

Complaint.

FEDERAL TRADE COMMISSION

v.

KRAUS & COMPANY, INC. AND HERMAN T. WEEKS.

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

Docket 996—June 21, 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 a corporation engaged elsewhere in the manufacture and sale of cigars, and a dealer-distributor of the products of said manufacturer, caused to be affixed to or inserted in the containers of the manufacturer's product, labels or linings bearing such words or legends as "Tampa," "Smoke our 10¢ Tampa," "None Genuine unless stamped 'Tampa'," etc.; with the effect of misleading and deceiving a substantial part of the purchasing public:

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 Kraus & Co., Inc., and Herman T. Weeks, hereinafter referred to as the respondents, have been and are 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, Kraus & Co., Inc., is a corporation organized under the laws of the State of Maryland and having its principal office and place of business in the city of Baltimore in said State, and for more than two years last past has been and still is engaged in the business of manufacturing and selling cigars. Said respondent in the course of its said business causes said cigars when sold to be transported from the State of Maryland 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.

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PAR. 2. Respondent, Kraus & Co., Inc., for more than two years last past has caused and still does cause, the word "Tampa" to be stamped upon the covers of the boxes containing said cigars manufactured by it in Baltimore, in the State of Maryland, as aforesaid, and has affixed and does affix to said boxes labels bearing the word "Tampa," and paper linings bearing the words "Smoke Our 10¢ Tampa," and others bearing the words "None Genuine Unless Stamped 'TAMPA,'" and/or other legends containing the word "Tampa" alone or in connection with other words, and all referring to said cigars manufactured by the said respondent, Kraus & Co., Inc., as aforesaid.

PAR. 3. Respondent, Herman T. Weeks, doing business under the name and style of Weeks Brothers, at Pittston, in the State of Pennsylvania, for more than two years last past has been and still is engaged in the business of buying, selling, and otherwise dealing in cigars and particularly cigars manufactured and branded by Kraus & Co., Inc., as described in paragraph 2 hereof, and in connection and cooperating with respondent, Kraus & Co., Inc., causes such cigars to be transported from the State of Maryland, 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. 4. Respondent, Herman T. Weeks, individually and/or in connection and cooperating with said respondent Kraus & Co., Inc., has caused and still does cause the word "Tampa" to be stamped upon the covers of the boxes containing the cigars manufactured by respondent, Kraus & Co., Inc., and sold by said Herman T. Weeks, and causes to be affixed to said boxes labels bearing the word "Tampa" and paper linings bearing the words "Smoke Our 10¢ Tampa," and others bearing the words "None Genuine Unless Stamped 'Tampa,'" and/or other legends containing the word "Tampa" alone or in connection with other words, and all referring to said cigars manufactured by said respondent, Kraus & Co., Inc., and sold by respondent, Herman T. Weeks, as aforesaid.

PAR. 5. Cigars have for many years been manufactured in the city of Tampa, Fla., and in the territory immediately surrounding said city and known as the Tampa District, and such cigars are referred to as Tampa cigars. Such cigars have been and are manufactured principally from tobacco imported from Havana, Cuba, and generally known and referred to as Havana tobacco, and cigars made in said city and district of Tampa 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. 6. The cigars manufactured by respondent, Kraus & Co., Inc., and sold by respondent, Herman T. Weeks, both individually and co-operating with each other, upon which said brands, labels, and legends, have been and are placed by them and each of them, as aforesaid, were not made in the city of Tampa or in the Tampa District, so called, and the use of said brands, labels, and legends, was intended to and did signify to the purchasing public that said cigars had in fact been manufactured in Tampa, Fla., or in the Tampa District, so called.

PAR. 7. The word "Tampa" on the containers of said cigars and the other labels and legends used in connection therewith as above described 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 Tampa District in the State of Florida and composed principally of tobacco transported from Havana, Cuba, and each and all of said brands, labels, and other legends have the capacity and tendency to mislead and deceive the purchasing public into the belief that said cigars so branded, marked, 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. 8. The above acts and practices of respondents, and each of them, are all to the prejudice of the public and of 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.

