

Syllabus

IN THE MATTER OF

JOHN F. BOLON, TRADING AS JOHN F. BOLON CIGAR
COMPANY

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

Docket 2293. Complaint, Dec. 30, 1935¹—Decision, Aug. 17, 1937

Where an individual engaged in manufacture, sale, and distribution of cigars through various States, in substantial competition with those likewise engaged in sale and distribution of such products in commerce among the various States and within the District of Columbia—

- (a) Caused cigars thus manufactured by him to be packed for display and sale to public in wooden boxes or containers, on the border of which were imprinted the words "Fabrica De Tabacos Vuelta Abajo," and thereby represented that said cigars were made from tobacco grown in the particular section of the Island of Cuba known as Vuelta Abajo, source of tobacco considered by many of cigar and tobacco trade and consuming public as of a higher and more desirable quality for use in manufacture of cigars than any other tobacco grown on said Island or elsewhere, and, to many of said trade and public, world's most famous cigar tobacco, notwithstanding fact said cigars were not made in Cuba from tobacco grown therein, either in aforesaid district in whole or in part, and, as such, considered by many of tobacco and cigar trade and cigar purchasing public superior in quality to cigars made wholly of tobacco not grown in aforesaid district, but were made entirely from the domestically grown product;
- (b) Caused to be imprinted on box phrase "Cured in Rum," notwithstanding fact he used no rum in curing, treating, flavoring, or sweetening tobacco used by him in manufacture of such cigars; and
- (c) Offered and sold to public cigars bearing trade or brand name "Turkey," with words "Matchless Turkish Blend" imprinted on cellophane wrappers thereof, notwithstanding fact cigars made, sold, and distributed by him to public under such trade names or brands or designations contained no Turkish tobacco whatever, but were made, as aforesaid, of domestic product;

With effect of confusing, deceiving and misleading many of said wholesale and retail dealers and many of said purchasing public into erroneous and mistaken belief that aforesaid cigars were made from tobacco grown wholly or in part in said district, and were cured in rum, or were made wholly from, or blended with, tobacco grown in Turkey, and with capacity and tendency to unfairly divert trade to him from competitors engaged in selling, in interstate commerce, truthfully advertised products of same kind and nature:

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.

¹ Amended.

AMENDED 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 John F. Bolon, doing business under the trade name of John F. Bolon Cigar Company, hereinafter referred to as respondent, has been and is 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 thereto would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John F. Bolon, is an individual doing business at all times since 1924 under the trade name of John F. Bolon Cigar Company, and having, at all times, a place of business in the State of Ohio.

PAR. 2. During all the times above mentioned the respondent has been and still is engaged in the business of manufacturing and selling cigars. Respondent causes, and during the time above referred to has caused, the cigars sold by him to be packed for display and resale to the public in and from wooden boxes or other containers and to be transported to wholesale and retail dealers, the purchasers thereof, from his place of business in the State of Ohio or the State of origin of the shipment.

PAR. 3. During all the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, have been engaged in the manufacture and sale of cigars and have caused said cigars to be packed for display and resale to the public in and from wooden boxes or other containers, and have caused said cigars to be transported to wholesale and retail dealers located in various States of the United States other than the State of the seller or the State of origin of the shipment.

PAR. 4. The respondent, in the manufacture and sale of cigars, is and has been in substantial competition in interstate commerce with other individuals, firms and corporations, referred to as sellers in paragraph 3 hereof, during all times mentioned and referred to in paragraph 1 hereof.

PAR. 5. During all the times above mentioned the respondent has manufactured and offered for sale and still sells cigars under the trade name

GARCIA SWEETS

The boxes and containers in which the cigars are packed, transported, and offered for sale, carry on the edges thereof a border on which is imprinted the words

FABRICA DE TOBACOS VUELTA ABAJO

There is also imprinted on the box the following phrase:

Cured in Rum

PAR. 6. During all the time above mentioned, and for many years prior thereto, cigars made wholly of Cuban grown tobacco were made in Cuba and in the United States 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 their said surname either alone or in combination with the rest of their name, on the bands of the cigars, on the boxes or containers and on the labels and in advertisements of their said cigars in newspapers and other publications.

