

Syllabus

IN THE MATTER OF
ATLANTIC COAST OIL COMPANY OF NEW YORK, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914.*Docket 2865. Complaint, June 30, 1936—Decision, Sept. 25, 1936*

Where an association, in continuous operation for years and composed of practically all the refiners of motor oil produced from the Pennsylvania strata of oil fields, and of a large number of jobbers and distributors of such motor oil, organized to promote sale thereof, had caused large sums of money to be spent for such purpose and adopted emblem distinctive in arrangement, shape, color, and wording, and featuring words "Guaranteed 100 Per Cent Pure Pennsylvania Oil", for use by members on their labels and advertising to signify that distributor was an association member and that oil sold under emblem was pure, unadulterated oil, produced from said strata, so that, as result of such adoption and association activities, said emblem and name "Pennsylvania", together with derivations thereof, had acquired a very definite and valuable secondary meaning to purchasing public in connection with sale of motor oil as indicating and suggesting a pure, unadulterated oil produced from said Pennsylvania strata, such as decidedly preferred by substantial portion of consuming public; and thereafter a corporation engaged in business of blending and wholesaling motor oils and greases in competition with others similarly engaged—

- (a) Caused its products to be offered for sale and sold in cans or containers bearing aforesaid emblem, together with phrase "Guaranteed 100 Per Cent Pure Pennsylvania Oil Specially Processed", and either word "Pennsylvania" or some derivation thereof and phrase "Permit No. —", so as to indicate that said oil was pure, unadulterated Pennsylvania oil and that it was a member of said association, notwithstanding fact that oil in question was not such a product, but was composed of a blend of oils produced from other territories, and it was not a member of association in question, nor entitled to use emblem thereof or word "License" or "Permit" therewith, or word "Pennsylvania" or any derivation thereof in connection with offer and sale of its products; and

Where the Society of Automotive Engineers had developed a system of numbers to indicate viscosities of motor oils and said system of letters and numbers, through long usage, had come to have a very valuable and secondary meaning when used in connection with sale of such products, for which, as thus correctly described, there was a very definite preference on the part of a substantial portion of consuming public; and thereafter aforesaid corporation—

- (b) Caused to appear on cans and containers in which its products were packaged and sold, lettering and numbers used by said society in system thus developed by it to indicate relative viscosities, notwithstanding fact oil thus offered and sold by it under said letters and numbers did not have viscosity thus indicated;

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With capacity and tendency to confuse, mislead, and deceive trade and public through use of said emblem, etc., and said lettering and numbers, etc., and with result of inducing their purchase of said corporation's products in the belief that they were buying a pure and unadulterated oil or grease produced from the Pennsylvania strata, etc., and oils of the true viscosity indicated by such letters and numbers, etc., and with result of thereby placing in the hands of its jobbers, distributors, and retailer purchasers means of deceiving ultimate consumer, and of unfairly diverting trade from its competitors to it and to dealers in its said products; to the substantial injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John Darsey for the Commission.

Mr. Robert Stillman, 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 Atlantic Coast Oil Company of New York, Inc., hereinafter 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, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Atlantic Coast Oil Company of New York, Inc., is a corporation existing by virtue of the laws of the State of New York, with its principal place of business located at Dry Harbor Road and Cooper Avenue, Glendale, Queens, New York City. For several years last past the respondent has been engaged in the business of blending and wholesaling motor oils and greases, in commerce between and among the various States of the United States, causing the said products, when sold, to be shipped or transported from its place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York. In the course and conduct of its business, the respondent has been and is in substantial competition with other partnerships, corporations, firms, and individuals likewise engaged in the business of wholesaling motor oils and greases in commerce as hereinabove described.

