

Complaint

IN THE MATTER OF
BLATZ BREWING COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1990. Complaint, Dec. 23, 1931— Decision, July 7, 1932*

Consent order requiring respondent, in connection with sale in interstate commerce of plain unflavored malt sirup containing no hops, barley or other ingredients produced in or imported from Bohemia, to cease and desist from using word "Bohemian" to describe or designate said product, unless qualified as in said order set forth.

Mr. James M. Brinson for the Commission.

Richmond, Jackman, Wilkie & Toebaas, of Madison, Wis., 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 the Blatz Brewing Co., hereinafter designated 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 Blatz Brewing Co. is now and has been for several years last past a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in the city of Milwaukee, in said State, engaged in the manufacture of malt sirup and its sale in commerce among and between the various States of the United States, in competition with individuals, partnerships, and corporations engaged in the sale of like products in interstate commerce. It has been, and is its practice to cause such product, when sold, to be transported from its aforesaid place of business at Milwaukee in the State of Wisconsin to purchasers located in the various other States of the United States than the State of Wisconsin.

PAR. 2. In the course and conduct of the business described in paragraph 1, it has been, and is the practice of respondent to offer

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for sale and sell certain plain malt sirup containing no hops, foreign or domestic, in cans bearing labels on which appear the following:

Blatz
Bohemian
Malt
Sirup

in large and conspicuous letters, beneath which appear the words
Made by Blatz Brewing Company, Milwaukee,
Wisconsin

in letters relatively small and inconspicuous. The word "Blatz" prominently appears in letters known as script, the word "Bohemian" appears in letters known as German script, while the words "Malt Sirup" and the words "Made by Blatz Brewing Company, Milwaukee, Wisconsin" appear in ordinary block letters. The letters of the word "Bohemian" are colored in bright orange and edged with gold. The other words appear in white letters, and all of this legend is prominently presented from a blue background. There appears below the legend on the blue background the word "Light."

In truth and in fact the product of the respondent is manufactured in the United States, contains no hops or other material produced in Bohemia, and consists entirely of domestic ingredients, and has been, and is manufactured according to no formula or process peculiar to or characteristic of Bohemia.

Respondent has also caused such malt sirup to be widely advertised in trade magazines, periodicals, and newspapers having a circulation in the various States of the United States in which it has been, and is the practice of respondent to describe and designate the said product as "Blatz Bohemian Malt Sirup".

PAR. 3. There have been grown for a considerable period of time in that province of Czechoslovakia formerly known as Bohemia, hops of a kind and quality which have caused them to be favorably known in the various parts of the world including the United States of America. On account of their excellence as a flavoring material for malt sirups, Bohemia has long been associated in the minds of the purchasing public with the production of hops and with malt sirup flavored therewith, and the practice of respondent in using the name Bohemian to describe and designate his product has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the product so described and designated has been imported from Bohemia, or contains one or more ingredients produced in Bohemia and imported into the United States, or

has been, and is made according to some formula or process typical of and peculiar to Bohemia, and into the purchase of such product in reliance on such erroneous belief.

The said practice of respondent has furnished and furnishes dealers, wholesale and retail, to whom it has been and is the practice of respondent to sell said product, with the means by which they have been enabled to mislead and deceive the consuming or purchasing public into the belief that such product has been or is manufactured in Bohemia or manufactured from or out of material produced in Bohemia, in whole or in part, or according to processes or formulas characteristic or typical of Bohemia.

The said practices of respondent have had and have the capacity and tendency to divert trade to respondent from competitors who have been and are offering for sale in interstate commerce, malt sirups containing ingredients or material produced in Bohemia and imported into the United States therefrom, and from competitors offering for sale and selling in like commerce plain malt sirups containing no Bohemian or other foreign ingredient or material, and described or designated by no trade mark suggestive of Bohemia or other foreign countries.

PAR. 4. Said practices of respondent in the sale and distribution of its products have been and are in the circumstances and conditions aforesaid, 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

The Federal Trade Commission having issued and served its complaint herein, and the Blatz Brewing Co. having filed its answer to said complaint, the Commission appointed a trial examiner to take evidence and the taking of evidence was begun. Thereupon, before said trial examiner, counsel for the Commission and counsel for the respondent entered into a stipulation which was dictated by said counsel and transcribed by the official reporter into the record herein, and which was subject to the approval of the Commission. It was agreed by said stipulation that further formalities herein, including the taking of further evidence, the submission of briefs and oral arguments were waived, and respondent consented that the Commission might proceed to enter and serve upon respondent

its order to cease and desist from the methods of competition charged in the complaint. The Federal Trade Commission having approved said stipulation and being fully advised in the premises,

It is ordered, That respondent, Blatz Brewing Co., cease and desist from using directly or indirectly the word "Bohemian" independently or in combination, association, or connection with other words to describe or designate any plain, unflavored malt sirup offered for sale or sold by the respondent in interstate commerce, containing no hops, barley or other ingredients produced in or imported from Bohemia unless the words "Made by Blatz Brewing Company at Milwaukee, U.S.A. from barley grown in the United States" or "Made by Blatz Brewing Company at Milwaukee, Wis., from barley grown in the United States" clearly and conspicuously appear in connection with the words "Bohemian Malt Sirup."

It is further ordered, That respondent within 60 days from and after service of this order shall file with the Federal Trade Commission, a report in writing setting forth in detail the manner and form of its compliance with said order.

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