

IN THE MATTER OF

J. OLIVER SNYDER, AN INDIVIDUAL, DOING BUSINESS
UNDER THE TRADE NAME OF E. SNYDER & SONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2120. Complaint, Oct. 26, 1933—Order, Apr. 28, 1934*

Consent order requiring respondent individual, his agents, etc., in connection with the sale of cigars in interstate commerce, to cease and desist from

- (a) Falsely labeling, branding, advertising, or otherwise describing his said product as "Factory Throw-outs", "Factory Left-overs", or by words of similar import, or as having been made from the same kind and quality of tobacco used for higher-priced, higher-grade products, unless the cigars thus designated and described are in fact thrown out, left over, or discarded from factory lots of higher-priced, higher-grade cigars, made with the same kind and quality of tobacco intended for and used in such higher-priced, higher-grade product, or consist of cigars made with the same kind and quality of tobacco used for a product regularly marketed under other brand names and at higher retail prices; and
- (b) Representing through use of words "Manufacturer", "Producer", or "Maker", or in any other way that it makes or produces the cigars sold and distributed by it, and does not operate as a middleman, and thereby saves all the costs, profits, or other charges of middlemen and thus affords his customers advantages in price, service, and quality not available to purchasers from competing middlemen or other competitors, unless and until he actually owns and operates or directly and absolutely controls the factory or other producing and manufacturing facilities used in the production of all cigars sold or distributed by him under the aforesaid representations, statements, and assertions.

Mr. Henry Miller for the Commission.

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 J. Oliver Snyder, an individual doing business under the trade name of E. Snyder & Son, 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, J. Oliver Snyder, an individual, is and for more than 2 years last past has been engaged in carrying on and conducting the business as hereinafter described under the trade

name of E. Snyder & Son with his place of business at Hampstead in the State of Maryland. The said business engaged in by respondent is and has been the sale and distribution to the purchasing public throughout the United States, including dealers, users, and consumers, of various brands of cigars, which cigars are and have been manufactured for respondent and purchased by him from certain manufacturers regularly engaged in the business of manufacturing cigars in the States of Pennsylvania and Maryland and selling them to dealers and other purchasers. In the course and conduct of said business, respondent causes his cigars to be advertised, represented, described, offered for sale, and sold to the purchasing public throughout the United States by means of newspaper advertisements, circulars, pamphlets, leaflets, and other forms of advertising matter distributed to his customers and prospective customers, as well as through personal solicitation of customers and prospective customers by himself and by his salesmen or agents employed for the purpose. In distributing said cigars to his customers and acting pursuant to purchase orders received and sales made as aforesaid, respondent causes the several parcels or lots of said cigars as and when sold to be shipped, transported, and delivered in interstate commerce from points in the States of Maryland and Pennsylvania, to wit: Hampstead, Md., Dallastown, Pa., and Red Lion, Pa., through and into States other than the States in which such respective shipments originated and the District of Columbia to the respective purchasers thereof in such other States and the District of Columbia. There are and at all times herein mentioned have been various and sundry other corporations, persons, partnerships, and firms engaged in the business of selling and distributing to dealers, users, and consumers, in, between, and among the several States of the United States and the District of Columbia, cigars which have been manufactured or purchased by them and which are and have been competitive to respondent's said cigars. At all times herein mentioned respondent has been and still is conducting his said business and selling and distributing his cigars in direct active competition with such other persons, partnerships, corporations, and firms and with competitors generally throughout the United States.

PAR. 2. Among the cigars sold and distributed by respondent are cigars of a certain type and grade which are and have been extensively and widely marketed by respondent for resale to the consuming public at the rate of 2 cigars for 5 cents, and at other indicated retail prices. As to such cigars respondent has followed for more than 2 years last past and continues to follow the practices of causing them to be sold and distributed in competition in interstate

commerce, as described in paragraph 1 hereof, under brands, labels, designations, descriptions, and representations to the effect that such cigars—

- (a) Are “factory throw-outs”;
- (b) Are “factory left-overs”;
- (c) Are cigars which have been taken from certain factory lots of cigars which were manufactured for sale as higher-priced or higher-grade cigars and with tobacco intended for, and used in, such higher-priced or higher-grade cigars; and
- (d) Are cigars which have been manufactured as part of certain cigars of higher type, grade, or quality, regularly marketed under other brand names at higher retail prices.

