

Syllabus

IN THE MATTER OF
SETHNESS 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 1541. Complaint, Oct. 18, 1928—Decision, June 29, 1929

Where a corporation engaged in the manufacture of extracts, concentrates and flavors neither made from the juice or fruit of the grape, cherry, or other fruits concerned, nor containing the same in such substantial quantity as to be properly referred to by the names thereof or by such words as "Grapette", "Cherryette", etc., and in the sale of said products through traveling salesmen primarily to jobbers, manufacturers, and/or bottlers to serve as a basis for soft drinks bottled and sold by them to the retail and other trade in the various States,

- (a) Made such statements in advertising said products in trade journals and other publications circulating among the various States as "'The Best Grape we have ever used' is the unanimous testimony of bottlers everywhere who have tried Sethness famous Concord Grape. 'Best Grape' means a grape of the true fruit character, a profit maker, and a prestige builder";
- (b) Described its said products in certain advertising booklets issued by it periodically as "Grape Catawba White", "Grape Concord true", "Grapette", "Cherryette, clear", "Bananaette, clear", "Lemonette, cloudy", "Lymette, cloudy", "Limonette", "Oranette", "Peachette", "Raspberryette", and "Strawberryette", and labeled certain of its said products with the words "Catawba Grape White", "Cherryette", "Concord Grape", "Grapette", and other such names as immediately above set forth; and
- (c) Stated on placards and tin signs furnished to its bottler customers for distribution by them among the retail trade "Drink Peachette, a refreshing carbonated beverage", or "Drink Concord Grape Soda", or "The real drink. 'The taste tells—try it' with Concord Grape Soda", and in connection therewith displayed a representation of a bottle and glass filled with a purple liquid to simulate the color of grape juice;

With the result of thereby asserting and clearly importing and implying to a substantial part of the purchasing public that beverages made from its said products were composed in whole or in part from natural fruit or the juice thereof and of thus supplying to jobbers and bottlers of said flavoring extracts, concentrates, and sirups, and retail dispensers of beverages made therefrom the means of deceiving and defrauding the consuming public, and with the capacity and tendency to mislead and deceive purchasers of said beverages as to the composition thereof, as above set forth, and to suppress competition in the sale of truthfully marketed extracts, sirups, concentrates, and beverages made therefrom, whether artificially colored and flavored and not made from the product of any fruit or juice thereof, or so made in whole or in part, and of diverting trade therefrom:

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

Mr. Edward L. Smith for the Commission.

Mr. W. Parker Jones, of Washington, D. C., 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 Illinois corporation engaged in the manufacture of artificially colored and flavored, flavoring extracts, concentrates, and sirups containing no fruit or fruit juice, and in the sale thereof to bottlers, directly, and, indirectly, through jobbers located throughout various States, with naming product misleadingly, 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, conspicuously labels the containers of its aforesaid products with brand or trade names including the words "CATAWBA GRAPE WHITE", "CONCORD GRAPE", "GRAPETTE", "CHERRYETTE", "PEACHETTE", "STRAWBERRYETTE", "BANANAETTE", "LEMONETTE", "ORANGETTE", "LYMETTE", "LIMONETTE", and "RASPBERRYETTE", together with the word "imitation" underneath, in smaller type, and, in still smaller type the words "artificially colored", and directions for the manufacture of beverages therefrom, and sells its said products in containers thus labeled to bottlers of beverages made therefrom, by whom and by whose retail dealer vendees, said beverages, made from said flavoring extracts, concentrates, and sirups, and containing no fruit or fruit juice, and sold in bottles containing about six fluid ounces, usually, are described and designated in connection with their sale and offer to the public as "CATAWBA GRAPE WHITE", "CONCORD GRAPE", "GRAPETTE", "CHERRYETTE", "PEACHETTE", "STRAWBERRYETTE", "BANANAETTE", "LEMONETTE", "LYMETTE", "ORANGETTE", "LIMONETTE" and "RASPBERRYETTE", and in its advertisements of its said products under the aforesaid names or brands, in trade journals, booklets, pamphlets, circulars, periodicals, and other printed matter circulated generally throughout the various States, and on placards and tin signs and in circulars, booklets, and other printed matter supplied to bottlers and to retailers of beverages made from its said extracts, etc., and displayed to the public in connection with

the sale of the beverages in question, sets forth numerous false, misleading, and deceptive statements, representations, and depictions of and concerning the nature and character of its said products, including, in addition to said brand names, such statements as—

"The best grape we have ever used" is the unanimous testimony of bottlers everywhere who have tried Sethness Famous

CONCORD GRAPE

"Best Grape" means a grape of the true fruit character, a profit maker and a prestige builder.

Your customers will find in any "Ette" the same tempting, delicious flavor as in the rich, ripe fruit from which it takes its name.

DRINK CONCORD GRAPE SODA. THE REAL DRINK THE TASTE TELLS—TRY IT WITH CONCORD SODA.

and in connection therewith, a bottle and a glass filled with a purple liquid pictorially displayed to simulate the color of grape juice.

