

Syllabus

IN THE MATTER OF
FIDELITY HOP & MALT CORPORATION AND WANDER
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 1936. Complaint, Apr. 7, 1931—Decision, Nov. 10, 1931

Where a corporation engaged in the sale and distribution of malt sirups,

- (a) Sold a sirup flavored wholly with domestic hops in containers labeled, at its request, with such words as "Genuine Saazer Malt," "Famous Saazer Malt Sirup," "Original Saazer Malt Sirup," or "Saazer Bohemian Style Malt Sirup"; and,
- (b) Made such statements in advertising its aforesaid product in English and foreign language newspapers circulating in the United States, and in trade journals and publications having wide circulation, as "This Old World flavor meets the New World's favor," together with the words "Famous Saazer Malt Sirup," conspicuously, and, in small letters, the words "Bohemian Style";

With the capacity and tendency to mislead and deceive the purchasing public into believing the aforesaid product to have been imported into the United States from the Saazer district of Bohemia or Czechoslovakia, or to contain or be flavored with the genuine, well and favorably known Saazer hops there grown and with the effect of thereby placing in the hands of dealers means enabling them to mislead the purchasing public into aforesaid erroneous belief; and,

Where the manufacturing vendor of the aforesaid malt sirup,

- (c) Supplied to its aforesaid vendee distributor, at the latter's request, cans and containers for the sale of said product bearing such labels as above set forth; with the result of aiding, assisting and promoting said vendor distributor in the sale of its said malt sirup, through furnishing it with the means of putting into the hands of latter's wholesale and retail dealers the means of selling the product in question as and for a malt sirup made or produced in the former Saazer district of Czechoslovakia, and imported into the United States therefrom, or as and for a product made in the United States containing hops grown or produced in said district, or flavored therewith;

With the capacity and tendency to divert trade to said vendor distributor from competitors offering and selling in interstate commerce malt sirup imported to the United States from said district, or made in the United States in whole or in part from imported hops or other imported ingredients, or from domestic ingredients or materials:

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

Complaint

15 F. T. C.

Mr. James M. Brinson for the Commission.

Rosenthal, Hamill & Wormser, of Chicago, Ill., for Fidelity Hop & Malt Corporation and *Donnelly, Lynch, Anderson & Lynch*, of Cedar Rapids, Iowa, for Wander Co.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Fidelity Hop & Malt Corporation, an Illinois corporation, engaged in sale and distribution of malt sirup, and respondent Wander Co., a Delaware corporation, engaged in manufacture and sale of said product, both with principal place of business in Chicago, with misbranding or mislabeling, and advertising falsely or misleadingly 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.

Respondent, Fidelity Hop & Malt Corporation, as charged, sells malt sirups made by respondent Wander Co., in cans or containers, (1) to the body of which said Wander Co. has affixed labels supplied by respondent, Fidelity Hop Corporation containing such words as "Saazer Malt Sirup," "Original Saazar Malt Sirup," "Genuine Saazar Malt," "Famous Saazer Malt Sirup," or "Saazer Bohemian Style Malt Sirup," together with a large depiction of a rural scene, particularly featuring growing hops and laborers and a girl attired in foreign costume, and (2) with tops supplied by respondent, Fidelity Hop Corporation, bearing the words "Genuine Saazer Malt Sirup" or "Famous Saazer Malt Sirup," together with a depiction of a girl attired as aforesaid, and respondent Fidelity Hop & Malt Corporation, further, as charged, in advertising products dealt in by it as aforesaid, in foreign language and English newspapers and particularly in trade journals and publications has featured such words as "This Old World flavor meets the New World's favor," and "Famous Saazar Malt Sirup," together with words, in small letters, "Bohemian style," and statement "Plain with genuine imported Saazer hops or hop flavored"; notwithstanding fact that product in question was not imported from Saazer District of Bohemia nor flavored with hops or other ingredients there produced, as implied through use of said words, but was a domestic product made solely of domestic ingredients.*

* Allegations of complaint relating to growing of genuine Saazer hops, and meaning which has come to be attached to word "Saazer" follow:

"Saaz is a town in the country formerly known as Bohemia, which is now a province of Czechoslovakia. It is located in the midst of the hop-growing industry. Hops pro-

