

Complaint

IN THE MATTER OF
BEN-BURK, INCORPORATED

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

Docket 1775. Complaint, Mar. 19, 1930—Decision, May 4, 1931

Where a corporation engaged in sale at wholesale of domestic malt syrup containing only a small proportion of higher priced, foreign grown hops, long regarded as superior to the domestic, and particularly so in the case of those from Germany and the Saazer district of Czecho-Slovakia, sold aforesaid products in containers displaying such labels as "German Maid", "Dutch Maid", "Kron-Prinz" or "Meierhof", together with depictions of German, Dutch or other foreign scenes, with lids bearing a brass diamond soldered thereon, with the stamp of a German iron cross, and the words "Gott Mit Uns 1870", and "Imported hop flavor", and in cartons bearing the words "Special light 3 pounds Imp."; with capacity and tendency to mislead and deceive purchasers and prospective purchasers into believing aforesaid products to have been imported from Germany or to have been made from or flavored with foreign ingredients, and with effect of furnishing dealers and jobbers with the means of misleading and deceiving their customers into purchasing aforesaid products in reliance on said erroneous belief, and capacity and tendency to divert trade to it from competitors offering imported malt syrups or those made out of foreign or imported ingredients, or competitors selling such syrups consisting entirely of domestic materials:

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

Mr. James M. Brinson for the Commission.

Mr. Ellis Benjamin, of Boston, Mass., 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 Massachusetts corporation, engaged in the sale at wholesale of malt products for making home brew beverages, including malt syrups purchased from Jacob Ruppert, of New York, and with principal office in Boston, with misbranding or mislabeling as to source or origin and composition of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Findings

15 F. T. C.

Respondent, as charged, engaged as above set forth, in connection with the sale of aforesaid malt syrups, sold largely to people of German or other foreign extraction throughout the country, and containing only a small proportion of imported hops, to wit, approximately one-eighth or one-ninth, sold and distributed said syrups in cans, upon the lid of which it had caused to be soldered a brass diamond bearing the stamp of a German Iron Cross on which are the words "Gott Mit Uns, 1870", and over it the words "Imported Hop Flavor", and under labels containing the brand names "German Maid", "Dutch Maid", "Kron Prinz", and "Meierhof", and depictions of scenes in Germany, Holland or other foreign countries, and symbols of such countries, and in cartons bearing the words "Special Light, three-pound, Imported".

Said labels and descriptive matter, as alleged "have the capacity and tendency to cause purchasers of such products to believe that the hops contained in respondent's products above described are wholly or principally of foreign origin and imported, and to induce purchasers of respondent's products in that belief,"¹ and said practices of respondents, as above set forth, are, as charged, all to the prejudice of the public and of respondent's competitors, who truthfully describe their products, and constitute unfair methods of competition.

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", the Federal Trade Commission issued and served its complaint upon the respondent, Ben-Burk, Inc., a corporation, charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer, hearings were had and evidence introduced on behalf of the Commission and the respondent before John W. Bennett, an examiner of the Federal Trade Commission, theretofore duly appointed. Thereupon this proceeding came on for final hearing on briefs and oral arguments, and the Commission, being fully advised in the premises, files this its report, stating its findings as to the facts and its conclusion drawn therefrom:

¹ As to this complaint, after setting forth that hops are an essential ingredient for flavoring such products as those herein concerned, alleges that the foreign grown hops, such as German or Dutch hops, have long been regarded as superior in quality for the purpose of making beer and command in this country a much higher price than hops grown here.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Ben-Burk, Inc., has been, and is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the city of Boston and State aforesaid. Its business has consisted and consists in selling at wholesale, malt syrup products which it purchases from Jacob Ruppert, a New York corporation, which, on the order of respondent, distributes said syrups to retailers and jobbers in the various States of the United States other than the States of Massachusetts or New York. In the course and conduct of its said business respondent has been for two years last past, and now is, in competition in interstate commerce with various other individuals, partnerships and corporations engaged in the sale of malt syrup products in such commerce.

PAR. 2. Respondent in the course and conduct of its business as described in paragraph 1 hereof has offered for sale and sold, and caused to be distributed as aforesaid in commerce among and between the various States of the United States, certain malt syrups in cans, upon the lids of which it has caused to be soldered a brass diamond bearing the stamp of a German iron cross on which are the words "Gott Mit Uns 1870", and over it the words "Imported Hop Flavor". These products are sold by respondent under the labels "German Maid", "Dutch Maid", "Kron-Prinz" and "Meierhof". The labels "German Maid", "Dutch Maid" and "Kron Prinz" contain pictures or scenes of Germany or Holland, or other foreign countries and other symbols of such foreign countries. Respondent has also sold said products in cartons on which were stamped the words "Special light 3 pounds Imp."

PAR. 3. It has been and is the practice in the malt syrups trade to sell and distribute both malt syrups flavored with hops and malt syrups without hop flavoring. Foreign grown hops, particularly hops grown in Germany and in the Saazer district of Czechoslovakia formerly known as Bohemia, have long been regarded as superior in quality for the purpose of making beverages, and command in this country a much higher price than hops grown in the United States.

In truth and in fact the products of respondent so described and sold have not been and are not manufactured in Germany, Czechoslovakia or any other foreign country, and no more than ten per cent of the hops, or other material used in their manufacture, have been, or were until January 1, 1930, imported from Germany, Czechoslovakia, or any other foreign country, and such products have been and were manufactured in the United States chiefly of domestic material grown or produced in the United States.

