

IN THE MATTER OF
ELBY EXTRACT COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1940. Complaint, Apr. 16, 1931—Decision, June 28, 1932

Where a corporation engaged in the manufacture and sale of flavoring extracts and sirups,

- (a) Employed words "Bouquet 3me" and "London Dry Essences", in describing its said products in circular letters and in labeling the same, and stated that such products were "absolutely our own products manufactured and imported exclusively by us under our own special formula";
- (b) Labeled its product with the words "Eugene et Joseph Freres" and a depiction of a building typical of European edifices, with aforesaid words upon the front thereof, and, below, the legend "Huiles essentielles, chimiques, fine synthetiques, extraits superieur, Grasse, France—New York, U.S.A." (subsequently changed to the English equivalent thereof), and reproduced upon the wooden containers of its bottled product a pictorial representation of aforesaid label bearing the words "Eugene et Joseph Freres", and the aforesaid French legend (thereafter changed as aforesaid); and
- (c) Featured the words "Eugene et Joseph Freres", with the words "Bouquet 3me" in advertising its product in a trade periodical and depicted in said advertising the bottle in which said product was sold by it and the wooden containers enclosing the bottles for sale, together with said names "Eugene et Joseph Freres", said building typical of European edifices, with said names on the front thereof, and below, the French legend above referred to for which it later substituted the English version as above set forth;

Facts being products in question were not made abroad nor imported, but were composed to the extent of 70 or 75 percent of domestic solvents, and to the extent of 25 or 30 percent of essential oils purchased by it from or through importers and manufacturers' agents in the United States, only a small part of the building depicted was ever occupied by it, and the words "Eugene et Joseph Freres" at no time appeared across the front thereof, but only over one of the doors or windows of the part used by it; With capacity and tendency to mislead and deceive purchasers and prospective purchasers into believing said products to have been imported, and to divert trade to it from competitors selling imported extracts made in France and other foreign countries, and those selling extracts made in the United States out of imported essential oils, in combination with domestic solvents, and truthfully advertising and describing the same, to the injury of said competitors' business:

Held, That such practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Schneider & Groggins, 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 respondent, a New York corporation engaged in the manufacture of flavoring extracts and sirups and in the sale and transportation thereof to purchasers in the various States and with principal place of business in New York City, with advertising falsely or misleadingly and misbranding or mislabeling as to source, origin, or composition of products and trade and business status, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, represents in circular letters distributed among customers and prospective customers that "Our Bouquet 3me and London Dry Essences are absolutely our own products manufactured and imported exclusively by us under our own special formula," and sells certain of its products bearing labels on which appeared the legend "Eugene et Joseph Freres", followed by a pictorial representation of a building typical of European edifices, bearing upon its front the words "Eugene et Joseph Freres", and below such words * * *:

Huiles essentiels, chimiques fine synthetiques,
extraits superieur

Grasse
France

New York
U.S.A.

and also stencils on containers of its "Bouquet 3me" products the words "From the wood".

The facts are that products thus "advertised, designated, described, and labeled, have not been, were not, and are not manufactured by Eugene et Joseph Freres at Grasse in France, or in any foreign country, and were not, have not been, and are not imported into the United States from France, or any other foreign country, but have been, were, and are manufactured by respondent Elby Extract Co. at its place of business in the city and State of New York, and a substantial portion of the ingredients thereof have been, were and are of domestic origin, and the product sold and distributed by respondent under the trade name of Bouquet 3me was not, has not been, and is not aged in wood."

Findings

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Said acts and practices, as alleged, "have had and have, and each of them has had, and has the capacity and tendency to mislead and deceive the purchasing public, and have furnished and furnish dealers, wholesale and retail, with the means by which they have been and are enabled to mislead and deceive their customers, into the belief that the products of respondents' so advertised, labeled, described, and designated have been, were and are manufactured in France and imported by respondent into the United States, and that such products have been and are aged in wood", and "have had and have the capacity and tendency to divert trade to respondent from competitors offering for sale and selling in interstate commerce, flavoring extracts and sirups truthfully described", and, as charged, "are all to the prejudice of the public and respondent's competitors, and have been, and are unfair methods of competition within the meaning and intent of section 5."

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 Elby Extract Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed answer, testimony and documentary evidence were received, duly recorded, and filed in the office of the Commission; thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony, and evidence, briefs and oral arguments by counsel for the Commission and counsel for the respondent, and the Commission having duly considered the same now makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Elby Extract Co. is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the City of New York and State aforesaid, engaged in the manufacture of flavoring extracts and sirups and their sale and transportation, when sold, from its said

place of business to purchasers in the various other States of the United States than the State of New York.

