

Complaint

IN THE MATTER OF

ELIAS SHEINKER, TRADING AS W. SHEINKER & SON,
AND W. SHEINKER & SON, INC.

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

Docket 1909. Complaint, Jan. 27, 1932.¹—Order, June 24, 1932

Consent order requiring respondents, their agents, etc., in connection with sale in interstate commerce of their so-called "German Culinary Bouquet No. 22", and "German Culinary Bouquet No. 42", flavoring extracts, to cease and desist from using words "German" or "Leipzig" on packages, bottles or containers thereof, or in advertisements thereof or otherwise, or any other words, phrases, pictorial design, device, etc., importing such or any other foreign source of origin; as in said order set forth and qualified.

Mr. E. J. Hornibrook for the Commission.

Hirsh, Newman, Reass & Becker, of New York City, for respondent.

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 Elias Sheinker, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Elias Sheinker, is an individual doing business under the trade name, W. Sheinker & Son, with his principal place of business in the City and State of New York. For the last year respondent has been engaged in the manufacture and sale in interstate commerce of flavoring extracts. In the course of said business, respondent has advertised for sale and sold in interstate commerce, liquid flavors in bottles, composed of various ingredients, principally essential oils, fusel oil, solvents, vanilla extract and water. Of these, the essential oil and fusel oil together represent, respectively, approximately 15 per cent and 20 per cent of the respondent's products above described. The flavors so advertised and sold by respondent in interstate commerce carry labels designating

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the contents as German Culinary Bouquet No. 22 and German Culinary Bouquet No. 42. Said labels contain also the following printed matter: Wilhelm Schneider & Co., Leipzig and New York, U. S. A. and a design in the form of a coat of arms with monogram of the letters "W S" on a shield, supported by two lions, with medals on either side, and underneath the shield, "Leipzig" and "Essence Fabrication".

Respondent has caused to be published in Malt Age, a trade journal having a substantial interstate circulation, advertisements of said products headed "Products of Wilhelm Schneider & Co., Leipzig, Germany", and carrying pictures of said products labeled as above described. The products so labeled are manufactured by respondent at his place of business in New York City, in accordance with his own formulae, by mixing, blending, and diluting essential oils so that the finished combination gives the desired flavor.

PAR. 2. In the year 1927, respondent began purchasing flavoring extracts designated as German Culinary Bouquet No. 22 and German Culinary Bouquet No. 42, from Wilhelm Schneider & Co., a manufacturer of flavoring extracts, located in Leipzig, Germany. The first shipments under said purchases were imported completely made up and bottled, ready for the market. The bottling and the labeling were done in Germany and the goods were marketed as received. Later, also in 1927, respondent discontinued the importation of the bottled extracts and imported the basic concentrate from which they were made; that is, the essential oils, which had already been blended, and mixed by Wilhelm Schneider & Co., of Leipzig, Germany. This was imported in bulk and diluted by respondent for market. Respondent secured labels and empty bottles from Wilhelm Schneider & Co., of Leipzig, and used them in putting up the ex-products, so that they were identical, as sold by him, in appearance, with the products which he had previously imported already bottled and labeled. Thereafter respondent ceased importing the concentrate in bulk from Wilhelm Schneider & Co., of Leipzig, as above described, and prepared and put up in bottles flavoring extracts sold by him under the name of German Culinary Bouquet No. 22 and German Culinary Bouquet No. 42, made from ingredients purchased from importers in New York City and from domestic manufacturers, according to his own formulae, and continued to use the labels of Wilhelm Schneider & Co. as above described, except that he caused "New York, U. S. A." to be added to the words "Wilhelm Schneider & Co. Leipzig". On the bottom of the bottles are impressed the words, "Wilhelm Schneider & Co., Leipzig and New York." Respondent has also since he ceased to purchase the products above described

from W. Sheinker & Son of Leipzig, in circulars and advertising matter, described his business as W. Sheinker & Son, manufacturers and importers, and distributors of Wilhelm Schneider & Co., Leipzig, Germany, New York, U. S. A."

