

IN THE MATTER OF
CHERRY BLOSSOMS MANUFACTURING 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 1542. Complaint, Dec. 3, 1928—Decision, Dec. 16, 1929

Where a corporation engaged in the manufacture of an artificially colored and flavored concentrate and in the sale thereof to bottlers, by whom the beverage made therefrom, containing neither product of the cherry nor cherry blossom, though with the taste and appearance of such a beverage, was sold to retailers.

- (a) Sold said concentrate and beverage under the name "Cherry Blossoms";
- (b) Advertised said beverage as "Cherry Blossoms" in trade journals and supplied to purchasers advertising matter for distribution by them throughout the United States, and, for display at soda fountains and soft drink stands particularly, blotters, placards, fans, and metallic signs featuring said name, together with representations of cherry blossoms, and such statements as "When you call for CHERRY BLOSSOMS you are asking to be served the Cherry that 1,200 bottlers * * * have passed upon as being the best cherry the market affords"; and
- (c) Featured said name in the labels supplied to bottler purchasers, and depicted cherry blossoms thereon, together with the words, in relatively inconspicuous fashion, "Artificial Color and Flavor," and furnished to bottle crown manufacturers names of customers, for sale thereto of bottle crowns bearing the words "Cherry Blossoms," in large type, together with the words, in smaller type, "Artificial Color and Flavor";

With the capacity and tendency to deceive and mislead the purchasing public into believing said beverage to be made from the product of the cherry or the blossom thereof and with the effect of stifling and suppressing competition in the sale of truthfully marked concentrates and beverages, whether in fact so made, either in whole or in part, or from other fruits, or not so made, but artificially colored and flavored, and of diverting trade from the aforesaid classes of concentrates and beverages:

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

Mr. Edward L. Smith for the Commission.

Mr. Frank Y. Gladney, of St. Louis, Mo., for respondent.

SYNOPSIS OF COMPLAINT¹

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Iowa corporation engaged in the manufacture of an artificially colored and flavored concentrate containing no product

¹ Amended.

of the cherry or cherry blossom, and in the sale thereof in gallon bottles and 75-gallon kegs to bottlers for use by them in the manufacture of a beverage with the taste and appearance of one made from the product of the cherry, and with place of business in St. Louis, with naming product misleadingly, using misleading corporate name, 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 the sale of its said concentrate under the name "Cherry Blossoms," advertises the beverage made therefrom, in trade journals, under the aforesaid name, affixes to the containers of its concentrate labels conspicuously designating said beverage as "Cherry Blossoms," together with the words, in smaller type "Imitation Cherry Concentrate" and in still smaller type "Artificial Color and Flavor,"^a furnishes bottler purchasers of its concentrate labels for affixing by them to the bottles of the beverage made from the concentrate, featuring the word "Cherry Blossoms," together with the words, in relatively inconspicuous type and fashion, "Artificial Color and Flavor" and/or "Imitation Cherry Soda,"^a furnishes to manufacturers of bottle crowns names of its customers who purchase from said manufacturers and affix upon their bottles crowns designating the contents of the bottles as "CHERRY BLOSSOMS," with the words, in smaller type, "Artificial Color and Flavor," said crowns as a rule constituting the only marking on the bottles of the beverage sold to the consumer, due to failure of the far greater proportion of the bottles sold to retailers to contain any of the aforesaid labels,

^a Said label is described in the complaint as follows:

This label is approximately 5½" x 6" and contains in large type in a conspicuous red block the words "CHERRY BLOSSOMS"; and underneath the said block in smaller type are the words "Imitation Cherry Concentrate"; while underneath the said last quoted phrase and in still smaller type are the words "Artificial Color & Flavor," directions for manufacturing and the name and address of the company following.

^a Said various labels, as described in the complaint, are also described in the findings (see par. 8, p. 128) with the exception of one of said labels, described in the complaint as follows:

A 2½" equilateral parallelogram with a general background in blue with a representation in pink coloring of cherry blossoms and with a large red block in which appear in white type the words—

IMITATION
CHERRY
BLOSSOMS
SODA

while underneath in the general blue background appear in white type the following:

Bottled Under Authority of the
Cherry Blossoms Mfg. Co. Newton, Iowa, U. S. A.

