

Complaint

IN THE MATTER OF
OLD HICKORY MILLS ET AL.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1607. Complaint, Sept. 6, 1929¹—Order, Aug. 6, 1934*

Consent order requiring respondent Old Hickory Mills, its officers, etc., in connection with the sale of flour in commerce among the several States, to cease and desist from carrying on such business under the name "Old Hickory Mills" or under any other name including the word "Mills" or any other word or words of like import, and from representing through advertisements, circulars, etc., or in any other manner designed to promote or affect interstate commerce, that it is a manufacturer of flour or that the flour sold by it comes direct from manufacturer to purchaser, unless and until it actually "owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour sold or offered for sale by it under such title or name, or by or through any such representations; unless and until respondent shall insert and use also the words 'Not Grinders of Wheat' in immediate conjunction with its title, corporate name, trade name, or other designation in letters equally legible and conspicuous when said title, corporate name, trade name, or other designation is used on stationery, letterheads, bags, containers, advertising matter or otherwise."

Mr. Edward L. Smith and Mr. John W. Hildrop for the Commission.

Mr. Thomas H. Malone, of Nashville, Tenn., for respondent.

COMPLAINT¹

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 the Old Hickory Mills, a corporation, J. Frank Foster, individually and as president, James Willis, individually and as vice president, R. W. Condon, individually and as vice president, and D. L. Anderson, individually and as secretary-treasurer, 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 said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Old Hickory Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee. The respondents, J. Frank Foster, James

¹ Amended.

Willis, R. W. Condon, and D. L. Anderson are respectively, president, vice presidents, and secretary-treasurer of said corporation. Respondent corporation has its place of business at 410 Twenty-third Avenue, North, in the city of Nashville, State of Tennessee, which is also the location of the office and plant of the Mero Mills which is engaged in the business of blending and mixing flours and selling the same to the public in both self-rising and plain form. Respondents, J. Frank Foster, James Willis, R. W. Condon, and D. L. Anderson, manage, control, and direct the business and affairs of respondent Old Hickory Mills.

PAR. 2. The respondent corporation, Old Hickory Mills, is engaged in the business of selling flour, principally to retail grocers located throughout the southeastern States of the United States, which flour it purchases from the Mero Mills, which packs the same on orders received by it from the respondent corporation. The business of respondent amounts to approximately 20,000 barrels of flour per year, the orders for which are solicited principally through the mail. Respondent corporation also conducts and operates its business under the trade names of Lion Milling Company and Maple Leaf Milling Company at the same address; namely, 410 Twenty-third Avenue, North, Nashville, Tenn. On the letterheads used in the business done by respondent corporation under the trade names aforesaid, separate post office addresses are given; to wit, Lion Milling Company, P. O. Box 118, and Maple Leaf Milling Company, P. O. Box 234, Nashville, Tenn.

PAR. 3. Respondent corporation solicits orders for flour purchased, prepared, and sold to it by the Mero Mills, as above described, in States other than the State of Tennessee, and contracts to sell and deliver and does sell and cause to be transported to purchasers outside the State of Tennessee, said flour. Respondent corporation is in competition with individuals, partnerships and corporations likewise engaged in the business of selling flour in interstate commerce.

PAR. 4. Respondent corporation, in the conduct of its business as aforesaid, sells the flour purchased by it as above described under from two to six brands under each of the three names; namely, Old Hickory Mills, Lion Milling Company, and Maple Leaf Milling Company. The letterheads used in its business correspondence are as follows:

OLD HICKORY MILLS

Manufacturers of

Pure Soft Wheat Flour

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MAPLE LEAF MILLING COMPANY

Box 234

Nashville, Tennessee

LION MILLING COMPANY

Box 118

Nashville, Tennessee

The flour packed for respondent and sold by it as aforesaid is delivered in cotton or other sacks on which respondent causes to be stamped in conspicuous letters the name or symbols of the particular brand and also the words, "From Old Hickory Mills, Nashville, Tennessee", or "From Maple Leaf Milling Company, Nashville, Tennessee", or "From Lion Milling Company, Nashville, Tennessee", and such words as: "Best Plain Patented" or "Self-Rising Flour."

In the course of its said business respondent corporation sends out circulars and other literature which contain other representations in words or symbols tending to lead customers and prospective purchasers of the flour which it sells to believe that it manufactures said flour, whereas respondent corporation owns no plant or machinery for the grinding of wheat into flour.

