

Syllabus

IN THE MATTER OF
MORTON SALT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2150. Complaint, Jan. 16, 1934—Decision, Apr. 30, 1935*

Where a corporation engaged in the manufacture and sale of a salt product, first made by it by mixing ordinary salt with other ingredients, including burnt sugar and refined concentrate of pyroligneous acid, secured through destructive distillation of wood in the practical absence of air, and, later, by also passing the salt through a long tube, through which wood smoke was propelled in the opposite direction—

Described said product as "smoke salt" or "Morton's Smoke Salt" and so marked the containers thereof and advertised the same in magazines and newspapers of general circulation in the United States, and in booklets and pamphlets distributed by it among purchasers and prospective purchasers in various States, and by radio broadcasting, and represented that said product possessed the quality of having been smoked, and that through use thereof meats could be cured and smoked by one operation, so that the smokehouse was no longer necessary, and in a booklet called "Meat Curing Made Easy" represented said "smoke salt" as a "wonderfully improved meat curing product", and as one "that does the whole job of curing, sugar-curing, and smoking at the same time", and included in some advertisements, in relatively small and inconspicuous letters, such phrases as "refined condensed wood smoke" and "highly concentrated and condensed refined wood smoke";

The facts being that such destructive distillation of wood does not result in a substitute for natural smoke produced through combustion of said substance and no such substitute is known to science, said tube process, as employed by it, did not and could not result in more than a negligible amount of smoke in quantity and effect, at most, adhering to the salt, and in a genuine smoke salt as made by competitors through electrical precipitation in which a sufficient amount of smoke is made to adhere to the salt so as to give the same the properties and qualities of smoke sufficiently for use in curing and flavoring meats;

With effect of misleading and deceiving the purchasing public into the belief that its aforesaid "smoke salt", to which said sugar had given the dark, or honey, brown color of the genuine product, had been subjected to the action and effect of, or treated or impregnated with smoke of burning wood during combustion, and had acquired from such source alone all of its smoke and smoke effects, and had had more than mere contact with smoke, and that through use thereof meats could be cured and smoked by one operation, etc., and into the purchase thereof in reliance upon such erroneous belief, and of diverting trade to it from competitors offering or selling in interstate commerce salt for curing meats, and from competitors offering and selling genuine smoke salt or smoked salt for said purposes, truthfully described, advertised or represented, and with capacity and tendency so to mislead, deceive, and divert:

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Held, That such practices were all to the prejudice of the public and competitors, and constituted unfair methods of competition, in violation of Section 5.

Mr. James M. Brinson for the Commission.

Mr. H. H. Shelton and Sanders, Childs, Bobb & Wescott, of Washington, D. C., 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 Morton Salt Company has been or 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. Respondent Morton Salt Company, for several years last past, has been and now is a corporation, organized, existing and doing business, under and by virtue of the laws of the State of Illinois, with its office and principal place of business, at Chicago in said State. It has been during its existence and still and now is, engaged in the manufacture of salt, and in its sale in commerce among and between the State of Illinois and the various other States of the United States. It causes its said product, when sold, to be transported to purchasers thereof in the various States of the United States, from its principal place of business in Chicago, Ill., and from its branch or other places of business in the various other States of the United States than the State of Illinois. In the course and conduct of its said business, respondent is now and since its organization has been in competition in commerce among and between the various States of the United States, with individuals, partnerships and corporations, offering for sale and selling salt in like commerce.

PAR. 2. In the course and conduct of its said business, respondent has offered for sale and sold, and offers for sale and sells a certain product, described and designated "Smoked Salt", or "Smoke Salt", or "Morton Smoke Salt". Respondent has widely advertised and continues advertisements of such product by and through magazines, newspapers, booklets, pamphlets and radio broadcasting.

In its advertisements by such radio broadcasting it emphasizes the value of its product particularly because of its character as "Smoke

Salt". In its advertisements in magazines, newspapers and otherwise it presents as the predominant virtue of its product, its **quality** of having been smoked so that the smokehouse is no longer necessary, and that by use of its smoke or smoked salt, meats can be cured and smoked by one operation.

