

IN THE MATTER OF
GERMANIA TEA COMPANY, AND CONSOLIDATED DRUG
TRADE PRODUCTS, INC.

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

Docket 3114. Complaint, Apr. 26, 1937—Decision, June 12, 1937

Where two corporations respectively engaged in importation and sale, and sale and distribution, of two herb products sold under trade names "Germania Herb Tea" and "Germania Orange Pekoe Tea," and composed, principally and respectively, of "senna" and "juniper," and of caffeine, in substantial competition with those engaged in sale of similar herb products and other preparations designed and used for purposes for which said corporations held out their aforesaid products as useful—

Represented, in extensive advertising campaigns conducted by them, consisting of radio broadcasts, circulars, pamphlets, and other printed matter, and in labels placed on aforesaid products, that they had substantial therapeutic value in the treatment of obesity when used in connection with a designated reducing diet, facts being first-named product performed no function in treatment of obesity other than that of a laxative or purgative, and neither product was of value as a remedy, treatment or cure for aforesaid condition;

With effect of misleading and deceiving purchasers and prospective purchasers into the belief that said representations were true, and to cause purchase of said products by reason of such erroneous beliefs, and with the result that trade was thereby diverted from aforesaid competitors to it; to the substantial injury of substantial 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. John Darsey for the Commission.

Mr. Benjamin Segal, of Minneapolis, Minn., 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 Germania Tea Company, a corporation, and Consolidated Drug Trade Products, Inc., a corporation, hereinafter referred to as respondents, have been and are 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. Respondent, Germania Tea Company, is a corporation existing and doing business under and by virtue of the laws of the State of Minnesota with its principal office and place of business located at 608 First Avenue North in the city of Minneapolis, State of Minnesota. For more than two years last past, it has been engaged in the importation and sale of herb products, among which products are those which it sells under the trade names, "Germania Herb Tea" and "Germania Orange Pekoe Tea." The respondent causes the aforesaid designated products when sold to be transported from its principal place of business in the State of Minnesota to purchasers thereof residing in the various other States of the United States.

The respondent, Consolidated Drug Trade Products, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois with its principal place of business located at 544 South Wells Street in the city of Chicago, State of Illinois. It has for several years last past been engaged in the sale of various drug products. For a period of more than three (3) years last past, it has been engaged in the sale and distribution of the products, "Germania Herb Tea" and "Germania Orange Pekoe Tea," which it obtains from the respondent, Germania Tea Company under a distributor contract which makes provision for an advertising campaign to be conducted by the respondent, Consolidated Drug Trade Products, Inc., in connection with the offering for sale and sale of the aforesaid products. It causes the products, "Germania Herb Tea" and "Germania Orange Pekoe Tea," when sold to be transported from its place of business in the State of Illinois to purchasers thereof located in the various other States of the United States.

In the course and conduct of their businesses, the respondents have been and are in substantial competition in commerce among and between the various States of the United States with other corporations, partnerships, firms, and individuals engaged in the sale of similar herb products, or products and preparations designed and used for the purposes for which respondents represent their aforesaid products to be useful.

PAR. 2. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have cooperatively printed and circulated through the several States to customers and prospective customers, pamphlets and other advertising matter and have made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom

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into the various States of the United States other than the State wherein said program originated. In all of said advertisements and radio broadcasts and on the labels placed on said products, the respondents make many statements wherein they represent that said products have a substantial therapeutic value in the treatment of obesity when used in connection with a designated reducing diet.

In truth and in fact, said herb products now designated as "Germania Herb Tea" and "Germania Orange Pekoe Tea" are of no value as a remedy for obesity. Neither preparation plays any important part in reducing excess weight when used in connection with any designated diet. The principal ingredients of the product are "senna" which is a strong purgative and "juniper" which is a diuretic. Neither of these ingredients are of any material value in the treatment of obesity or in reducing excess weight. A continuous use of these products might result in harmful effects to a substantial portion of the persons using the same without the direction and supervision of a doctor.

PAR. 3. Under the foregoing facts and circumstances, the representations and statements used by the respondents in the sale of their herb products are false and misleading. The use of such statements and representations has the capacity and tendency to mislead and deceive ultimate purchasers and consumers into the erroneous and mistaken beliefs that said products have a substantial therapeutic value in the treatment of obesity and into the purchase of respondent's herb products on account of said beliefs induced by the representations of the respondents. As a result thereof, trade is unfairly diverted to respondents from competitors engaged in selling in commerce, as herein described, products of the same kind and nature as those of respondents or selling products which actually do have substantial therapeutic value in the treatment of obesity. In consequence thereof, injury has been done by respondents to competition in commerce among and between the various States of the United States.

