

Complaint

18 F.T.C.

## IN THE MATTER OF

M. B. LYTLE

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

*Docket 2093. Complaint, Mar. 7, 1933—Decision, Aug. 22, 1933*

Where an individual engaged in Utah in producing and marketing alfalfa seed, including a variety thereof commonly designated and known as "Grimm", and in the shipment of said seed in bags into and through various other States, to retail grain dealers, and direct to ultimate purchasers, placed upon bags of his said seed, official Utah seed certification blue tags, which he had caused to be taken and transferred from other bags of seed inspected and certified by the State Department of Agriculture, notwithstanding fact that his aforesaid bags had neither been inspected nor certified by said Department and did not contain the highest quality of certified seed obtainable, nor seed of pure "Grimm" variety as understood from extensive use of such blue tag certification; with effect of misleading prospective purchasers and purchasers into the erroneous belief that said seed was of the same purity of variety and pedigree and had been subjected to the same careful verification of origin, purity of variety, pedigree of quality, freedom from noxious weeds, and hardness as Grimm alfalfa seed of the highest quality, inspected and certified by aforesaid Department for the State of Utah, and with a tendency so to mislead, and to divert trade from competitors to himself:

*Held*, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

*Mr. PGad B. Morehouse* 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 individual, engaged at or near the town of Delta, Utah, in producing and marketing alfalfa seed, including a variety thereof commonly designated and known as "Grimm", and in shipping said seed into and through various other States, with misbranding or mislabeling as to official indorsement or sponsorship, in violation of the provisions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondents as alleged, places upon bags of his said seed, neither containing highest quality of certified seed obtainable, nor seed of pure Grimm variety, and neither inspected nor certified by the Utah De-

partment of Agriculture, official Utah seed certification blue tags<sup>1</sup> taken and transferred from other bags inspected and certified by said department; with effect of misleading purchasers and prospective purchasers into erroneous belief that seed in question "is of the purity of variety and pedigree and has been subjected to the same careful verification of origin, purity of variety, pedigree of quality, freedom from noxious weeds and hardness as 'Grimm' alfalfa seed of the highest quality", inspected and certified by said department, and with tendency so to mislead, and to divert trade from respondent's competitors to it; 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", the Federal Trade Commission issued and served a complaint upon the respondent, M. B. Lytle, an individual, charging him with the use of unfair methods of competition in violation of the provisions of said act.

The Commission duly served said complaint upon respondent on the 11th day of March, 1933, stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed, to wit, the 14th day of April, A. D. 1933, at 2 o'clock in the afternoon at the offices of the Federal Trade Commission in the city of Washington, D.C. Respondent having failed to appear at the place and time so fixed or to answer or to show cause why an order should not be entered by the Commission, the said complaint was thereupon reissued and served again by registered mail with a new notice resetting the aforesaid hearing for the same place upon the 9th day of June, 1933, at 2 o'clock in the afternoon. At respondent's requests extensions of time having been granted up to and including the 3d day of July, 1933, within which he might file answer to the aforesaid complaint or show cause why an order should not be entered by the Commission and respondent having continued in his failure and refusal so to do, thereupon this cause came on for final disposition upon the complaint pursuant to paragraph (3) of rule III of the Rules and Regulations duly adopted for the purpose of carrying out the provisions of the aforesaid act, due notice of which was served upon respondent with the aforesaid complaint, and the

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<sup>1</sup> Matter alleged in the complaint relating to inspection and certification in question, is set forth in paragraph 2 of the findings, *infra* at p. 42.

## Findings

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Commission having duly considered that respondent is in default, and being fully advised in the premises makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual who is now and for more than two years last past, has been engaged, at or near the town of Delta in the State of Utah, in the business of producing and marketing alfalfa seed including a variety thereof commonly designated and known as "Grimm". When sold, respondent causes the said seed to be shipped in bags from Delta, Utah, into and through various other States of the United States, both to retail grain dealers for resale and direct to the ultimate purchasers thereof.

In the course and conduct of his business as aforesaid respondent is and has been in direct and substantial competition with others engaged in the sale and distribution in interstate commerce of alfalfa seed of the variety known as "Grimm".

PAR. 2. For agricultural reasons widely known and approved, a true knowledge of the source, origin, purity of variety, pedigree of quality, freedom from noxious weeds, and hardiness is of great importance to the ultimate purchaser of alfalfa seed. Because of that considered importance, the State Department of Agriculture of Utah recognizes and regulates the inspection and certification of alfalfa seed grown within said state by inspecting the alfalfa while growing, passing upon the aforesaid factors, sealing the bags at the source, supervising the cleaning of the seed, and attaching to those bags containing the highest quality of "Grimm" alfalfa seed a blue tag containing the State's official certification as to the source, purity of variety, pedigree, origin, freedom from noxious weeds and hardiness. Through extensive use such blue tag certification has come to and does indicate to the purchaser that the bag to which it is attached contains the highest quality of certified seed obtainable, and on that account the purchaser pays a higher price than for other grades of alfalfa seed.

