

Complaint

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IN THE MATTER OF

DAVID A. HORN AND J. M. HYSON, COPARTNERS, DOING
BUSINESS UNDER THE TRADE NAME AND STYLE OF
THE TAMPA CIGAR COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1326. Complaint, June 11, 1925—Decision, July 30, 1927*

Where cigars made in Tampa, Fla., and in the Tampa district for more than a quarter of a century had come to be widely known and referred to in the trade and by the cigar-purchasing public as Tampa cigars, and the word "Tampa" on containers of cigars or in the advertisements thereof had come to be understood by the cigar-purchasing public and the trade as meaning that such cigars had been manufactured in Tampa or in the immediately surrounding territory, and where the word "Havana" on such containers or in such advertising had come to be understood by said trade and public as meaning cigars manufactured from tobacco grown on the Island of Cuba; and thereafter a firm engaged at Red Lion, Pa., in the manufacture and sale of cigars composed of domestic tobacco only, and with no interest in any cigar factory in Tampa or the Tampa district,

- (a) Employed the words "Tampa cigar" as a part of their trade name and displayed the same on signs, on their business stationery, and in their advertising, and on the labels or containers of their cigars;
- (b) Caused the word "Havana" to be printed on the bands of one of their brands, and the legend "Made of the finest selected imported and domestic tobaccos," etc., to be printed on the labels and containers of another brand; and
- (c) Caused to be placed in gold letters upon the containers of another brand the phrase "Double Grand Prize St. Louis Exposition, 1904", together with a representation of a gold medal or prize at either end thereof, and underneath in small type the statement "Title and design registered by Tampa Cigar Co.," the fact being that no such prize was conferred on anyone at the exposition in question;

With the tendency and capacity to confuse, mislead and deceive the trade and cigar-purchasing public in respect of the place of manufacturing and composition of the aforesaid cigars, and into believing that the brand last above referred to had been awarded the "Double Grand Prize" by the exposition in question:

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

Mr. Charles Melvin Neff and *Mr. Henry Miller* for the Commission.

Mr. S. B. Meisenhelder, 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

¹Amended complaint, Oct. 2, 1925.

charged respondents, partners engaged in the Borough of Red Lion, York County, Pa., in the manufacture of cigars containing, with unimportant exceptions, no Havana tobacco, and in the sale thereof to wholesale and retail dealers in the various States, with using misleading trade name, advertising falsely or 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.

Respondents, as charged, displayed their trade name including the word "Tampa" to the trade and public, on signs, on their business stationery, in their advertisements of their cigars, and on the labels of the containers thereof and otherwise, with the tendency and capacity to cause the cigar trade and public to believe that said cigars were made in the Tampa district, long possessed of a high repute and good will among the trade and members of the public as a district known to be one of the principal manufacturing centers in the United States for the manufacture of superior cigars, and with the result that many among said trade and public were confused, misled, deceived and defrauded thereby, in accordance with respondents' intent in the unnecessary choice of the word Tampa as a part of its trade name, to deceive the wholesale and retail cigar trade and members of the public into believing its cigars to have been made in the city or district of Tampa, and into purchasing the same in such belief, into so doing.²

² The background and history of the cigar industry of Tampa, as related to this case, are set forth in the complaint as follows:

For many years, prior to the establishment of the cigar-manufacturing industry in the city and district of Tampa, Fla., the dominant center of the industry for the manufacture of cigars composed of Habana tobacco, both as regards the source of supply of the material of which they were composed and of the labor employed in their manufacture, was located in Cuba.

The said cigars, known by reason of the tobacco composing them as Habana cigars, were made by hand, almost exclusively, by what is known as the Spanish hand-made method in which the use of machinery, moulds or other mechanical aids was and is not employed, and in connection with the manufacture of said cigars there was developed in Cuba a large body of native labor of the highest skill in the use of the aforesaid Spanish hand method.

During the times mentioned and referred to herein, cigars made of Habana tobacco whether made in Cuba or in the United States are and have been made almost exclusively by the aforesaid Spanish hand method. A very substantial number of the said cigar trade and members of the public in the United States believed and now believe that Habana tobacco was and is superior in quality for the manufacture of cigars to tobacco grown elsewhere, and that cigars made either in Cuba or in the United States of Habana tobacco are and have been superior in quality to cigars made of other tobacco and by any other method or in any other way than by the said Spanish hand method.

"Vuelta Abajo" is the name of a district in the Island of Cuba in which tobacco is grown that has been and is considered by the said trade and public as the finest tobacco for use in the manufacture of cigars.

