

Complaint.

8 F. T. C.

IN THE MATTER OF
MITCHELL BLANK DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF HAGEN IMPORT COM-
PANY OF NEW JERSEY.

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

Docket 1217—November 7, 1924.

SYLLABUS.

Where an individual engaged in the sale at retail of various products made in the United States and bought by him from concerns located therein,

- (a) Used and featured the trade name "Hagen Import Company of New Jersey" in his catalogues, circulars and other advertising literature;
- (b) Designated as "Imported Bavarian Old Time Barley Malt Extract" an extract of barley malt which did not originate in Bavaria but was a purely domestic product, and featured said name in advertising and labeling such product;

With the effect of misleading and deceiving purchasers into believing his products to be imported and of inducing them to purchase the same in that belief, and of thus diverting trade from competitors who truthfully marked their merchandise:

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

Mr. T. John Butler for the Commission.

Mr. Joseph Varbalow of Westcott & Varbalow of Camden, N. J., 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 Mitchell Blank doing business under the trade name and style Hagen Import Company of New Jersey, 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 doing business under the trade name and style "Hagen Import Company of New Jersey" with his place of business in the city of Camden, State of New Jersey, and is engaged in selling various kinds of merchandise at retail to consumers residing and located at points in various States of the United States. He causes said merchandise when so sold to be transported from his said place of business in the city of Camden,

N. J., 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 said business respondent is in competition with other individuals, partnerships and corporations also engaged in the sale and transportation of like merchandise between and among various States of the United States.

PAR. 2. In the regular course and conduct of his business for more than a year last past, respondent has published and caused to be published newspaper advertisements, catalogues, circulars, and other trade literature, in all of which respondent causes his said trade name "Hagen Import Company of New Jersey" to be prominently displayed; said advertisements and trade literature have been sent by respondent to customers and prospective customers located in several different States of the United States, for the purpose of soliciting mail orders for respondent's merchandise, and a considerable number of such orders have been received and filled by respondent.

In truth and in fact, respondent does not import any of his merchandise, but buys his goods from concerns located in the United States and resells same to users thereof.

PAR. 3. The use by respondent of the trade name Hagen Import Company of New Jersey, has the capacity and tendency to mislead and deceive the purchasing public and to cause them to believe that respondent is an importer, and that his merchandise is made in foreign countries and by him imported into the United States and to cause them to purchase said merchandise in that belief.

PAR. 4. There are many concerns in the United States, competitors of respondent, which actually import their goods from foreign countries and so represent such goods to the purchasing public; there are many other concerns, competitors of respondent, which sell goods made in the United States, and so represent such goods to the purchasing public. The acts and practices of respondent, as set out in paragraph 2 hereof, have the capacity to, and do, divert business from and otherwise prejudice said competitors.

PAR. 5. In the regular course and conduct of his business, for more than a year last past, respondent has offered for sale and sold, among other things, a product which he has advertised, described and labeled "Imported Bavarian Old Time Barley Malt Extract," which said name and designation respondent has caused to be displayed in large and conspicuous type upon said labels and in said advertisement.

In truth and in fact, said product, so advertised, described and labeled, is an extract of barley malt and is not manufactured in a foreign country and imported into the United States, but is manu-

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factured, bought by respondent and by him resold, all within the United States.

PAR. 6. The use by respondent of said labels, advertisements and descriptions, as set out in paragraph 5 hereof, has the capacity and tendency to mislead and deceive the purchasing public and to cause them to believe that the malt extract sold by respondent is manufactured in a foreign country and imported into the United States, and to purchase said product in that belief.

PAR. 7. There are several concerns, competitors of respondent, which are actually importing malt extract from foreign countries and reselling same, truthfully advertised and labeled, to the public generally. There are also several concerns, competitors of respondent, which are engaged in selling malt extract made in the United States, and so labeled and described, to the public generally. The acts and practices of respondent, as set out in paragraph 5 hereof, tend to divert business from, and otherwise prejudice, said competitors.

PAR. 8. The above alleged acts and things done by respondent are all to the prejudice of the public and 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 respondent, Mitchell Blank, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered his appearance by his attorney, and having 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 this case in lieu of testimony, and proceed forthwith to make its findings as to the facts and its order disposing of this proceeding, the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of "Hagen Import Company of New Jer-

sey," with his place of business in the city of Camden, State of New Jersey, and is engaged in selling various kinds of merchandise at retail to customers residing and located at points outside of New Jersey in various States of the United States. He causes such merchandise when so sold to be transported from said place of business in the city of Camden, N. J., into and through other States of the United States and delivered to said customers at their respective points of location in States other than New Jersey. In the course and conduct of his said business, respondent is in competition with other individuals, partnerships and corporations also engaged in the sale and transportation of like merchandise between and among the various States of the United States.

PAR. 2. In the regular and usual course and conduct of his said business, respondent has published or caused to be published newspaper advertisements, catalogues, circulars, and other advertising literature, in all of which respondent caused his said trade name, "Hagen Import Company of New Jersey" to be prominently displayed. Said advertisements, catalogues, circulars, and advertising literature were sent by respondent to customers and prospective customers and the public generally located in several different States of the United States other than New Jersey for the purpose of soliciting mail orders for respondent's merchandise and as a result a considerable number of such orders from customers in States of the United States other than New Jersey have been received by respondent and accepted by him and the merchandise so ordered sold to customers and caused to be transported out of New Jersey into other States of the United States and there delivered to such customers.

