

IN THE MATTER OF
THE METEOR COAL COMPANY

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

Docket 1447. Complaint, Mar. 23, 1927—Decision, Jan. 21, 1928

Where a bituminous coal of high quality and value, mined exclusively in the southwestern portion of West Virginia, and contiguous Virginia, had long been known as "Pocahontas" coal, and enjoyed a widespread popularity among dealers and consumers, and was considered by many of the trade and consuming public as superior in quality and value to other competitive bituminous coals, and the best bituminous coal for certain purposes in the United States; and thereafter a corporation engaged in the sale of an inferior and cheaper coal produced at and near Pocahontas, Ill., named, designated, and conspicuously advertised said coal as "Pocahontas" in newspapers, trade journals, and other publications of general circulation, and otherwise so represented the same in the selling and marketing thereof; with the capacity and tendency to mislead, and with the effect of misleading many among the trade and consuming public with reference to the source of said coal, and of inducing the purchase thereof, as and for that first named, and with the tendency to divert business from and otherwise injure and prejudice competitors dealing in such coal and properly naming, designating and representing the same as "Pocahontas," and competitors dealing in other coals without so misrepresenting the same:

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

Mr. W. T. Chantland for the Commission.

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 sale of coal to dealers and consumers in various States, and with principal place of business in St. Louis, with naming 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.

Respondent, as charged, for about 10 years last past, called a coal dealt in by it as above set forth, "Pocahontas" coal, featured said name and designation in its advertisements thereof in newspapers, trade journals and other publications of general circulation throughout the United States and in sundry sections thereof, and otherwise represented the same as "Pocahontas" coal in connection with the sale and marketing thereof, notwithstanding the fact that the coal

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in question was not that coal mined exclusively in southwestern West Virginia and contiguous Virginia, and marketed and sold throughout large areas and districts of the United States, including territory in which said corporation sold its coal, and for over 40 years widely and favorably known among the dealers and consumers in the areas and sections in which marketed, as "Pocahontas" coal, and by many thereof considered as superior in quality and value to other competitive bituminous coals, and to be the best bituminous coal for sundry purposes sold and marketed in the United States, but was a bituminous coal of substantially lower quality and value, mined in Illinois, and sold at prices substantially lower than prevailing prices for the other.

The use of such name and designation, as alleged, had the effect of misleading and deceiving many among the trade and consuming public into believing said coal to be the "Pocahontas" coal above set forth, and to cause many thereof to deal in and purchase said coal in such belief, and the capacity and tendency so to do, and to divert business from and otherwise injure and prejudice competitors dealing in and selling "Pocahontas" coal, as hereinabove set forth, and rightfully and lawfully naming, designating and representing their coal as "Pocahontas" coal, and competitors dealing in coal, not "Pocahontas" as above set forth, without in any manner representing the same as "Pocahontas"; all to the prejudice of the public and of 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, 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 upon respondent Meteor Coal Co., in which the Commission charged the respondent with using unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, respondent filed an answer to said complaint admitting that it had been engaged in commerce in the sale of its coal since April 26, 1906, and setting forth other averments. Thereafter, respondent filed its amended answer as follows:

IN THE MATTER OF THE METEOR COAL COMPANY

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AMENDED ANSWER TO COMPLAINT

The Meteor Coal Co. in this amended answer withdraws its original answer under date of April 27, 1927, and admits the use of the words "POCAHONTAS COAL" in their advertising and selling. We are willing and intend, in good

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faith, to cease permanently using those words and in the future, in all matters relating to the advertising and sale of this said coal, the Meteor Coal Co. and its representatives will, in good faith, always designate and refer to it as "ILLINOIS POCAHONTAS COAL."

We further desire to waive hearing on the charges set forth in the complaint, and will not contest the proceedings, and by this answer we formally consent that the Commission may make, enter and serve upon us an order to cease and desist from the violation of the law alleged in the complaint in conformity to law, and to paragraph (2) of article III of the Rules of Practice and Procedure of the Federal Trade Commission, as amended June 30, 1927.

METEOR COAL COMPANY,

(Signed)

H. F. McDONALD, President.

ST. LOUIS, MISSOURI, December 29, 1927.

The amended answer, as above set out, was thereupon received and regularly considered by the Commission, and the Commission duly permitted the respondent to withdraw its original answer, and the Commission ordered said amended answer to be filed and made a part of the record in said proceeding as the answer of the respondent to said complaint. Thereafter, upon the complaint and said amended answer, and in accordance with the law and rules of this Commission applicable, this proceeding came on for consideration and decision by the Commission, and the Commission, after due consideration and being fully advised in the premises, now makes its report in writing and states its findings as to the facts and conclusion therefrom in conformance with the law:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Meteor Coal Co., is a corporation organized under the laws of the State of Missouri, with its principal place of business in the city of St. Louis in said State. It is now and since April, 1906, has been engaged in the business of selling coal to dealers in same and to consumers of coal and to others, located and residing at points in various States of the United States. It causes said coal when so sold to be transported from coal mines in the State of Illinois, at and near the town of Pocahontas, where the coal in which respondent deals is produced, into and through other States of the United States to said vendees, at their respective points of location and residence. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations engaged in the business of selling and distributing coal in commerce between and among various States of the United States.

