

Complaint

IN THE MATTER OF

ALBERT L. HILKEMEYER AND LEONARD HILKEMEYER,
INDIVIDUALLY, AND TRADING AS DIXIE HATCH-
ERIES, AND AS JEFFERSON FARMSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3285. Complaint, Dec. 21, 1937—Decision, Mar. 19, 1938*

Where two individuals, engaged as part owners and under profit-sharing arrangements in business of hatching, selling, and distributing poultry and baby chicks under name "Dixie Hatcheries"—

Advertised, over such name, their said business in various issues of poultry journals and papers of interstate circulation, in which issues, in substantially identical advertisements, they offered, at a much lower scale of prices, same grade and type of baby chicks over trade name of Jefferson Farms, then inoperative hatchery of one of said individuals, and turned over for filling to former hatcheries and filled at same prices, with one exception, orders coming to latter, in competition with those who do not falsely advertise or otherwise represent that affiliated or branch businesses are separate and distinct competing businesses;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true and that said Dixie Hatcheries and Jefferson Farms were separate and distinct competing business, and into purchase of said chicks because of erroneous and mistaken beliefs thus induced, and with result that trade was unfairly diverted to them from competitors who do not misrepresent their business connection or status, and with tendency and capacity so to mislead and deceive; to the injury of such competitors;

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

Mr. Wm. T. Chantland for the Commission.

Stokes & Stokes and *Mr. John W. Hildrop* 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 Albert L. Hilkemeyer and Leonard Hilkemeyer, individually, and trading as Dixie Hatcheries and as Jefferson Farms, hereinafter referred to as respondents, have been and now 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 and states its charges in that respect as follows:

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PARAGRAPH 1. Respondent Albert L. Hilkemeyer is an individual residing at Westphalia, Missouri, and for some time last past he has been, and is now, doing business as the owner-lessor of a number of baby chick hatcheries located in States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee, including one located at 2401 Second Avenue, North Birmingham, Ala., which is known as the Dixie Hatcheries. Respondent Leonard Hilkemeyer is a part owner of the chick hatchery business operated in Birmingham under the name Dixie Hatcheries, and said respondent, for some time last past has operated, and now operates, said Dixie Hatcheries under an agreement by which each of said respondents share in the profits from said business. Respondent Leonard Hilkemeyer maintains his residence at 2401 Second Avenue, North Birmingham, and at Jefferson Farms, Highway 31, twelve miles north of Birmingham, Ala.

Respondents are now, and have been for some time past, engaged in the business of hatching, selling, and distributing poultry, more particularly young chickens which are commonly known and referred to as "baby chicks." The business in which the respondents are engaged is commonly known as and is hereinafter referred to as the chick-hatchery business. Respondents in the course and conduct of their business under the name Dixie Hatcheries sell and distribute said baby chicks to members of the public and cause said chicks, when sold, to be transported from the State of Alabama, the State of origin of the shipment, to purchasers thereof located at points in the various States of the United States other than the State of Alabama. There is now, and has been during all the times herein mentioned, a course of trade in commerce in said baby chicks sold by respondents between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, respondents are now, and have been during all the times herein mentioned, engaged in substantial competition with various other individuals, firms, and corporations engaged in hatching, offering for sale, and selling baby chicks to members of the general public in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. As part of their said business operations, said respondents have, for some time last past and since June 1, 1936, caused to be inserted in various issues of poultry journals and papers having an interstate circulation certain advertisements over the trade name of Dixie Hatcheries and other advertisements substantially identical except with a much lower scale of prices for the same grade and types of baby chicks over the trade name of Jefferson Farms.

The use of the different trade names Jefferson Farms and Dixie Hatcheries in connection with advertising the same grades and types

of baby chicks at different prices serves as a representation to prospective purchasers that the businesses conducted under the names Dixie Hatcheries and Jefferson Farms were, and are, separate and distinct competing chick-hatchery businesses. Through use of such advertisements and representations, and through the quoting of cheaper prices for the same grades and types of baby chicks by the Jefferson Farms, the respondents induce inquiries and orders by members of the purchasing public. Such inquiries and orders are answered under the trade name Dixie Hatcheries with quotations of prices higher than those originally quoted in the advertisements over the name Jefferson Farms, and sales are made under the name Dixie Hatcheries with baby chicks hatched by said Dixie Hatcheries.