A more particular and vivid reflection of the method of respondent in bringing the alleged merits of its so-called smoke or smoked salt to the attention of the public is presented by the following excerpts from a magazine entitled "*Meat Curing Made Easy*" published by respondent and distributed among purchasers and prospective purchasers, bearing the legend "And sent to you with the compliments of your Morton Salt Dealer". The magazine contains pictorial representations of hogs and their sucklings, and describes the equipment necessary for butchering, care of the animals before butchering, killing, scalding and subsequent processes including the curing. The front page depicts a container bearing the legend "Morton's Figaro Smoke Salt". Below appear the words "Sugar cures—Salt cures, makes smokehouse smoking unnecessary". On one page of the magazine Morton's Smoke Salt is recommended "for curing and smoking your meat". Again on same page appears "Morton's Smoke Salt is a wonderfully improved meat curing salt; it is the blending together in one convenient product the highest grade meat salt, a marvelously balanced sugar cure and refined condensed smoke". Again, respondent declares on the same page, "It is used just like ordinary meat salt but the curing results are far superior, because the salt, the sugar cure and the smoke all strike in and penetrate the meat together resulting in a better, safer and more uniform cure. It does the whole job of curing, sugar curing and smoking at the same time". The following is particularly noteworthy in that it appears on the same page with the picturization of the sow with its sucklings, and commencement of the instruction about the butchering and curing of pork; "Morton's Smoke Salt comes into this situation with an important contribution. By eliminating yesterday's tedious and long drawn out practices through providing a quicker, simpler, easier and safer way to cure and smoke meat—it renders a distinct service to the farmer. By improving upon the thoroughness of the cure and making more perfect the smoking operation it gives to the farmer a more efficient and dependable method with which to realize the advantages and economies that home killing meat affords". In same magazine respondent declares "Morton's Smoke Salt is a complete sugar curing salt with wood smoke added and therefore does the whole job of curing, sugar curing, and smoking at the same time". Its advertisements abound in such expressions as "Highly

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concentrated condensed and refined wood smoke"; "When the cure is finished, your meat is already smoked"; "When salt and smoke are combined together you get the benefit of the curative preserving qualities of both, while the meat is green".

In truth and in fact, the product which respondent sells to the public described and designated as "Smoked" or "Smoke salt", in such variety of language, in order to induce its purchase as smoked or smoke salt, has not been and is not smoked salt or smoke salt. It consists now as it has from its first introduction to the public, of ordinary salt, to which has been added sugar, pepper, saltpeter, and pyroligneous acid.

The salt offered for sale and sold by respondent as "Smoked salt" or "Smoke salt" or "Morton's Smoke Salt" has not been and is not treated in any way with natural wood smoke. The words "Smoked" or "Smoke" whenever used in connection with the curing of meat, have for many years signified and meant to the dealers, wholesale and retail, and the consuming public, and now signify and mean to them, particularly that portion thereof engaged or interested in the curing of meats, subjection to the action and effect of, or impregnation or treatment with the smoke produced by wood in process of combustion.

PAR. 3. There have been for many years last past and now are individuals, partnerships and corporations offering for sale and selling salt as "Smoked" truthfully described and designated because their products have been smoked in course of the process of burning wood, in accordance with the significance and meaning of the word, as described in paragraph 2 hereof.

PAR. 4. The practice of respondent in advertising as described in paragraph 2 hereof, and offering for sale and selling its said product as "Smoked", "Smoke", or "Morton's Smoke Salt" has had and has the capacity and tendency to mislead and deceive, and has misled and deceived, and does mislead and deceive dealers, wholesale and retail, and the consuming public into the belief that such product has been treated, impregnated with or subject to the action and effect of, the smoke of burning wood, and into the purchase of respondent's said product in reliance upon such erroneous belief.

PAR. 5. The above and foregoing practice of respondent has had and has the capacity and tendency to divert, and has diverted and does divert trade to respondent from competitors, offering for sale or selling in interstate commerce salt, actually smoked in the true acceptance of the term as described in paragraph 2 hereof.

PAR. 6. The above and foregoing practice of respondent has been and is all to the prejudice of the public and respondent's competitors, and in violation of the provisions of Section 5 of an Act of Con-

gress, 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 issued and served its complaint upon respondent, Morton Salt Company, charging it with the use of unfair methods of competition in interstate commerce in violation of Section 5 of said Act.

The respondent having entered its appearance and having filed its answer, testimony was taken and evidence received in support of the complaint and on behalf of the respondent before the examiner of the Commission theretofore duly appointed for such purpose.

