

Complaint.

9 F. T. C.

IN THE MATTER OF

A. SINGER AND CHARLES SCHAFFER, PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE CALIFORNIA GRAPE GROWERS EXCHANGE.

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

Docket 1237—May 29, 1925.

SYLLABUS.

Where a cooperative, nonprofit corporation engaged as the California Grape Growers Exchange in marketing the crops of some 600 California grape grower members; and thereafter a firm engaged in competition therewith in the sale of California and other grapes on and near the Atlantic seaboard, under the same name, with the result that purchasers and prospective purchasers were misled in reference to the identity of the two concerns and the trade and public were induced to purchase its products as and for those of the senior organization:

Held, That such appropriation of the name of a competitor, under the circumstances set forth, constituted an unfair method of competition.

Mr. T. John Butler 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 A. Singer and Charles Schaffer, partners doing business under the trade name and style California Grape Growers Exchange, 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 name and style California Grape Growers Exchange, with their place of business in the City and State of New York. They are, and for about one year last past have been, under said name, engaged in the business of selling California grapes in carload lots to purchasers located in various States of the United States, and for the most part in States on the Atlantic seaboard and north of the State of Maryland. Respondents' method of doing business is to obtain contracts for California grapes in carload lots and other large quantities, and thereafter to fill such orders by purchasing grapes in the State of California and causing the same to be trans-

ported from said State of California 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 during said time have been and now are in competition with other individuals, partnerships and corporations engaged in selling grapes in commerce between and among various States of the United States.

PAR. 2. Among the competitors of respondents referred to in paragraph 1 hereof is the California Grape Growers Exchange, a marketing association of persons engaged in the production of grapes in the State of California, said association being incorporated under the laws of said State and consisting of about 650 such grape growers. Said association sells and transports the grapes grown by its members to persons located in various States of the United States, including persons in aforementioned States in which respondents carry on the major part of their business, as hereinbefore set out. The business of said competitor consists for the most part of sales in carload lots and other large quantities.

PAR. 3. The use by respondents of the trade name, "California Grape Growers Exchange," is calculated to, tends to and does mislead and deceive persons engaged in the business of buying and selling grapes, and the public generally, into the belief that respondents are said competitor, California Grape Growers Exchange, or are a sales agency of said competitor, and to deal with respondents in that belief, thus diverting trade from and otherwise injuring said competitor.

PAR. 4. The above alleged acts and things done by respondents are all to the prejudice of the public and of respondents' said competitor, 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 26th 1914, entitled "An Act To Create a Federal Trade Commission, to definite its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondents A. Singer and Charles Schaffer, partners, doing business under the name and style of California Grape Growers Exchange, charging them with the use of unfair methods in competition in commerce in violation of the provisions of said act.

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The respondents having filed herein their answer to said complaint, hearings were had and evidence was introduced on behalf of the Commission, and the said Charles Schaffer appeared and testified before an examiner of the Federal Trade Commission theretofore duly appointed. Respondent Charles Schaffer at said hearing incorporated into the record his consent that an order issue requiring respondents to cease and desist from the acts and practices and things charged in said complaint. Respondent A. Singer was not served with the notice of the time and place when said hearings would be held, nor with notice of the report as to the facts made by the trial examiner, for the reason that, after due diligence on the part of the Federal Trade Commission, said respondent A. Singer could not be found and his whereabouts are unknown to this Commission. Thereupon, this proceeding coming on for decision, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusion, drawn therefrom:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents A. Singer and Charles Schaffer are partners, doing business under the trade name and style of California Grape Growers Exchange, with their office and principal place of business located in the city of New York, State of New York, and are engaged in the business of selling grapes, particularly California grapes, in carload lots. Respondents purchase said California grapes in carload lots on the f. o. b. auction, New York City, N. Y., and after buying the same in carload lots sell said grapes to various purchasers located in various States of the United States, more particularly the States on or near the Atlantic seaboard, and north of the State of Maryland, and said respondents after selling said grapes in carload lots to various purchasers cause the same to be transported from the said City of New York, State of New York, to such purchasers located at many different points in various States of the United States, more particularly the States on or near the Atlantic seaboard and north of the State of Maryland, sale of said grapes being in interstate commerce. In the sale of said grapes, including said California grapes, in carload lots as herein set out, said respondents are in active and direct competition in interstate commerce with other persons, firms, partnerships, and corporations likewise engaged in commerce.

