

Complaint

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IN THE MATTER OF
N. SHURE 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 1478. Complaint, Oct. 1, 1927—Decision, July 5, 1929

Where a corporation engaged in the sale of various articles of general merchandise at wholesale, by mail order to retail dealers in various States, labeled soft-drink powders and liquid flavors containing no more than a negligible amount of fruit juices and consisting principally of tartaric acid as a base and artificially colored and flavored, "Orangeade Powder," "Grape Powder", and "Lemon Powder", and "Grape", "Cherry", "Raspberry" and "Loganberry", respectively, and in its advertisements of its aforesaid powders and flavors set forth pictorial representations of the containers so labeled, together with the words "Orangeade", "Grape", "Lemon", and the other names of the fruits suggested or indicated, as above set forth, and the statement that the powders were "artificial products composed of a citrous base, flavored with true Italian flavors, and artificially colored" and that "a delicious drink suggesting the rich fruit flavor of the true fruit itself is obtained by using Superior Powders", thereby falsely implying that the aforesaid products were derived from the fruits or juices of the fruits so designated and represented; with the capacity and tendency to mislead and deceive the public into believing the same to be so derived and to induce the purchase thereof in such belief and with the result of thereby supplying to and passing into the hands of others the means of deceiving the purchasing public as above set forth and of diverting business from and otherwise injuring and prejudicing competitors' manufacturing, selling, and transporting pure fruit juices or extracts thereof for the compounding of beverages, and beverages already compounded, truthfully labeled and advertised by them:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. William A. Sweet 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, an Illinois corporation engaged at Chicago in the sale by mail, at wholesale, of various articles of general merchandise to retailers located in various States throughout the United States, including certain soft drink powders and liquid flavors for making beverages, with 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, labels the containers of its said powders and liquids, containing none of the fruit or fruit juices indicated, respectively, "Orangeade", "Grape" and "Lemon", and "Raspberry", "Grape", "Cherry" and "Loganberry", and advertises its aforesaid powders and flavors, thus labeled, in its catalogues distributed to its customers and prospective customers in various States, together with descriptive matter including, among other things, the representation "superior soft drinks", and "superior liquid flavors in bottles" for the powders and liquids, respectively, and pictorial representations of the containers of said powders and flavors, labeled as above set forth.

The use by respondent, as charged, "of the words 'Orangeade', 'Grape', and 'Lemon' in the labels upon the containers of its said powders, and the words 'Raspberry', 'Grape', 'Cherry', and 'Loganberry' in the labels upon the containers of its said liquid flavors, and of the pictorial representations of the containers, including the labels, of said powders and liquid flavors in its said catalogues has the capacity and tendency to and does mislead purchasers of said powders and liquid flavors into the belief that said powders and liquid flavors are composed in whole or in part of the fruit or juice of the fruit, so represented, and to induce such purchasers to purchase the same in that belief", and by reason of the resale by respondent's wholesale dealer customers of said powders and flavors to retail dealers, by whom said products and the beverages made therefrom are offered and sold to the purchasing public, results in respondents thereby supplying to and placing in "the hands of others the means of deceiving purchasers of said powders, liquid flavors, and the beverages made therefrom, into the belief that the same are made from or contain, in whole or in part, the fruit or juice of the fruit as represented", and respondent's said acts and practices, as charged, tend to and do divert business from and otherwise injure and prejudice competitors, among whom there are concerns and individuals engaged in the manufacture, sale, and transportation, in commerce, of "pure fruit juices, or extracts thereof, to be used for the compounding of beverages, and beverages already compounded, who truthfully mark their products", all to the prejudice of the public and of respondent's competitors.

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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 a complaint upon the respondent, N. Shure Co., charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the said act.

Hearings were held 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. A brief was filed by counsel for the Commission. The time within which the brief on behalf of respondent was required to be filed under the Commission's rules and practice expired on May 8, 1929, 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 the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation organized and existing by virtue of the laws of the State of Illinois with its principal office and place of business in the city of Chicago in said State. It has been and is now engaged in the wholesale mail order business selling various articles of general merchandise at wholesale to retail dealers therein located in various States throughout the United States. It causes its said merchandise when so sold to be transported from its said place of business in the city of Chicago into and through various States of the United States other than the State of Illinois to the purchasers thereof located in the said States. The respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and transportation of articles of general merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof the respondent has been and is now soliciting the sale, selling, and transporting in commerce of certain soft drink powders and liquid flavors designed and intended to be converted into beverages by the addition of water. During the times referred to in the complaint herein and until the summer of the year 1928 re-

spondent caused to be affixed to the containers of said soft drink powders labels bearing the words "Orangeade Powder", "Grape Powder", and "Lemon Powder", respectively, and with said labels bearing said names and designations so affixed sold and transported said soft drink powders in commerce as aforesaid to its retail dealer customers who in turn sold the same with said labels so affixed and the beverages made therefrom to the public. During the times herein mentioned respondent caused to be affixed to the containers of said liquid flavors labels bearing the words "Grape", "Cherry", "Raspberry", and "Loganberry", respectively, and with said labels bearing said names and said designations so affixed sold and transported said products as aforesaid to its retail dealer customers who in turn sold the same, with said labels as affixed, and the beverages made therefrom to the public.

