

Complaint.

FEDERAL TRADE COMMISSION

v.

G. F. HEMLER.

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

Docket 1001—May 15, 1923.

SYLLABUS.

Where it had been long known that cigars manufactured at Tampa, Fla., were largely composed of tobacco imported from Havana, Cuba, and such cigars had come to be widely and favorably known and generally referred to as "Tampa Cigars"; and thereafter an individual engaged elsewhere in the manufacture and sale of cigars made from other than Havana tobacco, placed on certain brands of his cigars bands bearing the words "Tampa, Florida," and on the paper lining of the boxes containing the same, the words "All Havana Hand Made," with the effect of misleading and deceiving a substantial part of the purchasing public and to the injury of competing manufacturers of genuine Tampa cigars who so labeled, branded and advertised their product:

Held, That such misbranding and mislabeling, under the circumstances set forth, constituted an unfair method 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 G. F. Hemler, sometimes doing business under the name and style of The Star Cigar Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is engaged at McSherrystown, in the State of Pennsylvania, in the business of manufacturing and selling cigars, and causes such cigars when sold to be transported from the State of Pennsylvania through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. In the course of said business carried on by him, as aforesaid, respondent has made a practice of placing on certain brands of cigars manufactured by him at McSherrystown, in the State of Pennsylvania, bands bearing the words "Tampa Florida," and on the paper lining of the boxes containing said cigars has placed the words "All Havana Hand Made." Cigars have for many years been manufactured in the city of Tampa, Florida, and in the territory immedi-

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ately surrounding said city and known as the Tampa District. Such cigars have been and are manufactured principally from tobacco imported from Havana, Cuba, and generally known as Havana tobacco, and cigars made in said city and district have acquired a wide and favorable reputation and are generally considered to be the best cigars manufactured of Havana tobacco, with the exception of those made at Havana, Cuba, by reason of similarity of climate and labor conditions.

PAR. 3. The cigars manufactured by respondent upon which said brands and labels have been and are placed by him, as aforesaid, were not manufactured at the city of Tampa, Florida, or in the Tampa District, aforesaid, and were not made of Havana tobacco, and the use of said brands and labels was intended to and did indicate and signify to the purchasing public that said cigars had in fact been manufactured at Tampa, Florida, or in the Tampa District, and were composed of Havana tobacco.

PAR. 4. The words "Tampa Florida" on the bands of said cigars and the words "All Havana Hand Made" on the containers thereof have been and are understood by a substantial part of the purchasing public to mean cigars manufactured in the city of Tampa or in the said Tampa District in the State of Florida and composed of tobacco imported from Havana, Cuba, and said brands and labels have the capacity and tendency to mislead and deceive the purchasing public into the belief that said cigars so branded and labeled were in fact Tampa cigars as such term is generally understood and were manufactured from Havana tobacco, and to induce them to purchase the same in that belief.

PAR. 5. The above acts and practices of respondent are all to the prejudice of the public and of respondent's 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.

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, G. F. Hemler, 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, and having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein,

without the introduction of testimony or the presentation of argument in support of same, the Federal Trade Commission 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 the respondent is engaged in the business of manufacturing and selling cigars at McSherrystown, in the State of Pennsylvania, and causes such cigars, when sold, to be transported from the State of Pennsylvania through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged in commerce.

PAR. 2. That in the course of said business carried on by him, as aforesaid, respondent has made a practice of placing on certain brands of cigars manufactured by him at McSherrystown, in the State of Pennsylvania, bands bearing the words "Tampa, Florida," and on the paper lining of the boxes containing said cigars has placed the words "All Havana Hand Made."

PAR. 3. That for more than thirty years cigars have been manufactured in the City of Tampa, Florida, and in the territory immediately surrounding said city and known as the Tampa District; that such cigars are known and referred to as Tampa Cigars and are manufactured principally from tobacco imported from Havana, Cuba; and that such cigars made in said City and District of Tampa have acquired a wide and favorable reputation.

PAR. 4. That the cigars manufactured and sold by respondent, upon which the bands, labels, and legends described in paragraph 2 hereof have been and are placed by him, were not made in the City of Tampa or in the Tampa District, so called, in the State of Florida, nor composed of tobacco grown in and imported from Havana, Cuba.

PAR. 5. That the words "Tampa, Florida," on the bands of said cigars and the words "All Havana Hand Made" on the containers thereof have been and are understood by a substantial part of the purchasing public to mean cigars manufactured in the City of Tampa, or in the said Tampa District, in the State of Florida, and to be composed of tobacco imported from Havana, Cuba.

PAR. 6. That many of respondent's competitors are engaged in the manufacture and sale of cigars to persons in States other than those in which their principal factories and places of business are located, and in causing such cigars to be transported from the States in which their principal factories or places of business are located through and into other States of the United States, pursuant to such manufacture and sales. That many of respondent's competitors have manufactured, sold, and shipped and are now manufacturing, selling, and shipping, in said commerce between the States of the United States, cigars which are manufactured in the City of Tampa, or the

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Tampa District, in the State of Florida, and principally from tobacco imported from Havana, Cuba, which cigars and the containers thereof bear labels, brands, and advertising matter containing the word "Tampa," alone or in connection with other words and phrases.

PAR. 7. That the bands, labels, and legends containing the words "Tampa, Florida," and the words "All Havana Hand Made" used by the respondent upon cigars and the containers thereof manufactured, sold, and shipped by him, as set forth in the foregoing findings, have the capacity and tendency to and do mislead and deceive a substantial part of the purchasing public into the belief that such cigars are manufactured in the City of Tampa, or the Tampa District, in the State of Florida, and are composed of tobacco grown in and imported from Havana, Cuba.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in 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 agreed statement of facts filed herein, and the Commission 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, G. F. Hemler, his agents, representatives, servants, and employees, do cease and desist from using the words "Tampa, Florida," and the words "All Havana Hand Made," or any of them, in bands, labels, or legends on cigars and the containers thereof manufactured by him in McSherrystown, Pa., or in any other place than the City of Tampa, or the Tampa District, in the State of Florida, or sold by him, if such cigars in fact are not made in the City of Tampa, or the Tampa District, in the State of Florida, and are not composed of tobacco grown in and/or imported from Havana, Cuba.

It is further ordered, That the respondent, G. F. Hemler, 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 forth.

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