

Complaint

IN THE MATTER OF
VAL BLATZ BREWING 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 1608. Complaint, Apr. 23, 1929—Decision, May 12, 1930

Where a corporation engaged in the manufacture and sale of a malt sirup flavored with domestic and imported Bohemian hops in the proportion of four to one,

- (a) Designated and advertised the same as " * * * Bohemian Malt Sirup Hop Flavored * * *" and so labeled the containers thereof; and
- (b) Made such statements in its advertisements thereof in newspapers and other publications as "Flavored with world-famous imported, genuine Saazer hops". " * * * Guaranteed by the Czechoslovak Government certificate attached to each bale of Saazer hops exported" (along with a purported facsimile thereof), together with pictures of a European peasant woman, sprinkling hops into a can thereof, and, in some cases, a prominent map of Czechoslovakia, and the words, "Flavored with a blend of Bohemian Saazer and domestic hops";

With tendency and capacity to mislead and deceive and with effect of misleading and deceiving purchasing public into believing said sirup to be flavored exclusively with such higher priced and highly reputed imported hops, and with tendency to divert business from and otherwise prejudice and injure competitors representing use of Bohemian or imported hops on their labels and in advertising matter, and competitors using exclusively domestic hops and making no such representation as above set forth:

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

Mr. Everett F. Haycraft for the Commission.

Richmond, Jackson, Wilkie & Toebeas, of Madison, Wis., 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, a Wisconsin corporation engaged in the manufacture and sale of malt sirup, and with principal place of business in Milwaukee, 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, engaged as above set forth, labels containers of its aforesaid product, neither manufactured in Bohemia

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nor from ingredients obtained in and imported therefrom, or Czechoslovakia (excepting a small proportion of hops used for flavoring), but made in the United States and principally from ingredients obtained therein (including American grown hops in substantial quantity), "Blatz Bohemian Malt Sirup Hop Flavored—Light", and makes such statements in advertising its aforesaid product in newspapers and other publications circulating among the various States and in circulars and other trade literature used by it in soliciting the sale thereof, as "Blatz Bohemian Malt Sirup Hop Flavored—Light", and, "If you want the world-famous flavor of genuine imported Saazer hops, ask for" followed by an illustration of a can labeled, as above set forth, together with, among other things, the statement "Blatz malt sirup, flavored with a blend of Bohemian Saazer and domestic hops", illustrations of a man with a bag of barley and a woman dressed in Bohemian or Czechoslovakian costume, and a pictorial representation of a certificate described as "Government certificate issued by Czechoslovakian Republic and attached to each bale of Saazer hops exported", and the phrase "Made from the world's choicest ingredients—Genuine Bohemian Saazer hops, and No. 1 barley from Minnesota and Wisconsin, America's foremost barley region"; and the statement, "It's the genuine. Flavored with Bohemian Saazer hops, guaranteed genuine by the Czechoslovakian Government certificate attached to each bale imported by Blatz," and supplied customers with advertising copy containing the aforesaid statements and illustrations and others.

According to the complaint the use by respondent, and by others, caused by it, of the word "Bohemian" and the aforesaid statement, illustrations and representations "have the tendency and capacity to mislead and deceive the trade and purchasing public into the belief that respondent's malt sirup is manufactured in and imported from Bohemia and is composed wholly or in substantial part of hops grown in and imported from Bohemia or Czechoslovakia"; with their superior flavor, greater desirability and better reputation amongst the trade and consuming public than hops grown in the United States, and to cause such trade and public to purchase and use respondent's malt sirup, relying upon that belief; to the injury and prejudice of the public and of respondent's competitors, of whom some are engaged in the manufacture and sale of malt sirup grown in and imported from Bohemia or Czechoslovakia and known as Saazer hops, and others are engaged in the manufacture and sale of malt sirup containing hops grown in the United States.

