

Syllabus

IN THE MATTER OF
DANIEL R. HODGDON AND NATIONAL FOOD BUREAU,
INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2539. Complaint, Aug. 30, 1935—Decision, Feb. 2, 1937

Where an individual, who represented himself as a food expert, and a corporation, which he headed, directed and controlled, engaged in advertising food products through newspaper articles and through radio addresses which were broadcast from a New York station and which were heard and understood by purchasers or prospective purchasers located in various other States and in the District of Columbia, and in thus advertising a certain brand of peanut oil, made in Virginia and distributed and sold by the manufacturer to dealers and the general public among the various States and in the aforesaid District, and constituting, in the conduct of their said advertising campaign, instrumentalities of interstate commerce, by causing, aiding, or assisting in the shipment of the product in question from the aforesaid State to purchasers or prospective purchasers elsewhere located, and, as such, engaged in such commerce, and engaged in the conduct of their said activities in active and open competition with other advertising agencies and advertisers and instrumentalities for advertising in interstate commerce, who do not misrepresent the articles of trade and commerce which they promote and advertise and the professional status of the person or persons delivering radio addresses to the public,—

- (a) Represented, in said radio addresses and other advertising, that corn oil or cottonseed oil or food products made therefrom were cheap commodities which were unwholesome, impure, deleterious to health, and unfit for human consumption, and that peanut oil, or food products made therefrom, were superior, in the matter of digestibility or dietetics, to the others, and delivered such radio lectures in such a manner as would lead a listener to the erroneous belief that the aforesaid individual, referred to frequently by the announcer as "Doctor," was such, and a physician, through such statements, among others, as "It means that the market is flooded today with food concoctions, dietetical monstrosities, and cheap glucose filled candies; cottonseed oil; with stearic acid salad oils; and a lot of other junk * * *, preparing the way to death and destruction * * *," "If food is cooked in cooking oil, it may be that the cooking oil contains a large amount of stearic acid, or is composed chiefly of cottonseed oil * * *," all of which "things tend to destroy the child's appetite * * *"; and
- (b) Referred to competitors who sell articles made from cottonseed oil, corn oil and other vegetable oils as "racketeers," and to persons who sell two oils first mentioned as "cheap food swindlers," and to the products of competitors, including cottonseed oil and corn oil, as containing a substance comparable to a tallow candle, through such statements as that such competitors are "Racketeers * * * who make money * * * out of * * * salad oils which are compounds of sunflower seed oil, cottonseed

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oil, corn oil," and "These food swindlers had filled these cans cheaply with cottonseed oil which had been produced in the United States," and "It may be saturated with stearic acid, a substance that is so hard that its melting point is far above the temperature of the body. It has not any more value than eating a tallow candle";

Facts being that peanut, cottonseed and corn oils are all pure, wholesome foods of approximately the same chemical consistency and approximately 98% digestible, and, according to chemists, dietitians and experts on home economics, of equal food value and, as sold to public for food purposes, not to be distinguished except through chemical analysis, products of competitors of the manufacturer of the peanut oil thus promoted and advertised were not dietetical monstrosities, cheap concoctions, unfit for human consumption, did not have a large amount of stearic acid, etc., competitors selling articles made from cottonseed, corn and other vegetable oils were not racketeers or cheap food swindlers, such various articles were not comparable to a tallow candle, and aforesaid various other representations were likewise false and misleading, and delivery of such lectures in a way calculated to create the impression on the public that said individual was a physician disseminating medical advice was decidedly unfair to manufacturers and distributors of corn and cottonseed products throughout the United States, and to the other advertising agencies shunning such practices;

With capacity and tendency to mislead and deceive many members of the trade and public through such false, deceptive, misleading, and defamatory statements and representations, and induce them to refrain from buying competing brands of salad or cooking oil made from cottonseed oil, corn oil, and other oils, in the belief that such various statements were true, and with effect of unfairly diverting trade to manufacturers of brand of peanut oil thus advertised and sold from competitors engaged in sale and distribution of other brands of peanut, corn, or cottonseed oils in interstate commerce and who do not make such misleading and disparaging statements, and with capacity to divert unfairly trade to said individual and corporation from competitors who do not make such false, deceptive, disparaging, and misleading statements in referring to the articles advertised or promoted by them, or make misleading statements or representations regarding their professional status; to the substantial injury of competition and substantial competitors 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 J. Keenan*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. Daniel Jacobson, of New York City, for respondents.

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 Daniel R.

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Hodgdon, an individual, and the National Food Bureau, Inc., hereinafter referred to as the respondents, have been and are using unfair methods of competition in "commerce" as 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 this its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. One of the respondents herein, Daniel R. Hodgdon, is an individual representing himself to the public to be an expert on the quality and fitness of food for human consumption, having his place of business at 1697 Broadway, in the city of New York. The other respondent, the National Food Bureau, Inc., is a corporation organized in and existing pursuant to the laws of the State of Pennsylvania, having its principal place of business at 1697 Broadway, New York City, N. Y. The respondent, Daniel R. Hodgdon, is, and for a long time last past, has been, president and treasurer of the respondent National Food Bureau, Inc., and is joined herein individually, as it is unknown when and at what times during the continuation of the acts and practices complained of herein he functions or functioned individually and when he functions or functioned as an officer, employee, or agent of the respondent National Food Bureau, Inc. These respondents are now, and have been for a long time last past, jointly or severally engaged for hire in the business of promoting or having promoted the sale of articles of food for human consumption by advertising the sale of the same through the medium of radio addresses, books, newspapers, pamphlets, or circulars, which are circulated among persons, firms, corporations, and partnerships; some of whom are located in the State of New York and others in various other States of the United States and the District of Columbia. The radio addresses made or caused to be made by respondents are susceptible of being heard and are or have been heard and understood by persons who are or have been purchasers or are prospective purchasers of the foods so promoted and advertised, some of whom are located in the State of New York and others located in the various States of the United States and the District of Columbia.

PAR. 2. One of the foods so promoted and advertised by the respondents herein, in the manner described in paragraph 1 hereof, is a peanut oil sold under the trade name of "Planters Hi-Hat Oil," which is manufactured in the State of Virginia and distributed and sold to dealers and to the general public located in and among the various States of the United States and the District of Columbia, and the respondents herein in conducting or having conducted said radio broadcasts and having circulated or caused to be circulated said news-

papers, newspaper articles, books, pamphlets, and circulars in interstate commerce in furtherance of the sale of the said "Planters Hi-Hat Oil" are instrumentalities of and engaged or have been engaged in interstate commerce by causing, aiding or assisting in the shipment of this product from the State of Virginia to purchasers or prospective purchasers thereof located in other State or States of the United States, and there has been for a long time last past a constant current of trade and commerce in said product as a result, either wholly or in part, of the representations made by respondents in said radio addresses, books, circulars, newspapers, or pamphlets, and respondents assert or have asserted in said radio talks, books, circulars, newspapers, and other advertisements that other vegetable oils sold in open competition in interstate commerce are inferior to "Planters Hi-Hat Oil" by stating, among other things, words, and utterances to the effect that:

(a) It means that the market is flooded today with food concoctions, dietetical monstrosities and cheap glucose filled candies; cottonseed oil; with stearic acid salad oils; and a lot of other junk made for human consumption and at the same time, preparing the way to death and destruction of human beings.

(b) If food is cooked in cooking oil, it may be that the cooking oil contains a large amount of stearic acid, or is composed chiefly of cottonseed oil, or that irritating fatty acids are present in overabundance. All of these things tend to destroy the child's appetite for his regular meals.

(c) (That competitors are) racketeers * * * who make money * * * out of * * * salad oils which are compounds of sunflower seed oil, cottonseed oil, corn oil.

(d) These food swindlers had filled these cans cheaply with cottonseed oil which had been produced in the United States.

(e) It may be saturated with stearic acid, a substance that is so hard that its melting point is far above the temperature of the body. It has not any more value than eating a tallow candle.

These statements are false and misleading, and tend to disparage and defame the products of competitors in that, either directly or by innuendo, they assert, imply, intimate, or suggest that:

(a) The products of the competitors of "Planters Hi-Hat Oil" are dietetical monstrosities, are cheap concoctions unfit for human consumption and that the consumption of foods made from such products, including cottonseed oil and corn oil, will cause death and destruction to human beings;

(b) If a food is cooked in vegetable oil other than "Planters Hi-Hat Oil," it will contain a large amount of stearic acid or free fatty acid composed chiefly of cottonseed oil, which will destroy a child's appetite for his regular meals;

(c) Competitors who sell articles manufactured from cottonseed oil, corn oil and other vegetable oils are racketeers;

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(d) Persons who sell cottonseed oil and corn oil are cheap food swindlers;

(e) The products of competitors, including cottonseed and corn oil, contain substances comparable to a tallow candle.

When in truth and in fact the products of competitors of "Planters Hi-Hat Oil" are not diatetical monstrosities, are not cheap concoctions unfit for human consumption and that the consumption of foods made from such products including cottonseed oil and corn oil, will not cause death and destruction of human beings; do not have a large amount of stearic acid or free fatty acid and will not destroy a child's appetite for his regular meals; that competitors who sell articles manufactured from cottonseed oil, corn oil and other vegetable oils are not racketeers or cheap food swindlers and that such articles of food, including cottonseed oil and corn oil, are not comparable to a tallow candle.

PAR. 3. In the course and conduct of their said business the respondents are now, and have been for a long time last past, thus advertising and promoting, orally by radio and through the medium of books, newspapers, circulars, and printed articles the vegetable oil or peanut oil known and described as "Planters Hi-Hat Oil," which article is in substantial competition with the products of other individuals, partnerships, and corporations engaged in the sale of vegetable oils between and among the various States of the United States and the District of Columbia.

PAR. 4. There are many competitors of "Planters Hi-Hat Oil," the sale of which is advertised and promoted by respondents, who sell similar salad oils, cottonseed oil, corn oil, and peanut oil, who do not misrepresent their products or disparage the products of their competitors, and the use by respondents of the false, deceptive, misleading, and defamatory statements and representations hereinbefore set out is calculated to, and does, have the capacity and tendency to mislead and deceive many members of the trade and public, and induce them to refrain from buying competing brands of salad or cooking oil made from cottonseed oil, corn oil and other oils, in the belief that the statements made by respondents, as set out in paragraph 2 hereof, are true, and tends to and does unfairly divert trade to the manufacturers of "Planters Hi-Hat Oil" from competitors engaged in the sale and distribution of other brands of peanut oil, corn oil, or cottonseed oil in interstate commerce who do not make such misleading and disparaging statements, whereby substantial injury is done to substantial competition in interstate commerce.

Likewise respondents are in active and open competition, and have been in active and open competition, with other advertisers and adver-

tising agencies and instrumentalities for advertising in interstate commerce who do not misrepresent the articles of trade and commerce which they promote and advertise, and the use by respondents of false, deceptive, disparaging, and misleading statements in connection with the articles which respondents do promote and advertise is calculated to and does have the capacity of unfairly diverting trade to respondents from competitors who do not make such false, deceptive, disparaging, and misleading statements in referring to articles so advertised or promoted, whereby substantial injury is done to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of the respondents are each and all of them to the prejudice of the public and competitors of the article of food known as "Planters Hi-Hat Oil" and competitors of respondent, 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 August 30, 1935, issued and on September 3, 1935, served its complaint in this proceeding, upon respondents, Daniel R. Hodgdon, an individual, and National Food Bureau, Inc., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, and the filing of respondents' joint answer thereto, testimony and other evidence in support of the allegations on said complaint were introduced by James M. Hammond, attorney for the Commission, before J. J. Keenan, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Daniel Jacobson, attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now fully advised in the premises, finds

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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. One of the respondents herein, Daniel R. Hodgdon, is an individual representing himself to the public as being an expert on the quality and fitness of food for human consumption, having his place of business at 328 Greenwich Street, in the city of New York. The other respondent, the National Food Bureau, Inc., is a corporation organized in and existing pursuant to the laws of the State of New York, having its principal place of business at the same address. The respondent, Daniel R. Hodgdon, at the time of filing the complaint in this proceeding, and for a long time prior thereto, was president and treasurer of the respondent, National Food Bureau, Inc., and he directed and controlled its business operations.

It is unknown when and at what times during the continuation of the acts and practices complained of herein the respondent Hodgdon functioned individually and when he functioned as an officer, employee or agent of the respondent, National Food Bureau, Inc. These respondents are now and have been for a long time jointly and severally engaged for hire in the business of promoting the sale of articles of food for human consumption by advertising the sale of the same through the medium of radio addresses and newspaper articles which are directed to or circulated among persons, firms, corporations, and partnerships; some of which are located in the State of New York and others in various other States of the United States. The radio addresses which are the principal matters involved herein, made or caused to be made by respondents, were susceptible of being heard and have been heard and understood by persons who are or have been purchasers or prospective purchasers of the food so promoted and advertised, some of whom are located in the State of New York and others are located in various other States of the United States and the District of Columbia.

PAR. 2. All of the radio talks hereinafter referred to were made over radio station WMCA at New York City. It is operated by the Knickerbocker Broadcasting Company, Inc., of 1697 Broadway, New York City, under license issued by the United States Government. This station has sufficient power and range to permit the matter broadcasted to be heard within a radius of one hundred miles of New York City and into several adjacent States. All of the addresses in question were delivered by the respondent, Hodgdon in person, from this station and all of the addresses containing the disparaging

statements referred to herein are in evidence as exhibits in the proceeding.

Some of them consist of the original continuities filed by the respondents with the broadcasting company at the time the lectures were delivered and some were copied into the record from phonograph records made at the time the lectures were being given. All of the lectures relate to the advertisement and promotion of the sale of food or food products of which peanut oil was one of several. The preparation of these lectures was left by the manufacturer of the peanut oil involved entirely to the respondents who functioned as independent contractors for the preparation and sale of advertising matter. During the course of these lectures the respondent Hodgdon was frequently referred to by the announcer as "Doctor" and the lectures were delivered in a manner which would lead a listener to believe that the individual respondent was a medical doctor as the context of the lectures dealt with dietetical matters and the digestibility and fitness of foods for human consumption.

PAR. 3. The brand of peanut oil involved is manufactured in the State of Virginia and distributed and sold by the manufacturer to dealers and to the general public located among the various States of the United States and in the District of Columbia, and the respondents herein, in conducting said broadcasts in interstate commerce, in furtherance of the sale of said peanut oil and in conducting the advertising campaign pertaining to the same, are instrumentalities of and engaged in interstate commerce by causing, aiding, or assisting in the shipment of this product from the State of Virginia to purchasers or prospective purchasers thereof located in other States of the United States and in the sale of or the dissemination and distribution of the said advertising matter including the radio advertising referred to herein. There has been for a long time last past, a constant current of trade and commerce in said peanut oil and advertising matter, as a result, either wholly or in part, of the representations made by respondents in said radio addresses and advertising matter. The respondents have stated in said radio addresses and other advertising that other vegetable oils sold in open competition in interstate commerce are inferior to the peanut oil advertised and promoted by them, by stating, among other things, words and utterances to the effect that:

It means that the market is flooded today with food concoctions, dietetical monstrosities and cheap glucose filled candies; cottonseed oil; with stearic acid salad oils; and a lot of other junk made for human consumption and at the same time, preparing the way to death and destruction of human beings.

If food is cooked in cooking oil, it may be that the cooking oil contains a large amount of stearic acid, or is composed chiefly of cottonseed oil, or that

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irritating fatty acids are present in overabundance. All of these things tend to destroy the child's appetite for his regular meals.

(That competitors are) Racketeers * * * who make money * * * out of * * * salad oils which are compounds of sunflower seed oil, cottonseed oil, corn oil.

These food swindlers had filled these cans cheaply with cottonseed oil which had been produced in the United States.

It may be saturated with stearic acid, a substance that is so hard that its melting point is far above the temperature of the body. It has not any more value than eating a tallow candle.

