

Syllabus

IN THE MATTER OF

PREMIER PEAT MOSS CORPORATION

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

Docket 2793. Complaint, Apr. 29, 1936—Decision, Dec. 7, 1936

Where a corporation, engaged as principal importer and distributor of Swedish peat moss, in importing said product and selling same to wholesalers and retailers in substantial competition with those engaged in the importation, sale, and distribution of such product from Germany and other foreign countries, for use as soil conditioner, stable litter, and stable bedding, and in competition with many who import and sell in interstate commerce peat moss for the same general purpose as the Swedish product sold by it, but rightfully and truthfully represent the qualities and virtues possessed by their product and in no manner misrepresent the qualities or virtues thereof—

- (a) Featured on a circular published and widely distributed by it, in connection with the offer and sale of its said product, the quoted caption "United States Department of Agriculture," together with quoted matter ascribed to said Department's official circular, setting forth certain characteristics of said product, of good quality, and followed by schedule which purported to give results of comparative tests of Swedish and German peat moss, to the advantage of the former and disadvantage of the latter in numerous respects, and including results, or purported results, of various State experiment stations and of the Bureau of Weights and Measures of New York City, notwithstanding fact said circular was not an official report or bulletin of such Department, did not contain any comparisons or analyses made or authenticated by it or by any branch of the United States Government, and was never promulgated by said Government and did not have its approval or sanction, and no such comparisons or analyses respecting and affecting such Swedish and German peat moss, as represented or shown in such circular, had ever been made by Department in question, and said purported tests and measurements afforded no bases in fact for the representations made relative to the comparative absorbent capacity, moisture content, and weight and bulk advantage, and comparisons shown to the advantage of such Swedish moss did not have the approval or endorsement of any Department of the United States Government, Bureau or Branch of the United States, or of any municipal or State Government;

With intent and effect of creating erroneous impression upon purchasing public generally that said circular presented an analysis and comparison of Swedish and German peat moss, as made and promulgated by the United States Department of Agriculture in a Government report, and that said circular had the approval and sanction of such Department; and with capacity and tendency to mislead and deceive its customers and prospective customers and the public generally into the purchase of said Swedish moss in preference to German peat moss, in aforesaid erroneous beliefs, and that analyses of said State experiment stations and of said

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municipal bureau proved and demonstrated conclusively advantages of former over latter in respect of absorbent capacity, moisture content, and weight saving and bulk per unit, as set forth in circular in question;

- (b) Inserted in a published and widely distributed copy of a letter received by it from a State experiment station, and over the signature of said station's chief in research chemistry, and in which letter were given results of analyses of four samples of peat moss, words "Swedish" and "German"; with intent of disclosing to public the identity of the two brands of peat moss covered by such analyses, notwithstanding fact that analysis set forth in such letter was not complete, exhaustive and independent, and did not demonstrate relative absorbent capacity of the two peat mosses, as therein, in effect, misleadingly represented and implied; With capacity and tendency to mislead and deceive its customers and prospective customers and the purchasing public generally into the erroneous belief that figures shown therein were result of complete, exhaustive and independent analysis, and demonstrated the relative absorbent capacity of said respective products; and

- (c) Published and issued a circular distributed to dealers throughout the United States, wherein was set forth under caption "Results," that "Figures from the Custom House records of the Bureau of Foreign and Domestic Commerce" showed the volume of its import of Swedish peat moss for the period therein set forth, "had reached over 93% of the total peat moss imports from Central Europe"; facts being representations therein contained were inaccurate, false, and misleading in that a greater volume of peat moss was not imported from Sweden than from Central Europe during months in question;

With capacity and tendency to mislead and deceive purchasing public into buying the Swedish peat moss in the erroneous belief that a greater volume of article in question was imported from Sweden than from the remainder of Central Europe during months in question; and with results of placing in the hands of Swedish peat moss retailers, wholesalers and distributors an instrument and means whereby they might be and were encouraged and caused to, and did, misrepresent to a substantial portion of the consuming public the evidence as to the relative merits of such and German and other peat moss, and with capacity and tendency to, and with effect of, unfairly diverting trade to it from competitors engaged in the sale in commerce of German and other imported peat moss; 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. Edward M. Averill*, trial examiner.