PAR. 4. At one time, respondent Leonard Hilkemeyer conducted a baby chick hatchery at Jefferson Farms near Birmingham, Ala. In the conduct of such business, respondent did business under the name Jefferson Farms, but he ceased all operations of such business about June 1, 1936. Since that time, all the operations and business relating to baby chicks theretofore conducted at Jefferson Farms by respondent Leonard Hilkemeyer under the trade name Jefferson Farms, included those resulting from the aforementioned advertising printed under the trade name Jefferson Farms have been carried on by respondents as part of the business operations conducted under the trade name Dixie Hatcheries.

PAR. 5. In truth and in fact the baby chick-hatchery business formerly conducted under the name Jefferson Farms has not been in operation since June 1, 1936 and respondents have actually operated only one business at or near Birmingham, Ala., since that date, although they have continued to represent and hold themselves out as the operators of two separate and distinct competing businesses for the purpose and with the effect of attracting additional inquiries, contacts and purchasers from members of the public. Respondents do not conduct any chick hatchery operation at the Jefferson Farms and this name is used by them in their aforesaid advertisements solely for the purpose of inducing inquiries on account of the advertised lower prices. The advertisements appearing over the name Jefferson Farms are merely a subterfuge for the business conducted under the name Dixie Hatcheries. The Dixie Hatcheries replies to all correspondence and inquiries addressed to Jefferson Farms and it makes all sales secured pursuant thereto at higher prices than originally quoted in the advertisements under the name Jefferson Farms.

PAR. 6. There are among the competitors of respondents many who do not advertise or otherwise represent that affiliated or branch businesses are separate and distinct competing businesses, when such is

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not the fact, and who do not otherwise misrepresent the character and status of their respective businesses by operating the same plant under two or more different names, or selling the same quality or grade of chicks at the same or different prices using separate sets of literature, or in any other manner.

PAR. 7. The acts and practices of the respondents as above alleged in the course of selling and offering for sale their baby chicks in commerce as described herein have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true and that Dixie Hatcheries and Jefferson Farms are separate and distinct competing businesses, and into the purchase of respondents' baby chicks on account of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof, trade has been unfairly diverted to the respondents from those of their competitors rereferred to in paragraph 6 hereof who do not misrepresent their business connection or status. In consequence thereof, injury has been, and is being, done to respondents' competitors in commerce among and between the various States of the United States.

PAR. 8. The above and foregoing acts and practices have been and are all to the prejudice of the public and the respondents' competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on December 21, 1937 issued, and on December 23, 1937 served, its complaint in this proceeding upon respondents, Albert L. Hilkemeyer and Leonard Hilkemeyer, individually, and trading as Dixie Hatcheries and as Jefferson Farms, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint, and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for leave to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of evidence and all other intervening procedure, which substituted answer was duly filed in the office of the Commission.

Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and answer, briefs and oral arguments 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. Respondent Albert L. Hilkemeyer is an individual residing at Westphalia, Mo., and for some time last past he has been, and is now, doing business as the owner-lessor of a number of baby chick hatcheries located in States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee, including one located at 2401 Second Avenue, North Birmingham, Ala., which is known as the Dixie Hatcheries. Respondent Leonard Hilkemeyer is a part owner of the chick-hatchery business operated in Birmingham under the name Dixie Hatcheries, and said respondent, for some time last past, has operated, and now operates, said Dixie Hatcheries under an agreement by which each of said respondents share in the profits from said business. Respondent Leonard Hilkemeyer maintains his residence at 2401 Second Avenue, North Birmingham, and at Jefferson Farms, Highway 31, 12 miles north of Birmingham, Ala.

PAR. 2. Respondents are now, and have been for some time past, engaged in the business of hatching, selling, and distributing poultry, more particularly young chickens which are commonly known and referred to as "baby chicks." The business in which the respondents are engaged is commonly known as, and is hereinafter referred to as the chick hatchery business. Respondents in the course and conduct of their business under the name Dixie Hatcheries sell and distribute said baby chicks to members of the public and cause said chicks, when sold, to be transported from the State of Alabama, the State of origin of the shipment, to purchasers thereof located at points in the various States of the United States other than the State of Alabama. There is now, and has been during all the times herein mentioned, a course of trade in commerce in said baby chicks sold by respondents between and among the various States of the United States.