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" (38 Stat. 717), the Federal Trade Commission on April 23, 1929, issued and served a complaint, as required by law, upon Val Blatz Brewing Co., respondent above named, in which said complaint it is charged that respondent has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The said respondent having filed its answer herein, hearings were held and evidence was introduced on behalf of the Commission and of the respondent before an examiner of the Federal Trade Commission duly appointed. Thereupon this proceeding came on for a final hearing on the briefs and oral argument, the briefs having been filed on the part of the Commission and the respondent, and counsel for the Commission and the respondent having been heard on oral argument, 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. Respondent Val Blatz Brewing Co. is a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located in the city of Milwaukee in said State. Said respondent was organized in 1889 and for many years prior to 1919 operated a so-called shipping brewery, with fifty-two branch establishments, and engaged in the business of making and selling malt products including a beverage known as beer, having succeeded to the brewery business established by Val Blatz in 1851. During that period of time the name "Blatz" was largely advertised in distinctive script facsimile of its founder's signature, and said respondent's products were shipped throughout all of the several States of the United States and into foreign countries. Among the various types of beer thus manufactured, sold and distributed by the said respondent was one known as Bohemian, which was a beer of a distinctive brew originating in the country of Bohemia and originally flavored with Bohemian hops. Said respondent, since the year 1920, has been, and

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now is, making a hop-flavored malt sirup and packing said sirup in containers and labeling the same as follows:

Blatz Bohemian Malt Sirup

Hop Flavored

Made By

Val Blatz Brewing Co.,

Milwaukee, Wis.

and selling said sirup in said containers, thus labeled, to various individuals, partnerships, and corporations engaged in the distribution of such products, located in the several States of the United States other than the State of Wisconsin, and causing said product when so sold to be transported from respondent's factory in Milwaukee in said State to, into and through other States to the purchasers thereof.

PAR. 2. Said respondent in the course and conduct of its said business of manufacturing, selling, and distributing malt sirup as described in paragraph 1 hereof, prior to January 1, 1928, in soliciting the sale of, and in selling its said sirup, advertised it in newspapers and other publications having a circulation among the several States, under its said trade name Blatz Bohemian Malt Sirup, using the following statements to describe said malt sirup when it was hop flavored:

1. Flavored with the world-famous flavor of genuine, imported Saazer hops.
2. Flavored with world-famous imported, genuine Saazer hops.
3. Made from the world's choicest ingredients, genuine Bohemian Saazer hops and No. 1 barley.
4. It's the genuine, flavored with Bohemian Saazer hops. * * * Guaranteed by the Czechoslovak Government certificate attached to each bale of Saazer hops exported. (Said quotation was always accompanied by a facsimile of a certificate purported to have been issued by the Czechoslovakian Government.

In some of said advertising literature the following statement appeared in small type: "Flavored with a blend of Bohemian Saazer and domestic hops." Many of the advertisements issued by said respondent also displayed a picture of a woman in European peasant garb, sprinkling hops into a can of said sirup, and some of them featured a map of Czechoslovakia, thus carrying out the impression which had been created by the statements made in the advertisements to the effect that the hops used in flavoring said product were imported from Czechoslovakia.

Since January 1, 1928, said respondent has discontinued the foregoing described representations in its advertising matter but has continued the use of its said trade name featuring the word "Bo-

hemian" in large and distinctive type to describe its hop-flavored product on labels placed on containers, and in advertising matter.

PAR. 3. Hops grown in Bohemia or Czechoslovakia, and particularly in the district of Saaz, known as Saazer hops, have the reputation of being one of the best types of hops grown and command a higher price on the market than any other type of hops. Respondent, in the manufacture of its said Blatz Bohemian Malt Sirup, designated, labeled, advertised, and sold as aforesaid, has flavored and now flavors said sirup with a blend of domestic hops and hops imported from Bohemia or Czechoslovakia in the ratio or proportion of 80 per cent domestic hops to 20 per cent imported hops.

