

Complaint.

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IN THE MATTER OF
JAMES B. HALL, JR., INCORPORATED.

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

Docket 1137—July 29, 1924.

SYLLABUS.

Where it had long been generally considered that the highest grade of tobacco from which cigars could be made was that grown on the Island of Cuba and known as "Havana Tobacco," and the word "Havana" signified to the trade and consumers cigars composed exclusively of the aforesaid tobacco; and thereafter a corporation engaged at New York City in the manufacture of cigars not composed exclusively of such tobacco, and in the sale thereof direct to the consumer by mail order,

(a) Branded and labeled said cigars and the containers thereof with such labels and legends as "Hall's Fancy Tales Havana Cigars," "Hall's Havana Coronas," etc., and so characterized the same in its catalogues and advertisements; and

(b) Represented in its catalogues that the tobacco from which its cigars were manufactured was grown on the Island of Cuba and on its own plantations, with the result that it was thereby enabled through sale direct from factory to consumer to offer the same to the latter at substantially lower prices than ordinarily charged for comparable cigars, when, as a matter of fact, it owned no such plantations, but purchased the Havana tobacco used by it from growers or through brokers representing the same;

With the result that the trade and consumers were misled and deceived in respect of the composition of said cigars, and consumers were misled and deceived into believing that they were securing a substantial saving in cost in the purchase thereof:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

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 James B. Hall, Jr., Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act. issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, James B. Hall, Jr., 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 or executive offices and manufacturing plant located in the City of New York, State of New York. Respondent is engaged in the business of manufacturing and selling cigars and causing said product, when sold, to be transported from its principal office or manufacturing plant in the City of New York, in the State of New York, to purchasers located in other States of the United States, and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in said product manufactured by said respondent between and among the various States of the United States. In the course and conduct of its said business, respondent continuously has been, and is now, in competition with other individuals, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. Respondent, James B. Hall, Jr., Inc., in the course and conduct of its said business as described in paragraph 1 hereof, for more than one year last past, as a means of inducing the public to purchase cigars manufactured by it from tobacco grown elsewhere or other than on the Island of Cuba, has caused and still causes the following brands, labels or legends to be placed on the cigars or containers of said cigars manufactured by it; "Hall's Fancy Tales Havana Cigar," "Hall's Resagos Havana Cigar," "Hall's Panetelas Havana Cigar," and other similar false and misleading brands, labels or legends containing the word "Havana," when in truth and in fact the tobacco from which its said product is manufactured is not grown on the Island of Cuba and is not tobacco generally known and recognized by the purchasing public as Havana tobacco.

PAR. 3. Respondent, James B. Hall, Jr., Inc., in the course and conduct of its said business as described in paragraph 1 hereof, for more than one year last past, as a means of inducing the public to purchase its product, caused advertisements to be inserted in publications having general circulation throughout the several States of the United States and by means of catalogues, circulars, and other advertising matter distributed in commerce throughout the several States of the United States, published and represented to the purchasing public in said advertising matter that the tobacco from which its product is manufactured was grown on the Island of Cuba and on plantations owned by it; that the said respondent published and represented in said advertising matter that by reason of its ownership of plantations on the Island of Cuba and on which its said tobacco is grown, and by the further reason that the method

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employed by it in marketing its product direct to the consumer, a saving of from 50 per cent to 80 per cent results to the purchaser thereof, when in truth and in fact the tobacco from which its product is manufactured was not grown on the Island of Cuba and is not manufactured from what is generally known and recognized by the purchasing public as Havana tobacco, and that the said respondent does not now own, nor has it heretofore owned, plantations on the Island of Cuba on which the tobacco used by it in the manufacture of its product is grown; that the product of respondent is not marketed at a saving to the purchaser of from 50 per cent to 80 per cent and that the said price charged by respondent for its product is about the usual market price of similar products consistent with quality and workmanship.