PAR. 4. The aforementioned methods, acts and practices of respondents are all to the prejudice of the public and respondents' competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on April 26, 1937, issued and served its complaint in this proceeding upon respondents, Germania Tea Company, and Consolidated Drug Trade Products, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 20, 1937, the respondents filed their answers in which answers they admitted all the material allegations of the complaint to be true and stated that they waived hearing on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said 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, Germania Tea Company, is a Minnesota corporation having its principal office and place of business at 608 First Avenue, North, Minneapolis, Minn. For several years it has been engaged in the importation and sale of herb products, among which products are those sold under the trade name "Germania Herb Tea" and "Germania Orange Pekoe Tea." The respondent causes the aforesaid designated products when sold to be transported from its place of business in Minnesota to purchasers residing in the various other States of the United States.

The respondent, Consolidated Drug Trade Products, Inc., is an Illinois corporation with its principal place of business at 544 South Wells Street, Chicago, Ill. For several years it has been engaged in the sale of various drug products. For a period of more than three years it has been engaged in the sale and distribution of the products "Germania Herb Tea" and "Germania Orange Pekoe Tea" which it obtains from the respondent, Germania Tea Company, under a distributor contract which provides for an advertising campaign to be conducted by the respondent, Consolidated Drug Trade Products, Inc. It causes the products designated above, when sold,

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to be transported from its place of business in the State of Illinois to purchasers who are located in the various other States of the United States.

In the course and conduct of their businesses, the parties respondent herein have been and are in substantial competition in commerce among and between the various States of the United States with other corporations, partnerships, firms, and individuals engaged in the sale of similar herb products and other preparations designed and used for the purposes for which respondents represent their aforesaid products to be useful.

PAR. 2. For the purpose of inducing the purchase of the aforesaid products, respondents have conducted extensive advertising campaigns in the various States of the United States consisting of radio broadcasts, circulars, pamphlets, and other printed matter. In all of said radio broadcasts, printed matter, and labels placed on said products, the respondents have made many statements wherein they represent that the aforesaid products have a substantial therapeutic value in the treatment of obesity when used in connection with a designated reducing diet.

In truth and in fact the herb products "Germania Herb Tea" and "Germania Orange Pekoe Tea" are of no value as a remedy, treatment, or cure for obesity. The principal ingredients of the product "Germania Herb Tea," are "senna," which has laxative and purgative qualities, and "juniper" which is a diuretic. The ingredients of the product "Germania Herb Tea" have no therapeutic value in the treatment of obesity and perform no functions in this respect other than those of a laxative or purgative. The principal ingredient of the product "Germania Orange Pekoe Tea," is caffeine. This product has no therapeutic value as a remedy, treatment or cure for obesity.

PAR. 3. Respondents' false and misleading representations of and concerning the said products, as hereinabove set forth, have the capacity and tendency to mislead and deceive, have misled and deceived, and do mislead and deceive purchasers and prospective purchasers into the belief that such representations are true and to cause the purchase of said products as the result of such erroneous beliefs. Trade is thereby diverted from its aforesaid competitors to respondents, to the substantial injury of substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondents, Germania Tea Company, and Consolidated Drug Trade Products, Inc., are to the

prejudice of the public and of 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 and the answers of respondents, in which answers respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Germania Tea Company and Consolidated Drug Trade Products, Inc., their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of herb products now designated as "Germania Herb Tea" and "Germania Orange Pekoe Tea," or of the same or similar products designated by any other name or names in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That the product now designated as "Germania Herb Tea" performs any functions in a reducing program other than those of a laxative or purgative;

2. That the product now designated as "Germania Orange Pekoe Tea" performs any function or has any value in the treatment of obesity, or, in a reducing program, other than the caffeine supplied through its consumption.

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

IN THE MATTER OF
AMERICAN GRAIN DISTILLERS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2420. Complaint, May 27, 1935—Decision, June 17, 1937

Where a corporation engaged, as rectifier of all kinds of whiskies at its rectifying plant, in purchasing, rectifying, and blending whiskies, gins, and other spirituous beverages, and in producing gin with a still used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products between and among the various States and in the District of Columbia, in substantial competition with those engaged in manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and including among said competitors those who, as manufacturers and distillers by original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distillers," or "distiller" as part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distillers" in its corporate name, on its stationery, mailing cards, and invoices, and on the labels attached to the bottles in which it sold and shipped its said products, that it was a producer of distilled spirits from raw materials, and thus represented to its customers, and furnished same with a means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller, and that the whiskies and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash as aforesaid, notwithstanding fact it did not thus distill said various beverages thus bottled, labeled, sold, and transported by it, as definitely understood from word "distillers," used in connection with liquor industry and products thereof in the trade and by the purchasing public, as meaning, when used in connection with liquor industry and products thereof, manufacture of such liquors by process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, and did not own, operate, or control any place or places where such beverages are made by process of distillation from mash, wort, or wash, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

¹ Count two of the complaint, under the National Industrial Recovery Act, dismissed.