

Complaint

IN THE MATTER OF

CHARLES T. MORRISSEY, DOING BUSINESS UNDER THE
TRADE NAMES AND STYLES OF CHARLES T. MORRISSEY & CO., AND CHARLES ORANGEADE COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5, OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1444. Complaint, Mar. 10, 1927—Decision, May 14, 1928*

Where an individual, engaged under a trade name including the word "Orangeade", in the manufacture and sale of "soft drink powders", for use, together with certain liquid flavors, in the preparation of beverages, and not composed, in either case, of fruits or fruit juices, but principally of tartaric acid as a base, with oil of limes, lemons or oranges, in the "lime" etc., flavors, and artificially colored;

- (a) Labeled the packages, vials and other containers of said soft drink powders and flavors, "cherry", "strawberry", "grape", "raspberry", "raspberry", "pineapple", "lime", "lemon", "orange", "orangeade", "orange-julep", "grape-julep", "cherry-julep", and "lemonette"; and
- (b) Advertised said powders and flavors under such names, in publications of general circulation and by means of circulars and cards distributed to dealers and others, together with such representations as, "The best strawberry drink you ever tasted" and "Wonderful true fruit flavor orangeade in powder", and depictions of the respective fruits indicated;

With the capacity and tendency to mislead and deceive the public into believing said products to be derived from the fruits or the juices of fruits indicated, and to induce the purchase thereof in such belief, and with the effect of so doing, and of placing in the hands of distributors and dispensers of said soft drink powders and beverages made therefrom, the means, in the advertising matter and display cards supplied by him to distributors and dispensers of his aforesaid products, and the beverages made therefrom, of deceiving and defrauding the consuming public, and with the capacity and tendency to divert business from and otherwise injure and prejudice competitors dealing in pure fruit juices or extracts for compounding beverages, and in beverages already compounded, and who truthfully mark their products:

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

Mr. William A. Sweet for the Commisison.

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, doing business under a trade name including the word "Orangeade", engaged in the manufacture of soft drink powders and in the sale thereof to purchasers in various

Complaint

12 F. T. C.

States other than the State of origin of shipments, and with place or places of business in Chicago, with misrepresenting product, misbranding or mislabeling 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, engaged as above set forth, in selling certain of his said powders, under the brands "Fruit Vale", "Charles" and "Crescent", containing none of the fruits or juices thereof as hereinafter depicted and represented, labels the packages, vials and other containers of his powders with the words, among others, "orangeade", "orange julep", "lemon", "limes", "grape", "grape julep", "cherry", "cherry julep", "strawberry", "pineapple", "raspberry", and "ras-o-berry", respectively, together with depictions of clusters of the fruit designated arranged in fanciful form on such labels, and in advertising the same in newspapers, magazines and other periodicals or publications of general circulation throughout the various States, and on placards and other display matter placed in the hands of dealers in and dispensers of beverages made from his said powders, makes such representations as "Wonderful true fruit flavor orangeade in powder * * *. Makes the best drink you ever tasted—no trouble. Real, rich, true orange flavor and color. Superior strength. * * * Grape, cherry, lemon, apple, strawberry, pineapple, etc. * * *" "Crescent orangeade powder is, without question, the best tasting, strongest and biggest profit paying orangeade made. It is delightfully refreshing, and has such a true, smooth, natural orange flavor that it has become the most popular orange drink on the market. * * * It costs you much less than orange drinks in syrup form, has a much richer, better flavor, and is more convenient to handle". "Just like luscious oranges"—"Our powder is derived from the juice of lemons reduced to powdered form."

The use by respondent, as alleged, "of the aforesaid designations, statements, depictions and representations of and concerning his said products, has the capacity and tendency to, and does, mislead purchasers of said powders and the beverages made therefrom into the belief that said powders and beverages are composed, in whole or in part, of the fruit or juice of the fruit as represented, depicted and designated, and to purchase same in said belief; and said placards and display advertising supplied as aforesaid to the distributors and dispensers of said powders and the beverages made therefrom, furnish them with the means of deceiving and defrauding the consuming public", and said acts and practices tend to and do divert business from and otherwise injure and prejudice competitors dealing in pure

