

IN THE MATTER OF

JOHN C. HERMAN AND EDWIN S. HERMAN, PARTNERS,
DOING BUSINESS AS JOHN C. HERMAN & COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914.*Docket 1443. Complaint, Mar. 8, 1927—Decision, Feb. 27, 1932*

Consent order requiring respondent partner cigar manufacturers to cease and desist use of word "Havana" in connection with sale of their so-called "Havana Darts" cigars, containing no Havana or Cuban tobacco, or from applying word "Havana" to cigars not composed entirely of such tobacco, or using any other name, statement, etc., falsely implying or importing a Havana or Cuban tobacco content; as in said order set forth and qualified.

Mr. Henry Miller for the Commission.

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 John C. Herman and Edwin S. Herman, partners doing business under the trade name and style John C. Herman & Co., hereinafter referred to as respondents, have been and are 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:

PARAGRAPHS 1. Respondents are partners doing business under the trade name and style John C. Herman & Co., with their place of business in the city of Harrisburg, State of Pennsylvania. They are engaged in the manufacture of cigars and the sale thereof to wholesale and retail dealers located at points in various States of the United States. They cause said cigars when so sold to be transported from their said place of business in the city of Harrisburg, Pa., into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of their said business, respondents are in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of cigars in commerce between and among various States of the United States.

PAR. 2. For many years prior to the date hereof, tobacco has been and is now a commercial export product from the island of Cuba and the term "Havana" tobacco has for many years meant, and still means to the cigar tobacco trade, the cigar trade and the consuming

public, tobacco grown on the island of Cuba. Many among the said trades and many of the consuming public have for many years considered and still consider that cigars made of said Havana tobacco are superior in quality to cigars made of tobacco grown elsewhere than on the island of Cuba.

PAR. 3. Among the cigars manufactured and sold by respondents in interstate commerce as in paragraph 1 hereof set out, are certain cigars named and designated by respondents Havana Darts. Respondents pack their said Havana Darts cigars in boxes and containers upon which respondents cause to be set forth in sundry places and positions, said name Havana Darts printed in large and conspicuous letters together with statements to the effect that said cigars are made of Havana tobacco as in paragraph 2 hereof defined, and upon each said cigars respondents cause to be placed a band and label upon which said name, Havana Darts, is conspicuously printed and set forth. Respondents ship and deliver said cigars so packed, labeled and banded, to aforesaid dealer vendees. Said wholesale dealer vendees resell said cigars to retail dealers and ship and deliver said cigars, still so packed, labeled, and banded, to their said retail dealer vendees. Said retail dealer vendees, both those who purchase said cigars directly from respondent and those who purchase same from said wholesale dealers, offer for sale and sell said cigars, still so packed, labeled, and banded, to the consuming public.

PAR. 4. The use by respondents of said name and designation Havana Darts in the packing, labeling, and banding of their said cigars, all as in paragraph 3 hereof set out, has the capacity and tendency to and does mislead and deceive many among the aforesaid trades and many of the consuming public into the belief that the respondents' said Havana Darts cigars are composed of Havana tobacco, as in paragraph 2 hereof defined, and causes many of said trades and many of the consuming public to purchase respondents' said Havana Darts cigars in that belief. In truth and in fact, respondents' said Havana Darts cigars contain no Havana tobacco, as in paragraph 2 hereof defined, and are composed entirely of tobacco grown elsewhere than on the island of Cuba.

PAR. 5. There are among the competitors of respondents referred to in paragraph 1 hereof, many who sell cigars composed of Havana tobacco, as defined in paragraph 2 hereof, and who rightfully and lawfully represent their said cigars to be so composed. There are others of such competitors who sell cigars manufactured of tobacco other than said Havana tobacco and who in no wise represent that their said cigars are composed of said Havana tobacco. Respondents' acts and practices, all in this complaint above set out, tend to

divert business from and otherwise injure and prejudice said competitors.

PAR. 6. For about five years last past, respondents have engaged in the acts and practices under the circumstances and conditions and with the results hereinbefore set out.

PAR. 7. The above alleged acts and practices of respondents are all to the prejudice of the public and of respondents' 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.

