

IN THE MATTER OF  
HAVANA-FLORIDA CIGAR 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 2667. Complaint, Aug. 5, 1936<sup>1</sup>—Decision, Mar. 29, 1937*

Where the finest quality of cigar tobacco was grown in Cuba near Havana, and the word "Havana," or "Habana," had been used and understood since time immemorial by cigar purchasing and consuming public and cigar manufacturers and dealers of the United States as meaning said tobacco, which had long been imported therein and was widely and extensively there used and consumed in cigars made in whole, and in part only, from such tobacco, and which had the reputation, among the cigar consuming and purchasing public of the United States, as cigar tobacco of highest quality and excellence, with cigars made in whole or in part therefrom in large demand, and preferentially purchased by many cigar dealers and many of the consuming public, with many believing that use of such tobacco in cigars increases the quality and desirability thereof; and thereafter a corporation engaged in Florida in the manufacture, packing, branding, and labeling of various brands of cigars, for sale and distribution by it and its dealers to the purchasing and consuming public in the United States, through personal solicitation, circulars, and other communications with customers and prospective customers, and in competition with many who sell and distribute cigars composed in whole, and also cigars composed in part only, of Havana tobacco, and who rightfully and truthfully advertise, represent and label their said cigars as containing such tobacco, and with many who sell and distribute among the States cigars containing no such tobacco, but composed wholly of said product grown in the United States, or elsewhere than on the Island of Cuba, and who do not brand, label, advertise, or otherwise represent their said cigars as made of Havana or Cuban tobacco—

Sold and distributed, through personal solicitation of salesmen and through circulars and written correspondence, in large and substantial quantities, under such names and brands as "Garcia's Havana Smoker," cigars made by it to be sold at a price of two or five cents, and featured said name on the labels of the paper cigar bands and on various places upon the cigar boxes or containers in which sold in varying quantities, and so packed its two-for-five-cents "Hav-a-Good Cigar" in containers that word "Havana" in its corporate name appeared in juxtaposition with letters "Hav-a" of said last-named cigar's brand name, notwithstanding fact that cigars thus branded, labeled, and sold were made from a cheap grade of tobacco alleged to contain 1 percent of Cuban, but purchased ready-mixed from factories and dealers and consisting largely of clippings gathered from cigars in process of manufacture, and aforesaid cigars, thus branded, labeled, described, and advertised, contained no Havana tobacco nor tobacco grown on Island of Cuba in appreciable amount;

<sup>1</sup> Amended and supplemental.

With effect of misleading and deceiving a large and substantial number of the purchasing and consuming public into buying its aforesaid cigars in the erroneous belief that they were composed, in whole or in large part, of Havana tobacco, or that grown on said Island of Cuba, and of placing in the hands of its dealers and distributors an instrumentality through which they might and did mislead and deceive the purchasing public, and with result, from such false and misleading representations, that consuming public was injured and trade was diverted to it from aforesaid competitors; to their injury and that of retail dealers and to the substantial injury of substantial competition in commerce, and to the prejudice of the buying public:

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

*Mr. Marshall Morgan* for the Commission.

#### AMENDED AND SUPPLEMENTAL COMPLAINT

*Whereas*, The Federal Trade Commission did heretofore, to wit, on December 20, 1935, issue its complaint herein charging and alleging that the respondent corporation is, and has been, guilty of unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914:

*And whereas*, This Commission, since the issuance of said complaint, has been advised that the respondent therein is, and has been, using unfair methods of competition in interstate commerce other than, and in addition to, those in relation to which the Commission issued its complaint aforesaid on December 20, 1935, in violation of the provisions of Section 5 of said Act;

*Now, therefore*, Acting in the public interest, pursuant to the provisions of the Act of September 26, 1914, aforesaid, the Federal Trade Commission charges that Havana Florida Cigar Company, Inc., has been, and now is, using unfair methods of competition in interstate commerce in violation of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Havana Florida Cigar Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 501 North Madison Street, Quincy, Fla. Respondent is now and for more than three years last past has been engaged, as hereinafter described, in the business of manufacturing various brands of cigars and selling and distributing the same to dealers in various parts of the United States, more particularly in the States of Alabama, Tennessee, Georgia, and New York. The