PAR. 2. The Pennsylvania Grade Crude Oil Association is a non-profit corporation organized in 1923, and has been in continuous

operation since that time. Its membership is composed of practically all of the refiners of motor oil produced in the Pennsylvania strata of oil fields and a large number of jobbers and distributors thereof. Its purpose has been and is to promote the sale of oil produced in the Pennsylvania strata of oil fields, and large sums of money have been spent to this end. The Association adopted an emblem to be used by each member on their labels and advertising matter, which signifies that such distributor is a member of the Association, and that oil sold under said emblem is a pure, unadulterated oil produced in the Pennsylvania strata of oil fields, and a bond is given by each member to assure these conditions to be true. The emblem is quite distinct in arrangement of shape, coloring, and wording, the featured wording being "Guaranteed 100% Pure Pennsylvania Oil". As the result of the activity of the Association the emblem described supra, as well as the name "Pennsylvania" together with derivations thereof, have acquired a very definite and valuable secondary meaning to the purchasing public when used in connection with the sale of motor oils; they indicate and suggest a pure, unadulterated oil produced in the Pennsylvania strata of oil fields for which a substantial portion of the consuming public have a very decided preference.

PAR. 3. The Society of Automotive Engineers has developed a system of numbers to indicate relative viscosities in motor oils, and through long usage this system of letters and numbers has come to have a very definite and valuable secondary meaning when used in connection with the sale of motor oils. The lower numbers used in the system developed by this Society indicate lighter oils to be used in low temperature, while the higher numbers indicate heavier oils to be used in higher temperature or fast driving, and there is a very definite preference on the part of a substantial portion of the consuming public for oils of the true viscosity indicated by said numbers.

PAR. 4. In the course of sale of its motor oils and greases the respondent causes its products to be offered for sale and sold, in commerce as described supra, in cans bearing the emblem of the Pennsylvania Grade Crude Oil Association, the phrase "Guaranteed 100% Pure Pennsylvania Oil, Specially Processed", the word "Pennsylvania" or some derivation thereof, the phrase "Permit No. —" together with said emblem, so as to indicate that the oil contained in said cans is a pure, unadulterated Pennsylvania oil or an oil produced in the Pennsylvania strata of oil fields, and also that the respondent is a member of the Pennsylvania Grade Crude Oil Association, when in truth and in fact the oil contained in the said containers is not a

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pure and unadulterated Pennsylvania oil but is one composed of a blend of oils produced in other territories, and when in truth and in fact the respondent is not a member of the Pennsylvania Grade Crude Oil Association and is not entitled to use the emblem of said association, or the word "license" or "permit", together with said emblem, or the word "Pennsylvania" or any derivation thereof, in connection with the offering for sale and sale of its products.

In the course of offering for sale and sale of its products the respondent also causes to appear on cans and containers in which its products are packaged the lettering and numbers used by the Society of Automotive Engineers in the system which it has developed to indicate relative viscosities in motor oils, when in truth and in fact the oil offered for sale and sold by respondent under said letters and numbers does not have the viscosity indicated by the letters and numbers so used.

PAR. 5. The use by respondent of the emblem of the Pennsylvania Grade Crude Oil Association, the word "Pennsylvania" or any derivation thereof, the word "license" or "permit" together with said emblem, the lettering and numbers used by the Society of Automotive Engineers to indicate relative viscosities, in connection with the offering for sale and sale of its motor oils and products as aforesaid, has the capacity and tendency to confuse, deceive and mislead the trade and public, and is calculated to and does confuse, deceive, and mislead the trade and public, and as a result of said acts and practices the trade and public are induced to buy respondent's products in the beliefs that they are purchasing a pure and unadulterated motor oil or grease produced in the Pennsylvania strata of oil fields, and that they are purchasing oils of the true viscosity indicated by the letters and numbers on the containers in which respondent's oils are packaged. That through and by virtue of the aforesaid acts and practices the respondent has placed and is placing in the hands of its jobbers, distributors, and retailer purchasers the means of deceiving the ultimate consumer. In consequence of the aforesaid acts and practices trade is unfairly diverted from respondent's competitors and from dealers in the products of respondent's competitors to the respondents and dealers who sell respondent's products. Substantial injury is thereby done by respondent to substantial competition in commerce, as hereinabove set forth.

PAR. 6. The acts and things done by respondent, and the methods and practices employed, used and indulged in by it, as hereinabove alleged, described, and set forth, are all to the injury and prejudice of the public and to respondent's competitors, and constitute unfair methods of competition in interstate commerce within the intent and

meaning 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."