During all of the times above mentioned, and for many years prior thereto, many in the cigar trade and many of the public became accustomed to believe and still believe that cigars printed with the name "Garcia," either on the box or container or on the band of the cigar, were made by manufacturers of Cuban nationality and of Cuban grown tobacco exclusively, and were and are of a quality superior to cigars made by other manufacturers and of tobacco wholly or in part grown elsewhere, and in purchasing cigars became accustomed to and still call for them either by the name "Garcia" alone or in combination with the rest of the name of the manufacturer of that surname.

PAR. 7. Vuelta Abajo is the name of a district in the province of Pinar del Rio in the Island of Cuba in which tobacco is grown which is and has been considered, during all the time above mentioned, by many of the said tobacco and cigar trade and the public, to be of a higher and more desirable quality for the use in the manufacture of cigars for sale and consumption in the United States than any tobacco grown not only in the countries other than Cuba, but even of a higher and more desirable quality for such purpose than tobacco grown elsewhere on the Island of Cuba.

Likewise many of the said tobacco and cigar trade and many of the said cigar purchasing public have also considered, during all the times above mentioned, and still believe, that cigars made in Cuba for sale and consumption in the United States of tobacco grown

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in Cuba, either wholly or in part in said Vuelta Abajo district, are and have been superior in quality to cigars made wholly of tobacco grown outside of said district. To many of said trade and public Vuelta Abajo tobacco is the most famous tobacco in the world that is used in the manufacture of cigars.

PAR. 8. During all of the times above mentioned and for many years prior thereto many of the tobacco and cigar trade and the public have believed and still believe that cigars cured in rum are of a superior quality and flavor to cigars not so cured.

PAR. 9. During all of the times above mentioned the cigars manufactured and sold by the respondent were not made in the Island of Cuba or made wholly of Cuban-grown tobacco and were not made by manufacturers whose surname was "Garcia"; nor were the cigars manufactured and sold by the respondent made of tobacco grown in whole or in part in the Vuelta Abajo district of the Island of Cuba. In truth and in fact the tobacco from which the cigars sold by the respondent under the name "Garcia Sweets" were and are manufactured, was grown in the States of Ohio and Connecticut, and further in truth and in fact there is no rum used in curing the tobacco from which said cigars were and are manufactured.

PAR. 10. The respondent during all the times above mentioned has offered for sale and sold and still sells to the public cigars under the trade name of

TURKEY

On the cellophane wrapper in which said cigars are packed there is imprinted the words

TURKISH MATCHLESS BLEND

During all of the time above mentioned, and for many years prior thereto, the name "Turkey" in connection with the tobacco trade and the public is associated with tobacco which has been produced primarily in the country of Turkey and adjacent area and generally throughout the Near East. The said tobacco is used for its flavor and aroma in the blending and manufacture of cigars and cigarettes. In truth and in fact, the cigars manufactured by the respondent and sold and distributed to the public under the trade name and designation "Turkey Matchless Blend" do not contain any Turkish tobacco whatsoever; but the tobacco used in the manufacture of said cigars designated as "Turkish Matchless Blend" comes from or is grown in the States of Ohio and Connecticut.

PAR. 11. The use by the respondent of the aforesaid words "Garcia," "Vuelta Abajo," and "Turkey," and the phrase "Cured in Rum" on the cellophane wrapper of said cigars and on the boxes or con-

tainers and labels thereon, in which said cigars are packed and sold by him for display and resale to the public, and in said advertisements and letterheads, has the capacity and tendency to mislead and deceive and to confuse many of the said wholesale and retail dealers and many of the said purchasing public, and has confused, deceived and misled and still confuses, misleads, and deceives them, respectively, in the belief that the said cigars were and are made wholly from tobacco grown in Cuba and either wholly or in part of tobacco grown in said district of Vuelta Abajo of the Island of Cuba and by manufacturers of the surname "Garcia," and further, that said cigars were cured in rum. The cigar and tobacco trade and the public are likewise misled and deceived in the matter hereinbefore stated into believing that the cigars manufactured and sold by the respondent under the trade name "Turkey" contain some Turkish tobacco.

