Syllabus

IN THE MATTER OF

MYLES SALT COMPANY, LIMITED

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

Docket 2152. Complaint, Jan. 16, 1934—Decision, Apr. 30, 1935

Where a corporation engaged in the sale of a salt preparation for use in curing and smoking meats, made by mixing salt with pyroligneous concentrate, product of destructive distillation of pine wood, and refinement of the pyroligneous acid resulting therefrom, and by adding burnt sugar or other ingredients to the mixture to impart thereto the brown color of the necessarily more expensive genuine smoke salt—

Described and designated its said product as "Myles' Smoke Salt" and set forth upon a card attached to the containers thereof, on the face or conspicuous side, in capital letters, "USE MYLES' SMOKE SALT FOR DELICIOUS HOME-CURED MEATS. SEE OTHER SIDE FOR INSTRUCTIONS", together with its name, and displayed on the reverse or unexposed side, the legend, in large capital letters, "DIRECTIONS FOR CURING WITH MYLES' SMOKE SALT", followed by instructions and preceded by language to the effect that the product contains various ingredients, including "Condensed Smoke", and "Nothing else is necessary. This smoke salt when properly used assures you country-cured hams and bacons with delicious flavor", and, in large conspicuous capital letters, "ABSOLUTELY NO OTHER SMOKING NECESSARY."

With effect of misleading and deceiving the purchasing public into believing that said salt had been subjected directly to the action and effect of, or treated or impregnated with natural wood smoke produced by burning wood during process of combustion, and into purchasing same in reliance on such belief, and of diverting trade to it from competitors offering in interstate commerce salt for curing meats, and those offering the necessarily more expensive smoked salt for curing and smoking meat, truthfully described and 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.

Mr. James M. Brinson for the Commission.

Milling, Godchaux, Saal & Milling, of New Orleans, La., 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 Myles Salt Company, Limited, 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, Myles Salt Company, Limited, is now and for several years last past has been a corporation organized, existing and doing business under the laws of the State of Louisiana with its principal office and place of business in the city of New Orleans and State of Louisiana. It has been and is engaged in the manufacture of a product described as "Myles' Smoke Salt" and in its sale in commerce among and between the State of Kentucky and the various other States of the United States.

It has been and is in the course and conduct of its business in competition with individuals, partnerships and corporations engaged in the sale in interstate commerce of salt in like commerce.

PAR. 2. Respondent has been and now is offering for sale and selling a certain product which it has described and designated and still describes and designates as "smoked salt" or "smoke salt". The label on the container in which the salt of respondent is packed and marketed bears a card of directions for use of the product. This card contains the legend: "Myles' smoke salt for home curing". On one side of the card of directions appears the following: "Use Myles' smoke salt for delicious home-cured meats". On the other side of this card appears: "Myles' smoke salt is carefully prepared and contains properly blended proportions of salt, sugar, cure condensed wood smoke and peppers. Nothing else is necessary. This smoke salt when properly used assures you country-cured hams and bacon with delicious flavor. Absolutely no other smoking is necessary."

In truth and in fact, the product offered for sale and sold by respondent in interstate commerce as Myles' smoke salt has not been and is not treated in any way with smoke or subjected to the action and effect of natural wood smoke. The word "smoked" or the word "smoke" when applied to or used in connection with the curing of meats has for a considerable period of time signified and meant and now signifies and means to retail dealers, and to the consuming public, subjection to the action and effect of, or treatment or impregnation with, the smoke produced by wood in process of combustion.

PAR. 3. There have been for many years last part and now are individuals, partnerships and corporations engaged in the manufacture and sale in commerce among and between the various States of the United States of salt truthfully described and designated as "smoked salt" or as "smoke salt".

PAR. 4. The practice of respondent in offering for sale or selling its product as "Myles' Smoke Salt" has had and has the capacity and tendency to mislead and deceive retail dealers and the consuming public into the belief that the product of respondent so described has been and is salt treated or impregnated with, or subjected to the action and effect of, natural wood smoke as described in paragraph 2 hereof.

The aforesaid practice of respondent has also had and has the capacity and tendency to divert trade to respondent from competitors selling smoked salt in interstate commerce truthfully designated and described.

PAR. 5. The aforesaid 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 the 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 a complaint upon respondent, Myles Salt Company, Limited, charging it with unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act.

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

Thereupon this matter regularly came on for final hearing before the Commission on the record, briefs, and oral arguments and the Commission, having duly considered the record and arguments of counsel and being fully advised in the premises, files this its report stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Myles Salt Company, Limited, is now and for several years last past has been a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business in New Orleans in said State. It has been and is engaged in the manufacture of salt and its sale in commerce among and between the State of Louisiana and the various other States of the United States and the District of Columbia.

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

PAR. 2. It has been for more than a year last past, and now is the practice of respondent to offer for sale and sell a product which it describes and designates as "Myles Smoke Salt". It is offered for sale and sold for use in curing and smoking meats. Respondent sells it in bags to which is attached a card, the face or conspicuous side of which bears the following in capital letters: "Use Myles Smoke Salt for Delicious Homecured Meats. See other side for instructions. Myles Salt Company, Limited, New Orleans, Louisiana." The letters in which the words "Myles Smoke Salt" are expressed are the largest and most conspicuous on the card. On the reverse or unexposed side of the card, which the purchaser or user is invited to consult for instructions, appear the words in large capital letters "Directions for curing with Myles Smoke Salt"; below them are instructions for use of the product. Immediately above the words "Directions for curing with Myles Smoke Salt" and in no sense relating to instructions or directions for use of the product, appears language which would be on the face or conspicuous side of the card, if intended by respondent as a bona fide qualification or explanation of the words "Myles Smoke Salt" or as notice to the purchasing public that the so-called "smoke salt" in fact consists of salt which has been treated chemically with pyroligneous concentrate as hereinafter found, in order to produce an imitation of genuine smoke salt.

