

IN THE MATTER OF
MENKE GROCERY 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 1993. Complaint, Jan. 14, 1932—Decision, Oct. 31, 1932

Where a corporation engaged in sale of groceries, stock powders, and other merchandise at retail through orders secured through its house-to-house canvassers,

- (a) Described and represented itself on its letterheads, order blanks, and other trade literature as a wholesale grocer and displayed upon said letterheads, etc., the legend "United States Food Administration License G-30152" and represented to the public through its said canvassers that its business was done under the license and approval of the Government and its merchandise inspected and approved by officials thereof, facts being it was not in any sense a wholesale grocer and its products were not inspected by the Government and its Food Administration license along with other similar licenses had expired with the abolition of said administration by executive order years before;
- (b) Guaranteed satisfaction to the customer and reimbursement of the purchase price upon the return of any goods as to which the customer was dissatisfied and through its canvassers promised prompt shipment of merchandise ordered and prepayment of transportation charges where shipments were made by express or freight, facts being it failed to make such prepayment and frequently failed and refused to return purchase price as promised or to make prompt shipments or to ship at all, notwithstanding payment for goods had been made in full;
- (c) Represented certain of its merchandise as pure and genuine extracts and supplied samples indicating merchandise of very high and superior grade, to its canvassers who generally represented said samples as indicative of merchandise to be supplied pursuant to customer's order, facts being extracts shipped were imitation, and merchandise supplied to customer was generally far inferior to sample; and
- (d) Represented its "Chickena" powder as an effective medicine for various fowl diseases and effective in causing hens to lay, and its "Lion Brand Stock Powder" as "a great stock remedy and conditioner", and promised return of purchase price of either product in event same should not be satisfactory to customer, facts being said products were not effective for purposes represented, and it failed to return purchase price thereof, notwithstanding expressions of dissatisfaction by customers in many instances and return of said last-named product;

With effect of deceiving customers and with capacity and tendency so to do, and induce purchase of its merchandise on account of their belief in truth of such representations, and thereby divert business from its competitors to their injury:

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. Alfred M. Craven for the Commission.

McCollum, Schwind & Barnes, of Kansas City, Mo., 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 Missouri corporation engaged in the sale of groceries, stock powders, and other merchandise at retail upon orders secured by house to house canvassers, and by mail to purchasers in various States, and with principal place of business in Kansas City, with misrepresenting business status, with claiming falsely Government endorsement, inspection, license, or approval, with offering deceptive inducements to purchase through misleading or unobserved guarantee, unfulfilled transportation prepayment and money back promises, and through deliveries not conforming to sample, and with misrepresenting qualities and results of products, 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 aforesaid, makes numerous false and misleading statements with reference to character of its goods, and business, and manner of doing business, including among others, the following representations, namely, that—

It is a wholesale grocer and operates under United States Food Administration license, with Government inspected merchandise, facts being it purchases its merchandise from wholesale grocers, is not in any respect a wholesaler, and does not operate under any such Government license or approval, if it ever did;

Guarantee of satisfaction to the customer and return of purchase price on any goods as to which customer is dissatisfied, and promise of prompt shipment, and, where shipment is by express or freight, of prepayment of transportation charges, facts being return of purchase price to dissatisfied customers is refused in many instances, and in no instance have transportation charges been prepaid, and in numerous instances there has been failure to make prompt shipment, notwithstanding payment had been made in full;

Representation of its "extracts" as pure and genuine, and filling of orders for such products, with imitations, and practice of supplying canvassers with samples of high grade merchandise, and filling orders solicited pursuant to such samples, with merchandise far inferior thereto, as a rule, and often dirty, wormy or otherwise unfit for human consumption;

Representation of its "Chickena" powder as an effective medicine for various diseases of fowls, also for causing hens to lay, and

unfulfilled guarantee of return of purchase price in event of customer's dissatisfaction, notwithstanding fact powder is not effective for the purpose represented; and

Representation of its "Lion Brand Stock Powder" as "a great stock remedy and conditioner" and as remedial for various livestock diseases and sold on trial, and unfulfilled promise to return purchase price to customer if dissatisfied, notwithstanding fact preparation is not effective for purposes represented and customers have frequently expressed their dissatisfaction and returned the remedy.

