

Complaint

IN THE MATTER OF

MACDONALD T. GREENE AND WALTER T. GREENE,
COPARTNERS, TRADING UNDER THE FIRM NAME
AND STYLE "DAKOTA ALFALFA GROWERS"

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

Docket 1967. Complaint, Aug. 28, 1931—Order, Jan. 29, 1932

Consent order requiring respondent partners, engaged as "Dakota Alfalfa Growers," in purchase of "Grimm," "Cossack," and "Common (Dakota No. 12)" alfalfa seed from Dakota Growers Finance Association, and in sale of said seed to seed houses, farmers' elevator and grain companies, etc., for resale to consumers, to cease and desist, as in said order set forth, from (1) using words "U. S. Registry" misleadingly on their containers; (2) falsely representing (a) said seed as coming to consumer direct from grower, or growers' cooperative, or place of production, with but one profit, or as grown from specially selected fields, and (b) themselves or their said vendor as a State sponsored cooperative improvement association; and (3) from attaching to their containers tags falsely indicating through colors employed, quality, variety, and official inspection and certification of seed therein contained.

Mr. PGad B. Morehouse for the Commission.

Morgan & Eastman, of Mitchell, S. Dak., for respondents.

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 MacDonald T. Greene and Walter T. Greene, copartners trading under the firm name and style Dakota Alfalfa Growers, hereinafter referred to as respondents, have been and are now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, MacDonald T. Greene and Walter T. Greene, are copartners, trading under the firm name and style Dakota Alfalfa Growers, with principal place of business at the city of Mitchell, in the State of South Dakota, and are at the same time executive officers of Dakota Growers Finance Association, a cooperative marketing association, incorporated November 8, 1926, under the laws

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of the State of South Dakota, and having the same principal office as that of respondents. Respondents are now, and for more than two years last past have been engaged in the business of buying three varieties of alfalfa seed known as Grimm, Cossack, and Common (Dakota No. 12), from the Dakota Growers' Finance Association, and reselling the same to seed dealers, seed houses, farmers' elevator companies and farmers' grain companies, each of which in turn sells to the consumer. When sold, respondents cause said seed to be shipped from their principal place of business in South Dakota, in, through and to various other States of the United States for delivery to the purchasers thereof. In the course and conduct of their business as aforesaid, respondents are and have been in competition with other individuals, partnerships, corporations, and associations engaged in the sale and distribution in interstate commerce of alfalfa seed of the varieties known as Grimm, Cossack, and Common (Dakota No. 12).

PAR. 2. To the farmer or other consumer, a knowledge of the source or origin of alfalfa seed is a factor of great importance for agricultural reasons widely known and approved. In the course and conduct of their business as aforesaid, respondents cause the said alfalfa seed to be marketed and sold in canvas bags bearing upon the face of each in large letters, among other representations, the words and figures following: "U. S. Registry 223047—Dakota Alfalfa Growers—Worlds Best Seed—Mitchell, S. D. Warehouse," and containing inside a card on which is printed by respondents "The contents of this bag are protected against substitution by U. S. Registry," thereby tending to deceive prospective purchasers, and through the latter, the consuming public into the beliefs that said seed so marketed and sold is of an origin inspected, verified, and certified to by a Federal seed inspector under authority of the United States Department of Agriculture, and that the said seed so marketed and sold is registered in some bureau or department of the United States Government, whereas in truth and in fact the said seed is not of an origin inspected, verified, and certified to by a Federal seed inspector under authority of the United States Department of Agriculture, and the only registry number or registration involved is a trademark registration by respondents of their firm name and style.