Mr. Astor Hogg for the Commission.

Mr. Emerich Kohn and *Mr. Mitchell Salem Fisher*, 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 Premier Peat Moss Corporation, 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. Respondent, Premier Peat Moss Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 150 Nassau Street, New York, N. Y., and is now, and has been for a period of more than three years, engaged in the business of importing and selling to wholesalers and retailers for resale, in commerce as herein set out, Swedish Peat Moss.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said Swedish Peat Moss, when sold by it, to be transported from its office and principal place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York, and in the District of Columbia. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade in commerce in said Swedish Peat Moss so distributed and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the course and conduct of its business, is now and has been at all times mentioned herein, engaged in substantial competition with other corporations and with individuals and partnerships engaged in commerce among the various States of the United States and in the District of Columbia in the importation, sale, and distribution of peat moss imported from Germany and other foreign countries.

PAR. 4. Peat Moss consists of a vegetable matter partially decomposed in water, which, in the earlier stages of decomposition, is extensively used as a soil conditioner due to the fact that it has great water-absorbing and moisture-retaining capacities. It is also extensively used as a stable litter and for stable bedding. Germany and Sweden are the principal countries from which peat moss is imported. The respondent is the principal importer and distributor of Swedish Peat Moss in the United States.

PAR. 5. In such competition between the sellers of Swedish Peat Moss and sellers of German Peat Moss and peat moss from other countries, one of the controlling influences upon the purchasing public

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is the public opinion as to the comparative weight, quality, absorbing capacity, ash content, and moisture content of peat moss obtained from various sources.

PAR. 6. In the course and conduct of its business, as hereinbefore set out, in offering for sale and selling Swedish Peat Moss, respondent has published and distributed widely among its customers and prospective customers and among the purchasing public generally, a circular bearing the following caption:

UNITED STATES DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.

states in its official circular No. 167

(Typed in red ink.)

Moss Peat of good quality is light in weight, porous, spongy, fairly elastic, of yellow brown color, must have a high water absorbing capacity, a relatively low amount of woody material and ash.

The above quotation was and is followed by a schedule purporting to give results of tests wherein Swedish Peat Moss and German Peat Moss were compared, and a summary of the alleged advantages of Swedish Peat Moss over the German Peat Moss, as follows:

	Swedish Peat Moss	German Peat Moss	Advantages of Swedish Peat Moss
Raw Material.....	Sphagnum Peat...	Sphagnum Peat...	
Quality.....	Porous spongy....	Felted spongy....	More spongy and loose.
Absorbing Capacity: Analyses of New York State Experiment Station, Geneva, N. Y.	13.5 times.....	10.8 times.....	25% higher.
Ash Contents.....	1.03%.....	1.68%.....	40% less.
Moisture: Analysis of State Experiment Stations, New Haven, Conn., and Amherst, Mass. ¹	10%.....	15%.....	33% less moisture savings in weight.
Measurements.....	40 x 20 x 26", 12 cu. ft.	38 x 23 1/4 x 22," 12 cu. ft.	
Contents: Official Measurement of Mayor's Bureau of Weights & Measures, City of New York.	23/23 bushels.....	20 bushels.....	2 to 3 bushels more.
Packing.....	New burlap, 8 slats, 4 wires.	New burlap, 8 slats 4 wires.	
Average Weight of Bales:			
Horticultural.....	Approx. 150 lb....	100 lb.....	Same size bales with lighter weight but larger contents.
Poultry Litter.....	Approx. 115 lb....	150 lb.....	
Stable Bedding.....	Approx. 110 lb....	140 lb.....	
Freight per Bale on Basis of 30¢ per cwt.	37 1/2¢.....	45¢.....	18% saving.
Wharfage and Loading on Basis of 4¢ per cwt.	4 1/2¢.....	6¢.....	20% saving.
Time in Loosening Contents of One Bale.	10 minutes.....	15 minutes.....	33% labor-saving.

