

Complaint

IN THE MATTER OF

DIXIE E. BOYER, TRADING AS D. E. BOYER

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

Docket 2360. Complaint, Apr. 11, 1935—Decision, May 29, 1935

Where an individual engaged in the manufacture and sale of stogies and small cigars—

- (a) Featured the words "Hand-made" on the inner face of the lids of the containers of said products and also in various places on the outer faces thereof, notwithstanding fact they were not made entirely by hand;
- (b) Encircled said products with bands containing words "Perfectos Habanas", notwithstanding fact they were not made of tobacco grown in Cuba; and
- (c) Featured the words "Wheeling Twins" and "Wheeling Twins Master Quality" on containers of said products, as hereinabove set forth, notwithstanding fact they were not made in Wheeling;

With tendency and capacity to mislead and deceive a large part of purchasing public and trade into believing said products were made in Wheeling, were hand-made, or made of tobacco grown in Cuba, as the case might be, and into purchasing same in such belief by reason of the preference of a large portion of said trade and the public for products thus made or composed, and unfairly to divert trade to said individual from competitors who actually make such products in Wheeling, or entirely by hand, or of tobacco grown in Cuba, and thus represent the same, to the substantial injury of substantial competition in interstate commerce:

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. John W. Hildrop for the Commission.

Walker & Walker, of St. Clairsville, 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 Dixie E. Boyer, an individual trading as D. E. Boyer, hereinafter called the 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 public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Dixie E. Boyer, is an individual trading under the name and style of D. E. Boyer, with her principal

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place of business located in the city of Belmont in the State of Ohio. She is now engaged and for more than two years last past has been engaged at the said city of Belmont in the business of manufacturing stogies and small cigars and in the sale thereof between and among the various States of the United States. She now causes and for more than two years last past has caused such stogies and small cigars, when sold by her, to be transported from her place of business in the city of Belmont aforesaid to the purchasers thereof, some located in the State of Ohio and others in the various other States of the United States; and there is now and has been for more than two years last past a constant current of trade and commerce by said respondent in such stogies and small cigars between and among the various States of the United States. In the course and conduct of her business respondent is now and for more than two years last past has been in substantial competition with other persons and with corporations, firms and partnerships engaged in the sale and distribution of stogies and small cigars between and among the various States of the United States.

PAR. 2. In the course and conduct of her business described in paragraph 1 hereof, respondent, Dixie E. Boyer, trading as D. E. Boyer, in selling and offering for sale the stogies and small cigars manufactured by her, has caused and still causes the word "Hand-made" and the words "American Made", "Wheeling Twins", and "Wheeling Twins Master Quality" to appear and to be featured on the inner face of the lids of the boxes containing such stogies and small cigars, and in various places on the outer faces of such boxes. On certain of the stogies and small cigars sold and offered for sale by her, as described in paragraph 1 hereof, the respondent has placed and still places bands encircling such stogies and small cigars, which bands contain and have contained the words "Perfectos Habanas."

PAR. 3. The word "Wheeling", when applied to stogies and small cigars, now means to dealers and to the purchasing public and for more than two years last past has meant to dealers and to the purchasing public that such small cigars and stogies are manufactured in the city of Wheeling, W. Va.; the word "Hand-made", when applied to stogies and small cigars for more than two years last past, has meant and still means to the trade and the purchasing public and still means to the purchasing public that such stogies and small cigars are made entirely by hand; the word "Habana", when applied to stogies and small cigars for more than two years last past, has meant to the trade and to the purchasing public and still means to the trade and to the purchasing public that such stogies

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and small cigars are made from tobacco grown on the Island of Cuba.

PAR. 4. There is a preference on the part of a large portion of the purchasing public and of a large portion of the tobacco trade for stogies and small cigars manufactured in Wheeling, W. Va.; there is also a preference on the part of a large portion of the purchasing public and of the tobacco trade for stogies and small cigars which are "Hand-made"; there is also a preference on the part of a large portion of the purchasing public and of the tobacco trade for stogies and small cigars made of tobacco grown in Cuba.

PAR. 5. In truth and in fact, the said stogies and small cigars manufactured and sold by respondent neither are nor were manufactured in Wheeling, W. Va., but are and were manufactured in the city of Belmont, Ohio, and said stogies and small cigars so manufactured, sold and distributed by the respondent neither are nor were wholly made by hand but are and were partially made by machinery. Also, said stogies and small cigars so manufactured, sold and distributed by respondent neither are nor were made of tobacco grown in Cuba.