In truth and fact, respondent did not and does not import any of the merchandise so advertised and sold, but bought the same from concerns located in the United States and resold it to users thereof; that said merchandise was not imported but was manufactured within the United States.

PAR. 3. One kind of merchandise advertised, and sold by respondent as set out in paragraph 2 herein, was an extract of barley malt, which respondent has advertised, labeled, described, and sold under the name of "Imported Bavarian Old Time Barley Malt Extract." This said name and designation respondent has caused to be displayed in large and conspicuous letters upon said labels and in said advertisements.

In truth and in fact, said product, so advertised, described and labeled, is an extract of barley malt and is not manufactured in a foreign country and is not imported into the United States, but is

Conclusion.

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manufactured, bought by respondent, and is by him sold in interstate commerce as aforesaid, all within the United States.

PAR. 4. There are several competitors of respondent engaged in importing merchandise from foreign countries into the United States and selling such merchandise in the various States of the United States which said competitors truthfully advertise that their merchandise sold in competition with the merchandise of respondent in interstate commerce has been imported and is imported merchandise, and among such merchandise of respondent's competitors so imported, advertised and sold is an extract of barley malt. Respondent's competitors also are engaged in the purchase, sale and distribution in interstate commerce of merchandise manufactured in the United States, and so advertised, labeled and described, among which merchandise there has been and is an extract of barley malt. That said imported extract of barley malt and said domestic extract of barley malt of respondent's competitors were and are in competition with respondent's extract of barley malt in interstate markets of the United States and particularly in the markets where respondent's extract of barley malt, labeled, advertised and described as aforesaid, has been and is being sold in interstate commerce; that none of respondent's said extract of barley malt was imported from or originated in Bavaria; that the use of the word "Bavarian" in trade and commerce in referring to or designating barley malt extract is for the purpose of indicating that such barley malt extract was made in Bavaria, Germany, and not to identify the commodity without respect to where it may have been made or originated.

PAR. 5. This use by respondent of his said trade name, "Hagen Import Company of New Jersey," and of the said advertisements, catalogues, circulars and label, "Imported Bavarian Old Time Barley Malt Extract," all as set out herein, particularly in paragraphs 2 and 3 herein, had the tendency and capacity to mislead and deceive, and did mislead and deceive purchasers of respondent's merchandise by causing them to believe that respondent's merchandise was imported into the United States from foreign countries, and to purchase said merchandise in interstate commerce in that belief, thus diverting trade to respondent from his competitors who truthfully marked merchandise sold by them in competition with respondent.

CONCLUSION.

The practices of respondent under the conditions and circumstances described in the foregoing findings are unfair methods of

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competition in commerce and constitute a violation of Section 5 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 Commission upon the complaint of the Commission, the answer of respondent and the statement of facts agreed on by counsel for the Commission and by the respondent, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions 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,"

It is now ordered, That the respondent, Mitchell Blank, his representatives, agents, servants and employees, do cease and desist from:

(1) Using and displaying the word "Import" or the word "Imported" in a trade name or in catalogs, labels, circulars, literature, advertisements, or otherwise in connection with the sale of goods, wares or merchandise which is not imported into the United States from a foreign country.

(2) Using the label "Imported Bavarian Old Time Barley Malt Extract," or any mark or brand or label bearing the word "Imported," either alone or in combination with other word or words, to designate and describe a barley malt extract or other product which is not imported into the United States from a foreign country.

(3) Using in soliciting orders or making sales of barley malt extract the word "Bavarian," either alone or in combination with other word or words, upon the container or label of an extract of barley malt unless said extract of barley malt was made in Bavaria a foreign country, and imported into the United States.

(4) Representing or advertising by means of letters, circulars, newspapers, labels, brands, marking, or other means whatsoever, that the said respondent, Mitchell Blank, trading under the name and style of Hagen Import Company of New Jersey, is an importer of goods, wares or merchandise sold or offered for sale, when said statement or representation is untrue or false.

It is further ordered That the respondent, Mitchell Blank, shall within sixty days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Complaint.

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IN THE MATTER OF
AMERICAN SHELLAC COMPANY, INC.

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

Docket 1047—November 18, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture of shellacs, and of various grades of shellac compounds which contained from 60 per cent to 80 per cent of shellac gum, with the addition of 40 per cent to 20 per cent of resin or other gums, dissolved in alcohol, and in the sale of such products, sold said compounds labeled "White Shellac" or "Orange Shellac," in accordance with the color, in competition with concerns which sold their products labeled and branded in accordance with the spirit and purpose of a resolution adopted by the National Varnish Manufacturer's Association and other trade organizations, and designed to prevent the debasement of the term "Shellac" and to protect the purchasing public through providing for the use on labels and in advertising of products not composed exclusively of shellac gum dissolved in alcohol, of the word "compound" together with the word "shellac," where the latter content equaled or exceeded one-half the total solid content, and for the use of the word "substitute" or "imitation" together with the word "shellac" in other cases; with the effect of misleading and deceiving a substantial part of the purchasing public into believing such products to be composed solely of genuine shellac gum dissolved in alcohol, and of inducing the purchase thereof in such belief:

Held, That the sale of such compounds labeled as above set forth constituted an unfair method of competition.

Mr. William A. Sweet for the Commission.

Mr. Monroe J. Cahn, of New York City, 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 the American Shellac Company, Inc., 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, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under and by virtue of the laws of the State of New York, with its principal office located in the Produce Exchange Building, in the city of New York in said State, and its factory located at Long Island City