

IN THE MATTER OF
CAREY SALT COMPANY¹

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

Docket 2516. Complaint, Aug. 14, 1935—Decision, Dec. 3, 1936

Where a corporation engaged in the production and sale of a product which consisted of salt, treated with pyroligneous liquor or acid, secured through destructive distillation of wood in the absence of air, with the addition of pepper, saltpeter, and sugar, and of caramel or burnt sugar, to produce the honey-brown color associated by the trade and public with products subjected to or impregnated or treated with natural wood smoke—

(a) Described said product as "Smoke Salt," and featured said designation on the labels of the containers in which the same was offered, distributed, and sold, and repeatedly made use thereof in the printed directions for use on one side of the label, and likewise made use thereof in advertising its said product in a booklet distributed among purchasers and prospective purchasers; and

(b) Represented, in advertising its said product through radio broadcasting and in periodicals, newspapers, booklets, and pamphlets, that its said so-called "Smoke Salt" cured and smoke-flavored meat in one operation, and that it was "a thousand times better than the old smokehouse," and that meat treated with it acquired therefrom the same taste and other properties or effects as it acquired from treatment with salt and subsequent exposure to the smoke from burning wood during process and course of combustion, through such statements as " * * * perfect improved meat cure that takes all guesswork out of home meat-curing," "Old-timers' in butchering and curing meats at home amazed!", "Cures and Smoke-Flavors Meat in one Operation . . . Quicker . . . Easier . . . With Never-Failing, Uniform Results!", " * * * a great step forward in home-curing methods * * * Reduces the whole curing process * * * into one single operation * * *", "experts, familiar with used meat-curing methods, * * * amazed at the extra fine flavor," " * * * made of pure * * * meat salt * * * combined with well-balanced sugar-cure—and flawless, doubly refined and condensed wood smoke";

Notwithstanding fact that its said "Smoke Salt" had not been, as signified to consuming public from use of such a word, smoked with natural wood smoke, nor subjected directly or at all to such smoke, and had not derived from such smoke and did not have either its qualities and properties

¹Through subsequent Commission action, effective date for report of compliance with order in the instant matter was extended until such time as the Commission rendered its final decisions in *Smoke Salt Products Co., et al.*, Docket 2783, and *Pennsylvania Salt Manufacturing Co., et al.*, Docket 2784, subject, however, to amendments or revocation at any time if such action appeared warranted in the discretion of the Commission, and through later Commission action relating to its aforesaid stay order, it was directed that the matter "remain *in fieri* without prejudice to the right of the Commission forthwith to enter such final order as seems just at or after the Commission's final decision in the matter" of the aforesaid two cases.

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for, or its efficacy in, curing, preserving, smoking, or flavoring meats as in the conventional smokehouse or as in the operation or course of similar of equivalent processes, and could not, by virtue of the nature thereof, do the complete job of curing meats nor the curing and smoking of meats in one operation;

With capacity and tendency to mislead and deceive retail dealers into the belief that so-called "smoke salt" was a product subjected directly to the action and effect of, or impregnated or treated with, the smoke of burning wood during the process or course of its combustion, and that it could do the complete job of curing and smoking meat in one operation, and into purchase thereof in reliance on such erroneous belief, and with result of placing in the hands of retail dealer vendees the means whereby they were enabled to and did mislead and deceive the consuming public into the belief that its said product had been smoked with natural wood smoke and that application and use thereof would do the complete job of curing and smoking meats as hereinabove set forth, and into purchase thereof in reliance on such erroneous belief, and of diverting trade to it from competitors engaged in the sale of salt, truthfully represented and described, for the purpose, among others, of curing and preserving meat, in substantial competition with it; to said competitor's substantial injury:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. James M. Brinson for the Commission.

Williams, Martindell & Carey, of Hutchinson, Kans., 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 Carey Salt Company has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charge in that respect as follows:

PARAGRAPH 1. Respondent, Carey Salt Company, is now and for several years last past has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business at Hutchinson in said State.

It has been and is engaged in the production of salt and its sale in commerce among and between the State of Kansas and the various other States of the United States and the District of Columbia. It causes its product, when sold, to be transported from its said place

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of business in the State of Kansas to purchasers located in the various other States of the United States and in the District of Columbia.

