

IN THE MATTER OF
EDWIN CIGAR COMPANY, INC., AND JAMES B. HALL, JR.,
INC.

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

Docket 2363. Complaint, Apr. 12, 1935—Decision, Apr. 6, 1936

Where two corporations engaged in the manufacture of cigars and leaf tobacco, and in the sale and distribution thereof direct to the consuming public by mail order in the case of one, and at wholesale to jobbers and retailers in the case of the other, and controlled and directed, in the case of both, by the same individual, of long experience and expert in the business, and president of each, and with the same general officers, of whom two were members of said president's immediate family—

- (a) Designated and labeled as "Factory Seconds", "Odd Lots", "Factory Throw Outs" and "Throw Outs" several types of cigars which they sold and distributed at prices ranging from 1 to 4½ cents, but, generally, at 3 cents, and represented in newspaper and periodical advertising of general interstate circulation that said cigars were in fact "Factory Seconds", etc., as above set forth, facts being they were not, as thereby understood by trade and purchasing public, products of high grade tobacco and high quality which could not be sold at the regular, intended price, because of slight color variations or imperfections which do not affect the enjoyment thereof, but were made from cheap, damaged, old, or inferior tobacco, and composed about 60 percent of their annual production of 14,000,000 cigars;

With capacity and tendency to deceive dealers and purchasing public and create impression that such cigars were made of a grade of tobacco superior to that actually used and to mislead and deceive them into belief that in buying such cigars at prices charged they were obtaining a product of high quality that could not be sold for price intended on account of imperfections, and with effect of diverting trade unfairly to said corporations from individuals and concerns engaged in sale and distribution of genuine "Factory Seconds", etc., thus truthfully represented by them, and from competitors engaged in sale and distribution of comparable, cheap, and inferior cigars, truthfully designated and advertised by them as to character and quality;

- (b) Designated certain types of their cigars as "Finest Havana Filler" and thus represented same in newspaper and periodical advertising of general circulation and as guaranteed of 15-cent quality and priced at 3 to 4½ cents each on account of slight color variations and imperfections, and represented other types of their cigars as made from or filled with Havana or Cuban tobacco through use of such words as "Havana", "Havana Long Filler" or "Havana Filler", and so advertised and represented certain types of their said products, composed of a brand of Havana and other types of tobacco filler as to convey to dealers and purchasers impression that filled portion thereof was made entirely of Havana tobacco, facts being that in manufacture of their said "Havana", "Havana Filler" or "Havana Filled" cigars they ignored recognized standards of the industry in the

making of cigars so designated and did not use finest Havana filler, but purchased the cheapest type of filler, composed of storm-broken, scrap tobacco, full of holes and not identifiable as Havana tobacco at all, substituted binders for filler in order to use damaged, defective binder leaf in place of good quality filler leaves, made it their practice and policy to purchase such cheap and damaged tobacco for use in making their said cigars, used multiple number of binder leaves and sometimes as many as eight in manufacture of their product designated as made from Havana filler, their various types designated as filled with Havana tobacco contained undetermined percentages thereof, if any at all, and their various cigars advertised as guaranteed 15-cent quality, etc., were not made of quality of tobacco, used in 15-cent cigars but were made of cheap and inferior grades of said product;

With tendency and capacity to mislead and deceive members of trade and consuming public into erroneous belief that the cigars thus variously designated and described were actually made wholly from the finest quality of tobacco leaf imported from Cuba, or that filler thereof was thus made, or was composed wholly of Cuban or Havana tobacco, or they were duly and properly filled with such Cuban tobacco leaf in conformity with accepted and well known customs and standards, and with result that many dealers and members of said public purchased various types of their cigars in preference to those of their competitors who, in sale of cigars not made entirely of Havana tobacco or not filled entirely therewith, or not made of finest grade thereof, do not represent in any way that their said products are so made or filled and do not use terms "Havana Filler", "Havana Filled", "Finest Havana Filler" or similar terms in any way to create confusion in minds of purchasers of said cigars as to nature or quality thereof, and with effect of diverting unfairly trade from said competitors to themselves and also from competitors who actually make, distribute, and sell cigars made wholly from or filled wholly with Havana tobacco, or made of the finest grade of Cuban tobacco, and who truthfully advertise and represent the nature and quality of cigars made and sold by them, to the substantial injury of such various competitors in the conduct of their respective businesses; and