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, Kraus & Company, Inc., and Herman T. Weeks, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their several appearances and filed their several answers herein and each of said respondents having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by the respondents that the Federal Trade

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Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith 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. Respondent, Kraus & Co., Inc., is a corporation organized under the laws of the State of Maryland and having its principal office and place of business in the city of Baltimore in said State, and for more than two years last past has been and still is engaged in the business of manufacturing and selling cigars. Said respondent in the course of its said business causes said cigars when sold to be transported from the State of Maryland through and into other States of the United States to the purchasers thereof, and carriers on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Respondent, Kraus & Co., Inc., for more than two years last past has caused and still does cause, the word "Tampa" to be stamped upon the covers of the boxes containing said cigars manufactured by it in Baltimore in the State of Maryland, as aforesaid, and has affixed and does affix to said boxes labels bearing the word "Tampa," and paper linings bearing the words "Smoke Our 10¢ Tampa," and others bearing the words "None Genuine Unless Stamped 'TAMPA,'" all referring to said cigars manufactured by the said respondent, Kraus & Co., Inc., as aforesaid.

PAR. 3. Respondent, Herman T. Weeks, doing business under the name and style of Weeks Brothers, at Pittson, in the State of Pennsylvania, for more than two years last past has been and still is engaged in the business of buying, selling, and otherwise dealing in cigars and particularly cigars manufactured and branded by Kraus & Co., Inc., as described in paragraph 2 hereof, and in connection and cooperating with respondent, Kraus & Co., Inc., causes such cigars to be transported from the State of Maryland, 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. 4. Respondent, Herman T. Weeks, in connection and cooperating with said respondent Kraus & Co., Inc., has caused and still does cause the word "Tampa" to be stamped upon the covers of the

boxes containing the cigars manufactured by respondent, Kraus & Co., Inc., and sold by said Herman T. Weeks and causes to be affixed to said boxes labels bearing the word "Tampa" and paper linings bear the words "Smoke Our 10¢ Tampa," and others bearing the words "None Genuine Unless Stamped 'TAMPA,'" all referring to said cigars manufactured by said respondent, Kraus & Co., Inc., and sold by respondent, Herman T. Weeks, as aforesaid.

PAR. 5. That for more than 30 years cigars have been manufactured in the city of Tampa, Fla., 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. 6. That the word "Tampa" alone or in connection with other words or phrases, when applied to cigars, without any other word or words descriptive of their quality or place of manufacture, is understood by a substantial part of the purchasing public to mean cigars manufactured in the city of Tampa or in the Tampa District, in the State of Florida, and composed principally of tobacco transported from Havana, Cuba.

PAR. 7. That many of respondents' 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 respondents' 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 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. 8. That the cigars manufactured and sold by respondents, both individually and cooperating with each other, upon which the brands, labels, and legends, described in paragraph 4 hereof have been and are placed by them, were not made in the city of Tampa or in the Tampa District, so called, in the State of Florida.

PAR. 9. That the labels, brands, and legends containing the word "Tampa" used by respondents upon cigars and the containers

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thereof manufactured, sold, and shipped by them, all 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 Tampa District, in the State of Florida, and are in fact Tampa cigars, as such term is generally understood.

CONCLUSION.

The practices of the 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 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 and answers and agreed statement of facts filed herein, and the Commission having made its findings as to the facts, and its conclusion that the respondents have 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 respondents, Kraus & Company, Inc., and Herman T. Weeks, each and both of them, their agents, representatives, servants, and employees, do cease and desist from—

Using the word "Tampa" alone, or in combination with other words, in brands, labels, or legends on cigars, and the containers thereof, manufactured by or for them, or either of them, in Baltimore, Md., or any other place than the city of Tampa, Fla., or the Tampa District, so called, unless if the cigars in fact are not made in Tampa, Fla., or the Tampa District, such word or words are followed by words in type or lettering equally conspicuous with the word "Tampa" which state the true place of manufacture.

It is further ordered, That the respondents, Kraus & Company, Inc., and Herman T. Weeks, shall within sixty (60) days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

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