

IN THE MATTER OF
THE BRIARWOOD CORPORATION

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

Docket 2255. Complaint, Dec. 4, 1934—Decision, Feb. 20, 1935

Where a corporation engaged under a name including the word "Briarwood" in the manufacture and sale of pipes made of ground briar root and binder, molded under pressure into various shapes, and sold under the name "Berbriar", and other designations—

Employed such words and phrases in its advertisements, letterheads, billheads and other trade literature circulated among customers and prospective customers, in referring to and describing said pipes and soliciting the sale thereof, as "made from genuine imported Briar Root, Briar Kob", "molded from genuine imported briar root by an entirely new process", and ascribed said pipe's smoking quality to "molding the genuine imported briar root in such a way as to keep the pores open";

With capacity and tendency through said incorrect, exaggerated, and misleading statements to deceive and mislead purchasers and prospective purchasers of said article into the belief that they were made from natural grown briar root, carved or fashioned from the solid block:

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

Mr. Astor Hogg for the Commission.

Mr. William H. Rosenfeld, of Cleveland, Ohio, 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 The Briarwood Corporation 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 public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, the Briarwood Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its factory and principal place of business in Cleveland, in the State of Ohio. It is now and has been for more than one year past engaged in the manufacture of smoking pipes and in the sale and distribution of such smoking

pipes in commerce between and among the several States of the United States of America, causing said pipes when sold, to be shipped and transported from its said factory and place of business in Cleveland, Ohio, to dealers, distributors, and purchasers thereof in the several States of the United States, and during said period of time and now, the said respondent has been and is in competition with divers other firms, corporations, associations, and individuals engaged in a similar and like business and who are likewise engaged in interstate commerce.

PAR. 2. In the course and conduct of its said business the respondent, the Briarwood Corporation, adopted as and for a corporate and trade name under which to carry on its said business, the words "The Briarwood Corporation", and further, in soliciting the sale of and in selling said pipes in interstate commerce, caused such pipes to be designated, described and represented in its advertisements, letterheads, billheads, and other printed literature widely circulated among customers and prospective customers, by the use of the following words and phrases "*made from genuine imported briar root, briar kobs*", "*this pipe . . . is molded from genuine imported briar root*", "*imported briar*" and "*berbriar*"; when in truth and in fact said pipes were not made from the natural grown briar root, but were fabricated by said respondent corporation from briar root dust and a vegetable binder.

PAR. 3. There is a preference on the part of many users, purchasers and smokers of pipes, for pipes molded from the natural grown briar root, and the use by respondent of the words and phrases set out in paragraph 2 hereof, had and has the capacity and tendency to deceive and mislead the smokers of pipes and the purchasing public into the belief that when they purchased the pipes, manufactured, advertised, designated, described and sold as aforesaid, they were buying genuine briar root pipes, molded from the natural grown briar root, when in truth and in fact they were purchasing a fabricated article made from briar root dust with a vegetable binder.

PAR. 4. In the conduct of its said business and in the sale of its said pipes, the respondent furnished its dealers and retail merchants certain advertising matter among which was a printed paper or circular which was placed in the bowl of each pipe shipped to the dealer and entitled "*important notice on the care of your pipe*", and which contained the following: "*This pipe which you have just purchased is molded from genuine imported briar root by an entirely new process*" and "You will notice the coolness of the smoke in your mouth; this is accomplished by molding the *genuine imported briar*

root in such a way as to keep the pores open . . ." all of which was false, misleading and exaggerated and placed in the hands of retail merchants an instrumentality for the perpetration of a fraud and a deception upon the buying public.

PAR. 5. Each and all of the false and misleading statements and representations of the respondent referred to in paragraphs 2, 3, and 4 had and have a capacity and tendency to divert trade from those individuals, firms, corporations, and associations engaged in the manufacture and sale in interstate commerce of genuine briar root pipes and from those individuals, firms, corporations, and associations doing a similar and like business to that of respondent, but who truthfully advertise and represent their commodities, to respondent and to otherwise injure said competitors of respondent.

PAR. 6. The acts and practices set forth in paragraphs 2, 3, and 4 hereof are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning 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."

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 the 4th day of December 1934 issued and thereafter served its complaint against the respondent named in the caption hereof, charging it with the use of unfair methods of competition in commerce in violation of the said act. Respondent, after entering its appearance and filing its answer to said complaint, thereafter, to wit, on the 1st day of February 1935, entered into a stipulation as to the facts with W. T. Kelley, chief counsel for the Federal Trade Commission, in which it was stipulated and agreed that the statement of facts in said agreement between respondent and chief counsel may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs.

The Commission being fully advised in the premises, now approves, ratifies, and confirms the said stipulation and agreement entered into

as aforesaid by and between respondent and W. T. Kelley, chief counsel of the Federal Trade Commission, and, having duly considered the same, makes this its report in writing and states its findings as to the facts and conclusion drawn therefrom, as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its principal office and place of business located in the city of Cleveland, State of Ohio. Respondent is now and for more than two years last past has been engaged in the business of manufacturing, selling, and distributing smoking pipes known, described, and designated by it as "Berbriar" and other designations. Respondent causes said smoking pipes, when so sold to be transported from its place of business in the city of Cleveland, State of Ohio, into other States of the United States to purchasers thereof at their respective locations. In the course and conduct of said business, respondent is in competition with other corporations, partnerships and individuals likewise engaged in the manufacture, sale, and transportation in commerce between and among the various States of the United States of similar articles of commerce.