PAR. 4. That all the aforesaid brands, labels or legends and advertising matter used by said respondent are false and misleading and have the capacity and tendency to and/or do mislead and deceive the purchaser into the belief that the product of respondent is manufactured from tobacco grown on the Island of Cuba generally known and recognized by the purchasing public as Havana tobacco, and have the further capacity and tendency to and/or do mislead and deceive the purchaser into the belief that the same is marketed at a considerable saving to the purchasing public by reason of the aforesaid false and misleading brands, labels or legends and advertising matter used by said respondent in the marketing of its said product.

PAR. 5. That the use of the word "Havana" by the said respondent in the brands, labels or legends of its cigars is understood by a substantial part of the purchasing public to mean that said cigars were manufactured from tobacco grown on the Island of Cuba, which said tobacco is generally known and referred to as Havana tobacco, which by reason of climatic conditions of the said Island of Cuba, favorable to the growth and cultivation of tobacco, and the skilled labor employed in curing and marketing the same, said tobacco has acquired a wide and favorable reputation and is generally considered the highest grade of tobacco from which cigars are manufactured.

PAR. 6. That the above alleged acts and things done by the 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 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."

REPORT, FINDINGS AS TO THE FACTS,¹ 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," the Federal Trade Commission, on the 25th day of March, 1924, issued and served its complaint on the respondent, James B. Hall, Jr., Inc., charging it with unfair competition in violation of Section 5 of said Act.

Respondent having entered its appearance without filing an answer, and an agreed statement of facts having been made and filed in which it is stipulated that the facts therein recited may be taken as the facts in this proceeding and in lieu of testimony, and that upon said facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and conclusions and enter its order disposing of the proceeding.

Thereupon, this proceeding having come on for hearing and the 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 James B. Hall, Jr., Inc., is now and has been for many years last past 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 factory in the City of New York, State of New York. Respondent is engaged, and has been engaged since its incorporation, in the business of manufacturing and selling cigars, and in the course of said business causes its products when so sold to be transported from its principal office and factory in the City of New York, State of New York, to purchasers located in other States of the United States. In the course and conduct of its said business respondent has been and is now in competition with other individuals, partnerships and corporations engaged in the manufacture and distribution of cigars throughout the various States of the United States.

PAR. 2. Respondent in the course and conduct of its said business as stated in paragraph 1 hereof for more than one year last past has manufactured cigars partly from tobacco grown upon and imported from the Island of Cuba and partly from tobacco grown elsewhere than on the Island of Cuba and upon such cigars and upon the con-

¹ Published as slightly modified by the Commission on August 13, 1925.

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tainers of such cigars has placed the following brands, labels and legends: "Hall's Fancy Tales Havana Cigar," "Hall's Resagos Havana Cigar," "Hall's Panetelas Havana Cigar," "Hall's Havana Coronas," and other brands, labels and legends containing the word "Havana."

PAR. 3. Respondent in the course and conduct of its said business has sold its cigars for the most part direct to the consumer, and as a means of inducing the public to purchase its cigars has caused catalogues descriptive thereof to be widely distributed throughout the United States by mail and has by such means solicited orders direct from consumers of cigars and has also solicited orders by means of advertisements inserted in many publications having general circulation throughout the United States. In these catalogues and advertisements the respondent has described its cigars by the brands, labels and legends above set forth in paragraph 2 and has in such catalogues and advertisements represented that the tobacco from which its cigars were manufactured was grown on the Island of Cuba and on plantations owned by it and that by reason of the ownership of plantations and sale direct from factory to consumer, the consumer was enabled to purchase the cigars at a substantially less price than the price ordinarily charged for cigars of like character, when in truth and in fact the respondent during the time when such representations were made did not own any plantation in the Island of Cuba, but purchased the Havana tobacco used by it in its factory either direct from growers of tobacco in Cuba or through brokers representing such growers.

