

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS JANUARY 30, 1928, TO JUNE 11, 1929

IN THE MATTER OF

NATIONAL FRUIT FLAVOR CO., INC.

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

Docket 1482. Complaint, Oct. 14, 1927—Decision, Jan. 30, 1928

Where a corporation engaged in the manufacture of a concentrate or compound neither made of nor derived from grape juice or grapes, and in the sale thereof to owners and operators of bottling plants, for manufacture into a beverage likewise neither so made nor derived, though imitating grape juice in color, odor and taste; designated said concentrate and beverage "Grape Squeeze" and "Squeeze", and made such statements upon signs, placards and other advertising matter furnished by it to its aforesaid customers for distribution among and use and display by the vendors and dispensers of beverages to the public, to whom they sold the same, as "That distinctive grape drink Squeeze", "Drink Grape Squeeze", "Drink Squeeze, the distinctive grape flavor"; with the capacity and tendency to mislead and deceive many of the public into believing the aforesaid beverage to have been made of or derived from grape juice or grapes, and to induce many thereof to purchase the same in such belief, and with the effect of placing in the hands of others an instrumentality of committing a fraud upon the public by enabling said vendors and dispensers to sell the same under the name "Grape Squeeze", as made of or derived from grape juice or grapes, and of diverting business from and otherwise injuring and prejudicing competitors not misrepresenting the nature and character of their beverages and compounds, or the ingredients whereof composed:

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

Mr. A. R. Brindley 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 Louisiana corporation engaged in the manufacture of a concentrate or compound for use by owners and operators of bot-

tlings plants, in making a beverage for sale to vendors and dispensers thereof to the consuming public, and in the sale of such concentrate or compound to the aforesaid owners and operators in various States, and with principal office and place of business at New Orleans, 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 three years preceding the complaint, supplied its vendees, for their use in supplying the vendors and dispensers of the beverage made from its aforesaid concentrate or compound, with signs, placards and other advertising matter containing the name and designation given to its said concentrate or compound and the beverage made therefrom, namely, "Grape Squeeze" and "Squeeze", and such statements as "That distinctive grape drink Squeeze", "Drink Squeeze, the distinctive grape flavor", notwithstanding the fact that the concentrate or compound in question and the beverage derived therefrom were not made of nor derived from grape juice or grapes, though imitating the former in color, odor and taste.

The use of the words "Grape Squeeze", and of the aforesaid statements, has, as alleged, the capacity and tendency to mislead and deceive many of the public into believing the beverage in question to be made of or derived from grape juice or grapes, and to cause them to purchase the same in such belief, and the supplying of the aforesaid advertising matter to the trade results in placing in the hands of others a means and instrumentality of committing a fraud upon the public, by enabling vendors and dispensers of beverages to represent and sell said "Grape Squeeze" as a beverage made of or derived from grape juice or grapes; all to the prejudice of the public and of respondent's competitors, many of whom in nowise misrepresent the nature and character of their beverages and compounds, or the ingredients whereof composed, and from whom business thus tends to be and is diverted.

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 National Fruit Flavor Co., Inc., the respondent, charging it with using unfair methods of competition in commerce in violation of the provisions of said act, together with a notice that answer to the com-

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Findings

plaint should be filed within thirty days after service of the complaint, unless such time be extended by the Commission, and with a copy of the rules of practice of the Commission. The respondent failed to make answer to the complaint within the time required by the rules of practice and in response to an inquiry the respondent forwarded to the Commission the following written statement:

NEW ORLEANS, U. S. A., *December 15, 1927.*

FEDERAL TRADE COMMISSION,

Washington, D. C.

GENTLEMEN: Referring to yours of the 3rd, Docket No. 1482, wish to advise that after careful consideration we find that our interest in the question involved would not warrant us in spending the necessary money to make a contest.

Very truly yours,

NATIONAL FRUIT FLAVOR CO., INC.,

IRA B. HARKEY, *President.*

Thereupon this proceeding came on for decision, and the Federal Trade Commission, having duly considered the record and being fully advised in the premises, makes its report in writing and states its findings as to the facts and its conclusions therefrom pursuant to the rules of practice and procedure, Rule III, subdivisions 2 and 3, and in conformity with the law.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Fruit Flavor Co., Inc., is a corporation organized under the laws of the State of Louisiana with its principal office and place of business in the city of New Orleans in said State. It is engaged among other things in the manufacture of a certain concentrate or compound named by it "Grape Squeeze" and "Squeeze" and the sale of said commodity to owners and operators of bottling plants located at points in various States of the United States. Said compound is designed and intended to be used and is used by respondent's said vendees in the manufacture of a beverage which is compounded and bottled by said vendees and by them sold to vendors and dispensers of beverages who in turn resell said beverage to the consuming public, all under said names and designations "Grape Squeeze" and "Squeeze". 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 beverages, and concentrates and compounds for use in compounding beverages, in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its said business respondent supplies and causes to be supplied to its said vendees sundry signs,