PAR. 3. The advertising and various labels used by respondent, as described in paragraphs 1 and 2 hereof, have each and all the capacity and tendency to mislead, and do mislead, purchasers of flavoring extracts into the belief that the articles manufactured, advertised and sold by respondent, as above described, are made by Wilhelm Schneider & Co., in Leipzig, Germany, and are imported into this country; whereas, in fact, they are manufactured by the respondent in the City of New York, from ingredients purchased by him from domestic manufacturers and importers located in the City of New York, and the imported material in said products constitute approximately, altogether, 35 per cent thereof.

PAR. 4. Respondent, in his business as above described is in competition in interstate commerce with vendors of flavoring extracts manufactured abroad and imported into this country, and with makers and vendors of flavoring extracts in this country who do not represent their products to be imported. The practices of respondent as above described, in the advertising and labeling of his products, tend to unfairly divert trade from vendors of imported and makers and vendors of domestic extracts described above.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate 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.

SUPPLEMENTAL 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 W. Sheinker & Son, Inc., hereinafter referred to as one of the respondents, 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. Reiterates and adopts each and all of the allegations of the original complaint herein and makes and asserts each and all of the charges thereof against both of the above-named

respondents. Attaches hereto a true and perfect copy of said original complaint, marks it Exhibit A, and makes it a part of this supplementary complaint.²

PAR. 2. On February 4, 1931, the Federal Trade Commission issued its said original complaint against respondent Elias Sheinker, trading as W. Sheinker & Son, and caused the same to be duly and legally served upon him on February 6, 1931. On December 8, 1931, the Federal Trade Commission ordered that the taking of testimony under the said original complaint proceed at the City of New York on December 16, 1931. Thereafter respondent, Elias Sheinker, procured a postponement of the taking of such testimony until January 19, 1932. Testimony under said original complaint was received on behalf of the Federal Trade Commission at said City of New York on January 19 and 20, 1932, and the Commission rested its case against respondent Elias Sheinker, and March 1, 1932, at said City of New York, State of New York, was then and there fixed by the trial examiner as the time and place for receiving testimony on behalf of respondent Elias Sheinker.

PAR. 3. Respondent W. Sheinker & Son, Inc., is a corporation organized on January 7, 1932, under the laws of the State of New York, with its principal place of business in the City of New York. It was so organized by respondent Elias Sheinker and now exists for the purpose of carrying on the business formerly conducted by him, which business is described in paragraph 1 of said original complaint, and it is the sole owner and successor of said business, and since the date of its said incorporation it adopted and now uses in the sale and promotion of the sale in interstate commerce of the products "German Culinary Bouquet No. 22" and "German Culinary Bouquet No. 42" the same false and misleading statements and representations and circulated the same in and through the same and similar media and for the same purposes as were used by respondent Elias Sheinker as described in said original complaint.

PAR. 4. Respondent, W. Sheinker & Son, Inc., is a necessary and proper party in this matter.

PAR. 5. The advertising and various labels used by respondents as described in paragraphs 1 and 2 of the original complaint had and have, each and all, the capacity and tendency to mislead, and do mislead purchasers of flavoring extracts into the belief that the articles manufactured, advertised, and sold by respondents, as above described, are made by Wilhelm Schneider & Co. in Leipzig, Germany, and are imported into this country; whereas, in fact, they are

² See *ante*, pp 233 et seq.

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now manufactured by the respondent W. Sheinker & Son, Inc., in the City of New York, from ingredients not made by Wilhelm Schneider & Co., but purchased by it from domestic manufacturers and importers, and the imported material in said products constitutes approximately 35 per cent thereof.

PAR. 6. Respondent W. Sheinker & Son, Inc., in its business as above described, is in competition in interstate commerce with vendors of flavoring extracts manufactured abroad and imported into this country and with manufacturers and vendors of flavoring extracts in this country who do not represent their products to be imported. The practices of respondents, as above described, in the advertising and labeling of their products, tend to unfairly divert trade from vendors of imported and makers and vendors of domestic extracts described above.