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 June 30, 1936, issued and served its complaint in this proceeding upon respondent, Atlantic Coast Oil Company of New York, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 24, 1936, the respondent filed its answer in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now 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. The Atlantic Coast Oil Company of New York, Inc., is a New York corporation with its principal place of business located at Dry Harbor Road and Cooper Avenue, Greendale, Queens, New York City. It has for several years last past been engaged in the business of blending and wholesaling motor oils and greases, in commerce between and among the various States of the United States. It causes its products when sold to be shipped or transported from its place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York. It has been and is in substantial competition with other partnerships, corporations, firms, and individuals likewise engaged in the business of wholesaling motor oils and greases in commerce between and among the various States of the United States.

PAR. 2. The Pennsylvania Grade Crude Oil Association is a non-profit corporation organized in 1923, and has been in continuous

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operation since that time. Its membership is composed of practically all of the refiners of motor oil produced from the Pennsylvania strata of oil fields, and also a large number of jobbers and distributors thereof. It was organized to promote the sale of said oil and it has caused large sums of money to be spent to this end. The association adopted an emblem to be used by each member on their labels and advertising matter, which emblem signifies that such distributor is a member of the association, and that oil sold under the said emblem is a pure, unadulterated oil produced from the Pennsylvania strata of oil fields. A bond is given by each member to assure that said members will maintain the prescribed standard. The emblem is quite distinct in arrangement of shape, color, and wording, the featured wording being "Guaranteed 100 Per Cent Pure Pennsylvania Oil." Pursuant to the activities of the association, the emblem described *supra*, as well as the name "Pennsylvania", together with derivations thereof, has acquired a very definite and valuable secondary meaning to the purchasing public when used in connection with the sale of motor oil. They indicate and suggest a pure, unadulterated oil produced from the Pennsylvania strata of oil fields for which a substantial portion of the consuming public have a very decided preference.

PAR. 3. The Society of Automotive Engineers has developed a system of numbers to indicate relative viscosities in motor oils. Through long usage this system of letters and numbers has come to have a very definite and valuable secondary meaning when used in connection with the sale of motor oils. The lower numbers used in the system developed by this society indicate lighter oils to be used in low temperatures, while the higher numbers indicate heavier oils to be used in higher temperatures or fast driving. There is a very definite preference on the part of a substantial portion of the consuming public for oils of the true viscosity indicated by said numbers.

PAR. 4. The Atlantic Coast Oil Company of New York, Inc., caused its products to be offered for sale and sold in commerce, as described *supra*, in cans or containers bearing the emblem of the Pennsylvania Grade Crude Oil Association, the phrase "Guaranteed 100 Per Cent Pure Pennsylvania Oil Specially Processed", the word "Pennsylvania" or some derivation thereof, the phrase "Permit No. —" together with said emblem, so as to indicate that the oil contained in said cans or containers is a pure, unadulterated Pennsylvania oil, and also that respondent is a member of the Pennsylvania Grade Crude Oil Association. In truth and in fact the oil contained in the said containers is not such an oil as indicated, but is one composed of a blend of oils produced from other territories. In truth

and in fact the respondent is not a member of the Pennsylvania Grade Crude Oil Association and is not entitled to use the emblem of said association, or the word "License" or "Permit", together with said emblem, or the word "Pennsylvania" or any derivation thereof, in connection with the offering for sale and sale of its products.

The Atlantic Coast Oil Company of New York, Inc., also causes to appear on cans and containers in which its products are packaged and sold the lettering and numbers used by the Society of Automotive Engineers in the system which it has developed to indicate relative viscosities in motor oils. In truth and in fact the oil offered for sale and sold by it under said letters and numbers does not have the viscosity indicated by the letters and numbers so used.

