

Complaint

14 F. T. C.

IN THE MATTER OF
CLICQUOT CLUB 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 1819. Complaint, May 3, 1930—Decision, Dec. 9, 1930

Where a corporation engaged in the manufacture and sale of ginger ale represented that its said product had been aged six months, and, later, "Aged six months in the making", in newspapers, magazines, and other publications, on counter displays and fountain hangers, and on labels or stickers attached to the product or the containers thereof, and through radio broadcasting, and similarly represented ginger ale not so aged as unripe, undesirable, and injurious, fact being that said product was not so aged but only the flavoring mixture used therein, constituting one-fifth of 1 per cent by weight; with capacity and tendency to mislead and deceive the public and to divert trade to it from competitors and with effect of furnishing to wholesale and retail dealers means enabling them to mislead and deceive their customers and prospective customers into believing said product to be six months old when offered for sale and sold by it and into purchasing same in reliance on such erroneous belief:

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

Mr. James M. Brinson for the Commission.

Mr. Ralph M. Greenlaw, of Providence, R. I., 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 Rhode Island corporation, engaged in the manufacture and sale of ginger ale, with principal place of business in Millis, Mass., and with factories and warehouses in various States, with advertising falsely or misleadingly, and misbranding or mislabeling as to qualities of product, 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, states in newspapers, catalogues, counter displays, fountain hangers, and other advertising and on the labels or stickers attached to its product or the containers thereof, and through the radio that ginger ale not aged six months is unripe, undesirable, and injurious and that its own product through such aging, has "derived a fullness of flavor and mellowness of tone", fact being its said product had not been so aged; with capacity and tendency to mislead and deceive the public, and with effect of furnishing wholesale and retail dealers with the means of enabling them to mislead their own customers

and prospective customers in respect of the aging of respondent's product, as above set forth, and into purchasing said product in reliance upon such erroneous belief; all to the prejudice of the public and in violation of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Acting in the public interest, 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, Clicquot Club Co., charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondent having entered its appearance and filed answer, hearings were duly held before an examiner of the Commission theretofore appointed for such purpose. Thereafter it having been stipulated and agreed by and between the attorney for the Commission and Ralph M. Greenlaw, attorney for the respondent, thereunto having first been duly authorized, that the privilege or right of submitting briefs and oral arguments would be and was waived and that the Federal Trade Commission might forthwith proceed to file its report stating its findings as to the facts and conclusion drawn therefrom and dispose of the matter by an appropriate order to cease and desist from the practices described in the complaint and reflected by the evidence, and this proceeding having come on for final decision and the Commission being fully advised in the premises, files this its report in writing, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Clicquot Club Co. is now and for several years last past has been a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal place of business in the city of Millis, State of Massachusetts. It has been for several years last past, and now is engaged in the manufacture of ginger ale and in its sale in commerce among and between the various States of the United States, principally to wholesale dealers. It has caused during said period of time and now causes its product, when sold, to be transported from its factory and warehouse to purchasers in the several States of the United States other than the State of Massachusetts or the State or States from which such product or products have been or are transported or shipped to them. In the course and conduct of such business respondent has been at all times hereinafter mentioned and is now

in competition with individuals, partnerships, and corporations engaged in the sale of such or similar products in interstate commerce.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent Clicquot Club Co., until on or about April 18, 1929, offered for sale and sold its ginger ale by means of and through statements and representations in newspapers, magazines, and other publications circulated in the various States of the United States, in or on counter displays and fountain hangers, distributed by it among purchasers or prospective purchasers, and on labels or stickers attached to its product or the containers thereof, and also through the agency of radio broadcasting among or between the various States of the United States, that ginger ale is unripe, undesirable, and injurious unless it has been aged six months and that the ginger ale offered for sale or sold by respondent in commerce among or between the various States of the United States had been aged six months, and that such ginger ale has derived a fullness of flavor and mellowness of tone from or as a result of such aging process. On or about April 18, 1929, respondent discontinued its practice of representing that its ginger ale had been and was aged six months and adopted as a substitute therefor the phrase "Aged six months in the making", and has represented and now represents in, through, or by the aforesaid advertising agencies or media, that its ginger ale has been and is "Aged six months in the making".