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said cigars are manufactured by respondent in Quincy, Fla., where they are packed, branded, and labeled by respondent for sale and distribution by it and by its dealer-customers to the purchasing and consuming public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold to be transported and delivered from its place of business in Quincy, Fla., through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its business, the respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars, and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana. The word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar-purchasing and consuming public of the United States, and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in whole and in part only from such tobacco. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco and have believed, and still believe, that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

The outer leaf, or wrapper, of a cigar comprises about five per cent of the entire cigar, while the filler and binder, constituting ninety-five per cent of the cigar, are the controlling factors in its size, strength, and flavor. The filler controls, primarily, the designed length, thickness, and shape of the cigar as rolled into a binder or binder wrapper of desired size. A dark cigar can be mild if it has a mild filler and binder, while a light colored cigar can be quite strong if the filler and binder are of a strong grade of leaf. The filler of the cheapest grades of cigars, such as "2 for 5's", is com-

posed principally of what is known as "scrap," being clippings from cigars in the process of manufacture.

PAR. 3. For a long period of years prior to the time respondent engaged in its said business, cigars composed wholly of Cuban tobacco were made in both Cuba and in the United States, and are now so made, for sale and consumption in the United States by manufacturers whose surname was "Garcia," and who respectively used and displayed, and still use and display, the said surname, either alone or in combination with the rest of their name, or with other words, on the bands of their cigars, or on the boxes or containers thereof, and on labels used in connection with the sale thereof.

For many years, persons in the cigar and tobacco trade, and many of the public purchasing cigars for consumption, have believed, and still believe, that cigars in connection with the sale of which the name "Garcia" so appeared or appears, were or are made by manufacturers named "Garcia," and of Cuban nationality or descent, and of Cuban grown tobacco exclusively, and that said cigars were and are of a quality superior to those made by many other manufacturers and superior in quality to cigars made wholly or in part of tobacco grown elsewhere than on the Island of Cuba, and in purchasing such cigars became accustomed to and still call for them either by the name of "Garcia" alone, or in combination with the remainder of the name of a manufacturer of that surname, or with the word "Havana," or other word or words denoting Cuban or Havana tobacco.

PAR. 4. In the course and conduct of respondent's business, as described in paragraph 1 hereof, sales of cigars are made and purchase orders therefor obtained through and as a result of the personal solicitation of salesmen, the use of circulars and by means of written correspondence and other communications with respondent's customers and prospective customers. The said cigars, manufactured, sold and distributed competitively by respondent in interstate commerce, as set forth in paragraph 1 hereof, are and for several years last past have been sold and distributed by respondent in large and substantial quantities, under such names and brands, among others, as "Garcia's Havana Smoker," a brand manufactured to be sold at a price of 2 for 5¢. The following hereinafter described brands and labels have been affixed by respondent to the said cigar and to the containers thereof. The labels attached to the cigars themselves consist of a paper band placed by respondent around each cigar and bearing conspicuously the words "Havana Garcia's Smokers," printed in letters of red upon a label of yellow. The containers for such cigars are the usual and customary cigar boxes or cigar containers of varying capaci-

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ties, holding from fifteen cigars up to fifty and a hundred. The labels and brands attached to each box or container have been designed and affixed thereto by respondent, and are as follows:

(1) Centered on the outside of the lid of the box is a label or brand bearing the words "GARCIA'S HAVANA SMOKER" in large black letters, on a background of brown. In the center, between the word "Garcia's" and the words "Havana Smoker", appear the following: "H. F. Co. Mild and Fragrant".

This same brand or label appears again on the inside of the top of the box, and in either of the two upper corners, printed on a black background, appears the legend "2 for 5¢".

On the outside of the box front, in black letters on a background of brown, appears the following: "Havana Smoker Claro 2 for 5¢".

This same wording is also found on either end of the larger boxes used by respondent in the sale and distribution of its above described cigars.

(2) Centered on the outside of another box or container is a band or label reading:

2 f 5¢  
o  
r

2 f 5¢  
o  
r

GARCIA'S SMOKERS  
No Fancy Labels—Bands or Boxes  
All the quality in the Cigars.