PAR. 3. Said terms, “factory throw-outs” and “factory left-overs” as used by respondent and as descriptive of cigars sold to the public, are and for many years last past have been used and understood by manufacturers, dealers, and consumers of cigars in the United States as meaning cigars which are being marketed at certain retail prices, but which in fact are cigars that have been manufactured as part of, and with the same kind, grade, type, or quality of tobacco used in, cigars regularly marketed under other or definite brand names and at higher retail prices, such so-called “factory throw-outs” or “factory left-overs” not having been packed or marketed at such higher retail prices under said other or definite brand names because of being part of excess quantities left over or because of slight imperfections resulting in failure of the cigars to pass inspection or for other reasons.

PAR. 4. In truth and in fact respondent's said cigars sold as described in paragraph 2 hereof are not and have not been “factory throw-outs” nor “factory left-overs” as hereinabove defined and as understood by the purchasing and consuming public; nor have said cigars been taken from lots which were manufactured for sale at higher retail prices or as higher-grade cigars, nor manufactured with tobacco intended for and used in such higher-priced or higher-grade cigars; nor were such cigars manufactured as part of cigars of higher type, grade, or quality, regularly marketed under other brand names at higher retail prices. Respondent's said cigars sold as described in paragraph 2 hereof were made of inferior and low-grade tobacco and were manufactured with the preexisting intention on the part of respondent and of the manufacturer of marketing the cigars to the public at the low retail prices indicated on the commercial containers thereof.

PAR. 5. The said practices and representations of respondent alleged in paragraph 2 hereof are and have been false, misleading,

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and deceptive, and their use by respondent has and had the capacity, tendency, and effect—

(a) Of misleading and deceiving the purchasing and consuming public into the erroneous belief that said practices and representations were and are true in fact; and

(b) Of causing dealers and consumers to buy, and dealers to resell, said cigars upon such false, misleading, and deceptive practices and representations.

PAR. 6. Further, respondent is and for more than 2 years last past has been conducting his said business described in paragraph 1 hereof and selling and distributing his said cigars under representations, statements, and assertions to the effect that—

(a) Respondent is the manufacturer of said cigars and sells and distributes the same to his customers as the manufacturer thereof;

(b) That the prices at which he sells his cigars are manufacturer's prices, that they do not include the costs, profits, or other charges of any middlemen;

(c) That in buying from respondent purchasers are thereby dealing directly with the manufacturer and saving to themselves the costs, profits, or other charges of any and all middlemen.

In truth and in fact respondent is not a manufacturer and does not manufacture the cigars which he sells but purchases the same from manufacturers and resells them as a middleman and at middleman's prices, which include the costs, profits, and other charges of himself as well as those of the manufacturer. In the sale and distribution of said cigars respondent does not, by reason of being a manufacturer, save to the purchasers the costs, profits, or other charges of all middlemen.

PAR. 7. The said representations, statements, and assertions used by respondent as described in paragraph 6 hereof are false, misleading, and deceptive, and have and had the capacity, tendency, and effect of misleading and deceiving purchasers into purchasing cigars from respondent in the erroneous belief that said representations, statements, and assertions are and were true in fact.

PAR. 8. Respondent's use of the foregoing false, misleading, and deceptive acts and practices as aforesaid are methods of competition which are unfair and which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate to hamper, burden, or restrain the freedom of fair and legitimate competition in the cigar industry and trade. Said false, misleading, and deceptive acts and practices used by respondent as aforesaid constitute unfair methods of competition in commerce in violation of Section 5

of the 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 issued under Section 5 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", and respondent's amended answer thereto that respondent, desiring to waive all further proceedings, and under paragraph (2) of rule III of the Commission's Rules of Practice, consents that the Commission may make, enter, and serve upon him 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 in the course of the sale or distribution in commerce between and among the several States, Territories, and the District of Columbia, or in such Territories or District, the respondent J. Oliver Snyder, his agents, representatives, servants, and employees, do cease and desist:

(a) From directly or indirectly labeling, branding, describing, advertising, or representing any such cigars with the term "factory throw-outs" or "factory left-overs" or with any simulation thereof or word or words of similar import, *unless* the cigars so labeled, branded, described, advertised, or represented are cigars which in fact have been taken, thrown out, left over, or discarded, during or after manufacture, from certain factory lots of cigars manufactured for sale as higher-priced or higher-grade cigars and with the same kind, grade, type, and quality of tobacco intended for and actually used in such higher-priced or higher-grade cigars; or *unless* such cigars so branded, labeled, described, advertised, or represented are in fact cigars which have been manufactured as part of, and with the same kind, grade, type, and quality of tobacco used in cigars regularly marketed or to be marketed under other brand names and at higher retail prices.

(b) From falsely or deceptively advertising, branding, labeling, describing, or representing, directly or indirectly, in any other manner whatsoever (1) that any such cigars sold or distributed in commerce as aforesaid are cigars which have been taken, thrown out, left over, or discarded from factory or other lots of cigars manu-

factured for sale as higher-priced or higher-grade cigars, or (2) that any such cigars so advertised, branded, labeled, described, or represented have been manufactured from the same kind, grade, type, or quality of tobacco used in higher-priced or higher-grade cigars.

(c) From making any representations, statements, or assertions, directly or indirectly, either by use of the words "manufacturer", "producer", or "maker", or by any other means whatsoever, that respondent is the manufacturer, maker, or producer of any such cigars sold or distributed in commerce as aforesaid; or that in the course or conduct of his business respondent is, or operates as, a manufacturer, producer, or maker and not a middleman; or that by reason of being a manufacturer, producer, or maker, or selling and distributing his cigars directly from manufacturer or producer to purchaser he thereby excludes or saves all or a part of the costs, profits, or other charges of a middleman or all middlemen, and thereby affords his customers advantages in price, service, or quality not available to purchasers from competing middlemen or other competitors of respondent; *unless and until* respondent actually owns and operates or directly and absolutely controls the factory or other producing, making, or manufacturing equipment and facilities used in the manufacture or production of all such cigars sold or distributed by respondent under said representations, statements, and assertions.

It is further ordered, That respondent, J. Oliver Snyder, shall, within 60 days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
NURITO 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 2084. Complaint, Jan. 13, 1933—Decision, May 7, 1934

Where a corporation engaged in the sale and distribution of a certain medicinal preparation,

Represented the same on cartons and in circulars and newspaper advertisements as a cure and treatment for the relief of neuritis, rheumatism, neuralgia, sciatica, and lumbago, and kindred ailments, through such statements as "Acts like magic, making bed-ridden sufferers get up and dance", "So many thousands have found quick relief from neuralgia, neuritis, sciatica, lumbago, and rheumatism through Nurito, that it has now become the standard relief throughout the world", and numerous others of similar tenor, such as "Now! grandma runs upstairs without an ache or pain", "Runs back to work; yesterday couldn't move aching legs", etc.;

The facts being that while said preparation would temporarily relieve muscular aches and pains, it did not in and of itself have any appreciable therapeutic value in the treatment of neuritis, rheumatism, neuralgia, sciatica, and lumbago, and did not have the proper therapeutic values to produce the results claimed for it, but contained certain ingredients which were liable to produce toxic effects in certain cases and were actually contraindicated in certain ailments;

With effect of misleading and deceiving customers and prospective customers into purchasing said product in the belief it would produce the results claimed, as above set forth, and with capacity and tendency so to do, and to injure substantially competitors engaged in sale of numerous products having the same action, without falsely advertising the same as a cure for such diseases, or otherwise, and with effect of so doing, through unfairly diverting trade from said competitors to itself:

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. Henry C. Lank for the Commission.

Mr. Clinton Robb, of Washington, D. C., 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, an Illinois corporation engaged in the sale and distribution to retail dealers of a medicinal preparation designated "Nurito", and with office and principal place of business in Chicago, with advertising falsely or misleadingly as to the results or qualities of