

Complaint.

FEDERAL TRADE COMMISSION

v.

KING-FERREE COMPANY, INC.

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

Docket 995—July 9, 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 not composed principally of tobacco imported from Havana, applied to its product, in the labeling and advertising thereof, the word "Vantampa" (a coined word arrived at by combining the letters v-a-n from "Havana" with the word "Tampa"); with the effect of misleading and deceiving a substantial part of the purchasing public:

Held, That the use of such labels and legends, 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 King-Ferree Company, Inc., 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 a corporation organized under the laws of the State of North Carolina and having its principal place of business in the city of Greensboro, in said State, and for more than one year 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 North Carolina 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. Respondent has for more than one year last past made a practice and still makes a practice of placing on containers of cigars

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manufactured by it at Greensboro in the State of North Carolina, as aforesaid, labels bearing the following legend:

Strictly Long Filler
Hood's
VANTAMPA
The Perfect Cigar

and has made use of other labels bearing the said name "Vantampa" and placed the same on boxes containing cigars manufactured by said respondent as aforesaid. Said respondent has also advertised under the name "Vantampa" said cigars manufactured by it at Greensboro in the State of North Carolina as aforesaid, in various newspapers having a general circulation in the State of North Carolina and in the adjoining States and generally throughout the United States. 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 frequently 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. 3. The cigars manufactured by respondent upon which said brands and labels have been and are placed by it and which have been advertised by it, as aforesaid, were not made in the city of Tampa, Fla., or in the district known as the Tampa District, and the use of said brands and labels and of said advertising by respondent was intended to and did signify to the purchasing public that said cigars had in fact been manufactured at Tampa, Fla., or in the Tampa District aforesaid.

PAR. 4. The name "Vantampa" used by respondent in connection with said cigars and in advertising the same, as above described, has been and is understood by a substantial part of the purchasing public to signify that said cigars were manufactured in the city of Tampa or in the Tampa District in the State of Florida, and were composed principally of tobacco imported from Havana, Cuba, and said brands and labels and said advertising have the capacity and tendency to mislead and deceive the purchasing public, into the belief that said cigars so branded, labeled, and advertised 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, King-Ferree Company, Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein and having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in the 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 is a corporation organized under the laws of the State of North Carolina and having its principal place of business in the city of Greensboro, in said State, and for more than one year 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 North Carolina 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. That the officers of the respondent are J. G. Hood, president; W. W. Fife, vice president; and E. A. Hood, secretary and treasurer.

PAR. 2. Respondent has for more than one year last past made a practice and still makes a practice of placing on containers of cigars

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manufactured by it at Greensboro, in the State of North Carolina, as aforesaid, labels bearing the following legend:

Strictly Long Filler
Hood's
VANTAMPA
The Perfect Cigar

and has made use of other labels bearing the said name "Vantampa" and placed the same on boxes containing cigars manufactured by said respondent as aforesaid. Said respondent has also advertised under the name "Vantampa" said cigars manufactured by it at Greensboro, in the State of North Carolina, as aforesaid, and in various newspapers having a general circulation in the State of North Carolina.

PAR. 3. That for more than thirty years cigars have been manufactured in the city of Tampa, Fla., and in the territory immediately surrounding said city and known as 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 labels and legends described in paragraph 2 hereof have been and are placed by it, were not made in the city of Tampa or in the Tampa District, so-called, in the State of Florida, nor composed principally of tobacco grown in and imported from Havana, Cuba.

PAR. 5. That the word "Vantampa" was coined by the respondent and is a combination of the letters v, a, and n—van (being the middle syllable of the word "Havana") with the word "Tampa."

PAR. 6. That the word "Vantampa" in the labels and legends used by the respondent on the cigars or the containers thereof is understood by a substantial part of the purchasing public to mean and indicate that said cigars were manufactured in the city of Tampa, or in the Tampa District, in the State of Florida, and are composed principally of tobacco grown in and imported from Havana, Cuba.

PAR. 7. 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

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manufacture and sales. That many of the 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 in 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 "Vantampa" alone or in connection with other words and phrases.

PAR. 8. That the labels, brands, and legends containing the word "Vantampa" used by respondents upon cigars and the containers 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 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 power 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 answer 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 King-Ferree Company, Inc., its officers, agents, representatives, servants and employees, do cease and desist from—

Using the word "Vantampa" alone, or in combination with other words, in brands, labels, or legends on cigars, and the containers thereof, manufactured by it in Greensboro, N. C., 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

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Tampa District, such word or words are followed by words in type or lettering equally conspicuous with the word "Vantampa" which state the true place of manufacture.

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

ROCHESTER CLOTHING CO.

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v.

PHILIP MOSKOWITZ, TRADING UNDER THE NAME AND
STYLE OF ROCHESTER CLOTHING COMPANY.