PAR. 5. The use by respondent corporation of the name, Old Hickory Mills and the trade names Lion Milling Company and Maple Leaf Milling Company, and the representations in its correspondence and otherwise, as aforesaid, have the capacity and tendency to lead dealers and prospective purchasers of flour to believe that in purchasing its products they are buying flour direct from a miller or manufacturer of flour—that is, one that makes the flour it sells by rolling or grinding or other process of crushing wheat and extracting therefrom the product known as flour, and without the intervention of a middleman or any element of cost of a middleman's profit, and induce purchases of its flour by dealers and consumers on that understanding and belief; and said representations constitute unfair methods of competition with millers or manufacturers of flour likewise engaged in interstate commerce, and with sellers of flour likewise engaged in interstate commerce who do not manufacture the flour they sell but buy and sell flour made by others and do not represent themselves to be millers or manufacturers of flour, to the injury of said millers and sellers of flour in that said representations of respondents are false and misleading and tend to take away their business.

Wherefore, the said acts and practices of respondents are all to the prejudice of the public and constitute unfair methods of competition

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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

Old Hickory Mills, a corporation, one of the respondents in this proceeding, by its attorney, Thomas H. Malone, Esq., having filed with this Commission its motion that it be permitted to withdraw its answer to the amended complaint herein and be permitted to waive hearing on the charges set forth in the complaint herein and not contest the proceedings, and the said respondent, Old Hickory Mills, in and by its said motion relying on paragraph 2 of Rule III of the Commission's Rules of Practice, having consented that as therein provided, the Commission may make, enter and serve upon said respondent, Old Hickory Mills, an order to cease and desist from the methods of competition alleged in the said complaint; and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, That the said motion be and the same is hereby granted and that the said respondent, Old Hickory Mills be and it is hereby permitted to withdraw its answer to the amended complaint herein, and that it be and is hereby permitted to waive hearing on the charges set forth in the said complaint;

And it is hereby further ordered, That the said respondent, Old Hickory Mills, its officers, agents, representatives, and employees forthwith cease and desist from carrying on the business of selling flour in commerce among the several States of the United States under the name Old Hickory Mills or under any other name which includes the word "mills" or any other word or words of like import, and from making representations through advertisements, circulars, correspondence, stationery, or in any other manner whatsoever designed to promote or otherwise affect interstate commerce, that it is a manufacturer of flour or that the flour sold by it comes direct from manufacturer to purchaser, unless and until said respondent, Old Hickory Mills, using such word or words or making such representations actually owns and operates or directly and absolutely controls a factory or mill wherein is made by grinding or crushing the wheat berry any and all flour sold or offered for sale by it under such title or name, or by or through any such representations; unless and until respondent shall insert and use also the words "Not Grinders of Wheat" in immediate conjunction with

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its title, corporate name, trade name, or other designation in letters equally legible and conspicuous when said title, corporate name, trade name, or other designation is used on stationery, letterheads, bags, containers, advertising matter or otherwise.

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

ORDER OF DISMISSAL AS TO RESPONDENT INDIVIDUALS

This Commission having been informed that J. Frank Foster, James Willis, R. W. Condon, and D. L. Anderson made respondents in this proceeding as individuals and as officers of the respondent, Old Hickory Mills, a corporation, are no longer connected with the said respondent, Old Hickory Mills, and the Commission this day having entered, issued, and served upon said respondent, Old Hickory Mills, an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the same and being fully advised in the premises—

Now, therefore, it is hereby ordered, For the reasons hereinabove mentioned, that the complaint in this proceeding as to the aforesaid J. Frank Foster, James Willis, R. W. Condon, and D. L. Anderson be and the same is hereby dismissed.

Complaint

19 F. T. C.

IN THE MATTER OF
SCHULTZ & HIRSCH COMPANY

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

Docket 2105. Complaint, June 9, 1933—Order, Aug. 6, 1934

Consent order requiring respondent, its officers, etc., in connection with sale or distribution of mattresses or similar articles in interstate commerce or the District of Columbia, or to promote the purchase and use by dealers and the consuming public thereof, to cease and desist from—

“Directly or indirectly causing the use of, or aiding, abetting, encouraging, or otherwise assisting dealers or other sellers of mattresses and similar articles of bedding in using or causing to be used, any price or value marks in the branding, labeling, displaying, advertising, offering for sale or selling of such articles to the consuming public when such price or value mark indicates or represents a price or value which does not represent a true estimate in good faith of the price at which said mattresses and similar articles of bedding are to be sold to the public, or a value or price at which they are intended to be priced and sold, and are so priced and sold currently in the usual course of trade, so that such goods will not be marked up with the intention of thereafter marking them down for the purpose or with the effect of conveying incorrect impressions as to the extent of bargains or price concessions offered the public”;

Provided that nothing above shall be construed as authorizing or permitting respondent, officers, etc., “to coerce, induce, or cause any dealers or merchants to enhance their prices, or to fix or charge uniform or enhanced resale prices in the marketing of aforesaid articles to the consuming public.”

Mr. Henry Miller for the Commission.

Alzheimer, Mayer, Woods & Smith, of Chicago, Ill., 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 Schultz & Hirsch Company, 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, Schultz & Hirsch Company, is a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago in said State. It is and for many years last past has been engaged in the business of manufacturing mattresses, of selling