

Complaint

IN THE MATTER OF
HAVATAMPA CIGAR COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1465. Complaint, June 3, 1927—Order Oct. 11, 1932*

Consent order requiring respondent, its officers, etc., to cease and desist in connection with sale and distribution of cigars in interstate commerce, from (1) using word "Cuba", in brand name or designation "Hoyo de Cuba", for cigars not composed entirely, or in substantial amount, of Cuban tobacco, unless accompanied by equally conspicuous explanatory matter, respectively covering the aforesaid circumstances, as in detail set forth; (2) applying words "Havana", "Habana", "Mild Havana", "Mild Habana", "Mild Havana Cigar", "Mild Habana Cigar", or any other words of similar import to cigars not composed wholly of Havana or Cuban tobacco; or (3) applying to any cigars not composed of Havana or Cuban tobacco in whole or in part, any other word, name, etc., implying such composition.

Mr. Henry Miller for the Commission.

McMullen, Worth & Draper, of Tampa, Fla., 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 Havatampa Cigar Co., a corporation 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, Havatampa Cigar Co., is a corporation organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business in the city of Tampa, in said State. It is, and for many years last past has been, engaged in the business of manufacturing, selling, and distributing cigars throughout the United States to wholesale and retail dealers and to the consuming public. Respondent causes said cigars when so sold to be transported in commerce from its said place of business in the city of Tampa, Fla., through and into other States of the United States to said vendees at their respective points of location or residence in said other States; and in so carrying on and conducting its said business respondent is and at all times hereinafter mentioned has been engaged in interstate commerce and in

Complaint

17 F.T.C.

direct active competition with many individuals, partnerships and other corporations also engaged in the sale and transportation of cigars in commerce between and among the several States of the United States.

PAR. 2. For many years prior to the date hereof tobacco and cigars produced on the Island of Cuba have been and are sold and consumed by the trade and public throughout the United States, and said tobacco and cigars produced in Cuba have been and are well and favorably known to, and preferred and in great demand by, the trade and consuming public throughout the United States. For many years last past many among the trade and the consuming public throughout the United States have preferred and still prefer to purchase cigars made in Cuba or cigars composed in whole or in greater part of said Cuban tobacco, and have considered and still consider such cigars to be superior in quality or value to cigars produced elsewhere than in Cuba and to cigars composed in whole or in greater part of tobacco grown elsewhere than on the Island of Cuba. Said tobacco grown in Cuba is and has been since time immemorial generally known, referred to and designated in the trade and by the consuming public as "Havana" or "Habana" tobacco, and the cigars composed wholly of such tobacco as "Havana" or "Habana" cigars.

PAR. 3. In the course and conduct of its said business, respondent sells and distributes large quantities of its cigars from its place of business in Tampa, Fla., to the trade and consuming public throughout the several States of the United States under the description, designation, and brand name of "Hoyo de Cuba." Said so-called "Hoyo de Cuba" cigars as and when so sold and distributed by respondent are packed by it in boxes or other containers upon which respondent has caused to be affixed in sundry places and in large prominent and conspicuous lettering, the words or phrases "Hoyo de Cuba", "Havana", "Habana", "Mild Havana", "Mild Habana" and "Mild Havana Cigar" and upon each of said so-called "Hoyo de Cuba" cigars respondent has caused to be affixed a paper band or label bearing the words or phrases "Hoyo de Cuba" in large and conspicuous lettering. In the regular course of trade and as intended by respondent, said so-called "Hoyo de Cuba" cigars are offered for sale, displayed and resold by respondent's dealer purchasers and other dealers to the purchasing and consuming public as and under the designations, descriptions, brands, and labels placed thereon by respondent as set forth above. Further, respondent advertises, represents, and describes its said so-called "Hoyo de Cuba"

cigars to the trade and consuming public as "Hoyo de Cuba", "Havana", "Habana", "Mild Havana", "Mild Habana", and "Mild Havana Cigar" through and by means of magazine and newspaper advertisements, placards and circular letters, leaflets and similar trade literature published and circulated by it among the purchasing and consuming public of the United States.

PAR. 4. The use by respondent of the words or phrases "Hoyo de Cuba", "Havana", "Habana", "Mild Havana", "Mild Habana", "Mild Havana Cigar", alone or in conjunction with each other, in designating, branding, advertising or describing said so-called "Hoyo de Cuba" cigars, as set forth in paragraph 3 hereof, is false and misleading, and is calculated, has and had the capacity and tendency to and does mislead and deceive many among the trade and many members of the consuming public into the erroneous belief that said so-called "Hoyo de Cuba" cigars are composed wholly of tobacco grown on the Island of Cuba or that the greater part of said cigar is tobacco which has been grown on the Island of Cuba; and thereby cause purchasers to purchase said cigars in such erroneous belief. In truth and in fact said so-called "Hoyo de Cuba" cigars manufactured, sold and distributed by respondent, as aforesaid, are not composed in whole nor in part of tobacco grown on the Island of Cuba or Havana or Habana tobacco, but the whole and greater part thereof is composed of tobacco grown elsewhere than on the Island of Cuba.