Findings

15 F. T. C.

On or about January 1, 1930, respondent discontinued the practice of offering for sale or selling in interstate commerce any malt syrup bearing either on the lids of cans or containers, or labels attached thereto, the word "Imported", unless such product had been or was flavored 100 per cent with foreign or imported hops. On or about said time respondent also discontinued use on the lids or tops of the containers in which its product had been offered for sale as aforesaid, the stamp with the iron cross and the words "Gott Mit Uns", and approximately at said time, or shortly prior thereto, respondent caused to appear on its various labels the words "Made in America". Respondent also discontinued on or about January 1, 1930, its practice of stenciling on the cartons the words "Special light 3 pounds Imported". It has been, and still is the practice of respondent to use on cans or containers of products which have no imported ingredients and consist entirely of ingredients produced in the United States, the same labels described in paragraph 2 hereof carrying foreign scenes and features.

PAR. 4. The acts and practices of respondent in offering for sale and selling its product in containers bearing on the lids thereof the German iron cross with the words "Gott Mit Uns" and the word "Imported" and the words "Special light 3 pounds Imported" stenciled on its cartons, have had the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that the products of respondent had been, or were imported into the United States from Germany, and the use of the said labels since January 1, 1930, containing the words "German Maid", "Dutch Maid", "Kron Prinz" and "Meierhof" with their pictures of individuals in foreign dress and foreign scenes on cans or containers of products containing no foreign or imported ingredients, have had and have, and each of said practices has had, and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the product of respondent has been imported into the United States, or is manufactured from, or flavored with foreign ingredients. Such acts and practices have also furnished, and furnish dealers and jobbers with the means to mislead and deceive their customers into the purchase of such products in reliance on the erroneous belief that they have been, or were imported, or manufactured from, or out of, or flavored with, foreign ingredients, and such practices have had and have, and each of them has had, and has the capacity and tendency to divert trade to respondents from competitors offering for sale or selling in interstate commerce, imported malt syrups, or malt syrups manufactured from and out of foreign or imported ingredients, or selling malt syrups consisting entirely of domestic ingredients.

CONCLUSION

The acts and practices described in the above and foregoing findings as to the facts have been and are all to the prejudice of the public and respondent's competitors, and are unfair methods of competition within the meaning of an act 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 received, briefs and arguments of counsel, and the Commission having made its findings as to the facts and its conclusion drawn therefrom that the 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 now ordered, That the respondent, Ben-Burk, Inc., its officers, agents and employees, do cease and desist from—

(1) Offering for sale, or selling in interstate commerce, any malt syrup or malt syrup product, either by or in advertisements containing, or in cans or containers bearing, a representation of the German iron cross, with the words "Gott mit uns", or "Imported hop flavor", or the words "One hundred per cent hop flavored" or the word "Imported" or the abbreviation "Imp.", or any other word or words signifying, suggesting, or implying either an imported product, or a product flavored with imported hops, unless such product is imported, or is flavored with 100 per cent of imported hops.

(2) Using in advertisements or on the cans or containers of any product made in the United States entirely of domestic materials offered for sale and sold in interstate commerce, the words "German Maid", "Dutch Maid", "Kron Prinz", or "Meierhof" as a trademark, or trade name for or to describe or designate such product, or any picture, representation, or illustration of Germany, or other foreign scenes, or of individuals in foreign dress or costume, unless there conspicuously appear in immediate conjunction with such words "German Maid", "Dutch Maid", "Kron Prinz" and "Meierhof", or with such picture, representation, or illustration, the words "Made in the United States of Domestic Ingredients".

It is further ordered, That respondent shall, within 60 days after service upon it 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.

Complaint

15 F. T. C.

IN THE MATTER OF
CANADA'S PRIDE PRODUCTS CO., INC., FORMERLY
INTERNATIONAL PRODUCTS 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 1843. Complaint, June 11, 1930—Decision, May 5, 1931

Where a corporation engaged in sale of domestic malt syrups containing no Canadian ingredients, adopted the corporate name "Canada's Pride Products Co., Inc." and advertised and labeled said products as "Canada's Pride Malt Hop, Malt Syrup Hop flavored," together with map of Dominion of Canada, and statement guaranteeing use of only freshest and purest ingredients "in the manufacture of Canada's Malt Hop," and words or legend "In Canada, International Products Sales Company, Ltd., Truro, Nova Scotia; International Products Company, sole distributors, New York City, N. Y."; with capacity and tendency to mislead and deceive purchasers and prospective purchasers, and with effect of furnishing dealers with means of misleading and deceiving customers into belief that said products had been made in Canada and imported into the United States or made out of material or ingredients so produced and imported, and thus induce purchase of such products in reliance on such erroneous belief, and with capacity and tendency to divert trade to it from competitors truthfully advertising and describing their products:

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

Mr. James M. Brinson for the Commission.

Mr. John B. Hosty, of Hosty & Irmiger, of Chicago, Ill., 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, "Canada's Pride Products Co., Inc.¹, a Rhode Island corporation engaged in the sale of malt syrups, chiefly to wholesale grocers and chain stores through traveling salesmen, and with office and principal place of business in New York City, with advertising falsely or misleadingly as to source or origin and composition of products, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

¹ International Products Co. until on or about April 1, 1930, at which time the corporate name was duly changed.