

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

commerce, in that respondents, for about one year preceding the complaint, adopted as a name and designation for said cigars the phrase "Havana Cadet," and featured the same upon the containers thereof, with the capacity and tendency to mislead, deceive, and confuse many wholesale and retail dealers and many of the consuming public into believing said cigars to be composed entirely of tobacco grown on the Island of Cuba, long favorably known to the cigar-tobacco trade, the cigar trade, and the cigar purchasing public of the United States as Havana tobacco, and considered by many thereof superior in quality for the manufacture of cigars to tobacco grown elsewhere, and to cause many of said trade and public to purchase said cigars in such belief, and with the effect of diverting business from and otherwise injuring and prejudicing competitors, many of whom sell cigars composed in part or in whole of tobacco grown elsewhere than in Cuba, without using the word Havana in connection therewith, or in other manner representing the same as composed entirely of tobacco grown in Cuba, and others of whom sell cigars composed entirely of such tobacco and properly label, brand, advertise, and otherwise represent the same under the name "Havana" and various phrases and appellations including such word; 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 (38 Stat. 717), the Federal Trade Commission issued and served a complaint upon the above-named respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having made and filed their answers to the complaint; formal hearings were had before an examiner of the Commission at which all of the above-named respondents appeared by counsel and testimony was taken and evidence introduced on the part of the Commission in support of the charges stated in the complaint and by the respondents in opposition thereto.

Thereupon this proceeding came on for decision before the Federal Trade Commission and upon the testimony and evidence introduced on the part of the Commission and the respondents and upon argument of counsel for the Commission and for the respondents, the Commission, having duly considered the record and being fully advised in the premises, makes these its findings as to the facts and its conclusions drawn therefrom:

Findings

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Windsor Cigar Co., is a corporation, organized April 29, 1924, under the laws of the State of Pennsylvania, with its principal office and place of business at Windsor, in York County, in said State.

PAR. 2. The respondent, Benjamin Paris, is an individual doing business under the trade name and style, Paris Cigar Co., having its principal place of business at Windsor, in York County, State of Pennsylvania.

PAR. 3. The respondent, Raphael N. Paris, is an individual having his principal place of business in the city of Baltimore, Md.

PAR. 4. The respondent, Windsor Cigar Co., is and has been since the date of its incorporation engaged in the manufacture and sale of cigars at Red Lion, in the county of York, Pa., and on May 20, 1924, the Windsor Cigar Co. entered into an agreement with respondents, Benjamin Paris and Raphael N. Paris, whereby the Windsor Cigar Co. agreed to manufacture cigars under the direction and according to the instructions of respondent, Benjamin Paris, and to sell them in accordance with the directions of respondent, Raphael N. Paris. This agreement provided that the Windsor Cigar Co. should manufacture cigars to be sold under the name "Havana Cadet" and that respondents Benjamin Paris and Raphael N. Paris were to be paid a commission, respectively, by the Windsor Cigar Co. for cigars made and sold under the name or brand of "Havana Cadet."

PAR. 5. Immediately after the organization of the respondent, Windsor Cigar Co., it began to manufacture cigars under the above contract. The cigars were packed in tin containers and have been and are sold to wholesale and retail dealers by respondents and the said cigars have been and are offered for sale and sold by said retail dealers to the consuming public. The respondents caused the said cigars when sold by them to be transported from within the State of Pennsylvania, to the purchasers, the said wholesale and retail dealers, located in various States of the United States other than the State of Pennsylvania. The cigars made and sold by the respondents under the brand name "Havana Cadet" have been and are offered for sale and sold to the purchasing public for use and consumption at the retail price of 5 cents. In the course and conduct of their said business respondents are and have been in competition with other individuals, partnerships and corporations engaged in the manufacture and sale of cigars in interstate commerce between and among the various States of the United States.

PAR. 6. On the containers of the cigars made and sold by the respondents, as aforesaid, the respondents caused to appear the picture or illustration of a young man in a uniform such as is commonly worn by students of a military academy. Above this picture or illustration on the containers of the cigars and in advertisements, respondents caused the word "Havana" to be set forth and immediately underneath the picture the word "Cadet." On the containers of the cigars in smaller type the printed inscription "Imported Sumatra Wrapper—Domestic Filler" was caused to appear. In advertisements of the said cigars the respondents sometimes caused the brand or name "Havana Cadet" to appear without the said picture.

PAR. 7. For a number of years prior to the organization of the respondents' Windsor Cigar Co., cigars were sold by the respondents Benjamin Paris and Raphael N. Paris under the said brand, name, or label "Havana Cadet," in containers on which appeared the aforesaid picture of a young man in the uniform of a cadet together with the name "Havana Cadet" as above described, and during this time neither the inscription "Imported Sumatra Wrapper—Domestic Filler" nor any other inscription, or words, were used in connection with the sale of the said brand of cigars which indicated the name or nature in any way of the tobacco composing them, excepting the word "Havana" in the brand name "Havana Cadet."