Where said mail order corporation, in the operation of its business—

- (c) Made many false and disparaging statements in its advertisements with respect to certain types of tobacco used by various competitors, warning dealers and public against use of "American Sumatra", Florida, and Georgia tobacco, used largely by trade and by said corporation itself in many of its products; with tendency and capacity to create in minds of dealers and members of purchasing public the impression and belief that said American tobacco was inferior to leaf tobacco used by it and to cause them to refuse to purchase cigars made from American Sumatra, and with effect of unfairly diverting trade to it from competitors likewise engaged in manufacture and sale of cigars made with American Sumatra wrapper; and

Where the other corporation, engaged in making cigars from inferior and cheap tobacco imported from the Philippines, and in distribution and sale thereof at wholesale to jobbers and retailers—

- (d) Unfairly disparaged cigars imported from said islands by its competitors or otherwise, in advertising and soliciting sale of cigars made by it, through statements and representations indicating that excessive period of time

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was required to transport cigars from Manila to the United States, and that said cigars there made, and imported therefrom, are wormy and not of good quality, facts being such cigars as a class are neither wormy nor of inferior grade; with capacity and tendency to deceive dealers and purchasing public into believing such cigars wormy, and to cause them to refuse purchase thereof on such account; and

- (e) Purported to set out the trade or brand name of Philippine cigars thus disparaged as wormy, as "Pacific-O", fact being "Pacifco" was trade name adopted by a competitor for a brand of cigars, which said competitor imported from said islands; with effect of confusing in the minds of dealers and members of the purchasing public, the cigars sold by it with those sold by said competitor; and

With effect of unfairly diverting trade to it from competitors engaged in sale and distribution of cigars made in the Philippine Islands, and imported into the United States:

Held, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

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

Mr. John W. Hildrop and *Mr. Marshall Morgan* for the Commission.

Mr. Bennett E. Siegelstein, of New York City, for respondents.

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 the Edwin Cigar Co., Inc., a corporation, and James B. Hall, Jr., Inc., a corporation, and hereafter referred to respectively, have been and are 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. Both respondents, Edwin Cigar Co., Inc., and James B. Hall, Jr., Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, both with their principal offices and places of business in the city of New York in said State. While each of the respondents is a separate corporate entity, they both have the same president and other executive officers and the same stockholders, and have the same place of business and the business of each is the business of the other and they are, insofar as the conduct of their respective businesses is concerned, one and the same corporation, and the acts of each are the acts of the other. Respondents are now and for more than 2 years last past have been engaged in the manufacture of cigars and in the sale thereof between and among the various States of the United

States, other than the State of origin. They cause such cigars when sold by them to be transported to the purchasers thereof in the State of New York and to other purchasers located in various States of the United States, and there is now and has been for more than 2 years last past a constant current of trade and commerce by respondents in such cigars between and among the various States of the United States. In the course and conduct of their said business the respondents are now and for more than 2 years last past have been in substantial competition in commerce between and among the various States of the United States with various other corporations and with individuals, partnerships, and firms engaged in the sale of cigars.

PAR. 2. In the course and conduct of their said business the respondents in soliciting the sale of their cigars between and among the various States of the United States advertise and for more than 2 years last past have advertised in newspapers, magazines, journals, and periodicals having interstate circulation, and by circulars, labels, and circular letters, their said cigars or portion thereof as being "Factory Seconds", "Odd Lots", "Factory Throw Outs", and "Throw Outs." Typical of such advertisements is the following, to wit:

From Time to Time There Accumulate a Limited Number of
Factory Seconds and Odd Lots Representing the above brands.
These are disposed of at \$2.75 net per hundred, and are not sub-
ject to any discounts or special offerings made on our regular
brands.

James B. Hall, Jr., Inc.

Manufacturers of Fine Havana cigars.

33 Irving Place, New York.

PAR. 3. For many years the terms "Factory Seconds", "Odd Lots", and "Factory Throw Outs" have each meant and each still means, and have been used and understood and are still used and understood by manufacturers of cigars, by wholesalers and retailers thereof, and by the purchasing public to mean that the cigars to which such designations have been and are applied are made of high grade tobacco, that cigars made of such tobacco are of high quality, but that such "Factory Seconds", "Odd Lots", and "Factory Throw Outs" because of slight color variations and slight imperfections which do not affect the smoking enjoyment thereof could not be sold at the regular price for which they were intended, but by reason of such slight color variations and slight imperfections would be advertised and sold at reduced prices.

