

Complaint

IN THE MATTER OF

H. MICHELSEN COMPANY, INC.

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

Docket 2033. Complaint, May 11, 1932—Decision, May 8, 1933

Where a corporation engaged in New York City in the manufacture and sale of bay rum from oil of bay from Porto Rico and St. Johns, conspicuously labeled its bottles with the words "H. Michelsen, St. Thomas, West Indies", together with the legend in smaller type, "The H. Michelsen Co., New York, sole agents for the North American Continent", and displayed upon its letterheads, invoices, and order blanks, depiction of its bottles so labeled, and offered and sold said product in bottles with the words "St. Thomas" blown therein, and shipped the same in packing boxes bearing the words "H. Michelsen, St. Thomas, W. I.", with effect of injuring competitors who do not use such labels, containers, letterheads, etc., for their domestic products, not made at St. Thomas, West Indies, and of diverting trade to it from competitors through purchases by persons who believed its products to have been made in St. Thomas, Virgin Islands, and bought the same as and for the more costly and favored product there made, and with capacity and tendency so to do:

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

Mr. Robert H. Winn 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 bottling and sale of bay rum and with principal office and place of business in New York City, with misbranding or mislabeling as to source of origin of product, and advertising falsely or misleadingly in said respect in violation of the provisions of section 5 of said act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid in the bottling and sale of domestic bay rum, displays the word "St. Thomas, West Indies" on labels of the bottles of its said product, together with the words, lower down and in smaller type, "Sole agents for the North American Continent", and also displays the words "St. Thomas, W. I." upon the packing boxes used for its said bottled product, and makes use of bottles, some of which have blown in the bottom thereof,

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"H. Michelsen—Bay Rum—St. Thomas"; notwithstanding fact product "so marked, stamped, branded, and labeled is not, and since 1918 had not been bay rum manufactured at St. Thomas, Virgin Islands, West Indies".¹

The adoption by respondent, as alleged, "of the address, 'St. Thomas, West Indies' as the address to be placed upon labels used by it on bottles of the domestic bay rum manufactured, offered for sale and sold in interstate commerce by it and the use of the words St. Thomas as blown into the bottles used by respondent in bottling such bay rum and the use of the address St. Thomas, W. I., on packing boxes used by it as containers in which to pack the said bay rum, has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the bay rum manufactured and sold as aforesaid by the respondent has been and is bay rum manufactured at St. Thomas, Virgin Islands, West Indies, and imported into the United States therefrom, and to induce the purchase of the respondent's bay rum by members of the purchasing public in reliance upon such erroneous belief."

Aforesaid practices of respondent, as further alleged, have placed and each of them "has placed and places in the hands of wholesale dealers and retail dealers selling the respondent's bay rum, the means whereby such dealers may mislead and deceive the consuming public into the purchase of respondent's bay rum as and for bay rum manufactured at St. Thomas, Virgin Islands, West Indies," and "aforesaid practices of respondent have had and have and each of them has had and has the capacity and tendency to unfairly divert trade to the respondent from corporations, individuals, and partnerships, offering for sale and selling bay rum manufactured in the West Indies and from corporations, individuals, and partnerships

¹ As set forth in the complaint, respondent prior to 1918 sold bay rum made at St. Thomas, Virgin Islands, West Indies, and since then has sold bay rum which has been exclusively domestic.

As alleged in the complaint with respect to bay rum made in the West Indies and particularly at St. Thomas—

"Bay rum is now and for many years has been manufactured in the West Indies, and particularly at St. Thomas, Virgin Islands. Much of this bay rum is exported from the West Indies to the United States of America and into and through the several States thereof. Such bay rum has acquired a favorable reputation in the United States as a soothing antiseptic and astringent, resulting in the establishment of a good will, which developed from time to time an increasing popular demand by the consuming public for bay rum manufactured in the West Indies, and particularly at St. Thomas, Virgin Islands. In 1918, when the respondent started to manufacture the bay rum now manufactured, offered for sale and sold by it, the bay rum manufactured at St. Thomas, Virgin Islands, and imported therefrom into the United States had long been widely and generally known and the words St. Thomas as applied to bay rum had for many years theretofore come to signify and mean and ever since has signified and meant and now signifies and means to the trade and to the consuming public of the United States a bay rum manufactured at St. Thomas, Virgin Islands, West Indies, and imported into the United States therefrom."

offering for sale and selling bay rum manufactured elsewhere than in the West Indies, but truthfully described."

