

Syllabus

IN THE MATTER OF

W. H. SNYDER, R. P. SNYDER, AND ROGER N. SNYDER,
PARTNERS, DOING BUSINESS AS W. H. SNYDER &
SONSCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1441. Complaint, Mar. 4, 1927—Decision, Mar. 3, 1932*

Where the words "Havana" or "Habana" had long since been used and understood by the cigar purchasing and consuming public of the United States and by cigar manufacturers and dealers as meaning and designating tobacco grown in Cuba, of high grade, such tobacco had long been imported into the United States and extensively used and consumed therein in cigars made in whole or in part thereof, cigars made of such tobacco were considered by many as having an improved quality and desirability by reason of such fact, and enjoyed a large demand in the United States, and purchase thereof was preferred by many of the dealers and consuming public; and thereafter a domestic firm engaged in manufacture and sale of domestic cigars, containing no Havana or Cuban tobacco,

- (a) Named, banded, and advertised one of their aforesaid cigars as "Havana Fruit," and displayed said name and the words "Guaranteed Mild Havana" conspicuously in numerous places on the containers in which offered the public, together with glass display cigar box lids, supplied by it and bearing aforesaid name, and so framed and planned that retailer's use thereof resulted in display of aforesaid legends, and concealment of inconspicuous notice on inside hinge strap that cigars were made "from ripe domestic tobacco"; and
- (b) Named, banded, and advertised a cigar made and sold as aforesaid, "Havana Velvet," and so labeled the containers thereof, together with a depiction of Cuban tobacco plantation showing Havana tobacco under cultivation;

With effect of misleading and deceiving a large and substantial number of the purchasing and consuming public into buying aforesaid cigars as and for those composed in whole or in part of Havana, i. e., tobacco grown in Cuba, and of unfairly diverting trade from competitors dealing in cigars so composed in fact and rightfully and truthfully so advertising, representing, banding, and labeling the same, and from competitors dealing in cigars composed wholly of domestic tobacco and of non-Cuban tobacco, and neither banding, labeling, advertising, nor otherwise representing their said cigars as containing any Havana or Cuban tobacco, and with capacity and tendency so to mislead and deceive and unfairly divert trade from competitors, and to operate as a competitive burden upon sale of aforesaid competitive cigars:

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

Complaint

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Mr. Henry Miller for the Commission.

Mr. John Walsh and *Mr. L. A. Spiess*, of Washington, D. C., 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 respondents, W. H., R. P., and Roger N. Snyder, partners engaged as W. H. Snyder & Sons in the manufacture of cigars and sale thereof to wholesale dealers in various States, and with principal place of business in Windsor, Pa., with naming product misleadingly, misbranding or mislabeling and advertising falsely or misleadingly, in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, for about four years last past, have designated as "Havana Fruit" and "Havana Velvet" two brands of cigars made by them, and composed for the most part of tobacco other than Havana tobacco, i. e., tobacco grown on the Island of Cuba,¹ and so band said cigars and conspicuously label the containers thereof in which sold to its wholesale dealer vendees, and in which finally offered to the consuming public by said wholesalers' retail dealer customers.

Use by respondents, as alleged, "of said names and descriptions 'Havana Fruit' and 'Havana Velvet' in naming, designating, packing, labeling and banding their said cigars," as above set forth, "has the capacity and tendency to, and does, mislead and deceive many among aforesaid trades and many of the consuming public into the belief that respondents' said 'Havana Fruit' and 'Havana Velvet' cigars are composed of Havana tobacco," as aforesaid, and "causes many among said trades and many of the consuming public to purchase respondents' said cigars in that belief," and said acts and practices, as charged, tend to divert business from and otherwise injure and prejudice competitors dealing in cigars composed of Havana tobacco, and rightfully and lawfully so representing the same, and competitors manufacturing cigars composed for the most part of other than Havana tobacco, without in anywise representing

¹ As alleged in paragraph 2 of the complaint, "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 of said trades and many of the consuming public have, for many years, considered, and still consider, said Havana tobacco superior in quality for the manufacture of cigars to tobacco grown elsewhere than 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."

their said cigars as so composed; 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 the respondents W. H. Snyder, R. P. Snyder, and Roger N. Snyder, partners, doing business under the trade name and style W. H. Snyder & Sons, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondents entered their appearance in the proceeding and filed answer to said complaint. Thereafter, the matter being ready for the taking of evidence with respect to the charges in the complaint, a stipulation as to the facts was agreed upon and entered by respondents and counsel for the Commission wherein it is stipulated and agreed that the statement of facts therein recited may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Federal Trade Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and may enter its order disposing of the proceeding. Said stipulation as to the facts was approved by the Commission and thereafter, the privilege of filing briefs having been waived, the matter was orally argued before the Commission by counsel for the respondents and counsel for the Commission.