Such false and misleading representations, as alleged, "and each of them have the capacity and tendency to deceive and do deceive customers of respondent and to induce them to purchase respondent's merchandise in and on account of their belief in the truth of such representations and thus to divert business from respondent's competitors to their injury"; all to the prejudice of the public and competitors.

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" (38 Stat. 719), the Federal Trade Commission, on the 14th day of January, 1932, issued and thereafter served its complaint against the respondent, Menke Grocery Co., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. Respondent having entered its appearance and filed an answer to said complaint, the hearing was had before a trial examiner theretofore duly appointed, and testimony and evidence received in support of the charges stated in the complaint and in opposition thereto, thereupon this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent is a corporation, organized and doing business under and by virtue of the laws of the State of Missouri with its principal place of business in Kansas City in said State. It is, and for many years last past has been, engaged in the business of selling groceries, stock powders, and other merchandise at retail, upon orders secured by house to house canvass by its duly

authorized agents, such sales being made to purchasers thereof, chiefly farmers, located principally in the States of Illinois, Iowa, Missouri, Nebraska, Kansas, Colorado, and Wyoming. In the course and conduct of its business, respondent, in response to the orders received by it, ships the said groceries and other merchandise, in interstate commerce, to its customers by mail, express and freight at their respective points of location in the territory above described.

PAR. 2. In the course and conduct of its business respondent is and has been, during its corporate existence, in competition with other individuals, partnerships and corporations, located in the United States, engaged in the sale of groceries and other merchandise of the nature dealt in by respondent at retail and in the transportation thereof, in interstate commerce, to customers located in the States comprising the territory above described.

PAR. 3. In the course and conduct of its business aforesaid, respondent makes and has made numerous false and misleading statements with reference to the character of its goods, character of its business, and its manner of doing business, among others, as follows:

1. Respondent on its letterheads, order blanks, and other trade literature describes and represents itself to be a wholesale grocer, when in truth and in fact, respondent sells its merchandise solely at retail to the general public, and is not in any respect a wholesale grocer.

2. Respondent has used upon its letterheads, order blanks, and other trade literature, the legend "United States Food Administration License G-30152", and through its agents has represented to the public that its business is done under the license and approval of the United States Government, and that its merchandise has been inspected by officials of the United States Government and been by them approved; when in truth and in fact the respondent's products were not inspected by the United States Government or any of its officials and its Food Administration license, as every other Food Administration license expired with the abolition of the Food Administration by the Executive order of the President of the United States of August 21, 1920, reading in part as follows:

The work of the United States Food Administration, having been completed to the public benefit and to my satisfaction, said United States Food Administration, and all remaining divisions and branches thereof, are hereby terminated and abolished.

While the respondent claims to have removed the legend "United States Food Administration License G-30152" from its letterheads and order blanks, such removal if made was not made until after the issuance of the Commission's complaint in this proceeding.

3. Respondent guarantees satisfaction to the customer and to return the purchase price on the return of any goods as to which the customer is dissatisfied; when in truth and in fact in many instances respondent has failed and refused to return the purchase price to dissatisfied customers.

4. Respondent promises through its canvassers to make prompt shipment of the merchandise ordered and, in cases where shipment is made by express or freight, prepay transportation charges. In truth and in fact in no instance has the respondent fulfilled such promises as to the prepayment of charges and in numerous instances has failed to make prompt shipment of merchandise and in many instances failed to ship same at all, although payment therefor was made in full.

5. Respondent in selling its certain merchandise known as extracts represents same to be pure and genuine but in filling such orders for such extracts ships extracts that are not pure or genuine but are imitation.

6. Respondent supplies its canvassers with samples of merchandise which samples represent the merchandise to be of very high and superior grade and said canvassers generally represent that the merchandise which the customer may order or does order will be according to the sample, when as a matter of fact merchandise shipped to the customer is generally far inferior to the sample.

7. Said respondent, among its other merchandise, sells a powder called "Chickena" which it represents to be effective as a medicine for various diseases of fowls and also effective to cause hens to lay and guarantees to return the purchase price of the powder in case such powder should not be satisfactory to the customer. The said powder is not effective for the purpose represented and the respondent does not, upon the return of such powder from a dissatisfied customer, return the purchase price as promised.