Thereby trade is diverted to the respondent from his competitors, who do not make such misrepresentations by using false and misleading trade names or designations. Thereby substantial injury is done by the respondent to substantial competition in interstate commerce.

PAR. 12. The acts and practices of the respondent are all to the prejudice of the public and of competitors of the respondent, 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."

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 30, 1935, issued and thereafter served its amended complaint in this proceeding on respondent, John F. Bolon, trading as John F. Bolon Cigar Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said amended complaint and the filing of respondent's answer thereto, the Commission by order entered herein, granted the respondent's motion for permission to withdraw said answer to said amended complaint, and to substitute therefor an answer admitting all the material allegations of the said amended complaint, as modified by the Commission's order of December 24, 1936, to be true and waiving the taking of further evidence and all other inter-

vening procedure, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended complaint, as modified, and the substitute answer (briefs of counsel having been waived), 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. The respondent, John F. Bolon, is an individual, trading as John F. Bolon Cigar Company and having his factory and place of business at 89½ South Summit Street, Bethesda, Ohio. For more than two years last past he has been engaged in the manufacture of cigars and in the sale and distribution of the same into and through various States of the United States.

PAR. 2. In the course and conduct of his said business, as described in paragraph 1 hereof, respondent has offered his said cigars for sale and has sold and transported, or caused the same to be transported, in commerce among and between the several States of the United States, direct from the aforesaid place of business to consumers located at points in the States of the United States other than the State of Ohio. In the course and conduct of such business, respondent has been and now is engaged in substantial competition with corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution of cigars in commerce between and among the various States of the United States, and within the District of Columbia.

PAR. 3. 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. Vuelta Abajo is the name of a district in the Province of Pinar Del Rio, in the Island of Cuba, in which is grown tobacco that is and has been considered by many of the tobacco and cigar trade and consuming public to be of a higher and more desirable quality for use in the manufacture of cigars than any other tobacco grown on the Island of Cuba, or elsewhere. Many of the tobacco and cigar trade and many of the cigar purchasing public have considered and still believe the cigars made in Cuba from tobacco grown in Cuba, either wholly or in part in said Vuelta Abajo district, or cigars made in the United States from tobacco grown wholly or in part in the said Vuelta Abajo district of Cuba, are and have been superior in quality to cigars made wholly

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of tobacco grown outside of said district. To many of said trade and public Vuelta Abajo tobacco is the most famous tobacco in the world used in the manufacture of cigars.

PAR. 4. Respondent, in the course and conduct of his said business of manufacturing and offering cigars for sale has caused cigars so manufactured by him to be packed for display and sale to the public in wooden boxes or containers carrying on the edges thereof a border on which there has been imprinted the words:

Fabrica De Tabacos Vuelta Abajo

Through such statement, respondent represents that said cigars are made from tobacco grown on the Island of Cuba and are made from tobacco grown in that particular section of said Island known as Vuelta Abajo.

Respondent has also caused to be imprinted on the box the following phrase:

Cured in Rum

In truth and in fact, the cigars manufactured and sold by the respondent were not made in the Island of Cuba, nor from tobacco grown in whole or in part in the Vuelta Abajo, or other district, region, or section of the Island of Cuba. Respondent's said cigars, on the contrary, were and are manufactured entirely from tobacco grown in the States of Ohio and Connecticut. Respondent does not use and has not used any rum in curing, treating, flavoring, or sweetening tobacco used by him in the manufacture of cigars.

PAR. 5. For many years to the tobacco trade and the consuming public, the name "Turkey" has been associated with and indicates tobacco which has been produced in the country of Turkey. On account of its flavor and aroma, said tobacco is used in the blending and manufacture of cigars and cigarettes.

The respondent, in the further course and conduct of his business, in manufacturing and selling cigars, had offered for sale and sold to the public, cigars bearing the trade or brand name:

Turkey

On the cellophane wrapper in which said cigars are and have been wrapped, there is also imprinted the words:

Matchless Turkish Blend

In truth and in fact, the cigars manufactured by the respondent and sold and distributed by him to the public under the trade names or brands or designations "Turkey" and "Matchless Turkish Blend"

do not contain and have not contained any Turkish Tobacco whatsoever. The tobacco used by respondent in the manufacture of said cigars so branded, labeled and designated was and is grown in the States of Ohio and Connecticut.