fruit juices or extracts therefrom, for the compounding of beverages and beverages already compounded, and who truthfully mark their products; 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 (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon the respondent Charles T. Morrissey, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Hearings were had in the course of which testimony and evidence were received in support of the charges in the complaint and in opposition thereto. The trial examiner filed his report upon the facts and the respondent filed exceptions thereto. A brief was filed by counsel for the Commission. The time within which the brief of respondent was required to be filed under the Commission's rules of practice expired on April 4, 1928, and no brief has been filed by the 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 be facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual, doing business under the trade names and styles of Charles T. Morrissey & Co. and Charles Orangeade Co., with his usual place of business in the city of Chicago, in the State of Illinois. He is now and has been for more than two years prior to March 10, 1927, engaged in the business of manufacturing certain powders designated and known as "Soft drink powders", which are designed and intended to be used in compounding beverages by the addition of water and sugar thereto, and in the sale and distribution of said powders in interstate commerce between and among various States of the United States. He also manufactures and sells, in commerce, certain liquid flavors put up in vials and included in the packages or cartons containing said powders, which liquid flavors are intended to be used in connection with said powders in compounding said beverages. Respondent has caused and now causes his soft drink powders and liquid flavors when sold to the public to be transported from his place of business

in the city of Chicago to the purchasers thereof into and through various States of the United States other than the State of Illinois. In the sale and shipment of said powders and flavors respondent is in competition with other manufacturers of similar powders, flavors, and extracts, used in compounding of beverages, and of beverages already compounded, and who cause the same when so sold to be transported to the purchasers thereof located in various States of the United States into which respondent has caused and now causes his products to be transported.

PAR. 2. In the course and conduct of his said business, as described in paragraph 1 hereof, the respondent has caused and still causes to be affixed to the packages, vials, and other containers of his said soft drink powders and flavors, labels bearing the names and designations, "Cherry", "Strawberry", "Grape", "Raspberry", "Lime", "Lemon", "Pineapple", "Ras-o-Berry", "Orangeade", "Orange-Julep", "Orange", "Grape-Julep", "Cherry-Julep", and "Lemonette", respectively, and with said labels bearing said names and designations so affixed, sold and transported said products in interstate commerce. Respondent in soliciting the sale and selling his said products, in interstate commerce, has caused advertisements to be inserted in publications having general circulation between and among various States of the United States, and advertising circulars and cards to be printed and distributed to dealers and others who used said products in making beverages which were sold to consumers. Such advertisements and advertising matter contain, among other names and representations, the following: "Orangeade", "Grape-Julep", "The best strawberry drink you ever tasted", "Orange-Julep", "Cherry-Julep", "Wonderful true fruit flavor orangeade in powder", together with depictions of clusters of fruit, cherries, grapes, strawberries, and oranges as the case may be.

PAR. 3. The soft drink powder and flavors, labeled respectively, "Cherry", "Strawberry", "Grape", "Raspberry", "Pineapple", "Ras-O-Berry", "Grape-Julep", and "Cherry-Julep", as set forth in paragraph 2 hereof, contain none of the fruit, or juice of the fruit so represented, but consist principally of tartaric acid as a base, and are artificially colored with coal tar colors. The soft drink powders labeled respectively, "Lime", "Lemon", "Lemonette", "Orange", "Orangeade", and "Orange-Julep", contain none of the fruit or juice of the fruit so represented, but consist principally of tartaric acid, as a base, to which has been added oil of lemons, oil of limes, and oil of orange, respectively, which is derived from the peel of those fruits, and are artificially colored with coal tar colors.

PAR. 4. The labels and advertising matter used by respondent in connection with the sale of his said soft drink powders and flavors carry the false implication that the products so labeled and advertised are derived from the fruits or the juices of the fruits so designated and represented, when such is not the fact, and have the capacity and tendency to mislead and deceive the public into the belief that said products are so derived, and to cause them to purchase the same in that belief.

PAR. 5. The use by respondent of the said labels and advertising matter bearing aforesaid designations and representations of and concerning his said soft drink powders and flavors has the capacity and tendency to and does mislead purchasers of said products and the beverages made therefrom into the belief that said powders and flavors are composed in whole or in part of the fruit or juice of the fruit so represented, depicted and designated and to cause them to purchase the same in that belief; and said advertising matter and display cards supplied by respondent, to the distributors and dispensers of said soft drink powders and the beverages made therefrom furnish said dispensers with the means of deceiving and defrauding the consuming public.

