

Complaint

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IN THE MATTER OF
HARRY SHER, TRADING AS ALTOONA MALT CO., ET AL.
COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2058. Complaint, July 11, 1932—Order, Feb. 27, 1933

Consent order requiring respondent individuals, their agents, etc., in connection with the sale in interstate commerce of malt syrup, to "cease and desist from labeling, naming, or in any other wise designating such malt syrup as Royal Canadian Malt Syrup and/or as Canadian Imperial Malt Syrup unless in immediate conjunction with and as a part of the use of the said names Royal Canadian Malt Syrup and/or Canadian Imperial Malt Syrup it clearly and plainly appears in large, conspicuous type in such naming, labeling and designating that such malt syrup is manufactured in the United States of America from and of ingredients produced in the United States of America."

Mr. Edward L. Smith for the Commission.

Mr. Roy J. Stone, of Columbus, Ohio, for respondents.

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 Harry Sher, trading as Altoona Malt Company, Samuel Stone, trading as Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, and Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher, trading as Altoona Malt Company, Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Harry Sher, for more than one year prior to April 1, 1931, was engaged in the business of selling malt syrup at Altoona, Pa., where he had his principal place of business, which he conducted under the name Altoona Malt Company, and in the cities of York and Bradford, in the State of Pennsylvania, and in the cities of Elmira, Corning, Cornwell, and Jamestown, in the State

of New York, where he conducted branches of said business under various trade names. The malt syrup dealt in by said respondent was made in the United States of America from ingredients produced in the United States of America. In the course and conduct of his said business, said respondent Harry Sher, while trading as Altoona Malt Company and while trading under various other names, caused such malt syrup when sold by him to be transported from his place of business in the city of Altoona, Pa., and from his other places of business located in the cities hereinabove mentioned, to purchasers thereof located in such States and to other purchasers thereof located in various other States of the United States, and there was for more than one year prior to April 1, 1931, a constant current of commerce by said respondent in such malt syrup between and among various States of the United States. In the course and conduct of his said business, said respondent Harry Sher was for more than one year prior to April 1, 1931, while trading as Altoona Malt Company and while trading under various other trade names, in competition with other persons and with corporations and partnerships engaged in the sale of malt syrup between and among various States of the United States.

PAR. 2. In the course and conduct of his said business, said respondent Harry Sher offered for sale and sold until April 1, 1931, or thereabouts, malt syrup made in the United States of America from ingredients produced in the United States of America, which he described and designated in advertisements distributed among purchasers and prospective purchasers in the various States of the United States, on his letterheads, and on the labels of the containers of such malt syrup as:

ROYAL
CANADIAN
MALT SYRUP

To the left of the words "Royal Canadian Malt Syrup" used on the labels of the containers of the malt syrup sold by said respondent Harry Sher, trading as Altoona Malt Company and under various other trade names, appeared the following words printed on a representation of a maple leaf:

If you enjoy the real original Flavor, Body, and Strength
Always insist on ROYAL CANADIAN MALT
A Little Better than the ordinary Malt

while to the right of said words "Royal Canadian Malt Syrup" appeared the following words printed on a representation of another maple leaf:

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Results are simply amazing

Better Hop Flavor, Richer Body, and Exceptional Strength

All in a big can of ROYAL CANADIAN BRAND MALT

This malt was formerly called Canadian Style

and centered between the aforesaid representations of maple leaves and between the word "Canadian" and the words "Malt Syrup" in the aforesaid designation Royal Canadian Malt Syrup was a representation of a crown beneath which appeared the letters:

A M

CO

PAR. 3. Respondent Samuel Stone, for more than one year prior to April 1, 1931, was engaged in the business of selling malt syrup at Columbus, Ohio, where he had his principal place of business, which he conducted under the names Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, and in the cities of Newark, Akron, Canton, Cleveland, Youngstown, Dayton, Lorain, Sandow, Massillon, Piqua, Steubenville, and Toledo, in the State of Ohio, and in the cities of Beaver Falls and Sharon, in the State of Pennsylvania, where he conducted branches of the said business under such various trade names. The malt syrup dealt in by said respondent was made in the United States of America from ingredients produced in the United States of America. In the course and conduct of his said business, said respondent Samuel Stone, while trading as Stone Malt Company and while trading under such various other trade names, caused such malt syrup when sold by him to be transported from his place of business in the city of Columbus, Ohio, and from his other places of business located in the cities hereinabove mentioned, to purchasers thereof located in such States and to other purchasers thereof located in various other States of the United States, and there was for more than one year prior to April 1, 1931, a constant current of commerce by said respondent in such malt syrup between and among various States of the United States. In the course and conduct of his said business, said respondent Samuel Stone was for more than one year prior to April 1, 1931, while trading as Stone Malt Company and while trading under such various other trade names, in competition with other persons and with corporations and partnerships engaged in the sale of malt syrup between and among various States of the United States.