PAR. 6. The use by the respondent of the aforesaid words, "Vuelta Abajo" and the phrase "Cured in Rum" has the capacity and tendency to mislead and deceive and confuse many of the said wholesale and said retail dealers and many of the said purchasing public, and has confused, deceived, and misled, and still confuses, misleads and deceives them respectively, into the erroneous and mistaken belief that the said cigars were and are made from tobacco grown wholly or in part in said district of Vuelta Abajo of the Island of Cuba and further, that said cigars were cured in rum. The said cigar and tobacco trade and the public are likewise misled and deceived into erroneously and mistakenly believing that the cigars manufactured and sold by the respondent under the trade names "Turkey" and "Turkish" are manufactured wholly from or blended with tobacco grown in Turkey. The aforesaid practices have and have had the capacity and tendency to unfairly divert trade to respondent from competitors engaged in selling in interstate commerce products of the same kind and nature as those of respondent, which products are truthfully advertised.

CONCLUSION

The aforesaid acts and practices of the respondent, John F. Bolon, trading as John F. Bolon Cigar 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 ¹

This proceeding having been heard by the Federal Trade Commission upon the original and amended complaints of the Commis-

¹ Case was closed, with respect to use of term "Garcia", by following order on Dec. 24, 1936:

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 complaint heretofore issued on the 30th day of December 1935, 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 complaint, the case proceed to trial in accordance with the regular procedure of the Commission.

sion and the answer filed herein by the respondent, admitting the material allegations of said amended complaint as modified by the order of the Commission duly entered on December 24, 1936, 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, John F. Bolon, individually and trading as John F. Bolon Cigar Company or under any other trade name, his 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. Representing, through the use of the words "Vuelta Abajo" or any other word or words of similar import and meaning, as descriptive of, or as brand names for, or on labels of, cigars, or in any other manner, that said cigars are made from tobacco grown in and imported from the Island of Cuba and the Province of Pinar Del Rio, unless said cigars are actually made entirely from tobacco grown in the said Island of Cuba and Province of Pinar Del Rio;

2. Representing, through the use of the words, "Cured in Rum," or other words of similar import or meaning, that cigars have been cured, treated, flavored or sweetened through the use of rum, unless such is the fact;

3. Using the words "Turkey" or "Turkish" as descriptive of cigars unless such cigars are made wholly from tobacco grown in the country of Turkey, or using the words "Turkey" or "Turkish" in conjunction with the words "Matchless Blend" or other word or words of similar import or meaning, as descriptive of cigars, unless such cigars are made in substantial part from tobacco grown in the country of Turkey.

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

IN THE MATTER OF
DISTILLERS BRANDS, 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 2390. Complaint, May 16, 1935—Decision, Aug. 17, 1937

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, brandies, gins, and other spirituous beverages, and in making gin with a still which it used therefor, by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling, in various States and in the District of Columbia, its aforesaid various products to wholesalers and jobbers in various States, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, 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 from mash, wort, or wash of whiskies, gins, and other spirituous beverages, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery and advertising and on the labels of the bottles in which they sell and ship such products, and those who, engaged in rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth—

Furnished, through use of word "Distillers" in its corporate name, printed on its stationery and in its advertising, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, its customers, both wholesalers and retailers, with the means of representing to the ultimate consuming public that the said whiskies, gins, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said beverages, so bottled, labeled, sold, and transported by it, 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;

With effect of misleading and deceiving purchasing public into the belief that the whiskies, brandies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash, and of inducing said public, acting in such belief, to buy its said whiskies and other spirituous beverages, rectified, blended, and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate name or in any other manner, misrepresent that they are manufacturers, by distillation from mash, wort, or wash, of such various beverages; 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.

¹ Count 2 of the complaint, under National Industrial Recovery Act, dismissed.