

Complaint.

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FEDERAL TRADE COMMISSION

v.

SIMON ADELSON, TRADING UNDER THE NAME AND
STYLE OF UNITED STATES REFINING COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 716—March 9, 1923.

SYLLABUS.

Where an individual engaged in the manufacture and sale of paints and other products advertised and labeled two products as "Old Government Paint, Ground In Pure Linseed Oil—Greatest Covering Capacity—Richest Color—Longest Wearing," etc., and "OLD GOVERNMENT WHITE, Ground Finer and Will Cover More Surface and is Whiter than any Pure White LEAD," with the intermediate words so printed as probably to escape the attention of the casual observer; the fact being that said products were neither procured from nor made for the Government, nor made in accordance with any Government formula or specification, and were neither ground in pure linseed oil nor composed of pure white lead:

Held, That such false and misleading advertising, and such mislabeling, 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 Simon Adelson, trading under the name and style of the United States Refining 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 respondent carries on business at Cleveland, Ohio, under the name and style of the United States Refining Company, and is engaged in the business of manufacturing and selling paints and other products, and causes such products to be transported to the purchasers thereof from the State of Ohio through and into other States of the United States; and in carrying on such business, respondent has been in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent, in the course of his business as described in paragraph 1 hereof, makes and has made use of false and deceptive advertising matter of and concerning commodities sold by him, and places upon the containers of such commodities deceptive labels, in that one of the commodities so sold by respondent has been described in such advertising matter and labels as "Old Government Paint, Ground in pure linseed oil—greatest covering capacity—richest color—longest wearing," etc., whereas such paint had not been ground in pure linseed oil, and was not procured from the Government or manufactured for its use, or manufactured in accordance with any Government formula or specifications; and that as a means of procuring the sale of another commodity, respondent used other advertising matter descriptive of such commodity, and placed upon the containers thereof, labels, which advertising matter and labels contained the statement, "Old Government White, ground finer and will cover more surface and is whiter than any pure white lead," with the first three words and the last word in large bold face type and the other words of such statement in small inconspicuous type, so that a casual observer would be likely to see only the words "Old Government White Lead," and would be deceived thereby into believing that the product was white lead, whereas such commodity was not pure white lead and has not been procured from the Government or manufactured for its use, and was not made in accordance with any Government formula or specifications; that various other statements of the same general character were contained in advertising matter and labels used by respondent in the course of his said business, all of which statements were calculated to and did mislead and deceive the purchasing public.

PAR. 3. 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 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 its complaint upon the respondent, Simon Adelson, trading under the name and style of United States Refining Company, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer herein, a statement of the facts was agreed upon by counsel for the Commission and counsel for respondent, to be taken in lieu of evidence.

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:

PARAGRAPH 1. That respondent carries on business at Cleveland, Ohio, under the name and style of the United States Refining Company, and is engaged in the business of manufacturing and selling paints and other products and causes such products to be transported to the purchasers thereof from the State of Ohio through and into other States of the United States; and in carrying on such business respondent has been, and now is, in direct, active competition with other persons, partnerships, and corporations engaged in selling paints, pure white lead, and other products, who likewise cause such products to be transported from the States of their domicile to purchasers in other States, and who advertise and label such products accurately.

PAR. 2. That respondent, in the course of his business as described in paragraph 1 hereof, makes and has made use of advertising matter of and concerning commodities sold by him, and places upon the containers of such commodities deceptive labels, in that one of the commodities so sold by respondent has been described in such advertising matter and labels as "Old Government Paint, Ground in pure linseed oil—greatest covering capacity—richest color—longest wearing," etc.; whereas such paint has not been ground in pure linseed oil, and was not procured from the Government or manufactured for its use, or manufactured in accordance with any Government formula or specifications; and that as a means of procuring the sale of another commodity, respondent used other advertising matter descriptive of such commodity, and placed upon the containers thereof labels, which advertising matter and labels contained the statement, "Old Government White, ground finer and will cover more surface and is whiter than any pure white lead," with the first three words and the last word in large, bold face type, and the other words of such statement in small, inconspicuous type, so that a casual observer would be likely to see only the words "Old Government White Lead," and would be deceived thereby into believing that the product was white lead, whereas such commodity was not pure white lead. Such product has not been procured from the Government or manufactured for its use, and was not made in accordance with any Government formula or specifications.

