturers of soaps who do not market their product in containers and wrappers upon which are printed false, fictitious and misleading price marks; that respondent by the means aforesaid, aids, abets and assists its customers in using unfair methods of competition against others similarly engaged, but who do not sell soaps in containers marked with such false, fictitious and misleading price marks.

PAR. 4. That respondent further in the course of its business, markets its products in containers upon which are printed what purports to be the name of the manufacturer, but respondent instead of using its own name and place of business, uses various fanciful names of concerns that do not exist, with places of business designated as being in cities and states other than the State of Indiana, thereby misleading and deceiving the purchasing public and preventing the public from discovering the true manufacturer of the products.

PAR. 5. That by reason of the facts recited, the respondent has been and is using an unfair method of competition in commerce,

within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 Union Soap 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, hearings were had and evidence was thereupon introduced in support of the allegations of the complaint before George McCorkle, an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission having 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. That respondent is a corporation organized and doing business under the laws of the State of Indiana with its principal office and place of business in the City of Indianapolis in said State and engaged in the business of manufacturing soap and selling and shipping same to purchasers residing in said State and in the various other states of the United States, in competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. That respondent in the course of its business as described in Paragraph 1 hereof, for several years prior to June, 1921, manufactured and sold various brands of toilet soap designating them as "Cucumber Cream," "Olive Cream Castile," "Almond Cream," and "Hot Springs Mineral"; that at the date of the hearing in this case, on January 25, 1922, respondent had abandoned the manufacture of all brands of soap except "Cucumber Cream" and "Olive Cream Castile"; that all of said brands contained the same material and were of the same grade and quality, the ingredients being water 33 per cent, lye 25 per cent, filler 20 per cent, coconut oil 15 per cent and silica 7 per cent; there is a slight variation as to the perfumes and coloring matter used in the different brands. The said soap is of inferior grade and quality and as appears from the above analysis, contains nothing from the cucumber vegetable, nor does the "Olive Cream Castile" contain any olive oil. The said brands of soap,

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together with some varieties of laundry soap, are sold exclusively to peddlers. The fanciful brands made by respondent are packed in boxes, three cakes to the box, each cake wrapped in an individual wrapper upon which boxes and wrappers are printed what purports to be certain proposed resale prices, but which in truth are not resale prices but are fictitious, false, and misleading in that such prices are greatly in excess of the prices at which respondent and its vendees contemplated that said soap would be resold, and in fact is sold; that the said soaps are sold to respondent's customers with full knowledge on the part of respondent that the price marks on the said boxes and wrappers have been, and are being, used as a means of misleading and deceiving the purchasing public as to the grade and quality of the said soap; that the said toilet soaps are sold by respondent at forty cents for twelve bars plus ten bars of laundry soap. The boxes in which the said soap is packed have printed upon them in conspicuous type the following:

One Fourth Dozen		Price 75 cents.
Toilet	CUCUMBER	Cleansing
Bath		Purifying
Shampooing	CREAM SOAP	Fragrant
NEW YORK	U. S. SOAP COMPANY.	LOS ANGELES.

PAR. 3. That respondent has an agent in Los Angeles and one in New York City, but has no office or other place of business in said cities, and no books or accounts of any kind are kept, and no business is transacted, by respondent, under the name of "U. S. Soap Company," which name appears on the soap boxes above referred to.

PAR. 4. That there are other dealers in toilet soap who do not sell their said products in containers marked with false and fictitious prices.

CONCLUSION.

That the practices of respondent as set forth in the foregoing report are unfair methods of competition in interstate commerce in violation 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."

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 the testimony and evidence submitted, and the Commission

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having made its findings as to the facts and its conclusion 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,"

It is now ordered, That the respondent, the Union Soap Co., its officers, directors, agents, and employees do cease and desist from selling, offering for sale, or advertising for sale, in interstate commerce, toilet soap or other kinds of soap bearing upon the boxes or wrappers in which said soap is packed or wrapped, or upon the soap itself, or in any advertising or written matter in relation to said soap:

(1) Any false, fictitious, or misleading statement or representation as to the ingredients or price of said soap;

(2) Any statements or representations which falsely state or represent the name of the manufacturer to be other than the Union Soap Co.;

(3) Any statements or representations which falsely state or represent the address or location of the respondent Union Soap Co.'s office or place of business.

It is further ordered, That the respondent, within sixty (60) days after the date of the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order of the Commission hereinbefore set forth.

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FEDERAL TRADE COMMISSION DECISIONS.

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FEDERAL TRADE COMMISSION

v.

HYGRADE KNITTING COMPANY, INC.