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and furnishes to purchasers advertising matter for distribution generally throughout the United States and for particular display at soda-water fountains, soft-drink stands, and the like, through which the beverage called "Cherry Blossoms" by respondent, by its bottlers and by its retailers, reaches the consuming public, said advertising matter consisting of blotters, soda-fountain placards, fans and metallic signs featuring the name "Cherry Blossoms," together with representations of a Cherry Blossom and such statements as "When you call for CHERRY BLOSSOMS you are asking to be served the Cherry that 1200 bottlers * * * have passed upon as being the best cherry the market affords."⁴

The use by respondent of the name CHERRY BLOSSOMS for its product and the beverage made therefrom and its advertising of said product and beverage "have the capacity and the tendency to deceive and mislead the purchasing public into the belief that such beverage manufactured from the concentrate sold by respondent to its bottlers and resold by them to the retailers is a beverage made from the product of cherry or from the blossom of the cherry," and its use of the name "CHERRY BLOSSOMS" for its product, its advertising matter showing "CHERRY BLOSSOMS," as the name of the drink made from the concentrate sold by it to its bottlers, and its corporate name, Cherry Blossoms Manufacturing Co., each used independently, or in connection or conjunction with the other or others, as more particularly described herein, are calculated to and have the effect of stifling and suppressing competition in the sale of concentrates and beverages made in whole or in part from the product of the cherry or from other fruits and of diverting trade from truthfully marked concentrates and beverages made in whole or in part from the product of cherry, or of other fruits and truthfully marked; and are also calculated to and have the effect of stifling and suppressing competition in the sale of concentrates and beverages not made from the product of any fruit but artificially colored and artificially flavored and truthfully marked, and of diverting trade from truthfully marked concentrates and beverages made not from any fruit but artificially flavored and colored; all to the prejudice of the public and of respondent's competitors, of whom there are considerable numbers engaged in the manufacture and sale of such concentrates and beverages as above described and truthfully marked and advertised, and said acts and practices, as charged, constitute unfair methods of competition in commerce within the intent and meaning of section 5.

⁴ Said various blotters, etc., as described in the complaint are also similarly described in the findings. (See par. 5, p. 129.)

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 define the powers and duties, and for other purposes," the Federal Trade Commission issued and served its amended complaint upon the respondent, Cherry Blossoms Manufacturing 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.

Thereupon the respondent entered its appearance and filed its answer to the said amended complaint, and a hearing was held before an examiner duly appointed and testimony, documentary evidence and exhibits were offered and received and duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for hearing before the Federal Trade Commission on such complaint and answer, and on the testimony, evidence and exhibits on file, and on the brief of counsel for the Commission (the respondent having waived the filing of the brief and the right to oral argument) and the Federal Trade Commission, having duly considered the same and being fully advised in the premises, now makes this its report and states its findings as to the facts, and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cherry Blossoms Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business in Newton in said State, and with a place of business in St. Louis, Mo. It is engaged in the manufacture of a concentrate, artificially colored and artificially flavored, which it calls "Cherry Blossoms." This concentrate is not made from any product of cherry, nor from cherry blossoms. Respondent sells such concentrate in gallon bottles and 25-gallon kegs to various individuals, partnerships, and corporations located at points throughout the various States of the United States and ships such concentrate, when sold, from its factories in Missouri and in Iowa to the purchasers thereof located in various other States of the United States. The said purchasers are bottlers, who, from such concentrate purchased by them from respondent, manufacture the beverage called "Cherry Blossoms" by respondent, by such bottlers and by retailers to whom such bottlers sell in bottles usually of about 6 fluid ounces content the beverage manufactured by them from such concentrate. This beverage is not made from any product of cherry,

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nor from cherry blossoms, although it has the taste and appearance of a beverage made from the product of the cherry.

In the course and conduct of its business respondent is in competition with other corporations and with individuals, and partnerships engaged in the manufacture of concentrates, and in the sale of such concentrates to bottlers in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business described in paragraph 1 hereof, respondent, Cherry Blossoms Manufacturing Co., has caused advertisements to be published in trade journals, advertising as "Cherry Blossoms" the beverage made from the concentrate manufactured by it. (Com. Ex. 1.)