PAR. 6. The foregoing false, exaggerated and misleading statements by respondent are and were made for the purpose, and have and have had a tendency and capacity to mislead and deceive a large part of the purchasing public and the trade and to cause them to purchase the products of the respondent under the belief that they are or were made in Wheeling, W. Va., that they are or were hand-made, and that they are or were made of tobacco grown in Cuba. Said false and misleading statements and representations used by respondent as aforesaid have and have had a capacity and tendency to unfairly divert trade to respondent from those of her competitors engaged in a like and similar business, who actually manufacture stogies and small cigars in Wheeling, W. Va., and who designate or brand their products with the word "Wheeling"; and also from those of her competitors who manufacture stogies and small cigars entirely by hand and who represent that such stogies and small cigars are hand-made. Said false and misleading statements and representations have and have had a capacity and tendency to unfairly divert trade to respondent from those of her competitors who manufacture stogies and small cigars from tobacco grown in Cuba who represent their stogies and small cigars to be made from tobacco grown in Cuba. Thereby substantial injury is done and has been done by respondent to substantial competition in interstate commerce.

Findings

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PAR. 7. The foregoing alleged acts and practices of respondent, Dixie E. Boyer, trading as D. E. Boyer, are each and all to the prejudice of the public, and to the competitors of the respondent, 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.

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 the respondent herein, Dixie E. Boyer, trading as D. E. Boyer, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The said respondent thereupon having entered into a stipulation with the chief counsel of this Commission that the Commission might adopt as its findings as to the facts in this proceeding the recitations in paragraphs 1, 2, 3, 4, 5, and 6 of said complaint, that it might draw its conclusion therefrom and that, having made its findings as to the facts and drawn its conclusion therefrom, the Commission might then, without any testimony, proceed to enter an order against the said respondent to cease and desist from the unfair methods of competition in the complaint set out, and the Commission having duly considered the same and being fully advised in the premises makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Dixie E. Boyer, is an individual trading under the name and style of D. E. Boyer, with her principal place of business located in the city of Belmont in the State of Ohio. She is now engaged and for more than two years last past has been engaged at the city of Belmont in the business of manufacturing stogies and small cigars and in the sale thereof between and among the various States of the United States. She now causes and for more than two years last past has caused such stogies and small cigars, when sold by her, to be transported from her place of business in the city of Belmont aforesaid to the purchasers thereof, some located in the State of Ohio and others in the various other States of the United States; and there is now and has been for more than two

years last past a constant current of trade and commerce by said respondent in such stogies and small cigars between and among the various States of the United States. In the course and conduct of her business respondent is now and for more than two years last past has been in substantial competition with other persons and with corporations, firms and partnerships engaged in the sale and distribution of stogies and small cigars between and among the various States of the United States.

PAR. 2. In the course and conduct of her business described in paragraph 1 hereof, respondent, Dixie E. Boyer, trading as D. E. Boyer, in selling and offering for sale the stogies and small cigars manufactured by her, has caused and still causes the word "Hand-made" and the words "American Made", "Wheeling Twins", and "Wheeling Twins Master Quality" to appear and to be featured on the inner face of the lids of the boxes containing such stogies and small cigars, and in various places on the outer faces of such boxes. On certain of the stogies and small cigars sold and offered for sale by her, as described in paragraph 1 hereof, the respondent has placed and still places bands encircling such stogies and small cigars, which bands contain and have contained the words "Perfectos Habanas".

PAR. 3. The word "Wheeling", when applied to stogies and small cigars, now means to dealers and to the purchasing public and for more than two years last past has meant to dealers and to the purchasing public that such small cigars and stogies are manufactured in the city of Wheeling, W. Va.; the word "Hand-made", when applied to stogies and small cigars for more than two years last past, has meant and still means to the trade and the purchasing public and still means to the purchasing public that such stogies and small cigars are made entirely by hand; the word "Habana", when applied to stogies and small cigars for more than two years last past, has meant to the trade and to the purchasing public and still means to the trade and to the purchasing public that such stogies and small cigars are made from tobacco grown on the Island of Cuba.

PAR. 4. There is a preference on the part of a large portion of the purchasing public and of a large portion of the tobacco trade for stogies and small cigars manufactured in Wheeling, W. Va.; there is also a preference on the part of a large portion of the purchasing public and of the tobacco trade for stogies and small cigars which are "Hand-made"; there is also a preference on the part of a large portion of the purchasing public and of the tobacco trade for stogies and small cigars made of tobacco grown in Cuba.

Conclusion

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PAR. 5. In truth and in fact, the said stogies and small cigars manufactured and sold by respondent neither are nor were manufactured in Wheeling, W. Va., but are and were manufactured in the city of Belmont, Ohio, and said stogies and small cigars so manufactured, sold and distributed by the respondent neither are nor were wholly made by hand but are and were partially made by machinery. Also, said stogies and small cigars so manufactured, sold and distributed by respondent neither are nor were made of tobacco grown in Cuba.

