

Complaint.

8 F. T. C.

IN THE MATTER OF

JACOB C. WINTER AND TITUS A. SMITH, PARTNERS
DOING BUSINESS UNDER THE TRADE NAMES AND
STYLES OF J. C. WINTER & COMPANY, AND KEY WEST
CIGAR COMPANY.

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

Docket 1209—December 2, 1924.

SYLLABUS.

Where it had been long known that cigars manufactured at Key West, Florida, were composed of tobacco grown in and imported from the Island of Cuba, and such cigars had come to be widely and favorably known and referred to as "Key West Cigars" by a substantial part of the purchasing public; and thereafter a firm engaged elsewhere in the manufacture and sale of cigars not composed of tobacco grown on the Island of Cuba, applied to its product, in the labeling and advertising thereof, the words "Key West Perfectos," or "Key West Perfectos Imported"; with the capacity and tendency to mislead and deceive the trade and consuming public into believing said cigars to have been manufactured in Key West or the Key West district from tobacco grown on the Island of Cuba, and to induce them to purchase the same in such belief:

Held, That the use of such labels, brands and legends, under the circumstances set forth, constituted unfair methods of competition.

Mr. William A. Sweet for the Commission.

Mr. A. W. Hermann of York, Pa., 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 Jacob C. Winter and Titus A. Smith, partners doing business under the trade names and styles, J. C. Winter & Company, and Key West Cigar Company, hereinafter referred to as respondents, have been and are 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. Respondents are partners doing business under the trade names and styles of J. C. Winter & Company and Key West Cigar Company, with their principal place of business in the city of Red Lion, State of Pennsylvania. They are engaged in the manufacture of cigars and the sale thereof to dealers in cigars located at points in various States of the United States. They cause said

cigars when so sold to be transported from their said place of business in the city of Red Lion, 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 their said business respondents are in competition with other individuals, partnerships and corporations engaged in the manufacture and/or sale and transportation of cigars between and among various States of the United States.

PAR. 2. In the course and conduct of their aforesaid business respondents manufacture and sell cigars composed of tobacco grown elsewhere than on the Island of Cuba and manufactured at certain cigar factories operated by respondents at said city of Red Lion, Pa., or at other points near said city and in the State of Pennsylvania, and as a means of inducing the public to purchase said cigars respondents mark and label said cigars and the boxes in which said cigars are packed, with the words "Key West Perfectos," and said cigars so labelled and boxed are ultimately offered for sale and sold to the consuming public in various portions of the United States. In connection with the sale and distribution of said cigars respondents furnish to dealers certain window and counter displays upon which displays respondents have caused to be set forth in large and conspicuous letters the words "Key West Perfectos, Imported," and retail dealers offering respondents' said cigars to the consuming public utilize said displays in their respective places of business in connection with the offer and sale of respondents' said cigars.

PAR. 3. The words "Key West" when used as a name, brand or label for cigars, or in advertising and offering same for sale, is understood by a substantial portion of the purchasing public to designate cigars manufactured in the city of Key West, in the State of Florida, or in the district contiguous to said city and commonly known as the Key West District, and that said cigars are composed of tobacco grown on the Island of Cuba, commonly known as and hereinafter called "Havana" tobacco. Cigars manufactured in the city of Key West and composed of Havana tobacco have acquired a wide and favorable reputation amongst the consuming public throughout the United States and are generally sought after and asked for under the name "Key West" by that part of the trade and purchasing public desiring said cigars.

PAR. 4. The use by respondents of said marks and labels described in paragraph 2 hereof in the sale of cigars manufactured by them at Red Lion, in the State of Pennsylvania, from tobacco grown elsewhere than on the Island of Cuba, has the capacity and tendency to mislead and deceive the trade and consuming public into the belief that said cigars are in fact manufactured in said city of Key

Findings.

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West, or in said Key West District, and are composed of Havana tobacco, and to induce the trade and consuming public to purchase said cigars in that belief.

PAR. 5. There are among the competitors of respondents referred to in paragraph 1 hereof many who manufacture and sell in the course of their aforesaid interstate business cigars composed of Havana tobacco and manufactured in said city of Key West or in said Key West District, and who properly mark, label and advertise their said cigars under the name "Key West." There are others of said competitors who manufacture and sell in the course of their aforesaid interstate business cigars composed of tobacco other than Havana tobacco and manufactured at points and places other than the city of Key West or said Key West District, and who in no wise mark, label, or advertise their said cigars under the name "Key West" or represent same to be composed of Havana tobacco.

PAR. 6. The above alleged acts and things done by respondents are all to the prejudice of the public and 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 a complaint upon the respondents Jacob C. Winter and Titus A. Smith, partners doing business under the trade names and styles of J. C. Winter & Company, and Key West Cigar Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having entered their appearance and filed their answer therein and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case, and in lieu of testimony, and proceed further upon such agreed statement of facts 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 or in opposition thereto, and 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.

Respondents Jacob C. Winter and Titus A. Smith are copartners doing business under the trade names and styles of J. C. Winter & Company and Key West Cigar Company. Their principal place of business and their manufacturing plant are located in the city of Red Lion, in the State of Pennsylvania. They are engaged in the business of manufacturing cigars and in the sale thereof to dealers in cigars located at points in the District of Columbia and in various States of the United States other than the State of Pennsylvania and have caused, and still cause, such cigars, when so sold, by them, to be transported from their said place of business in Red Lion, Pa., to, into and through said other States and the District of Columbia to the purchasers thereof located therein.

