

Complaint

IN THE MATTER OF
PROVIDENCE MALT COMPANYCOMPLAINT (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

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source or origin and composition of product, and advertising falsely or misleadingly in said respects; in that it offers and sells certain products, in which the famous, more desired and more expensive Saazer hops have either not been used, or not used in sufficient quantity "to produce a distinctive taste, flavor or quality, or to be perceptible or appreciable," in containers bearing labels with German words and insignia, and a notice featuring the use of imported hops therein, depicts aforesaid labels in wide advertisements of said products in periodicals circulating in the various States, together with representation "We use genuine imported Saazer hops in this blend,"² and similarly offers another domestic product composed entirely of domestic ingredients in containers with labels bearing the Canadian arms and various other British insignia.³

Respondent's practices, as aforesaid, "have had and have the capacity and tendency to mislead and deceive, and have furnished and furnish dealers, wholesale and retail, with the means to mislead and deceive the purchasing public" into the belief that said products have been and are imported into the United States from Germany and have been and are flavored with Saazer hops, or have been imported from Canada or made out of Canadian ingredients, respectively, and have effect of diverting trade to respondent from competitors offering and selling imported malt Saazer hop flavored sirup, domestic malt sirup so flavored, and domestic sirups flavored with domestic hops, and capacity and tendency, so to do; all to the prejudice of the public and competitors.

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 respondent Providence Malt Co., a corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance and filed answer, a hearing was duly held before an examiner of the Federal Trade Commission theretofore duly appointed for such purpose, in the course of which counsel for the Commission and Saul Abrams, representing Providence Malt Co., entered into a stipulation as to the facts in lieu of testimony and evidence, and the respondent consented

² As alleged in the complaint, "malt sirup is not a blend in the generally accepted sense of the word and is not so considered either by the trade or the consuming public."

³ Aforesaid labels and notices are described below in the findings at page 32.

in such stipulation that the Federal Trade Commission may forthwith proceed to file its report stating its findings as to the facts and conclusion drawn therefrom, and to issue and serve an order to cease and desist from the practices charged in the complaint. Such stipulation is approved, and this proceeding having come on regularly for decision upon the complaint, answer and stipulation, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises makes this its report in writing stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The Providence Malt Co. has been, for more than a year last past, and now is, 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 Providence in said State. It has been and is engaged in offering for sale and selling in commerce among and between the several States of the United States a product, consisting of malt sirup, which it has caused and causes to be transported, when sold, from its place of business in Providence, R. I., to purchasers located in the several States of the United States other than the State of Rhode Island.

PAR. 2. In the course and conduct of such business, respondent has been and now is in competition with individuals, partnerships, and corporations engaged in the sale and distribution of malt sirup and similar products, in like commerce.

PAR. 3. Saaz is the name of a town in that portion of Czechoslovakia formerly called Bohemia and is in the center of the hop-growing industry of that country. The district in the midst of which it is situated is now, and for a considerable period of time has been, known throughout the world for the excellence of the hops it produces, and of malt products flavored with them. Hops grown in such districts have long been known and now are known, described and designated as Saazer hops, in the United States. Saazer hops and the distinctive flavor resulting from their use in malt products have been and are widely and popularly known among the purchasing public in the United States, and Saazer hops command a higher price than domestic hops; and malt sirup flavored with such Saazer hops commands a higher price than malt sirup flavored with domestic hops.

PAR. 4. It has been and is the practice of respondent Providence Malt Co. to offer for sale and sell, in the course and conduct of its business, certain products in containers, with labels affixed thereto,

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which are so arranged that on one side of the can or container appear the words:

GERMAN
DELIGHT
HOPFEN GESCHMACK
MALZ SIRUP

and on the other side, opposite, appear the following words:

GERMAN
DELIGHT
HOP FLAVORED
MALT SIRUP

The word "German" appears in large and conspicuous letters and the word "Delight" in relatively small and inconspicuous letters. The label is so arranged that between the words "German Delight" and the words "Hopfen Geschmack Malz Sirup" on one side of the container and the words "German Delight" and the words "Hop Flavored Malt Sirup" on the opposite side, appear circles which inclose a corruption of the so-called German eagle; and on each side of it are reproductions of the so-called German iron cross. Above the corruption of the German eagle appears in both circles the word "Saazer" in conspicuous red letters; and, below such design appear in one circle, the German words "Hopfen Geschmack," and in the other the words "Hop Flavored." On a side of the can there appears on the label at a point equally distant from each circle, the following in conspicuous letters:

Important. Most hop flavored malts are made with domestic hops entirely. In German Delight, however, genuine imported Saazer hops are used in the blend in sufficient quantity to produce a taste, flavor, and quality which can not be duplicated. Distributors, Providence Malt Co., Providence, R. I.

