

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

Docket 980—February 16, 1924.

SYLLABUS.

Where an individual engaged in the sale of an orange beverage in different stores in the same city, all of which by virtue of their color, signs, arrangement thereof, etc., were characterized by a marked and distinctive exterior appearance, and had become well known to the people of said city and associated exclusively with his aforesaid places of business, and the beverage there sold and extensively advertised by him had come to be widely and favorably known among the consuming and purchasing public of such city; and thereafter a firm with full knowledge of the aforesaid facts, engaged in competition with such individual in the sale of orange beverage at a store which they caused in the painting of its front, and in the size, shape, coloration, general appearance, and in a significant portion of the lettering, of its signs, to simulate those of the aforesaid individual, with the effect of misleading and deceiving persons into entering their store as and for one of those of such individual and purchasing the beverage there sold as and for that sold by him:

Held, That such simulation of the place of business of a competitor, under the circumstances set forth, constituted an unfair method of competition.

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

Mr. James B. Green 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 Victor K. Kissal, and Paul Kokalis, copartners, doing business, under the name of Kissal & Kokalis, hereinafter referred to as 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. Respondents, Victor K. Kissal and Paul Kokalis, have been for more than one year last past and still are copartners doing business under the name of Kissal & Kokalis and have their

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principal place of business at 607 Fifteenth Street NW. in the District of Columbia, where respondents are engaged in the business of operating a beverage store as an adjunct to a restaurant operated by them on the same premises and known as "Century Lunch." The said beverage store has a separate entrance on Fifteenth Street and said respondents sell and dispense to the consuming and purchasing public in said store, various soft drinks including a so-called orange beverage prepared by them, and for more than one year last past have carried on said business in the District of Columbia in direct, active competition with other individuals, partnerships and corporations similarly engaged in said District.

PAR. 2. For a period of more than five years last past one Carrol H. Dikeman has been engaged, in the District of Columbia, in the business of operating a chain of retail stores known as Dikeman's Orange Beverage Stores, and at present located respectively at 431 Ninth Street NW., 719 Fourteenth Street NW., 1004 F Street NW., 3034 Fourteenth Street NW., and 931 Ninth Street NW., at which stores said Dikeman has, during said period, sold and now sells an orange beverage known as "Dikeman's Orange Beverage" to the consuming and purchasing public in direct active competition with other individuals, partnerships and corporations in the District of Columbia, including said respondents.

PAR. 3. All of said stores operated by said Dikeman, as aforesaid, have the same distinctive exterior appearance consisting of a white painted store front and on either side of the entrance distinctive signs bearing the legend "Dikeman's Delicious Orange Beverage, 5¢" in gilt lettering on a white background and bearing at the top the representation of a cluster of oranges, the whole being surrounded by a thin blue border. Said distinctive signs displayed by said Dikeman at his said stores, together with the general appearance of the store fronts have become well known to the people of the District of Columbia and have become associated exclusively with said Dikeman's said establishments, and the orange beverage sold and dispensed at said establishments by said Dikeman has acquired a wide and favorable reputation and good will among the consuming and purchasing public of said District, of which facts the respondents herein had full knowledge.

PAR. 4. After the establishment of said Dikeman's orange beverage stores, as aforesaid, respondents adopted for their said beverage store located at 607 Fifteenth Street NW., in the District of Columbia, adjoining their said restaurant, and having a separate entrance on Fifteenth Street, a store front which was and is substantially the

same as the store fronts of said Dikeman's orange beverage stores, being painted white, arranged in substantially the same manner as the stores of said Dikeman, and having installed at either side of the entrance signs on which the words "Delicious Orange Beverage, 5¢, Best in Town" were painted in gilt lettering on a white background, the whole being surrounded with a thin blue border and surmounted by a cluster of oranges, which signs simulated the said signs used by said Dikeman on his said stores, both in size, shape, coloration, general appearance and principal legend (omitting the name Dikeman), and said store front and signs, together with the general appearance and aspect of respondents' said store had and have the capacity and tendency to mislead and deceive, and have in fact misled and deceived a portion of the consuming and purchasing public of said District, into the mistaken belief that said respondents' said store was and is one of said Dikeman's chain of stores and that the beverage sold and dispensed by respondents therein was and is said Dikeman's orange beverage, all to the prejudice of the public and of said respondents' said competitors.

