

Syllabus

IN THE MATTER OF
BRITISH AMERICAN TOFFEE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3085. Complaint, Mar. 23, 1937—Decision, May 22, 1937*

Where a domestic corporation engaged, at its office and principal place of business in the United States, in the manufacture and sale of confectionery products, including one known to the trade as "toffee," and making said last-named product from formulas prepared by an English stockholder and former candy manufacturer in England for a number of years and at its aforesaid office and principal place of business only, and neither owning, operating, nor controlling manufacturing plants, branches, or selling agencies in any part of England, or in any other foreign country, and in competition, as thus engaged, with many who sell toffee and other confectionery products made in England and imported therefrom, and who rightfully and lawfully represent their said merchandise as imported, and with others who make and sell such products made in the United States and in no manner represent their said domestic confectionery or toffee as an English or foreign made and imported confection, such as long popular and in demand among the consuming public throughout the United States and considered, in the case of many, as superior, and especially so in case of English-made toffee, to similar domestic products, and purchased by many of said public, in the case of such toffee, in preference to the domestic-made product—

Made use of such words and phrases, on the individual wrappers of the candy pieces, as "Delicious English Toffees," and included on the statements lithographed or printed on the cellophane bags or containers of such individually wrapped pieces, along with its name of "British American Toffee Company," words "England's Most Popular Sweet, Piccadilly Toffee," and also set forth thereon depictions of the Tower of London and London Bridge and two soldiers simulating in dress and appearance British soldiers, and upon the cartons containing said cellophane bags or toffee in bulk set forth labels, along with its aforesaid name, containing words "Piccadilly Toffee made by," etc.;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that its said toffee products, thus designated as "English" and "Piccadilly" toffee, were importations of a foreign made product and that it owned and operated factories in England in which it made the same, and with result that such public, by reason of said belief thus induced, bought substantial volume of its said products, and trade was unfairly diverted from those competitors engaged in similar businesses who do not make use of the same or similar misrepresentations, acts and practices; 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.

Complaint

24 F. T. C.

Mr. J. T. Welch for the Commission.

Tilson, Stanley & McCuen, of Washington, D. C., 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 British American Toffee Company, a corporation, hereinafter referred to as respondent, is now, and has been, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. British American Toffee Company is now, and has been at all times mentioned herein, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business at 102 Hill Street, New Haven, Conn. It is now, and has been at all times mentioned herein, engaged in the business of manufacturing and selling confectionary products, including a product known to the trade as "toffee."

PAR. 2. Said respondent causes its said product, when sold to wholesale and retail dealers to be transported from its principal place of business in the State of Connecticut, to the purchasers thereof located in other States of the United States, and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said product known as "toffee" manufactured and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondent, in the course and conduct of its business, has been at all times mentioned herein, engaged in substantial competition with other corporations, partnerships, and individuals, engaged in commerce among the several States of the United States and in the District of Columbia, in the manufacture, importation, distribution, and sale of domestic and foreign confectionary products, including the product known as "toffee."

PAR. 4. Respondent, British American Toffee Company, in the course and conduct of its business, as set forth herein, has offered for sale and sold in commerce as herein set out, certain of its products, to wit: "English Toffee," "English Toffees," and "Piccadilly Toffee,"

1337

Complaint

in cellophane or paper bags or containers and in cartons. By way of advertisement or inducement to purchase, there is lithographed or printed thereon as to "English Toffee" or "English Toffees," the following:

Delicious English Toffees
Printed in England

and as to "Picadilly Toffee," the following:

"England's Most Popular Sweet" Piccadilly Toffee
British-American Toffee Company

together with figures or pictures of an English castle representing the Tower of London and London Bridge, a coat-of-arms and two soldiers simulating British soldiery in dress and appearance. The cartons in which respondent has shipped and now ships its said products, had and have affixed to them labels containing the following words:

Piccadilly Toffee

The cartons in which respondent's said products are shipped bear printed words or legends such as "Printed in England" which have the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the mistaken and erroneous belief that the contents of said cartons are also made in and imported from England. Respondent has caused invoices and billings to be forwarded to its customers, located in States other than the State of Connecticut, containing as a description of its said product: "Piccadilly Toffee."