PAR. 4. The word "Havana" signifies to the tobacco trade and to the consumers of cigars, that the cigars of which it is descriptive are made as to all component parts, filler, binder, and wrapper, of tobacco entirely grown upon the Island of Cuba. Tobacco grown upon the Island of Cuba, generally known as Havana tobacco, has long had a wide and favorable reputation, and has been and is now generally considered the highest grade of tobacco from which cigars can be manufactured.

PAR. 5. The use of the word "Havana" by the said respondent as descriptive of its cigars is misleading and has the capacity and tendency to mislead and deceive, and does mislead and deceive, those engaged in the trade, and also the consumers of cigars, into the belief that respondent's cigars thus described were and are made entirely from tobacco grown upon the Island of Cuba.

PAR. 6. The advertisements and representations made as to ownership of plantations in Cuba and the growing thereon of the Havana tobacco used by respondent in the manufacture of cigars are decep-

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tive and misleading and have the tendency and capacity to deceive, and do mislead and deceive, purchasers into the belief that the cigars offered for sale by respondent are Havana cigars and marketed at a substantial saving in cost to the consumer.

PAR. 7. There are many competitors of the respondent who do not represent that cigars are Havana cigars, except when such cigars are made entirely from tobacco grown upon the Island of Cuba, and there are many more competitors of respondent who do not and have not represented that they are or were owners of plantations when such is not the fact.

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 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the agreed statement as to the facts made and filed herein in lieu of the testimony and evidence, and the Commission having made its findings as to the facts and its conclusions 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 James B. Hall, Jr., Inc., a corporation, its officers, agents and employees, do cease and desist from—

(1) Using the word "Havana" as descriptive of cigars unless such cigars be made entirely from tobacco grown in the Island of Cuba.

(2) Representing in any manner that cigars other than those manufactured entirely from tobacco grown in the Island of Cuba, are Havana cigars.

(3) Advertising or representing in any manner whatsoever that any of the tobacco going into the manufacture of cigars manufactured by it was grown upon a plantation or plantations in the Island of Cuba owned by it, when such is not the fact.

It is further ordered, That the respondent, James B. Hall, Jr., Inc., shall within sixty days after the service upon it of a copy of

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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.

EDWIN CIGAR Co., INC., July 29, 1924. (Docket 1138.) The Commission made findings and order in the foregoing case, which were similar to those in the case of James B. Hall, Jr., Inc., above reported in full and in which the brands, labels and legends applied by respondent to its cigars were as follows: "Edwin's Royales Havana Filler Cigar," "Imperials Havana Cigar," "Lord Edwin Havana Cigar," "Havana Smokers" and other brands, labels and legends containing the word "Havana."

Complaint.

IN THE MATTER OF
SAMUEL SELIGSOHN.

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

Docket 1135—August 5, 1924.

SYLLABUS.

Where an individual engaged in the sale at retail of men's clothing which he purchased from manufacturers and resold at substantially prevailing retail prices for comparable clothing, made and featured such statements in advertising his said clothing as "Buy from the Maker Direct and Save the Big Difference in Price," "Mr. Seligsohn Manufactures his Own Clothes—Sells Them to you Direct at a Small Overhead Expense," with the capacity and tendency thereby to mislead and deceive the purchasing public into believing that in buying of him they were purchasing directly from the owner, controller or operator of a factory in which the clothing so offered for sale was made, and that they were thereby saving the profits of middlemen:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Sachs & Sachs, of Philadelphia, Pa., for respondent.

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 Samuel Seligsohn, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate 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 an individual with his place of business in the city of Philadelphia, State of Pennsylvania. He is, and at all times hereinafter mentioned has been engaged in the sale of men's clothing at retail to purchasers located at points in various States of the United States. He causes said clothing when so sold to be transported, from his said place of business in the city of Philadelphia, Pa., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his aforesaid business respondent is in competition with other individuals, partnerships, and corporations similarly and otherwise engaged in the sale of clothing in interstate commerce and with the trade generally.