In truth and in fact the product of the respondent branded and labeled German Delight is not and has not been made in Germany or in the Saazer district of Czechoslovakia, formerly Bohemia, or imported therefrom, and until September, 1930, was flavored with only 45 per cent of Saazer hops. Since September, 1930, the said product of the respondent has been flavored with Saazer hops exclusively—that is to say, 100 per cent Saazer hops has been used for such purposes.

PAR 5. Respondent Providence Malt Co. has caused other products to be offered for sale and sold in containers bearing labels on which said products are branded or designated as Canadian Arms. On

such labels there appear, in addition to the brand or name Canadian Arms, a shield on which is displayed prominently in red, St. George's Cross. The label contains designs representing the lion, the unicorn, the beaver, a sheaf of wheat, and other symbols or characters generally associated in the public mind with Canada or the British Empire.

In truth and in fact the product offered for sale and sold by respondent, branded and labeled Canadian Arms has not been, was not and is not manufactured in Canada or in any foreign country, or imported into the United States therefrom, but has been, was, and is manufactured in the United States from domestic ingredients or materials entirely.

PAR. 6. The respondent has also caused its product to be advertised in two issues of the Malt Age, a trade journal circulating throughout the United States among those engaged in the manufacture and sale of malt sirups and malt sirup products. One advertisement appeared in such journal in May, 1930, and the other in June, 1930. In the advertisement of May, 1930, appear representations of the containers of the respondent; one bearing the German Delight label and the other the Canadian Arms label. The June advertisement which appears in the June, 1930, issue, known as Commission's Exhibit No. 2, relates solely to the product described and designated as German Delight and it contains a representation or reproduction of the container, with the label hereinbefore described.

PAR. 7. There are competitors of respondents who offer for sale and sell in interstate commerce malt sirup manufactured in the United States, entirely of domestic ingredients, and do not use as a trade name or trade-mark any foreign name, description, emblem, symbol or design and on whose labels appear no foreign words at all.

PAR. 8. The practices of respondent described in paragraphs 2, 3, 4, 5, and 6 hereof have had and have the capacity and tendency to mislead and deceive and have furnished and furnish dealers, wholesale and retail, with means whereby they have been and are enabled to mislead and deceive the purchasing public into the belief that the product offered for sale and sold by respondent, under and by the name German Delight has been and is an imported product flavored exclusively with Saazer hops, and to induce its purchase in reliance on such erroneous belief, and that its product offered for sale and sold under and by the name Canadian Arms, has been and is imported into the United States from Canada, or has been and is manufactured in the United States of materials or ingredients imported from Canada, and to induce purchase of such product in reliance on such erroneous belief.

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PAR. 9. The aforesaid practices of respondent have had the capacity and tendency to divert trade to respondent from competitors offering for sale and selling, in interstate commerce, malt sirup manufactured in the United States entirely of domestic materials who do not use as a trade name or trade-mark any foreign name, description, emblem, symbol, or design, and on whose label appear no foreign words, and to divert to respondent, trade from individuals, partnerships, and corporations selling or offering for sale in interstate commerce their malt sirup imported into the United States or malt sirup manufactured in the United States and flavored with Saazer hops.