placards, and other advertising matter to be, and which are, supplied by said vendees to said vendors and dispensers of beverages to be used by them in and about the sale of said beverage "Grape Squeeze" to the consuming public. Upon said signs, placards, and other advertising matter respondent causes to be set forth statements containing said names and designations "Grape Squeeze" and "Squeeze", which statements are calculated to, and do, import and imply that said beverage is made of or derived from grape juice or grapes. Among said statements are: "That distinctive grape drink "Squeeze", "Drink Grape Squeeze", "Drink Squeeze, the distinctive grape flavor", and other like statements. Said vendors and dispensers of beverages use and display aforesaid signs, placards, and other advertising matter in connection with the dispensing of said beverage and to induce the public to purchase same. In truth and in fact said compound and said beverage derived therefrom are not, and neither of them is, made of or derived from grape juice or grapes, but said beverage imitates grape juice in color, odor, and taste.

PAR. 3. The use by respondent of the words "Grape Squeeze" as the name of its compound and of the beverage made therefrom, and the use by respondent of said statements appearing upon its advertising matter, all as before set out, have the capacity and tendency to mislead and deceive many of the public into the erroneous belief that said beverage is made of or derived from grape juice or grapes and to cause many of the public to purchase said beverage in that belief.

PAR. 4. In supplying aforesaid advertising matter to the trade, all as in paragraph 2 hereof set out, respondent places in the hands of others a means and instrumentality of committing a fraud upon the public, by enabling vendors and dispensers of beverages to represent and sell said beverage "Grape Squeeze" as a beverage made of or derived from grape juice or grapes.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof many who in no wise misrepresent the nature and character of their said beverages and compounds or of the ingredients whereof same are composed and respondent's acts and practices as above set out tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. For about three years last past respondent has engaged in the acts and practices under the circumstances and conditions and with the results all hereinbefore set out.

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Order

CONCLUSION

Above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission and the Commission having made its findings as to the facts and its conclusion pursuant to the law that respondent, National Fruit Flavor Co., Inc., has violated and is violating 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 therefore ordered, That National Fruit Flavor Co., Inc., its officers, agents, representatives, and employees forthwith cease and desist from using or authorizing others to use the names "Grape" or "Grape Squeeze", or either of such names, on signs, placards, or other advertising matter in connection with the sale or offering for sale in commerce of any concentrate or compound designed and used or intended to be used in the manufacture of beverages to be sold and dispensed to the public when such concentrate or compound is not made or derived from grape juice or grapes, and cease and desist from using or authorizing others to use in connection with the sale or offering for sale in commerce of any such concentrate or compound any other names or statements which are calculated to and do import and imply that such concentrate or compound is made or derived from grape juice or grapes.

It is further ordered, That National Fruit Flavor Co., Inc., within sixty days after the service upon it of a copy of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form of its compliance with this order.

IN THE MATTER OF
CHARLES KURLAN

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

Docket 1362.—Complaint, Jan. 15, 1926—Decision, Feb. 6, 1928

Where an individual engaged in the sale of cloth or fabrics to manufacturers of and dealers in, men's shirts, named, designated and branded a cloth or fabric so dealt in by him and composed wholly of cotton, though resembling and simulating silk in texture and general appearance, "Tabsylk", and supplied his customers with labels featuring such name and designation, for their use upon the shirts manufactured by them from the aforesaid cloth; with the capacity and tendency to mislead and deceive many of the consuming public into purchasing said shirts so labeled and described as "Tabsylk", and so displayed, represented, advertised and sold by said customer's retail dealer vendees, as and for garments composed in whole or in part of silk, and with the effect of placing in the hands of manufacturers and dealers the instrument and means, in the supplying of the aforesaid labels, of misleading and defrauding the consuming public by enabling them thereby, with or without further representations, to offer and sell the same to said public as and for such garments and of diverting business from and otherwise injuring and prejudicing competitors dealing in cloth composed in whole or in part of silk and rightfully and lawfully so represented, and competitors dealing in cloth composed wholly of cotton without misrepresentation and without furnishing deceptive or misleading labels to their vendees, as above set forth, or in anywise placing in the hands of others the instrument or means of misleading or committing a fraud upon the public with respect to their fabric; all to the prejudice of such competitors, and to the injury of the public:

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

Mr. Henry Miller 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 individual, engaged in the sale of cloth and fabrics to shirt manufacturers in the various States, and with place of business in New York City, with naming fabric 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.

Respondent, as charged, for more than two years last past named and designated as "Tabsylk" a fabric dealt in by him, as above