

Complaint

IN THE MATTER OF

LOUIS A. MILLER DOING BUSINESS UNDER TRADE
NAME SOUTHERN MILLING COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1617. Complaint, Sept. 5, 1929¹—Order, Sept. 5, 1934*

Consent order requiring respondent, doing business as aforesaid, his agents, etc., to cease and desist from carrying on the sale of flour in commerce among the several States, under name "Southern Milling Company", or any other name which includes the word "milling" or any other word or words of like import, and from making representations through advertisements, circulars, etc., or in any other manner designed to promote or affect interstate commerce, that he is a manufacturer of flour or that the flour sold by him comes direct from manufacturer to purchaser, unless or until respondent, doing business as aforesaid Southern Milling Company, 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 him under such title or name, or by or through any such representation; or "unless and until said respondent shall insert and use, also, the words 'Not Grinders of Wheat', in immediate conjunction with such trade name or other designation, in letters equally legible and conspicuous, when said 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.

Price, Schlater & Price, 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 Louis A. Miller, an individual, doing business under the trade name of Southern Milling 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:

¹Amended.

PARAGRAPH 1. The respondent, Louis A. Miller, is an individual doing business under the name of Southern Milling Company. Respondent is engaged in the city of Nashville, State of Tennessee, in the business of soliciting, principally by mail, orders for, and selling wheat flour, both plain and self-rising, under the trade name aforesaid. He solicits orders from dealers throughout the Southeastern States, and causes to be shipped and delivered in performance thereof said products to customers located in various States other than the State of Tennessee. Such orders are filled for him by the Mero Mills located at Nashville, Tenn., which conducts a business of buying and packing flour. The Mero Mills does not grind or manufacture wheat into flour. The flour furnished by the Mero Mills to fill the orders secured as aforesaid by respondent is packed in bags supplied by respondent on which bags appears in prominent type the words, "*Southern Milling Company, Nashville, Tennessee*".

PAR. 2. In the course and conduct of his business as above described respondent in soliciting orders by mail uses stationery upon the letterheads of which appears—

SOUTHERN MILLING COMPANY
High Grade Flour and Mill Feed

and in his business correspondence he makes representations to customers and prospective customers implying that he operates a mill and grinds or manufactures wheat into the flour which he sells. Respondent does not grind or manufacture flour and owns or controls no equipment for so doing.

PAR. 3. The use by respondent of the trade name Southern Milling Company and other representations in his business correspondence as aforesaid have the capacity and tendency to lead dealers and prospective purchasers of flour to believe that in purchasing from respondent they are buying flour direct from a miller or manufacturer of flour, that is one that makes flour by rolling, 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 flour from him on that understanding and belief; and said representations constitute unfair methods of competition with such millers or manufacturers of flour likewise engaged in interstate commerce, and with sellers of flour likewise engaged in interstate commerce who do not grind or manufacture the wheat into flour but who buy and sell flour manufactured 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 respondent are false and misleading and tend to take away their business.

Wherefore, said acts and practices of respondent are all to the prejudice of the public and constitute 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.

ORDER TO CEASE AND DESIST

Louis A. Miller, doing business under the trade name Southern Milling Company, respondent herein, having filed with this Commission his answer to the amended complaint in this proceeding, in which said answer he refrains from contesting the proceeding and, relying upon paragraph (2) of Rule III of the Commission's Rules of Practice, he consents in and by the said answer that the Commission, as provided in paragraph (2) of Rule III of its Rules of Practice, may make, enter, issue, and serve upon him an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the said answer, and being fully advised in the premises:

Now, therefore, it is hereby ordered, That the said respondent, Louis A. Miller, doing business under the trade name of Southern Milling Company, his 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 Southern Milling Company, or any other name which includes the word "milling", 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 he is a manufacturer of flour, or that the flour sold by him comes direct from manufacturer to purchaser, unless and until said respondent, Louis A. Miller, doing business under the trade name of Southern Milling Company, 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 him under such title or name, or by or through any such representation; unless and until said respondent shall insert and use, also, the words "not grinders of wheat", in immediate conjunction with such trade name or other designation, in letters equally

Order

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legible and conspicuous, when said trade name or other designation is used on stationery, letterheads, bags, containers, advertising matter, or otherwise.

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

Complaint

IN THE MATTER OF
BAYER COMPANY, INC.COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2192. Complaint, June 8, 1934—Order, Sept. 14, 1934*

Consent order requiring respondent, its officers, etc., in connection with sale and offer in interstate commerce and in District of Columbia of aspirin, to cease and desist from—

- (a) Representing that "Aspirin is the trade mark of Bayer manufacture of Monoaceticacidester of Salicylicacid" and from using said phrase in its advertising in newspapers, periodicals, or other publications or printed matter, or by radio broadcasting or in any other way, and from using any other phrase or statement of similar import; provided, that where the word "aspirin" has been held in certain foreign countries to be respondent's directly or indirectly owned valid trade mark therein, this order shall not apply to advertising or packages intended for circulation or sale in such countries;
- (b) Making such representations, without proper qualification or explanation, concerning its product, in advertising, radio broadcasting or otherwise, as that "no harmful after-effects follow its use", "does not upset the stomach", "cannot harm the heart", "anyone can take Bayer Aspirin", "you could take it every day without harm", "Take enough to assure your complete comfort", "If it is genuine aspirin, it cannot possibly hurt you", "Genuine Bayer Aspirin tablets promptly relieve headaches, neuritis", provided that nothing aforesaid shall be construed as preventing respondent from making proper therapeutic claims or recommendations, based upon reputable medical opinion or recognized medical or pharmaceutical literature; and
- (c) Advertising or representing in newspapers or otherwise that aspirin not made by respondent is counterfeit or spurious.

Mr. Edward L. Smith for the Commission.

Mr. Edward S. Rogers, of New York City, for respondent.

COMPLAINT

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, having reason to believe that Bayer Company, Inc., a corporation hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the