

Complaint

10 F. T. C.

IN THE MATTER OF

DAVID J. GOLDSMITH, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE HAGEN IMPORT COMPANY
OF PENNSYLVANIA

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

Docket 1236—March 6, 1926

SYLLABUS.

Where an individual engaged in the purchase of various kinds of merchandise from domestic manufacturers, and in the sale thereof at retail, and neither importing nor manufacturing the products dealt in by him,

- (a) Adopted a trade name which included the words "import company," and featured the same in his advertisements, catalogues, circulars, and other trade literature, and on his letterheads and bill heads, together with the additional phrases "Importers—Manufacturers—Jobbers," and "European Office, Munich, Germany," and the picturization of an ocean steamship, with the effect of misleading and deceiving the purchasing public and inducing the purchase by it of goods from him as an importer or manufacturer, to the prejudice of competitors who truthfully represented themselves as importers or manufacturers, as the case might be, from whom business was thereby diverted;
- (b) Advertised a domestic extract of barley malt as "Imported Bavarian Style Old Time Malt Extract," and featured such representation upon the labels of the containers thereof, together with a picturization of a steamship; with the effect of misleading and deceiving a substantial part of the purchasing public in reference to the source of the aforesaid extract, and inducing the purchase thereof in such mistaken belief, and with a tendency thereby to divert business from and otherwise prejudice competitors dealing in barley malt extract, which was made in the United States, and so labeled, advertised, and sold:

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

Mr. Robert O. Brownell for the Commission.

Welsh & Bluett, of Philadelphia, Pa., 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, an individual doing business in Philadelphia as Hagen Import Co. of Pennsylvania and engaged in the sale of various kinds of merchandise at retail to consumers in various states, with using misleading trade name, advertising falsely or misleadingly, naming product misleadingly, and misbranding or mislabeling, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that, being neither

importer, wholesaler, nor manufacturer of the merchandise dealt in by him, which he purchased from concerns located in the United States and resold at retail, he featured his aforesaid trade name in his newspaper advertisements, catalogues, and other trade literature, employed the same upon his letterheads and billheads, together with the phrases "Importers—Manufacturers—Jobbers," and "European Office, Munich, Germany," and the picturization of an ocean steamship, and advertised, described and conspicuously labeled a domestic barley malt extract dealt in by him as "IMPORTED BAVARIAN style OLD TIME MALT EXTRACT," also with the picturization of a steamship and with the word "style" in inconspicuous letters; the complaint further alleging that a substantial part of the purchasing public has a preference for genuine imported merchandise over domestic products and for genuine imported extract of barley malt over such extract produced in the United States, that respondent's acts and practices have the effect of misleading and deceiving the purchasing public by causing them to believe respondent to be a manufacturer, importer, or wholesaler, or a combination thereof and to purchase his goods in that belief, have a capacity and tendency to induce the purchase of the aforesaid malt extract as and for a genuine imported product, and have the effect of diverting business from and otherwise prejudicing genuine importers, and manufacturers, or wholesalers dealing in or making and selling the products herein concerned, in competition with it, without misrepresenting the character of their business or their products, and have a tendency so to divert business from and otherwise prejudice competing concerns, dealing without misrepresentation in the aforesaid extract, all 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 an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon respondent, David J. Goldsmith, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent entered his appearance and made answer in writing to the said complaint, and hearings were conducted before a trial examiner, duly appointed by the Commission. Thereafter the trial examiner made his report, and an oral argument was heard by the Commission.

Thereupon this proceeding came on for decision, and the Commission, having duly considered the record and being fully advised in

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the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style "Hagen Import Co. of Pennsylvania," with his place of business in the city of Philadelphia, State of Pennsylvania, 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 Philadelphia, 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 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 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 Co. of Pennsylvania," to be prominently displayed; and respondent also uses in connection with his said business letterheads and billheads bearing the said trade name and the additional phrases "Importers—Manufacturers—Jobbers" and "European Office, Munich, Germany," and the picturization of an ocean steamship. The said advertising matter on said letterheads and billheads was sent 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.

Respondent does not import his merchandise, nor does he manufacture it, but buys his goods from manufacturers located in the United States and resells same as heretofore described.

PAR. 3. The use by respondent of said trade names and said phrases and marks, as set out in paragraph 2 hereof, has the tendency and capacity to and does mislead and deceive the purchasing public into the belief that the respondent is a manufacturer and/or an importer and that the merchandise which he offers for sale is manufactured or imported by respondent, and causes the public to purchase said goods in that belief.

PAR. 4. Among the competitors of respondent are several who actually import their goods from foreign countries and truthfully represent to the public generally that such goods are imported. There are

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Conclusion

other concerns, also competitors of respondent, who actually manufacture the goods which they sell and truthfully represent to the public that they are the manufacturers of such goods. A substantial part of the purchasing public has a preference for genuine imported merchandise over domestic products, and there is a substantial part of the purchasing public which prefers to deal directly with a manufacturer. 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 his competitors.