In soliciting the sale of and in selling its said soft drink powders and liquid flavors respondent during the times herein mentioned caused to be inserted in catalogues issued and distributed by it to its customers and prospective customers located in various States of the United States advertisements describing said soft drink powders and liquid flavors and depicting the containers thereof. Said advertising matter describing said powders contained pictorial representations of the containers of said powders, including the labels bearing the words "Orangeade Powder", "Grape Powder", and "Lemon Powder", respectively, and directly underneath said pictorial representations the words "Orangeade", "Grape", and "Lemon", respectively. Said advertising matter describing said liquid flavors contained pictorial representations of the containers of said liquid flavors, including the labels thereon bearing the words "Grape", "Cherry", "Raspberry", and "Loganberry", respectively, directly underneath the pictorial representations of the respective containers of said liquid flavors. Said advertising matter also contained and still contains the following statement:

Superior Soft Drink Powders, artificial products composed of a citrous base, flavored with true Italian flavors, and artificially colored. A delicious drink suggesting the rich fruit flavor of the true fruit itself is obtained by using Superior Powders.

Subsequent to the latter part of the year 1928 the labels placed or caused to be placed upon the containers of the soft drink powders and liquid flavors sold in commerce by respondent have borne the word "imitation" immediately preceding the names of the fruits represented, and the names of the fruits so represented have been

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followed by words describing said powders as an artificial product composed of a citrous base flavored with high-grade flavor and artificially colored, and describing the liquid flavor as an artificial product composed of a citrous base flavored with true and artificial flavor and artificially colored.

The advertisements describing said soft-drink powders and liquid flavors in catalogues issued and distributed by respondent subsequent to the year 1927 have contained the word "artificial" immediately preceding the several names of the fruits represented in connection with the said names which appear immediately below the pictorial representations of the several containers of the same.

PAR. 3. The soft drink powders and liquid flavors labeled and described as set forth in paragraph 2 hereof are not made from the fruit or juice of the fruit so represented and do not contain more than a negligible amount thereof, but consist principally of tartaric acid as a base, and artificially colored and flavored.

PAR. 4. The labels and advertising matter used by respondent in connection with the sale of its soft drink powders and liquid flavors carried the false implication that the products so labeled and advertised were derived from the fruits or the juices of the fruits so designated and represented when such is not the fact, and had the capacity and tendency to mislead and deceive the public into the belief that said products were so derived and to cause them to purchase the same in that belief; and the respondent thus supplies to and passes into the hands of others the means of deceiving the purchasing public into the belief that said powders and liquid flavors and the beverages derived therefrom are made from or contain in whole or in substantial part the fruits or juices of the fruits represented.

PAR. 5. There are among the competitors of the said respondent those who manufacture, sell, and transport in commerce pure fruit juices or extracts thereof to be used for the compounding of beverages and beverages already compounded who truthfully label and advertise their products and respondent's acts and practices as hereinbefore set forth tend to and do divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The practices of the 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 the complaint of the Commission, the testimony in support of the complaint and in opposition thereto, and the brief of counsel for the Commission, respondent having failed to file a brief, and the Commission having made its findings as to the 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, N. Shure Co., its officers, agents, representatives, employees, and successors, do cease and desist from:

(1) Using in connection with the sale in interstate commerce of any beverage powder the words "Orangeade", "Grape", "Lemon", "Raspberry", "Cherry", or "Loganberry", or either of them, 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.

(2) Using, in connection with the sale in interstate commerce of any beverage flavor, the word "Grape", "Cherry", "Raspberry", or "Loganberry", or either of them, 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 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 respondent, N. Shure Co., pursuant to the provisions of Rule XVI of the Commission's Rules of Practice, shall within 60 days after the service upon it of a copy of the order to cease and desist 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.

Complaint

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IN THE MATTER OF
GRAHAM GRISWOLD, DOING BUSINESS AS THE
GRISWOLD LUMBER CO.

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

Docket 1606. Complaint, Apr. 23, 1929—Decision, Sept. 23, 1929

Where an individual engaged in the wholesale lumber business,

- (a) Delivered to customers lumber caused by him to be scant sawn, in fulfillment of orders for rough lumber to be cut and milled to specified larger sizes and dimensions; and
- (b) Charged said customers the considerably higher amounts which would in fact have accrued and been properly payable for freight had said individual caused such lumber to be cut, milled, and delivered as ordered by said customers;

With the result that ability of competitors who filled orders with specified sizes and dimensions and collected only the true and actual freight charges for the transportation thereof, to compete with said individual and secure and hold customers for rough lumber in the various States was impaired and dangerously hampered, and trade tended to be and was unfairly diverted therefrom, wholesalers and retailers were misled into buying and accepting rough lumber of smaller sizes and dimensions than ordered, and buildings, bridges, and other structures were constructed of timbers and lumber of less strength than intended and required by specifications of dealers and architects; to the injury and prejudice of said competitors and of the public:

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

Mr. Ellis DeBruler for the Commission.

Mr. James W. Crawford, of Portland, Oreg., 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 operation of a wholesale business at Portland, Oreg., with making and collecting full measure charges for short measure shipments, 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 sales agent for certain corporations engaged in lumber milling, and, in some cases affiliated with him, for three years last past (1) caused orders received by him for rough lumber, for milling to certain sizes and dimensions, to be milled scant sawn, i. e., at smaller dimensions than specified by the customers, and to be transported thereto as conforming to specified