PAR. 6. The foregoing false, exaggerated and misleading statements by respondent are and were made for the purpose, and have and have had a tendency and capacity to mislead and deceive a large part of the purchasing public and the trade and to cause them to purchase the products of the respondent under the belief that they are or were made in Wheeling, W. Va., that they are or were hand-made, and that they are or were made of tobacco grown in Cuba. Said false and misleading statements and representations used by respondent as aforesaid have and have had a capacity and tendency to unfairly divert trade to respondent from those of her competitors engaged in a like and similar business, who actually manufacture stogies and small cigars in Wheeling, W. Va., and who designate or brand their products with the word "Wheeling"; and also from those of her competitors who manufacture stogies and small cigars entirely by hand and who represent that such stogies and small cigars are hand-made. Said false and misleading statements and representations have and have had a capacity and tendency to unfairly divert trade to respondent from those of her competitors who manufacture stogies and small cigars from tobacco grown in Cuba who represent their stogies and small cigars to be made from tobacco grown in Cuba. Thereby substantial injury is done and has been done by respondent to substantial competition in interstate commerce.

CONCLUSION

The foregoing alleged acts and practices of respondent, Dixie E. Boyer, trading as D. E. Boyer, are each and all to the prejudice of the public, and to the competitors of the respondent, 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation entered into between the respondent herein, Dixie E. Boyer, trading as D. E. Boyer, and the chief counsel of this Commission, and the Commission having made its findings as to the facts and its conclusion that said 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:"

Now, therefore, it is hereby ordered, That respondent Dixie E. Boyer, trading as D. E. Boyer or trading under any other name, in connection with the sale and the offering for sale of stogies and small cigars in interstate commerce, forthwith cease and desist from:

(1) Causing the word "Hand-made" or any other word or words of similar tenor, import or substance to be used on the inner face of the lids of boxes containing stogies or small cigars, or on any other place on such boxes, or on the bands encircling such stogies or small cigars, or in any other way, until and unless such stogies and small cigars are entirely made by hand;

(2) Using the words "Perfectos Habanas", "Habanas", "Habana", "Havana", or any other word or words of similar tenor, import or substance on bands encircling such stogies or small cigars, on the boxes containing such stogies or small cigars, or in any other way, until and unless such stogies and small cigars are made from tobacco grown on the Island of Cuba;

(3) Using the words "Wheeling Twins Master Quality", "Wheeling", "Wheeling Twins", or any other word or words of similar tenor, import or substance on the boxes containing such stogies or small cigars or on bands encircling such stogies or small cigars, or in any other way, until and unless such stogies or small cigars are made in the city of Wheeling, West Virginia.

And it is hereby further ordered, That the said respondent, Dixie E. Boyer, trading as D. E. Boyer, shall within 60 days after the service upon her of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which she shall have complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF
SOUTHERN NEW YORK CANDY DISTRIBUTORS ASSO-
CIATION OF BINGHAMTON, NEW YORK, ET AL.

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

Docket 2292. Complaint, Feb. 4, 1935—Order, May 31, 1935

Consent order requiring respondent association, respondent individuals joined in their individual capacities, and as officers thereof and members of its executive committee, and respondent member corporations, firms and individuals, and their respective officers, directors, etc., forthwith to cease and desist, in connection with the purchase or sale of confectionery, candy, or allied products in interstate commerce, from—

- (a) Using any of the methods of competition alleged in the complaint against them, namely, uniting in a common course of action, and cooperating and confederating together and with others to prevent competing dealers from obtaining confectionary and allied products directly from the manufacturers, establish respondent members as a class of "recognized" brokers, distributors and wholesalers of said products in the trade territory involved, and fix and establish uniform prices to be observed by said members in the sale of said products and prevent others from selling at lower prices, through, as more particularly therein set forth—
- (1) Exacting and procuring pledges and promises to adhere to and enforce such program from members and manufacturers;
- (2) Printing and publishing so-called "white lists" of "recognized" dealer members, and supplying same to aforesaid manufacturers and inducing and compelling latter to decline dealings with dealers and others not included therein;
- (3) Using boycott and threats and other united action against manufacturers, dealers, and others, to induce compliance with their said program;
- (4) Holding meetings to devise means of exerting influence to induce conformance by manufacturers, brokers and others;
- (5) Informing and advising manufacturers of the names of recognized dealers in the territory concerned and of their program, and purpose to insist thereon, and that direct sales to nonrecognized dealers, or failure to conform, would be considered unfriendly acts;
- (6) Denying membership and recognition to nonconforming dealers and otherwise disciplining them; and
- (7) Using and engaging in other cooperative acts and methods in promoting and carrying out their aforesaid program, agreement and undertaking; and from
- (b) Combining, conspiring or uniting in a common course of action, and cooperating and/or confederating together, among themselves and/or with others to prevent competing dealers in confectionery, candy or allied products from obtaining such products directly from the manufacturers;
- (c) Publishing so-called "white lists" containing the names of "recognized" dealer members of respondent association, so as to include therein only so-called legitimate, regular or "recognized" dealers, brokers, distributors or wholesalers of said products;