PAR. 5. Respondent, British American Toffee Company, does not manufacture any of its products, including those described herein, in any part of England, does not own or operate manufacturing plants, branches or selling agencies in any part of England. All toffee products of the respondent are of domestic manufacture. Respondent's corporation is not a "British" corporation, nor it is a "British-American" corporation.

PAR. 6. Confectionary products, including "toffee" manufactured in England or other foreign countries, have for many years enjoyed widespread popularity, good-will, and demand among the consuming public throughout the United States, many of whom believe and consider that confectionary products, especially those designated as "toffee," manufactured in England, are superior in quality and other desirable characteristics to similar confectionary products manufactured in the United States. Many of the consuming public throughout the United States purchase "toffee" manufactured in England

Complaint

24 F. T. C.

and imported into the United States in preference to "toffee" manufactured in the United States.

PAR. 7. The false and misleading advertising and representations hereinabove set out, on the part of the respondent, places in the hands of wholesale and retail dealers and jobbers, an instrument and means whereby said dealers and jobbers may commit a fraud upon a substantial portion of the consuming public by enabling dealers to represent and offer for sale and sell the said products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee," either as an imported product or as a product manufactured in the United States in conjunction with or under license from English manufacturers of "toffee." There are, among the competitors of the respondent, many who deal in confectionary products and sell "toffee," as well as other confectionary products manufactured in England and imported into the United States, who rightfully and lawfully represent such merchandise to be imported. There are others among the competitors of the respondent, who deal in confectionary products, including "toffee" that are manufactured in the United States, who in no manner represent their products as having been manufactured in or imported from England or any other foreign country.

PAR. 8. The effect of the foregoing false and misleading advertisements and representations of the respondent is to mislead a substantial number of wholesale and retail merchants and jobbers, as well as a substantial portion of the consuming public, in the several States, by inducing them to erroneously and mistakenly believe:

1. That respondent owns and operates factories in England, in which it manufactures the products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee";

2. That respondent is a British corporation or a British-American corporation;

3. That the products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee" are importations of a foreign manufactured product that can be, and often are, sold by dealers on the open market to the consumer public at a higher price than like products of domestic manufacture;

4. That the products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee" are manufactured in conjunction with or under license from foreign manufacturers who have been engaged in the confectionary business for many years.

The foregoing false and misleading statements and representations on the part of respondent are added inducements for a substantial number of wholesale and retail merchants and jobbers, as well as consumer purchasers, to buy the products known as "English Toffee" or

"English Toffees" and "Piccadilly Toffee," manufactured, sold and distributed by respondent, and have a tendency and a capacity to, and do unfairly divert trade from competitors of respondent engaged in similar businesses who do not make use of the same or similar false and misleading statements and representations, with the result that substantial quantities of said products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee" are sold to said dealers and purchasers and to the consuming public on account of said beliefs induced by the said false and misleading representations. As a consequence thereof, substantial injury has been done by the respondent to competition in commerce among the several States of the United States, and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices and representations of the respondent have been and are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition within the meaning and intent 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 March 23, 1937 issued and served its complaint in this proceeding upon said respondent, British American Toffee Company, charging it with the use of unfair methods of competition in violation of the provisions of said act. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved and accepted, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. British American Toffee Company is a corporation organized in January 1936 and existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business at 102 Hill Street, New Haven, Conn. Since its organization, it has been engaged in the business of manufacturing and selling confectionery products, including a product known to the trade as "toffee." The capital stock of the corporation is owned by Theodore R. Blakeslee of New Haven, Conn., and James Whitefield and H. E. Tilbrooke of London, England. The ownership of the stock of said corporation is equally divided among the above named individuals.

PAR. 2. When its toffee is sold to wholesale and retail dealers located in various States of the United States, the respondent causes said toffee to be transported from its principal place of business in the State of Connecticut to the purchasers thereof at their respective points of location in other States of the United States. The respondent has, at all times since its organization, maintained a constant current of trade in commerce in its toffee between and among the various States of the United States and in the District of Columbia.