PAR. 4. The cigars of respondents advertised and sold by respondents as aforesaid were not and are not in truth and in fact "Factory Seconds", "Throw Outs", or "Odd Lots", but were and are of an

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inferior quality and were and are made by respondents for the purpose of selling as "Factory Seconds", "Throw Outs", and "Odd Lots." The false and misleading statements of respondents hereinbefore set out were and are made for the purpose of deceiving the dealers and the purchasing public and to create an impression and understanding upon dealers and the purchasing public that the cigars so advertised and sold as "Factory Seconds", "Throw Outs", and "Odd Lots" were and are made of a superior grade of tobacco than that of which they were and are actually made, and such representations have had and still have the capacity and tendency to and have and do mislead and deceive the dealers and the purchasing public into such beliefs. Such false and misleading representations have had and still have the capacity and tendency to and have and do unfairly divert trade to respondents from other individuals, partnerships, firms, and corporations selling in commerce between and among the various States of the United States "Factory Seconds", "Throw Outs", and "Odd Lots", said individuals, partnerships, firms, and corporations truthfully representing them to be such and from individuals, partnerships, firms, and corporations selling in commerce between and among the various States of the United States cheap and inferior cigars of the same quality as those manufactured and sold by respondents but who truthfully and properly designate and advertise the same.

PAR. 5. Respondents from time to time have made and still make false and disparaging statements in their advertising concerning the goods of their competitors. Typical of such false and disparaging statements is one used by respondent James B. Hall, Jr., Inc., in the April 23, 1933, issue of the New York Times, a newspaper of wide circulation between and among the various States of the United States which said advertisement is as follows:

HAND MADE

LONG FILLER

Cigars imported from Philippine Islands

which are in the

PACIFIC O.

A BOX OF 100 CIGARS FOR 50 CENTS

These cigars that we offer represent a close-out of cigars imported from the Philippine Islands, located in the PACIFIC Ocean, and are usually sold at retail for 2½ cents each.

The cigars are not fresh (it takes about six to eight weeks to deliver these Manila cigars to New York from the Philippine Islands, where they are hand made by native Filipinos) and they are in some cases

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wormy, although they are practically all packed in Cellophane. While these cigars cannot be classed as "firsts" (they are "returns"), they still retain their distinctive taste associated with all Philippine (Manilla) cigars.

The manufacturing of cigars many of which are sold and shipped into the United States is a large industry in the Philippine Islands. Such cigars are not wormy and the foregoing representations in the said advertisements have had and still have a capacity and tendency to deceive the dealers and the purchasing public that Philippine cigars are wormy and in such beliefs to refuse to buy Philippine cigars. Such representations have had and still have a capacity and tendency to unfairly divert trade to respondents from their competitors engaged in the sale in the United States of cigars made in the Philippine Islands.

PAR. 6. During the year 1933, respondent, Edwin Cigar Co., Inc., made and has since made false and disparaging statements in its advertisements regarding the tobacco used by certain of its competitors in the manufacture of cigars made by such competitors. Typical of such false and disparaging statements was the following:

For God's sake and your own sake, do not use American Sumatra.

The foregoing and similar statements were in disparagement of Florida Sumatra wrappers which are extensively used in the manufacturing of cigars and constitute a large and important industry in the State of Florida and have had and still have a tendency and capacity to and do create in the minds of individuals, associations, firms, and corporations engaged in the manufacture of cigars, and on the minds of the purchasing public the impression that American Sumatra is inferior to leaf tobaccos or wrappers then being used by respondent, Edwin Cigar Co., and had a tendency and capacity to unfairly divert trade to respondents from its competitors engaged in a similar and like business because in truth and in fact the Florida Sumatra wrapper has long been recognized as and is a high quality wrapper for the manufacture of cigars.

PAR. 7. Respondent, Edwin Cigar Co., Inc., from time to time inserts and causes to be inserted in newspapers and magazines in different States of the United States, all of which have an interstate circulation, the following advertisement:

Finest Havana filler, Connecticut wrapper, broadleaf binder. 50 cigars \$1.50 postpaid, guaranteed 15 cents quality, 3 cents each for factory fresh cigars, representing 50 of the 100 cigars mild, mellow, deliciously fragrant cigars put aside by our inspectors for slight color variations, etc. We guarantee on a money back basis that you will smoke and enjoy every one of these fine cigars just as though you had paid the full retail price * * *.