¹ Moisture tests:

New Haven, Conn., 8.78% Swedish.
 New Haven, Conn., 9.03% Swedish.
 Cornell University (N. Y.), 11.57% Swedish.
 Amherst, Mass., 11.83% Swedish.
 Amherst, Mass., 13.15% German.
 Amherst, Mass., 16.98% German.

PREMIER PEAT MOSS CORPORATION,
 150 Nassau Street, New York. "The Better Peat Moss."

The respondent further caused the circulation in various States of the United States, among customers, prospective customers, and the public generally a purported copy of a letter from Arthur W. Clark, Chief in Research Chemistry of the New York State Experiment Station at Geneva, N. Y., which copy of letter so circulated and distributed reads as follows:

March 17, 1933.

PREMIER PEAT MOSS CORPORATION,

150 Nassau Street, New York, New York.

GENTLEMEN: Analyses of the four samples of peat moss are as follows:

No. 1—Horticultural Grade

Swedish:

Ash -----	1.02%
Nitrogen-----	0.88%
Organic matter -----	95.06%

No. 1—Poultry Litter

Ash -----	1.03%
Nitrogen-----	0.83%
Organic matter -----	91.12%

No. 2—Horticultural Grade

German:

Ash -----	1.84%
Nitrogen-----	0.94%
Organic matter -----	94.95%

No. 2—Poultry Litter

Ash -----	1.52%
Nitrogen-----	0.91%
Organic matter -----	91.36%

Sample No. 1—Horticultural Grade and Poultry Litter show an absorption of 13.5 parts of water to one part of peat moss, while sample No. 2 both Horticultural Grade and Poultry Litter show an absorption of 10.8 parts of water to one part of peat moss.

Very truly yours,

(Signed) ARTHUR W. CLARK,
Chief in Research Chemistry.

The two words "Swedish" above, and "German" below, which appeared in the copy of the letter hereinabove set out, were not in the original letter but were written in by said respondent and the presence of those two words discloses to the public the identity of the two brands of peat moss covered by the analysis.

The circular published and distributed as first hereinabove set out was, and is, for the purpose and effect of creating, and it does

create, the impression with the respondent's customers and prospective customers and the purchasing public generally that it presented a fair compilation, analysis and comparison of Swedish peat moss and German peat moss, and that, as such, it was, and had been, duly promulgated by the United States Department of Agriculture as a Government report, and that such circular had the approval and sanction of the United States Department of Agriculture.

In truth and in fact, the circular widely distributed, as aforesaid, is not an official report or bulletin of the United States Department of Agriculture. It does not contain any comparisons, analyses, or compilations that have been made or authenticated by the United States Department of Agriculture or by any branch of the Government and was never promulgated by the United States Government and it does not have the approval or sanction of the United States Government. In fact, the United States Department of Agriculture has never made any such comparisons or analyses between Swedish peat moss and German peat moss as is represented or shown on said circular.

In the course and conduct of its business, as aforesaid, respondent published and issued a circular which it distributed to its dealers throughout the United States which circular stated and represented, among other things,

"RESULTS. Figures from the Custom House Records of the Bureau of Foreign and Domestic Commerce show that the volume of our import of Swedish peat moss for the months of October, November, and December 1933, had reached over 93% of the total volume of all peat moss imports from central Europe."

In truth and in fact, the representation of the respondent that during the months of October, November, and December 1933, 93% of the total volume of all peat moss imported from central Europe came from Sweden is inaccurate, false and misleading.

PAR. 7. In and by the use of the circular, first hereinabove set out, which is entitled "United States Department of Agriculture, Washington, D. C.", respondent represents that Swedish peat moss is more spongy and loose than German peat moss; that the absorbing capacity of Swedish peat moss is 25% higher than German peat moss and that the analysis of the New York State Experiment Station, Geneva, N. Y., proves that the absorbing capacity of Swedish peat moss is 25% higher than German peat moss; that the ash content of Swedish peat moss is 40% less than German peat moss; that Swedish peat moss has 33% less moisture than German peat moss as shown by the analysis of State Experiment Stations, New Haven, Conn., and Amherst, Mass., and therefore, Swedish peat moss affords savings in

weight; that a bale of Swedish peat moss contains from two to three more bushels of peat moss than is contained in a bale of German peat moss and the measurement of Mayor's Bureau of Weights and Measurements, city of New York, demonstrates such to be a fact.