PAR. 5. The above acts and conduct of respondent, under the aforesaid circumstances, 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 respondents Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearance by their attorney, and having filed their answer herewith, thereupon hearings were had before an examiner of the Federal Trade Commission theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answer of respondents, thereupon this proceeding came on for final hearing and the Commission being fully advised in the premises and upon consideration thereof makes this its report stating its findings as to the facts and conclusion.

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FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents herein are now, and for several years immediately prior to this proceeding have been, engaged in the business of operating a lunch counter and retail shop at No. 609 Fifteenth Street NW., in the City of Washington and District of Columbia, where they sell, among other things, soft drinks to the consuming and purchasing public, and in the conduct of such business they are now, and for several years last past have been, in direct, active competition with other individuals, partnerships and corporation similarly engaged in the District of Columbia.

PAR. 2. Carroll H. Dikeman, for the past nine years, has been engaged in the City of Washington, District of Columbia, in the business of operating retail stores known as Dikeman's Orange Beverage Stores; that among such stores so operated by said Dikeman, were stores at Nos. 431 Ninth Street NW.; 719 Fourteenth Street NW.; 1004 F Street NW.; 1338 F Street NW.; 3034 Fourteenth Street NW.; and 655 Pennsylvania Avenue SE., in said City in said District. At his said store located at 431 Ninth Street NW., since 1916, and at his other said stores since they have been established, in direct and active competition with other individuals, partnerships and corporations in the District of Columbia, including said respondents, said Dikeman has sold and now sells to the consuming and purchasing public an orange beverage known as "Dikeman's Orange Beverage."

PAR. 3. Said stores operated by said Dikeman have all a similar distinctive exterior appearance, consisting of a white-painted store front with glass folding doors, and on either side of the entrance distinctive signs bearing the legend "Dikeman's Delicious Orange Beverage, 5¢" in gilt lettering on a white background, and bearing at the top a representation of a cluster of oranges with their twig and foliage, the entire sign being convex on the front surface and surrounded with a thin blue border.

(a) In the summer season the folding glass doors making up the store front of said Dikeman are folded back against either side, so as to give an unobstructed view of the interior of said store to passers-by on the sidewalk.

(b) In the interior of the said store of said Dikeman on Ninth Street there is placed a counter upon which the orange beverage above mentioned is served. This counter is white in color in its upper portion, and its top is of white marble, into which are set china bowls with silver tops, containing the orange beverage dispensed by the said Dikeman.

(c) On either side, at the door posts, are fastened the convex signs hereinabove mentioned. Each of said signs is about two feet wide and of such a length as to cover about two-thirds of the distance from the top of the door to the sill thereof, and is so placed that the top and bottom thereof, respectively, are about equal distances from the top of the door and the sill of the door, respectively.

(d) Signs similar to the signs described in subparagraph (c) of this paragraph have been in continuous use at the entrance of each of said stores of said Dikeman from the time each store was established. These signs were originally designed by said Dikeman and were made and placed in use by him. Said signs, for several years after they had been placed in use by said Dikeman, were unique and distinctive in appearance as compared with other signs in use in the District of Columbia.

(e) All the stores of said Dikeman hereinabove mentioned are similar in outward appearance and interior arrangement to the store at No. 431 Ninth Street NW., and each has signs similar in form, design, color, size and appearance to the signs described above.

PAR. 4. More than one year ago, and subsequent to the time that said Dikeman had established his orange beverage stores as hereinabove mentioned, respondents, who had been conducting a lunch counter at 609 Fifteenth Street NW., in the City of Washington, District of Columbia, added to their business the sale and dispensing of orange beverage.

(a) Respondents had the front of their said store at 609 Fifteenth Street NW. painted white. They installed within said store, at the front, a counter similar in form and appearance to that being used by said Dikeman in his store at 431 Ninth Street NW. Respondents' said counter was white, and into the top thereof was sunk containers similar to the containers used by said Dikeman, from which was dispensed the orange beverage. The end of said counter appeared in the opening in said store front. Immediately beyond a post at the side of said opening was the door of the shop, which in summer time stands open.