In the course and conduct of such business respondent, Carey Salt Company, has been and is engaged in competition with individuals, partnerships, and corporations offering for sale and selling salt of any kind in interstate commerce.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, it has been and is the practice of respondent, Carey Salt Company, to offer for sale and sell a product which it has designated and described, and continues to designate and describe, as "Smoke-Salt."

The label on the container in which such product is sold carries the legend consisting in part of the words "Carey-Ized," beneath which appears the word "Salt" under which are the words "Smoke-Salt," all in large and conspicuous letters. On one side of the label there are printed directions wherein the words "Smoke-Salt" repeatedly appear.

Respondent has advertised its product in the booklet which describes it throughout as "Smoke-Salt." This booklet it has caused to be distributed in the various States of the United States among purchasers and prospective purchasers. Respondent also has advertised its product by means of radio broadcasting and in magazines, newspapers, booklets, pamphlets, and leaflets. In such advertisements it has representations and statements such as the following:

New Carey-Ized smoke-salt great boon to farmers.

Famous Carey laboratories perfect improved meat cure that takes all guess work out of home meat-curing.

A thousand times better than the old smokehouse.

Our hams are never under cured or too smoky.

"Old-timers" in butchering and curing meats at home amazed!

Cures and Smoke-Flavors Meat in One Operation * * * Quicker * * * Easier * * * With Never-Failing, Uniform Results!

Already thousands who thought they were satisfied with older methods are turning to this new and vastly better way! Proving for themselves that "Carey-ized" Smoke-Salt is a great step forward in home-curing methods. For it gives better quality meats that stay good longer. Reduces the whole curing process—salting, sugar-curing and smoke-flavoring—into one single operation * * * and then does the complete job quicker, easier, more thoroughly than ever before.

Yes, the experts, familiar with usual meat-curing methods, were frankly amazed at the extra fine flavor "Carey-ized" Smoke Salt gives hams and bacon. Yet there's a real reason for better flavor—surer results. "Carey-ized" Smoke-Salt is made of pure, Carey meat salt, of just the right grain and strength, combined with a well-balanced sugar-cure—and flawless, doubly refined and condensed wood smoke.

Carey-ized Smoke-Salt ends the drudgery, expense and varying results of the old smoke-house method.

In truth and in fact the word "Smoked" and the word "Smoke" used in connection with salt offered for sale or sold for curing, preserving, smoking or flavoring meats have for many years signified and meant to dealers wholesale and retail and the consuming public, and now signify and mean to them, particularly that portion thereof engaged or interested in the curing of meats, that the salt so described or designated has been subjected to the action and effect of, or to impregnation or treatment with, the smoke of burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke properties or smoke effects for use in curing, preserving, smoking, or flavoring meats.

The product which respondent sells to the public described and designated as "Carey-ized Smoke-Salt" or as "Smoke-Salt" has not been and is not smoked salt or smoke salt as understood by the consuming public. Such product has not been and is not subjected to the action and effect of, or impregnated or treated with, the smoke of burning wood during its process of combustion sufficiently to acquire from such source alone its smoke effects or smoke properties, or at all. It consists of salt, sugar, saltpeter, pepper red and black, and a so-called condensed smoke, such condensed smoke being pyroligneous acid or a concentrate thereof, produced from or by the destructive distillation of wood.

PAR. 3. There have been for many years last past and now are individuals, partnerships, and corporations offering for sale and selling salt of various kinds in interstate commerce, including smoke salt, truthfully described and designated.

PAR. 4. The practices of respondent, as described in paragraph 2 hereof, have had and have the capacity and tendency to mislead and deceive, and have misled and deceived, and do mislead and deceive dealers, wholesale and retail, and the consuming public into the belief that respondent's said product has been treated or impregnated with, or subjected to the action and effect of the smoke of burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke effects and properties, and into the purchase of respondent's said product in reliance upon such erroneous belief.