PAR. 3. In the course and conduct of their business as aforesaid, by the use of the name Dakota Alfalfa Growers on the bags in which said seed is marketed and sold, as well as on stationery, advertising and other printed matter used by them to solicit sales, and by the use of the words "The seed contained in this bag reached you direct from the growers" in conjunction with the statement "It is from

a Growers' Cooperative Association whose interest is the development of hardy alfalfa," on the tags attached to said bags, respondents represent to the purchasers and prospective purchasers that the said seed is grown by the sellers thereof and shipped directly from its place of production to the said purchasers with but one profit and cause the purchasing public to believe that the Dakota Alfalfa Growers and the Dakota Growers' Finance Association aforesaid have a character, object, and purpose similar to that of various State-sponsored crop improvement associations existing and operating in the State of South Dakota and elsewhere, which have for their object the improvement in quality, purity of variety, and verification of origin of alfalfa seed, whereas in truth and in fact, respondents do not raise any alfalfa seed either under the firm name and style of Dakota Alfalfa Growers, nor as executive officers of the Dakota Growers' Finance Association, a corporation, but the seed in question is raised by various farmer members of this association and delivered by them to the latter under a cooperative marketing agreement for the purpose of procuring the best possible price therefor, and the seed is then sold to respondents who resell the same using the foregoing representations.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have represented and do represent to purchasers and prospective purchasers that the said alfalfa seed is grown by members of a cooperative growers' association upon fields of virgin Dakota soil specially selected because of the quality thereof and at the same time represent that the selected fields "range from 12 to 40 years standing," thereby intending and meaning to say that said fields have had a stand or crop of alfalfa thereon continuously for from 12 to 40 years last past. These said representations are material concerning the value of the said alfalfa seed produced thereon by reason of the well-recognized importance of purity of variety, pedigree, freedom from noxious weeds and hardness, and tend to mislead the purchasers and prospective purchasers into the belief that of the fields in which said seed originated some selection has been made by respondents which is calculated to improve the purity of variety, pedigree, freedom from noxious weeds, and hardness of the crop to be grown from said seed, whereas in truth and in fact any person or persons engaged in the production of agricultural products to be handled by or through the Dakota Growers' Finance Association aforesaid may and do become members upon signing a membership agreement accepted and approved by the board of directors or the secretary of the association and upon the payment of a membership fee of \$1, and no selection is made by respondents

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from among such membership for the purpose of improving or maintaining the purity of variety, pedigree, freedom from noxious weeds or hardness of said seed.

PAR. 5. Because of the considered importance of maintaining and improving the pedigree, purity of variety and hardness of alfalfa seed grown in the States of Idaho, Montana, South Dakota, and Utah, the producers thereof, for sale and distribution in interstate commerce in competition with the respondents, through various crop improvement associations, have for a number of years last past, and prior to the use thereof by respondents, attached to the bags or sacks in which said seed is so packed, distributed, and sold, blue tags and red tags, which, respectively, through extensive use have come to and do indicate to the purchaser the highest and next highest quality alfalfa seed of the Grimm or Cossack varieties together with inspection and certification of origin under state supervision.

Respondents, in the course and conduct of their business, have been and are using in a similar manner tags of identical blue color on bags containing alfalfa seed of either Grimm, Cossack, or Dakota No. 12 (common) of a high grade, and tags of identical red color on bags containing Dakota No. 12 (common) alfalfa seed of a lower grade. Such seed so packed and labeled is sold and distributed by respondents in interstate commerce in a territory coextensive with that in which their competitors, aforesaid, sell and distribute the same products.

The adoption and use of the aforesaid colored tags by respondents in the manner aforesaid has the tendency to mislead prospective purchasers and purchasers into the belief that said seed is of the same purity of variety and pedigree and has been subjected to the same careful verification of origin as the alfalfa seed packed, sold, and distributed in interstate commerce by the members of the various crop improvement associations, aforesaid, when such is not the case and that in purchasing from respondents alfalfa seed under a blue or red tag the purchaser is purchasing alfalfa seed of the highest quality Grimm or Cossack varieties, without Dakota No. 12 (common), or any mixture thereof, when in truth and in fact such is not the case.

The use by respondents of the blue and red labels or tags in the manner aforesaid in conjunction with the misleading practices and misrepresentations and methods hereinbefore set out in paragraphs numbered 2, 3, and 4 of this complaint, have the tendency to mislead the purchaser with respect to the purity, quality, pedigree, variety, and value of their product, aforesaid, and all has the tendency unfairly to divert and does divert trade in interstate commerce from respondents' competitors to respondents.

