

Complaint

15 F. T. C.

IN THE MATTER OF

WILLIAM A. HIGGINS & COMPANY, INCORPORATED

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

Docket 1910. Complaint, Feb. 4, 1931—Decision, May 25, 1931.¹

Consent order requiring respondent to cease and desist from branding, labeling, or naming sacks or other containers of almond nuts, with or advertising same under, names or letters "Nonpareil", "I. X. L.", "Ne Plus", "Peerless", or "Drake" unless the nuts are grown in California and the names in question are used to designate the true varieties thereof; as in said order set forth.

Mr. E. J. Hornibrook for the Commission.

Crane, Inness & Arnold, of New York City, for respondent.

COMPLAINT

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 charges that William A. Higgins & Co., Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized and doing business under the laws of the State of New York, with its principal place of business in the City of New York. Its business for the last five years has been and now is the importing of nuts from Italy and France, especially almonds and walnuts, and the sale and distribution of nuts, including sales and shipments to purchasers in other States from its headquarters in New York City, N. Y.

PAR. 2. An organization of growers of almonds in California, known as California Almond Growers' Exchange, has in the past ten years regulated the grading and branding of the almonds grown by its members, and has adopted certain names or brands indicating the quality and grade of the product of members handled by the association. Said association has used the following names of brands: First quality, "Nonpareil"; second quality, "I X L" and "Ne Plus"; third quality, "Peerless" and "Drake". By adoption and long use, these names and brands have come to be applied exclusively to California products, and as such are well known and accepted in the trade as indicating nuts of superior quality and well graded types.

¹ As modified. Original order made as of March 25, 1931.

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PAR. 3. In the course of its business as aforesaid, the respondent has caused the names and brands of said California Almond Growers' Exchange, namely, "Nonpareil", "Ne Plus", and "California Drake" to be printed on bags and containers, and has placed in such bags and containers bearing said names and brands, almonds imported by it, and has sold and caused to be shipped to points outside the State of New York, said almonds in said bags and containers.

PAR. 4. The respondent, in its business as aforesaid, is in competition in interstate commerce with importers of almonds for sale in this country who do not represent their wares to be other than imported, and with producers and distributors of nuts, including almonds, in this country, and particularly with growers and distributors of California almonds.

PAR. 5. The acts of respondent in using the names and brands of California almond growers, as above described, has the tendency and capacity to, and does, mislead purchasers of the almonds so misbranded and sold by respondent, to believe that they were grown in California and were well and carefully graded by the California Almond Growers' Exchange, and were of a superior quality, as indicated by the brands used; and said acts of respondent tend to divert and to divert from said California Almond Growers' Exchange and its members sales of California almonds of the quality indicated by said brands.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

MODIFIED ORDER TO CEASE AND DESIST

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 on the 4th day of February, 1931, issued its complaint against William A. Higgins & Co., Inc., respondent herein and caused the same to be served upon said respondent as required by law, in which complaint it is charged that respondent has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

On March 4, 1931, respondent filed herein a formal written answer to said complaint. On March 17, 1931, the said respondent filed herein a written withdrawal of said formal answer and filed in lieu

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thereof a written answer wherein it elected to refrain from contesting this proceeding; and the Commission having considered and accepted such withdrawal and such last named answer, on March 25th, 1931, entered an order to cease and desist herein.

The Commission being further advised in the premises the said order to cease and desist is hereby modified to read as follows:

Ordered, That respondent William A. Higgins & Co., Inc., its agents, employees, or successors do cease and desist from doing directly or indirectly any and all of the acts hereinafter designated and set forth in paragraph 1 hereof, in connection with the sale or offering for sale of almond nuts in interstate commerce, or in the District of Columbia, as follows:

PARAGRAPH 1. From branding, labeling, or naming or causing to be branded, labeled, or named sacks, bags, boxes, or other containers of almond nuts or advertising such nuts, with or under the names or letters, "Nonpareil", "I.X.L.", "Ne Plus", "Peerless", or "Drake", unless such almond nuts are grown in the State of California and the name, "Nonpareil", the letters "I.X.L.," and the names "Ne Plus", "Peerless", or "Drake", are used to designate the true varieties of such nuts.

PAR. 2. It is further ordered that respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

CHARLES NESSLER, AN INDIVIDUAL TRADING UNDER THE NAME AND STYLE OF C. NESTLE COMPANY, AND ALSO UNDER THE NAME AND STYLE SOCIETY FOR THE ADVANCEMENT OF HAIR AND BEAUTY SCIENCE; AND NESTLE-LEMUR COMPANY AND CHARLES NESSLER AS AN OFFICER THEREOF

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

Docket 1833. Complaint, May 16, 1930—Decision, June 5, 1931

Where an individual engaged in the manufacture, sale, and/or lease of hair-waving machines, and appliances, instruments and supplies for use in connection therewith, including a so-called text-o-meter for testing the hair; in pursuance of plans for promoting and extending his said business, and in connection therewith for impressing the trade and public with the independence and impartiality of an organization created and controlled by him, and the value of its approval and recommendation,

- (a) Caused to be organized an ostensibly disinterested association under the name "Society for the Advancement of Hair and Beauty Science," and a board of trustees therefor, with staff of administrative and advisory officers and office provided by him, and caused it to be announced, as coming from said society, that it had been formed by those concerned in the development and extension of improved and scientific methods in the trade, to furnish it and the public reliable and disinterested advice on all matters relating to the chemistry of beauty parlors, hair treatments, hair dyes, permanent waving, and such other treatments as might be practical, and all other subjects or matters that might arise from time to time in the trade in connection with the service of the public; fact being that aforesaid society was not a bona fide independent and impartial organization of hair dressers, beauty-parlor operators, or others interested as above set forth, but was composed of business associates, friends, employees, or others related in some manner or degree to himself, and of employees of the corporate successor to his business, and expense of organizing, operating, and maintaining such alleged society had been and was advanced by him;
- (b) Caused the society to form, ostensibly, a so-called examination board to investigate, as represented to trade and public, claims of manufacturers and merits of products or methods advertised or suggested by them, and practices and methods from time to time introduced or followed in the trade, and represented that the society had and would maintain a legal adviser to report to it and procure actions against those who were or might be attempting to "foist inferior goods or treatment on their patrons"; facts being no examinations were held by the society to ascertain merits of products other than those offered and leased by said individual, or to enable society to furnish fair and disinterested advice and suggestions to trade and public, and so-called examinations were merely a method of