"The above named acts and practices of the respondent", as charged, "are 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."

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", the Federal Trade Commission on May 11, 1932, issued and served its complaint upon respondent, H. Michelsen Company, Inc., charging it with unfair methods of competition in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer to the said complaint, hearings were had and evidence was introduced on behalf of the Commission and on behalf of the respondent before a trial examiner theretofore duly appointed, and the said trial examiner having filed his findings of fact herein, thereupon this proceeding came on for final consideration by the Commission on the brief of counsel for the Commission and the record, the respondent having advised the Commission that it did not desire to file a brief, and the Commission having considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized in 1894 with its plant and principal place of business located at 145 Hudson Street in the City and State of New York. Its president is Henry C. Michelsen. It is and since 1918 has been engaged in the business of manufacturing and selling bay rum.

PAR. 2. The respondent's annual sales of bay rum approximates \$40,000. It sells approximately four fifths of its output to the Panama Railroad Company and the other one fifth to wholesale dealers and retail dealers, some of whom are located in other States of the United States than New York, and still others of whom are located in foreign countries. Respondent causes the bay rum domestically so sold to be shipped and transported from the State of New York through and into other States of the United States and deliv-

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ered to the purchasers thereof at their respective points of location in a State or States of the United States other than the State of New York. Respondent causes other of its bay rum so sold to be shipped and transported into foreign countries and delivered to the purchasers thereof at their respective points of location.

PAR. 3. Respondent in the course and conduct of its business places on the bottles in which its bay rum is sold to the public, labels conspicuously bearing the words printed in bold type "H. Michelsen, St. Thomas, West Indies", followed in smaller type by the legend "The H. Michelsen Company, New York, sole agents for the North American Continent"; places illustrations of bottles bearing such labels upon its letterheads, invoices, and order blanks; offers for sale and sells some of its bay rum in bottles which have blown in the glass composing said bottles the words "St. Thomas"; and ships its bottled bay rum in packing boxes bearing the words "H. Michelsen, St. Thomas, W.I.

PAR. 4. Respondent's bay rum is not made in St. Thomas, West Indies, but is made by respondent in its plant in New York City. Respondent between 1894 and 1917 was the sole bay rum selling agent for the North American continent for H. Michelsen, who for over 45 years preceding 1918 made bay rum at St. Thomas, West Indies, and sold it through the respondent among the several States in bottles bearing labels of which the labels now used by the respondent are facsimiles. In 1918 the St. Thomas plant was acquired by respondent or its president and the manufacturing business was transferred to New York City. Respondent makes its bay rum from oil of bay brought from Porto Rico and St. Johns, alcohol purchased in the State of New Jersey, which alcohol has been distilled from molasses, pure water, and the denaturant required by the prohibition law.

PAR. 5. The bottles containing respondent's bay rum are sold by retail dealers to the consuming public and when so sold have affixed to them the labels affixed by the respondent and heretofore referred to. Retail dealers and purchasing consumers understand the words "St. Thomas" when applied to bay rum to signify bay rum made at St. Thomas, West Indies. Retail dealers and consumers will pay a higher price for bay rum so labeled than they will for bay rum manufactured in the United States. Other brands of domestic bay rum are manufactured in this country and are not represented as having been made at St. Thomas. Such other domestic brands sell for a lower price than that at which the respondent's bay rum is retailed to the consuming public.

