

Complaint

IN THE MATTER OF
FLECK CIGAR COMPANY

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

Docket 1453. Complaint, Apr. 7, 1927—Order, Jan. 23, 1933

Consent order requiring respondent company, its officers, etc., to cease and desist in connection with sale and distribution of cigars in interstate commerce, from—

- (1) Using the word "Cuba" in brand name or designation "Rose-O-Cuba", for (a) any cigars containing no substantial amount of Cuban tobacco, without immediately accompanying or following such brand name or designation with an equally prominent statement or assertion clearly indicating aforesaid facts as to composition of cigars in question, or for (b) any cigars not composed entirely of Cuban tobacco, unless similarly accompanied by an equally prominent, appropriate explanatory statement or phrase as aforesaid;
- (2) Advertising, describing, branding, labeling or otherwise representing any such cigars as aforesaid described, with the words "Havana" or "Habana", or with any words, phrase, etc., falsely importing that cigars in question are composed wholly of Havana or Cuban tobacco;
- (3) Applying to any such cigars any other word, name, etc., falsely implying that Havana or Cuban tobacco is contained in cigars in question.

Mr. Henry Miller for the Commission.

Mr. John W. Townsend, of Washington, D.C., 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 Fleck Cigar Co., 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 is a corporation organized under the laws of the State of Pennsylvania with its principal office and place of business in the city of Reading in said State. It is engaged in the manufacture of cigars and the sale thereof to wholesale and retail dealers and direct to consumers among the general public located and residing at points in various States of the United States. It

causes said cigars when so sold to be transported from its said place of business in the city of Reading, Pa., through and into other States of the United States to said vendees at their respective points of location and residence. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations engaged in the sale and transportation of cigars in commerce between and among various States of the United States.

PAR. 2. For many years prior to the date hereof, tobacco has been and is now a commercial product of the Island of Cuba, and the term "Cuban tobacco" has, for many years, meant and still means to the cigar trade and the consuming public, tobacco grown on the Island of Cuba. Many among said trade and many of the consuming public have for many years considered and still consider that cigars made of said Cuban tobacco are superior in quality to cigars made of tobacco grown elsewhere than on the Island of Cuba and cigars containing said Cuban tobacco are in great demand among the consuming public in the United States. Said Cuban tobacco is generally known to said trade and to the consuming public as, and is commonly called by them, Havana or Havana tobacco.

PAR. 3. Among the cigars manufactured and sold by respondent in interstate commerce as in paragraph 1 hereof set out are certain cigars named and designated by respondent "Rose-O-Cuba". Respondent packs its said Rose-O-Cuba cigars in boxes and containers upon which respondent causes to be set forth in sundry places and positions said name Rose-O-Cuba printed in large and conspicuous letters and upon each said cigar respondent causes to be placed a brand or label upon which said name Rose-O-Cuba is conspicuously printed and set forth. Further in many instances, respondent causes to be placed upon said cigars individually, a band or label bearing said name Rose-O-Cuba and the word "Habana" printed in large and conspicuous letters. Respondent ships and delivers said cigars so packed, labeled and branded to its aforesaid vendees. Said wholesale dealer vendees resell said cigars to retail dealers and ship and deliver said cigars still so packed, labeled, and branded to their said retail dealer vendees. Said retail dealer vendees offer for sale and sell said cigars still so packed, labeled, and branded to the consuming public.

PAR. 4. The use by respondent of said name and designation, Rose-O-Cuba, and said word "Habana" in the packing, labeling, and branding of its said cigars, all as in paragraph 3 hereof set out, has the capacity and tendency to, and does, mislead many among aforesaid trade and many of the consuming public into the belief

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that respondent's said Rose-O-Cuba cigars are composed of said Cuban or Habana tobacco referred to in paragraph 2 hereof and causes many of said trade and many of the consuming public to purchase respondent's said Rose-O-Cuba cigars in that belief. In truth and in fact respondent's said Rose-O-Cuba cigars contain no afore-mentioned Cuban or Habana tobacco and are composed entirely of tobacco grown elsewhere than on the Island of Cuba.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof, many who sell cigars composed in whole or in part of afore-mentioned Cuban or Habana tobacco and who rightfully and lawfully represent their said cigars to be so composed. There are others of said competitors who sell cigars manufactured of tobacco wholly other than said Cuban or Habana tobacco and who in no wise represent that their said cigars are composed in whole or in part of the last named tobacco. Respondent's acts and practices, all in this complaint above set out, tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 6. For about five years last past respondent has engaged in the acts and practices under the circumstances and conditions and with the results hereinbefore set out.

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 Rules 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, Fleck 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 Rose-O-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 Rose-O-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 advertising, describing, branding, labeling, or otherwise representing any such cigars with the words "Havana" or "Habana" or with any other word, phrase, statement, or representation importing or implying that such cigars are composed of Havana or Cuban tobacco, 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 Havana or Cuban tobacco is contained in said cigars, if or when such is not the fact.

It is further ordered, That said respondent, Fleck 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

IN THE MATTER OF
MADISON MILLS, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1999. Complaint, Jan. 23, 1932—Decision, Jan. 24, 1933*

Where a corporation engaged in sale of cotton, and cotton and rayon, men's shirts to consuming public through house-to-house solicitors, set forth upon sample swatch cards for customers' selection, the words "Satin Ribbed Radioux Shirts", "Satin Striped Broadcloth Shirts", and "Normandy Flannel Shirts", notwithstanding fact that the garments supplied in response to selections thus invited, were not composed of fabrics striped or ribbed with silk woven in the satin weave, or made entirely of wool with nap surface, as understood by trade and public from the words employed; with tendency and capacity to mislead and deceive public and induce purchase of said shirts as and for garments composed of silk or wool, as above set forth, and divert trade to it to the injury of competitors engaged in the sale of accurately labeled and advertised shirts made of cotton, silk, or wool, as the case might be:

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

Mr. Henry C. Lank for the Commission.

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 sale of men's shirts and other garments to the purchasing and consuming public throughout the United States, through numerous salesmen, agents, and house-to-house canvassers, through sales promotional literature such as letters, leaflets, sample cards, etc., and through advertisements in newspapers and similar publications of general circulation, and with principal office and place of business in New York City, with misrepresenting product as to composition or source or origin, and advertising falsely or misleadingly in said respects, 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 for more than two years last past has advertised, offered, and sold shirts dealt in by it, and made in the United States of cotton and rayon also there made, under the designations "Satin Striped Broadcloth Shirts"; "Satin Ribbed Radioux Shirts"; Navarre Flannel Shirts"; and "English Broadcloth Shirts", respectively, notwithstanding the fact