PAR. 7. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in interstate 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 supplemental complaint of the Commission and answers of the respondents, and after testimony had been taken by a duly appointed trial examiner on behalf of both the Commission and respondents, and respondents thereupon having been granted, by the Commission, permission to withdraw their answers heretofore filed on April 19, 1932, and respondents having filed in lieu thereof their answer consenting that the Commission may make, enter, and serve upon them an order to cease and desist from the method or methods of competition charged in the complaint, and the Commission being fully advised in the premises,

It is now ordered, That respondent Elias Sheinker, his agents and employees, and respondent W. Sheinker & Son, Inc., its officers, agents, and employees, in connection with the sale or offering for sale in interstate commerce of flavoring extracts named, designated and described by them as German Culinary Bouquet No. 22 and German Culinary Bouquet No. 42, cease and desist, from: Using the word "German" or the word "Leipzig" on packages, bottles, or containers of such flavoring extracts or in advertisements of the same or otherwise, or any other word or phrase or any pictorial de-

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sign or any device, importing, implying, or suggesting that such flavoring extracts, so sold or offered for sale, are imported from Leipzig, Germany, or from any other foreign city or country unless such flavoring extracts are in fact manufactured in and imported from said Leipzig or such other indicated foreign city or country; except that if the essential ingredients of such products are imported by respondents and the products manufactured or compounded in the United States the name of such foreign country and city from which such essential ingredients are so imported may be used in the sale and offering for sale thereof upon packages, bottles or containers thereof and in advertisements of the same, provided apt and adequate words or phrases are used in conjunction therewith and in close proximity thereto so as to clearly indicate that such products are manufactured or compounded in the United States.

It is further ordered, That respondents shall within 60 days after service upon them 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 this order.

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IN THE MATTER OF

JOSEPH ROSENBLUM, AN INDIVIDUAL, TRADING AS
PRINCESS SILK MILLS

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

Docket 1991. Complaint, Jan. 8, 1932—Decision, June 25, 1932

Where an individual engaged in sale of dress goods and garments through numerous house to house solicitors, and doing an annual business of several hundred thousand dollars annually,

- (a) Employed trade terms including words "silk", "satin", "chiffon", "pongee", and "shantung" on his swatch cards, and in his advertising matter and through solicitors in bringing to attention of consumers, customers, and prospective customers dress goods and garments of cotton or rayon, or mixtures thereof, without further terminology or description as to composition thereof, notwithstanding fact aforesaid products and weaves variously designated as "sport silk", "crepe rayon silk", "rayon silk shantung", "rajah shantung", "pongee", "superfine pongee", "silhouette chiffon", etc., were not that long highly esteemed material composed of the product of the cocoon of the silkworm, long implied to trade and public by said terms; with effect of causing customers to purchase said fabrics and merchandise as and for genuine silk, and with capacity and tendency so to do;
- (b) Employed such terms as "linene shantung", "linene prints" and "linene suiting" in swatches, etc., in offering, advertising, and selling its aforesaid products, as above set forth, notwithstanding fact products were not linen as long understood by public, i. e., fabrics woven from flax or garments made thereof; with capacity and tendency to mislead purchasing public as to composition of aforesaid fabrics and garments, and with result of bringing about their purchase as and for genuine linen; and
- (c) Included words "Silk Mills" in its trade name, notwithstanding fact it neither fabricated nor manufactured merchandise dealt in by it; with capacity and tendency to mislead consuming public into believing said individual to be engaged in manufacture of said merchandise and with result of bringing about purchase thereof in such mistaken belief;

With capacity and tendency to mislead and deceive public and purchasers and prospective purchasers of said individual's products, and induce purchase thereof by them in reliance upon erroneous beliefs thus induced and thereby divert trade to said individual from competitors dealing through house to house solicitation or mail order, or engaged in intrastate commerce:

Held, That such practices, under circumstances set forth, constituted unfair methods of competition.

Mr. Eugene W. Burr for the Commission.

Mr. Samuel M. Birnbaum, 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