

Complaint

IN THE MATTER OF
UNIVERSAL EXTRACT COMPANY, INC.

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

Docket 2348. Complaint, Mar. 29, 1935—Decision, Jan. 28, 1936

Where a corporation engaged in the manufacture and sale of flavoring extracts—
Set forth upon the labels thereof the Italian words "Soli representanti in
America per la preparazione dei famosi genuini estratti", and upon its
letterheads, statements and invoices the words "Importers and Exporters",
and represented through advertisements, labels and otherwise, that it
imported and exported the flavoring extracts made and sold by it, and
that such products, thus dealt in by it, were imported into the United
States from foreign countries, the facts being it was not sole representative
in America of any famous or other preparations made in Italy or any
other foreign country, and neither exported nor imported any of the
products thus advertised and dealt in by it;

With tendency and capacity to mislead and deceive purchasers and prospective
purchasers into believing that said extracts were imported as above set
forth and that it was an importer and exporter of such products, and
thereby to induce the purchasing public, a portion of which prefers the
imported extracts over and above the domestic and to buy such products
from importers and exporters thereof, to purchase its said products from
it in such beliefs, and thus divert trade to it from its competitors, among
whom there are those engaged in the manufacture in the United States of
such products from ingredients purchased therein, without representing
the same as imported, or themselves as importers or exporters, and those
who in fact import such products from various foreign countries and
export the same, and truthfully represent their operations as such importers
and exporters, and their said products as imported from various foreign
countries; to the substantial injury of substantial competition in interstate
commerce:

Held, That such acts and practices were all to the injury and prejudice of the
public and competitors within the intent and meaning of Section 5.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. Edward L. Smith and *Mr. John W. Hildrop* for the
Commission.

Mr. Milton H. Goldstricker, of New York City, for respondent.

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Pursuant to the provisions of an Act of Congress, approved Sep-
tember 26, 1914, entitled "An Act to create a Federal Trade Com-
mission, to define its powers and duties, and for other purposes", the
Federal Trade Commission having reason to believe that Universal

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Extract Company, Inc., a corporation, 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 to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Universal Extract Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in New York City in said State. It is now and for more than two years last past has been engaged in the manufacture of flavoring extracts in New York City aforesaid and in the sale thereof between and among the various States of the United States. It now causes and for more than two years last past has caused such flavoring extracts, when sold by it, to be transported from its place of business in New York City aforesaid to the purchasers thereof located in the State of New York and to other purchasers located in 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 respondent in said flavoring extracts. In the course and conduct of its business said respondent is now and has been for more than two years last past in substantial competition in commerce between and among various States of the United States, with other corporations and with individuals, firms and partnerships engaged in the sale of flavoring extracts between and among the various States of the United States.

PAR. 2. In the course and conduct of its business respondent, in soliciting the sale of its flavoring extracts and in selling the same between and among the various States of the United States, has represented for more than two years last past and still represents in and by its advertisements, labels, stationery, and in other ways that it imports and exports the flavoring extracts which it manufactures and sells and that such extracts sold by the respondent are imported into the United States from foreign countries, when in truth and in fact said respondent is neither an importer nor exporter of flavoring extracts and when in truth and in fact the flavoring extracts made, offered for sale and sold by it are manufactured by it in the city of New York aforesaid from ingredients purchased by the said respondent in the said city of New York and in various other cities of the United States.

PAR. 3. There are among the competitors of the respondent and have been for more than two years last past, manufacturers of flavoring extracts in the United States who manufacture such extracts

from ingredients purchased in the United States but who do not represent that the extracts sold by them are imported or that such competitors are importers or exporters; there are also among such competitors, persons, firms, and corporations who import such extracts from various foreign countries and export the same from the United States and who truthfully represent themselves to be importers and exporters and that the flavoring extracts sold and offered for sale by them are imported from various foreign countries.

PAR. 4. There is a portion of the purchasing public in the United States who prefer imported flavoring extracts over and above flavoring extracts not imported from foreign countries. There is also a portion of the purchasing public who prefer to buy flavoring extracts from importers and exporters thereof. The acts and practices of the respondent as described in paragraph 2 hereof, have the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the beliefs that the flavoring extracts sold and offered for sale by the respondent are imported into the United States from foreign countries, that the respondent is in fact an importer of such flavoring extracts and an exporter thereof and thereby to induce the purchasing public to purchase flavoring extracts from respondent in such beliefs. Thereby trade is diverted to respondent from its competitors who do not misrepresent the origin of the flavoring extracts dealt in by them and thereby substantial injury is done by the respondent to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of the respondent are all to the injury and prejudice of the public and competitors of respondent in interstate 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, on the 29th day of March 1935, issued and served its complaint in this proceeding upon respondent, Universal Extract Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John

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W. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Milton H. Goldstricker, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto (oral arguments being waived); and the Commission having duly considered the same, 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 its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Universal Extract Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in New York City in said State. It is now and for more than two years last past has been engaged in the manufacture of flavoring extracts in New York City aforesaid and in the sale thereof between and among the various States of the United States. It now causes and for more than two years last past has caused such flavoring extracts, when sold by it, to be transported from its place of business in New York City aforesaid to the purchasers thereof located in the State of New York and to other purchasers located in 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 respondent in said flavoring extracts. In the course and conduct of its business said respondent is now and has been for more than two years last past in substantial competition in commerce between and among various States of the United States, with other corporations and with individuals, firms and partnerships engaged in the sale of flavoring extracts between and among the various States of the United States.