In truth and in fact, Swedish peat moss is not more spongy and loose than German peat moss; the absorbing capacity of Swedish peat moss is not 25% higher than German peat moss or higher to any degree, and the New York State Experiment Station, Geneva, N. Y., made no such analysis as to the absorbing capacity of Swedish peat moss and German peat moss as is represented in said circular. The ash content of Swedish peat moss is not 40% less than German peat moss or less at all. Swedish peat moss does not contain 33% less moisture than German peat moss, or less at all, and affords no savings in weight, and the representations on the circular to the effect that analyses of State Experiment Stations located at New Haven, Conn., and Amherst, Mass., demonstrated that Swedish peat moss contained less moisture are false and misleading. A bale of Swedish peat moss does not contain from two to three bushels more of peat moss than is contained in a bale of German peat moss and Mayor's Bureau of Weights and Measurements, city of New York, did not make and has never made any such a comparison. In fact, no analyses or tests made by any Department of the United States Government or Municipal or State Government afford any basis in fact for the comparisons made on said circular; nor do such comparisons have the approval or endorsement of any Department of the United States or Bureau or branch thereof, or any Department of any Municipal or State Government or bureau or branch thereof.

PAR. 8. The circular entitled "United States Department of Agriculture" circulated and distributed, as hereinabove set out, has the capacity and tendency to mislead and deceive the respondent's customers and prospective customers and the public generally into purchasing Swedish peat moss in preference to German peat moss under the erroneous belief (a) that the circular referred to and the comparisons thereon stated have been issued and promulgated by the United States Government and that it has the sanction and approval of the United States Department of Agriculture and that by reason of the comparisons made on said circular, the United States Department of Agriculture recommends Swedish peat moss in preference to German peat moss; (b) that the analyses of New York State Experiment Station, Geneva, New York, prove and demonstrate the fact that the absorbing capacity of Swedish peat moss is 25% higher than German peat moss; (c) that the ash contents of Swedish peat moss is 40% less than the ash contents of German peat moss; (d) that the

State Experiment Stations of New Haven, Conn., and Amherst, Mass., have made comparisons and tests of Swedish peat moss and German peat moss and find that Swedish peat moss contains 33% less moisture than German peat moss and affords savings in weight; (e) that a bale of Swedish peat moss contains from two to three bushels more as contained in a bale of German peat moss and that the analyses and tests of the Mayor's Bureau of Weights and Measurements, city of New York, show such to be a fact.

The use and circulation of the copy of letter dated March 17, 1933, as hereinabove set out, has the capacity and tendency to mislead and deceive the respondent's customers and prospective customers, and the purchasing public generally, into the erroneous belief that the analysis shown in said letter is a true analysis of Swedish peat moss and German peat moss.

The use and circulation of the circular containing the expression that the records of the Custom House of the Bureau of Foreign and Domestic Commerce reveal that the volume of imports into the United States of Swedish peat moss for the months of October, November, and December 1933, had reached over 93% of the total volume of all peat moss imports from central Europe has had the capacity and tendency to mislead and deceive the public into purchasing said Swedish peat moss under the erroneous belief that Swedish peat moss is more in demand in the United States than German peat moss.

PAR. 9. The false and misleading misrepresentations hereinabove set out made by the respondent place in the hands of said retail dealers, wholesale dealers, and distributors an instrument and means whereby said dealers and distributors may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent, offer for sale and sell Swedish peat moss as much to be preferred over German peat moss on account of the alleged fact that Swedish peat moss is more spongy and loose, has 25% higher absorbent capacity, 40% less ash content, 33% less moisture, and a bale contains two to three bushels more peat moss and that Swedish peat moss is more in demand in the United States than German peat moss and is recommended by various Departments of National, State, or municipal Governments.