This language states that Myles Smoke Salt (the words "Myles Smoke Salt" being in large capital letters) is carefully prepared and contains properly balanced proportions of salt, condensed smoke, peppers and saltpeter. It further contains the following: "Nothing else is necessary. This smoke salt when properly used assures you country cured hams and bacons with delicious flavor. Absolutely

no other smoking necessary." The words "Absolutely no other smoking necessary" are in large, conspicuous capital letters.

In truth and in fact the product of respondent, Myles Salt Company, Limited, designated and described as "Myles Smoke Salt" has not been and is not subjected to or treated or impregnated with natural wood smoke produced by burning wood during its process of combustion. It is manufactured by the mixture of salt with a product of the American Turpentine and Tar Company of New Orleans, La., which is made from the destructive distillation of pine wood into pyroligneous acid, which is certainly not smoke in any sense, and which is then refined into a product which the manufacturer sells to respondent described as pyroligneous concentrate. Such pyroligneous concentrate, which is in fact pyroligneous acid minus some of its ingredients, respondent thereupon falsely and deceptively renames "condensed smoke" when using small letters and "smoke" when using large and conspicuous letters in the legend on the containers of its product.

The color of salt smoked with natural wood smoke, that is, with smoke from burning wood, is brown. The mixture of white salt and pyroligneous acid or pyroligneous concentrate is gray. In order to imitate the color of genuine smoke salt respondent, by use of burnt sugar or other ingredients, imparts to its product the brown color which the purchasing public associates with genuine smoke salt.

Respondent pays to the American Turpentine and Tar Company seventy cents per gallon for the pyroligneous concentrate which it mixes with its salt and is enabled thereby to sell its imitation smoked or smoke salt for less than the price of genuine smoked salt, the production of which requires maintenance of devices and processes for subjection of salt to natural wood smoke.

PAR. 3. There have been for several years last past and now are individuals, partnerships and corporations offering for sale and selling in interstate commerce salt for curing meat and genuine smoked salt for curing and smoking meat in competition with the product of respondent.

PAR. 4. The word "Smoke" or any word or words signifying or implying smoke when used to describe or designate salt for curing and smoking meats, or in connection with smoking meats, have for many years last past signified and meant, and now signify and mean to the purchasing public salt which has been or is subjected directly to the action and effect of, or treated or impregnated with natural wood smoke, that is smoke produced by burning wood during its process of combustion. The product of respondent has not

been and is not so manufactured and its designation or description as "smoke salt" has been and is a false representation.

PAR. 5. The practice of respondent, Myles Salt Company, Limited, in offering for sale and selling its said product described and designated as "Myles Smoke Salt" has had, and has the capacity and tendency to mislead and deceive, has mislead and deceived, and does mislead and deceive the purchasing public into the belief that the product of respondent so described or designated has been or is subjected directly to, or treated or impregnated with natural wood smoke, that is, smoke produced by burning wood during its process of combustion, and into the purchase of respondent's product in reliance upon such erroneous belief.

Such false and misleading description or designation of its product by respondent has had and has the capacity and tendency to divert, and has diverted and does divert trade to respondent from its competitors offering for sale and selling in interstate commerce salt for curing meats and smoked salt for curing and smoking meats, truthfully described or designated.

CONCLUSION

The acts and practices of respondent described in the above and foregoing findings as to the facts by the Commission 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, Myles Salt Company, Limited, 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, Myles Salt Company, Limited, its officers, agents, employees and representatives, in connection with offering for sale or selling salt in interstate commerce or in the

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

FEDERAL AUTO PRODUCTS COMPANY

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

Docket 2291. Complaint, Jan. 30, 1935—Order, May 1, 1935

Consent order requiring respondent, its officers, etc., in connection with the sale and offer of reconditioned or used spark plugs in interstate commerce, to cease and desist forthwith from neglecting, refusing or failing to indicate or make it known on the wrappers, boxes and cartons containing the same, or in any other way, that such spark plugs are reconditioned or used.

Mr. DeWitt T. Puckett for the Commission.

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 Federal Auto Products Company, a 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 is and has been since August of 1933, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business at 1621 South Michigan Boulevard, Chicago, Cook County, Illinois, and is or has been since 1933 engaged in the sale and distribution by wholesale of reconditioned or rebuilt spark plugs which respondent sells and ships to its customers and retail dealers in various States of the United States of America, from its said place of business in Chicago, Ill., and is therefore engaged in interstate commerce, and is in substantial competition with divers other individuals, firms, associations, and corporations, engaged in interstate commerce in a similar and like business to that of respondent, both as to the sale and shipment in interstate commerce of rebuilt spark plugs.

PAR. 2. Respondent has purchased from various persons reconditioned spark plugs, the said plugs having been obtained by said persons from garages, service stations, and various places, which spark plugs had been reconditioned by replacing terminal brass tops, cleaning the porcelain, cleaning the electrodes or replacing them