Thereupon this matter came on regularly for decision before the Commission on the complaint, answer, testimony, evidence, briefs and oral arguments of counsel, and the Commission having duly considered the record and being fully advised in the premises, now files this its report, stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Morton Salt Company, has been for several years last past and now is, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at Chicago in said State. It is engaged in the manufacture of salt, and in its sale in commerce among and between the State of Illinois and the various other States of the United States and the District of Columbia. It has producing plants in the States of Michigan, Kansas and Texas, and causes its salt when sold to be transported from its place of business at Chicago in the State of Illinois and from its various plants in the States above named to purchasers in and through the various States of the United States other than the State of Illinois or the State or States from which its product has been or is transported to purchasers thereof.

In the course and conduct of such business respondent has been and is in substantial competition in interstate commerce with individuals, partnerships and corporations offering for sale and selling salt in such commerce, including salt described or designated as "smoke salt" or "smoked salt".

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PAR. 2. Respondent, Morton Salt Company, has been for several years last past and now is, offering for sale and selling in the course of its business described in paragraph 1 hereof, a product which it has described and now describes as "smoke salt" or "Morton's Smoke Salt". Such description or designation appears on the containers in which the product is offered for sale and sold, and respondent has particularly advertised and continues to advertise this product under such description and designation by or through magazines and newspapers of general circulation in and through the various States of the United States, booklets and pamphlets which it causes to be distributed among purchasers and prospective purchasers in various States of the United States and by means of radio broadcasting. In such advertisements and advertising matter respondent represents that the product "smoke salt" or "Morton's Smoke Salt" possesses the quality of having been smoked and that by use of such smoke salt, meats can be cured and smoked by one operation so that the smokehouse is no longer necessary. In a booklet called "Meat curing made easy" which respondent has published and distributed for several years last past and now publishes and distributes among purchasers and prospective purchasers its product called "smoke salt" or "Morton's Smoke Salt" is represented as a "wonderfully improved meat curing product" and as a "product that does the whole job of curing, sugar curing and smoking at the same time". Some of its advertisements have contained such phrases as "refined, condensed wood smoke" and "highly concentrated and condensed refined wood smoke" in relatively small and inconspicuous letters, although such words have no tendency to qualify or explain use of the description or designation "smoke salt" and would not have any such tendency had they been expressed by respondent in large or conspicuous letters.

The product was offered for sale to the public until late in 1933 in cans bearing a label carrying in large and conspicuous letters the words "Smoke Salt" or "Morton's Smoke Salt", but which labels did not contain any reference to refined, condensed wood smoke, or highly concentrated and condensed refined wood smoke.

This so-called smoke salt, which respondent so designated, advertised and sold, was manufactured until late in 1933 as aforesaid, by mixing ordinary salt with other ingredients, including burnt sugar and the product variously called by respondent as aforesaid highly concentrated and condensed refined wood smoke, or refined condensed wood smoke. This product was in fact a refined concentrate of pyroligneous acid. This acid results from the destructive distillation of wood, practically in the absence of air which it is necessary to exclude so far as possible in order to accomplish a

condensation from which results a maximum yield of volatile distillates. Such maximum yield cannot be effected from or through combustion of the wood whether perfect or imperfect, complete or incomplete, nor can the concentration or refinement of the product of destructive distillation of wood result in any substitute, nor is there any substitute known to science identical in its qualities and properties or the effects of its application or use, for the natural smoke produced by combustion of the wood. In truth and in fact the word "smoke" or "smoked", when used to describe or designate salt for use in curing and smoking or flavoring meats, signify and mean to the purchasing public that the product so described and designated has been subjected to or treated or impregnated with the smoke of burning wood during the course of its combustion, sufficiently to acquire from such source alone all of its smoke and smoke effects for curing or smoking meats.

The product which respondent mixed with its salt until late in 1933 was a product resulting from the refinement of pyroligneous acid produced by the destructive distillation of wood. It was neither smoke from burning wood nor derived from such smoke, and the designation or description of salt mixed with it as "smoke salt" or "Morton's Smoke Salt" was and is a false representation.

PAR. 3. In the latter part of the year 1933 respondent, Morton Salt Company, began the installation of another method for the manufacture of its smoke salt because of the claim made by competitors that they only were really smoking their salt, described as "smoke salt" or "smoked salt". Respondent by its new method, which in fact is no more than a modification of its former method of manufacturing its product, adopted and began to use and now uses a mechanical device by means of which natural wood smoke is brought into physical contact with salt, thereby furnishing respondent with a basis for the pretense that its salt is subjected to the action and effect of wood smoke during its process of combustion.