There are other individuals, partnerships and corporations in various States of the United States which have been, and still are, engaged in the manufacture and sale of cigars which they cause to be sold and transported from their respective places of business to, into and through the District of Columbia and States of the United States other than the State of origin and shipment, including the States to, into and through which the respondents caused their said cigars to be transported from their place of business, in competition with the respondents.

Respondents, in the course and conduct of their said business, manufacture cigars from tobacco grown elsewhere than on the Island of Cuba and as a means of inducing the public to purchase their said cigars made by them, as aforesaid, have marked and labeled and continue to mark and label, said cigars and the boxes in which the same are packed, with the words "Key West Perfectos" and said cigars so labeled and boxed are offered for sale and sold to the consuming public in various States of the United States. In connection with the sale and distribution of said cigars, respondents furnish to dealers certain window and counter display and advertising matter in which respondents have caused, and continue to cause, to be set forth in large and conspicuous letters the words "Key West Perfectos, Imported" and retail dealers offering respondents' said cigars to the consuming public utilize said display and advertising matter in their respective places of business. For many years cigars have been manufactured in the city of Key West, State of Florida, from tobacco grown in and imported from the Island of Cuba. Such cigars are known and referred to by a substantial part of the purchasing public as "Key West Cigars" and said cigars have acquired a wide and favorable reputation.

Conclusion.

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The words "Key West" when used as a name, brand or label for cigars, or in advertising matter used in connection with the sale of the same, are understood by a substantial portion of the purchasing public to indicate cigars manufactured in the city of Key West, in the State of Florida, or in the district contiguous to said city of Key West and commonly known as the Key West district, and that such cigars are manufactured from tobacco grown on the Island of Cuba.

There are among the competitors of respondents referred to above, individuals, partnerships and corporations who manufacture and sell in interstate commerce, as aforesaid, cigars which they manufacture in the city of Key West, or in said Key West district, in the State of Florida, and who mark, label and advertise their said cigars under the name "Key West," which cigars are made from tobacco grown on the Island of Cuba. There are others of said competitors who manufacture and sell in the course of their business, in interstate commerce, cigars made from tobacco grown elsewhere than on the Island of Cuba and manufactured in places other than the city of Key West or the Key West district in the State of Florida, who do not mark, label or advertise their said cigars under the name "Key West" or represent same to be made from tobacco grown on the Island of Cuba.

That the use by the respondents of the labels containing the words "Key West Perfectos, Imported" or the words "Key West" upon the cigars and the boxes containing the same, and in advertising matter used in the sale of such cigars, sold and transported by the respondents, as described in the foregoing paragraphs has the capacity and tendency to deceive and mislead the trade and consuming public into the belief that said cigars manufactured by respondents at Red Lion in the State of Pennsylvania, from tobacco grown elsewhere than on the Island of Cuba, are in fact manufactured in the city of Key West or in the Key West district, and are composed of tobacco grown on the Island of Cuba, and to induce the trade and consuming public to purchase said cigars in that belief.

CONCLUSION.

The 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 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 the respondents, and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the 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 ordered, That the respondents, Jacob C. Winter and Titus A. Smith, partners doing business under the trade names and styles of J. C. Winter and Company and Key West Cigar Company their agents, representatives and employees cease and desist from directly or indirectly—

Using the words "Key West" alone or in combination with any other word or words on labels, brands or legends on cigars or on the containers thereof, or in advertisements used in connection with the sale or distribution of such cigars, if such cigars are in fact not made in the city of Key West or in the Key West district in the State of Florida and are not manufactured from tobacco grown on the Island of Cuba.

It is further ordered, That said respondents shall, within sixty days after the service on 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.

Complaint.

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IN THE MATTER OF

JOSEPH GILBERT AND JACOB GILBERT, PARTNERS
DOING BUSINESS UNDER THE FIRM NAME AND
STYLE OF AMERICAN FEATHER BED & PILLOW
COMPANY.COMPLAINT, FINDINGS AND ORDER IN REGARD TO ALLEGED VIOLATION OF
SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.*Docket 1129—December 6, 1924.*

SYLLABUS.

Where a firm engaged in the sale by mail of feather beds, pillows and allied articles, of which it manufactured a part, but purchased a large portion from other manufacturers and resold the same at prevailing prices demanded by dealers engaged in the sale of such commodities by mail; in advertising its products in magazines, newspapers and other publications, and in catalogues, circulars, price lists and other trade literature,

- (a) Stated that it manufactured the articles which it dealt in, and sold the same direct to the consumer at factory prices, thus eliminating the profits of all middlemen;
- (b) Described its products as being of differing grades and qualities and listed the same under different trade names applied thereto and at varying prices to correspond to the purported differences in qualities and makes, the fact being that the bedding so described did not differ in grade, make, or quality;

With the effect of misleading and deceiving the public, and of securing from purchasers of the purported higher grades prices substantially in excess of the fair and reasonable value of the articles concerned, and substantially in excess of the prices at which it offered and sold the same articles as the lowest purported grade:

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

Mr. Alfred M. Craven for the Commission.

Mr. Charles Gilbert of Nashville, Tenn., 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 Joseph Gilbert and Jacob Gilbert, partners, doing business under the trade name and style American Feather Bed & Pillow Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in