PAR. 3. In the course and conduct of his interstate business as aforesaid, respondent has caused to be placed upon bags of his alfalfa seed, which have not been inspected or certified to by the Utah State Department of Agriculture and which do not contain the highest quality of certified seed obtainable, and which do not contain seed of pure Grimm variety, official Utah seed certification blue tags which said respondent has caused to be taken and transferred from other bags of seed which have been inspected and certified to by the said State Department of Agriculture.

The transfer and unauthorized use of the aforesaid blue tag by respondent upon seed not officially inspected and certified to by the Utah State Department of Agriculture has a tendency to and does mislead prospective purchasers and purchasers into the erroneous belief that the said seed was of the same purity of variety and pedigree and had been subjected to the same careful verification of origin, purity of variety, pedigree of quality, freedom from noxious weeds, and hardness as Grimm alfalfa seed of the highest quality which had been inspected and certified to by the State Department of Agriculture for the State of Utah, and has a tendency to divert trade from respondent's competitors to respondent.

PAR. 4. The acts and things above alleged to have been done by respondent are to the prejudice of the public and to the competitors of respondent who are engaged in the sale and distribution in interstate commerce of alfalfa seed, and are 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.

#### CONCLUSION

The practices of said respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and of respondent's competitors and are unfair methods of competition in commerce and constitute a violation of Section 5 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 come on to be disposed of by the Federal Trade Commission upon the failure of respondent to file answer to the complaint of the Commission duly served upon him and upon said respondent's failure to show cause why an order should not be entered by the Commission requiring him to cease and desist from the violations of law as charged in said complaint, and the Commission having made its findings as to the facts and conclusion that 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",

## Order

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*It is now ordered,* That respondent, M. B. Lytle, his agents, servants or employees in connection with the sale in interstate commerce of alfalfa seed, cease and desist:

(1) From placing or causing to be placed upon the bags or sacks upon which such alfalfa seed is sold official Utah seed certification blue tags, or in any other wise representing that his said seed has been officially inspected and certified to by the Utah State Department of Agriculture, when such is not the case.

(2) From attaching to the bags or sacks in which said seed is so packed, distributed and sold, tags of the identical shade of blue, which through extensive use have come to indicate officially certified highest quality alfalfa seed of the "Grimm" variety, when such bags or sacks do not contain such quality and variety of alfalfa seed—unless and until respondent in conspicuous printing on said blue tags clearly and truly informs the purchasers and prospective purchasers of the actual varieties and qualities of the said seed therein contained.

*It is further ordered,* That the said respondent within 60 days from and after the date of service upon it of this order shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

## Complaint

IN THE MATTER OF  
COOK PAINT & VARNISH CO. AND MARK L. JONES,  
INDIVIDUALLY

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

*Docket 1959. Complaint, June 17, 1931—Decision, Sept. 23, 1933*

Where a corporation engaged in the manufacture of varnish, paints, shellacs, wood-fillers and kindred products, and its salesman or agent through whom it contacted and solicited furniture manufacturing customers and prospective customers in certain States, paid and offered to pay to trusted employee foremen finishers of said manufacturing customers and prospective customers, without their knowledge or consent, substantial sums of money as a reward for recommending or procuring purchase of said corporation's products by their employers, or as an inducement for continuing so to do, or opposing purchase of competitors' product; with result that competitors unwilling to resort to such practices found it practically impossible to obtain any considerable business, trade was unfairly diverted to it, and fair competition based upon price and quality was eliminated:

*Held*, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and competitors, and constituted unfair methods of competition.

*Mr. Richard P. Whiteley* for the Commission.

*Littlepage & Littlepage*, of Washington, D.C., for respondents, along with whom appeared *McCune, Caldwell & Downing*, of Kansas City, Mo., for Cook Paint & Varnish Co.

## 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 Delaware corporation, engaged in the manufacture and sale of varnish, paints, shellac, wood-fillers, and kindred products, to manufacturers of furniture and others in various States, and with principal office and place of business in Kansas City (and with a Cincinnati division or branch called Blackburn Varnish Co., which trade name it used in the sale and distribution of certain of its products in interstate commerce); and respondent individual, its sales manager or general salesman, with bribing employees of com-