These statements are false and misleading and tend to falsely disparage and defame the products of competitors in that, either directly or by innuendo, they assert, imply, intimate, or suggest that:

(a) The products of the competitors of the manufacturers of the peanut oil so advertised are dietetical monstrosities, are cheap concoctions unfit for human consumption and that the consumption of foods made from such products including cotton seed oil and corn oil will cause death and destruction to human beings;

(b) If a food is cooked in vegetable oil other than the peanut oil so promoted, it will contain a large amount of stearic acid or free fatty acids composed chiefly of cotton seed oil which will destroy a child's appetite for its regular meals;

(c) Competitors who sell articles manufactured from cottonseed oil, corn oil, and other vegetable oils, are racketeers;

(d) Persons who sell cottonseed oil and corn oil are cheap food swindlers;

(e) The products of competitors, including cottonseed and corn oil, contain substances comparable to a tallow candle.

In truth and in fact, the products of competitors of the manufacturers of the peanut oil so promoted and advertised by the respondents are not dietetical monstrosities, are not cheap concoctions unfit for human consumption and the consumption of foods made from such products including cottonseed and corn oil will not cause death and destruction of human beings. Such products do not have a large amount of stearic acid or free fatty acid and will not destroy a child's appetite for his regular meals. Competitors who sell articles manufactured from cottonseed oil, corn oil and other vegetable oils are not racketeers or cheap food swindlers and such articles of food, including cottonseed oil and corn oil are not comparable to a tallow candle. The respondent Hodgdon is not a medical doctor.

Cottonseed oil, corn oil, and peanut oil are all pure wholesome foods; are all of approximately the same chemical consistency and are all approximately 98% digestible. The chemists, dieticians, and experts on home economics, who appeared in this case, state that all

of said products are of equal food value and can not be distinguished, as sold to the public for food purposes, except through the medium of a chemical analysis and the action of the respondents in delivering or causing these lectures to be delivered over the radio in a manner calculated to impress the public that the respondent, Hodgdon, was a medical doctor disseminating medical advice, is decidedly unfair to the manufacturers and distributors of corn and cottonseed oil products throughout the United States and to other advertising agencies who shun such practices.

PAR. 4. In the course and conduct of their said business, the respondents are now and have been for a long time last past, thus advertising and promoting by radio or through the medium of other forms of advertising the sale of peanut oil, which article is in substantial competition with the products of other individuals, partnerships, and corporations engaged in the sale of vegetable oils between and among the various States of the United States and the District of Columbia.

PAR 5. There are many competitors of the brand of peanut oil, the sale of which is advertised and promoted by respondents, who sell similar salad oils, cottonseed oil, corn oil, and peanut oil, who do not misrepresent their products or falsely disparage the products of their competitors, and the use by respondents of the false, deceptive, misleading, and defamatory statements and representations hereinbefore set out is calculated to, and does, have the capacity and tendency to mislead and deceive many members of the trade and public, and induce them to refrain from buying competing brands of salad or cooking oil made from cottonseed oil, corn oil, and other oils, in the belief that the statements made by respondents, as set out in paragraph 3 hereof, are true, and tends to and does unfairly divert trade to the manufacturers of the brand of peanut oil so advertised and sold by respondents from competitors engaged in the sale and distribution of other brands of peanut oil, corn oil, or cottonseed oil in interstate commerce who do not make such misleading and disparaging statements, whereby substantial injury is done to substantial competition in interstate commerce.