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In truth and in fact the cigars so advertised and offered for sale as "finest Havana filler" were and are only partially Havana filled. Such false and misleading advertisements have had and still have the tendency and capacity to mislead and deceive dealers and the purchasing public by creating the impression and understanding that such cigars advertised and offered for sale by respondent, Edwin Cigar Co., Inc., were entirely filled with Havana tobacco and have had and still have a tendency and capacity to unfairly divert the trade to respondent from its competitors who sell in commerce between and among the various States of the United States cigars entirely of genuine Havana filler, and from those competitors of respondent in commerce between and among the various States of the United States who sell cigars not wholly composed of Havana filler but who truthfully advertise the same.

PAR. 8. In the course and conduct of its said business, respondent, Edwin Cigar Co., Inc., advertises on the wrappers placed around the containers wherein the "odd lot" and "factory seconds" cigars are packed, as well as on its letterheads, the following:

Leaf tobacco, warehouses

323 Village Street, Hartford, Connecticut,

Suffield, Connecticut

Havana, Cuba.

and also carries on its letterhead and other advertising matter a picture of a large, 12-story building, purporting to be the factory where the products of the respondent offered for sale are manufactured. In truth and in fact, respondent has no factory in Hartford, Conn., Suffield, Conn., Havana, Cuba, or elsewhere, nor has it a 12-story building in which its parts are made, but the building so advertised is No. 2338-40 Third Avenue, New York City, one floor of which was formerly rented by respondent, Edwin Cigar Co., Inc.

PAR. 9. The foregoing false and misleading representations set out in paragraph 8 hereof are made for the purpose of misleading and deceiving the buying public with reference to the size of the business conducted by respondent, Edwin Cigar Co., Inc., and to create the impression that it is much larger and more important in the cigar industry than it actually is, and thereby to add to its sales and to unfairly divert to respondent trade from its competitors.

PAR. 10. Each and all of the foregoing false, misleading, and exaggerated statements and representations hereinbefore set out had and have the capacity to mislead and deceive dealers and purchasing public into the belief that they are true and to induce them to pur-

chase the products of respondents, and to unfairly divert trade to respondents from their competitors. Thereby substantial injury is done by respondents to substantial competition in interstate commerce.

PAR. 11. The acts and practices set forth herein are to the prejudice of the public and all respondents' competitors, and constitute unfair methods of competition within the intent and meaning of Section 5, of an Act of Congress, approved September 26, 1914, and entitled "An Act to create a 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 on April 12, 1935, issued and served its complaint in this proceeding upon the respondents Edwin Cigar Co., Inc., a corporation, and James B. Hall, Jr., Inc., a corporation, charging them 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 respondents' answer thereto, testimony and evidence, in support of the allegations of said complaint were introduced by J. W. Hilldrop, attorney for the Commission, before E. M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Bennett E. Siegelstein, attorney for the respondents; and said testimony and evidence was duly recorded and filed at 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; and the oral arguments of counsel aforesaid; 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. Respondents, Edwin Cigar Co., Inc., and James B. Hall, Jr., Inc., are New York corporations with their principal offices and places of business at 100 East Sixteenth Street, New York City. They are engaged in the manufacture, sale, and distribution of cigars and leaf tobacco. Edwin Cigar Co. operates a strictly mail order business selling direct to the consuming public in direct competition with

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retailers of cigars. James B. Hall, Jr., Inc., operates a strictly wholesale business selling to jobbers and retailers.

Max Rosenbloom is president of both respondents and controls their policies and directs their activities, in effect, as one enterprise. The other officers likewise hold the same respective positions in each respondent corporation. Leonard R. Edwin, Rosenbloom's son, is vice president; J. M. Cole is secretary and general manager; and Mrs. Max Rosenbloom is treasurer. Rosenbloom, having many years' experience, is an expert in the intricacies of cigar making and is thoroughly familiar with the grades of tobacco purchased and the percentages of various kinds used in blending and with the general operation of both respondents.

The respondents, in the sale and distribution of cigars and leaf tobacco, ship said products from their factories in New York and Pennsylvania to the purchasers thereof located in various States of the United States other than New York and Pennsylvania. Other corporations, firms, and individuals are likewise engaged in the manufacture and interstate sale and distribution of cigars and leaf tobacco. Both respondents are now, and have been, actively engaged in competition with said corporations, firms, and individuals in the sale and distribution in interstate commerce of cigars and leaf tobacco.