"Respondent's said brands, trade names, labels, and its aforesaid statements, representations, and depictions of and concerning the nature and character of its said flavoring extracts, concentrates, and sirups and beverages made therefrom", as charged, "tend to and do assert and clearly import and imply to a substantial part of the purchasing public that beverages made from respondent's said flavoring extracts, concentrates, and sirups are composed in whole or in part from natural fruit or the juice from natural fruit", and, along with its advertising matter carrying such statements, etc., have the capacity and tendency to mislead and deceive purchasers of the beverages in question into believing the same to be composed as above set forth, and said brands, trade names, labels, and advertising matter "supplied to jobbers and bottlers of said flavoring extracts, concentrates, and sirups, and retail dispensers of beverages made therefrom", further, as charged, "furnish them with the means of deceiving and defrauding the consuming public", and have the tendency and capacity to suppress competition in the sale of truthfully marketed flavoring extracts, sirups, and concentrates, and beverages made therefrom, whether containing no fruit or fruit juices and artificially colored and flavored, or made in whole or in part from fruits or fruit juices, and divert trade from said competitive truthfully branded, labeled, advertised, and otherwise marketed 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, 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 its complaint upon the respondent, Sethness Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of the said act of Congress.

The respondent having entered its appearance and having filed its answer herein, and the chief counsel for the Federal Trade Commission and counsel for the respondent having thereafter executed and filed a stipulation containing an agreed statement of facts and having therein stipulated that the said statement of facts might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and the chief counsel for the Federal Trade Commission and counsel for the respondent having agreed in the said stipulation that the Federal Trade Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the said proceeding, without the presentation of argument or the filing of briefs (except that respondent in the said stipulation reserved the right to submit to the Commission a memorandum of argument regarding the form and substance of the order to cease and desist which, it was agreed in the said stipulation, the Commission might enter upon the facts stipulated); and the respondent having submitted such memorandum of argument to the Commission and the Commission having duly considered the same and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Sethness Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago, in the State of Illinois. It is now and, for more than one year last past, has been engaged in the manufacture of extracts, concentrates, and flavors for use in the preparation of beverages, and in the sale and distribution of its said products in commerce

between and among various States of the United States. It causes its said products, when sold, to be shipped from its place of business located in the State of Illinois, to purchasers thereof located in States of the United States other than the State of Illinois. In the course and conduct of its business, Sethness Co. was at all times herein referred to, in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, Sethness Co. sells its products through traveling salesmen primarily to jobbers, manufacturers, and/or bottlers, who use said products as a basis for the soft drinks which they bottle and sell to the retail and other trade located in various States of the United States. As means for promoting the sale of its products, the said company caused advertisements to be inserted in trade journals and other publications having circulation between and among various States of the United States, some of the said advertising matter used in 1927 containing such language as—

"The Best Grape we have ever used" is the unanimous testimony of bottlers everywhere who have tried Sethness Famous

CONCORD GRAPE

"Best Grape" means a grape of the true fruit character, a profit maker, and a prestige builder.

The aforesaid company also caused certain of its beverage extracts to be advertised in booklets issued in 1927 at intervals of about two months apart, wherein the said products were listed under the general trade name or designation "Cosco", and were described as "Grape Catawba White", "Grape Concord true", "Grapette", "Cherryette, true", "Bananaette, clear", "Lemonette, cloudy", "Lymette, cloudy", "Limonette", "Orangette", "Peachette", "Raspberryette" and "Strawberryette". The said company also furnished placards and tin signs to its bottler customers for distribution among the retail trade. The reading matter on said advertising media was as follows: "Drink Peachette, a refreshing carbonated beverage" or "Drink Concord Grape Soda", or "The real drink. 'The taste tells—try it' with Concord Grape Soda", and in connection therewith, a bottle and a glass were pictorially displayed as filled with a purple liquid to simulate the color of grape juice. On labels affixed to certain of its products, appeared the words, "Catawba Grape White", "Cherryette", "Concord Grape", "Grapette", "Orangette", "Peachette", "Strawberryette", "Ba-

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nanaette", "Lemonette", "Lymette", "Limonette", "Raspberryette", and the like; when in truth and in fact, the products branded or labeled, designated, described, and/or advertised as aforesaid were neither manufactured from the juice or the fruit of either the grape, cherry, banana, lemon, lime, orange, peach, raspberry, or strawberry, nor did they contain the juice or the fruit thereof in such substantial quantity as to be properly and accurately designated, described, or referred to by the use of the words, "Lemon", "Grape", "Concord", "Catawba", "Cherry", "Banana", "Lime", "Orange", "Peach", "Raspberry", or "Strawberry", or any of them, or by the use of the words, "Grapette", "Cherryette", "Peachette", "Strawberryette", "Bananaette", "Lemonette", "Lymette", "Limonette", "Orangette", "Raspberryette", or any of them.

