

Complaint

IN THE MATTER OF

AMERICAN SHELL PRODUCTS COMPANY

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

Docket 2258. Complaint, Dec. 10, 1934—Decision, Aug. 13, 1935

Where a corporation engaged in buying and crushing mussel and oyster shells, and in the sale of such crushed shell to wholesale and retail dealers in the various States for ultimate resale to the purchasing public for use in feeding chickens—

- (a) Featured word "oyster" upon the labels of the sacks in which it sold various brands of its said product, containing proportions of oyster shell ranging from 50 percent to 5 percent, depending upon the particular brand involved, and displayed word "mussel" in an obscure place, and in relatively inconspicuous fashion, and in such small plain letters as compared with the large shaded letters in which word "oyster" was printed, that each letter in latter word was approximately two thirds of the size of the entire word "mussel"; and
- (b) Set forth upon the labels of the bags of three of the four brands sold by it, the words "Biloxi, Miss.", in addition to its own inland address, notwithstanding fact it maintained no office or place of business in Biloxi, known to trade and poultry raisers as one of the principal shipping points for crushed oyster shell;

With result of leading purchasers and prospective purchasers to believe that said bags of its product contained the more costly and preferred crushed oyster shell exclusively, and of confusing, misleading, and deceiving a substantial portion of the trade and purchasers in said respect, and with capacity and tendency so to do, and to induce purchase and use of its said products by the purchasing public because of such erroneous belief, and divert trade to it from competitors who sell crushed oyster shell and from those who sell mussel shell, truthfully branded, to their injury:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Edw. W. Thomerson for the Commission

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Iowa corporation, engaged in buying and crushing mussel and oyster shell, and in selling such crushed shell for use in supplying calcium carbonate in feeding chickens, and with principal place of business in Muscatine, Iowa, with misbranding or mislabeling as to composition of product, in violation of the pro-

visions of Section 5 of such Act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as aforesaid, sells its said product as oyster shell through conspicuously featuring the word "oyster" upon the labels of the containers thereof, with inadequate and inconspicuous display of word "mussel", and through display of words "Biloxi, Miss.", as one of its addresses, notwithstanding fact proportion of oyster shell in its four brands ranges from 50 per cent to 5 per cent only, and it has no office or place of business in Biloxi, well known to trade and crushed oyster shell purchasers as one of the principal shipping points for said product.¹

The acts and practices of respondent, as charged, in thus branding and representing its product "are false, misleading, and deceptive and have the tendency and capacity to and do confuse, mislead, and deceive a substantial part of the trade and purchasing public into the erroneous belief that its said crushed mussel shell, to which has been added crushed oyster shell in the proportions set out, is crushed oyster shell, and such acts and practices of respondent in branding, advertising and representing its products are false, misleading and deceptive and have the tendency and capacity to induce the purchasing public to buy and use respondent's said products because of the erroneous belief that such products are crushed oyster shell and to divert trade to respondent from competitors, similarly engaged in the sale of products used for the same general purpose", and "who do not so brand, advertise, and represent their products", to the injury and prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

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 10th day of December 1934 issued, and immediately thereafter served, a complaint charging the American Shell Products Company, a corporation, hereinafter referred to as respondent, with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, hearings were had and evidence was thereupon introduced at the instance of the Commission and respondent before an examiner of the Federal Trade Commission, theretofore duly appointed.

¹ The labels used in the four brands and description thereof, as alleged in the complaint, are set forth in the findings, *infra*.

Thereupon, this proceeding came on for final hearing on a brief filed by counsel on behalf of the Commission, no appearance being made or brief filed on behalf of the respondent, and the Commission having duly considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, American Shell Products Company, is a corporation, organized and existing under and by virtue of the laws of the State of Iowa, with its principal office and place of business in the city of Muscatine, in said State.

PAR. 2. The respondent is now engaged, and has been for the several years last past, in the business of buying and crushing mussel and oyster shell and in the selling of such crushed shell to wholesale and retail dealers located in the various States of the United States, for ultimate resale to members of the purchasing public for use in feeding chickens. Respondent produces and sells approximately 2,000 tons of crushed shell per year. Respondent causes such crushed shell, when sold, to be transported from its principal place of business at Muscatine, Iowa, or from the State where said shipment originated, to, into and across the several States of the United States other than the State of Iowa, or the States wherein such shipment originated, to the several purchasers thereof. Other corporations, and persons, firms and associations have been and are engaged in producing and offering for sale and selling in said commerce among the several States of the United States crushed mussel shell and crushed oyster shell and other competitive products and respondent, in the course and conduct of its business, is in substantial competition with such other corporations and persons, firms and associations.