PAR. 3. Respondent furnishes to the purchasers of said concentrate, labels which the said purchasers in selling the said beverage to retailers may affix to the bottles of the beverage. Said labels designate the beverage as "Cherry Blossoms," and are as follows:

1. An octagonal label (Com. Ex. 3) with the representation on three sides of cherry blossoms in pink coloring on a blue background and with the words "Cherry Blossoms" in large white type on a red background. Under this in much smaller type are the following:

(a) In small black type on the red background, the words "Trade Mark Registered";

(b) In white type on the red background, which type is smaller than the type of "Cherry Blossoms," the words "Carbonated Beverage";

(c) In blue type on a white and red striped background, which type is much smaller than the words "Cherry Blossoms," the words "Artificial Color and Flavor";

(d) In black type on the red background the words, "Contents 6½ Fluid Oz.";

(e) In white type on a blue background the words, "Bottled Under Authority of the Cherry Blossoms Mfg. Co. St. Louis, Mo., U. S. A."

2. A 2½-inch equilateral parallelogram (Com. Ex. 4) with a representation of cherry blossoms in pink coloring as its border and with the words "Cherry Blossoms" in large white type on a red block or background in which red block appear in small black type the words, "Min. Contents 6 Fl. Oz.," and with the words in small black type in the said red block—"Reg. U. S. Pat. Off." In much smaller type than the words "Cherry Blossoms," appearing in the said red block appear on the said label in white on a blue background the words, "Artificial Color and Flavor," while below the said red block appear in type smaller than the type of "Cherry Blossoms" these words—"Carbonated Beverage Bottled Under Authority of the Cherry Blossoms Mfg. Co. St. Louis, Mo., U. S. A."

These labels described in subparagraphs 1 and 2 of paragraph 3 hereof are used more than are those hereinafter described in subparagraph 3 of paragraph 3 hereof.

3. A 2½-inch equilateral parallelogram (Com. Ex. 5) on a general background of blue, containing as its most prominent words in large white type on a red background, "Cherry Blossoms" and with a representation of cherry blossoms in pink coloring on the general blue background. Above the said words "Cherry Blossoms" in said red background in white type, but in smaller type, on a general blue background is the following:

Artificial Color
Min. Contents 6 Fl. Oz.
Imitation
Cherry Soda

Underneath the said words "Cherry Blossoms" in said red background appear in smaller type than "Cherry Blossoms" the following:

A Carbonated Beverage
Bottled Under Authority of the
Cherry Blossoms Mfg. Co., St. Louis, Mo., U. S. A.

These labels described in subparagraph 3 of paragraph 3 hereto are furnished by respondent only to its purchasers who manufacture its beverage for sale in the State of New York or in the State of California.

PAR. 4. Respondent furnishes to manufacturers of bottle crowns the names of its customers, which said customers purchase from said bottle crown manufacturers and affix upon the bottles containing the beverage made from the said concentrate, bottle crowns (Com. Ex. 7) designating the contents of the bottles as "Cherry Blossoms." These bottle crowns contain the words "Cherry Blossoms" in large type, while in smaller type appear the words "Artificial Color and Flavor." These crowns are, as a rule, the only marking on bottles of the beverage sold to the ultimate consumer, because a far greater proportion of the bottles of the beverage sold by the bottlers to the retailers do not contain any of the labels described in subparagraphs 1, 2, and 3 of paragraph 3 hereof.

The beverage called by respondent, by its bottlers and by its retailers, "Cherry Blossoms," reaches the consuming public through soda-water fountains, soft-drink stands and the like.

PAR. 5. Respondent furnishes to its purchasers advertising matter, which is distributed generally throughout the United States and particularly displayed at soda-water fountains and soft-drink stands. Some of this advertising matter is as follows:

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(a) Blotters containing the statement—"Ask for Cherry Blossoms; A Blooming Good Drink," and containing a representation of a bottle of the beverage with the label "Cherry Blossoms" appearing thereon and containing a representation of a glass of the beverage. (Com. Ex. 8)

(b) A soda-fountain placard containing, among other things, the following: (1) "Thirsty? Join Me"; (2) Underneath a representation of a bottle of the beverage, the words, "In Bottles Only"; (3) a representation of cherry blossoms; and (4) the words "A Blooming Good Drink" and "Cherry Blossoms." (Com. Ex. 9)

(c) Fans (Com. Ex. 10) for distribution by retailers of the beverage, on the back of which appears the following:

When you call for Cherry Blossoms you are asking to be served the Cherry that 1,200 bottlers of carbonated beverages have passed upon as being the best cherry the market affords.