PAR. 10. There are among the competitors of the respondent many who import and sell in interstate commerce German peat moss which is for the same use and purpose as Swedish peat moss, but which competitors rightfully and truthfully represent the qualities and virtues possessed by said German peat moss and in no manner misrepresent the qualities or virtues thereof, and in no manner unfairly or

untruthfully make comparisons of Swedish peat moss with German peat moss.

The above false and misleading representations and comparisons have the capacity and tendency to, and do, unfairly divert trade to respondent from said competitors engaged in the sale in interstate commerce of peat moss used for the same general purpose.

PAR. 11. The acts and practices of the respondent above set forth are all to the prejudice of the public and 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."

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 29, 1936, issued and served its complaint in this proceeding upon respondent, Premier Peat Moss Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Mitchell Salem Fisher, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; 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. Respondent, Premier Peat Moss Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office

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and place of business located at 150 Nassau Street, New York, N. Y. It is now, and has been for a period of more than three years, engaged in the business of importing and selling Swedish Peat Moss to wholesalers and retailers, for resale in commerce as herein set out.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said Swedish Peat Moss, when sold by it, to be transported from its office and principal place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York, and in the District of Columbia. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said Swedish Peat Moss so distributed and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the course and conduct of its business, is now, and has been at all times mentioned herein, engaged in substantial competition with other corporations and with individuals and partnerships engaged in commerce among the various States of the United States and in the District of Columbia in the importation, sale, and distribution of peat moss imported from Germany and other foreign countries.

PAR. 4. Peat Moss consists of a vegetable matter partially decomposed in water, which, in the earlier stages of decomposition, is extensively used as soil conditioner, due to the fact that it has great water-absorbing and moisture-retaining capacities. It is also extensively used as a stable litter and for stable bedding. Germany and Sweden are the principal countries from which peat moss is imported. The respondent is the principal importer and distributor of Swedish Peat Moss in the United States.

PAR. 5. In such competition between the sellers of Swedish Peat Moss and sellers of German Peat Moss and peat moss from other countries, one of the controlling influences upon the purchasing public is the public opinion as to the comparative weight, absorbing capacity, ash content and moisture content of peat moss obtained from various sources.

PAR. 6. In the course and conduct of its business, as hereinbefore set out, in offering for sale and selling Swedish Peat Moss, respondent has published and distributed widely among its customers and prospective customers, and among the purchasing public generally, in the various States of the United States, a circular bearing the following caption:

(Typed in red ink.)

Findings

UNITED STATES DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.

states in its official circular No. 167

Moss Peat of good quality is light in weight, porous, spongy, fairly elastic, of yellow brown color, must have a high water absorbing capacity, a relatively low amount of woody material and ash.

The above quotation was, and is followed by a schedule, purporting to give results of tests wherein Swedish Peat Moss and German Peat Moss were compared, and a summary of the alleged advantages of Swedish Peat Moss over the German Peat Moss, as follows:

	Swedish Peat Moss	German Peat Moss	Advantages of Swedish Peat Moss
Raw Material.....	Sphagnum Peat...	Sphagnum Peat...	
Quality.....	Porous spongy.....	Felted spongy.....	More spongy and loose.
Absorbing Capacity: Analyses of New York State Experiment Station, Geneva, N. Y.	13.5 times.....	10.8 times.....	25% higher.
Ash Contents.....	1.03%.....	1.68%.....	40% less.
Moisture: Analysis of State Experiment Stations, New Haven, Conn., and Amherst, Mass. ¹	10%.....	15%.....	33% less moisture saving in weight.
Measurements.....	40 x 20 x 20", 12 cu. ft. 22/23 bushels.....	38 x 23½ x 22", 12 cu. ft. 20 bushels.....	2 to 3 bushels more.
Contents: Official Measurement of Mayor's Bureau of Weights & Measures, City of New York.			
Packing.....	New burlap, 8 slats 4 wires.	New burlap, 8 slats 4 wires.	
Average Weight of Bales:			
Horticultural.....	Approx. 150 lb.....	160 lb.....	Same size bales with lighter weight but larger contents.
Poultry Litter.....	Approx. 115 lb.....	150 lb.....	
Stable Bedding.....	Approx. 110 lb.....	140 lb.....	
Freight per Bale on basis of 30¢ per cwt.	37½¢.....	45¢.....	18% saving.
Wharfage and Loading on basis of 4¢ per cwt.	4½¢.....	6¢.....	20% saving.
Time in Loosening Contents of One Bale.	10 minutes.....	15 minutes.....	33% Labor saving.

