

Syllabus

IN THE MATTER OF

NATHANIEL L. BLAUSTON, AN INDIVIDUAL, DOING
BUSINESS UNDER THE NAMES AND STYLES OF
MARIE ANTOINETTE PERLE COMPANY AND BRISTOL
GIFT HOUSE

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

Docket 1479. Complaint, Oct. 8, 1927—Decision, Feb. 6, 1928

Where an individual engaged in the sale of jewelry, silverware, plateware, leather goods and novelty merchandise of various kinds at wholesale to retail dealers and dealers conducting mail order businesses; in advertising the same in his catalogues,

- (a) Represented certain sets of table ware as "fine nickel silver plated silverware" and certain candlesticks, wine sets, motor clocks, cigarette cases, and cigarette and match case sets as composed of "nickel silver", notwithstanding the fact that said articles were not composed either in whole or in part of silver or nickel, and illustrated the set first named with a pictorial representation of another set of better grade and higher selling price;
- (b) Represented cases of certain watches as composed of "rolled gold plate", "fourteen karat white or green rolled gold plate", and in other ways as gold plated, notwithstanding the fact that said cases had a gold plating of less than three one-thousandths of an inch in thickness, on the outside, and less than one-thousandth of an inch in thickness on the inside, the specified standard of thickness for the manufacture of watchcases represented and described as "gold plated", and misleadingly and deceptively represented certain watch cases as "life guaranteed";
- (c) Represented certain watches and clocks as having "silver finishing", "silver brush finished" and "silvered" dials, pen and pencil sets as having a "white gold finish" and a "gold finish", respectively, and ladies' wrist watches as having "platinoid finish" cases and "platinum effect" dials, notwithstanding the fact that none of the aforesaid articles contained any silver or gold or platinum materials;
- (d) Represented certain brooches and bar pins as having a "platinum top", certain bracelets as having a "gold top", and certain necklaces as composed of "amber", "crystal", "jade", "jet", "amethysts" and "garnets", notwithstanding the fact that the articles first mentioned were only thinly plated with the aforesaid materials, and the latter articles were not made of genuine amber, crystal, etc., but of materials simulating the appearance thereof;
- (e) Represented certain finger rings as "gold filled" and composed of "seamless gold shell", certain elk charms as "solid gold filled", and certain hair brushes, combs, mirrors, manicure sets, and similar toilet articles as composed in part of ivory, notwithstanding the fact that the aforesaid rings and charms did not contain a layer or shell of gold of substantial thickness

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on the outside and that the aforesaid descriptions were not preceded by a designation of the alloy of gold used in the shell, and a fraction representing the correct proportion of the weight of the shell to the weight of the entire ring, and that said brushes, etc., contained no ivory, but only a material simulating the appearance and finish thereof; and

- (f) Represented certain merchandise containing no ivory, rubber, amber or leather as "Ivoroid", "rubberoid", "amberoid", and "leatherette", respectively, with the capacity and tendency to mislead and deceive purchasers in respect of the composition thereof, and a certain case containing a traveling folding clock, not composed of leather, but of a material imitating the same in appearance, as made of "high-grade leather";

With the effect of misleading and deceiving purchasers into believing said articles to be composed in whole or in part of materials as represented and depicted in said catalogues, and of causing many of the consuming public to purchase said articles in such belief, and with the effect of diverting business from and otherwise injuring and prejudicing competitors who in nowise misrepresent the composition, nature and character of the merchandise dealt in by them:

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

Mr. William A. Sweet for the Commission.

Mr. Richard M. Cantor, 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, an individual engaged in the sale of jewelry, silverware, flatware, leather goods and novelty merchandise, at wholesale, to retailers and to mail order dealers at various places throughout the several States, and with principal place of business in New York City, 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.