Aforesaid acts and practices of respondent, Fidelity Hop & Malt Corporation "have had and have, and each of them has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the malt sirup offered for sale and sold by it has been or is imported into the United States," from the aforesaid district, or has been or is made from hops or other materials there grown, and to induce the purchase of said malt sirup in reliance upon such erroneous belief, and acts and practices of respondent Wander Co., as aforesaid, "have aided, assisted, and promoted the sale and distribution in interstate commerce by respondent Fidelity Hop & Malt Corporation, of its malt sirup, by furnishing said respondent Fidelity Hop & Malt Corporation with the means to put into the hands of, and which means said respondent has put into the hands of, dealers, wholesale and retail, for the sale of such malt sirup" as and for malt sirup made in aforesaid district and imported therefrom, or made in the United States from hops or other materials there grown, and acts and practices of respondents have further capacity and tendency to divert trade to respondent Fidelity Hop & Malt Corporation from competitors offering and selling, in interstate commerce, truthfully described or designated malt sirup products, imported into the United States from Bohemia, or other countries, or made in the United States in whole or in part of hops or other ingredients from the aforesaid Saazer district, or products made in the United States from domestic ingredients or materials; all to the prejudice of competitors and the purchasing public, and in violation of the provisions of section 5.

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 a complaint upon

duced in such section, known as the Saazer district, have been for a long period of time and now are generally known, designated and described as Saazer hops, and have been and now are well and favorably known throughout the United States. They have been for a long period of time, and now are extensively imported into the United States, and offered for sale and sold as Saazer hops, and malt extract, malt sirup and other products manufactured in the Saazer district from, or out of material or ingredients produced in such district have been for many years, and now are, imported into the United States and designated and described by or with the word 'Saazer,' or as flavored with Saazer hops. Such name or word 'Saazer' has come to signify or mean, and for many years last past has been understood by the purchasing public to signify and mean, and now signifies and means when applied to hops or malt products, that they have been produced or manufactured in the Saazer district of Czechoslovakia and imported into the United States, or that they consist in whole or in substantial part of ingredients produced in said district and imported into the United States therefrom."

Findings

15 F. T. C.

Fidelity Hop & Malt Corporation and Wander Co., hereinafter called respondents, charging them and each of them with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act. The respondents having entered their appearance and filed their answers, testimony and documentary evidence were received in the course of a hearing at Chicago, Ill., September 9, 1931, before John W. Bennett, an examiner of the Federal Trade Commission, theretofore duly appointed for such purpose, and the respondents, and each of them, in the course of such hearing, having duly consented in the record to the issuance of an order by the Commission requiring them and each of them to cease and desist from the practices charged in the complaint, and thereafter the proceeding having come on regularly for final decision on the complaint, testimony, evidence and agreement of respondents to accept such order, and the Commission having duly considered the same, now makes this its report in writing, stating its findings as to the facts and its conclusion as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Fidelity Hop & Malt Corporation is, and for more than a year last past, has been, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Chicago in the State of Illinois, and has been for such period of time and now is, engaged in the sale and distribution in commerce, among and between the various States of the United States, of a malt sirup which it has sold and sells to grocers, including chain-store grocery operators, and when sold, respondent has caused and causes such product to be transported from its said place of business to purchasers at their various points of location in the other States of the United States than the State of Illinois.

Respondent Fidelity Hop & Malt Corporation has been during such period of time, and now is, in competition with individuals, partnerships, and corporations engaged in the sale and distribution of malt sirup products in interstate commerce.

PAR. 2. Respondent Wander 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 Delaware, with its principal place of business and manufacturing plant in the city of Chicago in the State of Illinois. It has manufactured, and now manufactures, among other products, a malt sirup which it has sold and sells to various distributors of malt sirup and other malt products located

in the city of Chicago in the State of Illinois, including respondent Fidelity Hop & Malt Corporation, with the knowledge and expectation that such products have been, are, and will be, offered for sale and sold by respondent Fidelity Hop & Malt Corporation, and such other distributors in interstate commerce, and have been, are, and will be transported from the place of business of respondent Fidelity Hop & Malt Corporation in the city of Chicago in the State of Illinois to purchasers in the various other States of the United States.