PAR. 5. The use of the emblem of the Pennsylvania Grade Crude Oil Association, the word "Pennsylvania" or any derivation thereof, the word "License" or "Permit" together with said emblem, the lettering and numbers used by the Society of Automotive Engineers to indicate relative viscosities, by the Atlantic Coast Oil Company of New York, Inc., in connection with the offering for sale and sale of its motor oils and products as aforesaid, is calculated to and has the capacity and tendency to confuse, deceive, and mislead the trade and public. As the result of said acts and practices the trade and public are induced to buy respondent's products in the belief that they are purchasing a pure and unadulterated oil or grease produced from the Pennsylvania strata of oil fields, and that they are purchasing oils of the true viscosity indicated by the letters and numbers on the containers in which respondent's oils are packaged. Through and by virtue of the aforesaid acts and practices the respondent has placed and is placing in the hands of its jobbers, distributors, and retailer purchasers the means of deceiving the ultimate consumer, and as the result trade is unfairly diverted from respondent's competitors, to the respondent and dealers who sell respondent's products. Substantial injury is thereby done by respondent to competition in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, Atlantic Coast Oil Company of New York, Inc., a corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning 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."

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Atlantic Coast Oil Company of New York, Inc., a corporation, its officers, representatives, agents, and employees in connection with the offering for sale, sale and distribution of its motor oils and greases in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Representing through the use of the emblem of the Pennsylvania Grade Crude Oil Association that it is a member of said association, unless and until such is the case.

(2) Representing through the use of the emblem of the Pennsylvania Grade Crude Oil Association, the phrase, "Guaranteed 100 Per Cent Pure Pennsylvania Oil, Specially Processed", the word "Pennsylvania" or any derivation thereof, the phrase "Permit No. —", or the word "License" together with said emblem, that the oil or greases being offered for sale or sold by it are pure, unadulterated Pennsylvania oils or greases produced in the Pennsylvania strata of oil fields, unless and until such is the case.

(3) Representing, through the use of the letters and numbers developed by the Society of Automotive Engineers to indicate relative viscosities in motor oils, that the products being offered for sale and sold have the viscosities indicated by said numbers and letters, when such is not the case.

It is further ordered, That the respondent shall, within 60 days after 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 with this order.

Syllabus

IN THE MATTER OF
ACME DISTILLERIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2370. Complaint, Apr. 22, 1935—Decision, Sept. 29, 1936

Where a corporation engaged in rectifying, blending, and bottling whiskies, brandies, rum, gin, and other spirituous beverages, and neither distilling such whiskies, etc., by process of original and continuous distillation through closed pipes and vessels until manufacture is complete, nor owning, operating, or controlling a place or places where such beverages are made by process of distillation, but purchasing its distilled spirits requirements from distillers, and selling its said rectified and bottled products among the various States, in competition with corporations, firms, etc., engaged in manufacture and distillation of whiskies, etc., and who truthfully use words "Distillery," "Distilleries," "Distillers," or "Distilling" as part of their corporate or trade names and on their stationary and on labels of bottles in which they sell and ship such products, and in competition with corporations, etc., engaged in rectifying, blending, and bottling whiskies, etc., and who do not use said words as a part of their said names, etc.—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery and on labels attached to bottles in which it sold and shipped its said products, and in various other ways, that its said whiskies, brandies, rum, gin, and other spirituous beverages, thus contained and labeled, were by it made through process of distillation, and furnished its said customers with means of similarly misrepresenting said products as thus made to their own customer retailer vendees and to ultimate consuming public, as case might be;

With effect of misleading and deceiving dealers and purchasing public into belief that said whiskies, etc., sold by it were by it made and distilled, and with capacity and tendency so to do and to induce dealers and purchasing public, in such belief, to buy said whiskies, etc., thus rectified, blended, and bottled by it, and with effect of diverting trade thereby to it from competitors who did not, through their trade or corporate names, or in any other manner, misrepresent that they were manufacturers by distillation of whiskies, and other spirituous beverages; to the substantial injury of substantial competition in commerce:

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

Before Mr. John W. Bennett, trial examiner:

Mr. PGad B. Morehouse and Mr. DeWitt T. Puckett for the Commission.

Nash & Donnelly, of Washington, D. C., and Mr. I. William Schimmel, of Baltimore, Md., for respondent.

¹ Count 2 of the complaint, under the National Industrial Recovery Act, dismissed.