Respondent, as charged, in the catalogues issued and sold by him to his customers or prospective customers for their use in purchasing the articles therein represented, and reselling the same to the consuming public, sets forth false and misleading statements and representations concerning the materials of which said articles are composed and the nature and character thereof, including, among others, the following:

Sets of table silverware, candlesticks, wine sets, motor clocks, cigarette and match cases as composed in whole or in part of "nickel silver" and as "nickel silver plated", the fact being that they are not so composed either in whole or in part, and in purporting to illustrate a certain set of table silverware, in fact illustrated another and more expensive set;

Watches with a plating of gold less than three one-thousandths of an inch in thickness, on the outside, as composed of "fourteen karat white or green rolled gold plate", "white rolled gold plate", "rolled gold plate", "white gold rolled plate", "white gold plate", and as "gold-filled", and "yellow gold plated";

Watches and clocks and pen and pencil sets, containing no silver or gold metal, as "silver brush finished dials", "gold metal" and "silver dials", and as "white gold finish" and "gold finish", respectively;

Bead necklaces not composed of genuine amber, or crystal, etc., as amber, crystal, jade, jet, amethysts or garnets;

Rings, of which one-tenth by weight is not 14 karat gold, as "fine rolled gold plate" and "seamless gold shell" and "gold-filled" and "solid gold filled";

Hair brushes, combs, mirrors, manicure sets and similar toilet articles, not made in any part from genuine "ivory", but of a material simulating the same in appearance and finish, as "ivory"; and

Certain articles containing no ivory, rubber, amber or leather as "ivoroid", "rubberoid", "amberite" and "leatherette", with the capacity and tendency thereby to mislead and deceive purchasers into believing the same to be made in whole or in part of ivory, etc.

Such acts and practices, as alleged, have the capacity and tendency to and do cause retailers and many of the consuming public to purchase the articles in question in the belief that the same are composed as represented and depicted in said catalogues, in which respondent places in the hands of others the means of deceiving the consuming public, whom respondent's customer purchasers solicit through the pictorial and other representations and descriptions contained in the aforesaid catalogues sold and supplied to them by respondent, as above set forth, and tend to and do divert business from and otherwise injure and prejudice competitors, many of whom in nowise misrepresent the composition, nature and character of the merchandise sold by them; 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 the respond-

ent, Nathaniel L. Blauston, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act, together with a notice that, within thirty days from the service of the complaint, unless such time be extended by order of the Commission, an answer to the complaint should be filed with the Commission, and with a copy of Rule III of the rules of practice adopted by the Commission, June 30, 1927, with respect to answers and failure to answer.

Thereafter, Nathaniel L. Blauston, the respondent, appeared herein and filed an answer to the complaint in which he alleges that he refrains from contesting this proceeding. No other answer or return has been filed by said respondent.

Thereupon this proceeding came on for decision and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual having his principal place of business in the City of New York, State of New York. He is engaged in the business of selling jewelry, silverware, flatware, leather goods, and novelty merchandise of various kinds at wholesale to retail dealers and to dealers who conduct mail-order businesses located at various places throughout the several States of the United States. He causes said articles of merchandise when so sold to be transported from his said place of business in said City of New York into and through other States of the United States to the purchasers thereof located in such States. He is in competition with other individuals, partnerships and corporations engaged in the sale and transportation of like articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. Respondent obtains orders for and makes sales of his said articles of merchandise through and by means of certain catalogues issued by him in which they are severally described and pictorially represented and the prices thereof set forth. He sells said catalogues, in commerce, to his said customers or prospective customers to be used by them in ordering and purchasing the articles of merchandise therein represented and described and in reselling the same to the consuming public and said catalogues are so used by them.

PAR. 3. In the said catalogues referred to in paragraph 2 hereof respondent has caused for more than two years prior to the date hereof and still causes to be set forth false and misleading statements and representations and pictorial representations concerning the ma-

terials of which the articles of merchandise offered for sale and sold by him, in commerce as aforesaid, are composed and the nature and character thereof. Said statements and representations are as follows:

(a) That certain sets of tableware, each consisting of knives, forks, spoons, butter spreaders and sugar shell, are "fine nickel silver-plated silverware"; and that certain candlesticks, wine sets, motor clocks, cigarette cases and sets consisting of cigarette and match cases, are composed of "nickel silver", when in truth and in fact said articles are not composed in whole or in part of the metals known as silver and nickel. The pictorial representation in respondent's catalogues of the set of table silverware above referred to and designated in said catalogues as "No. 433" is not an illustration of the particular set actually offered for sale and sold by respondent, but of another set of better grade and greater selling price than the said set.