PAR. 3. It has been, and is the practice of respondent Fidelity Hop & Malt Corporation to purchase the said malt product it offers for sale and sells in the course and conduct of its said business from respondent Wander Co., and it has been, and is the practice of said respondent Wander Co. to deliver such product to respondent Fidelity Hop & Malt Corporation for resale, ready for delivery to purchasers in the various States of the United States; except that it has been, and is the practice of respondent Fidelity Hop & Malt Corporation to offer for sale and sell two types or classes of malt sirup, to wit, one plain malt sirup unflavored with hops, and the other a malt sirup flavored with domestic hops. Eighty per cent of the sales of respondent Fidelity Hop & Malt Corporation consist of sales of the plain and unflavored malt sirup. The type of malt sirup flavored with hops has been at all times heretofore and now is flavored wholly with domestic hops. In that portion of its sales covering plain or unflavored malt sirup, it has been the practice of respondent to sell in connection therewith, packages containing hops.

The product of respondent flavored with hops has usually borne on labels affixed to containers the words "hop flavor," and the respondent Wander Co. has furnished and furnishes the cans or containers in which its product is sold to respondent Fidelity Hop & Malt Corporation and delivered to it except the lead tops or closure members of such cans or containers which have been, and are furnished by respondent Fidelity Hop & Malt Corporation, and which respondent Wander Co. attaches to such cans or containers at the request of the respondent Fidelity Hop & Malt Corporation.

There have been affixed to such cans and containers by respondent Wander Co., labels furnished by respondent Fidelity Hop & Malt Corporation, on which labels have appeared either the words "Genuine Saazer Malt," or "Famous Saazer Malt Sirup," or "Original Saazer Malt Sirup," and labels appearing on the body of the can or containers have borne either the words "Saazer Malt Sirup," or "Saazer Bohemian Style Malt Sirup," and respondent Fidelity Hop & Malt Corporation has offered for sale and sold in the course of its business in such commerce its malt products in cans or containers bearing such labels.

Findings

15 F. T. C.

Respondent Fidelity Hop & Malt Corporation has also caused its malt sirup product to be advertised in newspapers, circulated in the United States both in foreign languages and in the English language, particularly in trade journals or publications such as Malt Age, having a wide circulation in the various States of the United States, and in such advertisements respondent Fidelity Hop & Malt Corporation has used the word "Saazer" to designate and describe its product, and in connection therewith has used such language as the following, in large and conspicuous letters:

This Old World Flavor Meets The New World's Favor
with the words immediately below, in large capital letters
FAMOUS SAAZER MALT SIRUP
below which appear in small letters the words
Bohemian Style

PAR. 4. There is a district in the country formerly known as Bohemia which is now a province of Czechoslovakia, which was formerly known and described as the Saazer district. Hops produced in such district have been for a long period of time, and now are, generally known, designated, and described as Saazer hops, and have been, and now are, well and favorably known throughout the United States. The word "Saazer" when applied to hops has come to signify and mean, and for many years last past has been understood by the purchasing public to signify and mean, and now signifies and means, hops produced in such district formerly known as the Saazer district in Bohemia now Czechoslovakia.

PAR. 5. The acts and practices of respondent Fidelity Hop & Malt Corporation in offering for sale and selling a product manufactured in the United States entirely from domestic ingredients as "Saazer Malt Sirup" or "Original Saazer Malt Sirup" or "Genuine Saazer Malt Sirup" or "Famous Saazer Malt Sirup" or "Saazer German Style Malt Sirup," have had and have the capacity and tendency to mislead and deceive the purchasing public into the belief that such product has either been imported into the United States from the district formerly called Saazer in Czechoslovakia, or that it contains, or is flavored with hops grown in such district, and they have put into the hands of dealers the means by which they have been enabled to mislead and deceive the purchasing public into such erroneous belief.

The acts and practices of respondent Wander Co., as described in paragraphs 2 and 3 hereof, have aided, assisted, and promoted the sale and distribution in interstate commerce by respondent Fidelity Hop & Malt Corporation, of its malt sirup by furnishing said respondent Fidelity Hop & Malt Corporation with the means to

343

Order

put into the hands of, and which means said respondent has put into the hands of, dealers, wholesale and retail, for the sale of such malt sirup as and for malt sirup manufactured or produced in the district of Czechoslovakia formerly called Saazer and imported into the United States therefrom, or as and for malt sirup manufactured in the United States containing or flavored with hops grown or produced in such Saazer district.