Cherry Blossoms is manufactured under a special process of blending and mellowing, perfected by our firm eight years ago. To doubly insure this quality for you this bottling and all distribution is handled by bottlers under exclusive franchise.

The first time you find yourself tired and thirsty, try this "Blooming Good Drink," or better still, order a case for the home, where all may enjoy this deliciousness.

(d) A placard constructed to fit over bottle necks, which placard contains (1) the words "Cherry Blossoms"; (2) a representation of cherry blossoms; (3) the statements, "In Bottles Only" and "A Blooming Good Drink." (Com. Ex. 13)

(e) A placard for use on soda fountains, containing in large type the words "Cherry Blossoms" and representations of cherry blossoms, as well as the statement, "A blooming Good Drink." (Com. Ex. 16)

(f) Metallic signs for use at soda fountains, one of which reads as follows:

Simply Great
Cherry
Blossoms
Makes You Glad You're Thirsty
(Com. Ex. 14)

and another which contains on its left a bottle of the beverage called by respondent "Cherry Blossoms" and on the right a glass of the beverage and in the center the following:

Ice Cold
Cherry
Blossoms
Sold Here
A Blooming Good Drink
(Com. Ex. 15)

PAR. 6. The use by respondent as set out in paragraph 1, subparagraphs 1 and 2 of paragraph 3 and in paragraph 4 hereof, of the name "Cherry Blossoms" for its product and for the beverage made therefrom and its aforesaid advertising as set out in paragraphs 2 and 5 hereof, of said product and the beverage made therefrom have the capacity and tendency to deceive and mislead the purchasing public into the belief that such beverage manufactured from the concentrate sold by respondent to its bottlers and resold by them to the retailers is a beverage made from the product of the cherry or from the blossom of the cherry.

PAR. 7. There is a considerable number of competitors of respondent who are engaged in the manufacture and sale in commerce between the various States of the United States of concentrates and beverages not composed in whole or in part of cherry or of other fruits but artificially colored and flavored, which are sold in competition with the product of respondent and which are truthfully marked and advertised; and there is a considerable number of competitors of respondent who are engaged in the manufacture and sale in commerce between various States of the United States of concentrates and beverages composed in whole or in part of cherry or of other fruits, which said products are sold in competition with the product of respondent and are truthfully marked and advertised.

PAR. 8. Respondent's use of the name "Cherry Blossoms" for its product as set out in paragraph 1, subparagraphs 1 and 2 of paragraph 3 and in paragraph 4 hereof, and its aforesaid advertising matter as set out in paragraphs 2 and 5 hereof, showing "Cherry Blossoms" as the name of the drink made from the concentrate sold by it to its bottlers, each used independently, or in connection or conjunction with the other, as more particularly described herein, are calculated to and have the effect of stifling and suppressing competition in the sale of concentrates and beverages made in whole or in part from the product of the cherry or from other fruits and of diverting trade from truthfully marked concentrates and beverages made in whole or in part from the product of cherry, or of other fruits and truthfully marked; and respondent's use of the name "Cherry Blossoms" for its product as set out in paragraph 1, subparagraphs 1 and 2 of paragraph 3 and in paragraph 4 hereof, and its aforesaid advertising matter as set out in paragraphs 2 and 5 hereof, showing "Cherry Blossoms" as the name of the drink made from the concentrate sold by it to its bottlers, each used independently or in connection or conjunction with the other as more particularly described herein, are calculated to and have the effect of stifling and suppressing competition in the sale of concentrates and

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beverages not made from the product of any fruit but artificially colored and artificially flavored and truthfully marked, and of diverting trade from truthfully marked concentrates and beverages made not from any fruit but artificially flavored and colored

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 amended complaint of the Commission, the answer of the respondent, and testimony and evidence submitted, and the Commission having made its findings as to the facts and entered its conclusion that the respondent has violated section 5 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,"

It is now ordered, that respondent, Cherry Blossoms Manufacturing Co., its representatives, agents, servants, employees, and successors forthwith cease and desist from:

(1) Using the words "Cherry Blossoms" or the word "Cherry" as a trade name, brand, label, or designation of a beverage or beverage concentrate sold or offered for sale in interstate commerce and not composed of the fruit or juice of the cherry nor composed of cherry blossoms, unless the said words "Cherry Blossoms" or the said word "Cherry" be immediately preceded by the word "Imitation" printed in type as conspicuous as that in which the said words "Cherry Blossoms" or the said word "Cherry" are printed, and unless the words "Artificially Colored" or "Artificial Color" appear conspicuously in said trade name, brand, label, or designation.

