

Complaint

IN THE MATTER OF
NORTHWEST CHAIR COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1427. Complaint, Oct. 13, 1926—Decision, May 9, 1927*

Where a corporation engaged in the manufacture and sale of maple chairs resembling walnut or mahogany, as the case might be, depicted and represented said chairs in its catalogues, price lists, circulars and similar trade literature as "Walnut", and "Mahogany", respectively, and so sold the same, thereby placing in the hands of its dealer vendees the means of assisting and enabling them to misrepresent and sell such chairs to the consuming public as composed of walnut or mahogany, respectively, and to use the aforesaid designations and descriptions in its catalogues as evidence and confirmation by the manufacturer of the truth of such misrepresentation; with the capacity and tendency to mislead and deceive many of the trade and purchasing public into believing the chairs in question to be composed of walnut or mahogany, respectively, and to purchase the same in such belief, and with the effect of unfairly diverting trade from competitors dealing in chairs respectively made of the aforesaid woods and truthfully so represented by them to the trade and consuming public, and from competitors dealing in chairs neither so composed nor in anywise so represented by them:

Held, That such misleading designation of product, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. Henry Miller for the Commission.

Hayden, Langhorne & Metzger, of Tacoma, Wash., 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 Washington corporation engaged in the manufacture of chairs, and in the sale thereof to dealers in various States, and with principal office and place of business in Tacoma, with 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, for about three years preceding the complaint, for the purpose of deceiving the purchasing public, falsely designated and described certain of its chairs in its catalogues, price lists, circulars and other trade literature supplied to its dealer vendees as "Walnut" and "Mahogany," the fact being

that said chairs resembled in appearance furniture made of, but were not walnut or mahogany, thereby placing in the hands of said dealer vendees the means of committing a deception and fraud upon the purchasing public by enabling them to represent said chairs as made of walnut and mahogany, respectively, and to display respondent's designations and descriptions as evidence and confirmation of the truth of such representations; with the tendency to divert and with the effect of diverting business from and otherwise injuring and prejudicing competitors, many of whom deal in chairs composed of walnut wood and mahogany wood, respectively, and rightfully and lawfully so represent the same to the trade and consuming public, and others of whom deal in chairs resembling those immediately above described but composed of other woods, and who in nowise represent the same to the trade and consuming public as walnut and mahogany, respectively; 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 the respondent, Northwest Chair Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer herein to said complaint, a stipulation as to the facts (filed of record), was agreed upon by and between respondent corporation and the chief counsel of the Federal Trade Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts of the proceeding before the Federal Trade Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint, or in opposition thereto, and that the Commission may proceed further upon said stipulation to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

And thereupon this proceeding came on for decision, and the Commission having duly considered the record, and now being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Washington, with its principal office

and place of business in the city of Tacoma in said State. It is and for more than two years last past has been engaged in the manufacture of chairs and the sale and distribution thereof to dealers throughout various States of the United States. In the distribution of its products it causes same when sold to be transported from its said place of business in the city of Tacoma, Wash., into and through other States of the United States to said dealer-vendees at their respective points of location in such other States. In the course and conduct of its said business, respondent is and at all times herein mentioned has been in direct active competition with many individuals, partnerships and other corporations engaged in the sale and distribution of chairs in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its said business and for more than two years last past, respondent has offered for sale and sold its said chairs through and by means of catalogues, price lists, circulars and similar trade literature which it sent and supplied from time to time to its aforesaid dealer-vendees and in and through which it depicted, represented and sold many of its said chairs as "Walnut" and "Mahogany"; whereas in truth and in fact said chairs so described and represented as "Walnut" and "Mahogany" resembled in appearance respectively chairs made of walnut wood and mahogany wood, but were in fact composed of or made of wood other than walnut or mahogany, namely maple wood. Respondent's catalogues in which its chairs are depicted and described as aforesaid are frequently displayed by said dealer-vendees to their customers, the consuming public, in making sales of said chairs of respondent's manufacture to such consuming public.