PAR. 3. British American Toffee Company has, at all times since its organization, been engaged in substantial competition with other corporations and with partnerships and individuals likewise engaged in the manufacture, distribution and sale of domestic confectionary products, including toffee, and with corporations, partnerships, and individuals engaged in the importation, distribution, and sale of foreign confectionary products, including toffee, in commerce among and between the several States of the United States.

PAR. 4. In the course and conduct of its business, British American Toffee Company has offered for sale and sold its toffee in commerce, as herein set out, in cellophane or paper bags or containers and in cartons. By way of advertisement, there are lithographed or printed, on the individual wrapper for each piece of candy, the words "Delicious English Toffees." There are lithographed or printed on the cellophane bags or containers which hold a number of individual pieces of toffee the following words:

England's Most Popular Sweet
Piccadilly Toffee
British American Toffee Company

1337

Findings

On the cellophane bags or containers, there also appear figures or picturizations representing the Tower of London and London Bridge and two soldiers simulating British soldiery in dress and appearance.

The other containers or cartons in which the cellophane bags or the toffee in bulk have been shipped from respondent's place of business to dealers and purchasers located in the several States bear labels containing the following words:

Piccadilly Toffee
made by
The British American Toffee Co.
New Haven, Conn.

PAR. 5. British American Toffee Company actually manufactures said toffee in New Haven, Conn. It does not manufacture its toffee in any other place and it does not own, operate, or control manufacturing plants, branches, or selling agencies in any part of England or in any other foreign country. Its toffee is made from formulas prepared by the aforesaid James Whitefield who has been engaged in the manufacturing of candy in England for a number of years.

PAR. 6. Confectionary products, including toffee manufactured in England or other foreign countries, have for many years enjoyed widespread popularity, good-will and demand among the consuming public throughout the United States, many of whom believe and consider that confectionary products, especially those designated as "toffee" manufactured in England are superior in quality and other desirable characteristics to similar confectionary products manufactured in the United States. Many of the consuming public throughout the United States purchase toffee manufactured in England and imported into the United States in preference to toffee manufactured in the United States.

PAR. 7. Since the filing and service of the complaint, the respondent has altered the advertising matter appearing on the cellophane bags and containers used in transporting its toffee in commerce as herein described. The cellophane bags now bear the following words—

Piccadilly Style Toffee
Made by British American Toffee Co.
In New Haven, Conn.

The cellophane bags continue to have lithographed or printed thereon a picturization of London Bridge and the Tower of London and two soldiers simulating British soldiery. The letters of the word "Style" are plainly and clearly printed in close connection with the words "Piccadilly" and "Toffee" and are readily discernible. The remaining portion of the legend indicating that the product is ac-

Findings

24 F. T. C.

tually manufactured in New Haven, Connecticut appears to be conspicuously placed in letters of sufficient size to be easily readable.

Various wrappers for the individual pieces of toffee contained in the cellophane bags above referred to have been altered so that the following words are printed thereon:

Coronet Toffee
Vanilla Flavor Toffee
Molasses Flavor Toffee
Brazil Nut Flavor Toffee
Rum and Butter Flavor Toffee

These wrappers as now printed and now used by the respondent do not contain the word "English."

Since the filing and service of complaint, the respondent has altered the advertising matter appearing on the labels of the other containers and cartons so as to read—

Piccadilly Style Toffee
made by
The British American Toffee Co.
in
New Haven, Conn.

The letters of the word "Style" are plainly and clearly printed in close connection with the words "Piccadilly" and "Toffee" and are readily discernible. The remaining portion of the legend indicating that the product is actually manufactured in New Haven, Conn., appears to be conspicuously placed in letters of sufficient size to be easily readable.

PAR. 8. There are among the competitors of respondent many who deal in confectionary products and sell in commerce, as herein set out, toffee as well as other confectionary products manufactured in England and imported to the United States and who rightfully and lawfully represent such merchandise to be imported. There are others among the competitors of respondent who manufacture and sell in commerce, as herein set out, confectionary products, including toffee, that are manufactured in the United States and who in no manner represent their products as manufactured in or imported from England or any other foreign country.

