IN THE MATTER OF

NATIONAL KREAM COMPANY, INC.

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

Docket 2901. Complaint, Aug. 19, 1936—Decision, Mar. 4, 1937

Where a corporation, engaged in jobbing foodstuffs—

Sold a large variety of flavoring extracts, upon the bottle labels of which there were set forth an apparent depiction of an Italian coat-of-arms and various Italian words, indicating and implying to members of purchasing public that said extracts were prepared, compounded, and packaged by the National Chemical Laboratory, at Milan, Italy, and were imported into the United States, and that they had been awarded first prize at certain expositions in Milan and Florence, Italy, in competition with other flavoring extracts there exhibited; facts being said extracts were compounded and packaged in the State of New York by an American manufacturer, and said various representations were false;

With effect of misleading large number of Italian Americans who prefer, as superior to such products produced in this country, those produced abroad, into the belief that they were buying such imported and preferred extracts of Italian origin; and with capacity and tendency to mislead and deceive purchasing public into belief that said extracts, thus labeled, were compounded and packaged abroad and imported into this country, and to induce such public, acting in such erroneous beliefs, to buy its said products, and thereby unfairly divert trade to it from its competitors who rightfully and truthfully represent their merchandise, and do not in anywise falsely represent the same; to the substantial injury of competition in commerce:

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

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

Mr. Astor Hogg for the Commission.

Mr. Henry Duke, of Long Island City, N. Y., 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 National Kream Company, Inc., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect

thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, National Kream Company, Inc., is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business at 360 Furman Street, Borough of Brooklyn, in the city and State of New York. Respondent is now and, for more than one year last past, has been, engaged in the business of a jobber of foodstuffs, including a variety of flavoring extracts. Respondent sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia; causing said products, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York.

PAR. 2. In the course and conduct of its business aforesaid, respondent is now, and for more than one year last past, has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing foodstuffs and flavoring extracts in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business, as aforesaid, the respondent sells a large variety of flavoring extracts. To the bottles which contain said flavoring extract are affixed labels, containing a reproduction of what appears to be an Italian coat of arms and the following wording:

Brevetto No. C135—Registration 352
Estratti-Bertola
Insuperabili
Premiati-alle Esposizioni
Milano e Firenze—1903
ROSOLIO ROSA
Laboratorio-Chimico
Nazionale
Milano
Italia
PRODOTTI IMPORTATI
Agenti Generali
Paramount Sales Co.
N. Y. U. S. A.
½ Oz.

The translation for the foregoing Italian wording is as follows:

Diploma No. C135—Registration 352
BERTOLA EXTRACT
Incomparable
First Prize at the Expositions
in Milan and Florence—1903
ROSOLIO ROSA
National Chemical Laboratory
Milan Italy
Imported Products
General Agents
Paramount Sales Co.,
N. Y. U. S. A.
½ Oz.

Said representations made upon the labels, as aforesaid, indicate and imply to the members of the purchasing public that the said flavoring extracts are prepared, compounded and packaged by the National Chemical laboratory at Milan, in Italy, and are imported into the United States. Said language further implies that the said product was awarded first prize at certain expositions in the cities of Milan and Florence, Italy, in competition with other flavoring extracts there exhibited. In truth and in fact, said flavoring extracts are not prepared, compounded and packaged by a National Chemical Laboratory in Milan, Italy, and are not imported into the United States; they were not exhibited at any Italian exposition, and were awarded no medals or other prizes; but, on the contrary, said flavoring extracts are prepared, compounded and packaged in the State of New York by an American manufacturer.

There is a large number of Italian-Americans among the purchasing public who show a preference for goods produced abroad, under the belief that they are superior to those produced in this country, said belief prevailing particularly in extracts and the like. These purchasers are led to believe, because of the statements contained on the label and the fact that said label is printed in the Italian language, that they are buying an imported extract of superior merit to the domestic product. There are among respondent's competitors many who sell both the domestic and imported products, and who, in the course and conduct of their business, honestly and truthfully represent their merchandise.

PAR. 4. The above and foregoing representations, as shown by the labels used by respondent, as described in paragraph 3, have the ca-

pacity and tendency to, and do mislead and deceive the purchasing public into the belief that the said flavoring extracts so labeled are prepared, compounded and packaged abroad, and imported into the United States, and have the capacity and tendency to, and do induce the said purchasing public, acting in such erroneous belief, to purchase respondent's product, thereby diverting trade to the respondent from those of its competitors who do not misrepresent and falsely label their products; and in this manner respondent does substantial injury to competition in interstate commerce.

PAR. 5. The above acts and things done or caused to be done by the respondent, were and are each and all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 other purposes," the Federal Trade Commission, on the 19th day of August 1936, issued and served its complaint in this proceeding upon respondent, National Kream Company, Inc., a corporation, charging it with 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 W. W. Sheppard, an examiner of the Commission theretofore duly designated by it and in opposition to the allegations of the complaint by Henry M. Duke, 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 and answer thereto, testimony and other evidence, and brief in support of the complaint (respondent's counsel having waived the filing of brief) 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, National Kream Company, Inc., is a corporation organized and existing under the laws of the State of New York. Its office and principal place of business is located at 360 Furman Street, Borough of Brooklyn, in the city of New York in said State. For more than one year last past, respondent has been engaged in the business of jobbing food stuffs, including a variety of flavoring extracts. It sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia, causing said products when sold, to be shipped from its place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York. In the course and conduct of its business as aforesaid, respondent is now and for more than one year last past has been in substantial competition with other corporations and with partnerships, firms, and individuals engaged in the business of selling and distributing food stuffs and flavoring extracts in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent sells and has sold a large variety of flavoring extracts. To the bottles which contain said flavoring extracts are affixed labels containing a reproduction of what appears to be an Italian coat-of-arms and the following words:

Brevetto No. C135—Registration 352
Estratti-Bertola
Insuperabili
Premiati-alle Esposizioni
Milano e Firenze—1903
ROSOLIO ROSA
Laboratorio-Chimico
Nazionale
Milano
Italia
PRODOTTI IMPORTATI
Agenti Generali
Paramount Sales Co.
N.Y. U.S.A.
½ Oz.