On or about 40 years prior to the time respondents engaged as copartners in their said business, the cigar-manufacturing industry was established in the city of Tampa, Fla., and the surrounding country known and referred to herein as the Tampa district. The

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Respondents further, as charged, labeled the boxes or containers of their cigars with brand names almost exclusively Spanish, together with pictures representing a Spanish cavalier or character, Spanish illustrations and decorations, the word "Havana", in the case of one of its brands, the legend, in the case of another, "Made of the finest selected Imported & Domestic Tobaccos Under Sanitary Conditions", the statement, in gold letters, in the case of another brand, "Double Grand Prize St. Louis Exposition 1904," and at either end of the phrase a representation of a gold medal or prize and underneath in small type "Title & Design registered by Tampa Cigar Co.", and the words on the label of another one of its brands, conspicuously and repeatedly, "Vuelta Abajo", and "Spanish Hand Made", and the phrase "Trade Mark and Design Owned by The Havencia Cigar Co.," a fictitious name; thereby falsely and knowingly representing and causing others to represent said cigars as composed entirely of Habana tobacco of the finest quality, and the manufacturer thereof as the fictitious firm or corporation named

manufacturers and workmen engaged in the manufacture of cigars in the said Tampa district from the time of the establishment of the cigar-manufacturing industry in the said district, were and now are to a very large extent manufacturers and workmen, or their descendants, who came from the Island of Cuba, and the said workmen were and now are believed to be among those of the highest skill in the making of cigars by the said trade and public.

For a number of years beginning immediately upon the establishment of the cigar-manufacturing industry in the said Tampa district, and until on or about the year 1900, most of the cigars made there were known as Habana cigars, composed of Habana tobacco and made by the aforesaid Spanish hand method by the said cigar makers, native workmen of Cuba or their descendants, and during the said times cigars with which the word "Tampa" was associated became known throughout the United States and had a reputation as cigars of superior quality to cigars made in many other places in the United States.

Havana cigars made by the aforesaid Spanish hand method continued to be and now are made in large and important quantities in the city of Tampa and its immediate environs referred to herein as the Tampa district.

On or about 25 years prior to the date hereof, the cigar-manufacturing industry in the said Tampa district was extended to and has since included not only the manufacture of Habana cigars but also the manufacture of cigars made either wholly or partly of domestic tobacco and in large and important quantities, and in the manufacture of which the aforesaid cigar makers have been employed to a large extent.

Since the establishment of the cigar-manufacturing industry in the said Tampa district, on account of the foregoing facts; on account of the proximity of the said city and district to the source of supply of Habana tobacco, and on account of particular climatic conditions existing in the said district which are believed by a very substantial number of the cigar trade and the members of the public in the United States who purchase cigars for use and consumption, to correspond nearly to the climatic conditions in the Island of Cuba; and on account of the aforesaid character of the labor engaged in the manufacture of cigars made in the said Tampa district, cigars made in the said city of Tampa and the said Tampa district have acquired and now have a high reputation among the said trade and members of the said public as being cigars of a quality superior to that of cigars made in many other places in the United States, and the said city of Tampa and said district have acquired by reason thereof during the times mentioned and referred to herein among the said trade and the members of the said public a similar reputation and a good will as a city and district known to be one of the principal manufacturing centers in the United States for the manufacture of cigars of a superior quality as aforesaid.

The Havencia Cigar Co., and falsely representing one of their aforesaid brands as having been adjudged by the aforesaid exposition as of a higher grade or quality than other cigars in competition with it, the fact being that no prize or medal of any kind was so awarded respondents, and with the tendency and capacity in the use of the aforesaid brand names, as above set forth, almost exclusively in Spanish, the use of the word "Tampa," Spanish names, pictures, illustrations, words "Vuelta Abajo," "Spanish hand made," "Havana" and "imported," to confuse, mislead, deceive and defraud the trade and public into believing said cigars to have been made of Habana tobacco, that they were made in the city or district of Tampa, and that respondents were cigar manufacturers in said city or district, and into purchasing respondents' cigars in the aforesaid mistaken beliefs.^a

Said acts and practices were, as charged, all to the prejudice of the public and respondents' competitors, some of whom manufacture cigars in said Tampa district and properly use the word Tampa in labeling, branding and advertising the same, and others of whom manufacture cigars elsewhere, without using the word "Tampa" as part of their trade name, or in the labeling, branding or advertising of their cigars.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served an amended complaint upon David A. Horn and J. M. Hyson, partners doing business under the firm name and style of "Tampa Cigar Company", charging them, and each of them, with the use of unfair methods of competition in violation of the provisions of said act.