(2) Advertising as "Cherry Blossoms" or "Cherry" in magazines, trade publications and particularly in the form and substance described in paragraph 2 of the findings as to the facts hereunto annexed, and in every other form, its beverage and beverage concentrate not composed of the fruit or the juice of the cherry nor

composed of cherry blossoms, unless the said words "Cherry Blossoms" or the said word "Cherry" be immediately preceded by the word "Imitation," printed in type as conspicuous as that in which the said words "Cherry Blossoms" or the said word "Cherry" are printed and unless the words "Artificially Colored" or "Artificial Color" appear conspicuously in said advertisements.

(3) Furnishing or causing to be furnished to purchasers in interstate commerce of its beverage or beverage concentrate not composed of the fruit or juice of the cherry or composed of cherry blossoms, and/or to retailers of the beverage made from such product, bottle caps, bottle crowns, advertising matter and/or labels designating as "Cherry Blossoms" or as "Cherry" such beverage, unless the said words "Cherry Blossoms" or the said word "Cherry" be immediately preceded on such labels, bottle caps, bottle crowns, and advertising matter, by the word "Imitation" printed in type as conspicuous as that in which the said words "Cherry" or "Cherry Blossoms" are printed, and unless the words "Artificially Colored" or "Artificial Color" appear conspicuously on the said bottle caps, bottle crowns, advertising matter and/or labels.

(4) Using in connection with the sale in interstate commerce of its beverage or beverage concentrate not composed of the fruit or juice of the cherry nor composed of cherry blossoms the labels described in paragraph 2 and subparagraphs 1 and 2 of paragraph 3 of the findings as to the facts hereunto annexed.

(5) Furnishing or causing to be furnished to its purchasers in interstate commerce of its beverage or beverage concentrate not composed of the fruit or juice of the cherry nor composed of cherry blossoms, the bottle caps and bottle crowns such as are described in paragraph 4 of said findings as to the facts hereunto annexed.

(6) Furnishing or causing to be furnished to its purchasers in interstate commerce of its beverage or beverage concentrate not composed of the fruit or juice of the cherry nor composed of cherry blossoms, any of the advertising matter described in paragraph 5 of the said findings as to the facts hereunto annexed.

It is further ordered, That the respondent, Cherry Blossoms Manufacturing 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 by the Commission herein set forth.

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IN THE MATTER OF

JOSEPH P. SEREDA, TRADING UNDER THE NAME AND
STYLE OF HEALTH VIOLET PRODUCTSCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 1695. Complaint, Sept. 20, 1929—Decision, Dec. 16, 1929*

Where an individual engaged in the sale to the public of a so-called violet-ray machine or instrument, in his advertisements thereof in newspapers, magazines, pamphlets, and other publications circulated generally throughout the different States and in circulars and other literature sent to prospective purchasers,

- (a) Represented that he was offering the same at a reduced and special price of \$15, thereby saving the purchaser \$20 from the usual price, the fact being that he had never sold or attempted to sell said instrument at any price greater than \$15; with the result that persons were induced to buy the same in the belief that they were obtaining the machine at a reduced and special price;
 - (b) Represented that said instrument would quickly cure pain and disease, that thousands suffering from chronic or acute diseases should receive immediate relief "from this wonderful healing method," and that "violet-ray should heal all other diseases and give relief almost instantly" and that "84 different diseases have been treated and healed with violet-ray," the facts being that said individual had made no test or experiments to determine the curative or healing value of said instrument, nor had such tests or experiments made, knew nothing about the curative value thereof or the rays therefrom, and utilized, for the list of diseases specified, a list in a circular which had come into his possession, and that the violet color made by the instrument, when plugged into a house current, furnished merely a mild superficial stimulation to the part of the body to which applied, such as obtained by application of turpentine or ointment containing red pepper, that neither said machine, nor the rays therefrom, had any curative effect or value whatsoever, and that such rays were in no way similar to ultra-violet rays, or to machines or instruments producing them; with the result that persons bought said instrument in the belief that it would cure and heal many diseases:
- Held*, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Baldwin B. Bane 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 so-called violet-ray machines and equipment to purchasers in other States