

FEDERAL TRADE COMMISSION

v.

MRS. E. M. HENNING, JOSEPH M. HENNING, C. WESLEY HENNING, AND WILLIAM E. HENNING, INDIVIDUALS, TRADING UNDER THE NAME AND STYLE OF PHILLIPS GENUINE SAUSAGE COMPANY.

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

Docket 998—November 15, 1923.

SYLLABUS.

Where the name "Phillips" had for many years been applied to sausage made and sold by various members of a family of that name in a certain city; and thereafter the successors to a business founded and conducted by one of said family as the "Thomas C. Phillips Sausage Co.," and doing business as the Phillips Genuine Sausage Co., stated upon the labels of their product that the same was "made and prepared by Thos. C. Phillips," notwithstanding the fact that said Thos. C. Phillips neither made said sausage nor had conveyed the right to use such legend:

Held, That the sale of goods misrepresented as above set forth constituted an unfair method of competition.

Mr. Thomas H. Baker, Jr. for the Commission.

Mr. H. S. Barger and *Mr. C. R. Ahalt* of Washington, D. C., for respondents.

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 Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning, and William E. Henning, individuals, trading under the name and style of Phillips Genuine Sausage Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce and in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning, and William E. Henning, individuals, trading under the name and style of Phillips Genuine Sausage Company, are now, and for more than two years last past, have been, among other things, engaged in the manufacture and sale of pork sausage in wholesale quantities in the city of Washington, District of Columbia, with their principal office and place of business in said city and District. In the course of their said business, respondents

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are in connection with other individuals, partnerships and corporations similarly engaged.

PAR. 2. Amongst the aforesaid competitors of respondents is the Joseph Phillips Company, a partnership which has its principal office and place of business in the city of Washington, District of Columbia. The said Joseph Phillips Company, and its predecessors have for many years been engaged in the manufacture of pork sausage under a secret formula, and in the sale thereof, and have since the inception of their businesses labeled, branded and advertised their said products under the names of "Phillips Sausage" or "Phillips Original All Pork Sausage." The said Joseph Phillips Company by reason of their extensive advertising and long use of the name "Phillips Sausage" and "Phillips Original All Pork Sausage", have built up a large and valuable good-will for their said products so manufactured, advertised and sold, and the purchasing public of the District of Columbia have, through continued association, come to understand that the name "Phillips" when applied to sausage designates that sausage manufactured and sold by the said Joseph Phillips Company.

PAR. 3. The said Joseph Phillips Company packs said pork sausage in one-pound packages which are wrapped in paper and upon each said wrapper of which appears the legend:

· Ask for
JOS. PHILLIPS
Manufacturer of
THE ORIGINAL
ALL PORK SAUSAGE
U. S. Inspected and Passed by Department
of Agriculture. Establishment No. 60.
1 lb. NET. WASHINGTON, D. C.

This said legend is printed in red and blue letters upon white paper.

PAR. 4. Respondents for more than two years last past have manufactured and sold, among other things, a pork sausage put up in one-pound packages, which said sausage it advertises by means of labels, circulars and various other printed matter in the following manner:

PHILLIPS'
"GENUINE"
ALL PORK
HOME MADE SAUSAGE
MADE AND PREPARED BY THOMAS C. PHILLIPS.

The said labels, circulars, advertisements and other printed matter so describing the product manufactured and sold by respondents have the tendency and capacity to mislead and deceive the consuming public into the belief that by purchasing the product of respondents it is obtaining the product of the said Joseph Phillips Company.

PAR. 5. The statement appearing on said labels, circulars, advertisements and other printed matter that the said product of respondents is, "made and prepared by Thomas C. Phillips" is false and misleading, for said product is in truth and in fact not made or prepared by any Thomas C. Phillips, nor is there any Thomas C. Phillips connected with the manufacture or sale of respondents' product in any capacity, nor has there been for many years.

PAR. 6. The practices, acts and conduct of respondents set forth above 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 its complaint upon the respondents herein, charging them with the use of unfair methods of competition in violation of Section 5 of the provisions of said act. Respondents, Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning and William E. Henning, individuals trading under the name and style of Phillips Genuine Sausage Co., having entered their appearance and filed their answer, pursuant to the order and designation of the Federal Trade Commission hearings were had before an examiner of the Commission, and testimony and evidence having been introduced in support of the charges of said complaint and in opposition thereto, thereupon this proceeding came on for final hearing before the Commission upon the testimony and evidence introduced, the examiner's report and exceptions thereto, and upon briefs for both sides, and the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusion.

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FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning and William E. Henning, individuals trading under the name and style of Phillips Genuine Sausage Co., are a partnership engaged in the manufacture and sale of pork sausage in the city of Washington, District of Columbia, and have been so engaged for more than two years last past, with their principal office and place of business in the said city and District, where they are in active competition with other persons, firms and corporations similarly engaged.