PAR. 4. In the course and conduct of his said business, said respondent Samuel Stone offered for sale and sold until April 1, 1931, or thereabouts, malt syrup made in the United States of

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America from ingredients produced in the United States of America, which he described and designated in advertisements distributed among purchasers and prospective purchasers in the various States of the United States, on his letterheads, and on the labels of the containers of such malt syrup as:

CANADIAN
IMPERIAL
MALT SYRUP

To the left of the words "Canadian Imperial Malt Syrup" used on the labels of the containers of the malt syrup sold by said respondent Samuel Stone, trading under the aforesaid various trade names, appeared the following words printed on a representation of a shield:

CANADIAN IMPERIAL results are simply
amazing, adds a new and irresistible flavor
to every dish. The original malt of its kind.
Formerly known as Royal Canadian.

while to the right of the said words, "Canadian Imperial Malt Syrup," appeared the following words printed on a representation of another shield:

CANADIAN IMPERIAL is a new delight-
fully different product manufactured by a
special process from the choicest of grains
and hops. There is nothing else like it.
Insist on the big 4¼ lb. can.

and printed underneath the said last mentioned lettering were the words:

Packed especially for
Canadian Imperial Distributing Company

In the center of the said label and between the words "Canadian Imperial" and the words "Malt Syrup" in the aforesaid designation "Canadian Imperial Malt Syrup" was a representation of a crown above and between two lions rampant.

PAR. 5. On or about April 1, 1931, the aforesaid business which prior to that time had been conducted by said respondent Harry Sher as hereinbefore described, and the aforesaid business which prior to that time had been conducted by said respondent Samuel Stone as hereinbefore described were combined through the organization of a partnership consisting of the said Harry Sher, respondent, the said Samuel Stone, respondent, I. J. Stone, respondent, and Jack Sher, respondent, since which aforesaid date, to wit, April 1, 1931, or thereabouts, both of the aforesaid businesses have been conducted

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by the said partnership under various trade names, to wit, Altoona Malt Company, Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and others. The said partnership has continued to sell between and among the various States of the United States, malt syrup manufactured in the United States of ingredients produced in the United States, as "Royal Canadian Malt Syrup" and as "Canadian Imperial Malt Syrup," both of which said brand names have appeared and still appear in advertisements of all of said respondents, trading under the aforesaid and other trade names, distributed among purchasers and prospective purchasers in the various States of the United States, on their letterheads, and on the labels of the containers of such malt syrup.

The labels used on containers of the aforesaid malt syrup styled by the aforesaid respondents Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher trading as Stone Malt Company and under such various other trade names, as Royal Canadian Malt Syrup is substantially the same as that previously used by said Harry Sher, respondent, and described in paragraph 2 hereof, with certain exceptions, to wit:

Instead of the letters "A M CO" under the crown as described in paragraph 2 hereof, the letters "R C CO" appear; and instead of the name "Altoona Malt Company" appearing on the said labels there appears the following wording:

Sole distributors

Royal Canadian Distributing Company

37 W. Spruce St., Columbus, O.

and in small and in inconspicuous type (not clearly observable) on such new labels appear the words:

Made in the good old U.S.A.

The labels used on containers of the aforesaid malt syrup styled by the aforesaid respondents Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher trading as Stone Malt Company and under such various other trade names, as Canadian Imperial Malt Syrup is substantially the same as that previously used by said Samuel Stone, respondent, and described in paragraph 4 hereof, except that on such new labels appear in small and in inconspicuous type, not clearly observable, the words:

Made in the good old U.S.A.

PAR. 6. Malt syrup made in Canada or made in the United States from and of ingredients produced in Canada is widely and popularly

known among the purchasing public in the United States, many members of such purchasing public preferring malt syrup made in Canada or in the United States from and of ingredients produced in Canada over malt syrup made of ingredients produced in countries other than the Dominion of Canada. The maple leaf, crown, shield and lions rampant as used on the labels hereinbefore described have generally been and still are associated, in the public mind, with the Dominion of Canada and as used on the labels hereinbefore described convey the impression that the syrup sold in the containers so labeled is made in Canada or in the United States from and of ingredients produced in the Dominion of Canada.

