

Complaint

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IN THE MATTER OF

OLD TRUSTY DOG FOOD COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2527. Complaint, Aug. 21, 1935—Decision, Dec. 11, 1935*

Where a corporation engaged in the sale of various brands of dog food, represented through labels and periodical and other advertising and in other ways, that its "Old Trusty Bovex" brand was "62½ percent Government inspected beef and beef products", facts being that, while its ingredients included, among others, meat and meat food products inspected and passed under the provisions of the Meat Inspection Act, and while it was made at an establishment where Federal Meat Inspection is maintained, it contained less than said percentage of Government inspected beef and beef products; with capacity and tendency to mislead and deceive purchasers and prospective purchasers in aforesaid respect:

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

Mr. Joseph C. Fehr for the Commission.

Mr. James M. Cushing, of Boston, Mass., 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 Old Trusty Dog Food Company, hereinafter referred to as 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. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business located at Needham Heights, in the State of Massachusetts. It is now and for more than one year last past has been engaged in the manufacture of various brands of dog foods, including a brand designated by it as "Old Trusty Bovex", and in the sale and distribution thereof in commerce between and among various States of the United States. It has caused and still causes said products, when sold, to be shipped from its place of business in Needham Heights aforesaid to the

purchasers thereof, some located in the State of Massachusetts and others located in various other States of the United States, and there is now and has been at all times hereinafter mentioned a constant current of trade and commerce by respondent in such products between and among the various States of the United States. In the course and conduct of its business the respondent is now and has been at all times hereinafter mentioned in substantial competition with other corporations, and with persons, firms, and partnerships engaged in the sale and distribution of similar products between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in selling and in soliciting the sale of the aforesaid product "Old Trusty Bovex", has represented and still represents in and by the use of labels affixed to the containers of such product, by advertisements in magazines having an interstate circulation, by hand bills and by folders distributed in interstate circulation, and by various other means, that such "Old Trusty Bovex" has been and is "62½% Government inspected beef and beef products" and that such "Old Trusty Bovex" has been "U. S. inspected and passed by Department of Agriculture", when, in truth and in fact, the aforesaid "Old Trusty Bovex" is not made of government inspected beef or beef products and when, in truth and in fact, the aforesaid "Old Trusty Bovex" has never been U. S. inspected or passed by the Department of Agriculture, and when, in truth and in fact, the aforesaid "Old Trusty Bovex" has never contained 62½% of beef or beef products, but a percentage of beef or beef products substantially less than 62½%.

PAR. 3. The representations made by the respondent as set out in paragraph 2 hereof have had and still have the capacity and tendency to mislead and deceive and have misled and deceived and still mislead and deceive the purchasing public into the beliefs that the aforesaid representations made by the respondent are true and to purchase the aforesaid product, "Old Trusty Bovex", in such erroneous beliefs.

PAR. 4. There are among the competitors of the respondent mentioned in paragraph 1 hereof, and have been for more than one year last past, manufacturers of government inspected beef and beef products for dogs who truthfully advertise and represent their products as being government inspected and passed, and as containing certain percentages of beef and beef products. There are also among such competitors of the respondent, and have been for more than one year last past, manufacturers of beef and beef food products for dogs not inspected or passed by the Department of Agriculture, and who do

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not represent that such products have been or are inspected and passed by the Department of Agriculture, or that they contain more than their correct percentage of beef or beef products.

The use by the respondent of the aforesaid labels, advertisements and circulars has had and still has the capacity and tendency to and has diverted and still diverts trade to respondent from its aforesaid competitors who truthfully represent their products, and thereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

PAR. 5. Said acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in or affecting 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, as amended.