Thereupon this proceeding came on for final hearing, and the Federal Trade Commission, having duly considered the entire record and being fully advised in the premises, makes this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents W. H. Snyder, R. P. Snyder and Roger N. Snyder are partners who as such are and, for many years last past and prior to the issuance of the complaint herein, have been doing business as hereinafter described under the trade name and style W. H. Snyder & Sons, with their office and place of business in

the city of Windsor in the State of Pennsylvania. The said business conducted by respondents is the manufacture of cigars and the sale and distribution thereof, from the State of Pennsylvania, to the cigar trade, wholesale and retail dealers and to the consuming public throughout the several States of the United States. Respondents maintain and operate cigar factories in York County, Pa., where they manufacture said cigars, and pack, brand, and label the same for sale and distribution to their customers and by their dealer-customers to the consuming public. Said cigars are advertised, offered for sale and sold by respondents to their customers in the several States through and by means of personal solicitation, newspaper, magazine, and other advertisements, and by means of correspondence and other communications with customers and prospective customers. In consummating the sale of the cigars and in making delivery thereof to their customers, respondents cause the cigars sold to be transported from their factories and place of business in the State of Pennsylvania through and into States other than the State of Pennsylvania to the respective purchasers thereof in such other States. Throughout the course and conduct of said business respondents are and continuously have been engaged in interstate commerce in the sale and distribution of their cigars; and they are and continuously have been selling and distributing said cigars and conducting their said business in direct active competition with many other individuals, partnerships, and corporations also engaged in the sale and transportation of cigars in commerce in, between and among the several States of the United States to wholesale and retail dealers and to the consuming public.

PAR. 2. Large and substantial quantities of the cigars manufactured, advertised, sold, and distributed competitively by respondents in interstate commerce, as set forth in paragraph 1 hereof, are and, for several years last past and prior to the issuance of the complaint herein, have been so sold and distributed by respondents under the name, designation, and description of "Havana Fruit" cigars and "Havana Velvet" cigars and under the following described labels and brands affixed to the cigars and the containers thereof. Said containers are the usual and customary cigar boxes or cigar containers of the respective capacities of twenty-five and fifty cigars each which are packed therein by respondents.

(a) AS TO SAID "HAVANA FRUIT" BRAND OF CIGARS: Around each of said cigars respondents affix a paper band bearing conspicuously the words "Havana Fruit." Upon each container respondents cause to be affixed and prominently and conspicuously displayed in numerous places, on both the inside and outside of the containers, the

printed words "Havana Fruit," "Guaranteed Mild Havana" as the designation and description of such cigars. In the comparatively inconspicuous position on the inside hinge strip, respondents cause to be set forth in said containers the statement "These cigars are manufactured from ripe domestic tobacco," said statement appearing but once in connection with such cigars. For the purpose of more effectively promoting the sale of said cigars to the consuming public respondents have had manufactured for them certain glass cigar box lids to be attached by retail dealers to said containers. Said glass lids are supplied by respondents free of charge to cigar stores and other dealers for use by such dealers in displaying and reselling respondents' said cigars to the consuming public. On said glass lids respondents have caused to be prominently printed and displayed the words "Havana Fruit" as the name and designation of the cigar. The metal frame of the glass lid has been designed in such a way that as and when the same is used it (1) holds the lid of the cigar box open so as to prominently display to the purchasers and prospective purchasers said words "Havana Fruit" and "Guaranteed Mild Havana"; and (2) obstructs and renders invisible to the purchasers and prospective purchasers the above-mentioned statement, "These cigars are manufactured from ripe domestic tobacco."

(b) AS TO SAID "HAVANA VELVET" BRAND OF CIGARS: Upon a paper band around each cigar and upon the containers of said "Havana Velvet" cigars which are and have been sold and distributed by respondents, as aforesaid, respondents cause and have caused to be conspicuously set forth as the name and designation of such cigars the words "Havana Velvet," which words in the case of the containers are displayed in conjunction with a picture depicting a Cuban tobacco producing plantation with growing Havana tobacco under cultivation.

To promote the sale of said Havana Fruit and Havana Velvet cigars, respondents caused and still cause the same to be designated, described and represented, in the advertising matter referred to in paragraph 1 hereof, as Havana Fruit cigars and Havana Velvet cigars respectively. In the regular course of business and as intended by respondents, cigar stores and other wholesale and retail dealers display, offer for sale and resell to the consuming public said cigars in the original containers and under the said labels, brands, designations, and representations applied thereto by respondents.

PAR. 3. The word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar purchasing and consuming public of

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the United States, and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in whole or in part from such tobacco. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of high quality and excellence, and cigars made in whole or in part from said tobacco are in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco, and have believed and still believe that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

PAR. 4. In truth and in fact none of respondents Havana Fruit and Havana Velvet cigars manufactured, branded, labeled, advertised and sold by respondents as hereinabove described contain any Havana tobacco or tobacco grown on the Island of Cuba, nor have they at any time contained any such tobacco, but are and have been manufactured entirely from and wholly composed of tobacco grown in the United States, namely Pennsylvania tobacco. The effect of the use of the word "Havana" in said designations Havana Fruit and Havana Velvet and otherwise in advertising, branding, labeling, and describing the said cigars containing no Havana tobacco, all as hereinbefore set forth, is misleading and it has and had the capacity and tendency to and did mislead and deceive a large and substantial number of the purchasing and consuming public into purchasing said cigars in the erroneous belief that they are and were composed in whole or in part of Havana tobacco, that is, tobacco grown on the Island of Cuba.