PAR 7. The practice of the respondent Harry Sher, trading as Altoona Malt Company and under various other trade names, in offering for sale and selling malt syrup manufactured in the United States from and of ingredients produced in the United States but labeled and branded as set out in paragraph 2 hereof; and the practice of the respondent Samuel Stone, trading as Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, in offering for sale and selling malt syrup manufactured in the United States from and of ingredients produced in the United States but labeled and branded as described in paragraph 4 hereof; and the use by said respondent Samuel Stone of the word "Canadian" in his various trade names as set forth in paragraph 3 hereof; and the practice of the respondents Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher, trading as Altoona Malt Company, Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, in offering for sale and selling malt syrup manufactured in the United States from and of ingredients produced in the United States but labeled and branded as described in paragraphs 2, 4, and 5 hereof; and the use by said respondents Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher of the word "Canadian" in their various trade names, have had and have the capacity and tendency to mislead and deceive and have furnished wholesale and retail dealers with the means to mislead and deceive the purchasing public into the belief that the malt syrup so labeled, branded, described, and sold by said respondents under said trade names of which the word "Canadian" is a part, has been, was, and is a Canadian malt syrup imported into the United States, or malt syrup manufactured from and of ma-

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terials or ingredients produced in Canada, and to induce the purchase of such malt syrup in reliance upon such erroneous belief. Such practices have had and have the capacity and tendency to divert trade to respondents from competitors offering malt syrup for sale in interstate commerce.

PAR. 8. The above alleged acts and practices of respondents are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in interstate 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 respondents herein having filed their answer to the complaint in this proceeding and having subsequently filed with this Commission their motion that they, and each of them, be permitted to withdraw their said answer, that they, and each of them, be permitted to waive hearing on the charges set forth in the said complaint and not to contest the said proceeding; and the respondents having consented that this Commission might make, enter and serve upon them, and each of them, as provided in paragraph 2 of Rule III of the Commission's Rules of Practice, an order to cease and desist from the methods of competition described in said complaint; and the Commission being fully advised in the premises,

It is hereby ordered, That the aforesaid motion be and the same is hereby granted; and it is hereby further ordered that the said respondents, Harry Sher, trading as Altoona Malt Company, Samuel Stone, trading as Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, and Harry Sher, Samuel Stone, I. J. Stone, and Jack Sher, trading as Altoona Malt Company, Stone Malt Company, Canadian Imperial Distributing Company, Canadian Imperial Malt Company, Royal Canadian Distributing Company, Royal Canadian Malt Company, and various other trade names, and each of them, their agents, employees, and representatives in the sale, offering for sale, or advertising for sale in interstate commerce of malt syrup forthwith cease and desist from labeling, naming or in any other wise designating such malt syrup as "Royal Canadian Malt Syrup" and/or as "Canadian Imperial Malt Syrup" unless in immediate conjunction with and as a part of

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the use of the said names "Royal Canadian Malt Syrup" and/or "Canadian Imperial Malt Syrup" it clearly and plainly appears in large, conspicuous type in such naming, labeling, and designating that such malt syrup is manufactured in the United States of America from and of ingredients produced in the United States of America.

It is hereby further ordered, That the said respondents, and each of them, shall, within 60 days after the service upon them, and each of them, of this order, file with this Commission a report or reports in writing setting forth in detail the manner and form in which they, and each of them, have complied with this order.

IN THE MATTER OF

MAHAFFEY COMMISSION COMPANY AND C. E. MALMIN,
ALIAS "NORTHERN AGRICULTURAL INSTITUTE"COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2066. Complaint, Oct. 3, 1932—Order, Mar. 1, 1933*

Consent order requiring respondents, their agents, etc., in connection with sale in interstate commerce of seed potatoes, to cease and desist from representing, directly or by implication, "that inspection or certification by the respondent, C. E. Malmin, is certification or inspection by the 'Northern' or any other 'agricultural institute' or that the said seed potatoes have been inspected and certified to by any persons whomsoever or in any manner whatsoever other than is actually the case".

Mr. PGad B. Morehouse for the Commission.

Mr. Justus Chancellor, Jr., of Chicago, Ill., for respondents.

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 Mahaffey Commission Co., a corporation, hereinafter referred to as the company, and C. E. Malmin, an individual who styles and designates himself as "Northern Agricultural Institute", and each of them, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Mahaffey Commission Co., is a corporation organized, existing, and doing business in the State of Illinois, having its office and principal place of business in the city of Chicago, State of Illinois. The respondent C. E. Malmin under the alias "Northern Agricultural Institute" is and has been in the exclusive employ of the other respondent as an inspector of seed potatoes under arrangements and circumstances hereinafter more fully set out.

For approximately the 2 years last past the respondent company, as a commission merchant, has been engaged in the sale and distribution of seed potatoes, by it purchased in carload lots from the sellers located in various States other than the State of Illinois, and