PAR. 2. That respondents A. Singer and Charles Schaffer, trading as California Grape Growers Exchange, had numerous competitors

among whom were the California Grape Growers' Exchange, a cooperative, nonprofit corporation, organized and existing under and by virtue of the laws of the State of California, having its principal place of business located in the city of San Francisco, State of California. That said cooperative corporation, California Grape Growers' Exchange, is composed of about six hundred grape growers located in the State of California, who market their crop of grapes through said organization which was organized and incorporated in 1919, and was engaged in selling grapes in interstate commerce a long time prior to the time of respondents engaged in said business. Said above mentioned cooperative association sells and transports in carload lots and other large quantities, grapes grown by the members of said association to various purchasers located in various States of the United States including the States at and near the Atlantic Seaboard and north of the State of Maryland, and causes said grapes so sold in carload lots and other large quantities to various purchasers, to be transported from said State of California to such purchasers located at many different points in various States of the United States including States at or near the Atlantic seaboard and north of the State of Maryland in interstate commerce. In the sale of said California grapes in carload lots and other large quantities, said cooperative association is in active and direct competition in interstate commerce with other persons, firms, partnerships, and corporations likewise engaged in commerce, including respondents.

PAR. 3. That the respondents A. Singer and Charles Schaffer, doing business under the trade name and style of California Grape Growers Exchange, on or about May 1, 1924, opened an office in Room 2010, at 150 Nassau Street, City of New York, State of New York, and caused to be painted upon the door of said office a sign which read: "California Grape Growers' Exchange." The markets of the respondents trading as California Grape Growers' Exchange, and the markets of aforesaid cooperative corporation California Grape Growers' Exchange cover practically the same territory, in so far as the territory of respondents extends. The identity of the trade name of respondents with the corporate name of said cooperative association, and the fact that both concerns are engaged in the sale of similar products in the same territory was calculated to create, and has created great confusion in the trade resulting in the loss of business by said cooperative association. Letters from customers and prospective customers offering to purchase or contract for the purchase of large quantities of California grapes in carload lots have been sent to respondents by such purchasers and prospective pur-

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chasers in the belief that they, the said purchasers or prospective purchasers, were sending said letters to said cooperative association or to an agent or representative thereof. That said cooperative association received complaints from purchasers and prospective purchasers complaining that said cooperative association would not offer California grapes for sale before August 1, 1924, while their New York office (meaning respondents) were advertising California grapes in carload lots for immediate delivery. That said cooperative association also received many telegrams and telephone calls from purchasers or prospective purchasers of California grapes complaining that said cooperative association was asking more for grapes sold directly by it, than it was asking for grapes sold through its New York agents, meaning respondents. That respondents are not, and never have been, agents or representatives of said cooperative association or connected therewith in any way, and great confusion in business has resulted from the use by respondents of a name identical with that of said cooperative association.