PAR. 5. There are among the competitors of respondents mentioned in paragraph 1 hereof many who sell and distribute in competition with respondents' cigars composed in whole and also cigars composed in part only of Havana tobacco and who rightfully and truthfully advertise, represent, brand, and label such cigars as containing said Havana tobacco. There are also many of said competitors who sell and distribute in competition with respondents cigars composed wholly of tobacco grown in the United States and of tobacco grown elsewhere than on the Island of Cuba and who do not brand, label, advertise, or otherwise represent that said cigars contain any Havana or Cuban tobacco. Respondents' Havana Fruit and Havana Velvet cigars are displayed, offered for sale and sold to the consuming public by respondents, and in and by cigar stores and

other dealer establishments, in competition with the said cigars of competitors. The respondents' use of the word "Havana" in relation to cigars containing no Havana tobacco under the circumstances and conditions hereinabove set forth has the capacity, tendency and effect of injuring the public and of unfairly diverting trade from respondents' competitors; and, further, tends to operate as a competitive burden upon the sale of said competing cigars.

CONCLUSION

The acts and practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are and have been to the injury and prejudice of the public and of respondents' competitors, and are unfair methods of competition in interstate commerce and constitute a violation of section 5 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 entire record, including the complaint of the commission, the answer of respondents thereto, the stipulation as to the facts agreed upon and approved; and the Commission having made its findings as to the facts with its conclusion that said respondents have been and are violating the provisions of section 5 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,"

It is now ordered, That respondents W. H. Snyder, R. P. Snyder, and Roger N. Snyder, and each of them, their agents, representatives, servants, employees, and successors in business, cease and desist, in connection with, or in the course of, the sale or distribution of cigars in interstate commerce:

(1) From using, or causing to be used, the word "Havana" in the brand names or designations Havana Fruit and Havana Velvet for any such cigars which do not contain any Havana or Cuban tobacco, unless in each instance when and where so used said brand names or designations 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 that such

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cigars do not contain any Havana or Cuban tobacco, or that said cigars are composed entirely of certain tobacco none of which is Havana tobacco or tobacco grown in Cuba.

(2) From using, or causing to be used, the word "Havana" in the brand names or designations Havana Fruit and Havana Velvet for any such cigars which are not composed entirely of Havana or Cuban tobacco but contain such tobacco in part, unless in each instance when and where so used said brand names or designations containing the word "Havana" 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 that such cigars are not composed wholly of Havana or Cuban tobacco or that the cigars contain certain tobacco which is not Havana tobacco or tobacco grown in Cuba.

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

(4) From directly or indirectly applying to any of said 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, W. H. Snyder, R. P. Snyder, and Roger N. Snyder 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.

Syllabus

IN THE MATTER OF
MECHANICAL MANUFACTURING CO., R. O'HARA,
AND W. A. MAYFIELD

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

Docket 1727. Complaint, Dec. 6, 1929—Decision, Mar. 4, 1932

Where a corporation (1) engaged in the manufacture and/or assembling of bumping posts, draft gears, and coupler centering devices, and in the sale thereof to the principal railway lines in the United States, (2) controlled by the principal stockholders of one of the large, well-known meat packers, officers, directors, and family owners of which made up its board, and, (3) including among its stockholders two transportation officials of said meat packing company, in direct charge of latter's traffic negotiations with the railroads, and in control of the freight car routings of its products and those of its subsidiaries, involving a business in meat products and by-products carried on through more than 500 branch distributing warehouses in the principal cities and towns of the United States, and utilization and control of approximately 7,500 refrigerator cars,

- (a) Used the volume of freight traffic thus controlled by aforesaid transportation officials, to induce purchase of its bumping posts, draft gears, and centering devices in preference to those of competitors through promises and assurances of shipments or increased shipments for the lines concerned, and, in some instances, threats of withdrawal of traffic from lines of companies declining such purchases; and

Where aforesaid transportation officials,

- (b) Cooperated with and assisted said corporation in making such sales to the railways, through utilizing their official position to induce and compel railway officials to give undue preference to its said draft gears and bumping posts, by personal interviews and official letters informing traffic and other railway officials that the packing company or "family" or "interests" controlling it and owning the corporation would be favorably disposed to railroads using corporation's gears or bumping posts, "expected their railroad friends" and those carriers whom they "patronized liberally" to buy products on a "reciprocity" basis or "reciprocate" through buying a portion or specified portion of their requirements, and were disappointed or dissatisfied with traffic officials of roads which failed to purchase said articles in substantial or specified numbers, along with the advice that other roads or specified roads were using said articles in substantial quantities; and
- (c) Threatened to and did divert traffic of said packer or its subsidiaries from railways failing or refusing to buy said articles in substantial quantities, and increased shipments to purchasers thereof and informed said corporation's customers, following assignment of license under which it theretofore made certain draft gears concerned, that purchase of such gears by said customers from such licensee would be satisfactory to the corporation;