PAR. 3. Crushed mussel shell, crushed oyster shell, and crushed limestone are used throughout the several States of the United States as a food for laying hens to increase the calcium carbonate content of the diet, because of the fact that such increase of calcium carbonate results in the formation of more and better egg shells. Crushed oyster shell is well known in the trade and among poultry raisers as a desirable addition to the diet of laying hens and many dealers in and purchasers of such products prefer crushed oyster shell to crushed mussel shell or crushed limestone and believe that it is superior to either crushed mussel shell or crushed limestone, for the purpose for which it is used. Crushed mussel shell has been used for this purpose for a number of years, but is not as well and favor-

Findings

21 F. T. C.

ably known in the trade and among poultry raisers as is crushed oyster shell. Crushed oyster shell is made by grinding and crushing either shell taken from edible oysters or shell taken from reefs in the Gulf of Mexico. Crushed mussel shell is made by grinding and crushing shell of fresh water mussel taken from the Mississippi, its tributaries, and other fresh waters in the United States. Crushed oyster shell sells at a higher price than does crushed mussel shell. Ultimate purchasers of crushed shell are unable to determine from an examination of the shell whether it is mussel or oyster shell or whether it is mixed shell, and are dependent upon the printed matter found on the containers in which such shell is sold as to the contents thereof. Crushed shell, whether it be oyster, mussel, or a mixture of oyster and mussel shell, finds a better sale when branded "oyster" than it does when branded "mussel", or branded "mixed oyster and mussel".

The city of Biloxi, Miss., is known in the trade and to poultry raisers as one of the principal shipping points in the United States for crushed oyster shell.

PAR. 4. Respondent's product is sold to wholesalers, retailers and the ultimate purchasers in burlap bags, which contain approximately 100 pounds of crushed shell and upon which appears the printed matter hereinafter set out.

Respondent produces and sells a mixed crushed shell, which is approximately 50 percent mussel and 50 percent oyster shell, under the trade name "Premium", and the respondent causes to be printed on the bags in which this brand of crushed shell is sold the following words, letters, and figures:

100 LBS. NET WHEN PACKED

PREMIUM

BRAND MUSSEL

(Drawing of a hen sitting on eggs)

OYSTER

ANALYSIS

Silica (SiO ²)	1.05%
Oxides Iron (Fe ² O ³)	1.34%
Calcium carbonate (lime C.A.C.O. ₃)	98.00%
Carbonate magnesium	1.10%

PURE KILN DRIED

TRIPLE SCREENED SHELL

AMERICAN SHELL PRODUCTS CO.

Biloxi, Miss.

Muscantine, Iowa.

Neahr-Bags-Chicago

Respondent produces and sells a mixed crushed shell, which is approximately 75 percent mussel and 25 percent oyster shell, under

237

Findings

the trade name "Standard", and the respondent causes to be printed on the bags in which this brand of crushed shell is sold the following words, letters, and figures:

100 LBS. NET WHEN PACKED	
STANDARD	
BRAND MUSSEL	
(Large drawing of two chickens)	
OYSTER	
ANALYSIS	
Silica (SiO_2)	1.2%
Oxides iron (Fe_2O_3)	.9%
Calcium carbonate (lime C.A.C.O. ²)	97.46%
Carbonate magnesium	1.10%
PURE KILN DRIED	
TRIPLE SCREENED SHELL	
Mfg. for	
AMERICAN FEED PRODUCTS CO.	
Bllox1, Miss.	Muscatine, Ia.

 Neahr-Bags-Chicago

Respondent produces and sells a mixed crushed shell, which is approximately 95 percent mussel and 5 percent oyster shell, under the trade name "Egg Producer", and the respondent causes to be printed on the bags in which this brand of crushed shell is sold the following words, letters, and figures:

100 LBS. NET WHEN PACKED	
EGG PRODUCER	
BRAND MUSSEL	
(Large drawing of two chickens)	
OYSTER	
ANALYSIS	
Silica (SiO_2)	1.05%
Oxides iron (Fe_2O_3)	1.34%
Calcium carbonate (lime C.A.C.O.3)	96.51%
Carbonate magnesium	1.10%
PURE KILN DRIED	
TRIPLE SCREENED SHELL	
Mfg. for	
CRUSHED SHELL CO.	
Bllox1, Miss.	Muscatine, Ia.

Respondent produces and sells a mixed crushed shell, which is approximately 95 percent mussel and 5 percent oyster shell, under

Findings

21 F. T. C.

the trade name "Very Best", which is made exclusively for the Witwer Grocery Company, an Iowa corporation, with its principal office at Cedar Rapids, Iowa, and the respondent causes to be printed on the bags in which this brand of crushed shell is sold, the following words, letters, and figures:

100 LBS. NET WHEN PACKED

VERY BEST BRAND

(Large drawing of two chickens)

O Y S T E R

ANALYSIS

Silica (SiO ²)	1.2%
Oxides iron (Fe ² O ³)	.9%
Calcium carbonate (lime C.A.C.O. ²)	97.46%

Mussel

Manufactured for and sold exclusively by

WITWER GROCERY COMPANY

Cedar Rapids, Iowa.