PAR. 5. In the regular course of his business respondent has offered for sale and sold to customers located in several different States of the United States, among other things, a product which he has advertised and labeled "IMPORTED BAVARIAN style OLD TIME MALT EXTRACT," which said name and representation respondent causes to be displayed in large and conspicuous type. The said labels also bear the picturization of a steamship. The product so advertised and described and labeled by respondent is an extract of barley malt, and is not imported into the United States, but is manufactured by concerns in the United States, bought by respondent, and by him resold as heretofore set out.

PAR. 6. The use by respondent of the said labels, advertisements, and descriptions of the said extract of barley malt, has the capacity and tendency to mislead and deceive, and does mislead and deceive a substantial part of the purchasing public by causing them to believe that the barley malt extract sold by respondent is manufactured in Bavaria and imported into the United States by him, and to purchase said extract in that belief.

PAR. 7. The barley malt extract which is manufactured in the United States and sold by respondent as and for imported barley malt extract is sold in competition with others who are engaged in selling barley malt extract made in the United States and so labeled, advertised, and sold.

PAR. 8. The acts and practices of respondent, as set out in paragraph 5 hereof, tend to divert business from and otherwise prejudice said competitors.

CONCLUSION

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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission upon its complaint, the answer of respondent, the record of testimony and exhibits duly introduced at hearings before a trial examiner, and the arguments of counsel for the Commission and for respondent, and the Commission having made its findings as to the facts and its conclusion that respondent has 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 now ordered, That respondent, David J. Goldsmith, his representatives, agents, servants and employees, do cease and desist from:

(1) Displaying or otherwise using the words "Import," "Imported," or "Importers" as part of a trade name, or otherwise, in connection with the sale of merchandise which is not imported into the United States from a foreign country.

(2) Using the word "Imported" upon labels, in advertisements, or otherwise, to designate or describe an extract of barley malt which is not imported into the United States from a foreign country.

(3) Using the word "Bavarian" upon labels, in advertisements, or otherwise to designate or describe an extract of barley malt, which is not imported into the United States from Bavaria, unless the said word "Bavarian" is immediately followed by the word "Style" or other equivalent qualifying word or words written or printed in conspicuous characters.

(4) Using the word "Manufacturers" in advertisements, letterheads, billheads, or otherwise, to designate or describe the character of respondent's business, unless and until he does manufacture the merchandise which he sells.

(5) Using the phrase "European Office, Munich, Germany," in advertisements, letterheads, billheads, or otherwise, unless and until respondent maintains an office in the city of Munich, Germany.

(6) Representing by means of letters, circulars, catalogues, brands, labels, or other means whatsoever that the said David J. Goldsmith is an importer, or is a manufacturer, or is engaged in selling imported goods, unless and until such be the fact.

It is further ordered, That the respondent, David J. Goldsmith, 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

IN THE MATTER OF

**M. GOLDBERG, AN INDIVIDUAL DOING BUSINESS
UNDER THE TRADE NAME AND STYLE FACTORY-
TO-YOU FURNITURE STORE**

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

Docket 1152—March 8, 1926

SYLLABUS.

Where an individual engaged in the purchase of furniture from the manufacturers, and in the sale thereof at retail, and neither owning nor operating any furniture factory,

- (a) Used as a trade name a name which included the words "Factory-To-You Furniture", and featured the same in his advertisements, letterheads, and other business stationery; with the capacity and tendency to mislead and deceive a substantial portion of the consuming public into believing that in dealing with him, they were dealing with the manufacturer directly and eliminating the profits of the middleman, and to divert trade from and otherwise injure furniture manufacturers who sold their products directly to the public, and dealers who purchased the furniture dealt in by them from the manufacturers and resold the same to the public;
- (b) Advertised, offered and sold furniture composed on its exposed surfaces in large part of woods other than walnut or mahogany, as the case might be, as "walnut", "genuine walnut" and "combination walnut", and as "mahogany" and "combination mahogany", respectively, with the capacity and tendency to mislead and deceive a substantial portion of the purchasing public in reference to the composition thereof, to the injury of dealers who truthfully, aptly and accurately disclosed the woods of which the furniture dealt in by them was composed:

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

Mr. Morgan J. Doyle for the Commission.

Mr. Thomas Bluett, of Welsh & Bluett, of Philadelphia, Pa., 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, an individual doing business at Philadelphia under the trade name and style "Factory-to-You Furniture Store," and engaged in the sale of furniture purchased by him from manufacturers, to the consuming public at a profit and at substantially prevailing retail prices, with using misleading trade name, 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