PAR. 5. The above and foregoing practices of respondent have had and have the capacity and tendency to divert, have diverted and do divert trade to respondent from competitors offering for sale or selling in interstate commerce white salt or salt smoked in accordance with the significance and meaning of the words "Smoke" or "Smoked" used in connection with salt for curing, preserving, smoking or flavoring meats as described in paragraph 2 hereof.

PAR. 6. The above and foregoing practices of respondent have been and are all to the prejudice of the public and respondent's competitors and in violation of the provisions 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 the 13th day of November 1934, issued and thereafter caused to be served upon respondent, Carey Salt Company, its complaint in this proceeding, 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, a stipulation subject to the approval of the Federal Trade Commission, and which hereby is approved, was introduced by James M. Brinson, counsel for the Commission and W. D. P. Carey of Williams, Martindell and Carey, of Hutchinson, Kans., counsel for the respondent, before Robert S. Hall, an examiner theretofore duly designated by it whereby and wherein there were adopted and accepted as testimony and other evidence for the purpose of this proceeding all testimony taken and evidence received of a general character in the matters of Morton Salt Company, Docket 2150, Jefferson Island Salt Company, Docket 2151, Myles Salt Company, Docket 2152 and Avery Salt Company, Docket 2248. This stipulation, testimony and evidence were reduced to writing and filed in the office of the Commission. Thereafter the proceeding regularly came on the final hearing before the Commission on the said complaint, the answer thereto, the testimony and evidence admitted by the stipulation aforesaid, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel having been waived, 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 report stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carey Salt Company, is now and for several years last past has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas,

with its principal office and place of business at Hutchinson in said State.

It has been and is engaged in the production of salt and its sale in commerce among and between the State of Kansas and the various other States of the United States and the District of Columbia. It causes its product, when sold, to be transported from its said place of business in the State of Kansas to purchasers located in the various other States of the United States and in the District of Columbia.

In the course and conduct of such business respondent, Carey Salt Company, has been and is engaged in substantial competition with individuals, partnerships, and corporations offering for sale and selling salt of any kind in interstate commerce.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, it has been and is the practice of respondent, Carey Salt Company, to offer for sale and sell to retail dealers, a product which it has designated and described, and continues to designate and describe, as "Smoke Salt."

The label on the container in which such product is offered for sale, distributed and sold, carries the legend consisting in part of the words "Carey-Ized" beneath which appears the word "Salt" under which are the words "Smoke Salt," all in large and conspicuous letters. On one side of the label there are printed directions wherein the words "Smoke Salt" repeatedly appear.

Respondent has advertised its product in a booklet which describes it throughout as "Smoke Salt." This booklet it has caused to be distributed in the various States of the United States among purchasers and prospective purchasers. Respondent also has advertised its product by means of radio broadcasting and in magazines, newspapers, booklets, pamphlets, and leaflets. In such advertisements it has representations and statements such as the following:

New Carey-Ized smoke-salt great boon to farmers.

Famous Carey laboratories perfect improved meat cure that takes all guess-work out of home meat-curing.

A thousand times better than the old smokehouse.

Our hams are never undercured or too smoky.

Old-timers' in butchering and curing meats at home amazed!

Cures and Smoke-Flavors Meat in one Operation . . . Quicker . . . Easier . . .

With Never-Failing, Uniform Results!

Already thousands who thought they were satisfied with older methods are turning to this new and vastly better way! Proving for themselves that "Carey-ized" Smoke-Salt is a great step forward in home-curing methods. For it gives better quality meats that stay good longer. Reduces the whole curing process—salting, sugar-curing and smoke-flavoring—into one single operation . . . and then does the complete job quicker, easier, more thoroughly than ever before.

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Yes, the experts, familiar with usual meat-curing methods, were frankly amazed at the extra fine flavor "Carey-ized" Smoke Salt gives hams and bacon. Yet there's a real reason for better flavor—surer results. "Carey-ized" Smoke-Salt is made of pure, Carey meat salt, of just the right grain and strength, combined with a well-balanced sugar-cure—and flawless, doubly refined and condensed wood smoke.

Carey-ized Smoke Salt ends the drudgery, expense and varying results of the old smoke-house method.