Said respondent also manufactures and sells the same or a similar brand under the name and designation:

## Garcia Smoker Refills

Respondent also under the brand name "Hav-a-Good Cigar" sells two kinds of cigars, one made of genuine "Havana" tobacco, retailing for 5¢, and the other made wholly from domestic tobacco treated with a certain process hereinafter referred to and described, and retailing 2 for 5¢. The said cigars made of domestic tobacco, especially treated as aforesaid, are packed by respondent in a box in such a manner as to leave visible immediately to the left of the centered brand name, the first word of respondent's corporate name, that is, the word "Havana," the said word "Havana" being used in connection with, and appearing in juxtaposition with the first four letters of said brand name, that is, "Hav-a."

The said cigars, branded, labeled, and sold by respondent, respectively, as "Garcias Havana Smoker," "Garcias Smoker," "Garcia Smoker Refills," and the aforesaid "Hav-a-Good" brand made of domestic tobacco are and have been made from a cheap grade of

tobacco alleged to contain 1% of Cuban tobacco. Tobacco used for this type of cigar may be purchased ready mixed from factories and dealers, and consists largely of clippings gathered from cigars in the process of their manufacture.

PAR. 5. Respondent's use of the word "Havana" in its corporate name and as a brand or label or part of a brand or label for cigars, and its use of the words "Garcia's" and "Garcia" are alleged to be predicated by respondent upon the following facts and circumstances:

Respondent company is now and for sometime past has been located at Quincy, Fla. Respondent at one time employed as foreman of its Quincy factory a man by the name of Raymond Garcia, who had theretofore operated a cigar factory at Havana, Fla. Some two and one-half years ago Garcia discovered a process of treating domestic tobacco with a solution made in the following manner:

Stems of Havana tobacco remaining after the tobacco is stripped from the leaf, and technically known as "Petroli," are purchased in bulk at Tampa, Fla., by respondent. Quantities of these stems are placed in barrels and water is added. The mixture is then allowed to ferment for three weeks, the liquid forming in the barrel becoming a sort of tobacco brew or vinegar. A quantity of domestic tobacco is then sprayed with such liquid, after which the domestic tobacco is allowed to heat. After the tobacco thus sprayed and treated is heated, and carefully watched for a number of days, it is sprayed again, then heated again, until in the view of respondent it develops the "certain mellowness" and "true flavor of real Havana tobacco." Said domestic tobacco so treated is thereafter used respectively as wrappers, binders, and filler in the manufacture of cigars.

Said respondent, as a result of said spraying procedure, employs the word "Havana" in its corporate name and the words "Havana" and "Garcia's" and "Garcia" singularly and in combination as brands or labels for cigars manufactured by it and advertised and sold by it in commerce.

PAR. 6. In truth and fact respondent's cigars, branded, labeled, described, and advertised, respectively, as "Garcias Havana Smoker," "Garcias Smoker," "Garcia Smoker Refills," and "2 for 5¢ Hav-a-Good," and sold by the respondent and by dealers to the purchasing and consuming public, as hereinbefore described, do not contain Havana tobacco, nor tobacco grown on the Island of Cuba, in any appreciable amount, nor have they at any time contained such tobacco in any appreciable amount, but are, and have been, manufactured entirely from, and wholly composed of, tobacco grown elsewhere than on the Island of Cuba. The use of the word "Havana" in said designation "Garcia's Havana Smoker" in respondent's corporate name

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and in connection with respondent's "2 for 5¢ Hav-a-Good" brand, and the use of the words "Garcia's" and "Garcia" in said designations "Garcia's Havana Smoker," "Garcia Smoker," and "Garcia Smoker Refills" in branding, labeling, describing, and advertising said cigars containing no Havana tobacco, or no Havana tobacco in appreciable amount, as hereinabove set forth, is misleading and has, and has had, the capacity and tendency to, and does and did, mislead and deceive a large and substantial number of the purchasing and consuming public into purchasing said cigars in the erroneous belief that they are and were composed, in whole or in large part, of Havana tobacco, that is, tobacco grown on the Island of Cuba.

PAR. 7. Among the competitors of respondent, referred to in paragraph 1 hereof, there are many who sell and distribute, in competition with respondent, cigars composed in whole and also cigars composed in part only of Havana tobacco, and who rightfully and truthfully advertise, represent, sell, and label such cigars as containing said Havana tobacco. There are also many of said competitors who sell and distribute between and among the several states in competition with respondent cigars containing no Havana tobacco and being composed wholly of tobacco grown in the United States or elsewhere than on the Island of Cuba, and who do not brand, label, advertise, or otherwise represent that said cigars are made of Havana or Cuban tobacco. There are also among the individuals, firms, and corporations referred to above who are and have been in competition with the respondent, some whose names are not "Garcia," and some who manufacture and sell cigars made of tobacco part of which only is grown in Cuba, or of tobacco grown elsewhere than in Cuba, and who do not brand or label, and have not been branding or labeling, the cigars made by them or the containers thereof, with the words "Garcia's" or "Garcia."