Each of the respondents entered his appearance and filed an answer. Neither was represented by an attorney. A formal hearing was had, testimony and other evidence was introduced on behalf of the plaintiff and respondents, and a brief was filed by counsel for the Commission. None was filed by the respondents or either of them. Thereafter this matter having come on regularly for decision, and the Commission having considered the record in this case, and being now advised in the premises, makes this its report, stating its findings as to facts and its conclusions drawn therefrom:

^a Among the brand names used by respondents for its cigars, as above set forth, were the following: "Fernando's El Kibbet C. T. Co." and the phrase, "Title and design registered by Tampa Cigar Co", "Flor De Alwin", "El Durbro", "El Scribe", "Unitus" and "Hurdle."

Findings

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. That the respondents, David A. Horn and J. M. Hyson, are individuals residing in the borough of Red Lion, County of York, State of Pennsylvania, and that since 1916 they have been, as copartners, continuously and until December, 1925, engaged in the business of manufacturing and selling cigars, under the firm name and style of the "Tampa Cigar Company." In December, 1925, the respondents, under the laws of the State of Pennsylvania, organized and incorporated "The Federal Cigar Company", to take over and continue the business of the copartnership, the "Tampa Cigar Company."

PAR. 2. The respondents, since they have been in business, have made all their cigars in the city of Red Lion, Pa. They caused their cigars, when manufactured, to be packed for display in wooden boxes or other containers, knowing and intending that they would be displayed for sale and sold to individuals, firms and corporations, both wholesale and retail dealers in cigars, and to the public generally throughout the United States.

PAR. 3. The respondents caused such cigars when sold to be transported from the city of Red Lion, Pa., to and into and through other States of the United States and the District of Columbia to the purchasers thereof, and carry on said business in direct and active competition with other individuals, copartnerships and corporations similarly engaged in commerce.

PAR. 4. That for more than a quarter of a century cigars have been made in the city of Tampa, Fla., and in the territory immediately surrounding this city known as the "Tampa District". Such cigars are widely known and referred to in the trade and by the cigar purchasing public as "Tampa cigars".

PAR. 5. The word "Tampa", when used on the containers of cigars or in the advertisements thereof, is understood by the cigar purchasing public and the trade to mean that such cigars were manufactured in the city of Tampa, Fla., or in the territory immediately surrounding said city.

The word "Havana" when used on the containers of cigars or in the advertising thereof, is understood by the trade and the cigar purchasing public to mean that such cigars were manufactured from tobacco grown on the Island of Cuba.

PAR. 6. Respondents, since 1916, when they began their partnership trading under the name Tampa Cigar Co., have displayed their trade name including the word "Tampa" on signs, on their business stationery and in advertising their cigars, and on labels on the con-

tainers or boxes containing their cigars. Respondents, on their cigars branded "Flor de Alwin," caused the word "Havana" to be printed on the bands, and on respondents' cigars called "Federal Judge," they caused to be printed on the labels and the containers "Made of the finest selected imported and domestic tobaccos under sanitary conditions."

Respondents, though they have been manufacturers of cigars since 1916, have never owned, operated, controlled or had any interest in any cigar factory in the city of Tampa, Fla., or in the Tampa district. They have manufactured their entire output in Red Lion, York County, Pa., and made shipments of their products from said place.

None of the cigars manufactured by respondents have at any time contained and do not now contain any Havana tobacco. Respondents, in the manufacture of their cigars, used domestic tobacco only.

Among other cigars manufactured by respondents is the brand "El Durbro." On the boxes or containers displaying this brand, respondents caused to be placed in gold letters the phrase "Double Grand Prize St. Louis Exposition, 1904;" and at either end of said phrase respondents caused to appear a representation of a gold medal or prize, and underneath said label, in small type, the following statement: "Title and design registered by Tampa Cigar Company." There was no "Double Grand Prize" granted, nor was there conferred on anyone a prize or decoration known as a "Double Grand Prize" by the St. Louis Exposition, otherwise known as the Louisiana Purchase Exposition, in 1904, and the use by respondents of this representation tended to deceive and mislead the purchasing public and respondents' customers into believing that respondents' said brand of cigars had been awarded said prize.

PAR. 7. Respondents' use, from 1916 to December, 1925, of the word "Tampa" in their firm name and otherwise as set forth, had the capacity and tendency to cause the cigar trade and the cigar-purchasing public to believe that respondents' cigars were made in the city of Tampa, Fla., or in the Tampa district, when in truth and in fact respondents' cigars were not manufactured in said city of Tampa, Fla., or in the Tampa district, but were manufactured in Red Lion, Pa., as set forth above.

The use by respondents of the word "Havana" in connection with the cigars manufactured and sold by them, whether in advertising or upon cigar containers, or otherwise, had the tendency and capacity to confuse, mislead and deceive the trade and the cigar-purchasing public into believing that the respondents made their cigars of tobacco grown on the Island of Cuba.