PAR. 2. The name "Phillips" was first applied to sausage in the city of Washington, District of Columbia, by one Thomas W. Phillips in or about the year 1859, when he commenced the manufacture and sale of sausage in the city and District aforesaid under his own name. During the year of 1885 one Joseph Phillips, son of the said Thomas W. Phillips, acquired an interest in the said business of Thomas W. Phillips and conducted the business until the death of the said Thomas W. Phillips in 1892, under the name of Thomas W. Phillips & Son. Upon the death of the said Thomas W. Phillips in 1892 the said Joseph Phillips came into full possession of the said business and continued to manufacture and sell sausage in the city of Washington, District of Columbia, under his own name, and sometime between the years of 1892 and 1900 the said Joseph Phillips advertised and sold his sausage as "Joseph Phillips' Original All Pork Sausage." The said sausage so manufactured and sold by the said Joseph Phillips was manufactured under a secret formula originated by the said Thomas W. Phillips.

PAR. 3. On or about the first day of June, 1911, the said Joseph Phillips leased unto Fred A. Spicer and Charles H. Leavell the physical properties of his said business and the right to manufacture under the name of Joseph Phillips and to manufacture "Joseph Phillips' Original All Pork Sausage." This contract was renewed October 16, 1916, and again on October 9, 1920, the said Joseph Phillips retaining for himself and his heirs a reversionary interest in said business and agreeing in said contract of leasing not to engage in business under the name of Phillips or to manufacture the said "Joseph Phillips' Original All Pork Sausage" in the city of Washington. The said Joseph Phillips further agreed to furnish the spices entering into the manufacture of said sausage, which said spices were to be mixed under the secret formula by which the said sausage had heretofore been manufactured. In the last above-named lease the said Joseph Phillips conveyed to Spicer and Leavell the

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right to use all trade names that might have been used by him at any time in advertising his said product. The said Spicer and Leavell now manufacture and sell in the city of Washington, District of Columbia, sausage under the name of "Joseph Phillips Company" and put up said sausage in one-pound packages, wrapped in parchment paper bearing the label:

ASK FOR
JOS. PHILLIPS
MANUFACTURER OF
THE ORIGINAL
ALL PORK SAUSAGE
U. S. INSPECTED AND PASSED
BY DEPARTMENT OF AGRICULTURE
ESTABLISHMENT NO. 60.
One pound net. Washington, D. C.

—the words "The Original" and a border being printed in red ink and the remainder of the printing in blue ink, all upon white paper.

PAR. 4. Thomas C. Phillips, a son of the said Joseph Phillips, worked in the sausage factory of his father up to and until about the year of 1891, when he left his father and started manufacturing and selling sausage in the District of Columbia upon his own account, under the name "Thomas C. Phillips Sausage Company." About the year 1897 or 1898 the said Thomas C. Phillips took in as a partner one Joseph Henning, and together they conducted the business as Phillips & Henning up to and until about the year 1904, when the partnership was dissolved. During the life of the said partnership the sausage manufactured by it was sold as "Thomas C. Phillips' Sausage." Upon the dissolution of said partnership by written agreement signed by both parties, the said Joseph Henning received all manufacturing rights of "Phillips' Sausage Meat," better known as "Phillips' Genuine Home Made Sausage," and the said Thomas C. Phillips assigned and transferred all his rights, title and interest to manufacture such sausage meat to the said Henning. In the year of 1904 Joseph Henning registered as a trade-mark in the U. S. Patent Office the label "Phillips' Genuine Home Made Sausage." Said Joseph Henning thereafter continued the manufacture and sale of sausage under the said label up to and until about 1914, when he assigned his interest in the above-mentioned business to the respondent Mrs. E. M. Henning, his wife, who conducted the said business under her own name up to and until about 1917 or 1918, when the said Mrs. E. M. Henning changed the name of said business to "Phillips' Genuine Sausage Company."

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After the death of the said Joseph Henning the respondent Mrs. E. M. Henning took into partnership the present respondents herein and they still conduct the said business and manufacture and sell sausage in the District of Columbia under the name and style of "Phillips' Genuine Sausage Company."

PAR. 5. The sausage so manufactured and sold by respondents is put up in one-pound packages, each with a wrapper reading:

PHILLIPS GENUINE
T ALL-PORK C
HOME MADE SAUSAGE
P CO.
MADE AND PREPARED BY
THOS. C. PHILLIPS
NET WEIGHT ONE POUND.

Upon this label there is in red ink the figure of a pig. The legend appearing upon the label set out next above, to wit, "Made and prepared by Thos. C. Phillips," is false and misleading, as the said sausage so manufactured, advertised and sold by the respondents herein is not made and prepared by Thomas C. Phillips but is in truth and in fact made and prepared by the respondents herein named, and the said Thomas C. Phillips did not, in the dissolution of partnership hereinbefore mentioned, or in any subsequent contract or agreement, confer upon the said respondents any right to use the legend "Made and prepared by Thos. C. Phillips."

CONCLUSION.

The practices of said respondents as set forth in the foregoing findings as to the facts are unfair 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 respondents, the testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having duly made its findings as to the facts, with its conclusion that 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, Mrs. E. M. Henning, Joseph M. Henning, C. Wesley Henning and William E. Henning, individuals trading under the name and style of Phillips Genuine Sausage Co., their agents, servants and employees, do cease and desist from directly or indirectly—

Representing, advertising, labeling or branding in any manner whatsoever their said sausage as "Made and prepared by Thomas C. Phillips," unless and until such products are actually made and prepared by Thomas C. Phillips.

It is further ordered, That respondents, within sixty (60) days after service upon them of this order, file with the Commission a report setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set out.

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F. B. DUNN ET AL.