In the course and conduct of its said business, the respondent adopted as and for a corporate and trade name under which to carry on its business, the words "THE BRIARWOOD CORPORATION" and in soliciting the sale of and in selling said pipes in interstate commerce caused such pipes to be designated, described and represented in its advertisements, letterheads, billheads, and other trade literature widely circulated among customers or prospective customers by the use of the following words and phrases:

"MADE FROM GENUINE IMPORTED BRIAR ROOT," "BRIAR KOB", "THIS PIPE * * *,
IS MOLDED FROM GENUINE IMPORTED BRIAR ROOT" * * * "IMPORTANT
NOTICE ON THE CARE OF YOUR PIPE",

and which contained the following:

"THIS PIPE WHICH YOU HAVE JUST PURCHASED IS
MOLDED FROM GENUINE IMPORTED BRIAR ROOT BY AN ENTIRELY
NEW PROCESS." * * * "YOU WILL NOTICE THE COOLNESS OF THE
SMOKE IN YOUR MOUTH; THIS IS ACCOMPLISHED BY MOLDING THE
GENUINE IMPORTED BRIAR ROOT IN SUCH A WAY AS TO KEEP THE PORES OPEN * * *."

The pipes as designated are fabricated by respondent from ground Briar Root to which a binder has been added forming a plastic mass which is then molded under pressure into various desirable shapes;

Order

20 F. T. C.

the wood content of said pipes so fabricated, sold and distributed by respondent consists of genuine ground Briar Root; and the said pipes so fabricated, sold and distributed by respondent are not made from the Briar Root in its natural form.

PAR. 2. The foregoing statements and representations made by respondent in aid of the sale of its smoking pipes are incorrect, exaggerated and misleading and have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's said smoking pipes into the erroneous belief that said smoking pipes are made from natural grown Briar Root and carved or fashioned from the solid block.

CONCLUSION

The practices of the respondent under the conditions and circumstances described in the foregoing findings of fact are to the prejudice of the public and to the competitors of the respondent and are unfair methods of competition in commerce in 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

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 its complaint against the respondent, The Briarwood Corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act. Thereafter, the respondent filed its answer to the charges set forth in the complaint and on, to wit, the 1st day of February 1935 a stipulation as to the facts was entered into by and between the chief counsel for the Federal Trade Commission and counsel for the respondent, in which it was stipulated and agreed that the statement of facts thus agreed to might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and the Commission having accepted and approved the said stipulation as to the facts and having made its findings as to the facts and 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, The Briarwood Corporation, its agents, representatives, and employees, in connection with

170

Order

the sale and advertising and offering for sale in interstate commerce of its smoking pipes designated as "Berbriar" and other designations do cease and desist from representing:

(1) That said smoking pipes are "Made from genuine imported Briar Root", unless that phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(2) That said smoking pipes are "Briar Kobs", unless that phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(3) That "This pipe * * * is molded from genuine Briar Root", unless such phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(4) That "This pipe which you have just purchased is molded from genuine imported Briar Root by an entirely new process", unless that phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(5) That "This is accomplished by molding the genuine imported Briar Root in such a way as to keep the pores open * * *", unless such phrase is used in conjunction with the word "ground" or some other word of like import conspicuously displayed.

(6) From making any other claims or assertions to the effect that the smoking pipes manufactured, sold and distributed by respondent are made from "Genuine Briar Root", unless such assertions and representations are used in conjunction with the word "ground" or some other word of like import conspicuously displayed, which explains that the smoking pipes are not made from or carved from the Briar Root in its natural form.

It is further ordered, That the charge of the complaint as to respondent's corporate and trade name be, and is hereby dismissed.

It is further ordered, That the respondent, The Briarwood Corporation, shall, within 60 days after the date of service upon it of this order, file in detail the manner and form in which it has complied with and is complying with the order to cease and desist hereinabove set forth.

IN THE MATTER OF

CLAYTON R. HASTINGS, DOING BUSINESS UNDER THE
NAME AND STYLE OF NATIONAL CIVIL SERVICE
INSTITUTECOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2286. Complaint, Jan. 26, 1935—Order, Mar. 4, 1935*

Consent order requiring respondent individual and respondent corporation, successor to the business theretofore conducted by him, its officers, etc., in connection with the sale, offer or distribution of courses of study and instruction preparatory to Civil Service examinations for the Federal Government, to cease and desist from—

- (a) Using term "Civil Service" in the name under which the business is conducted, in connection with the word "National", or in any other way implying or suggesting a connection with the United States Civil Service Commission or the United States Government, or using any other words in the name under which the business is conducted, or otherwise, from which such connection might be implied or suggested;
- (b) Falsely representing in any way that Civil Service positions under the Government are open and available or that examinations are to be held in the near future or at a specified time, or that said individual or corporation can secure Government positions for those who take said courses or that they, or either of them, can assist in that regard other than by assisting students in preparing for such examinations;
- (c) Designating any course offered by any term other than by such a term as may correspond to some classification used by said commission at the time such course is offered and for which examinations are held by such commission;
- (d) Misrepresenting the number of civil service employees, or of appointments thereto made, or to be made, or period or duration of civil service positions, or making any other false representation in regard to such jobs or examinations; or
- (e) Using a refund agreement based upon a contingency of a student falling to pass an examination, when there is little likelihood of any examination being held which such student could take and is solicited to contract to prepare for.

Mr. Harry D. Michael for the Commission.

Robinson, Symmes & Melson, of Indianapolis, Ind., 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 Clayton R.