PAR. 4. A substantial portion of the trade and purchasing public is of the belief that the word "Bohemian", when applied to hop-flavored malt sirup on labels or in advertising matter, describes and refers to a malt sirup flavored with hops imported from Bohemia or Czechoslovakia, as that country is now known, and the use by said respondent of the word "Bohemian" in its trade name on labels and advertising matter, as aforesaid, has the tendency and capacity to, and does mislead and deceive the purchasing public into the belief that the said respondent flavors its said malt sirup, thus described, exclusively with hops imported from Bohemia or Czechoslovakia.

PAR. 5. Said respondent, in the course and conduct of its said business as described herein, is now, and has been during three years last past, in competition in commerce in the sale of said sirup with other individuals, partnerships, and corporations, among which competitors are several who explicitly represent on labels and in advertising matter that Bohemian or imported hops are used in flavoring their products, while others who flavor their products exclusively with domestic hops make no such claim, and the acts and practices of said respondent as set forth herein tend to divert business from and otherwise prejudice and injure said competitors.

CONCLUSION

The respondent, by reason of the facts set forth in the foregoing findings, has been and now is using unfair methods of competition in commerce in violation 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 of re-

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spondent thereto, the testimony, evidence, briefs, and argument of counsel; and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions 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, Val Blatz Brewing Co., its representatives, agents, servants, employees, and successors forthwith, cease and desist, in connection with the sale and distribution of malt sirup in interstate commerce, from using directly or indirectly the word "Bohemian" on the labels of containers of hop-flavored malt sirup manufactured by it, or in advertising matter circulated by the respondent directly or indirectly, or inserted in periodicals and publications, to describe said product, unless or until said product is flavored exclusively with hops imported from Bohemia or Czechoslovakia; or when flavored with a blend of such imported hops and domestic hops, a statement to that effect be prominently displayed in type equally as large and as conspicuous as, and in immediate conjunction with, the word "hop" or the phrase or term "hop-flavored," on said labels or in said advertising matter.

It is further ordered, That respondent, Val Blatz Brewing Co., shall within 60 days after the 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 to cease and desist hereinbefore set forth.

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IN THE MATTER OF
BURTON BROS. & CO., 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 1696. Complaint, Sept. 28, 1929—Decision, May 12, 1930

Where a corporation engaged in the sale to shirt manufacturers, of a trade-marked, expensively advertised, and widely and favorably known, specially woven cotton cloth; in pursuance of a decision to permit shirts made therefrom to bear its label only when sold at not less than minimum specified by it,

Adopted and employed a "notice" to the trade for transmission to haberdasher customers by manufacturer vendees using label (and making a large proportion of the shirts concerned), claiming or setting forth, (1) labels furnished, and trade-mark, its property, (2) guarantee of wear and satisfaction for said shirts, (3) limitation of label, mark, and accompanying guarantee to shirts advertised and sold at not less than minimum specified, (4) haberdasher's privilege to remove label and mark, and offer, advertise, and sell garment, at any price desired, under any name, mark or label not resembling its own, (5) irreparable damage to it through offer, advertisement, representation, or sale of shirt under name or label, at less than said minimum, and intent to protect itself, its trade, trade-mark and good will, therefrom, to the fullest extent of the law, and prevent such offering, advertisement, sale and damage, and (6) statement explanatory of policy, and haberdasher's acceptance of and agreement to conditions and facts of said notice through acceptance of invoice of which made a part; extending to retailers or haberdashers electing to sell shirts made of its aforesaid trade-marked, so-called Irish poplin, under its said label and mark, the benefit of said guarantee as well as of other selling aids, denied to those electing sale of such shirts without such label and mark;

Not intending through said notice to warn retailers against proceedings, never in fact brought, for price cutting, but with purpose and effect of fixing and controlling resale prices and preventing dealers' exercise of own discretion and with tendency and effect of suppressing competition, and depriving ultimate purchasers of advantages in price which would obtain from the natural and unobstructed flow of commerce in said garments under conditions of free competition:

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

Mr. William T. Kelley for the Commission.

Green & Hurd, of New York City, 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 Burton Bros. & Co., Inc., a New York corporation, en-