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 20th day of August, 1935, 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 said act. Respondent, after entering its appearance and filing its answer to said complaint, thereafter, to wit, on the 6th day of December, 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 the chief counsel may be taken as the facts in the 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

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findings as to the facts and its conclusion drawn therefrom, as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business located at Needham Heights, in the State of Massachusetts. It is now and for more than one year last past has been engaged in the sale of various brands of dog foods, including a brand designated by it as "Old Trusty Bovex", in commerce between and among the various States of the United States. It has caused and still causes said products, when sold, to be shipped from its place of business in Needham Heights aforesaid, to the purchasers thereof, some located in the State of Massachusetts and others located in various other States of the United States; and there is now and has been at all times hereafter mentioned, a constant current of trade and commerce by respondent in such products between and among the various States of the United States. In the course and conduct of its business the respondent is now and has been at all times herein mentioned, in substantial competition with other corporations and with persons, firms and partnerships engaged in the sale and distribution of similar products between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in selling and soliciting the sale of the aforesaid product "Old Trusty Bovex", has represented, but in July, 1935, discontinued to represent, in and by the use of labels affixed to the containers of such product, by advertisements in magazines having interstate circulation, by handbills and by folders distributed in interstate circulation, and by various other means, that "Old Trusty Bovex" has been "62½ percent Government inspected beef and beef products", and that such "Old Trusty Bovex" has been "U. S. inspected and passed by the Department of Agriculture." In truth and in fact, the aforesaid "Old Trusty Bovex" has contained and still contains less than 62½ percent Government inspected beef and beef products. The aforesaid "Old Trusty Bovex" has contained and still contains, among other ingredients, meat and meat food products which are inspected and passed under the provisions of the Meat Inspection Act, and such "Old Trusty Bovex" is made at an establishment where Federal Meat Inspection is maintained.

PAR. 3. The foregoing statements and representations made by the respondent in aid of the sale of its product "Old Trusty Bovex",

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are incorrect, exaggerated and misleading, and have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's said product into the erroneous belief that said product is "62½ percent Government inspected beef and beef products."

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings of fact are to the prejudice of the public and of competitors of 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, Old Trusty Dog Food Company, a 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 6th day of December, 1935, a stipulation as to the facts was entered into by and between the Chief Counsel of the Federal Trade Commission and the respondent, wherein 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 its 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, Old Trusty Dog Food Company, its officers, agents, servants, and employees, in connection with the sale or offering for sale in interstate commerce, of a brand of dog food designated by it as "Old Trusty Bovex", forthwith cease and desist from using in circulars advertisements or labels, or in any other way, any statement that such "Old Trusty Bovex" is "62½ percent Government inspected beef and beef products," or

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any statement of like purport and effect, unless and until such "Old Trusty Bovex" contains 62½ percent Government inspected beef and beef products.

It is further ordered, That the respondent, Old Trusty Dog Food Company shall, within 60 days after the date of service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied and is complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

BRENNER PAPER MANUFACTURING, INC.

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2590. Complaint, Oct. 21, 1935—Order, Dec. 11, 1935*

Consent order requiring respondent corporation, its agents, etc., in connection with the printing or converting of paper or the imprinting thereon of forms and panels in preparation for use in printing announcements, or in the sale and distribution of such products in interstate commerce, to cease and desist from using a corporate name containing the word "manufacturing", or representing by any other means that it is a paper manufacturer, or using phrase "paper manufacturing", or publishing in any manner statements conveying impression that it or any of its officers, agents or employees on its behalf is engaged in paper manufacturing business or that its products are manufactured on its premises, unless and until it actually manufactures the paper it sells or offers for sale or owns or absolutely controls a mill, mills, factory or factories in which such paper is manufactured.

Mr. T. H. Kennedy for the Commission.

Mr. Jacob Brenner, of New York City, 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 Brenner Paper Manufacturing, Inc., a corporation, hereafter referred to as respondent, has been and now is 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, states its charges in that respect as follows:

PARAGRAPH 1. The Brenner Paper Manufacturing, Inc., respondent herein, is a corporation organized in October 1933, then, ever since and now, existing under and by virtue of the laws of the State of New York and now has its principal place of business in the city of New York, State of New York.

PAR. 2. The respondent, Brenner Paper Manufacturing, Inc., is and has been since on and after March 1, 1935, engaged in the business of printing or in the converting of paper or the imprinting thereon on forms and panels in the preparation for use in printing announcements and in the sale and distribution of such products in commerce between and among the various States of the United States.