PAR. 3. The ginger ale offered for sale and sold by respondent Cliquot Club Co., that is to say, the finished product or beverage, has not been and is not aged either six months or six months in the making. It requires six months to make the beverage or finished product of respondent, because a flavoring mixture used by respondent in the manufacture of its product which it calls the concentrate, has been and actually is aged six months in storage tanks, provided for such purpose at the plant of respondent. After such flavoring mixture or concentrate has been so aged it is thereupon mixed or combined with the other ingredients of the product. The flavoring mixture or concentrate so aged and used in manufacture of the ginger ale is in weight one-five hundred and twelfth of the product or about one-fifth of 1 per cent. The finished product, the ginger ale, therefore, while requiring six months for its production, is neither aged six months, nor six months in its making, nor is any other part of it than the so-called concentrate or flavoring mixture aged six months, or for any known, definite or regular period of time.

PAR. 4. The representation by respondent that the ginger ale offered for sale or sold by it has been aged six months or has been

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aged six months in the making, has had and has the capacity and tendency to mislead and deceive the public and to divert trade to respondent from its competitors, and has furnished, and is furnishing to wholesale and retail dealers the means by which they have been and are respectively enabled to mislead and deceive their own customers and prospective customers into the belief that such ginger ale is six months old when so offered for sale and sold by it, and into its purchase in reliance on such erroneous belief.

CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the injury 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 DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondent, testimony and evidence, and briefs and oral argument having been waived, and it having been stipulated and agreed by and between the attorneys for the Commission and the respondent that the Commission may forthwith file its report stating its findings as to the facts and its conclusion drawn therefrom and dispose of this proceeding by an appropriate order to cease and desist, and the Commission having filed its report stating its findings as to the facts and its conclusion drawn therefrom that respondent has violated 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 respondent Clicquot Club Co., its officers, agents, and employees, cease and desist directly or indirectly from representing by advertisement or otherwise in connection with offering for sale or selling its ginger ale in interstate commerce that it has been or is aged six months or aged six months in the making, unless or until the ginger ale has been or is in fact, aged six months before its sale and distribution by respondent.

It is further ordered, That respondent, within 60 days from and after service hereof, shall file with the Commission a report in writing, setting forth in detail the manner and form of its compliance with this order.

Complaint

14 F. T. C.

IN THE MATTER OF
FLYNN & EMRICH 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 1584. Complaint, Mar. 20, 1929—Decision, Dec. 20, 1930

Where a corporation engaged in the manufacture and sale of stokers, grates, and coal-feeding mechanisms including a mechanically operated stoker covered by letters patent, advised customers of a competitor over a period of years that it contemplated bringing suit for infringement of its patent against manufacturers and users of the infringing articles and that they were rendering themselves liable for damages and exposing themselves to possibilities of embarrassment and trouble through use of the competitive alleged infringing article, and suggested insertion in their contracts with said competitor of indemnifying clauses; not in good faith and with definite decision to bring any such suits, but in bad faith to prevent, hinder, and obstruct said competitor in the sale of its products:

Held, That such practice were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Stewart & Pearre, 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, a Maryland corporation engaged in the manufacture and sale of stokers, grates, and coal-feeding mechanisms to the purchasing public throughout the United States, and with principal place of business in Baltimore, with threatening patent infringement and damage suits not in good faith, 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, during the years 1926 and 1927, threatened a competitor, the Perfection Grate & Stoker Co. of Springfield, Mass., with infringement suits, and said competitor's customers with damage suits for using the alleged infringing article, for the purpose of preventing and hindering said competitor from selling its products, forcing cancellation of sales already executed, and the removal of equipment sold by said competitor to customers.

As charged by the complaint, "such threats and statements were caused to be made by the respondent company in bad faith, for that, they were made with the purpose of hindering, embarrassing, obstructing or otherwise eliminating competition of the said Perfection Grate & Stoker Co. in the sale of said products in the channels of interstate trade and said respondent company did not cause such suits for infringement or damages to be brought, and/or did not propose to bring such suits at the time such threats or statements were caused to be made"; all to the prejudice of the public and respondent's competitors.