PAR. 2. For over 40 years prior to the date hereof there has been marketed and sold throughout large areas and districts of the United

States, including the territory in which respondent markets its coal, a certain bituminous coal of high quality and value which said coal continuously has been and is now being marketed and sold under the name and designation "Pocahontas" coal. Said coal has during all said time enjoyed and now enjoys a widespread popularity and valuable good will among dealers in and consumers of coal throughout aforesaid areas and sections where the same is marketed and sold and many of said trade and many among the consuming public consider said coal superior in quality and value to other bituminous coals sold in competition with said "Pocahontas" coal and to be the best bituminous coal for certain purposes sold and marketed in the United States. Said coal is mined exclusively in the southwestern portion of the State of West Virginia and in contiguous territory in the State of Virginia.

PAR. 3. Among the coals sold and distributed by respondent in interstate commerce as set out in paragraph 1 hereof, is a coal named and designated by respondent "Pocahontas" coal. Said coal is not the "Pocahontas" coal described in paragraph 2 hereof, but is a bituminous coal substantially lower in quality and value than said "Pocahontas" coal described in paragraph 1 hereof, and is sold by respondent at prices substantially less than the prevailing prices at which said last-named coal is sold. Respondent's said coal is mined in the State of Illinois. Respondent causes advertisements offering its said purported "Pocahontas" coal for sale, to be inserted in newspapers, trade journals and other publications of general circulation throughout the United States and in sundry sections thereof, in which advertisements respondent causes said name and designation "Pocahontas" coal to be conspicuously printed and set forth as the name and designation of said coal, and respondent otherwise represents said coal to be "Pocahontas" coal in connection with the selling and marketing of same.

PAR. 4. The use by respondent of the name and designation "Pocahontas" in marketing and selling its said coal all as in paragraph 3 hereof set out, has the capacity and tendency to and does mislead and deceive many among the coal trade and many of the consuming public into the belief that respondent's said coal is "Pocahontas" coal described in paragraph 2 hereof, and to cause many among said trade and many of the consuming public to deal in and purchase respondent's said coal in that belief.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof many who deal in and sell said "Pocahontas" coal described in paragraph 2 hereof, and who rightfully and lawfully name, designate and represent their said coal to be

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"Pocahontas" coal. There are others of the competitors of respondent who deal in and sell bituminous coal which is not said "Pocahontas" coal described in paragraph 2 hereof, and who in no manner represent their said coal to be "Pocahontas" coal. The acts and practices of respondent all in this complaint before set out tend to divert business from and otherwise to injure and prejudice said competitors.

CONCLUSION

The acts, methods and practices of the respondent as set forth in the foregoing findings as to the facts constitute unfair methods of competition in commerce in 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 was heard and considered by the Federal Trade Commission on the complaint duly issued by the Commission and served upon respondent and on the amended answer of the respondent thereto. Thereupon the Federal Trade Commission made its report in writing, in which it stated its findings as to the facts and its conclusion that the respondent has been using unfair methods of competition in commerce in violation of the provisions 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",

Therefore, it is ordered, That the respondent, Meteor Coal Co., its officers, agents, representatives, and employees forthwith and forever cease and desist from advertising, or selling, or offering for sale any coal of its mines located in Illinois under the name of "Pocahontas" coal, and in any manner referring to its coal mined at or near the town of Pocahontas, Illinois, as "Pocahontas" coal, when not accompanied by clear and unequivocal designation of the State of its origin.

It is further ordered, That the respondent, Meteor Coal Co., shall within 60 days from the date of service of this order, file with the Commission a report in writing setting forth in detail the manner and form in which compliance with this order has been made.

Complaint

IN THE MATTER OF

JAMES J. BRADLEY, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF JAMES J. BRADLEY &
COMPANY

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

Docket 1455. Complaint, Apr. 12, 1927—Decision, Jan. 21, 1928

Where toilet and bath soaps manufactured in England had long enjoyed widespread popularity, good will and demand among the consuming public throughout the United States, and had come to be considered by many as superior in quality and other desirable characteristics to the domestic product, and to be purchased by many in preference thereto; and thereafter an individual dealing in toilet and bath soaps, designated a certain soap, of uniform size and shape, manufactured for him by a domestic manufacturer, "English Tub Soap", and conspicuously so stamped each cake thereof, the individual wrappers thereof, and the containers in which packed, together with the words "Hanson-Jenks Limited London-New York", upon each cake, the words (following his trade name) "sole Agts. U. S. and Canada", upon said wrappers, and the phrase "The Original Hanson-Jenks Tub Soap", upon the said containers; with the capacity and tendency to mislead and deceive many retail dealer vendees and many of the purchasing public into believing the aforesaid soap to have been manufactured in England and imported into the United States, and into purchasing the same in such belief, and with the effect of so doing, and of placing in the hands of dealers a means of committing a fraud upon the public by so representing, offering and selling the aforesaid soap, and of diverting trade from competitors dealing in genuine English imported soaps, and rightfully and lawfully so representing the same, and competitors dealing in domestic soaps without misrepresenting the same as above set forth:

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

Mr. Alfred M. Craven for the Commission.

Schaffer & Lake, of New York City, 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 individual, engaged in the sale of toilet and bath soaps to retailers in sundry States, and with place of business in New York City, with 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.