¹ Moisture Tests:

New Haven, Conn., 8.76% Swedish.
 New Haven, Conn., 9.03% Swedish.
 Cornell University (N. Y.), 11.57% Swedish.
 Amherst, Mass., 11.83% Swedish.
 Amherst, Mass., 13.15% German.
 Amherst, Mass., 16.98% German.

PREMIER PEAT MOSS CORPORATION,
 150 Nassau Street, New York. "The Better Peat Moss."

The respondent further caused the wide circulation in various states of the United States among customers, prospective customers, and the public generally, of a copy of a letter from Arthur W. Clark, Chief in Research Chemistry of the New York State Experiment Station at Geneva, New York, which copy of letter so circulated and distributed reads as follows:

MARCH 17, 1933.

PREMIER PEAT MOSS CORPORATION,

150 Nassau Street, New York, New York.

GENTLEMEN: Analyses of the four samples of peat moss are as follows:

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No. 1—Horticultural Grade

Swedish:

Ash.....	1.02%
Nitrogen.....	0.88%
Organic matter.....	95.06%

No. 1—Poultry Litter

Ash.....	1.03%
Nitrogen.....	0.83%
Organic matter.....	91.12%

No. 2—Horticultural Grade

German:

Ash.....	1.84%
Nitrogen.....	0.94%
Organic matter.....	94.95%

No. 2—Poultry Litter

Ash.....	1.52%
Nitrogen.....	0.91%
Organic matter.....	91.36%

Sample No. 1—Horticultural Grade and Poultry Litter show an absorption of 13.5 parts of water to one part of peat moss, while sample No. 2 both Horticultural Grade and Poultry Litter show an absorption of 10.8 parts of water to one part of peat moss.

Very truly yours,

(Sgd) ARTHUR W. CLARK,
Chief in Research Chemistry.

The two words, "Swedish" and "German," which appeared in the copy of the letter hereinabove set out, were not in the original letter, but were written in by said respondent, and the presence of those two words is intended to disclose to the public the identity of the two brands of peat moss covered by the analyses. The respondent further published and issued a circular, which was distributed to dealers throughout the United States, which circular stated and represented, among other things:

RESULTS: Figures from the Custom House records of the Bureau of Foreign and Domestic Commerce show the volume of our import of Swedish peat moss for the months of October, November, and December, 1933, had reached over 93% of the total peat moss imports from Central Europe.

PAR. 7. The publication and distribution of the circular first herein set out was, and is for the purpose of creating, and it does create the impression upon the purchasing public generally that said circular presented an analysis and comparison of Swedish peat moss and German peat moss as made and promulgated by the United States Department of Agriculture in a government report, and that such

circular had the approval and sanction of the United States Department of Agriculture.

In truth and in fact, the circular first set out in paragraph 6 hereof is not an official report or bulletin of the United States Department of Agriculture. It does not contain any comparisons or analyses that have been made or authenticated by the United States Department of Agriculture, or by any branch of the Government, and was never promulgated by the United States Government, and it does not have the approval or sanction of the United States Government. As a matter of fact, the United States Department of Agriculture has never made any such comparisons or analyses between Swedish peat moss and German peat moss as is represented or shown in said circular.