PAR. 6. There are other corporations and individuals and partnerships engaged in the manufacture and sale of bay rum to wholesale and retail dealers located in the several States of the United States and in foreign countries and who cause the same when so sold to be shipped and transported from the State and country of manufacture to said wholesale dealers and retail dealers, purchasers thereof at their respective points of location. Some of these manufacturers make and mix their bay rum at St. Thomas in the Virgin Islands where bay rum has been made and sold since at least 1872. Such manufacturers, name, designate, brand, and label their products so as to indicate that it is made at St. Thomas and have done so for many years. Others of these manufacturers make their bay rum in the United States but in the sale thereof as aforesaid in no wise represent that it is made at St. Thomas in the Virgin Islands.

PAR. 7. Respondent's largest customer, the Panama Railroad Company, is acquainted with the fact that the bay rum sold to it by respondent is manufactured in New York City.

CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce. The use by respondent of the labels, bottles, brands, tags, letterheads, invoices, and order blanks as hereinbefore found by the Commission has the capacity and tendency to and does in fact injure competitors who do not use such labels, bottles, brands, tags, letterheads, invoices, and order blanks because it diverts to respondent from its competitors sales of bay rum to persons who believe that the bay rum manufactured by respondent in New York and offered for sale and sold in interstate commerce so labeled and marked is made in St. Thomas, Virgin Islands, and who purchase respondent's bay rum in and because of such belief. The practices of respondent under the conditions and circumstances described in the foregoing findings constitute a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondent, and the testimony taken and brief filed herein, and the

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Commission having made its findings as to the facts with 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, H. Michelsen Company, Inc., its officers, agents, representatives, and employees, or any of them, in connection with the offering for sale, or sale of bay rum in commerce among the several States of the United States or in the District of Columbia, cease and desist from:

(1) Using labels on its bottles or other containers containing bay rum bearing the unqualified phrase "H. Michelsen, St. Thomas, West Indies", or in any other way representing or implying that the said bay rum offered for sale and sold by it is manufactured in the West Indies when such is not the case;

(2) Using letterheads, invoices, order blanks or other literature or advertising matter containing pictorial illustrations of bottles bearing such labels;

(3) Using bottles which contain the words "St. Thomas" blown therein in which to offer for sale or sell its bay rum when such bay rum so offered for sale and sold by it is not manufactured in St. Thomas, Virgin Islands;

(4) Using the phrase "H. Michelsen, St. Thomas, W. I." as a brand or tag on packing boxes or other containers containing bay rum offered for sale or sold by it, or in any other way representing or implying that the said bay rum offered for sale and sold by it is manufactured in the West Indies when such is not the case.

It is further ordered, That respondent shall within 60 days from the date of service upon them of the order herein, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

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IN THE MATTER OF

SAMUEL BRIER, DOING BUSINESS AS SAMUEL
BRIER & CO.

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

Docket 2097. Complaint, Mar. 29, 1933—Order, June 8, 1933

Consent order requiring respondent individual, in connection with sale or offer in interstate commerce of luggage, to cease and desist "from labeling, stamping, or otherwise advertising luggage manufactured in whole or in part from split seal or seal splits as 'seal' or 'genuine seal' or in any manner indicating that the material used in the manufacture is other than seal splits or split seal."

Mr. Alfred M. Craven for the Commission.

Bender & Rubin, of Philadelphia, Pa., 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 Samuel Brier, 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. The respondent is now and has been for several years last past engaged at the city of Philadelphia, Pa., under the name of Samuel Brier & Co., in the business of manufacturing and selling in interstate commerce to jobbers and retail dealers throughout the United States handbags, suitcases, and other luggage. He causes said merchandise when sold to be shipped in interstate commerce from his said place of business at Philadelphia into and through other States of the United States to the purchasers thereof at their respective points of location. In the course and conduct of his business respondent is and has been in competition with many other persons, firms, and corporations located in the United States engaged in the manufacture and sale in interstate commerce of handbags, suitcases, and other luggage and in the shipment of same from their respective points of location to purchasers throughout the various States of the United States.

PAR. 2. Many of respondent's competitors mentioned in paragraph 1 hereof make and sell luggage manufactured from leather made