In the course and conduct of its business respondent Elby Extract Co. has been, and at all times hereinafter mentioned was and now is, engaged in competition with individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of flavoring extracts and sirups.

PAR. 2. Respondent Elby Extract Co., in the course and conduct of its business as described in paragraph 1 hereof, has solicited the purchase of its products by the circulation and distribution, among customers and prospective customers, of a circular letter which contained the following language:

Our Bouquet 3me and London Dry Essences are absolutely our own products manufactured and imported exclusively by us under our own special formula.

and respondent Elby Extract Co., has also offered for sale and sold, in the course and conduct of its business described in paragraph 1, certain of its products bearing labels on which appeared the legend "Eugene et Joseph Freres", followed by a pictorial representation of a building typical of European edifices, bearing upon its front the words "Eugene et Joseph Freres", and below such words the following:

Huiles essentieles, chimiques fine synthetiques,
extraits superieur

Grasse

New York

France

U.S.A.

Respondent has caused a pictorial representation of such label bearing the aforesaid legend "Eugene et Joseph Freres" and other French words to appear on the wooden containers of the bottles in which its said products have been offered for sale and sold.

Respondent Elby Extract Co. has advertised and offered its product for sale in the Malt Age, a journal circulated in the various States of the United States among individuals, partnerships, and corporations engaged in the manufacture or sale of malt extracts and sirups. In such advertisements appears the following: "Eugene et Joseph Freres" in large and conspicuous letters and beneath such words appears "Bouquet 3me." The advertisement also contains a pictorial representation or illustration of the bottle in which products of respondent have been offered for sale and sold and of the wooden container in which such bottles have been enclosed when sold. Such representations or illustrations also present the names "Eugene et Joseph Freres", together with the building typical of European edifices, bearing upon its front the words "Eugene et Joseph Freres" and below such words the following:

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Huiles essentielles, chimiques, fine synthétiques,
extraits supérieur

Grasse

New York

France

U.S.A.

Sometime in April, 1931, after commencement of an investigation into its practices by the Federal Trade Commission and the receipt of a communication from the chief trial examiner in respect thereto, respondent caused the labels on its products to be altered by substitution of the following, to wit: .

	Essential Oils
Fine Chemicals	Synthetics
	Superior Extracts
Contents	New York
17½ ozs	U.S.A.

The substituted words are a translation into English of certain French words theretofore appearing on the labels of respondent and in its advertising matter immediately below the pictorial representation or illustration of the edifice bearing the inscription "Eugene et Joseph Freres" across its front. Thereafter respondent caused a similar change to be made in its labels on the wooden container of its bottled product, and in its advertisements in "Malt Age" caused to appear illustrations or representations of its bottles and of the wooden containers bearing the new or altered labels.

Respondent has, since such time, offered for sale and sold its product in bottles bearing its altered label enclosed in wooden containers on one side of which appears a representation or illustration of its bottles, showing the label thereon containing the words "Eugene et Joseph" in large and conspicuous letters and the word "Freres" appearing immediately below. Such altered label still contains a representation of the same building which originally appeared on labels of respondent with the words "Eugene et Joseph" across its front. It also still contains in large and conspicuous letters on the bottom the word "Bouquet" followed by "3me", and on the reverse side of the wooden container and clear across it are stamped in large letters "Eugene et Joseph Freres", while on the top of the wooden container appear the words "Genuine Bouquet 3me."

Respondent Elby Extract Co. has also sold a product, the containers of which have borne labels identical with, or similar to, the aforesaid labels except at their bottom have appeared the words "Non-Alcoholic, London Dry Essence" in place of the legend "Bouquet 3me." In truth and in fact the products sold by respondent Elby Extract Co. under the names "Bouquet 3me" and "Lon-

don Dry Essence" are now, and at all times heretofore, have been manufactured by respondent in the City and State of New York, at 110 Park Row. They have not been and are not manufactured in France, or any other foreign country, and imported into the United States.

Essential oils, which compose the base for the manufacture of such products of respondent, have been purchased by respondent from or through importers' and manufacturers' agents in the United States. Respondent Elby Extract Co. is not an importer and has not imported and does not import the essential oils, or any of them, used in the manufacture of the products involved herein. Solvents necessarily used in the manufacture of the products are entirely domestic in their origin. Such solvents compose from 70 percent to 75 percent of the product and the essential oils from 25 percent to 30 percent.

The label of respondent contains false and misleading representation of the building in which respondent formerly conducted its business. Respondent occupied only a small portion of the building, and the words "Eugene et Joseph" have at no time appeared across the front of such edifice, as represented on the labels of respondent, or at all. When respondent occupied a small portion of said building, the name Eugene et Joseph did appear over one of the doors or windows in the portion used by respondent.