PAR. 5. There are many competitors of respondent referred to in paragraph 1 hereof who as such sell and distribute cigars composed wholly of Cuban or Havana tobacco or tobacco grown on the Island of Cuba and who rightfully and truthfully represent their cigars to be so composed. There are also many of said competitors who as such sell and distribute cigars made in part of said Cuban or Havana tobacco and in part of tobacco grown elsewhere than on the Island of Cuba and who in no wise represent that their said cigars are composed wholly of said Cuban or Havana tobacco. Further, there are also many of said competitors of respondent selling and distributing in competition with respondent certain cigars composed wholly of tobacco grown elsewhere than on the Island of Cuba and who in no wise represent that their said cigars contain Cuban or Havana tobacco. Respondent's acts and practices in connection with the sale and distribution of its so-called "Hoyo de Cuba" cigars as hereinbefore set forth tend to and do divert trade from, and otherwise injure the business of said competitors.

PAR. 6. Respondent has engaged in and carried on the acts and practices under the circumstances and conditions and with the effects

and results hereinbefore set forth for more than four months last past.

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

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission and respondent's answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and, pursuant to Rule III of the Commission's Rule of Practice as amended and revised to July 1, 1932, consents that the Commission may make, enter and serve upon respondent, without evidence and without findings as to the facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises,

It is now ordered, That respondent, Havatampa Cigar Co., its officers, directors, agents, representatives, servants, and employees cease and desist, in connection with or in the course of the sale or distribution of cigars in interstate commerce—

(1) From directly or indirectly using or causing to be used the word "Cuba" in the brand name or designation "Hoyo de Cuba" for any such cigars which do not contain any substantial amount of Cuban tobacco, unless in each instance when and where so used said brand name or designation be immediately accompanied or followed 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 do not contain any Cuban tobacco, or that said cigars are composed entirely of certain tobacco none of which has been grown in Cuba;

(2) From directly or indirectly using or causing to be used the word "Cuba" in the brand name or designation "Hoyo de Cuba" for any such cigars which are not composed entirely of Cuban tobacco but contain such tobacco in part, unless in each instance when and where so used said brand name or designation containing the word "Cuba" be immediately accompanied or followed 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 Cuban tobacco or that the cigars contain certain tobacco which has not been grown in Cuba;

(3) From directly or indirectly applying to any such cigars the words "Havana", "Habana", "Mild Havana", "Mild Habana", "Mild Havana Cigar", "Mild Habana Cigar" or any other word or combination of words of similar import, if and when the cigars are not in fact composed wholly of Havana or Cuban tobacco;

(4) From directly or indirectly applying to any of said cigars any other word, name, designation, statement, assertion, phrase or representation which implies or imports that said cigars contain Havana or Cuban tobacco in whole or in part when such is not the fact.

It is further ordered, That said respondent, Havatampa Cigar Co., shall, within 60 days after the service upon it of a copy of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Complaint

17 F.T.C.

IN THE MATTER OF

NEIL M. JONES AND ROBERT D. EMERY, COPARTNERS
DOING BUSINESS UNDER THE NAME AND STYLE OF
AMERICAN RADIUM PRODUCTS COMPANY.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1752. Complaint, Jan. 30, 1930—Order, Oct. 29, 1932.*

Consent order requiring respondent individuals to cease and desist from representing that "water drawn from the lined water jar sold by them and heretofore designated 'The Radium Spa' has any therapeutic or curative value for any bodily ailment or disease whatsoever."

Mr. Eugene W. Burr 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 Neil M. Jones and Robert D. Emery, copartners doing business under the firm name and style of American Radium Products Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of section 5 of the said act, and states its charges in that respect, as follows:

PARAGRAPH 1. Respondents, Neil M. Jones and Robert D. Emery, are copartners trading under the name and style of American Radium Products Co., with their principal place of business in the city of Los Angeles, in the State of California. They are engaged in the business of manufacturing, offering for sale and selling to purchasers located in various States of the United States, earthenware water jars, lined with what the said respondents assert to be radium ore, causing such earthenware water jars when sold, to be transported from their place of business in Los Angeles, Calif., into and through other States of the United States to said purchasers at their respective points of location.

PAR. 2. The name which respondents have given to said water jar, by which respondents refer thereto, and under and by which the same is so offered for sale and sold by respondents, is "The Radium-Spa". Respondents assert to the public and to prospective purchasers in their advertising matter hereinafter referred to, and