(b) On either side of said counter, upon posts which have been painted white, respondents have caused to be placed convex signs painted white, bearing upon them the words or lettering in gilt letters, "Delicious Orange Beverage 5¢ Best in Town" (the figure "5" is superimposed over the character "¢"). Said signs appear to be about two feet across the face and of such a length as to cover about three-fourths of the distance from the top of the doorway of said shop to the surface of the sidewalk, such signs being placed in such a manner that the bottom of said signs are a foot or more above

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the surface of the sidewalk. At the top of said sign appears a cluster of oranges with their twig and foliage, and each side is surrounded by a pale green border. On these signs of respondents, as well as on the signs of said Dikeman, the cluster of oranges is surrounded by a border, but immediately below this orange cluster a decoration carried by the signs of said Dikeman is not reproduced by respondents. No name of a proprietor appears upon said signs of said respondents. The words and figures, "Orange Beverage 5¢" upon the signs of respondents are about alike in size, form, color and design, to those upon the signs of the said Dikeman.

(c) Prior to the time that respondent added the dispensing of orange beverage to their business at 609 Fifteenth Street NW. they had leased the front of their place of business to others who at times dispensed therein an orange beverage. At such times the front of said place of business, at least the portion of the front from which orange beverage was dispensed, was painted an orange color. After respondents had taken over such dispensing of orange beverage on their own accounts, they changed this color to white. This change made their sign more nearly simulate the said signs of Dikeman.

PAR. 5. Said Dikeman specializes in the sale in said stores hereinbefore mentioned, of an orange beverage. This business has increased within nine years from a business conducted in a single store, wherein he sold one to three gallons a day of orange beverage, to the sale of 1200 gallons per day of said beverage in seven stores in the District of Columbia, all conducted by said Dikeman, and in certain drug stores, where it is sold in the name of said Dikeman under an arrangement made by the owners of said stores with said Dikeman. Prior to the world war said Dikeman sold said beverage at 5 cents a glass. In war time he raised the price to 10 cents a glass, and at that time the signs of said Dikeman described herein bore the figures "10." Some time prior to a year ago, said Dikeman changed the price of his orange beverage back to 5 cents a glass, and had his signs so changed accordingly, and has since sold at that price, and said signs have since advertised the article at that price.

PAR. 6. Said distinctive signs displayed by said Dikeman at his said stores, together with the general appearance of his store fronts, have become well known to the people of the District of Columbia, and have become associated exclusively with his places of business. The beverage has acquired a wide and favorable reputation and good will among the consuming and purchasing public of said District, of all which facts respondent herein had full knowledge.

PAR. 7. He has advertised his beverage not only by the signs hereinabove mentioned, but also by advertisements in the newspapers

which have cost him many hundreds of dollars. In said advertisements Dikeman designates said beverage in words similar to those used upon his said signs.

PAR. 8. The aforesaid signs so placed by respondents at either side of the counter at the entrance of their said store at No. 609 Fifteenth Street, NW., simulate the said signs hereinabove mentioned as having been installed and used by said Dikeman at the entrance of his said stores, in size, shape, coloration, general appearance, and in a significant portion of the lettering thereon, and, taken in connection with the similarity in appearance between the store fronts of respondents and those of said Dikeman, they had and have the capacity and tendency to mislead and deceive a portion of the consuming and purchasing public of said District of Columbia into the mistaken belief that the respondents' said store is one of said Dikeman's stores, and that the beverage sold and dispensed by respondents herein was and is said Dikeman's orange beverage.

PAR. 9. Said signs so placed by respondents at either side of the counter in their said store at 609 Fifteenth Street, NW., simulate the said signs hereinabove mentioned as having been installed and used by the said Dikeman at his said stores, in size, shape, coloration, general appearance and in a significant portion of the lettering thereon, and taken in connection with the similarity in appearance of said store fronts of respondents and of said Dikeman, have a capacity and tendency to mislead and deceive, and have, in fact, by such deception, persuaded persons to enter the respondents' store and to make purchases of the respondents' beverage, under the mistaken belief that respondents' store was one of the said Dikeman's stores and that the beverage so purchased was Dikeman's "Orange Beverage."

CONCLUSION.

The above practices of said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of Section 5 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."

MODIFIED ORDER TO CEASE AND DESIST.¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and testimony heretofore taken, and the Commission

¹ Modified order issued as of May 12, 1924.

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having made its findings as to the facts and its conclusion that respondents have violated the provisions 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,"

It is now ordered, That respondents, Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis, their agents, representatives, servants and employees do cease and desist from simulating the signs, letterings, legend and store front in color, size, shape, design, and general appearance of the chain of stores of Carrol H. Dikeman.

It is further ordered, That respondents, Victor K. Kissal and Paul Kokalis, copartners doing business under the name of Kissal & Kokalis, 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.

PROCESS ENGRAVING CO.

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FEDERAL TRADE COMMISSION

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