

IN THE MATTER OF

DIXIE PECAN GROWERS EXCHANGE, INC.

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

Docket 1548. Complaint, Nov. 8, 1928—Decision, Feb. 15, 1930

Where a corporation engaged as an ordinary commercial enterprise in the purchase of pecans from the growers and in the sale thereof direct to consumers and to wholesale and retail dealers, and, excepting a negligible quantity, neither growing nor producing said nuts directly nor through officers or stockholders but purchasing same from independent growers in due course of trade and commerce, and conducting its said business in competition with (1) those similarly engaged, without using the words "grower" or "exchange" as a part of their trade names, or any other words or pictorial arrangements importing that they were growers or cooperative associations thereof, and (2) cooperative grower associations engaged under State law in the sale of pecan nuts to wholesalers and jobbers and through the mails, under trade names including the aforesaid words, known to the industry and a substantial part of the consuming public as meaning such organizations;

- (a) Used the words "growers' exchange" as a part of its corporate name and displayed the same on letters, and, in connection with advertising conducted by it at large expense, on circulars, advertising matter, and other literature soliciting sale of its said pecans, and upon the bag containers in which it shipped the same; and
- (b) Used and displayed such slogans in its trade literature, blotters, and other advertising matter as "direct from the groves", and/or "direct from the growers", together, in some cases, with a panoramic view of a large pecan orchard;

With the tendency and capacity to deceive the purchasing public by inducing purchase of nuts from it as and from a cooperative association of pecan growers, selling the same at prices below those at which comparable products would sell to the public after passing through usual course of trade from grower to wholesaler to retailer to public, and saving the public the wholesaler's and retailer's profits, and to injure growers selling direct to the public and dealers reselling to the public nuts purchased from growers:

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. E. J. Hornibrook for the Commission.

Watkins, Asbill & Watkins, of Atlanta, Ga., 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

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respondent, a Georgia corporation engaged in the sale of pecans purchased by it through personal calls and mail order solicitation from growers in the various States, and with principal place of business at Barnesville, Ga., and neither itself a grower of pecans nor with stockholder growers, with using misleading corporate name and advertising falsely or misleadingly as to business status or advantages, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, engaged as above set forth, employs, as charged, the words "growers' exchange" as a part of its corporate name, in order to take advantage of the widespread belief that growers through a so-called exchange are able to make the public better prices for a given quality and freshness of product than can competitors obliged to meet full jobbing costs and to sustain the delay believed by the public to be incidental to distribution through middlemen, and, for the said purpose, also uses in its advertising the slogans "Direct from the growers" and "Fresh from the groves" and adopts various other phraseology and means.

Said methods, as alleged, have a direct tendency to deceive the buying public into dealing with it as and for "an organization of actual growers possessing the advantages in distribution, cost, and in the freshness of the pecans offered by it", as above set forth, and thus to aid it in marketing its product in competition with others and particularly with legitimate growers' exchanges, and also have a direct tendency to lessen and destroy the confidence of growers and consumers of pecans in such exchanges and that of the general buying public in mail order transactions, to the detriment and prejudice of persons and corporations doing a legitimate mail order business and particularly of those doing such a business in pecans¹; all to the prejudice of the public and of respondent's competitors.

¹ Paragraph 2 of the complaint contains the following allegations relative to the foregoing:

PAR. 2. There are many organizations of growers of various horticultural products in the United States, including certain organizations of pecan growers, competitors of respondent, which use the term "exchange" or the term "growers' exchange" in their organization names, so that the use of said terms has come to signify, both to the consumers and to the producers of nuts and fruits, that an organization so using either of said terms as part of its name, is in truth and in fact composed of members who are actual growers, engaged cooperatively in the sale of their products without the intervention of jobbers. In the competitive sale and distribution of pecans, it is an advantage to cause the consuming public to believe that the seller offers his article after having eliminated jobber's profits and part of the jobbing costs and delay.

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 above named, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance and having filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and on behalf of the respondent before an examiner of the Federal Trade Commission, duly appointed.

Thereupon this proceeding came on for final hearing on the briefs submitted by counsel for the Commission and counsel for the respondent, and the Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Dixie Pecan Growers Exchange, Inc., is an ordinary commercial corporation, organized and incorporated under the laws of the State of Georgia in 1921. Its office and place of business is located in the city of Barnesville in said State. It is now and for more than five years last past has been engaged in the business of buying pecan nuts from the growers thereof and selling and shipping same to wholesale and retail dealers and to ultimate consumers residing throughout the several States of the United States.

Approximately one-half of respondent's sales of pecans are made direct to ultimate consumers. The balance is made to wholesale and retail dealers. Shipments of said pecans to said purchasers located throughout the different States of the United States are made pursuant to orders previously received. Said pecans are packed and shipped in bag containers upon which appear the words "Dixie Pecan Growers Exchange, Incorporated." Sales of said pecans are solicited by means of letters, circulars, advertising matter, and other literature, all of which bear respondent's said corporate name and usually said literature and advertising matter also bear the words "*Direct from the groves*" or "*Direct from the Grower.*" Respondent has spent approximately \$150,000 in advertising in soliciting the sale of its pecans, as aforesaid. Respondent has some

15,000 customers, ultimate consumers of pecans, whom it solicits and has solicited by means of letters and other literature upon which is printed respondent's corporate name and one or both of the above-mentioned slogans. It also caused to be mailed to its customers and prospective customers some 4,000 blotters upon which was printed the slogan "*Direct from the growers*," and on some of the literature sent to customers and prospective customers appeared a panoramic view of a large pecan orchard.