8. The respondent sells a certain preparation called by it "Lion Brand Stock Powder" representing that the same is "a great stock remedy and conditioner". As to this preparation respondent represents that it is remedial of various diseases of livestock and that it is sold on trial to the customer and that the purchase price thereof will be returned if the customer is dissatisfied; when in truth and in fact the said preparation is not effective for the purposes represented and the respondent has in no instance returned the purchase price although in many instances customers have expressed their dissatisfaction with the remedy and returned same to the respondent.

PAR. 4. The various false and misleading representations set forth in paragraph 3 hereof and each of them have the capacity and tend-

ency to deceive (and do deceive customers of respondent) and to induce them to purchase respondent's merchandise in and on account of their belief in the truth of such representations and thus to divert business from respondent's competitors to their injury.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors and are unfair methods of competition in interstate commerce, and constitute a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the pleadings and testimony and evidence introduced, and briefs of counsel, and the Commission having made its findings as to the facts, and its conclusion that the respondent has violated 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",

It is now ordered, That the respondent, Menke Grocery Co., its officers, agents, and employees, in connection with selling or offering for sale of its merchandise in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from—

1. Using in its letterheads, billheads, or other trade literature, the legend "United States Food Administration License G-30152", or in any other manner representing to the public that it is operating under the license or approval of the United States Government.

2. Representing on its letterheads or other trade literature, or through its agents or in any other manner that it operates a wholesale grocery, or is a wholesale grocer.

3. Selling any of its merchandise on promise or guarantees of satisfaction to the customer and that it will return the purchase price on the return of goods as to which the customer is dissatisfied without fulfilling such guarantees and promises.

4. Promising, either expressly or impliedly, prompt shipment of merchandise purchased unless and until respondent, by regular course of business shall make such prompt shipment.

Order

17 F.T.C.

5. Shipping merchandise that is inferior to samples shown the prospective buyers or which substantially differ from the description of the merchandise sold by its agents.

6. Misrepresenting in any manner the effectiveness of the stock and chicken powders or remedies.

7. Representing that any of its stock or chicken powders or remedies are sold on trial with the privilege of the buyer to return the merchandise if dissatisfied, and to receive back the price thereof, unless and until the respondent in the regular course of business shall return the purchase price upon the return by the customer of the merchandise purchased.

It is further ordered, That the said respondent shall, within 30 days after the service upon it of a copy 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 the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

EXPORT PETROLEUM COMPANY OF CALIFORNIA, LTD.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AS EXTENDED BY THE PROVISIONS OF SEC. 4 OF AN ACT OF CONGRESS APPROVED APR. 10, 1918

Docket 1969. Complaint, Sept. 22, 1931—Decision, Nov. 14, 1932

Where a corporation engaged in exportation of gasoline in cases containing two standard-size, 5-gallon capacity cans, generally recognized by trade and purchasing public as having such a capacity and usually so filled for export sale,

Pursued a general policy of filling such cases for export at the rate of 9.6 gallons per case or in less than 10-gallon quantities, and sold said product to wholesalers and retailers, correctly invoiced as to quantity, but in afore-said containers and cases with such marks as "2/5 gallon tins" or "5 U.S. gallons" or words of similar import, or with no indication of quantity, for resale to ultimate consumer by the case or can;

With result of placing in the hands of retailers and ultimate sellers an instrumentality enabling them to defraud consumers or other buyers through selling said cases and cans as and for those holding 10 full gallons, and 5 gallons, respectively, or by causing the consumer or buyer to purchase said containers as and for those filled to standard capacity, and with a tendency to divert export trade to it from competitors who did not follow such practice:

Held, That such practices, under the circumstances set forth, were all to the injury and prejudice of the public and competitors, and constituted unfair methods of competition in export trade, in violation of the provisions of section 5 of the Federal Trade Commission Act, as extended by section 4 of the Export Trade Act.

Mr. Harry D. Michael for the Commission.

Bailie, Turner & Lake, of Los Angeles, Calif., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, as extended by the provisions of section 4 of the Export Trade Act, the Commission charged respondent, a California corporation engaged in the business of exporting gasoline and kerosene, and with principal place of business in Los Angeles, with misrepresenting unit quantities and misbranding or mislabeling, in violation of the provisions of section 5 of said first named act, prohibiting use of unfair methods of competition in interstate commerce, as extended by section 4 of said last named act.

Respondent exporter sells his said product to jobbers, wholesalers and retailers abroad for ultimate resale to the consumers, in unit