PAR. 2. During the operation of their business over a period of several years last past, the respondents have been engaged in the manufacture and interstate sale and distribution of several types of cigars designated by them as "Factory Seconds", "Odd Lots", "Factory Throw Outs", and "Throw Outs." In soliciting the sale of these types, respondents have advertised said cigars in newspapers, magazines, and periodicals having a general interstate circulation. In said advertisements respondents have represented that the types designated and labeled "Factory Seconds", "Odd Lots", "Factory Throw Out", and "Throw Outs" are in fact "Factory Seconds", "Odd Lots", and "Throw Outs."

PAR. 3. For many years the terms "Factory Seconds", "Odd Lots", and "Factory Throw Outs", when used in the cigar-making business, have meant and have been used and understood by the manufacturers of cigars, by wholesale and retail dealers of cigars, and by the purchasing public, to mean that the cigars to which such designations have been and are applied are made of high-grade tobacco and are of high quality, but that such cigars, because of slight color variations or slight imperfections such as holes, rough ends, or over-tight or excessively loose filling, which do not affect the smoking enjoyment thereof, could not be sold at the regular price for which they were intended when manufactured. Customarily such "Factory Seconds",

"Odd Lots", and "Factory Throw Outs" are advertised and sold at prices substantially lower than the prices at which the regular grades of said cigars that do not possess such color variations and imperfections are advertised and sold.

PAR. 4. The cigars labeled and designated by the respondents as "Factory Seconds", "Odd Lots", and "Factory Throw Outs" are not "Factory Seconds", "Throw Outs", or "Odd Lots" as those terms are generally used and understood in the cigar-making industry or by the consuming public. The respondents actually manufacture relatively few high-grade cigars from which "Seconds" and "Throw Outs" could be obtained. The major portion or volume of their business is confined to the manufacture, from cheap, damaged, hail- or storm-cut, old or inferior-quality tobacco, of different cheap brands or varieties of cigars that are advertised and sold as "Factory Seconds", "Throw Outs", and "Odd Lots." These cigars are sold at prices ranging from 1 up to 4½ cents each, but generally for the price of 3 cents each. Approximately 60 percent of respondents' annual production of 14 million cigars is made up of these types that are designated as "Factory Seconds", "Throw Outs", and "Odd Lots." The statements and representations of the respondents that said cigars were in fact "Factory Seconds", "Odd Lots", and "Factory Throw Outs" have had and now have the capacity and tendency to deceive tobacco dealers and the purchasing public and to create an impression among said dealers and the purchasing public generally that the cigars so advertised and sold are made of a grade of tobacco superior to that of which they are actually made. Such statements and representations have had, and still have, the capacity and tendency to mislead and deceive said tobacco dealers and the purchasing public into purchasing said cigars in the belief that in so purchasing said cigars at, and for the prices charged they actually obtain cigars of a high quality that could not be sold for their intended sale price on account of discolorations and imperfections. The use of such false and misleading representations by the respondents in designating said cheap and inferior cigars as "Factory Seconds", "Odd Lots", and "Factory Throw Outs" serves to unfairly divert trade to the respondents from other individuals, partnerships, firms, and corporations engaged in the interstate sale and distribution of cigars that are in truth and in fact "Factory Seconds", "Throw Outs", and "Odd Lots" and who truthfully represent said cigars to be such "Factory Seconds", "Throw Outs", and "Odd Lots" and also to unfairly divert trade from competitors engaged in the interstate sale and distribution of cheap and inferior cigars of the same quality as those manufactured and sold by the respondents but who truth-

fully and properly designate and advertise the character and quality of their respective cigars.

PAR. 5. In the operation of its business the respondent, James B. Hall, Jr., Inc., has sold cigars made from inferior and cheap tobacco imported from the Philippine Islands and in advertising and soliciting the interstate sale of said cigars has made use of advertisements that unfairly disparage cigars imported from the Philippine Islands by its competitors and also unfairly disparage the quality of all cigars so imported from the Philippine Islands. The statements and representations made by said respondent, James B. Hall, Jr., Inc., indicate that an excessive period of time is required to transport cigars from Manila to the United States and that cigars so made and imported are wormy and not of good quality. Cigars imported from the Philippine Islands are not as a class wormy or of inferior grade. The statements and representations of the respondent, James B. Hall, Jr., Inc., have a capacity and a tendency to deceive tobacco dealers and the purchasing public into the erroneous belief that cigars made in the Philippines and imported to the United States are wormy and causes them to refuse to purchase said Philippine cigars on account of said belief.