Likewise, respondents are in active and open competition and have been in active and open competition with other advertising agencies and advertisers and instrumentalities for advertising in interstate commerce who do not misrepresent the articles of trade and commerce which they promote and advertise, and who do not misrepresent the professional status of the person or persons delivering radio addresses to the public, and the use by respondents of false, deceptive, disparaging, and misleading statements in connection with the articles which respondents do promote and advertise is calculated to and

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does have the capacity of unfairly diverting trade to respondents from competitors who do not make such false, deceptive, disparaging, and misleading statements in referring to articles so advertised or promoted or who do not make misleading statements or representations regarding their professional status, whereby substantial injury is done to substantial competitors in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, Daniel R. Hodgdon, an individual, and National Food Bureau, Inc., are to the prejudice of the public and to respondents' 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 joint answer of the respondents, testimony and other evidence taken before J. J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein, and oral arguments by James M. Hammond, Esq., counsel for the Commission, and by Daniel Jacobson, Esq., counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, Daniel R. Hodgdon, an individual, and National Food Bureau, Inc., and its officers, and their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of advertising matter, food or food products, including peanut oil, do forthwith cease and desist from:

1. Representing that corn oil or cottonseed oil or food products made therefrom are cheap commodities which are unwholesome, impure, or in any way deleterious to health or unfit for human consumption;
2. Representing that peanut oil or food products made therefrom are superior to or have a higher degree of digestibility or dietetical

superiority in any way for human consumption than corn oil or cottonseed oil or food products made therefrom;

3. Using any words or phrases calculated to falsely slander, defame, or discredit any person, firm or corporation engaged in selling corn or cottonseed oil or commodities made therefrom because of his, its or their being engaged in the manufacture, offering for sale or sale of said commodities;

4. Using, or authorizing others to use the word "Doctor" or its abbreviation, "Dr.", as descriptive of the professional qualifications of the respondent Daniel R. Hodgdon, in connection with any medical or dietetical topic in any way which has a tendency to import or imply that he is a medical doctor.

It is hereby further ordered, That the respondent Daniel R. Hodgdon, an individual and the respondent National Food Bureau, Inc., shall within 60 days from the date of the serving upon them of this order, file with the Commission, their reports in writing, stating the manner and form in which they shall have complied with this order.

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IN THE MATTER OF

ISADOR SOMMERFELD, TRADING AS DUBINER &
SOMMERFELD

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

Docket 1303. Complaint, April 8, 1925—Decision, Feb. 4, 1937

Where the term "Havana Tobacco" had long meant to cigar tobacco trade and cigar purchasing public of the United States tobacco grown on the Island of Cuba, and where many members of cigar tobacco and cigar trades and of cigar purchasing public had long believed such tobacco to be superior in quality for manufacture of cigars to be sold and consumed in the United States, and such trades and public had long considered that tobacco there grown in the Vuelta Abajo area or district of said Island was of a higher or more desirable quality for aforesaid use than tobacco grown in other countries or grown elsewhere on said Island; and thereafter an individual, engaged in New York in manufacturing and selling cigars which contained no tobacco grown on said Island, and in packing same for display and resale to members of the public who purchase cigars for consumption in and from wooden boxes and other containers, and in transporting such products to wholesale and retail dealer purchasers thereof into and through the District of Columbia and various other States; and never a recipient of any medals, prizes, or awards from any persons or associations on account of cigars made by him—

- (a) Caused words "Havana" and "Vuelta Abajo" to be placed on his cigar boxes and containers, and on the bands of cigars made and sold by him, with effect of misleading and deceiving many of said cigar and tobacco trades and members of cigar purchasing public into the belief that his said cigars were made wholly of Havana tobacco from the aforesaid district;
- (b) Caused to be placed on the boxes or containers of his said cigars certain labels carrying an outline map of the Island of Cuba and certain inscriptions in the Spanish language to the effect that cigars contained therein were made of finest Vuelta Abajo tobacco, and that tobacco in question was guaranteed as of the best Havana, and that anyone representing composition thereof to the contrary would be prosecuted to the fullest extent of the law, and containing also Spanish inscriptions and depictions of Spanish scenes and persons; and
- (c) Placed on his said boxes depictions of medals such as are awarded at World's fairs or conventions by governments, ruling members, manufacturers, trade associations, or others throughout the world, to manufacturers or dealers as prizes, decorations, or honors for the exceptional quality of their products, with effect of misleading and deceiving aforesaid trade and public into purchasing his said cigars as and for such products either imported from Cuba or made of Havana tobacco;

With result that many of the trade and public, relying on such words, labels, and inscriptions thus used by him in the manufacture and sale of said products,