PAR. 6. There are among competitors of said respondent individuals, firms and corporations which deal in and sell pure fruit juices, or extracts therefrom, to be used in the compounding of beverages, and in beverages already compounded, who truthfully mark their products, and respondent's acts and practices as hereinbefore set forth tend to and do divert business from and otherwise injure and prejudice such competitors.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's 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 complaint of the Commission, the testimony in support of the complaint and in opposition thereto and the brief of counsel for the Commission, the respondent having failed to file a brief, and the Commission having made its findings as to the

Order

12 F. T. C

facts with its conclusion that the respondent has 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 ordered, That the respondent Charles T. Morrissey, his representatives, agents, servants, employes, and successors, cease and desist from:

(1) Using or authorizing the use by others in interstate commerce of the words "cherry", "strawberry", "grape", "raspberry", "ras-o-berry", "pineapple", "lime", "lemon", or "orange", either independently or in conjunction or combination with any other word or words, letter or letters, as a corporate or trade name, or as a trade brand or designation in advertising or on labels, packages, or other containers or otherwise, in connection with the sale or distribution, in interstate commerce, of a product which is not composed wholly of the natural fruit, or juice of the fruit of the cherry, strawberry, grape, raspberry, pineapple, lime, lemon, or orange, respectively: *Provided*, that, when a product is composed in substantial part of any natural fruit, or the juice of such fruit, so as to derive its color and flavor from said fruit, and the name of the said fruit is used in a corporate or trade name, or as a trade brand or designation for said product, the name of said fruit shall not be used unless said name is immediately accompanied with some other word or words, letter or letters, displayed in type equally as conspicuous as that in which the name of the fruit is displayed clearly indicating that said product is not made wholly from the natural fruit or juice of the fruit designated, and that will otherwise indicate clearly that the product is composed in part of an ingredient or ingredients other than the natural fruit or juice of the fruit designated.

(2) Using or authorizing the use by others, in interstate commerce, in advertising or upon business stationery or on containers or on labels, or otherwise, of any word or words, picture or symbol falsely representing or suggesting that a product is made from or contains the natural juice or fruit of the cherry, strawberry, grape, raspberry, pineapple, lime, lemon or orange, respectively.

It is further ordered, That respondent, Charles T. Morrissey, pursuant to the provisions of Rule XVI of the Commission's rule of practice, shall, within 60 days after the service upon him of a copy of the order hereinbefore set forth, file with the Commission a report, in writing, setting forth in detail the manner and form in which said order has been complied with.

Syllabus

IN THE MATTER OF

R. P. KUHN, HOMER LAY, ROY DECK AND E. J. STERNER, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE EASTERN SEED 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 1489. Complaint, Dec. 14, 1927—Decision, May 17, 1928

Where partners engaged in the sale of vegetables and flower seeds to persons in the various States, through the medium of agents, mostly children, whom they procured by the offer of premiums to be given as prizes for the sale of their said seeds; in advertising their aforesaid premiums and seeds in their catalogues,

- (a) Misrepresented such premiums as of costlier and better materials and of a greater value than was the case, describing dress patterns, fabrics and wearing apparel of cotton and rayon, and containing no silk, as composed in whole or in part of silk, and as crepe de chine or pongee, cotton tablecloths and napkins as linen, gold plated watches, not engraved, with an imitation sapphire, as "14-K white gold—Guaranteed 25 years, beautifully engraved with sapphire stem crown", manicure sets, of imitation substances, as ivory or shell, pocketbooks containing no leather, nor embossed, as embossed leather, imitation leather cases of military brush sets, as fancy grained leather, machine made sweaters as hand made, hosiery containing only 8 per cent silk, as silk, and umbrellas respectively covered and ornamented with imitation taffeta and amber, as covered and ornamented with the genuine substances;
- (b) Represented such premiums as of certain specified retail values greatly in excess of the actual values;
- (c) Misrepresented the number of packages required to be sold to secure the various premiums, by enclosing three extra packages, on the pretense of covering the expense of increased postal rates and insuring delivery of the premium, post paid and insured, instead of sending the same collect without responsibility for loss or damage, the fact being that the postage and fees did not amount to the additional thirty cents the agents were required to remit in order to insure such delivery; with the result that said agents, mostly children, were thereby induced to order seeds because of said misrepresentations regarding packages necessary to be sold, in order to insure receipt of premium; and
- (d) Made such false statements in describing their seeds, under pictures of their supposed gardens, as "Part of our flower testing garden. We grow to maturity part of each variety, to see if they test true to name and yield satisfactorily", and "A view of our vegetable-testing garden. A convincing proof of the reliability of our vegetable seeds. Each variety must undergo the same rigid test", the fact being that the pictures in question were not pictures of gardens maintained and owned by them, and that they purchased the seeds dealt in by them from the growers, accepting their statements as to the qualities thereof;