PAR. 3. In the course and conduct of their business, respondents are now, and have been during all the times herein mentioned, engaged in substantial competition with various other individuals, firms, and corporations engaged in hatching, offering for sale, and selling baby chicks to members of the general public in commerce

among and between the various States of the United States and in the District of Columbia.

PAR. 4. As part of their said business operations, said respondents have, for some time last past and particularly from June 1, 1936 to February 1937, caused to be inserted in various issues of poultry journals and papers having an interstate circulation certain advertisements over the trade name of Dixie Hatcheries and other advertisements substantially identical except with a much lower scale of prices for the same grade and types of baby chicks over the trade name of Jefferson Farms.

PAR. 5. For some time during 1936 and 1937, and particularly from June 1, 1936 to February 1937, the Jefferson Farms Hatchery was closed down and all orders coming to it were turned over to Dixie Hatcheries to be filled. With one exception, the prices at which these orders were filled by the Dixie Hatcheries were not higher than those quoted in the current Jefferson Farms' advertisements.

PAR. 6. Jefferson Farms has now been leased and its control and operation passed to the lessee.

PAR. 7. Among competitors of respondents are many who do not advertise or otherwise represent that affiliated or branch businesses are separate and distinct competing businesses when such is not the fact.

PAR. 8. The advertising of respondents as above described has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and that Dixie Hatcheries and Jefferson Farms were separate and distinct competing businesses, and so into the purchase of respondents' baby chicks because of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade was unfairly diverted to respondents from those of their competitors who did not thus misrepresent their business connection or status to the injury of such competitors in commerce among and between the various States of the United States.

CONCLUSION

The above and foregoing acts and practices have been and are all to the prejudice of the public and of the respondents' competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on 16th day of March A. D. 1938, whereby respondents admit all the material allegations of the complaint to be true, and waive 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 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, Albert L. Hilkemeyer and Leonard Hilkemeyer, individually, and trading as Dixie Hatcheries, and as Jefferson Farms, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of baby chicks in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or indirectly, or by implication, in their advertising or in any other manner, representing:

That any baby chick hatchery or business owned, operated, or controlled by them or either of them is otherwise owned, operated, or controlled; or that one of two or more such hatcheries or businesses owned, operated, or controlled by either or both of them is competitive with the others similarly owned.

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
SELECTED KENTUCKY DISTILLERS, INC.

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

Docket 3047. Complaint, Feb. 3, 1937—Decision, Mar. 26, 1938

Where a corporation engaged as wholesaler only of whiskies, wines, liquors, gins, and champagnes purchased from distillers and rectifiers, and doing no distilling, rectifying, or bottling, and neither owning, operating nor controlling any place or places where alcoholic beverages are made by process of distillation from mash, wort, or wash, and in competition, as thus engaged, with individuals and concerns who manufacture and distill, from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and truthfully use words "Distillery," "Distilleries," "Distillers," or "Distilling" as part of their corporate or trade names on labels of bottles in which they sell and ship their said whiskies, etc., and with those engaged as purchasers, rectifiers, blenders, bottlers, and sellers of whiskies, etc., or as wholesalers thereof, who do not use said words as aforesaid—

Falsely represented, through use of term "Distillers" in its corporate name, printed on its stationery and invoices and on labels attached to bottles in which it sold and shipped its products, and in various other ways, to customers, whom it thereby furnished with means of similarly representing to their retailer-vendees and to ultimate consuming public, that it was a distiller of whiskies, wines, gins, and champagnes, i. e., as long understood by trade and ultimate purchasing public, engaged in manufacture of alcoholic beverages by process of original and continuous distillation from raw materials such as grain, mash, or wort;

With capacity and tendency to lead retail liquor dealers to purchase its said products under false impression that it was a distiller and owned and operated a distillery, and to induce purchasers and prospective purchasers unfairly to buy its said liquors in preference to those of competing wholesalers who do not thus falsely designate themselves, and with effect of misleading and deceiving dealers and purchasing public into aforesaid belief, and of inducing dealers and purchasing public, acting in such belief, to buy said whiskies, etc., labeled and sold by it, and of thereby unfairly diverting trade to it from competitors who do not, through their corporate or trade names or in any other manner, misrepresent that they are distillers of whiskies, gins, and other spirituous beverages, and with capacity and tendency so to do:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. R. L. Durning, of Louisville, Ky., for respondent.