

Complaint

IN THE MATTER OF
JOHN F. REICHARD, DOING BUSINESS AS MANCHESTER
CIGAR COMPANY

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

Docket 1459. Complaint, Apr. 22, 1927—Order, Mar. 12, 1932

Consent order requiring respondent individual, cigar manufacturer, to cease and desist use of word "Havana" in connection with sale of his so-called "Havana Cadet" cigar 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 for said cigar; 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 F. Reichard, hereinafter referred to as respondent, has been and is 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. Respondent is an individual with his place of business in the city of York, State of Pennsylvania. He is 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. He causes said cigars, when so sold, to be transported from his said place of business in the city of York, Pa., into and through other State of the United States to said vendees at their respective points of location. In the course and conduct of his said business, respondent is 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 of the Island of Cuba and the term "Havana" tobacco has for many years meant, and still means, to the cigar trade and to the consuming public, tobacco grown upon the Island of Cuba. Many among said trade and many

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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, and cigars containing said Havana tobacco are in great demand among the consuming public in the United States.

PAR. 3. Among cigars manufactured and sold by respondent in interstate commerce as in paragraph 1 hereof set out, are certain cigars named and designated by respondent Havana Cadet cigars. Respondent packs its said Havana Cadet cigars in boxes and containers upon which respondent causes to be set forth in sundry places and positions, said name Havana Cadet, printed in large and conspicuous letters. Respondent ships and delivers his said cigars, so packed, to his aforesaid vendees. Said wholesale dealer vendees resell said cigars to retail dealers and ship and deliver said cigars, still so packed, to their said retail dealer vendees. Said retail dealer vendees, both those purchasing from said wholesale dealers and those purchasing directly from respondent, display, offer for sale, and sell said cigars, still so packed, to the consuming public.

PAR. 4. The use by respondent of said name and designation Havana Cadet upon the containers in which his aforesaid cigars are packed, all as in paragraph 3 hereof set out, has the capacity and tendency to and does mislead many among aforesaid trade, and many of the consuming public, into the belief that respondent's said Havana Cadet cigars are composed of said Havana tobacco referred to in paragraph 2 hereof, and causes many of said trade and many of the consuming public to purchase respondent's said Havana Cadet cigars in that belief. In truth and in fact, respondent's said Havana Cadet cigars contain no aforementioned Havana tobacco and are composed entirely of tobacco grown elsewhere than on the Island of Cuba.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof, many who sell cigars composed of aforementioned Havana tobacco and who rightfully and lawfully represent their said cigars to be so composed. There are others of said competitors who sell cigars manufactured of tobacco wholly other than said Havana tobacco and who in nowise represent that their said cigars are composed of the last named tobacco. Respondent's acts and practices, all in this complaint above set out, tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. For about three years last past, respondent has 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 respondent are all to the prejudice of the public and of respondent's 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 F. Reichard, an individual doing business under the trade name and style Manchester Cigar Co., respondent above named, charging him with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondent not having filed answer to said complaint within the time therein specified, a hearing for the taking of testimony and other evidence with respect to the charges in said complaint was set to begin pursuant to order and notice before an examiner of the Commission thereto duly appointed. Respondent thereupon entered his appearance in this proceeding and having indicated his desire to avoid the taking of proofs in the matter and to file answer to said complaint, said hearing before the examiner was canceled. Respondent then submitted his answer to said complaint with the request that the same be filed and accepted by the Commission. In said answer to the complaint respondent formally states in writing that he desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, that he refrains from contesting the proceeding and consents that the Commission may make, enter and serve upon him an order to cease and desist from the violations of the law alleged in the complaint. Respondent also requests 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 respondent 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 respondent, his agents, representatives, servants, em-

ployees, and successors in business, in connection with or in the course of the sale or distribution of cigars in interstate commerce, cease and desist:

(1) From using or causing to be used the word "Havana" in the brand name or designation "Havana Cadet" 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 respondent John F. Reichard shall, within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

T. E. BROOKS, DOING BUSINESS AS T. E. BROOKS & 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 1442. Complaint, Mar. 4, 1927—Decision, Mar. 14, 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 and 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, and cigars made of such tobacco enjoyed a large demand in the United States and were considered as having an improved quality and desirability by reason of such fact, by many of the dealers and consuming public, who preferred the purchase thereof; and thereafter an individual engaged in the manufacture and sale of domestic cigars containing no Havana or Cuban tobacco,

Named, banded, and advertised its said cigars "Havana Sweets" and featured aforesaid name upon the tops and ends of the containers in which displayed and offered to the consuming public, as well as on the inside lid and inner side of the vertical part of the container to which was attached the hinged lid, with no notice of said cigar's domestic content other than a relatively inconspicuous statement to that effect printed at the bottom of aforesaid inside lid label;

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 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.

Mr. Henry Miller for the Commission.

Mr. John Walsh and *Mr. L. A. Spiess*, of Washington, D. C., 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 respondent individual, engaged in the manufacture of