PAR. 3. Respondent's said brands, trade names, labels, and its aforesaid statements, representations, and depictions of and concerning the nature and character of its said flavoring extracts, concentrates, and sirups and beverages made therefrom tend to and do assert and clearly import and imply to a substantial part of the purchasing public that beverages made from respondent's said flavoring extracts, concentrates, and sirups are composed in whole or in part from natural fruit or the juice from natural fruit.

PAR. 4. Respondent's said brands, trade names, labels, and said advertising matter carrying aforesaid statements, representations, and depictions of and concerning the nature and character of respondent's said flavoring extracts, concentrates, and sirups and beverages made therefrom have the capacity and tendency to mislead and deceive purchasers of beverages made from respondent's said flavoring extracts, concentrates, and sirups into the belief that said beverages are composed in whole or in part of the fruits or the juice of the fruits, as represented and described in respondent's said brands, names, labels, and advertising matter. Respondent's said brands, trade names, labels, and said advertising matter supplied to jobbers and bottlers of said flavoring extracts, concentrates, and sirups, and retail dispensers of beverages made therefrom furnish them with the means of deceiving and defrauding the consuming public.

PAR. 5. Respondent's said brands, trade names, labels, and its said advertising matter carrying aforesaid statements, representations, and depictions of and concerning the nature and character of its said flavoring extracts, concentrates, and sirups and beverages made therefrom, as described herein, have the tendency and capacity to suppress competition in the sale of truthfully marketed flavoring extracts, sirups, and concentrates and beverages made therefrom,

which are not made from the product of any fruit or fruits, or the juice of any fruit or fruits, but are artificially colored and flavored and of diverting trade from said truthfully marketed products and have the capacity and tendency to suppress competition in the sale of truthfully marketed concentrates and beverages made in whole or in part from the product of fruits, or the juice of fruits, and of diverting trade from said truthfully marketed products.

CONCLUSION

The practices of the respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in 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 by the Federal Trade Commission upon the complaint of the Commission, the answer thereto by the respondent, and an agreed statement of facts, and the Commission having duly considered the same and having made its findings as to the facts and reached and entered its conclusion that the respondent has violated 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",

Now therefore it is ordered, That the respondent, Sethness Co., its representatives, agents, servants, employees, and successors cease and desist from:

(1) Using in connection with the sale in interstate commerce of any beverage concentrate or sirup the words "Lemon", "Grape", "Concord", "Catawba", "Cherry", "Banana", "Lime", "Orange", "Peach", "Raspberry", or "Strawberry", or either of them, either with or without suffix, or any other word or letter or pictorial illustration, signifying a fruit or fruit juice as a trade brand, label, or designation of a product not composed of the fruit or fruit juice indicated unless the said words designating the product be immediately preceded by the word "Imitation" and followed by the words "Artificially Colored", all printed in type as conspicuous as that in which the other words designating the product are printed.

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(2) Using in connection with the sale in interstate commerce of any beverage flavor, any or either of the aforementioned words or any other word, or letter or pictorial illustration signifying a fruit or fruit juice as a trade brand, label, or designation of a product not composed of the fruit or fruit juice indicated, unless the said word designating the product be immediately preceded by the word "Imitation" and followed by the word "Flavor" and by the words "Artificially Colored", all printed in type as conspicuous as that in which the other words designating the product are printed.

It is further ordered, That the respondent, Sethness Co., shall, within 60 days from service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order herein set forth by the Commission.

Complaint

IN THE MATTER OF

MORRIS MASSING, TRADING UNDER THE NAME AND
STYLE OF COLUMBIA PANTS MANUFACTURING COM-
PANY

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

Docket 1590. Complaint, Mar. 29, 1929—Decision, June 29, 1929

Where an individual engaged in the sale of men's and boys' pants and shirts, and neither making the same, nor owning, interested in, controlling, or operating any plant so doing, but having the same made by independent contractors,

- (a) Falsely represented himself or his business as manufacturer and maker of said products, through use of a trade name including the word "manufacturing," and the placing thereof on his letterheads, envelopes, invoices, and other printed matter, together with such legends as "Manufacturers of Southern Brand Men's and Boys' Pants" and "Makers of Southern Brand Pants for Men and Young Men"; and
- (b) Labeled, ticketed, or tagged the aforesaid articles so dealt in by him, "Union Made," notwithstanding the fact that neither he, nor said contractors, were employers of union labor;

With the capacity and tendency to mislead and deceive retailers and consumers into believing said products to have been made by him, and a substantial portion of the purchasing public into believing the same to have been made in mills or elsewhere by such labor and to induce the purchase thereof as and for garments bought directly from the manufacturer thereof and/or made by union labor and as such preferred by that substantial proportion of the purchasing public affiliated therewith, and thereby to divert trade from manufacturing competitors in fact employing union workmen in the making of the garments concerned and truthfully advertising and describing the same:

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

Mr. James M. Brinson for the Commission.

Mr. Erwin I. Feldman, of Baltimore, Md., 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, engaged at Baltimore in the sale of men's and boys' pants and shirts to purchasers in other States, and neither employing any union labor in connection with said articles, nor owning, controlling, nor operating any mill, factory, or plant making the same, but purchasing said products from independent contractors