

IN THE MATTER OF
FRANKLIN COAL COMPANY

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

Docket 1187—February 5, 1926

SYLLABUS.

Where coal produced at Mount Olive, Ill., and in a small district contiguous thereto, had long come to be well and favorably known to a substantial part of the trade and consuming public, by reason of extensive advertising, wide distribution, and reputed high quality and grade, as "Mt. Olive Coal," or "Mt. Olive District Coal"; and thereafter a coal dealer advertised, designated, and sold coal not mined in the aforesaid district, as Mount Olive District coal, with the capacity and tendency to mislead and deceive a substantial part of the trade and purchasing public in reference to the source of the aforesaid coal and to induce the purchase thereof in such erroneous belief, to the prejudice of competitors dealing in genuine Mount Olive District coal and of those dealing in other coal, truthfully represented:

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

Mr. O. R. Stites for the Commission.

Mr. J. J. Milligan, of St. Louis, Mo., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Missouri corporation engaged in the purchase and sale of coal in wholesale quantities in interstate commerce, with principal office and place of business in St. Louis, with naming or designating its product misleadingly and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent advertised in the St. Louis papers, offered for sale, and sold, certain coal as "Mt. Olive Coal" and "Mt. Olive District Coal," in competition with coal mined in "the Mt. Olive section," lying within the counties of Macoupin and Madison, Ill., and known and designated by a substantial part of the purchasing public as, "Mt. Olive Coal"; the complaint charging that the coal so advertised, offered and sold by respondent "is not the product of said Mt. Olive section, but is produced in the counties of Clinton and Bond in the State of Illinois, which said counties lie wholly without aforesaid Mt. Olive district, and said coal derived from said last named source

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Findings.

has a lower market value than coal produced in said Mt. Olive district"; with the capacity and tendency to mislead and deceive purchasers into believing respondent's coal to be the product of the aforesaid Mount Olive District and with the effect of so doing, to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to 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," the Federal Trade Commission issued and served a complaint on the respondent Franklin Coal Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein, evidence was thereupon introduced in support of the allegations of the complaint and on behalf of respondent, Franklin Coal Co., before an examiner of the Federal Trade Commission. Thereupon, 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Franklin Coal Co., is a corporation organized and existing under the laws of the State of Missouri, with its principal offices and place of business in the city of St. Louis, in said State. It is, and for more than five years last past has been, engaged in the business of selling and distributing coal in wholesale quantities to retail dealers, industrial plants and car-lot customers located in the States of Illinois, Missouri, Arkansas, Iowa, and Wisconsin. In the course and conduct of said business it employs traveling salesmen who solicit orders for coal on behalf of the respondent from its customers and prospective customers, and respondent also offers for sale and sells its coal through and by means of circular letters, price lists and similar trade literature, which it mails from time to time to its customers and prospective customers. It obtains its coal from producers and operators of mines located in the State of Illinois, and in filling orders from its customers for said coal it causes same to be transported from the mines located in the State of Illinois from which said coal was produced, through and into other States of the United States to the purchasers thereof. In

carrying on its business as aforesaid, respondent has been at all times hereinbefore mentioned, and now is, in direct, active competition with many individuals, partnerships and other corporations similarly engaged in the sale and distribution of coal in commerce between and among various States of the United States, particularly the States of Illinois, Missouri, Arkansas, Iowa, and Wisconsin.

PAR. 2. In the course and conduct of its aforesaid business respondent is, and for more than five years last past has been, selling and distributing in interstate commerce large quantities of coal produced from mines located at Pocahontas, in Bond County, and Breese and Beckemeyer, in Clinton County, Ill., as and under the trade name and brand of "Mt. Olive District Coal," and in the course of dealing in said coal, respondent has, for more than two years last past, offered for sale, advertised and represented in circular letters, price lists and similar trade literature, which it mailed to its customers and prospective customers, said coal as "Mt. Olive District Coal"; and respondent still sells and distributes coal from said mines at Pocahontas, Breese, and Beckemeyer, Ill., under the name of, and as and for "Mt. Olive District Coal." Said coal is sold and distributed in interstate commerce by respondent in direct, active competition with, among others, coal produced at Mount Olive, Ill., and in the "Mt. Olive District" as defined in paragraph 3 hereof.

PAR. 3. For more than 40 years last past there has been and still is produced at Mount Olive, Ill., and in a small district contiguous to said Mount Olive, including Staunton, in said State—which district is known and referred to in the trade and among the consuming public as "The Mt. Olive District"—a coal having peculiar characteristics of fracture and composition, which has become known to and designated by the trade and a substantial part of the consuming public as "Mt. Olive Coal" and/or "Mt. Olive District Coal." Coal produced at mines located in said district is, and during the period aforementioned has been, sold and distributed, and extensively advertised by producers and dealers (one producer alone having expended between \$10,000 and \$12,000 per annum for the past 20 years on said advertising), throughout Illinois, Missouri, Arkansas, Iowa, Wisconsin, and other States as "Mt. Olive Coal" and "Mt. Olive District Coal." Said coal is, and throughout the period aforementioned has been well and favorably known to a substantial part of the trade and consuming public as "Mt. Olive Coal" and/or "Mt. Olive District Coal," because of its having been produced at Mount Olive, Ill., or in said Mount Olive District, including Staunton, and also because of the aforesaid advertising, wide distribution and its reputed high quality and purity.