One of the competitors of the respondents has adopted the trade name "Pacífico" for one brand of its cigars imported from the Philippines. Said respondent in advertising its Philippine cigars as being wormy used language that purported to set out the trade or brand name of said cigars as "Pacific-O", and that was calculated to and had the effect of confusing in the minds of dealers and members of the purchasing public the said cigars sold by it with cigars sold by said competitor. The statements and representations of said respondent unfairly disparage this brand of cigars sold and distributed by said competitor. All of said statements and representations unfairly divert trade to said respondent from competitors who are engaged in the interstate sale and distribution of cigars made in the Philippine Islands and imported into the United States.

PAR. 6. In the operation of its business the respondent, Edwin Cigar Co., Inc., has made and continues to make many false and disparaging statements in its advertisements regarding certain types of tobacco used by various competitors in the manufacture of cigars. In certain of the advertisements dealers and the public are warned against the use of American Sumatra tobacco. Such statements serve to unfairly disparage a type of tobacco grown in the States of Georgia and Florida known as American Sumatra which is used to a large extent by the trade. The respondent itself uses American Sumatra wrapper in many of its cigars but the use of said statements

has a tendency and capacity to create in the minds of tobacco dealers and members of the purchasing public the impression and belief that American Sumatra is inferior to leaf tobaccos or wrappers used by said respondent and to cause said dealers and purchasers to refuse to purchase cigars made from American Sumatra. The use of these statements serves to unfairly divert trade to said respondent from its competitors likewise engaged in manufacturing and selling cigars made with American Sumatra wrapper.

PAR. 7. In the operation of their businesses the respondents have manufactured, distributed, and now manufacture and distribute in interstate commerce certain types of cigars designated by them as being made from "Finest Havana Filler." They have inserted advertisements in newspapers and magazines of general circulation, in which they represent that said cigars are made from the "Finest Havana Filler", that such cigars are guaranteed to be 15-cent quality and are priced at from 3 to 4½ cents each on account of slight color variations and imperfections. The respondents also manufacture, distribute, and sell in interstate commerce various other types of cigars designated by use of the words "Havana", "Havana Long Filler", or "Havana Filler", or other designations, all of which serve as representations that said cigars so manufactured are made from or filled with Havana or Cuban tobacco.

From time immemorial tobacco grown on the island of Cuba has been recognized by the cigar-making industry and the consuming public as being of the very highest quality and excellence and as producing the world's finest cigar leaf. Tobacco so grown demands and receives a higher price in the market than does other tobacco and the cigars made from said tobacco generally sell for higher prices than cigars made from other tobaccos. The word "Havana" has been used and understood for many years by the cigar trade and the consuming public as the proper designation for the particular type of tobacco grown only on the island of Cuba. Havana tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in whole or in part from such tobacco. Many cigar dealers and members of the consuming public in the various States prefer to purchase cigars made from Havana tobacco rather than cigars made from tobacco grown in any other locality, and believe that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars. Many purchasers buy cigars advertised and labeled as "Havana", "Havana Filled", or "Havana Filler" cigars in preference to any other type and their preference is based on the presence of the word, Havana, in designating the cigars purchased.

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In the making of ordinary cigars a wrapper leaf is used as the outer cover, next inside is a binder leaf used to cover, hold, and shape the body or inside of the cigar which is composed of filler leaf. Usually one wrapper leaf and one binder leaf are used in the manufacture of such cigars. In the case of an extra long cigar two binder leaves may be used. The filler leaf comprises the remainder of the cigar and constitutes from 75 to 95 percent of the bulk or volume thereof. In Havana cigars the filler leaf and the wrapper leaf are of the same tobacco and no binder leaf whatever is used. The words "Clear Havana" or "Havana Cigar" used in describing a cigar mean and serve to designate, in the minds of the dealers and purchasers thereof, a cigar, including the wrapper, made 100 percent of Cuban tobacco. The terms "Havana Filler" and "Havana Filled" used in advertising or describing a cigar, mean and serve to designate in the minds of the dealers and the purchasers thereof a cigar the filler or filled portion of which contains nothing but Cuban or "Havana" cigar tobacco without any blending. A cigar filled with tobacco grown on the island of Cuba and with other tobacco not grown on the island of Cuba cannot properly be designated, advertised, and sold, according to the tobacco trade and the consuming public's understanding of the term, as "Havana Filler" or "Havana Filled."