CONCLUSION

The practices of respondent, under the conditions and circumstances described in the above and foregoing findings as to the facts, are all to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in 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, the answer of respondent, and a stipulation as to the facts in lieu of testimony and evidence entered into by and between counsel for the Commission and respondent Providence Malt Co. in course of a hearing duly held before an examiner of the Federal Trade Commission theretofore appointed for such purpose, and respondent having consented in such stipulation that the Federal Trade Commission may proceed forthwith to file its report stating its findings as to the facts, together with its conclusion drawn therefrom, and may proceed forthwith to issue an order to cease and desist from the practices charged in the complaint, and the Commission having filed its report stating 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 respondent, Providence Malt Co., its officers, agents, and employees, do cease and desist, directly and indirectly—

(1) From using the words "German Delight" or any pictures, illustrations, symbols, or emblems associated with, or suggestive of, Germany, in connection with offering for sale and selling, in inter-

state commerce, either in advertisements or on containers of, or as a trade name or trade-mark for, or to describe or designate, any malt or malt sirup product manufactured in the United States of domestic ingredients, unless there appear conspicuously in immediate conjunction with such words "German Delight," or with such pictures, illustrations, symbols, or emblems, apt and adequate words clearly showing that such product is manufactured in the United States entirely of domestic ingredients.

(2) From using the word "Saazer," or any pictures, illustrations, symbols, or emblems associated with, or suggestive of Saaz or the Saazer district of Czechoslovakia, in connection with offering for sale, in interstate commerce, any hop flavored malt sirup or malt sirup product, unless such product is flavored 100 per cent with Saazer hops.

(3) From using the words "German Delight" accompanied by the words "Imported Saazer Hop Flavor," or the word "Saazer" in combination or association with other words, together with foreign illustrations, pictures, symbols, or emblems, on labels of containers or in advertisements of, or as a trade-mark or trade name for, or to describe or designate any malt or malt sirup product offered for sale or sold in interstate commerce which has been, or is, manufactured in the United States from and out of domestic ingredients flavored with imported Saazer hops, unless such product is flavored 100 per cent with Saazer hops, and there appear, in immediate conjunction with the words "German Delight" or any foreign illustrations, pictures, symbols, or emblems, apt and adequate words showing that such product is manufactured in the United States of domestic ingredients flavored with imported Saazer hops.

(4) From using the words "Canadian Arms," or any pictures, illustrations, symbols, or designs associated with, or suggestive of, Canada, in advertisements or on containers of, as a trade-mark or trade name, or to describe or designate, any product offered for sale or sold in interstate commerce manufactured in the United States entirely of domestic material, unless there conspicuously appear in immediate conjunction with such words "Canadian Arms" and such pictures, illustrations, symbols, or emblems, apt and adequate words clearly showing that such product is manufactured in the United States entirely of domestic ingredients.

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

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IN THE MATTER OF
SANFORD MILLS AND O. F. KENDALL, ET AL., COPART-
NERS, DOING BUSINESS AS L. C. CHASE & 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 1587. Complaint, Mar. 22, 1929—Decision, Feb. 25, 1932

Where a corporation engaged in manufacture of an imitation leather so made up as to closely resemble in its numerous grains, finishes, and colors all the leading varieties of leather, and in sale thereof under name "Leatherwove," through sole sales agent to wholesalers, jobbers, and manufacturers for automobile trim, furniture upholstery, and manufacture of novelties, shoes, etc., in competition both with others similarly engaged, and with those engaged in sale of real leather; and aforesaid sales agent; used term "buckskin" in sample books and circulars, and on shipping tags in connection with sale of a particular variety of aforesaid "Leatherwove"; with effect of putting such artificial product into the channels of trade under said false and misleading name, and of thereby suggesting to customers and latter's vendees misrepresentation of said goods as made of leather, and furnishing them with means of so doing, and with tendency and capacity to deceive ultimate purchasers of products made thereof into believing same to be composed in whole or in part of leather, and divert trade from competitors dealing in leather, and in imitation leather without misrepresenting composition thereof, and otherwise injure the same:

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. E. J. Hornibrook for the Commission.

Heard, Smith & Tennant, of Boston, Mass., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Sanford Mills, a Maine corporation engaged in the manufacture of imitation leather, with head office and principal place of business in Sanford, Me., and respondent individuals, partners, with principal office and place of business in Boston, engaged in sale of said product to manufacturers of automobiles, furniture, etc., who make their products in whole or in part thereof, with naming product misleadingly, misbranding or mislabeling, and advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, named, designated, branded, and labeled aforesaid imitation leather, consisting of a cotton cloth coated on one