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 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 statement of facts agreed on by counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts with its conclusion that 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 respondent, Simon Adelson, trading under the name and style of United States Refining Company, do cease and desist:

(1) From using the word "Government" in advertising matter, on labels, or otherwise as describing commodities manufactured or offered for sale when such commodities have not been procured from or manufactured for, or by, the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating, otherwise describing, or advertising a commodity as:

(a) "Old Government Paint," or by so using words of similar import, when such paint is not, in fact, procured from the United States Government or manufactured by it or for its use;

(b) Containing "white lead" or other ingredients which in fact it does not contain;

(c) Having been manufactured, prepared or ground in "linseed oil" or other ingredients named when such ingredients have not been so used.

And it is further ordered, That the respondent, Simon Adelson, trading under the name and style of United States Refining Company, shall within sixty (60) days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set out.

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FEDERAL TRADE COMMISSION

v.

T. S. SOUTHGATE, TRADING UNDER THE NAME AND STYLE OF T. S. SOUTHGATE & CO., AND LEXINGTON GROCERY CO., AND TAYLOR BROS. & CO., INC., TRADING UNDER THE NAME AND STYLE OF SOUTHERN SALT CO.

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

Docket 935—March 9, 1923.

SYLLABUS.

Where two corporations, jointly engaged as the Southern Salt Co. in dealing in imported ground rock salt of a quality inferior to that made in domestic plants by the evaporation process and therefore preferred to the foreign product, and their broker or sales agent; in offering and selling the same,

(a) Advertised, listed, and described their salt as "No. 1 Star Brand Common Fine Salt," "Common Fine," "Fine," and "Highest Grade of Salt Obtainable," and offered the same at 2 cents per hundred pounds under the market price;

(b) Branded the sacks and other containers thereof conspicuously with the words "Southern Salt Co., Norfolk, Virginia, No. 1 Fine Salt"; and

(c) Failed in the advertising, sale, and distribution of such salt to disclose its true character as an imported, ground rock salt;

With the result that the trade and purchasing public were deceived and misled into buying said salt as and for a domestic product made by the evaporation process and of the highest quality obtainable:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

Acting in the public interest pursuant to 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," the Federal Trade Commission charges that T. S. Southgate, trading under the name and style of T. S. Southgate & Co., and the Lexington Grocery Co. and Taylor Bros. & Co., Inc., trading under the name and style of Southern Salt Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Said respondent, T. S. Southgate, conducts his business of merchandise broker under the style and title of T. S. Southgate & Co., with his principal office and place of business in the Southgate Terminal Building, Norfolk, Va. He is now and at all times hereinafter mentioned has been engaged in the general broker-

age business and distributes among other products salt for the Southern Salt Co., which is a trade name of the said respondent, Lexington Grocery Co., and said respondent Taylor Bros. & Co., Inc., the said Lexington Grocery Co. being a corporation organized under the laws of the State of North Carolina, with principal office and place of business at Lexington, N. C., and the said Taylor Bros. & Co., Inc., being a corporation organized under the laws of the State of Virginia, with principal office and place of business at Norfolk, Va., both engaged in the business of buying and selling groceries and other food products in a wholesale way, and in the course of the business transacted by the said respondents, the said salt is sold to wholesale grocers and manufacturers by the said respondent, T. S. Southgate, and when so sold was and is transported from Norfolk, Va., and other Atlantic seaports to the purchasers thereof at points in the various States of the United States. In the course and conduct of this said business said respondents are in competition with other individuals, partnerships and corporations similarly engaged in the purchase and sale of salt in interstate commerce.

PAR. 2. The said respondents, Lexington Grocery Co. and Taylor Bros. & Co., Inc., in the year 1921 began trading jointly under the name and style of Southern Salt Co. for the purpose of purchasing, selling, and distributing certain cargoes of ground rock salt imported from Germany, and the said T. S. Southgate, trading under the name and style of T. S. Southgate & Co., was employed as sales agent for said purpose, all of said sales of salt being under the supervision and direction of said respondents, Lexington Grocery Co. and Taylor Bros. & Co., Inc. The said T. S. Southgate, under the name and style of T. S. Southgate & Co., solicited orders for, and sold, said salt as exclusive agent for respondents, Lexington Grocery Co. and Taylor Bros. & Co., Inc., trading under the name and style of Southern Salt Co. as aforesaid, through circular letters circulated through the United States mail to prospective customers at various points in the several States and in said circulars advertised said ground rock salt as "No. 1 Star brand common fine salt" at 2 cents under the market price, and further described said salt as "Common Fine" and as "The Highest Grade of Salt obtainable." Respondents caused said rock salt, when so sold, to be shipped and delivered to the purchasers thereof in sacks and other containers branded "Southern Salt Co., Norfolk, Va., No. 1 Fine Salt."