PAR. 8. At all times herein mentioned and for a great many years prior thereto, the word "Havana" signified and still signifies to the tobacco trade and the consumers of cigars that the cigars of which it is descriptive are made as to all component parts, filler, binder and wrapper, of tobacco grown upon the Island of Cuba. Tobacco grown upon the Island of Cuba, generally known as Havana tobacco, has long had a wide and favorable reputation among the trade and cigar-consuming public and has been and is now generally considered the highest grade of tobacco from which cigars can be manufactured.

PAR. 9. The cigars made and sold by the respondents under the brand name "Havana Cadet" have not at any time contained, and do not now contain, any Havana tobacco.

PAR. 10. There are among the competitors of respondents referred to in paragraph 5 hereof many who manufacture and sell cigars made entirely of Havana tobacco, some of which cigars are ordinarily sold to the consuming public at 5 cents each. There are many others among said competitors who do not represent that cigars manufactured and sold by them are Havana cigars or are made of Havana tobacco except when the cigars so represented are made entirely from tobacco grown upon the Island of Cuba. The use of the name "Ha-

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vana " by respondents as set forth and found in these findings tends to and does divert trade from both classes of said competitors.

PAR. 11. The name or word "Havana" used by the respondents in the brand name "Havana Cadet" on the containers of their cigars, which are not made wholly of Havana tobacco, and in their advertisements, is misleading and has the capacity and tendency to mislead and deceive those engaged in the trade and also consumers of cigars into the belief that respondents' cigars thus described were and are made of Havana tobacco.

CONCLUSION

The practices of the respondents under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondents' competitors and are unfair methods of competition in 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 and upon the answers of the respondents, filed herein, and the Commission having made its findings as to the facts and its conclusion that the 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",

It is now ordered, That respondent Windsor Cigar Co., its officers, agents, representatives, servants, and employees and the respondents Benjamin Paris and Raphael N. Paris, their agents, representatives, servants, and employees cease and desist in connection with the sale and distribution of cigars in interstate commerce from—

(1) Using the word "Havana" as a brand name for or descriptive of such cigars unless the same be composed entirely of tobacco grown in the Island of Cuba.

(2) Representing in any manner whatsoever that any of respondents' said cigars other than those manufactured entirely from tobacco grown in the Island of Cuba are Havana cigars.

It is further ordered, That the respondents, Windsor Cigar Co., Benjamin Paris and Raphael N. Paris, shall, each of them, within 30 days after service upon them, respectively, of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which each of them has complied with the order to cease and desist herein set forth.

Syllabus

IN THE MATTER OF

MCGOWAN LABORATORIES, INC., AND WOMANHOOD
PUBLISHING CORPORATION

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

Docket 1393. Complaint, July 13, 1926—Decision, June 6, 1927

Where a corporation engaged in the preparation and sale of a toilet compound alleged to be effective in removing excess flesh, made many false and misleading statements in advertising the same in newspapers, magazines, and other publications of general circulation, to the effect that by the use thereof anyone might be freed from every ounce of unwelcome flesh, that getting thin was made pleasurable simple and easy for anyone thereby, that upon the application thereof to the human body a harmless chemical reaction took place, during which the excess fat was literally dissolved away, leaving the figure slim and properly rounded, giving the lithe grace desired by every man and woman, and that any purchaser thereof by patting the same gently on to the parts desired to be slenderized, thereby reduced any part of the body so treated, no matter how much or how little excess flesh there might be, quickly, surely, and permanently, the fact being that the preparation was of no value whatever for any such purposes; with the capacity and tendency to induce numerous persons seeking a safe and dependable means of quickly and permanently ridding their bodies of undesired flesh, into believing that the aforesaid product, when used as directed, produced the results represented; and

Where a corporation engaged in the publication and distribution throughout the United States of a monthly periodical designated True Romances, purposely and knowingly becoming a party to said false and fraudulent plan and scheme for the advertisement, sale, and distribution of said product (requiring for its success the cooperation of publishers of magazines and other publications of general circulation), and a medium for the accomplishment thereof, as such and for said purpose and for a consideration agreed upon, incorporated such false, misleading and fraudulent advertisements into its aforesaid magazine, and distributed the same as a part thereof to its subscribers and purchasers throughout the several States;

With the capacity and tendency to mislead and deceive persons into purchasing such fraudulent product, who might otherwise seek and obtain the services or products of competitors engaged in offering to the public, without any such misrepresentations, professional advice, instructions, etc., for ridding the body of undesired flesh, in response to the demands of many persons for a safe and dependable means of so doing, to the prejudice of the public and its competitors:

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