The representations of the circular letter dated March 17, 1933, set out in paragraph 6 hereof, are misleading, in that, under all the circumstances, the publication and circulation of copies of the letter, making comparisons between an analysis of Swedish peat moss and an analysis of German peat moss, amount to representations, and imply that the figures therein given are the result of a complete, exhaustive, and independent analysis, and demonstrate the comparative absorbent capacity of Swedish and German peat moss, when, as a matter of fact, the analysis therein referred to and reported was not complete, exhaustive, and independent, and does not demonstrate the relative absorbent capacity of the two peat mosses.

The representations in the other circular in paragraph 6 hereof set out, that during the months of October, November, and December, 1933, 93% of the total volume of all peat moss imported from Central Europe came from Sweden, is inaccurate, false, and misleading, in that a greater volume of peat moss was not imported from Sweden than from Central Europe during said months.

PAR. 8. In and by the use of the circular first set out in paragraph 6 hereof, respondent represents that the analyses of New York Experiment Stations, Geneva, N. Y., prove that the absorbent capacity of Swedish peat moss is 25% higher than German peat moss; that the analyses of the State Experiment Stations of Connecticut and Massachusetts prove that Swedish peat moss has 33% less moisture than German peat moss, thereby effecting a saving in weight; and that the measurements of the Mayor's Bureau of Weights and Measurements of New York City demonstrate that a bale of Swedish peat moss contains from two to three more bushels of peat moss than is contained in a bale of German peat moss.

As a matter of fact, the analysis of New York Experiment Stations, Geneva, N. Y., does not prove that the absorbent capacity of

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Swedish peat moss is 25% higher than German peat moss; the analyses of the Experiment Stations of Connecticut and Massachusetts do not prove that Swedish peat moss contains less moisture than German peat moss or affords a saving in weight; the measurements of the Mayor's Bureau of Weights and Measurements do not prove that a bale of Swedish peat moss contains from two to three bushels more peat moss than is contained in a bale of German peat moss. Said purported tests and measurements afford no bases in fact for the representations made, and such comparisons therein shown do not have the approval or indorsement of any department of the United States Government, Bureau, or Branch thereof, or of any department of any municipal or State Government, or bureau or branch thereof.

PAR. 9. The circulation of the circular first set out in paragraph 6 hereof has the capacity and tendency to mislead and deceive the respondent's customers and prospective customers, and the public generally, into purchasing Swedish peat moss in preference to German peat moss under the erroneous beliefs that:

(a) The circular referred to and the comparisons therein stated were issued, made and promulgated by the United States Government, and had the sanction and approval of the United States Department of Agriculture, and that the United States Department of Agriculture recommended Swedish peat moss in preference to German peat moss;

(b) The analysis of New York Experiment Stations, Geneva, N. Y., proved and demonstrated conclusively that the absorbing capacity of Swedish peat moss is 25% higher than German peat moss;

(c) The analysis of the said Experiment Stations at New Haven, Conn., and Amherst, Mass., proved and demonstrated conclusively that Swedish peat moss contains 33% less moisture than German peat moss, and thereby afforded a saving in weight.

(d) The measurements and tests of the Mayor's Bureau of Weights and Measurements of the city of New York proved and demonstrated conclusively that a bale of Swedish peat moss contains from two to three bushels more of peat moss than is contained in a bale of German peat moss.

The aforesaid circulation of copies of the letter set out in paragraph 6 hereof, dated March 17, 1933, has the capacity and tendency to mislead and deceive the respondent's customers and prospective customers, and the purchasing public generally, into the erroneous belief that the figures shown in said letter are the result of a complete, exhaustive, and independent analysis, and demonstrate the relative absorbent capacity of the two peat mosses.

The aforesaid use and circulation of the circular, containing the statement that the records of the Custom House of the Bureau of Foreign and Domestic Commerce revealed that the volume of imports into the United States of Swedish peat moss for the months of October, November, and December, 1933, had reached over 93% of the total volume of all peat moss from Central Europe, has the capacity and tendency to mislead and deceive the purchasing public into purchasing Swedish peat moss under the erroneous belief that a greater volume of peat moss was imported from Sweden than from the remainder of Central Europe during said months.