The extract sold by respondent is a concentrate so potent that 1 ounce is sufficient to flavor from 7 to 10 gallons of a beverage. It sells to dealers at \$10 for a 17½-ounce bottle, or three bottles for \$25 for the Bouquet *3me* and \$5 a bottle for the London Dry Essence.

PAR. 3. There have been and are competitors of respondent offering for sale and selling in the United States, extracts manufactured in France and in other foreign countries and imported into the United States therefrom, and offering for sale and selling extracts manufactured in the United States from and out of essential oils imported from France or other foreign countries in combination with solvents of domestic materials, which extracts have been and are offered for sale and sold in interstate commerce truthfully advertised and described.

PAR. 4. The practices of respondent described in paragraph 2 hereof of using the French language in its advertisements and upon its labels and containers have had and have, and each of them has had and has the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that the product sold by respondent as Bouquet *3me* and London Dry Essence have been and are imported products.

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The aforesaid practices have had and have, and each of them has had and has the capacity and tendency to divert trade to respondent from, and otherwise to injure, the business of competitors described in paragraph 3 hereof.

CONCLUSION

The acts and practices of respondent described in paragraph 2 hereof have been and are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition within the intent and meaning of section 5 of an act 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, answer of respondent thereto, the testimony, evidence, briefs of counsel, oral arguments having been waived, and the Commission having filed its report stating its findings as to the facts, with its conclusion drawn therefrom, that respondent has violated the provisions 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 respondent, Elby Extract Co., cease and desist, directly and indirectly, from representing that it imports sirups and flavoring extracts offered for sale and sold by it in interstate commerce, unless such sirups and flavoring extracts are, in fact, directly imported into the United States by respondent, and from using in connection with offering for sale or selling in interstate commerce any sirup or flavoring extract manufactured in the United States the words "Eugene et Joseph" or "Eugene et Joseph Freres" or the words "Bouquet 3me", or any other words in the French language, on containers of such product or on labels or in advertisements thereof, unless clearly and conspicuously appear in connection therewith apt and adequate words in the English language clearly showing that such products are manufactured in the United States.

It is further ordered, That respondent, Elby Extract Co., file within 60 days from and after service of this order a report in writing setting forth in detail the manner and form of its compliance therewith.

Syllabus

IN THE MATTER OF
ARROW-HART & HEGEMAN, INC., AND THE ARROW-
HART & HEGEMAN ELECTRIC COMPANY

COMPLAINTS, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 7 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1498. Complaint, Mar 3, 1928¹—Decision, July 6, 1932

Where a corporation, following its organization and pursuant to the purpose thereof, acquired all the common voting stock of two companies, which were (a) engaged in direct and substantial competition with each other in the manufacture, sale, and distribution in interstate commerce, under their respective trade marks, of a full line of electrical "shelf goods", i.e., those wiring devices ordinarily stocked and distributed by electrical supply distributors or jobbers, consisting of material of a standard type packed in suitable units for resale and described in catalogs under various schedule numbers, (b) had sales in the case of each of four million dollars a year or more, and together did a business in excess of 25 percent of the total sales of all manufacturers of electrical wiring devices of all descriptions, (c) were competitors as to the entire output of one of said companies and at least 59 percent of the sales volume of the other, selling said goods, of similar quality and for the same uses by the ultimate purchasers, to the same class of trade in the same territory and at approximately the same prices, and with 25 to 30 percent of their customers common to both, and (d) maintained sales offices, commission men, and branches in numerous large cities scattered across the country, from which they traveled salesmen or "missionary men", and thereafter authorized its president and vice president to vote for five years the stocks of said former competitors, subsequent operations of which recognized their community of interest;

With result that competition between said companies in the sale and distribution of electrical wiring devices in interstate commerce was substantially lessened, commerce therein in those sections and communities where the two were engaged in business was restrained, and said acquisition tended to create a monopoly in the electrical wiring devices industry; and

Where a second corporation brought into being as a result of said acquisition, by those responsible therefor, following its formation of two holding companies and a series of transactions which were planned to and did result in (a) said corporation's becoming possessed of the assets, stock, and businesses of said competing companies, and (b) said competitors' old stockholders becoming possessed of stock in it proportionately representing their former interests, made numerous changes in officer and employee personnel and arrangement of sales territories, etc., of said formerly competing organizations, whose plants it operated as a unit, and distributed their two former recognized competitive brands, under their old trade marks, through separate divisions under arrangements pursuant to which salesmen of said divisions, in some cases representing both, and in all instances under common district sales managers, continued to call upon the trade, but with no price, service, or credit inducements to obtain business from each other;

With result that total volume of sales of said new corporation exceeded volume of sales of parallel lines of electrical wiring devices of any one of its six

¹ Supplemental complaint, June 29, 1929.