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 issued and served its complaint in this proceeding upon John C. Herman and Edwin S. Herman, partners doing business under the trade name and style John C. Herman & Co., respondents above named, in which complaint it is charged that respondents have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

Respondents not having filed answer to said complaint within the time therein specified, a hearing for the taking of testimony with respect to the charges in said complaint was held pursuant to order and notice before an examiner of the Commission thereto duly appointed. At said hearing respondents entered their appearances in this proceeding and submitted their answer to said complaint with request that the same be filed and accepted by the Commission, whereupon said hearing for the taking of testimony was closed. In said answer to the complaint respondents formally state in writing that they desire to waive hearing on the charges set forth in the complaint and not to contest the proceeding, that they refrain from contesting the proceeding and consent that the Commission may make, enter, and serve upon them an order to cease and desist from the violations of the law alleged in the complaint. Respondents also request in said answer that the Commission proceed to final disposition of this proceeding upon said answer pursuant to the provisions of paragraph 2 of Rule III of the Commission's Rules of Practice and without further hearings.

The said answer of the respondents was duly accepted and filed by the Commission, and thereupon this proceeding came on before the

Federal Trade Commission on the entire record, and the Commission having duly considered the same and being fully advised in the premises.

It is now ordered, Pursuant to paragraph 2 of Rule III of the Rules of Practice heretofore adopted by the Commission and still in force, that respondents John C. Herman and Edwin S. Herman, their agents, representatives, servants, employees, and successors in business, in connection with or in the course of the sale or distribution of cigars in interstate commerce, do cease and desist:

(1) From using or causing to be used the word "Havana" in the brand name or designation "Havana Darts" for any such cigars which are not composed wholly of Havana or Cuban tobacco, unless in each instance when and where so used said brand name or designation be immediately accompanied by a statement, assertion or phrase which is equally prominent and conspicuous and which clearly and unequivocally indicates or states the fact, respectively, that said cigars do not contain any Havana or Cuban tobacco, or that the cigars contain such tobacco in part only, as the case may be.

(2) From directly or indirectly applying the word "Havana" singly to any such cigars which are not composed entirely of Havana or Cuban tobacco.

(3) From directly or indirectly applying to any of such cigars any other name, designation, statement, assertion, phrase or representation which implies, or imports that such cigars contain Havana or Cuban tobacco in whole or in part when such is not the fact.

It is further ordered, That said respondents John C. Herman and Edwin S. Herman shall, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
JOSEPH B. BRANDLER

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

Docket 1921. Complaint, Feb. 27, 1931—Decision, Feb. 29, 1932

Where an individual dealing as manufacturer's agent in a knitted Astrakhan cloth fabric, imitating Persian lamb fur on the outer or wool Angora pile side thereof, and in the sale of a large part thereof to a cloak manufacturer for latter's use in manufacture of garments (1) sold by him in competition with genuine Persian lamb fur coats, and Astrakhan coats resembling the appearance thereof, and (2) so lined and made up as not to permit purchasers and prospective purchasers of said manufacturer's retail dealer vendees to see the reverse side of the fabric in question without tearing or ripping the lining of the garment,

Adopted the phrase "Persian pelt" as a name for said fabric and furnished aforesaid manufacturer labels displaying words "Persian pelt—registered U. S. A.," in gold colored letters on black, for latter's use in labeling garments made by him thereof as aforesaid, and made such statements in advertising garments above referred to in a women's wear trade periodical, and in rotogravure circulars as "excellent copy of the Persian lamb fur. The difference can hardly be detected at sight. Feature in the ensemble—coat and beret of Persian pelt consigned to us exclusively," and "cold days would prove welcome to a smart coat and beret of Persian pelt, a fabric that is a remarkable reproduction of Persian lamb," and featured words "Persian lamb" in circulars distributed among retail dealers by said manufacturer under said individual's instructions;

With tendency and capacity to deceive and mislead purchasing public into believing said coats to be of Persian lambskin, induce the purchase thereof in reliance on such belief, and with effect of placing in the hands of retailers, through manufacturers and other thus supplied with aforesaid labels, means of consummating a fraud upon the purchasing public, and with capacity and tendency to divert trade from and otherwise prejudice and injure competitors, and operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the fabric coat, and fur coat, businesses:

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

Mr. Robert H. Winn for the Commission.

Mr. Maxwell E. Sparrow, Mr. Herman Levy, and Mr. William Michaels, of New York City, 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