PAR. 9. The foregoing misleading statements and representations on the part of the respondent have, and have had, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that its toffee products heretofore designated as "English Toffee" and "Piccadilly Toffee" are importations of a foreign manufactured product and that respondent owns and operates factories in England in which it

1337

Order

manufactures said products. As a result of said belief, induced by the statements and representations of the respondent as hereinabove detailed, the purchasing public has purchased a substantial volume of respondent's toffee products with the result that trade has been unfairly diverted from those competitors engaged in similar businesses who do not make use of the same or similar representations, acts and practices. As a consequence, substantial injury has been done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, British American Toffee Company, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its 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 and the agreed stipulation of facts entered into between the respondent herein, British American Toffee Company, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, British American Toffee Company, and its officers, representatives, agents, and employees, in connection with the advertising, offering for sale, and sale and distribution of confectionery products, including toffee, in interstate commerce, forthwith cease and desist from:

1. Representing, through the use of such phrases as "England's Most Popular Sweet," or any other word or phrase of similar import and effect, or through any other means or device, or in any manner,

Order

24 F. T. C.

that its said toffee products are manufactured in England or in any other foreign country or that said products are imported into the United States.

2. Using the word "Piccadilly" alone or in conjunction with any other words or phrases, or using picturizations of English soldiery or the Tower of London and London Bridge, or similar picturizations as descriptive of its toffee products on bags or containers, or in any other manner, unless there is placed in close proximity to and equal prominence with said words, phrases and picturizations, other words that clearly indicate that said product is actually produced or manufactured in the United States.

It is further ordered, That the respondent shall within 90 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

BERNARD LICHT, TRADING AS LICHT'S FUR FACTORY

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

Docket 2787. Complaint, Apr. 25, 1936—Decision, May 27, 1937

- Where an individual engaged in the sale of furs and fur garments, and owner of all the outstanding stock of a corporate manufacturer, wholesaler, and retailer of such garments, located at same address; in advertising, in an adjoining State, his said furs and fur garments through radio broadcasts over a station, wavelength of which was of such character that it could be heard by people in States other than such adjoining State of origin—
- (a) Represented that he owned the building in which his business was carried on, and that he possessed, or was in a position to offer for sale, thousands of fur coats in the newest styles and models, etc., and that by purchasing from him, the customer could save the middleman's profit and that the saving thereby effected amounted to as much as fifty percent of the price of similar garments sold through the usual retail channels, facts being neither he nor aforesaid corporation owned said building, but he was only a tenant and occupied and paid rent for the second floor thereof, he was not in a position to offer "thousands" of fur coats and other garments, but number thereof on hand and available for sale at any other time was substantially less than stated and represented over such broadcast, he made use of fur sewing machines not owned by him in manufacture of such garments made by him, purchased many of his fur garments from aforesaid corporation and other fur manufacturers, coats advertised by him as aforesaid at varying prices were purchasable from other large retail establishments in the same city for substantially smaller amounts, those advertised for \$39 were "rebuilt" or "renovated" coats, and customers or prospective customers could not and did not effect any such saving as above set forth through purchase from him;
 - (b) Represented that all repairs for furs or fur garments were furnished free of charge, and that storage for such products was likewise thus furnished, facts being amount of free repairs furnished by him was limited and did not include use of material necessary to make repairs involved, for which additional amount of money was charged, and he did not give "free storage" to his customers, as understood among members of trade as including "proper refrigerated space where the garment is hung, and adequate insurance to cover the garment in the event of loss that would be sustained," but charged his said customers for insurance against fire, burglary, and theft on furs and fur garments stored by them; and
 - (c) Represented that customers or prospective customers could purchase new fur garments consisting of genuine Hudson seal, raccoons, and other fur garments, at the low price of \$45 for each coat, and that purchases of fur coats could be effected by them through turning in their old coats in trade and having allowance made therefor to apply on the purchase price of the new coat offered by him; facts being that he did not disclose that many of the coats which he offered at low prices were made from old skins taken from coats previously worn, repaired and made over, and he did not sell