The respondents ignore recognized standards of the tobacco industry in the manufacture of the cigars which they designate as "Havana", "Havana Filled", "Havana Filler", or "Finest Havana Filler." They do not use the finest Havana filler but purchase the cheapest type of filler, which is hail-cut, or storm-broken, scrap tobacco, full of holes which cannot be identified as Havana tobacco at all. In manufacturing the cigars sold by them and designated as "Havana", "Havana Filler", or "Havana Filled", the respondents substitute binders for filler, for the purpose of using damaged, defective binder leaves in the place of good-quality filler leaves. The respondents have made it a practice and policy to purchase this cheap, damaged, hail-cut and storm-broken tobacco for use in the manufacture of their cigars, and they use a multiple number of binder leaves, sometimes as many as eight, in making the cigars that are designated as being made from Havana filler. In the view and practice of the respondents, a cigar containing only 1 percent Havana tobacco would be entitled to be designated as "Havana Filled" without any further qualifications. The various types of cigars designated by respondents as being filled with Havana tobacco contain undetermined percentages of Havana tobacco if any at all. Respondents advertise and represent certain types of cigars made and sold by them which are composed of a blend of Havana and

other types of tobacco filler in such a way as to convey to the dealers and purchasers thereof the impression that the filled portion of the said cigars is made entirely of Havana tobacco. The various types of cigars made and sold by the respondents and advertised as being of guaranteed 15-cent quality and sold for prices ranging from 3 to 4½ cents each, are not made of the quality of tobacco used in 15-cent cigars, but are made of cheap, inferior grades of tobacco.

The respondents' use, in connection with the interstate advertising, distribution, and sale of the various types of cigars made by them—

(1) Of the words "Finest Havana Filler", to designate said cigars made from cheap, damaged, and inferior tobacco and scrap tobacco;

(2) Of the words "Havana", "Havana Filler", or "Havana Filled" to designate cigars the filler of which is composed either wholly or partially of tobacco other than Cuban or Havana tobacco; and

(3) Of an excessive number of binder leaves to take the place of the customary filler leaves generally used under standards recognized in the manufacture of "Havana", or "Havana Filled" or "Havana Filler" cigars;

has the tendency and capacity to mislead and deceive members of the tobacco trade and the consuming public into the erroneous and mistaken beliefs that cigars made by the respondents and thus designated or described were—

(1) Actually made wholly from, or that the filler thereof was made wholly from the finest quality of tobacco leaf imported from the Island of Cuba;

(2) Made in such a manner that the filler or filled portion of said cigars was composed wholly and entirely of Cuban or Havana tobacco; and

(3) Duly and properly filled with such Cuban tobacco leaf in conformity with accepted and well known customs and standards.

As a result of these beliefs many dealers and members of the consuming public purchase the various types of cigars made and distributed by the respondents in preference to cigars made and distributed by their competitors who, in the sale of cigars not made entirely of Havana tobacco, or not filled entirely with Havana tobacco, or not made of the finest grade of Havana tobacco, do not represent in any way that their said cigars are so made or filled entirely with Havana tobacco and do not use the terms "Havana Filler", "Havana Filled", "Finest Havana Filler", or similar terms in any way to create confusion in the minds of the purchasers of said cigars as to the nature or quality thereof.

The use of such representations as are herein set out by the respondents serves to unfairly divert trade from said competitors to

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the respondents and also to unfairly divert trade from competitors who actually make, distribute, and sell cigars made wholly from Havana tobacco or filled wholly with Havana tobacco or made of the finest grade of Cuban tobacco who truthfully advertise and represent the nature and quality of the cigars made and sold by them. The representations, acts, and practices of the respondents as herein set out also serve to substantially injure both classes of said competitors in the conduct of their respective businesses.

CONCLUSION

The acts and practices of the respondents are each and all to the prejudice of the public and of the competitors of the respondents and constitute unfair methods of competition in commerce, within the meaning and intent 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 by the Federal Trade Commission on the complaint of the Commission, the answer of the respondents, testimony and evidence taken before E. 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 and oral arguments by John W. Hilldrop, counsel for the Commission, and by Bennett E. Siegelstein, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents Edwin Cigar Co., Inc., a corporation, and James B. Hall, Jr., Inc., a corporation, their respective officers, agents, representatives, and employees, in connection with the distribution, offering for sale, and sale of cigars, in interstate commerce, forthwith cease and desist from:

(1) Representing in their advertising literature or in any other manner, by use of the words "Odd Lots", "Factory Seconds", and "Factory Throw Outs", or words of similar import and meaning, either directly or otherwise, that the cigars manufactured, sold, and distributed by them are factory seconds, odd lots, or factory throw-outs unless and until said cigars so manufactured, advertised, and represented are in fact factory seconds, throw-outs, and odd lots

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resulting from normal manufacturing processes and are not cigars manufactured in mass or bulk for the purpose of being designated and sold as odd lots, factory seconds, and factory throw-outs;

(2) Representing either directly or by implication that the cigars made and sold by them are composed of a grade and quality of tobacco superior to or more costly than the grade of tobacco of which said cigars are actually made; or that their cigars customarily sell, or have customarily sold, for a price substantially greater than the price at which cigars of the same grade and quality are actually and customarily made to sell or are actually sold;

(3) Representing, by use of the words "Finest Havana Filler" or words of similar import and meaning, either alone or in conjunction with other words, directly or otherwise, to describe or designate cigars made and sold by them, that said cigars are actually composed of and made from the finest Havana filler unless and until the filler of said cigars is composed wholly and entirely of the finest grade of Cuban or Havana tobacco and said cigars are made and filled in conformity with the manufacturing practices and standards obtaining in the manufacture of genuine Havana filler cigars;

(4) Representing, by use of the words "Havana Filler", "Havana Filled", or words of similar import and meaning, either alone or in conjunction with other words, directly or otherwise, that the filler or filled portion of the cigars made and sold by them is made wholly and entirely of tobacco grown in and imported from the island of Cuba unless and until the filler or filled portion of said cigars is actually composed wholly and entirely of tobacco grown in and imported from the island of Cuba and said cigars are made and filled in conformity with practices and standards followed in the manufacture of genuine Havana filled cigars; and

(5) Using the words "Havana Filler", "Havana Filled", or words of similar import and meaning either alone or in conjunction with other words, directly or otherwise, to describe and designate cigars made by them in the making of which an excessive number of binder leaves are used and in which recognized standards followed in the making of cigars containing Havana filler are not complied with.

It is further ordered, That Edwin Cigar Co., Inc., its officers, agents, representatives, and employees in connection with the distribution and sale in interstate commerce of cigars, forthwith cease and desist from:

Representing, circulating, publishing, or causing to be represented, published, or circulated, any false, deceptive, or disparaging statements concerning tobacco grown chiefly in the States of Georgia and Florida commonly designated as American Sumatra tobacco.

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It is further ordered, That James B. Hall, Jr., Inc., its officers, agents, representatives, and employees in connection with the distribution and sale in interstate commerce of cigars, forthwith cease and desist from:

(1) Representing or advertising in any way that tobacco leaf grown in, or cigars imported from, the Philippine Islands are of inferior grade or are wormy; and

(2) Representing, by using in its advertising in any way, the words "Pacific" or "Pacifico", either alone or in conjunction with other words in such a way as to import or imply to purchasers of cigars sold by it that said cigars are the cigars made and sold by any competitor under the trade name "Pacifico" or "Pacificos."

It is further ordered, That the respondents shall within 60 days after the service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set out.

Complaint

IN THE MATTER OF
RADIATOR SPECIALTY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2586. Complaint, Oct. 17, 1935—Decision, Apr. 6, 1936*

Where a corporation engaged in sale of a cleaning fluid under name "Perfo"—

- (a) Represented on labels affixed to containers of said cleaner and on showcase or display cards that said preparation would remove spots without injury to color or fabric through such statements as "Does not injure the most delicate fabrics", facts being on fabrics or material dyed with certain kinds of dyes such as nonfast dyes it impairs and affects the colors thereof by causing the same to bleed or run; and
- (b) Represented on such labels and showcards that use thereof left no spot or ring through such statements as "Absorbs the spot" and "Leaves no rings", facts being that its use on certain fabrics or materials and under certain conditions or circumstances does result in appearance of a spot or ring on such fabrics or materials;

With effect of misleading and deceiving purchasing public in aforesaid respects and inducing it to buy said cleaning product in such erroneous belief and of affording retail merchants opportunity to perpetrate a fraud on such public and of diverting unfairly trade to it from competing individuals and concerns engaged in sale of similar products truthfully and honestly advertised and labeled by them and with tendency and capacity so to mislead, deceive, and divert:

Held, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Richard L. Kennedy for the Commission.

Mr. Richard G. Thigpen, of Charlotte, N. C., 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 Radiator Specialty Co., a corporation, hereinafter referred to as 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, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of