PAR. 10. The false and misleading representations hereinabove set out, made by the respondent, placed in the hands of Swedish peat moss retail dealers, wholesale dealers, and distributors an instrument and means whereby said dealers and distributors may be, and are encouraged and caused to, and do misrepresent, to a substantial portion of the consuming public, the evidence as to the relative merits of Swedish peat moss and German and other peat moss.

PAR. 11. There are, among the competitors of the respondent, many who import into the United States, and sell in interstate commerce, peat moss which is for the same general purpose as Swedish peat moss sold by respondent, but which competitors rightfully and truthfully represent the qualities and virtues possessed by such peat moss, and in no manner misrepresent the qualities or virtues thereof.

The above false and misleading representations and comparisons have the capacity and tendency to, and do, unfairly divert trade to the respondent from competitors engaged in the sale, in interstate commerce, of German and other imported peat moss, and thereby substantial injury is done to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Premier Peat Moss 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Edward M.

Order

24 F. T. C.

Averill, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Astor Hogg, counsel for the Commission, and by Mitchell Salem Fisher, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Premier Peat Moss Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of peat moss in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) The use, in its advertising, of analyses or tests, of the merits of its own and competing peat moss, with the representation, express or implied, that said analyses or tests were made by, or under the supervision of, or have the sanction or approval of the United States Government, or any Bureau, or Branch thereof, when such is not the fact;

(2) Using the results of comparative analyses and other tests of its own and competing peat moss under such circumstances and with such representations as to induce the belief that said analyses and tests were complete and exhaustive, and that they demonstrate the comparative qualities and merits of respondent's and competing peat moss, when such are not the facts;

(3) Misrepresenting statistics of the United States Government, or statistics contained in reports of the United States Government, with respect to the supply of, or demand for, or the comparative quality or merits of respondent's peat moss as compared with competing peat moss;

It is further ordered, That the respondent shall, within 30 days after the 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
LUMBER MILLS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2796. Complaint, May 4, 1936—Decision, Dec. 7, 1936*

Where a corporation engaged in the distribution and sale of sash, windows, doors, molding, and mill work, in substantial competition with others likewise thus engaged, and also with those engaged in manufacturing, distributing and selling such products, and including among its said competitors many who do not manufacture the products dealt in by them or in any way represent themselves as manufacturers of such products, and many who manufacture, distribute, and sell such products made from the botanical "*Pinus ponderosa*," and who do not in any way represent said products as actually made from the botanical "*Pinus strobus*," or white pine, but truthfully represent the same as made from the wood of and from which they are in fact made—

- (a) Represented, through use of word "Mills" in its corporate name, displayed and featured in its catalogs and price lists and on its letterheads, order blanks, invoices, and other literature, and through a design displaying and featuring said word, and statement that it was "offering these remarkable values at this time to keep our factory busy during the winter months," etc., that it owned, operated, or controlled a mill wherein lumber products were converted or made into sash, windows, doors, molding, and similar mill work, notwithstanding fact it was not, as understood by trade and purchasing public generally, such a manufacturer, with which a substantial portion of wholesale and retail purchasers of such products prefer to deal direct, as thereby securing them, in their belief, closer prices, superior quality and other advantages, as compared with dealing through a selling agency or middleman; and
- (b) Made use of words "white pine" in catalogs and price lists to designate wood from which many of the products sold by it were made, notwithstanding fact wood in question was the botanical "*Pinus ponderosa*," obtained from the species native to the mountainous region of the Pacific Coast, and was not the substantially more costly and generally preferred commercial white pine, or botanical "*Pinus strobus*," to which, in softness, ease of working, ability to stay in place, relative freedom from resinous substances, durability under exposure, and uniformity, it was inferior;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said various representations were true, and with the result that, induced by such false and misleading statements and representations, and as a consequence of the mistaken and erroneous beliefs thus induced, the consuming public purchased a substantial volume of its said products and trade was unfairly diverted to it from its competitors likewise engaged in distributing and selling similar products made from wood, and who truthfully advertise and represent the nature and character of their business and of the wood from which their said products are actually made; to the substantial injury of competition in commerce: