

Complaint.

IN THE MATTER OF
GARNETT S. ZORN AND H. VOLTZE DOING BUSINESS
UNDER THE TRADE NAME AND STYLE OF S. ZORN &
COMPANY

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

Docket 1083—October 31, 1925.

SYLLABUS.

Where a firm engaged in the sale of grain, sold as and for oats, oats grown in certain Midwestern States, with which it had caused to be mixed very substantial proportions of "screenings"; to the injury of competitors who did not engage in such practice, of the ultimate purchasers of such mixture, who paid for something which was not what it purported to be, and of the growers of clean cultivated oats in the aforesaid Midwestern States:

Held, That the sale of products adulterated as above set forth, constituted an unfair method of competition.

Mr. M. Markham Flannery for the Commission.

Mr. H. E. McElwain, jr., of Louisville, Ky., 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 Garnett S. Zorn and H. Voltze, doing business under the trade name and style of S. Zorn & Co., 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 are partners, doing business under the trade name and style of S. Zorn & Co., with their principal place of business in the city of Louisville, State of Kentucky, and are engaged in the business of selling grain of various kinds, including oats, to customers in various States of the United States, and cause the grain so sold by them to be shipped from their said principal place of business in the city of Louisville, State of Kentucky, into and through other States of the United States to said customers at their several points of location. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships and corporations similarly engaged in the sale of grain, including oats, in interstate commerce.

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PAR. 2. In order to increase the natural weight of cultivated oats dealt in by them, respondents add, or cause to be added, water, to said oats, before shipping the same to said customers. The water thus added to said oats by respondents is absorbed by the oats, and upon ordinary, reasonable inspection, the presence of said water cannot be detected by said purchasers. Said purchasers, in buying oats from respondents, believe and expect that the oats so purchased will contain no water artificially added, and in accepting and paying for said oats believe that the full amount and weight of the shipment purchased by them consists of oats in their natural condition and without any water or weight artificially added thereto, and in that belief said customers pay for the total weight of the shipments at the price which they have agreed to pay respondents for oats, and thus pay for water at the price agreed upon for oats. All the above alleged facts are well known to respondents.

PAR. 3. Cultivated oats as they come naturally from the field may contain some foreign material; cleaned oats are cultivated oats from which such foreign material has been removed. Such oats, purchased by respondents to be resold by them in their aforesaid business, are in many instances adulterated by respondents by means of their adding to and mixing with such cultivated and/or cleaned oats foreign material such as wild oats, weed seeds, chaff, straw knots and dust, which foreign material is commercially known as "screenings." In purchasing such oats as have been so adulterated, many aforesaid customers of respondent believe that they are buying, and that respondents are selling cultivated oats as they come naturally from the field, or oats which have been cleaned. The price and value of screenings is much less than the price and value of oats, either as they come naturally from the field or after they are cleaned. Oats are graded in the trade, and are sold at different prices for each grade. Respondents, in many instances, offer and sell such a mixture as and for cultivated oats in their natural condition as they come from the field, or as oats which have been cleaned. The presence of screenings in substantial quantities in such mixtures so sold by respondents is not disclosed by ordinary and reasonable inspection, and said customers pay for said adulterated oats a sum of money representing the total weight of the shipments in each instance, multiplied by the unit price of oats of the grade ordered by them, in the belief that they are securing oats as they have naturally come from the field, or oats that have been cleaned, and in all such instances said purchasers pay for screenings the price agreed upon for oats ordered by them. All the above alleged facts are well known to the respondents.

PAR. 4. For more than two years last past respondents have engaged in the practices set forth in paragraphs 2 and 3 hereof, under the circumstances and with the results in said paragraphs set forth.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and of respondents' competitors who do not so adulterate oats, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act 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 the respondents, Garnett S. Zorn and H. Voltze, trading as S. Zorn & Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearance through their attorney and having filed answer to said complaint, testimony both in support of and in opposition to said complaint having been received at hearings before a duly authorized examiner of the Federal Trade Commission and respondents having filed a motion to dismiss, which motion, after consideration, was denied, except in so far as said motion related to the charge of adding water to oats as alleged in paragraph 2 of said complaint, as to which charge said motion was granted on the sole ground that it was impossible to determine whether the particular oats to which water was added and not removed were sold and shipped in interstate commerce, this proceeding came 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 conclusions drawn therefrom.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents, Garnett S. Zorn and H. Voltze, are partners doing business under the trade name and style of S. Zorn & Co., with their principal place of business at Louisville, in the State of Kentucky, and are engaged in the business of selling grain of various kinds including oats. Respondents cause oats grown in the States of Ohio, Indiana, Illinois, and Iowa, and "screenings" grown in the Northwestern States, to be shipped from Minneapolis,

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Minn., Chicago, Ill., and points beyond to Louisville, Ky., where under a "transit privilege stopover" they cause said "screenings" and oats to be mixed one with the other and then cause the resulting commodity to continue its journey to purchasers thereof located at points of final destination in the States of Virginia, North Carolina, Alabama, and other Southern and Southeastern States. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships and corporations also engaged in the sale of grain, including oats, in interstate commerce.

PAR. 2. Oats grown in the States of Ohio, Indiana, Illinois, and Iowa usually are very clean, containing practically no wild oats and very little matter other than cultivated oats.

"Screenings" are seeds of pestiferous weeds, straw joints and other matter foreign to clean, cultivated oats or other grain. Weeds which infest the wheat fields of the Dakotas, particularly the Red River section, are, necessarily, cut and threshed when the wheat is cut and threshed, and their seeds shipped with the wheat. These are delivered with the shipment to the terminal elevator. While mingled with wheat this foreign matter is called "dockage," a designation arising from the fact that when the shipper sells wheat the estimated weight per bushel of contained foreign matter is deducted therefrom. This foreign matter is separated from the wheat in the terminal elevator by passing it over a series of screens. It then becomes known as "screenings" and is sold as such at about one-half the price of No. 3 white oats. "Screenings" contain large quantities of wild oats which are themselves weeds of little food value.

Wild oats are weeds, a pest that grows wild chiefly in the wheat fields of the Northwestern States of the United States, and Canada. They also grow wild to some extent with rye. Prior to about fifteen years ago no attempt was made by the mills to separate wild oats from the remaining mass of screenings. Since that time, by the use of "screen blowers," such a separation is to some extent accomplished. In this form they are sometimes called "mill oats," although such substances as chaff, the seeds of yellow fox tail, wild dogweed, pigweed and a variety of small seeds of other weeds remain with the wild oats, and although having passed through this process they are billed by railroads and invoiced under tariff regulations as "screenings."

Millions of bushels of such "screenings," "wild oats," or "mill oats," large quantities of which are imported from Canada, are annually mixed with cultivated oats and sold in the Southern and Southwestern States as and for oats.

PAR. 3. Respondents, between July 1, 1921, and February 15, 1922, added to and artificially mixed with approximately 90 carloads of cultivated oats about 90 carloads of "screenings." This mixture respondents sold as and for oats—mostly No. 3 white oats.

The following shipments by respondents to purchasers at the destinations named indicate but a few of hundreds of similar shipments of "screenings" mixed with cultivated oats which respondents sold as and for No. 3 white oats; Mobile & Ohio Car No. 18389, shipped to Oxford, N. C.; Baltimore & Ohio Car No. 174632 and Chicago, Burlington & Quincy Car No. 107174, shipped to Richmond, Va.; Louisville & Nashville Car No. 8833, shipped to Birmingham, Ala.; Chicago, Evansville & Indianapolis Car No. 130, shipped to Hampton, Va.; Chicago & Northwestern Car No. 116866 and Pennsylvania Car No. 26068, shipped to Greensboro, N. C.; Louisville & Nashville Car No. 1978; and St. Louis & San Francisco Car No. 122708, shipped to Gaffany, N. C.

An analysis of the contents of some such shipments based on a thorough examination and weighing of the separate portions of an analytical balance showed the contents of Louisville & Nashville Car No. 1978, sold by respondents as No. 3 white oats, to be cultivated oats grown in Indiana-Illinois section mixed to the extent of 17.3 per cent with "screenings" originating in the North Dakota section. Said "screenings" consist of wild oats, 11.2 per cent; needle barley, 2.5 per cent; stems, chaff, weed seed, 2 per cent; wheat threshings, 0.6 per cent; corn, 0.6 per cent; speltz, 0.4 per cent; and two pieces of ergot in 50 gram samples or approximately 2 ounces, making a total of foreign material in this product of 17.3 per cent. Analysis of another car, St. Louis & San Francisco, No. 122708, shipped by respondents to a purchaser at Gaffany, N. C., as No. 3 white oats, contained cultivated oats mixed with 15.7 per cent of "screenings" as follows: Weed seed, chaff, stems, dirt, 7.2 per cent; wild oats, 1.9 per cent; barley, 4 per cent; corn, 2.4 per cent; wheat, 0.2 per cent.

According to the rules promulgated under the Federal Grain Standards Act (Compiled Stats. sections 8747½-8747½k) No. 3 white oats may contain not more than 10 per cent of other than sound cultivated oats, but this applies only to natural mixtures. Mixtures sold by respondents were artificial mixtures and contained "screenings" to an average amount of 17½ per cent.

The contents of some of the cars designated in this paragraph were inspected and graded by a grain inspector. Such inspectors of grain are appointed by the various boards of trade in the localities in which shipments of grain are handled and upon the recommendation of such boards of trade or similar bodies are licensed to make inspections of grain under the Federal Grain Standards Act and in

accordance with the rules of the United States Department of Agriculture. Such inspections, however, are in no respect official acts of the United States Government. These inspectors are in the employ of and paid by the various boards of trade or similar bodies for the services rendered. The grain inspector making the inspection of the cars of grain referred to herein was in the employ of and paid by the Louisville Board of Trade of which respondents are members.

PAR. 4. The practice of adding "screenings," "wild oats" or "mill oats" to cultivated oats cheapens and debases the product and is ruinous to competitors of respondents who refrain from such practice.

The margin between the cost and selling price of oats is from one-half to 1 cent per bushel. On February 16, 1925, the market price of Illinois No. 3 white oats was $54\frac{3}{4}$ cents per bushel delivered at Ohio River gateways, making the resale price approximately $55\frac{3}{4}$ cents per bushel for No. 3 white oats not degraded in quality by admixtures of "screenings," "wild oats," or "mill oats." On the same date No. 3 white oats containing "screenings" placed therein, No. 2 oats and various mixtures, including the product of respondents, consisting of No. 3 white oats mixed with a large quantity of "screenings," "wild oats," or "mill oats" placed therein by respondents and offered for sale by them, were offered for resale at Louisville and other Ohio River gateways at from $47\frac{1}{2}$ cents to $54\frac{1}{4}$ cents per bushel, or from one-half cent to $7\frac{1}{4}$ cents per bushel less than the market price of No. 3 white oats delivered at Ohio River gateways.

Grain dealers in competition with respondents who formerly sold millions of bushels of clean oats annually were, therefore, compelled to abandon, or to practically abandon, the business of buying and selling oats.

The practice of respondents herein described not only injuriously affects respondents' competitors who do not mix No. 3 white oats with "screenings," "wild oats," or "mill oats," but causes the ultimate purchaser to pay for something which is not what it is purported to be; by secret substitution of "screenings," "wild oats," or "mill oats" it also injuriously affects the growers of clean cultivated oats raised in the States of Ohio, Indiana, Illinois, and Iowa, by placing their oats in direct competition with oats with which are deliberately mixed millions of bushels of obnoxious weed seeds from the wheat fields of the Northwestern States and Canada; the woody, fibrous shells, enclosing the low food value contained in "wild oats" and other weed seeds impair the digestion of animals and make possible the growth of weeds foreign to the locality in which they are used as feed for livestock.

CONCLUSION.

The practices of said respondents under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation 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 Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, and a motion by respondents to dismiss, and the Commission, after denying said motion except in so far as it related to the charge of adding water to oats; as alleged in paragraph 2 of said complaint, as to which charge said motion was granted on the sole ground that it was impossible to determine whether the particular oats to which water was added and not removed were sold and shipped in interstate commerce, made its findings as to the facts and its conclusion that respondents have violated the provisions 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,"

It is now ordered, That the respondents, Garnett S. Zorn and H. Voltze, trading as S. Zorn & Co., their agents, servants, employees and representatives, cease and desist from using the word "oats" in descriptions or designations in connection with the sale or offering for sale of "screenings," "wild oats," or "mill oats" artificially mixed with cultivated oats, unless the word "oats" is accompanied by a word or words plainly designating that such is an artificial mixture of "screenings," "wild oats," or "mill oats" with cultivated oats and not a natural mixture from the field where the oats were cultivated, and

It is further ordered, That respondents, Garnett S. Zorn and H. Voltze, doing business under the trade name and style of S. Zorn & Co., shall within sixty 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.

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IN THE MATTER OF
NORMAN J. FREEMAN AND MYRON LEWIS, PARTNERS,
DOING BUSINESS UNDER THE NAME AND STYLE OF
OHIO SHELLAC CO.

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

Docket 1307—October 31, 1925.

SYLLABUS.

Where a firm engaged in the sale of paints, varnishes and allied products, sold varnishes in which shellac gum was not the principal and predominant element, in containers conspicuously labeled with the words "Dutch Maid Shellac," "Ohio Shellac," and other phrases containing the word "Shellac," together with the words, in some cases, "Grade A, Compound" and "Compound," in small and inconspicuous letters; 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 Manufacturers' Association and other organizations, and designed to prevent the debasement of the term "Shellac," confusion in the trade, and deception of purchasers, 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," with the word "shellac," where the latter content equaled or exceeded one-half of the total solid content, and for the use of the word "substitute" or "imitation" with the word "shellac," in other cases; with the effect of misleading and deceiving the trade and public into believing the aforesaid products to be composed solely of shellac gum dissolved in alcohol in those cases in which the word "compound" was not included in the label, and with the capacity and tendency similarly to mislead and deceive that portion of the trade and purchasing public failing to observe the aforesaid word when included, and in other cases to mislead and deceive that portion observing the same into believing shellac gum to be the principal and predominant element of said products, and to cause the purchase of the same in the aforesaid mistaken beliefs:

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

Mr. William A. Sweet for the Commission.

Waterworth & Waterworth, of Cleveland, Ohio, 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 Norman J. Freeman and Myron Lewis, partners, doing business under the trade name and style Ohio Shellac Co., hereinafter referred to as respondents, have been and are using unfair methods