The English translation of the foregoing Italian wording is as follows:

Diploma No. C135—Registration 352
BERTOLA EXTRACT
Incomparable
First Prize at the Expositions
in Milan and Florence—1903
ROSOLIO ROSA
National Chemical Laboratory
Milan Italy
Imported Products
General Agents
Paramount Sales Co.,
N. Y. U. S. A.
½ Oz.

PAR. 3. The representations made upon the labels as set forth in paragraph 2 hereof indicate and imply to the members of the purchasing public that the said flavoring extracts are prepared, compounded and packaged by the National Chemical Laboratory, at Milan, Italy, and are imported into the United States. Said language further indicates and implies that the said extracts were awarded first prize at certain expositions held in the cities of Milan and Florence, Italy, in competition with other flavoring extracts there exhibited. The representations made by respondent are false and misleading in that said flavoring extracts are not and were not prepared, compounded or packaged by National Chemical Laboratory of Milan, Italy, and are not and were not imported into the United States from any foreign country. They were not exhibited at any Italian exposition and were awarded no medals or other prizes. As a matter of fact, said flavoring extracts are and were prepared, compounded, and packaged in the State of New York by an American manufacturer.

PAR. 4. There are a large number of Italian Americans among the purchasing public who have and show a preference for flavoring extracts produced abroad under the belief that they are superior to those produced in this country. These purchasers are led to believe because of the statements contained on the labels and the fact that the said labels are printed in the Italian language, that they are buying imported extracts of Italian origin for which they have a preference.

PAR. 5. The above and foregoing representations, as shown by the labels used by respondent as described in paragraph 2 hereof, have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said flavoring extracts so labeled are

and were prepared, compounded and packaged abroad, and imported into the United States; and have the capacity and tendency to induce the said purchasing public acting under such erroneous beliefs to purchase respondent's products, thereby unfairly diverting trade to the respondent from its competitors who rightfully and truthfully represent their merchandise and who do not in any wise falsely represent their products; and in this manner, respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, National Kream Company, Inc., a corporation are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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 W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief of the Commission filed herein (respondent having waived the filing of brief) and the Commission having made its findings as to the facts and its conclusion that said respondent had 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, National Kream Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of flavoring extracts or compounds in interstate commerce and in the District of Columbia, do cease and desist

1. From directly or indirectly advertising, designating or representing, through the use of words of any foreign language, or symbols, or picturizations, or through any other means or in any manner, that flavoring extracts or compounds manufactured or compounded in the United States are manufactured or produced in Italy or in any other foreign country and imported into the United States;

2. From directly or indirectly advertising, designating or representing, through the use of words, symbols or picturizations falsely indicating its flavoring extracts or compounds were exhibited at any exposition or awarded a prize at any such exposition, that such products are of superior merit.

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

KALO INOCULANT COMPANY

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

Docket 2745. Complaint, Mar. 14, 1936—Decision, Mar. 10, 1937

Where a corporation engaged in the sale and distribution of legume seed inoculants consisting of nitrogen-fixing bacteria in a humus base, under trade name "Humogerm," to wholesalers, retailers, and jobbers of seed, and through them, ultimately, to growers of leguminous crops who mix such inoculants with legume seed to promote growth of said crops and enrich soil in which same were grown; in advertising its said "Humogerm" in national and State farm magazines and in circulars, pamphlets, price lists, and other advertising matter distributed and circulated among its customers and prospective customers and furnished to its wholesale and retail customers to be passed on to the purchasing public, and through its labels, as the case might be—

(a) Represented to its said wholesale and retail customers, and supplied them with the means of representing to the ultimate purchaser, that its said containers were packed with a definite, ascertainable, minimum number of nitrogen-fixing bacteria, facts being that at time in question company from which it made its purchases and which mixed bacteria with humus base before shipping same in bulk to it, did not definitely ascertain definite number of such bacteria put in any given quantity of humus, and such numbers as were put in were subject to constant change during course of shipment, repackaging, and sale to ultimate purchaser;

(b) Represented through words "Guaranteed packed with" that each and every can of its said product contained a specified, definite, minimum number of living legume bacteria throughout the entire course of the distribution of said product and up to expiration date appearing on label of can, facts being there is no way known to science by which exact number of legume organisms can be determined in a can of inoculant as of the time the same reaches the farmer and no concern can truthfully guarantee that its product will, at that time, contain a definitely specified minimum number of such bacteria, and it did not know that there were present in its containers number and type of nitrogen-fixing bacteria stated and represented on its labels, and such number had not been and could not accurately be ascertained;

(c) Represented that its said product contained fifty percent more nitrogen-fixing bacteria than that of any other inoculant, and that its said product cost three and one-third cents per billion bacteria, facts being that number of bacteria in each can constantly varied, depending upon conditions to which can had been exposed, lack of uniformity in mixing, shipping in bulk and repackaging, and that, while use of a sufficient quantity of bacteria to produce adequate nodulation is essential, measurement of the relative values of competing commercial inoculants cannot truthfully be based on