PAR. 3. The said ground rock salt purchased, advertised, sold, and distributed by said respondents as aforesaid is inferior in quality to salt manufactured by the evaporation process in the various salt plants in the United States, and the words "Common Fine Salt,"

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"Common Fine," "Fine," and "Highest Grade of Salt obtainable," used by said respondent T. S. Southgate in said circulars and brands describing said ground rock salt as aforesaid signify to, and are understood by, a substantial part of the trade and purchasing public to mean salt manufactured by the evaporation process and are calculated and have the capacity and tendency to mislead and deceive the trade and purchasing public and to induce them to purchase said ground rock salt in the belief that it is salt manufactured by the evaporation process as aforesaid.

PAR. 4. For a number of years salt manufactured in the United States has been preferred by the trade and the consuming public and hence the advertising in said circular letters by said respondent, T. S. Southgate, as aforesaid, that the said ground rock salt was "Common Fine Salt," without disclosing the fact that such salt was imported from Germany, was calculated to and had the capacity and tendency to mislead and deceive the trade and purchasing public and to induce them to purchase said salt in the belief that it was manufactured in the United States.

PAR. 5. There are a considerable number of manufacturers of salt in the United States who manufacture salt by the evaporation process and advertise and sell their product as "Common Fine Salt" in competition with said respondents. There are also a number of salt manufacturers who manufacture salt from rock salt who advertise and sell their product as "Rock Salt" and who do not attempt to advertise or sell said rock salt as "Common Fine Salt" or in any other way attempt to deceive or mislead the purchasing public or induce them to believe that said rock salt is of the same quality as salt manufactured by the evaporation process.

PAR. 6. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods 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.¹

Pursuant to the provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, T. S. Southgate, trading under the name and style of T. S. Southgate & Co.; Lexington Grocery Co., and Taylor Bros. & Co., Inc., trading jointly under the name and style of Southern Salt Co., charging them with the use of unfair

¹ This case was subsequently reopened, and the complaint dismissed without prejudice, and without assignment of reasons. Such action, however, took place too late to permit the withdrawal of the case from this volume.

methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances and filed their answers herein in which they consented to accept an order by the Commission to cease and desist from the unfair practices alleged in said complaint, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by and between respondents and counsel for the Commission that the Federal Trade Commission may take such agreed statement of facts as the facts in this proceeding before the Federal Trade Commission and in lieu of testimony before said Commission in support of the charges stated in said complaint or in opposition thereto; that said respondents waive their rights to file briefs and present oral argument to said Commission in this proceeding, and that said Commission may proceed further upon such agreed statement of facts to make its report, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

And the Federal Trade Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent Lexington Grocery Co. is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, having its principal office and place of business in the city of Lexington and State of North Carolina, and its business is the purchasing, selling, and distributing, at wholesale, groceries and other food products, including salt. Respondent Taylor Bros. & Co., Inc., is a corporation organized under and by virtue of the laws of the State of Virginia, having its principal office and place of business in the city of Norfolk and State of Virginia, and its business is the purchasing, selling, and distributing, at wholesale, groceries and other food products, including salt. Respondent T. S. Southgate is an individual engaged in the business of general merchandise broker under the unincorporated trade name and style of T. S. Southgate & Co., having his principal office and place of business in the city of Norfolk and State of Virginia.

PAR. 2. Respondents Taylor Bros. & Co., Inc., and Lexington Grocery Co. at all times since the month of July, 1921, traded jointly under the unincorporated trade name and style of Southern Salt Co. in conducting a business of purchasing, selling, and distributing, at wholesale, to manufacturers, jobbers, and other purchasers throughout the United States certain cargoes of ground rock salt imported from Germany. In carrying on said salt business

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under the name and style of Southern Salt Co., respondents Lexington Grocery Co. and Taylor Bros. & Co., Inc., employed at all times since July, 1921, respondent T. S. Southgate, trading as aforesaid under the name and style of T. S. Southgate & Co., as their broker and agent in selling and distributing said ground rock salt. In conducting the business of dealing in said ground rock salt, respondents, and each of them trading as aforesaid, solicited orders for and sold large quantities of said ground rock salt by means of traveling salesmen and circular letters sent to jobbers, manufacturers, and other prospective customers at various points in the several States of the United States. Pursuant to the orders received for said ground rock salt, respondents caused said ground rock salt so sold to be transported in sacks and other containers from the city of Norfolk and State of Virginia through and into other States of the United States to the purchasers thereof, and in so carrying on the sale and distribution of said ground rock salt were in direct active competition with many other persons, partnerships, and corporations similarly engaged in the sale and distribution of salt in interstate commerce.

PAR. 3. Respondents, and each of them, through the aforesaid traveling salesmen represented, and in the said circular letters they advertised, listed, and described said ground rock salt as "No. 1 Star Brand Common Fine Salt," at 2 cents per 100 pounds under the market price, and further represented, advertised, listed, and described said ground rock salt as "Common Fine," "Fine," and as the "Highest Grade of Salt Obtainable," and respondents caused the said sacks and other containers in which said ground rock salt was shipped and delivered to the purchasers thereof to be branded conspicuously with the words "Southern Salt Co., Norfolk, Virginia, No. 1 Fine Salt."

PAR. 4. The said ground rock salt dealt in as aforesaid by respondents is not manufactured or produced by the evaporation process and it is inferior in quality to salt manufactured by the evaporation process in the various salt plants in the United States and sold to the trade and consuming public, and said ground rock salt is not the highest grade of salt obtainable. The aforesaid representing, advertising, listing, describing, and branding of said ground rock salt as "No. 1 Star Brand Common Fine Salt," "Common Fine Salt," "Common Fine," "Fine," "No. 1 Fine Salt," and "Highest Grade of Salt Obtainable," signified to the trade and purchasing public in the United States, and caused said trade and purchasing public to believe, that said ground rock salt is the highest grade of salt obtainable and that it is salt manufactured by the evaporation process. In advertising, selling, and distributing the said ground rock salt,

as aforesaid, respondents did not disclose to the trade and purchasers thereof that said salt is ground rock salt imported from Germany, and that the same is not manufactured or produced by the evaporation process in the United States. Salt manufactured or produced in the United States has for a number of years last past, and at all times herein mentioned, been preferred by the trade and consuming public over salt imported from Germany, and a substantial part of the trade and consuming public understand and believe that salt which is not marked, branded, or represented as having been imported from a foreign country is salt manufactured or produced in the United States.

PAR. 5. The aforesaid representing, advertising, listing, describing, and branding of said ground rock salt by respondents as "No. 1 Star Brand Common Fine Salt," "Common Fine Salt," "Common Fine," "Fine," and "Highest Grade of Salt Obtainable," and "Southern Salt Co., Norfolk, Virginia, No. 1 Fine Salt," without disclosing as aforesaid that said salt so represented is ground rock salt imported from Germany, is calculated and has and had the capacity and tendency to, and did, mislead and deceive the trade and purchasing public into the belief that said ground rock salt is the highest grade of salt obtainable and that it is salt manufactured or produced in the United States by the aforesaid evaporation process, and cause the said trade and purchasing public to purchase said salt in that belief.

PAR. 6. There are a large number of manufacturers and producers of salt in the United States who manufacture and produce salt by the said evaporation process and advertise and sell the salt so manufactured and produced in commerce among the several States of the United States as "Common Fine Salt," "Common Fine," "Fine," and "No. 1 Fine Salt," in competition with respondents. There are also a number of manufacturers and distributors of rock salt in competition with respondents who do not represent said rock salt as "Common Fine Salt," "Common Fine," "Fine," or "No. 1 Fine Salt," or in any way attempt to mislead or deceive the purchasing public or induce purchasers to believe that said rock salt is salt manufactured by the evaporation process and/or that said rock salt is of the same quality as the salt manufactured by the evaporation process. There are also a number of competitors of respondents who import from Germany rock salt and ground rock salt and sell the same in commerce among the several States of the United States, and who disclose to the purchasing public that the salt so imported, sold, and distributed is ground rock salt, or rock salt, as the case may be, and that the same was imported from Germany.

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CONCLUSION.

The practices of said respondents, 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.¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondents have 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 respondent T. S. Southgate, trading under the name and style of T. S. Southgate & Co., his agents, representatives, servants, and employees; respondents Lexington Grocery Co. and Taylor Bros. & Co., Inc., trading jointly under the name and style of Southern Salt Co., their officers, agents, representatives, servants, and employees, do cease and desist from directly or indirectly:

1. Advertising, describing, or representing in circulars, labels, brands, or otherwise as "Common Fine" or "Fine" salt sold and distributed by respondents in commerce unless such salt is in fact manufactured or produced by the evaporation process.

2. Advertising, describing, or representing in circulars, labels, brands, or otherwise any salt sold and distributed by respondents in commerce as being "the highest grade of salt obtainable," when such representation is not true in fact.

3. Selling or offering for sale in commerce any salt imported from Germany or any other foreign country without marking, labeling, branding, or otherwise disclosing to the purchasers thereof, that said salt was imported from Germany or such other foreign country as the case may be.

It is further ordered, That respondents, within sixty (60) days from the notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with and conformed to.

¹ See footnote on p. 30.

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