Respondent's so-called "Garcias Havana Smoker," "Garcias Smoker," "Garcia Smoker Refills," and "2 for 5¢ Hav-a-Good" are displayed, offered for sale, and sold to the consuming public by respondent, and in and by cigar stores and other dealer-establishments in competition with the said cigars of competitors. The respondent's use of the word "Havana" and of the words "Garcia" and "Garcias," as hereinabove described, in relation to a cigar having no Havana tobacco, or no appreciable amount of Havana tobacco, is false and misleading. As a result of such false and misleading representations on the part of respondent the consuming public is being, and has been, injured, trade is being, and has been, diverted to respondent from such competitors in interstate commerce, and thereby substantial injury is done, and has been done, by the respondent to substan-

tial competition in interstate commerce, and there is, and has been, placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive, and have misled and deceived, the purchasing public.

PÁR. 8. Said representations of respondent, contained in its brands, labels, advertisements, circulars, or other media through which the trade and consuming public are reached, have resulted in injury to respondent's competitors and to retail dealers and to the prejudice of the buying public, and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, 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 December 20, 1935, issued and thereafter served its original complaint in this proceeding on respondent, Havana-Florida Cigar Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act, and on August 5, 1936, issued and served its amended and supplemental complaint on the said respondent, charging it with the use of unfair methods of competition in commerce other than, and in addition to, those in relation to which the Commission issued its original complaint as aforesaid. After the issuance of said complaints and the filing of respondent's answer to the said amended and supplemental complaint, the Commission, on December 23, 1936, entered an order closing the case with respect to the use of the term "Garcia".<sup>1</sup> Thereafter, the Commission, by further order entered herein granted respondent's motion for permission to withdraw its said answer and to substitute therefor an answer admitting all the material allegations of the complaint as modified by the order of the Commission entered in this matter on December 24, 1936, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly

<sup>1</sup> Said order reads as follows:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same and being now fully advised in the premises; *It is ordered*, That the case growing out of the amended and supplemental complaint hereinbefore issued on the 5th day of August, 1936, insofar as said case relates to the alleged unfair or misleading use of the word "Garcia" be, and the same hereby is, closed. *It is further ordered*, That as to all other allegations growing out of the aforesaid amended and supplemental complaint, the case proceed to trial in accordance with the regular procedure of the Commission.

filed in the office of the Commission. Thereafter this proceeding came on for final hearing before the Commission on the said amended complaint and the answer thereto; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Havana-Florida Cigar Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 501 North Madison St., Quincy, Fla. Respondent is now, and for more than 3 years last past has been engaged, as hereinafter described, in the business of manufacturing various brands of cigars and selling and distributing the same to dealers in various parts of the United States, and more particularly in the States of Alabama, Tennessee, Georgia, and New York. The said cigars are manufactured by respondent in Quincy, Fla., where they are packed, branded, and labeled by respondent for sale and distribution by it and by its dealer-customers to the purchasing and consuming public of the United States. In consummating such sales and in distributing such products respondent causes the cigars so sold to be transported and delivered from its place of business in Quincy, Fla., through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its business, the respondent has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars, and offering such products for sale in commerce, between and among the various States of the United States and within the District of Columbia.

PAR. 2. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana. The word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar-purchasing and consuming public of the United States, and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in

whole and in part only from such tobacco. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco and have believed, and still believe, that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

The outer leaf, or wrapper, of a cigar comprises about five percent of the entire cigar, while the filler and binder, constituting ninety-five percent of the cigar, are the controlling factors in its size, strength, and flavor. The filler controls, primarily, the designed length, thickness and shape of the cigar as rolled into a binder or binder wrapper of desired size. A dark cigar can be mild if it has a mild filler and binder, while a light-colored cigar can be quite strong if the filler and binder are of a strong grade of leaf. The filler of the cheapest grades of cigars, such as "2 for 5," is composed principally of which is known as "scrap," being clippings from cigars in the process of manufacture.