(b) That the cases of certain watches are composed, respectively, of "rolled gold plate", "fourteen karat white or green rolled gold plate", "white rolled gold plate", "white gold rolled plate", "rolled white gold plate", and are "yellow gold plated", when in truth and in fact said watchcases have a plating of gold less than three one-thousandths of an inch in thickness, on the outside, and less than one one-thousandth of an inch in thickness on the inside, which is the specified standard of thickness of gold for the manufacture of watchcases represented and described as gold plated; and that certain of said watchcases are "life guaranteed", which representation is misleading and deceptive to the purchasing public.

(c) That certain articles of merchandise consisting of watches and clocks have "silver finished", "silver brush finished" and "silvered" dials, respectively; that certain other articles of merchandise, among which are pen and pencil sets, have a "white gold finish" and a "gold finish", respectively; that certain other articles of merchandise among which are ladies' wrist watches have "platinoid finish" cases and "platinum effect" dials, respectively, when in truth and in fact none of the said articles so described contain any silver or gold or platinum metal; and that certain brooches and bar pins each has a "platinum top" and that certain bracelets each has a "gold top", when in truth and in fact said articles are only thinly plated with platinum or gold, respectively.

(d) That certain articles of merchandise consisting of bead necklaces are composed, respectively, of "amber", "crystal", "jade", "jet", "amethysts" and "garnets", respectively, when in truth and in fact said necklaces so described are not made of genuine amber, crystal, jade jet, amethysts or garnets, but are composed of materials which simulate them in appearance.

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(e) That certain articles of merchandise consisting of finger rings are "gold filled" and are composed of "seamless gold shell" and that certain elk charms are "solid gold filled", respectively, when in truth and in fact said articles do not contain a layer or shell of gold of substantial thickness on the outside and when such words are not preceded by the designation of the alloy of gold used in the shell, which is preceded by a fraction designating the correct proportion of the weight of the shell to the weight of the entire ring.

(f) That certain articles of merchandise consisting of hair brushes, combs, mirrors, manicure sets and similar toilet articles are composed in part of "ivory", when in truth and in fact said articles are not in any part made from ivory, but are made of a material which simulates ivory in appearance and finish.

(g) Certain other articles of merchandise are represented and described as "ivoroid", "rubberoid", "amberite" and "leatherette", respectively, when in truth and in fact said articles contain no ivory, rubber, amber or leather, respectively. The use of these words to advertise and describe said articles has the capacity and tendency to mislead and deceive purchasers into the belief that said articles are manufactured in whole or in part of genuine ivory, rubber, amber or leather, respectively, as the case may be.

(h) That a certain case containing a traveling folding clock is composed of "high-grade leather", when in truth and in fact said case is not composed of leather but of a material made to imitate genuine leather in appearance.

PAR. 4. Respondent's said customers purchase, and offer for sale and sell the articles of merchandise referred to in paragraph 3 hereof to the consuming public pursuant to the pictorial representations and the descriptions and representations of said articles contained in the catalogues sold and supplied to them by respondent as set forth in paragraph 2 hereof.

PAR. 5. The statements and representations as above set forth are false and misleading, and have the capacity and tendency to and do mislead and deceive purchasers into the belief that said articles are composed in whole or in part of the materials as represented and depicted in said catalogues and to cause many of the consuming public to purchase respondent's said articles of merchandise in that belief.

PAR. 6. There are among the competitors of respondent referred to in paragraph 1 hereof many who in nowise misrepresent the composition, nature and character of the merchandise which they sell, and respondent's acts and practices as hereinbefore set forth tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 7. The above 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.

CONCLUSION

The methods of competition set forth in the foregoing findings, under the conditions and circumstances therein set forth, are unfair methods of competition in interstate commerce, and constitute a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard upon the complaint of the Commission and the answer of respondent, filed pursuant to Rule III of the rules of practice of the Commission, in which answer it is set forth that respondent refrains from contesting the proceeding instituted by the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has been and is 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",

It is ordered, That respondent, Nathaniel L. Blauston, his agents, employees and successors cease and desist from:

(a) Using the words "nickel silver", or either of them, to advertise or describe articles of merchandise which are not composed in whole or in part of the metals known as silver and nickel.

(b) Using the words "gold plate" or "gold plated", or either of them, to advertise or describe watch cases which have a plating of gold less than three one-thousandths of an inch in thickness on the outside, and one one-thousandth of an inch in thickness on the inside; and using the words "life guaranteed" to indicate the length of time such watch cases will last or wear.