Adoption of such method or such modification of its former method is the acknowledgment that the purchasing public associates the word "smoke" used in connection with curing and smoking or flavoring meats with natural smoke of burning wood.

By the process of manufacture so adopted by respondent and now in use, its salt passes through a tube seventy-five feet in length in one direction, while smoke resulting from burning wood passes through the tube in the opposite direction. During such passage through the tube the salt is handled by a so-called flight conveyor, in the form of a spiral, operating as a helical screw. It slowly carries or pushes the salt through the smoke which it meets coming from the opposite direction. The so-called flight conveyor contains

mixing flights which tend to retard rapid forward movement. The tube is twelve inches in diameter and the screw practically the same, there being only one-half inch of clearance. It is impossible in the course of one hour, in the conditions above described, to produce two tons of salt to which there has been attached or is attached sufficient wood smoke for the use of such product in curing and smoking meats. Yet this is the amount of salt per hour handled by the above-described mechanical device of respondent. In the manufacture of genuine smoke salt where electrical precipitation is used to apply smoke to the salt, the amount of natural wood smoke which can be pushed through a thirty-inch drum containing salt, with a twenty-four inch exhaust fan, is so small that it is impossible from a single tube to make as much as one-half ton per hour of smoke salt. When electrical precipitation is not employed, and this is the case in the process of respondent, or where mere contact only is used, natural wood smoke containing practically no liquids whatever has almost no capacity for adhering to solid surfaces. In the course of passage through a tube under such conditions some smoke may attach to the salt but it must be negligible in quantity and effect. If salt passes through smoke in a tube of great length or repeatedly passes through such a mechanical device as that employed by respondent so that its contact with smoke is sufficiently long in point of time, the salt will acquire a visible amount of smoke, but as manufactured by respondent the so-called smoke salt must contain a mere fraction of one per cent of smoke, if that much.

Salt, which has been sufficiently smoked to acquire the properties and qualities of smoke sufficient for use in curing and flavoring meats, has a dark brown or honey brown color. Morton's Smoke Salt, or the product so designated or described by respondent, does not have such color when it emerges from the mechanical device used by respondent in its manufacture. There is added to it after its contact with smoke, burnt sugar by means of which it is made to resemble or to simulate genuine smoke salt, nor does the product of respondent after its contact with smoke possess the properties or qualities of smoke acquired from such contact sufficiently to smoke or flavor meats. There is also added as an ingredient after such contact with smoke a substantial proportion of the same pyro-ligneous concentrate which respondent designates refined condensed wood smoke that was used exclusively by respondent in the manufacture of its so-called smoke salt before its adoption or use late in 1933 of the mechanical device now employed. Respondent still uses 33 $\frac{1}{3}$ per cent or one-third as much of such concentrate, or its so-called refined condensed smoke, as it formerly used. This addition

of the pyroligneous concentrate to the salt after its contact with the smoke is occasioned by the insufficiency of such contact to smoke the salt. It would be possible to subject salt to the action of smoke by means of the mechanical device of respondent sufficiently long in point of time, that addition to the product of the pyroligneous concentrate and burnt sugar would be unnecessary. There is salt offered for sale and sold in interstate commerce in competition with the product of respondent, designated and described as smoked salt, which is subjected to the action and effect of natural wood smoke but in course of its contact with the smoke by means of electrical precipitation there is, forcibly as it were, applied to the salt such a sufficiency of smoke that when the product emerges from the mechanical device there is no necessity for addition of other ingredients either to simulate the color of genuine smoke salt or the flavoring or other properties or qualities of genuine wood smoke in order to supply deficiencies resulting from insufficient contact with the wood smoke.

PAR. 4. The word smoke or smoked, or any word or words signifying or implying that a product has been or is smoked, when used in connection with curing and smoking meats, signifies and means to the purchasing public, found in paragraph 3, that the product so described or designated has been subjected to the action and effect of, or treated or impregnated with, natural wood smoke, that is, smoke produced by burning wood during the process of its combustion. It does not signify or mean that the product has merely had contact with such smoke. The words "smoked salt" or "Morton's Smoke Salt" used in connection with salt to be employed for curing and smoking meats, signify and mean that the product has had more than mere contact with smoke, that it has had such contact as to acquire smoke and its properties and qualities, and effects of smoke to such extent that by use of the product meats can be cured and smoked.