PAR. 3. In the course and conduct of respondent's business, as described in paragraph 1 hereof, sales of cigars are made and purchase orders therefor obtained through and as a result of the personal solicitation of salesmen, the use of circulars and by means of written correspondence and other communications with respondent's customers and prospective customers. The said cigars, manufactured, sold, and distributed competitively by respondent in interstate commerce, as set forth in paragraph 1 hereof, are and for several years last past have been sold and distributed by respondent in large and substantial quantities, under such names and brands, among others, as "Garcia's Havana Smoker," a brand manufactured to be sold at a price of 2 for 5¢. Brands and labels, as hereinafter described, have been affixed by respondent to the said cigar and to the containers thereof. The labels attached to the cigars themselves consist of a paper band placed by respondent around each cigar and bearing conspicuously the words "Havana Garcia's Smokers," printed in letters of red upon a label of yellow. The containers for such cigars are the usual and customary cigar boxes or cigar containers of varying capacities, holding from fifteen cigars up to fifty and a hundred. The labels and brands attached to the box or container of respondent's "Garcia's Havana Smoker" have been designed and affixed thereto by respondent, and are as follows:

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Centered on the outside of the lid of the box is a label or brand bearing the words "GARCIA'S HAVANA SMOKER" in large black letters, on a background of brown. In the center, between the word "Garcia's" and the words "Havana Smoker," appear the following: "H. F. Co. Mild and Fragrant." This same brand or label appears again on the inside of the top of the box, and in either of the two upper corners, printed on a black background, appears the legend "2 for 5¢." On the outside of the box front, in black letters on a background of brown, appears the following: "Havana Smoker Claro 2 for 5¢." This same wording is also found on either end of the larger boxes used by respondent in the sale and distribution of its above-described cigars.

Respondent also under the brand name "Hav-a-Good Cigar" sells two kinds of cigars, one made of genuine "Havana" tobacco, retailing for 5¢, and the other made wholly from domestic tobacco and retailing 2 for 5¢. The said cigars made of domestic tobacco are packed by respondent in a box in such a manner as to leave visible immediately to the left of the centered brand name, the first word of respondent's corporate name, that is, the word "Havana," the said word "Havana" being used in connection with, and appearing in juxtaposition with the first four letters of said brand name, that is, "Hav-a."

The said cigars, branded, labeled, and sold by respondent, respectively, as "Garcia's Havana Smoker" and the 2 for 5¢ "Hav-a-Good" brand, are and have been made from a cheap grade of tobacco alleged to contain 1% of Cuban tobacco. Tobacco used for this type of cigar may be purchased ready-mixed from factories and dealers, and consists largely of clippings gathered from cigars in the process of their manufacture.

PAR. 4. In truth and fact respondent's cigars, branded, labeled, described, and advertised, respectively, as "Garcia's Havana Smoker," and "Hav-a-Good"—"2 for 5¢," and sold by the respondent and by dealers to the purchasing and consuming public, as hereinbefore described, do not contain Havana tobacco, nor tobacco grown on the Island of Cuba, in any appreciable amount, nor have they at any time contained such tobacco in any appreciable amount, but are, and have been, manufactured entirely from, and wholly composed of, tobacco grown elsewhere than on the Island of Cuba. The use of the word "Havana" in said brand designated as "Garcia's Havana Smoker" and as used on containers in front of and in conjunction with the word, words or expression "Hav-a-Good" as printed or appearing on the container of the 2 for 5¢ brand of such cigars in branding, labeling, describing, and advertising said cigars containing no Havana tobacco, or no Havana tobacco in appreciable

amount, as hereinabove set forth, is misleading and has, and has had, the capacity and tendency to, and does and did, mislead and deceive a large and substantial number of the purchasing and consuming public into purchasing said cigars in the erroneous belief that they are and were composed, in whole or in large part, of Havana tobacco, that is, tobacco grown on the Island of Cuba.

PAR. 5. Among the competitors of respondent, referred to in paragraph 1 hereof, there are many who sell and distribute, in competition with respondent, cigars composed in whole and also cigars composed in part only of Havana tobacco, and who rightfully and truthfully advertise, represent, sell, and label such cigars as containing said Havana tobacco. There are also many of said competitors who sell and distribute between and among the several states in competition with respondent cigars containing no Havana tobacco and being composed wholly of tobacco grown in the United States or elsewhere than on the Island of Cuba, and who do not brand, label, advertise, or otherwise represent that said cigars are made of Havana or Cuban tobacco.