(c) Using the words "silver finished" or "silvered", or either of them, to advertise or describe watch or clock dials which contain no silver metal; or the words "gold finish", to advertise or describe pen and pencil sets which contain no gold metal; or the words

"platinoid finish" or "platinum effect" or either of them to advertise or describe articles of merchandise which contain no platinum or the words "platinum top" or "gold top", respectively, to advertise or describe brooches or bar pins or similar articles of jewelry which have only a thin plating of platinum or gold, as the case may be.

(d) Using the words "amber", "crystal", "jade", "jet", "amethyst" or "garnets", or either of them, respectively, to advertise or describe necklaces which are not composed of genuine amber, crystal, jade, jet, amethyst or garnet, as the case may be.

(e) Using the words "gold filled" or "gold shell" or either of them to advertise or describe finger rings and charms unless such articles contain a layer or shell of gold of substantial thickness on the outside, and unless said words are preceded by the designation of the alloy of gold used in the shell, which is preceded by a fraction designating the correct proportion of the weight of the layer or shell of gold to the weight of the entire ring or charm.

(f) Using the word "ivory" as a noun to advertise or describe articles of merchandise which are not composed in any part of genuine ivory, but are composed of a material made to simulate ivory in appearance and finish.

(g) Using the words "ivoroid" or "rubberoid" or "amberite" or either of them respectively to advertise or describe articles of merchandise which do not contain in any part genuine ivory, rubber or amber respectively; and from using the word "leather" either alone or in combination with any other word or words, letter or letters, to advertise or describe articles of merchandise which are not made in any part of the prepared skins of animals.

(h) Using in catalogues or other advertising matter pictorial representations of any article of merchandise which is not an illustration of the particular article of merchandise actually offered for sale.

(i) Making any other untrue advertisement or description of any article offered for sale by him.

It is further ordered, That the respondent, Nathaniel L. Blauston, shall within sixty days after the service upon him of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Syllabus

IN THE MATTER OF
BAYUK CIGARS, INC.COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 1391. Complaint, June 6, 1926—Decision, Feb. 8, 1928*

Where the Island of Cuba had come to be recognized and considered by the cigar trade and consuming public of the United States as a country famous for its production of tobacco and cigars of superior quality and excellence, and the tobacco there grown had come to be known, designated and described to and by said cigar trade and purchasing public as Havana tobacco or Cuban tobacco, and to be in great demand in the United States, and cigars manufactured therefrom in whole or in part had come to be considered as more desirable and superior in quality to cigars composed wholly of tobacco grown elsewhere and to cigars containing a smaller proportion of such Cuban or Havana tobacco; and thereafter a domestic corporation engaged in the manufacture of cigars, with factories in the States of New York, New Jersey, and Pennsylvania, and in the sale and distribution thereof to wholesale and retail dealers, and the consuming public.

- (a) Designated, described, banded, labeled, and sold, a 5-cent cigar, containing no Havana or Cuban tobacco, as above set forth, "Havana Ribbon", featuring the aforesaid words upon the bands and containers thereof, and extensively so advertised the same under such name and designation in magazines and daily newspapers of general circulation among the cigar trade and consuming public throughout the United States and various sections thereof, and in widely distributed signs, placards, posters, and similar advertising media; and
- (b) Designated, described, banded, labeled and sold a 10 and 15 cent cigar, containing the aforesaid Havana or Cuban tobacco only in a minor proportion, "Mapacuba", featuring the aforesaid word upon the brand thereof, together with the shield or coat of arms of the Republic of Cuba, and also upon the labels of the containers thereof, together with a map of Cuba, a picture of the city and harbor of Havana, the aforesaid shield or coat of arms, and the words "Havana Cigars", together with pictures of the fortress of Morro Castle at Havana, the Cuban flag, tobacco fields such as are common in Cuba, and the legend, in Spanish, "Guarantee—This package is eminently distinguished because it comes from a superior crop of Vuelta Abajo", a Cuban district noted for its fine tobacco, and extensively so advertised said cigars, as above set forth, under the designation, description and representation "Mapacuba", together with depictions of the map of Cuba, of the cigars in question with the aforesaid band, and of a box thereof, with labels as above described;