The aforesaid acts and practices of respondents Fidelity Hop & Malt Corporation and Wander Co. have had, and have the capacity and tendency to divert trade to respondent Fidelity Hop & Malt Corporation from competitors offering for sale and selling in interstate commerce malt sirups imported into the United States from the Saazer district, or malt sirup products manufactured in the United States in whole or in part from, or out of, hops or other ingredients imported into the United States, or malt products manufactured in the United States from domestic ingredients or material.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and evidence, and an agreement by respondents to accept an order of the Commission to cease and desist from practices charged in the complaint, and the Commission having filed its report, stated its findings as to the facts and its conclusion that respondents have, and each of them 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 respondent Fidelity Hop & Malt Corporation cease and desist from using the word "Saazer" as a trade name for, or as a part of, such trade name, or in connection therewith, or to describe or designate, any product offered for sale or sold in interstate commerce manufactured from or out of domestic

Order

15 F. T. C.

ingredients, and respondent Wander Co. from assisting and promoting such use of the word "Saazer" by affixing to cans or containers of such products, labels containing such trade name, description or designation, unless the word "Saazer" is accompanied by apt and adequate words equally as conspicuous as the word "Saazer," clearly showing that the product so labeled, designated, or described is manufactured in the United States from domestic ingredients.

And it is further ordered, That respondents, and each of them, file within 60 days from and after the service of this order a report in writing setting forth in detail the manner and form of their compliance with its terms and provisions.

Syllabus

IN THE MATTER OF

WHIRLWIND CARBURETOR CO., ALSO TRADING AS
WHIRLWIND MANUFACTURING CO., ELLING O.
WEEKS, INDIVIDUALLY AND AS PRESIDENT AND
TREASURER OF WHIRLWIND CARBURETOR CO., AND
P. C. SORENSON, INDIVIDUALLY AND AS SECRETARY
OF WHIRLWIND MANUFACTURING CO.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 1931. Complaint, Mar. 27, 1931¹—Decision, Nov. 12, 1931

Where a corporation engaged in the manufacture of a so-called "Whirlwind Vaporizer" for automotive use, and in the manufacture, and sale thereof, by mail and through agents; and two individuals, organizers, and president and treasurer, and secretary, thereof; in conducting the business in question through circular letters, leaflets, newspapers, and magazine advertisements,

- (a) Made such statements as "450 miles on a gallon of gas," in large display type, with explanatory matter in much smaller type, to effect that, as claimed, a gallon of gas contained sufficient energy, converted 100 per cent, to run a 4-cylinder car such distance, and that device in question, a "new gas saving invention," which "astonishes car owners," was producing mileage tests "that seem unbelievable," as well as creating more power, giving instant starting, quick pick-up and eliminating carbon; and
- (b) Made such statements as "Over the mountains from Los Angeles 559 miles on 11 gallons of gas. Think of it! * * * imagine more than 50 miles to the gallon. That is what the Whirlwind * * * does * * * Enough of a saving on just one trip to more than pay for the Whirlwind. * * * Saves motorists millions of dollars yearly. Car owners all over the country are saving money every day with the Whirlwind besides having better operating motors * * *," "From nature the Whirlwind secures a scientific principle and with it develops amazing power from ordinary gasoline," "works on an entirely new principle utilizing a portion of the 95 per cent (wasted energy in gasoline)," "vaporizes waste gas," "found by actual tests to increase gasoline mileage from 25 per cent to 50 per cent," "60 miles on a gallon," "smoother running motor," "bus driver saves 50 per cent," "more power in mileage," "cuts gas costs one-third," "starts motor instantly," "power on hills," "four runs like a six," "quick get-away," "more pep and speed," and others of similar tenor, and "salesmen make \$100 a week and over";

Facts being that no way had been found to bring about such conversion as aforesaid referred to, said statement was likely to prove very deceptive to casual reader perusing only the large type, and statements as to mileage were based upon letters received and accepted without corroboration, and that while device might bring about improvement in some respects at expense of general engine performance, it brought about very little improvement in general engine performance, and no such increase as from 25 to 50 per

¹ Amended as to the names only.