Respondent's so-called "Garcia's Havana Smoker," and 2 for 5¢ "Hav-a-Good" brand are displayed, offered for sale, and sold to the consuming public by respondent, and in and by cigar stores and other dealer-establishments in competition with the said cigars of competitors. The respondent's use of the word "Havana" as hereinabove described, in relation to cigars having no Havana tobacco, or no appreciable amount of Havana tobacco, is false and misleading. As a result of such false and misleading representations on the part of respondent the consuming public is being, and has been, injured, trade is being, and has been, diverted to respondent from such competitors in interstate commerce, and thereby substantial injury is done, and has been done, by the respondent to substantial competition in interstate commerce, and there is, and has been, placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive, and have misled and deceived, the purchasing public.

PAR. 6. Said representations of respondent, contained in its brands, labels, advertisements, or other media through which the trade and consuming public are reached, have resulted in injury to respondent's competitors and to retail dealers and to the prejudice of the buying public, and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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## CONCLUSION

The aforesaid acts and practices of the respondent, Havana-Florida Cigar Company, Inc., are 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."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the original and amended and supplemental complaints of the Commission and the answer filed herein on March 26, A. D., 1937, by the respondent admitting all the material allegations of said complaints, including the allegations of the said amended and supplemental complaint as amended by order of the Commission duly entered on December 23, 1936,<sup>1</sup> and waiving the taking of further evidence and all other intervening procedure, 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 said respondent, Havana-Florida Cigar Company, Inc., itself, its servants, employees, or agents, individual or corporate, in connection with the offering for sale, sale and distribution of cigars in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word "Havana" as descriptive of cigars unless such cigars be made entirely from tobacco grown in the Island of Cuba.

2. Representing in any manner that cigars other than those manufactured entirely from tobacco grown in the Island of Cuba, are Havana cigars.

*It is further ordered*, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

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<sup>1</sup> See footnote on page 865.

## Syllabus

## IN THE MATTER OF

DAVID F. KEMP, TRADING AS UNITED STATES SCHOOL  
OF MUSICCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2943. Complaint, Oct. 15, 1936—Decision, Mar. 29, 1937*

Where an individual engaged in the sale of correspondence courses for home study in playing various musical instruments, and in the sale, as incident thereto, of books, booklets, and other articles—

- (a) Represented, in advertising folders, pamphlets, circulars, letters, and other literature circulated to customers and prospective customers in the various States and in the District of Columbia, and in advertisements in periodicals of general circulation, that he had taught 700,000 pupils to play musical instruments, and that when a pupil enrolled in his said course he, the pupil, was assured of success, and that at the end of said course the average pupil was sufficiently proficient to pass a teacher's examination; and
- (b) Represented, as aforesaid, that no talent was necessary, and that any pupil could, through his said course, learn to play any musical instrument, and that all pupils, regardless of their degree of talent, could be taught to play an instrument in half the time usually required, and that an automatic finger control of his invention limbered, trained, or guided one's fingers so that they fell in the proper place automatically, and that a pupil, regardless of his talent, could quickly learn to play any jazz or classical selection and could play real tunes perfectly by note from the very start of the course, or at any point thereof;

Facts being that not all pupils studying his said course can play real tunes perfectly by note from the very start thereof, or at any other point therein, some measure of musical talent is generally necessary in order to enable a person to play a musical instrument, his said course is not such that a pupil can learn to play any such instrument without any musical talent, and aforesaid representations were otherwise exaggerated and false;

With capacity and tendency to deceive and mislead purchasers and prospective purchasers of his said correspondence lessons and courses of instruction, and to mislead a substantial portion of purchasing public into the erroneous belief that all said representations were true, and with result that a number of the consuming public, as a direct consequence of the mistaken and erroneous beliefs induced by such acts and representations, purchased substantial volume of said correspondence lessons and courses, and trade was unfairly diverted to him from competitors similarly engaged in sale and distribution of correspondence lessons and courses and who truthfully represent the effectiveness thereof and results to be obtained from their study; to the 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.

*Mr. Joseph C. Fehr* for the Commission.

*R. L. P. Wallace and Co.*, of New York City, for respondent.