PAR 2. In the course and conduct of its business respondent, in soliciting the sale of its flavoring extracts and in selling the same between and among the various States of the United States, has represented for more than two years last past and still represents in and by its advertisements, labels, stationery, and in other ways that it imports and exports the flavoring extracts which it manufactures and sells and that such extracts sold by the respondent are

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imported into the United States from foreign countries, when in truth and in fact said respondent is neither an importer nor exporter of flavoring extracts and when in truth and in fact the flavoring extracts made, offered for sale and sold by it are manufactured by it in the city of New York aforesaid from ingredients purchased by the said respondent in the said city of New York and in various other cities of the United States. On the bottles containing the flavoring extracts of respondent, which respondent sells and distributes in interstate commerce, labels are fixed containing the following words in Italian, to wit: "Soli representanti in America per la preparazione dei famose genuini estratti", the English translation of which is as follows: "Sole representative in America of the famous preparations of this extract." On the letterheads, statements and invoices of respondent there appear the words "Importers and Exporters". The foregoing advertisements, statements and representations by respondent are false and misleading. In truth and in fact, respondent is not the sole representative in America of any famous or other preparation or preparations made in Italy or any foreign country, and neither exports nor imports any of the goods, wares or merchandise by it advertised, sold and distributed in interstate commerce.

PAR. 3. There are among the competitors of the respondent and have been for more than two years last past, manufacturers of flavoring extracts in the United States who manufacture such extracts from ingredients purchased in the United States but who do not represent that the extracts sold by them are imported or that such competitors are importers or exporters; there are also among such competitors, persons, firms, and corporations who import such extracts from various foreign countries and export the same from the United States and who truthfully represent themselves to be importers and exporters and that the flavoring extracts sold and offered for sale by them are imported from various foreign countries.

PAR. 4. There is a portion of the purchasing public in the United States who prefer imported flavoring extracts over and above flavoring extracts not imported from foreign countries. There is also a portion of the purchasing public who prefer to buy flavoring extracts from importers and exporters thereof. The acts and practices of the respondent as described in paragraph 2 hereof, have the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the beliefs that the flavoring extracts sold and offered for sale by the respondent are imported into the United States from foreign countries, that the respondent is in fact an importer of such flavoring extracts and an exporter thereof and thereby

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to induce the purchasing public to purchase flavoring extracts from respondent in such beliefs. Thereby trade is diverted to respondent from its competitors who do not misrepresent the origin of the flavoring extracts dealt in by them and thereby substantial injury is done by the respondent to substantial competition in interstate commerce.

CONCLUSION

The above alleged acts and practices of the respondent are all to the injury and prejudice of the public and competitors of respondent in interstate 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, the answer of respondent, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein by John W. Hilldrop, counsel for the Commission, and Milton H. Goldstricker, attorney for the respondent (oral argument being waived), 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 Commisison, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Universal Extract Company, Inc., a corporation, its agents, servants and employees, in the advertising, sale and distribution in interstate commerce of its commodity, to wit, flavoring extracts, cease and desist from:

(1) Advertising and representing by labels on bottles and other containers, letterheads, invoices, in newspapers, journals, periodicals, through radio broadcasts, or by any other method, means or device:

(a) That it imports or exports the flavoring extracts which it manufactures and sells in interstate commerce, as aforesaid; that such extracts or the ingredients composing the same are by respondent imported into the United States from foreign countries; that respondent is either an importer or an exporter; or that respondent is the sole representative in America for its said commodity.

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(b) That any of the aforesaid flavoring extracts or other merchandise which respondent manufactures, advertises, sells and distributes in interstate commerce, or any of the ingredients composing same, are manufactured in any foreign country or imported into the United States until and unless the said products are so manufactured or imported.

(2) Using on the labels placed on its bottles or other containers in which respondent's flavoring extracts are shipped and distributed in interstate commerce the words "Soli representanti in America per la preparazione dei famosie genuini estratti", or words in any language which state, import, or imply that respondent is the sole representative in America of the famous preparations of the extract contained, labelled and advertised in said bottles or containers.

And it is hereby further ordered, That the said respondent, Universal Extract Company, Inc., a corporation, shall within 60 days after the service upon it 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 it shall have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF
STETSON PANTS COMPANY

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

Docket 2609. Complaint, Nov. 2, 1935—Order, Jan. 28, 1936

Consent order requiring respondent corporation, its officers, etc., in connection with the sale of pants, forthwith to cease and desist from—

- (a) Making, publishing, circulating, or causing to be circulated in any manner in interstate commerce, statements for the purpose of falsely creating the impression and belief among potential purchasers of such products that the products so offered for sale or sold are products of its manufacture;
- (b) Representing or causing to be represented to potential customers that it is the exclusive owner of a particular form of merchandise or that it has any patent or copyright upon a so-called "vizualizer", integral part of a general sales method; or
- (c) Making or publishing any false or fraudulent representations as to the volume of business done or the goodwill or trade experience acquired by it.

Mr. Alden S. Bradley for the Commission.

Paxton & Seasongood, of Cincinnati, Ohio, for respondent.

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", approved September 26, 1914, the Federal Trade Commission, having reason to believe that the Stetson Pants Co., a corporation, hereinafter referred to as the 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 respondent, Stetson Pants Co., is a corporation organized and existing under the laws of the State of Ohio, and has its principal office and place of business at No. 212 East Eighth Street, in the city of Cincinnati in said State. The principal business of the respondent consists in the sale and offering for sale of pants through the medium of personal solicitation and contact on the part of agents of said respondent, which agents are located in the various States of the United States; and the respondent now maintains, and since December 25, 1934, the date of its incorporation, has maintained, a constant current of trade and commerce in such