PAR. 4. The coal produced at Pocahontas, Breese, and Beckemeyer, Ill., including said coal advertised and marketed by respondent as and for "Mt. Olive District Coal," as set forth in paragraph 2 hereof, is not in fact "Mt. Olive District" coal as understood by the trade and consuming public; and said coal so marketed by respondent has different characteristics of fracture and composition and is generally less favorably known among the trade and purchasing public than said coal produced at Mount Olive, Ill., and in said Mount Olive District as hereinbefore defined, including Staunton. The coal-producing properties at Pocahontas, Breese, and Beckemeyer, including the mines from which respondent's coal is obtained, are now, and at all times herein mentioned have been, wholly without said Mount Olive District, which district includes Staunton, and are regarded by the trade and purchasing public as being no part of the coal-producing section known and hereinbefore defined as the "Mt. Olive District." The aforesaid Mount Olive District, including Staunton, is in Macoupin and Madison Counties, Ill.; whereas said mines at Pocahontas are in Bond County and approximately twenty miles distant from said Mount Olive District; and said mines at Breese and Beckemeyer are in Clinton County, Ill., and approximately thirty miles distant from said Mount Olive District.

PAR. 5. The respondent's representing, advertising, selling and distributing its coal produced at Pocahontas, Breese, and Beckemeyer, Ill., as and for "Mt. Olive District Coal," as set forth in paragraph 2 hereof, is false and misleading, and has and had the capacity and tendency to mislead and deceive a substantial part of the trade and purchasing public into the erroneous belief that said coal was produced at Mount Olive, Ill., or in aforesaid Mount Olive District, and is what is known as "Mt. Olive District Coal" as defined in paragraph 3 hereof, and to induce purchasers to buy said coal in such erroneous belief, thereby diverting trade from competitors of respondent who sell and distribute coal in interstate commerce under truthful representations, particularly those who sell coal produced in said Mount Olive District.

CONCLUSION

The acts and practices of respondent as hereinabove set forth, and under the conditions and circumstances set forth in the foregoing findings as to the facts, are unfair methods of competition in 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, the answer of respondent, Franklin Coal Co., and the testimony and evidence submitted, and the Commission having made its findings as to the facts, with its conclusion that the 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,"

Now, therefore, it is ordered, That the respondent, Franklin Coal Co., a corporation, its officers, agents, servants, representatives, and employes, cease and desist—

(1) From using in advertisements, or by or through any other means whatsoever, in connection with the sale or offering for sale in interstate commerce of coal produced at Pocahontas, Bond County, Ill., and/or Breese and Beckemeyer, Clinton County, Ill., the words or phrases "Mt. Olive" and "Mt. Olive District," as trade names for, or as descriptive of said coal.

(2) From using the words or phrases "Mt. Olive" and "Mt. Olive District" as trade names for, or as descriptive of any coal marketed by respondent in interstate commerce, unless said coal has been produced at Mount Olive, Ill., or in the small geographical section contiguous to said Mount Olive, including Staunton, in said State.

It is further ordered, That the respondent, Franklin Coal Co. (a corporation) shall, within sixty days after the service upon it of a copy of 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.

Syllabus

IN THE MATTER OF
CALUMET BAKING POWDER COMPANY

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

Docket 868—February 8, 1926

SYLLABUS.

Where a corporation engaged in the manufacture of baking powder, and in the sale thereof in competition with manufacturers of self-rising flour, freely and extensively sold subject to the provisions of the Pure Food and Drugs Act and similar state laws—

- (a) Secretly caused persons who appeared to be disinterested authorities, to prepare and issue over their signatures articles or publications containing numerous disparaging and prejudicial statements, involving complex matters of opinion incapable of determination by the trade or consuming public relative to the ingredients and use of self-rising flour, and widely circulated the same, and articles or publications of a similar nature, without making known its connection therewith and responsibility therefor, in that it—
- (1) Circulated as above set forth, among domestic science teachers and others, many thousands of copies of a publication which it caused to be prepared by and issued under the authorship of, a medical man, entitled "Domestic Science Text Book, Baking Powder a Healthful Leavening Agent," in which were contained such statements as that by reason of the methods of manufacture, results to be anticipated from the use of self-rising flour were comparable to those to be expected "from the use of the cheapest baking powder, manufactured without chemical control * * *"; that inasmuch as excessive quantities of soda and acid were frequently added in manufacturing such product, the housewife in using the same prepared food containing excessive amounts of residue; and that "because of the large amount of water contained in flour, and the lack of protection from atmospheric moisture through the use of cloth bags as containers, the keeping qualities of the self-rising mixture are seriously impaired";
- (2) Circulated as above set forth a publication which it caused to be prepared by, and issued under the authorship of, a domestic science lecturer in its employ, entitled "Twenty Lessons in Domestic Science," in which were set forth verbatim prejudicial statements above referred to as included in the former publication, together with the explanatory note, "N. B.—The text of this chapter is taken with the permission of the author, (naming him) from 'Domestic Science Text Book, Baking Powder, A Healthful, Convenient Leavening Agent'";
- (3) Circulated among housewives and teachers of home economics, and under the name and over the signature of, the editor of the domestic science department of a woman's magazine, circular letters on the letterheads of the aforesaid magazine, setting forth, among other things, that the department in question was "engaged in a special investigation of so-called self-rising flour" to find out "whether the people who are using self-rising flour have ever investigated it or have ever been told of its questionableness from a health and efficiency standpoint", and also reprints of anonymous