

Complaint.

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FEDERAL TRADE COMMISSION

v.

CARAVEL COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AS EXTENDED BY SECTION 4 OF AN ACT OF CONGRESS APPROVED APRIL 10, 1918.

Docket 792—June 21, 1923.

SYLLABUS.

Where an export house filled an order from a foreign purchaser for "Newtown Pippin Apples" with "California Newtown Pippins," and, for the purpose of securing payment under the purchaser's letter of credit, invoiced said apples as "Oregon Newtown Pippins" (recognized by the trade and understood by said export house as being superior in shipping and keeping qualities to the fruit actually sent) and declined, upon complaint by the purchaser, either to make any deduction from the purchase price paid, or to supply new goods:

Held, That such misrepresentation, under the circumstances set forth, constituted an unfair method of competition in violation of Section 5 of the Act of September 26, 1914, as extended by Section 4 of the Act of April 10, 1918.

COMPLAINT.¹

Acting in the public interest pursuant to 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," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes," the Federal Trade Commission charges that the Caravel Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of said acts, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Caravel Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the City and State of New York, and is now and for more than two years last past has been engaged in the business of exporting goods, wares, and merchandise from the United States to foreign countries, in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the respondent purchases large quantities of merchandise throughout numerous States

¹ Amended complaint.

of the United States, and resells the same to purchasers located in various foreign countries; that after such merchandise is so purchased, respondent causes the same to be transported through different States of the United States in and to the City and State of New York and other seaboard cities, and then moved and transported to the purchasers thereof in foreign countries, and there is now, and has been at all times herein mentioned, a constant current of trade and commerce in such merchandise between and among the various States of the United States and foreign countries, and more especially from different States of the United States, through other States, in and to the City and State of New York, and therefrom, in and to foreign countries.

PAR. 3. That in the State of Oregon certain apples are grown which have become and are well known and established as "Oregon Newtown Pippins," which are superior in shipping and keeping qualities, for export purposes, to certain apples grown in the State of California and known and designated as "California Newtown Pippins"; all of which is and has been, for many years last past, well known to the trade and dealers in apples throughout the United States and foreign countries, and was at all times herein mentioned well known to this respondent.

PAR. 4. On or about the 29th day of August, 1919, the respondent received and accepted through a Swedish broker an order from Aktiebolaget Halfdan Buhrman of Stockholm, Sweden, for 2,000 boxes of Newton Pippin Apples, to be shipped c. i. f. Stockholm. Pursuant to this order the said Aktiebolaget Halfdan Buhrman, on December 3, 1919, caused to be placed with the National City Bank of New York, N. Y., a letter of credit calling for Oregon Newtown Pippin Apples. Respondent, in the meanwhile, had purchased Newtown Pippin Apples grown in the State of California, which he shipped in fulfillment of the above order and which he invoiced, for the purpose of obtaining payment, under the letter of credit hereinbefore mentioned, as Oregon Newtown Pippin Apples, well knowing that such apples were not Oregon Newtown Pippins. This fraudulent invoice was presented to the said National City Bank, who upon the strength thereof paid respondent the sum of \$9,400, which amount respondent has retained, although demand was promptly made by the said Aktiebolaget Halfdan Buhrman for damages for breach of contract.

PAR. 5. The above alleged acts of respondent are all to the prejudice of the public and of competitors of respondent and constitute an unfair method of competition within the meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled

Findings.

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"An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

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," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes," the Federal Trade Commission issued and served its amended complaint upon the respondent, Caravel Company, Inc., charging it with violation of said acts. Respondent having entered its appearance and filed its answer herein, together with stipulation as to the facts in support of the allegations of said amended complaint, agreeing, among other things, that the Commission might proceed to make its findings, conclusion, and order without further notice of proceedings, and this matter having come regularly on to be heard, and having been duly considered, and the Commission being fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Caravel Company, Inc., was at all the times mentioned in the amended complaint and now is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the city of New York, and has been engaged in the business of exporting goods, wares and merchandise from the United States to foreign countries in competition with other persons, firms and corporations similarly engaged.

PAR. 2. In the conduct of its business, respondent purchased large quantities of merchandise throughout numerous States of the United States and resold the same to purchasers located in various countries; after such merchandise was purchased respondent caused the same to be transported through different States of the United States to the City and State of New York and other seaboard cities, and then moved and transported to purchasers in foreign countries, and there was at all times herein mentioned a constant current of trade and commerce in such merchandise between and among the various States of the United States and foreign countries.

PAR. 3. In the State of Oregon certain apples are grown which are now known as "Oregon Newtown Pippins" which are superior in shipping and keeping qualities, for export purposes, to certain apples grown in California and designated as "California Newtown Pippins," all of which is and has been for many years last past well known to the trade and dealers in apples throughout the United States and foreign countries, and was at all times herein mentioned well known to respondent. The word "Newtown" is sometimes inaccurately called "Newton."

PAR. 4. On or about the 29th day of August, 1919, respondent received and accepted through a Swedish broker, an order from Aktiebolaget Halfdan Buhrman, of Stockholm, Sweden, in the following words and figures:

"August 29, 1919, 2,000 boxes apples, Newton Pippins, size 125/175. October-November, by Steamer c. i. f. Stockholm, all boxes to be strapped all around for export."

PAR. 5. Pursuant to the above order, on or about the 15th day of November, 1919, respondent purchased from Harold L. Kane, of Watsonville, Calif., 2,000 boxes of Newtown Pippins, grown in the State of California, and caused the same to be shipped to respondent's order at New York City. Upon the arrival of the apples at the latter destination, respondent notified the purchaser by cable and requested a letter of credit, in response to which the purchaser established credit at the National City Bank of New York, and said bank on the 3d day of December, 1919, sent respondent a letter of credit in which respondent was advised that its drafts would be honored when accompanied with certain documents, among which was plain invoice in triplicate covering certain merchandise described in said letter of credit as follows:

"2,000 iron strapped boxes apples, Oregon Newton Pippins, extra fancy, 125/175, price \$4.70 c. i. f. Stockholm."

Said letter also advised the respondent that—

"Conditions embodied in this letter of credit must be adhered to, otherwise payment will not be effected."

PAR. 6. On December 18, 1919, respondent invoiced the said 2,000 boxes of Newtown Pippins purchased from Harold L. Kane, as follows:

"2,000 boxes Newton apples, Oregon Pippins."

and presented the invoice together with draft, bill of lading and other necessary documents to the National City Bank, hereinbefore mentioned, and received the sum of \$9,400.00 as the purchase price of

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said 2,000 boxes of apples at \$4.70 a box. Thereafter and upon the arrival of the above mentioned shipment of apples in Stockholm, respondent received the following cable from the purchaser:

"Bought Oregon Newton Pippins, extra fancy. Received California fancy. Fruit unsatisfactory. Claim either new goods or price reduced \$1.00 per case."

which claim was not allowed by respondent.

CONCLUSION.

The practice of the respondent, under the circumstances described in the foregoing findings, is an unfair method of competition, within the meaning 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," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having come regularly on to be heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer thereto and stipulation as to the facts by the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes."

It is therefore ordered, That the respondent, Caravel Company, Inc., its officers, agents, employees, and servants be, and they are hereby, ordered to cease and desist from falsely describing, in invoices or by any other means, articles shipped in foreign commerce for the purpose of obtaining payment on such falsified document for the articles shipped.

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THE HOLSMAN COMPANY.