In truth and in fact, wood smoke, as commonly understood by the public is the product or result of the incomplete or imperfect combustion of wood, in the presence of air. The word "Smoke," and the word "Smoked" used in connection with salt offered for sale, distributed, or sold, for curing, preserving, smoking, or flavoring meats, or any other word or words used in such connection implying smoke, or use of smoke, have, for a considerable period of time signified and meant and now signify and mean, to the consuming public, that the product to which the word "Smoke," or "Smoked" or any word, or words, implying smoke or use of smoke is applied, has been or is smoked with natural wood smoke, that is, subjected directly to the action and effect of, or to treatment or impregnation with smoke produced by burning wood, during the process and course of its combustion, sufficiently to acquire from such source alone smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

The product which respondent offers for sale, distributes and sells to retail dealers and through them to their customers the consuming public, described and designated as "Smoke Salt" has not been and is not smoked with natural wood smoke. It has not been and is not subjected directly or at all to such smoke, that is, smoke produced by burning wood during the process and course of its combustion. It has not acquired or derived from such smoke, and has not had and does not have, either its qualities and properties for, or its efficacy in, curing, preserving, smoking, or flavoring meats, as in the conventional smoke house, or as in the operation or course of similar or equivalent processes. It can do neither the complete job of curing and smoking meats, nor the curing and smoking of meats in one operation. The product of respondent consists of salt, treated with a liquid known as pyroligneous liquor or acid, to which are added pepper, saltpeter, sugar, and caramel or burnt sugar.

Pyroligneous liquor or acid is manufactured by a process known and described as the destructive distillation of wood. This process requires the absence of air for its efficiency in recovery of the maximum amount of the constituents or products of the wood. As a result of this necessity, air is excluded from the retort in which the decomposition of the wood is accomplished by the external applica-

tion of heat. The only opening in the retort when the process is in operation is that leading into the condensing apparatus. It affords no entrance for air but, on the contrary, provides an exit through which air present in the retort and in the wood is expelled as soon as the vapors or fumes, and other material or products in the wood commence their passage into the condensing apparatus. This absence of air and consequently of combustion effects in the course of the destructive distillation recovery of all condensible material resulting from decomposition of the wood. The distillate so produced, pyroligneous liquor, contains therefore many substances which would be destroyed in the course of combustion or incomplete or imperfect combustion of wood, or would escape into the atmosphere, and which have not been discovered or identified in the smoke produced by burning wood in the process and course of its combustion. The application of respondent's product, treated with such pyroligneous liquor, to meats, therefore, necessarily subjects them to an entirely different treatment under different atmospheric and other conditions than does the conventional smokehouse method, or equivalent processes in which natural wood smoke is employed.

A product exposed to the dense natural wood smoke of the smokehouse or its equivalent is subjected to conditions which the application of pyroligneous liquor or acid does not and cannot supply, and salt treated with such liquor or acid also fails to supply such conditions. Pyroligneous liquor or acid subjects the product with which it is treated and such product subjects meats to which it is applied to the action and effect of numerous substances never found in smoke and which do not and cannot serve as a substitute for the conditions and effects of natural wood smoke operating in the smokehouse or its equivalent processes. This fact is emphasized by the practice of respondent, in adding caramel or burnt sugar, as an ingredient, to its product, in order to produce the honey brown color which the trade and public associates with products subjected to or impregnated or treated with the said natural wood smoke. In other words, although using the product of destructive distillation, which it designates as condensed smoke, for the treatment of its salt, it is necessary for respondent to resort to caramel or burnt sugar as a coloring agent, in order to simulate the appearance of a product actually treated with natural wood smoke and thereby to produce a merchantable commodity, which can, in appearance, satisfy the expectations of the trade and consuming public.

PAR. 3. There are now and for several years last past have been individuals, partnerships, and corporations engaged in substantial competition with respondent in the sale of salt truthfully represented

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and described, in interstate commerce; for the purpose, among others, of curing and preserving meats.

PAR. 4. The above and foregoing practices of respondent, described in paragraph 2 hereof have had and have and each of them has had and has the capacity and tendency to mislead and deceive retail dealers into the belief that the so-called smoke salt has been and is a product subjected directly to the action and effect of, or impregnated or treated with, the smoke of burning wood during the process or course of its combustion and that such product can do the complete job of curing and smoking meat in one operation and into the purchase of such product in reliance on such erroneous belief.