PAR. 4. That by reason of having received such letters, telegrams, and telephone calls from customers and prospective customers, who were in the belief that respondents trading as California Grape Growers Exchange were said cooperative association, or an agency or a representative thereof, the said cooperative association, California Grape Growers' Exchange caused its president to go to the City of New York where the said president visited the office of respondents, trading as California Grape Growers' Exchange at Room 2010, 150 Nassau Street, New York City, N. Y., and there met respondents, A. Singer and Charles Schaffer, and was told by them that they were a copartnership doing business under the style and trade name of California Grape Growers' Exchange, and thereupon, the president of said cooperative association demanded of respondents that they cease using the said name California Grape Growers' Exchange in trading and selling grapes particularly California grapes, which respondents then and there refused to do; that afterwards the president of said cooperative association in writing made a demand upon respondents trading as aforesaid that they cease and desist from the use of the said name "California Grape Growers' Exchange" and on June 19, 1924, the said president of said cooperative association received a telegram from respondents trading as aforesaid agreeing to cease and desist from the use of said name "California Grape Growers' Exchange," if the said cooperative association would pay them the sum of \$500; that said cooperative association refused to pay them said sum of \$500, or any other sum. The use by respondents of the trade name and style of Cali-

ifornia Grape Growers' Exchange in dealing in and selling grapes, particularly California grapes, has the capacity and tendency to mislead and deceive, and has misled and deceived purchasers and prospective purchasers located at many points in various States of the United States, into the belief that respondents in their said business are identical with said cooperative association and its business, and has caused the trade and public acting in such belief to deal with respondents and to buy grapes from respondents as and for the grapes of said cooperative association, and has caused the purchasing public to purchase grapes from respondent in the belief that such grapes are the grapes of said cooperative association. Said respondents A. Singer and Charles Schaffer trading as aforesaid continued in business in said Room 2010 at 150 Nassau Street, New York City, N. Y., until October 1, 1924, at which time they moved from said office and discontinued all business operations which they previously had conducted in the trade name and style of California Grape Growers' Exchange.

CONCLUSION.

The practices of the respondents under the conditions and circumstances described in the foregoing findings as to the facts constitute unfair methods of competition in commerce among the States and are prohibited by 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 Federal Trade Commission, the answer of the respondents, A. Singer and Charles Schaffer, and the testimony and evidence submitted, and the Commission having made its findings as to the facts and 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,"

Now, therefore, it is ordered, That respondents, A. Singer and Charles Schaffer, do cease and desist from:

1. Using as a trade name or trade mark or label the name or words "California Grape Growers Exchange" or any other combination of words likely to be confused with the words "California Grape Growers Exchange," and

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2. From using the words "California Grape Growers Exchange" on letterheads, billheads, advertising or otherwise, in connection with the sale of grapes,

And it is further ordered, That respondents file with the Federal Trade Commission within 30 days from the date of the service of this order upon them a report in writing stating the manner and form in which this order has been complied with, said report to have attached to it copies of all circulars, stationery, advertisements, marks, labels, and other devices distributed by respondents or displayed to the public in connection with the sale by respondents of grapes in commerce in the several States of the United States.

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IN THE MATTER OF
JAMES HEDDON'S SONS.

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

Docket 1188—June 2, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture of fishing tackle and in the sale thereof to jobbers and to retailers; in pursuance of a policy directed to the observance of the prices fixed by it for the sale of its products at wholesale and at retail, which prices it incorporated in the price lists which it issued to the trade from time to time, and which policy it made known as it did its practice of penalizing price cutters through less favorable discounts, followed by a discontinuance of relations, if necessary,

- (a) Entered into, and procured from dealers, agreements and assurances binding them to observe said prices, as a condition precedent to doing business with them;
- (b) Requested its dealer customers to report the names of price cutters or persons suspected as such; and
- (c) Sought their cooperation in making its aforesaid policy effective by advising them of its intention to act upon reports sent in by them of price cutting, by the penalization of the price cutter through less favorable discounts, or his elimination, or by informing them that price cutters reported to it who would not give assurance of adherence to the suggested resale prices had been or would be refused further sales;

With the result that its prices were generally observed by both jobbers and retailers, dealers were prevented from selling its products at such lower prices as they might consider warranted by their respective selling costs and by trade conditions generally, and competition in respect of its products was suppressed and hindered:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission;
Langworthy, Stevens & McKean of Chicago, Ill., 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 James Heddon's Sons, a corporation, hereinafter referred to as