PAR. 3. By use of the designation and description as "Walnut" and "Mahogany" of certain of its chairs in its catalogues, price lists, circulars and similar trade literature, as set forth in paragraph 2 hereof, respondent thereby places in the hands of its said dealer-vendees the means whereby said dealer-vendees are aided, assisted and enabled to misrepresent to the consuming public that said chairs are made of walnut wood or mahogany wood, respectively, and to sell such chairs as made of walnut wood, or mahogany wood, respectively, and to use respondent's said designation and descriptions in its catalogues as evidence and confirmation by the manufacturer that such misrepresentations are true in fact. Respondent's designation, descriptions and representation of said chairs as "Walnut" and "Mahogany", respectively, as set forth in paragraph 2 hereof was and is false and had and has the capacity and tendency to mislead and deceive many of the trade and purchasing public into the

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erroneous belief that said chairs are composed or made of walnut wood and mahogany wood, respectively, and to purchase said chairs in such erroneous belief.

PAR. 4. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who deal in and sell chairs made of walnut wood and mahogany wood, respectively, and who truthfully represent their said chairs to the trade and consuming public. There are also many of said competitors who deal in and sell chairs made wholly of woods other than walnut wood or mahogany wood, respectively, but who in no wise represent to the trade and consuming public that their said chairs are made of walnut wood and of mahogany wood, respectively. Respondent's above-mentioned acts and practices in designating and representing certain of its chairs as walnut and mahogany tend to and do unfairly divert trade from said competitors and are to the prejudice and injury of the public.

CONCLUSION

The acts and things done by the respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in interstate 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 respondent thereto, the stipulation as to the facts in lieu of testimony executed and filed by the respondent and the chief counsel of the Commission, and the Commission having made its findings as to the facts with its conclusion that 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",

It is now ordered, That respondent Northwest Chair Co., its officers, agents, representatives, servants, and employees, cease and desist, in connection with the sale and distribution of chairs in interstate commerce, from directly or indirectly representing, describing, advertising, branding or labeling—

(a) Any such chairs or parts of such chairs as "Mahogany" unless the exposed surfaces thereof are composed wholly of solid mahogany wood or mahogany wood veneered with mahogany; or

(b) Any such chairs or parts of such chairs as "Walnut" unless the exposed surfaces thereof are composed wholly of solid walnut wood or walnut wood veneered with walnut;

Provided that this order shall not be construed as prohibiting the use of such phrases as "Mahogany Finish," or "Walnut Finish," or phrases of similar import denoting color, in connection with chairs composed of other than mahogany or walnut wood, respectively, if and when in using such phrases and immediately preceding the same, the respondent clearly designates the name of the wood or woods of which such chairs are actually composed.

It is further ordered, That respondent, Northwest Chair Co., shall within 60 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 hereinabove set forth.

IN THE MATTER OF

WINDSOR CIGAR COMPANY, BENJAMIN PARIS, DOING
BUSINESS UNDER THE TRADE NAME AND STYLE,
PARIS CIGAR COMPANY, RAPHAEL N. PARIS

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

Docket 1301. Complaint, Apr. 8, 1925—Decision, May 24, 1927

Where tobacco grown upon the Island of Cuba and known as Havana tobacco had long had a wide and favorable reputation among the trade and cigar-consuming public and been generally considered as being the highest grade of tobacco from which cigars could be made, and the word "Havana" had come to signify to said trade and public that the cigars to which it was applied were made entirely of tobacco there grown; and thereafter a corporation engaged in the manufacture and sale of cigars containing no Havana tobacco and two individuals associated with it therein, named cigars made by it as above set forth, and sold at retail at five cents each "Havana Cadet," and so advertised and labeled the same, together with the picture of a cadet and the inscription in smaller type "Imported Sumatra Wrapper—Domestic Filler" (under which name and label the aforesaid individuals had theretofore sold cigars without such inscription); with the capacity and tendency to mislead and deceive the trade and cigar-consuming public into believing the aforesaid cigars to be composed of Havana tobacco, and with the effect of diverting trade from competitors engaged in the manufacture and sale of cigars so composed and ordinarily sold to the consuming public, as to some, at the aforesaid price, and from competitors engaged in the manufacture and sale of cigars neither so composed nor so represented by them:

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

Mr. Edward E. Reardon for the Commission.

Mr. John E. Cross and *Mr. Louis Hollander*, of Baltimore, Md., and *Mr. Martin Lehmeyer* and *Mr. Henry C. Niles*, of York, Pa., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent corporation, engaged at York, Pa., in the manufacture of cigars composed wholly of tobacco grown elsewhere than on the Island of Cuba, and in the sale thereof through respondent Paris as distributor, with 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