PAR. 2. The pecans offered for sale and sold by respondent, as set forth above, with the exception of a negligible amount, are purchased by respondent from independent growers of said nuts. The respondent owns or controls less than 5 acres of pecan trees capable of bearing nuts. These trees produce in a good season not to exceed 2,000 pounds. With the exception of this negligible quantity, neither the respondent or its officers or stockholders grew or produced the pecans sold by respondent, at the time of the taking of the testimony herein, or prior thereto, but the pecans sold by respondent were purchased from the growers thereof and resold by it in due course of trade and commerce among the several States of the United States.

PAR. 3 There are among the competitors of respondent in several States of the United States many individuals, copartnerships, corporations, and voluntary associations engaged in the business of buying and selling pecan nuts and shipping the same to their customers in other States, who do not use in such business the word "*Grower*" or the word "*Exchange*" as a part of their trade names, or any other words, phrases, slogans or pictorial arrangement importing or implying that they are growers of pecan nuts or that they are cooperative associations of growers of the same.

The statutes of many States of the United States provide for the organization of cooperative associations on a nonprofit sharing basis for the purpose of marketing horticultural and agricultural crops, and many farmers and growers who sell such crops outside of such States have organized such cooperative associations and market their crops as such cooperative associations, and these include several engaged in the selling of pecan nuts in interstate commerce, and include the National Pecan Growers Exchange of Albany, Georgia, organized eleven years ago, or about five years before the organization of respondent—which cooperative organization has a membership of 1,300 actual growers of pecans who reside in Georgia, Alabama, Florida, and Mississippi—and which includes the Southern Pecan Growers Cooperative Association of said Albany. Both of these sell to wholesalers and jobbers and the Southern also sells

Conclusion

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pecans through the mails. Their members are all growers. These cooperative associations are competitors of respondent.

There have been instances where respondent's use of the trade name "*Dixie Pecan Growers' Exchange, Incorporated*" has been confused with the tradename "National Pecan Growers' Exchange".

PAR. 4. There are some 762 cooperative associations composed of farmers located in the various States of the United States using the word "*Exchange*" as a part of their trade name. There are cooperative associations of nut growers located in several States of the United States, some of which use the term "*Exchange*" and the majority of which use the term "*Growers*" as a part of their trade names. In the pecan industry the words "*Growers Exchange*" has come to mean a cooperative association of pecan growers and such meaning is given to such term by a substantial part of the consuming public.

PAR. 5. The use by the respondent of the words "*Growers Exchange*" in the corporate name under which respondent carries on business and the use by it of the phrases "*Direct from the Groves*" and "*Direct from the Grower*" under the circumstances above set out have the tendency and capacity to deceive the purchasing public by inducing persons to purchase the pecan nuts from respondent upon the erroneous belief that respondent is a cooperative association of growers of pecan nuts and is selling pecan nuts at prices below those at which pecan nuts of like grade and quality would sell to the public after passing through the usual course of trade from the grower to the wholesaler, from the wholesaler to the retailer, from the retailer to the public, and that the public by dealing with the respondent saves in the purchase price a sum representing the profits of the wholesaler and retailer; that such practices had the capacity and tendency to injure growers of pecan nuts who did in fact sell their product direct to the public as well as dealers who purchase pecan nuts from the growers and who resell same to the public.

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 interstate 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 DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent thereto, the testimony, evidence, the brief of the Commission and the brief of respondent; and the Commission having made its findings as to the facts and 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 now ordered, That respondent, Dixie Pecan Growers Exchange, Inc., its officers, representatives, agents, and employees, in connection with the advertising, offering for sale, and sale of pecan nuts in interstate commerce cease and desist:

From using in advertising matter, circulars, correspondence stationery, or in any manner whatsoever the word "growers" as a part of its trade name or otherwise and the phrases or slogans "Direct from the groves" and "Direct from the growers", or any other words of like import or any statement, representations or pictorial arrangements importing or implying that pecan nuts sold by it come direct from the growers to purchaser or that respondent is a grower of pecan nuts, or that it is a cooperative or other association composed of pecan growers.

It is further ordered, That the respondent, Dixie Pecan Growers Exchange, Inc., shall within 60 days after the service upon it of a copy of this modified order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied therewith.

¹ As modified June 17, 1930.

IN THE MATTER OF

B. D. RITHOLZ, M. I. RITHOLZ, S. J. RITHOLZ, F. RITHOLZ,
ANTE RITHOLZ, COPARTNERS, DOING BUSINESS
UNDER THE TRADE NAME AND STYLE OF CLEAR
SIGHT SPECTACLE 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 1554. Complaint, Jan. 2, 1929—Decision, Feb. 15, 1930

Where a firm engaged in the manufacture of spectacles and in the sale thereof directly to the purchasing public, in advertising their said product in circulars and other advertising matter included such statements as "Special ten-day offer," "Get your spectacles free without cost," "Special big advertising offer—100 people—only one in a community to receive our wonderful spectacles free without cost," the facts being that the so-called special or free offer was not limited as to time or to a particular number of persons or to one person in a community and that the pretended opportunity to get said spectacles "Free" or "Free without cost" or "Free without a cent of cost," consisted, in effect, of an offer by said firm to pay the particular purchaser a commission for cash orders secured for two or more pairs from other customers:

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. Richard P. Whiteley for the Commission.

Mr. John A. Nash, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individuals, partners engaged in the manufacture of spectacles and in the sale and distribution thereof directly to the purchasing public, in various States, generally by mail, and with principal place of business in Chicago, with advertising falsely or misleadingly as to prices and free goods in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, engaged as above set forth, made such statements in letters or circulars sent to prospective purchasers in the various States as "We'll send you spectacles on trial and give you a chance to get yours *free without a cent of cost*," "To ward off the simply