The practices aforesaid have placed and do place in the hands of retail dealers to whom respondent sells its product the means whereby they have been and are enabled to mislead and deceive, have misled and deceived, and do mislead and deceive, the consuming public into the belief that the product of respondent has been smoked with natural wood smoke as described in paragraph 2 hereof, and that application and use of such product will do the complete job of curing and smoking meats in one operation and into the purchase of such product in reliance upon such erroneous belief.

The aforesaid practices of respondent have had and have and each of them has had and has the capacity and tendency to divert and each of them has diverted and does divert trade to respondent from competitors mentioned in paragraph 3 hereof. As a result of such practices, substantial injury has been and is being done to such competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Carey Salt Company, 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 power and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, a stipulation as to certain facts and as to the testimony and evidence before Robert S. Hall, Examiner of the Federal Trade Commission theretofore duly designated by it for such purpose, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, by James M. Brinson, counsel for the Commission, and

by William D. P. Carey of Williams, Martindell and Carey of Hutchinson, Kans., counsel for respondent, oral arguments having been waived by the said counsel for the Commission and respondent, and the Commission having made its report stating its findings as to the facts and its conclusion that said respondent has violated the provisions 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."

It is ordered, That the respondent, Carey Salt Company, its officers, representatives, agents, and employees in connections with the offering for sale, sale and distribution of its salt in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Using the word "smoke," or any other word or words signifying smoke or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during the process and course of its combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking, or flavoring meats.

(2) Representing that its so called smoke salt cures and smoke-flavors meat in one operation or that it cures and smokes meat at all or that treatment of meat with its said product is a thousand times better than the old smoke house or as good or that meat by treatment with such product acquires therefrom the same taste or flavor or other properties or effects, as meat acquires from treatment with salt and subsequent exposure to the smoke from burning wood during the process and course of its combustion.

It is further ordered, That respondent, Carey Salt Company, shall file within 60 days from and after the service of this order a report in writing setting forth in detail the manner and form of its compliance herewith.

IN THE MATTER OF
GEORGE LANDON AND M. M. WARNER, TRADING AS
LANDON & WARNER

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

Docket 2701. Complaint, Jan. 31, 1936—Decision, Dec. 4, 1936

Where two partners engaged in the offer, sale, and distribution of the so-called "Director" elastic fabricated belt for use as an abdominal support and in the reduction of surplus fat in that region; in advertising the same in periodicals and newspapers of general circulation among the States, and through published descriptive letters, circulars, booklets, and other printed matter, including testimonial reproductions—

- (a) Falsely represented that said belt, worn, provided a gentle changing pressure or massage-like action which reduced the wearer's waistline, and that wearing thereof brought about results formerly obtained by massage and exercise, with result that excess fatty tissues in said region were caused to disappear, and that, through use thereof, the wearer's waistline would be permanently reduced, and that it provided and constituted a safe and effective remedy and method of treatment of abdominal obesity and the reduction of weight; and
- (b) Falsely represented that the use thereof made the wearer feel fifteen years younger, and eliminated tired bloated feeling after meals and relieved shortness of breath and restored the user's vigor, and that use thereof would cure constipation and increase elimination in a normal way without the use of harsh, irritating cathartics;

With effect of confusing, misleading, and deceiving members of the public, through such false and, generally, inaccurate, unfounded or greatly exaggerated representations, into the erroneous belief that use of their said belt would reduce excess fat around the abdomen and bring about the beneficial results to the wearer stated and implied by their said advertisements and literature, and with tendency and capacity to induce members of the public to buy and use such belt because of the erroneous beliefs thus engendered, and thereby to divert trade to them from competitors engaged in the sale and distribution in commerce of devices and belts designed, sold, and used for the same or similar purposes as their said belt, and who do not, by false and misleading representations or advertising, induce purchasers and consumers to buy or use such competitors' products:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Brelín, Britton & Landon, of Chicago, Ill., for respondents.