Order

PAR. 6. The acts and things above alleged to have been done and the false and misleading representations and practices made and done by respondents are to the prejudice of the public and to the competitors of respondents 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.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon the written waiver of respondents of taking of testimony, findings as to facts, filing of briefs, oral argument and all other intervening procedure as well as the consent of said respondents that an order shall issue herein for them to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises having thereupon concluded that respondents have violated 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,"

It is now ordered, That the respondents, MacDonald T. Greene and Walter T. Greene, and each of them, individually and as co-partners, trading under the firm name and style Dakota Alfalfa Growers, their agents, representatives, servants, and employees, in connection with all alfalfa seed, marketed and sold by them in interstate commerce, do cease and desist from:

(1) Using the words "U. S. Registry" on the containers, bags, or packages in which such seed is sold, or on tags, cards, or labels attached thereto, without at the same time plainly showing that said words refer to a trade-mark registration in the United States Patent Office.

(2) Representing in any way that said seed comes to the consumer direct from the growers or direct from a growers cooperative association; or that the seed therein packed is grown by the sellers and shipped directly from the seed's place of production to the said purchasers by the producers thereof with but one profit, when such is not the case.

(3) Representing in any manner whatsoever that either Dakota Alfalfa Growers or the Dakota Finance Association is a State-sponsored cooperative improvement association, when such is not the case.

(4) Representing that said seed is grown from specially selected fields unless and until some actual selection of such fields is made to

maintain or improve the purity of variety, pedigree, freedom from noxious weeds and hardness of said seed.

(5) From attaching to the bags or sacks, in which said seed is so packed, distributed, and sold, tags of the identical shade of blue or red which through extensive use have come to and do indicate to the purchaser that said bags and sacks contain the highest and next highest quality of alfalfa seed of the Grimm or Cossack varieties together with inspection and certification of origin under State supervision when such bags or sacks do not contain, respectively, the highest and next highest quality of alfalfa seed of said varieties and have not been inspected and certified under State supervision as to origin and do contain alfalfa seed known as Dakota No. 12 (common), unless and until respondents, in conspicuous printing on said tags clearly and truly inform the purchasers and prospective purchasers of the actual varieties of said seed therein contained and that the origin and inspection have not been certified to under State supervision.

It is further ordered, That the said respondents within 60 days from and after the date of the service upon them of this order shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF
PROVIDENCE MALT 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 1976. Complaint, Oct. 13, 1931—Decision, Feb. 15, 1932

Where a corporation engaged in sale of domestic malt sirups,

- (a) Labeled the containers of one of its said products with legends "GERMAN DELIGHT HOPFEN GESCHMACK MALZ SIRUP," and "GERMAN HOP FLAVORED MALT SIRUP," on opposite sides thereof, together with corruption of the German eagle, reproduction of German iron cross, word "Saazer" in conspicuous red letters, and notice featuring use in product in question of genuine imported Saazer hops in quantities effective to produce unequaled taste, flavor, and quality, as contrasted with exclusive use of domestic hops in most hop-flavored malts, and displayed aforesaid "German Delight Label" in advertising its said product, notwithstanding fact said product was not until recently flavored with more than 45 per cent Saazer hops;
- (b) Labeled containers of another domestic product, compounded of domestic ingredients exclusively, with brand and designation "Canadian Arms," and depicted on said labels a shield prominently displaying St. George's Cross, together with designs representing the lion, unicorn, beaver, sheaf of wheat, and other symbols or characters generally associated in the public mind with Canada or the British Empire, and in advertising aforesaid product displayed such Canadian Arms label;

With capacity and tendency to mislead and deceive wholesale and retail dealers, and with result of supplying them with means of misleading and deceiving purchasing public into believing former product to have been imported and flavored with famous and more expensive Saazer Bohemian hops exclusively, and latter to be either imported, or domestic product of Canadian ingredients, and induce purchase of said products in reliance on such erroneous beliefs, and with capacity and tendency to divert trade to said corporation from competitors dealing in domestic malt sirups of domestic ingredients, entirely, without use of any such foreign trade names, descriptions, etc., or in imported malt or domestic Saazer hop flavored sirups:

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

Mr. James M. Brinson for the Commission.

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 sale of malt sirup to purchasers in the various States, and with principal place of business in Providence, with misbranding or mislabeling as to