Davenport, Iowa.

Mason City, Iowa.

Iowa Falls, Iowa.

On the bags in which brands "Premium", "Standard", "Egg Producer", and "Very Best" are sold, the word "oyster" is printed in large shaded letters in a conspicuous place and the word "mussel" is printed in small plain letters in an obscure place. Each letter used in the word "oyster" is approximately two-thirds the size of the entire word "mussel". Respondent does not maintain an office or place of business in the city of Biloxi, Miss. The effect as a whole of the printed matter on said bags and the use of the address Biloxi, Miss., on the three brands on which it is used, is to lead purchasers and prospective purchasers to believe that said bags contain crushed oyster shell and not a mixture of crushed mussel and oyster shell.

PAR. 5. Respondent's acts and practices in branding and representing its product in the manner as hereinabove set forth are misleading and deceptive and have the tendency and capacity to and do confuse, mislead and deceive a substantial portion of the trade and purchasers of such products into the erroneous belief that its crushed mussel shell, to which has been added crushed oyster shell in the proportions as above stated, is crushed oyster shell and has the tendency and capacity to induce the purchasing public to buy and use respondent's products because of said erroneous belief that such products are crushed oyster shell and to divert trade to the respondent from competitors who sell crushed oyster shell and from competitors who sell crushed mussel shell and brand it truthfully, to their injury.

CONCLUSION

The acts and practices of the respondent, American Shell Products Company, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors and are unfair methods of competition in commerce and constitute a violation of the 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 by the Federal Trade Commission upon the record and the Commission having made its findings as to the facts and its conclusion that the respondent American Shell Products Company, a corporation, 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 American Shell Products Company, a corporation, its officers, agents, representatives, servants, and employees, when offering for sale and selling crushed shell in commerce among the several States of the United States, cease and desist from directly or indirectly:

(1) Using the word "oyster" on bags or containers in which it sells crushed shell or otherwise to represent, describe, or designate crushed shell (a) unless and until such crushed shell is composed entirely of the crushed shell of the bivalve commonly known as the oyster, or (b) unless and until, where such crushed shell is composed partly of oyster shell, the word "oyster" is accompanied by a word or words, in equally conspicuous form and color, aptly and truthfully describing the other material or materials of which such product is composed.

(2) Using an address on bags or containers in which it sells crushed shell or otherwise in connection with the sale or offers of sale of crushed shell, unless and until the respondent maintains an office or place of business at such address.

It is further ordered, That the respondent American Shell Products Company, a corporation, shall, within 60 days after service upon it of a copy of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Complaint

21 F. T. C.

IN THE MATTER OF
WYOMING VALLEY JOBBERS ASSOCIATION, INCORPORATED,
ITS OFFICERS AND ACTIVE MEMBERS

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

Docket 2403. Complaint, May 22, 1935—Order Aug. 16, 1935

Consent order requiring respondent association, its officers, active members, and their officers, agents, etc., in the purchase, sale and distribution in interstate commerce of tobacco and confectionery products, to cease and desist from—

- (a) Combining, conspiring or uniting in a common course of action, and cooperating and confederating together, among themselves and with others to prevent competing dealers in tobacco and confectionery products from obtaining tobacco and confectionery products directly from the manufacturers thereof;
- (b) Publishing lists or "White Lists" containing the names of "recognized" dealer members of respondent association, so as to include in said lists only so-called legitimate, regular or "recognized" dealers, brokers, distributors, or wholesalers of said products;
- (c) Conspiring or uniting to fix and establish uniform prices at which members of respondent association or others shall sell such products;
- (d) Maintaining, by concerted action, coercion and persuasion, a boycott against, and refusal to purchase tobacco products from any tobacco manufacturer or manufacturers located outside of the State of Pennsylvania engaged in the sale of tobacco in interstate commerce in the Wilkes-Barre, Pa., district.

Mr. P. C. Kolinski for the Commission.

Mr. Andrew Hourigan, of Wilkes-Barre, Pa., for respondents and
Mr. Louis Shaffer, of Wilkes-Barre, Pa., for Shaffer Tobacco Co., Inc.

COMPLAINT

Pursuant to the provisions of an Act of Congress 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 each and all the parties named in the caption hereof, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Wyoming Valley Jobbers Association, Inc., is a nonprofit corporation incorporated under the laws of the