PAR. 5. There have been and are individuals, partnerships and corporations offering for sale and selling in competition with respondent in interstate commerce salt for curing meats, and other competitors of respondent offering for sale and selling, in like commerce, salt truthfully described or designated as "smoked salt" for curing and smoking or flavoring meats.

PAR. 6. The acts and practices of respondent as described in paragraphs 2 and 3 hereof in offering for sale and selling its product described as "smoke salt" or "Morton's Smoke Salt", and in representing that by application or use of such product meats may be cured and smoked by one operation and that the smokehouse is no

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longer necessary for curing and smoking meats, have had and have, and each of them has had and has, the capacity and tendency to mislead and deceive, they have misled and deceived, and each of them has misled and deceived, and they do and each of them does mislead and deceive, the purchasing public into the belief that the product of respondent described or designated as "smoke salt" or "Morton's Smoke Salt" has been subjected to the action and effect of, or treated or impregnated with, the smoke of burning wood during its process of combustion, and that such product has acquired from such source alone all of its smoke and smoke effects, and into the purchase of the product "Morton's Smoke Salt" in reliance upon such erroneous belief.

Such acts and practices have had and have, and each of them has had and has, the capacity and tendency to divert trade, and they have diverted and do divert trade to respondent from competitors of respondent offering for sale or selling in interstate commerce salt for curing meats and competitors offering for sale and selling smoke salt or smoked salt offered for sale or sold for curing, smoking or flavoring meats, truthfully described, advertised or represented.

CONCLUSION

The aforesaid acts and practices of respondent have been and are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition in violation of the provisions 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 been heard upon the complaint issued and served upon respondent, Morton Salt Company, and its answer thereto, testimony, evidence, briefs and arguments of counsel for the Commission and counsel for respondent, and the Federal Trade Commission having made its report in writing stating its findings as to the facts with its conclusion drawn therefrom that the said respondent has been and is violating 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 respondent, Morton Salt Company, its officers, agents, employees and representatives, in connection with offering for sale or selling salt in interstate commerce or in the

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District of Columbia, cease and desist on brands or labels, and in magazines, trade journals, newspapers or other periodicals, or in house organs, pamphlets, radio broadcasting, or in any other form of advertisement, directly or indirectly, expressly or impliedly, from:

Using the word "smoked" or the word "smoke", or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

It is further ordered, That respondent shall file within 60 days from the service hereof a report in writing setting forth the manner and form of its compliance with this order.

IN THE MATTER OF
JEFFERSON ISLAND SALT COMPANY

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

Docket 2151. Complaint, Jan. 16, 1934—Decision, Apr. 30, 1935

Where a corporation engaged in the sale of a salt preparation for curing and smoking meat, made by mixing salt with pyroligneous concentrate, the product of destructive distillation of pine wood, and the refinement of the pyroligneous acid resulting therefrom, and including in said mixture burnt sugar and other ingredients to impart thereto the brown color associated by purchasing public with the necessarily more expensive genuine smoke salt, i. e., salt smoked with natural wood smoke—

Falsely labeled the cans in which it sold said product with the words "Jefferson Island Country Ham Smoked Meat Salt", and, in smaller letters, the words "Liquid Smoke" or "Condensed Smoke" as the case might be, and displayed upon bags in which it also sold the same, in large letters, its corporate name, and the words "Pure Smoke Meat Salt" and set forth on the reverse side thereof, under "Directions for Use" the legend "Jefferson Island Country Ham Smoke (printed "Smoked" in leaflets originally enclosed) Salt", followed by "Is just exactly what the name implies", and an enumeration of ingredients, including "Condensed Smoke";

With effect of misleading and deceiving purchasing public into belief that said product had been subjected directly to or treated or impregnated with natural wood smoke, produced by burning wood during the process of combustion, and into purchasing said product in reliance on such erroneous belief, and of diverting trade to it from competitors offering and selling in interstate commerce salt for curing meats, and those offering the necessarily more expensive genuine smoked salts for curing and smoking the same, truthfully described or designated, and with capacity and tendency so to mislead, deceive, and divert:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition in violation of Section 5.

Mr. James M. Brinson for the Commission.

Carroll & McElwain, of Louisville, Ky., 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 Jefferson Island Salt Company, Inc., has been or is using unfair methods of competition in commerce, as "commerce" is defined in