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The use by the respondents of the word "Imported" in connection with the cigars manufactured and sold by them, whether in advertising or upon cigar containers, or otherwise, had the tendency and capacity to confuse, mislead and deceive the trade and the cigar-purchasing public into believing that the respondents made their cigars of imported tobacco only.

PAR. 8. Among the competitors of the respondents engaged in the manufacture and sale of cigars in interstate commerce are a number of individuals, firms and corporations located in the city of Tampa, Fla., or in the Tampa district, who have been and now are properly using the word "Tampa" in labeling, branding and advertising the cigars they manufacture and sell. .

Among said competitors of respondents are the individuals, firms and corporations manufacturing and selling cigars outside of the said city of Tampa, Fla., or in the Tampa district, who are not using and have not used the word "Tampa" as part of their trade name, or in the labeling, branding or advertising of their cigars.

PAR. 9. Respondents, from 1916 to December, 1925, conducted their partnership as above set forth under the firm name "Tampa Cigar Company". In December, 1925, respondents David A. Horn and J. M. Hyson caused to be incorporated under the laws of the State of Pennsylvania a corporation entitled the "Federal Cigar Company", under which name respondents are now operating. Respondents' place of business is still located at Red Lion, York County, Pa. The Federal Cigar Co. had a capital stock of \$150,000. Its officers are: Respondent David A. Horn, president, respondent J. M. Hyson, treasurer; Charles H. Horn, vice president; and Earl Grove, secretary.

CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings are to the 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 amended complaint of the Commission, the answer of respondents and the testimony and the evidence, and the Commis-

sion having made its findings as to the facts, with its conclusion that respondents have 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 respondents David A. Horn and J. M. Hyson, and each of them, their agents, servants, representatives and employees cease and desist—

(1) From using the word "Tampa" in or as a trade name under which to sell and distribute in interstate commerce any cigars which have not been manufactured in the city of Tampa, Fla., or in the Tampa district in the State of Florida;

(2) From using the word "Tampa", or any other word or words of similar import, alone or in conjunction with any other word or words in describing, advertising, labeling, branding, or otherwise representing any cigars sold and distributed in interstate commerce when such cigars have not been manufactured in the city of Tampa, Florida, or in the Tampa district in the State of Florida;

(3) From using the word "Havana," or word or words of similar import in describing, advertising, labeling, branding, or otherwise representing any cigars or parts of cigars sold and distributed in interstate commerce, unless such cigars or parts of cigars, respectively, as the case may be, are in truth composed wholly of tobacco grown on the Island of Cuba.

(4) From describing, advertising, labeling, branding or otherwise representing as imported any cigars or parts of cigars sold and distributed in interstate commerce unless such cigars or parts of cigars, respectively, as the case may be, have been imported into the United States from a foreign country.

(5) From representing in any manner whatsoever in connection with the sale and distribution of cigars in interstate commerce that respondents or any of such cigars have been awarded a "Double Grand Prize, St. Louis Exposition, 1904," or any other price, when such is not true in fact.

It is further ordered, That the respondents shall within 60 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
PHILIP CAREY MANUFACTURING COMPANY, · PHILIP
CAREY COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914,
AND OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1184. Complaint, May 23, 1924—Decision, Aug. 4, 1927

Where a corporation, and its subsidiary, engaged in the manufacture and sale of patented preformed bituminous expansion joints, and occupying a dominant position in the industry,

- (a) Sent spies under assumed names to the plants of competitors, to report on their facilities, capacities, and operations;
- (b) Used information thus acquired as a basis for representations to prospective customers of such competitors, to the effect that such competitors could not make extensive deliveries or fill orders of magnitude, notwithstanding the fact reports showed that they were taking care of all business which came to them, and were planning expansions with a view to taking care of additional business if and when obtained;
- (c) Circulated through their salesmen a statement, to the effect that a bankruptcy petition had been filed against a competitor, in such a way as to give prospective customers the impression of such competitor's bankruptcy, the facts being, among other things, that an involuntary petition in bankruptcy was filed against such competitor by a competitor of it, one of their own licensees, that a contract involving many thousands of dollars in joints was pending at the time, that the company against which such petition was filed, while at the time not strong financially, was solvent and meeting its obligations, and that the bankruptcy proceedings were never pressed; and
- (d) Represented to purchasers and prospective purchasers of the products herein concerned, that the product of competitors was unsuitable for the purposes intended and would not be passed or accepted;

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

Mr. James M. Brinson for the Commission.

Mr. Alfred C. Cassatt, of Cincinnati, Ohio, 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 Philip Carey Manufacturing Co., an Ohio cor-