

IN THE MATTER OF  
FLOYD IRL SORRELLS TRADING AS TEXAS TASTY  
COMPANY

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

*Docket 3487. Complaint, July 12, 1938—Decision, Jan. 10, 1939*

Where an individual engaged in manufacture and sale of so-called "Penny Nips" confection to dealers in the various States and in the District of Columbia; in advertising his said product in periodicals and newspapers of interstate circulation and other circulars distributed to prospective purchasers in commerce among the various States, or to agents—

- (a) Represented that said product was a noncompetitive item, and that such or similar product had never been sold in the territories awarded the particular dealers prior to the signing of their contracts, and that no State license would be required of them to sell his said confection in the various States in which he was attempting to operate, facts being it was not non-competitive, but many other confections of similar and better quality had been and were being sold in all parts of the United States at lower prices than those charged for said "Penny Nips," many similar products had been sold in territories awarded his said dealers, and similar products had been sold therein prior to the signing of their contracts, and State licenses were required of them as a condition to their being permitted to sell merchandise in question in their respective territories;
- (b) Represented that said product would withstand 132° F. heat, and that it contained pure fruit juices, and that he would furnish purchaser with a copy of letter from the city of Fort Worth as to the purity of his said confection, facts being it would not withstand heat as above claimed, but would run and become of no value at a much lower temperature, such product did not contain pure fruit juices, but was composed of artificial coloring, acid, sugar, and water, and he had no letter from city officials of said city certifying as to purity and wholesomeness of his said confection;
- (c) Represented that his agents would remain in the respective territories with the dealers involved to aid them in the sale of such confection, until the deposits of whatever amount paid by them had been returned to them through sales of such product, facts being such agents did not thus remain in the various territories involved with the dealers concerned to aid them as aforesaid, but, on the contrary, left such territories as soon as they secured the dealers' payments and did not thus help them; and
- (d) Represented that merchandise in question would be shipped to a bonded warehouse, to which dealers might go and take out merchandise in such quantities as they might need by paying balance of \$9 per case due thereon, and that a certain amount of free merchandise would be shipped to dealers to repay them for any expense incurred by shipping charges, and that a certain amount would be shipped to them direct, prepaid, facts being goods in question were shipped c. o. d., and he did not, as above represented, ship merchandise to warehouses prepaid, as aforesaid, so that such dealers

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might get such merchandise as above set out, nor send certain amounts of free merchandise to dealers to repay them for shipping expenses, nor ship goods directly to them prepaid;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of his said products as result of such erroneous belief, and with result of thereby diverting trade unfairly to him from competitor manufacturers and distributors of like and similar products who do not make such false and misleading representations concerning the same and their business methods:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

*Mr. Clark Nichols* for the Commission.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Floyd Irl Sorrells, trading as Texas Tasty Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the 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 Floyd Irl Sorrells is an individual trading under the name of Texas Tasty Co. with his principal office and place of business located at 904 West Richmond Street, Fort Worth, Tex. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture of a confection known as "Penny Nips," and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused his said product, when sold, to be transported from his principal place of business aforesaid to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and for more than 2 years last past has been, a course of trade by said respondent in such product in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar products, other confections, carbonated beverages, and chewing gum in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, through the media of advertisements inserted in magazines and newspapers of interstate circulation, circulars, and other advertising literature which are and have been distributed to prospective purchasers in commerce, representatives or agents, respondent makes and has made various deceptive, false, and misleading statements and representations to the following effect:

1. That respondent's product is a noncompetitive item.
2. That the product will withstand 132° F. heat.
3. That respondent will furnish the purchaser or dealer with a copy of a letter from the city of Fort Worth, Tex. as to the purity and wholesomeness of respondent's product.
4. That respondent's product contains pure fruit juice.
5. That the respondent's agents or representatives will remain in the territories with said dealers aiding them in getting their sales forces organized and will remain with them until the deposit of whatever amounts paid by said dealers have been returned to them through sales of said product.
6. That the merchandise will be shipped to a bonded warehouse and that said dealers may go to said bonded warehouse and take the merchandise out in such quantities as they may need by paying a balance of \$9 per case due on the merchandise.
7. That a certain amount of free merchandise will be shipped to the dealers to repay them for any expenses they have incurred in paying shipping charges.
8. That a certain amount of goods will be shipped to said dealers direct prepaid.
9. That the respondent's product, or a similar product, has never been sold in the territories awarded said dealers prior to the signing of contracts by them.
10. That no State license will be required to sell respondent's products in the various States in which respondent is attempting to operate.

PAR. 3. In truth and in fact, respondent's product is not a noncompetitive article but, on the contrary, many other confections of similar and better quality are and have been sold in all parts of the United States at lower prices than those for which "Penny Nips" are sold; the product will not withstand 132° F. heat, but, on the contrary, at a much lower temperature will run, lose its shape, and become of no value; respondent has no letter from the city officials of Fort Worth, Tex., certifying to the purity and wholesomeness of his product; said product consists of a paraffin or wax container,

containing artificial flavoring, artificial coloring, acid, sugar, and water, and does not contain pure fruit juices; respondent's agents or representatives do not remain in the territories with said dealers aiding them in getting their sales force organized and until the deposits made by said dealers have been earned and paid back to them, but, on the contrary, said representatives or agents of respondent leave the territories as soon as they get said dealers' payments and do not aid them in any manner in setting up their sales forces and helping them until they get back the amounts they have paid said representatives of respondent; respondent does not ship the merchandise to bonded warehouses prepaid so that said dealers may get such merchandise from said warehouses by paying for the amounts they desire to withdraw; respondent will not and does not send certain amounts of free merchandise to said dealers to repay them for expenses incurred in paying shipping charges; respondent will not ship goods direct to said dealers prepaid but invariably ships such goods to said dealers c. o. d.; there are many similar products sold in territories awarded said dealers and similar products have been sold prior to the signing of the contracts by said dealers; and said dealers do have to purchase State license before they are permitted to sell said merchandise of respondent in the territories assigned to them.

PAR. 4. The use by respondent of the false, deceptive, and misleading statements and representations above referred to have had, and now have, the capacity and tendency to mislead and deceive, and have misled, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and to purchase substantial quantities of respondent's product as a result of such erroneous belief. There are among said competitors of respondent, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products and their methods of doing business. By the statements and representations by respondent as aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof, substantial injury is being done, and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all 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 the Federal Trade Commission Act.

## Findings

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## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 12, 1938, issued, and served its complaint in this proceeding upon respondent, Floyd Irl Sorrells, individually and trading as Texas Tasty Co., 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 complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 complaint and substitute answer, and the Commission, having duly considered the matter 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, Floyd Irl Sorrells, is an individual doing business under the trade name and style of Texas Tasty Co. with his principal place of business and office located at 904 West Richmond Street, Fort Worth, Tex. He is now and for some time last past, has been engaged in the manufacture and sale of a confection known as "Penny Nips" and in the distribution thereof to dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused the said product, when sold, to be transported from his place of business as aforesaid to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and for more than 2 years last past has been a course of trade by said respondent in such product in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals, firms, and corporations engaged in the sale and distribution of like and similar products, other confections, carbonated beverages, and chewing gum, in commerce between the various States of the United States.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, respondent, in magazines and newspapers of

interstate circulation and other circulars distributed to prospective purchasers in commerce among and between the various States of the United States or agents, has advertised said product and has made representations respecting the same to the following effect:

1. The respondent's product is a noncompetitive item.
2. That the product will withstand 132° F. heat.
3. That respondent will furnish the purchaser with a copy of a letter from the city of Forth Worth, Tex., as to the purity of respondent's product.
4. That respondent's product contains pure fruit juice.
5. That respondent's agents will remain in the respective territories with said dealers to aid them in the sale of said product until the deposit of whatever amounts paid by said dealers has been returned to them through sales of said product.
6. That the merchandise will be shipped to a bonded warehouse to which said dealers may go and take the merchandise out in such quantities as they may need by paying a balance of \$9 per case due thereon.
7. That a certain amount of free merchandise will be shipped to the dealers to repay them for any expense incurred by shipping charges.
8. That a certain amount of goods will be shipped to said dealers direct prepaid.
9. That the respondent's product or similar product has never been sold in the territories awarded said dealers prior to the signing of contracts by them.
10. That no State license will be required to sell respondent's product in the various States in which respondent is attempting to operate.

PAR. 3. In truth and in fact respondent's product is not a non-competitive article but on the contrary many other confections of similar and better quality are and have been sold in all parts of the United States at lower prices than those for which "Penny Nips" are sold; the product will not withstand 132° F. heat, but it will run and become of no value at a much lower temperature; respondent has no letter from the city officials of Forth Worth, Tex., certifying to the purity and wholesomeness of his product; said product contains artificial flavoring, artificial coloring, acid, sugar, and water and does not contain pure fruit juices; respondent's agents do not remain in the territories with said dealers aiding them in their sales until the deposit made by said dealers has been earned and paid back to them but on the contrary said agents leave the territories as soon as they get said dealers' payments and do not aid them in sales; respondent does not ship the merchandise to bonded warehouses pre-

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paid so that said dealers may get such merchandise from said warehouse by paying for the amount they desire to withdraw; respondent does not send certain amounts of free merchandise to said dealers to repay them for expenses incurred in shipping charges; respondent will not ship goods direct to said dealers prepaid but ships such goods c. o. d.; there are many similar products sold in territories awarded said dealers and similar products have been sold prior to the signing of the contracts by said dealers; that said dealers do have to purchase State licenses before they are permitted to sell said merchandise of respondent in the respective territories assigned to them.

PAR. 4. The use by respondent of the statements and representations above referred to have had and now have the capacity and tendency to mislead and deceive and have misled a substantial portion of the purchasing public into the erroneous belief that such representations are true and to purchase substantial quantities of respondent's product as a result of such erroneous belief. There are among said competitors of respondent manufacturers and distributors of like and similar products who do not make such false and misleading representations concerning their products and their methods of doing business. By the statements and representations of respondent, as aforesaid, trade is unfairly diverted to respondent from such competitors in commerce between and among the various States of the United States and in the District of Columbia.

#### CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

IT IS ORDERED, That the respondent, Floyd Irl Sorrells, an individual trading as the Texas Tasty Co. or under any other trade

name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of confections known as "Penny Nips," whether sold under the name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing directly or in any manner whatever

1. That such confection is a noncompetitive article of merchandise.
2. That such confection will remain in marketable condition in weather temperature up to 132° Fahrenheit.
3. That the city officials of Fort Worth, Tex., or of any other city, have certified the purity of such confection, until and unless such officials have so certified respondent's confection.
4. That the liquid in such confection is pure fruit juice.
5. That respondent's representatives or agents will remain in the territory allotted to a dealer under contract, for the purpose of aiding the dealer in his sale of respondent's product, until the dealer has sold merchandise equaling the amount the dealer advanced to respondent's representative or agent as a consideration for the contract.
6. That such confection will be shipped by respondent to a bonded warehouse, where the dealer may withdraw it in small quantities by paying the amount due on each small box so withdrawn.
7. That free merchandise will be shipped to the dealer to reimburse him for expense incurred in paying shipping charges, unless such merchandise is actually shipped.
8. That such confection will be shipped to purchasers charges prepaid, unless it is in fact so shipped.
9. That products similar to respondent's confection or respondent's confection have never been sold in the territory allotted to the dealer, when such is not the fact.
10. That no State or municipal license will be charged the dealer for selling respondent's confection in the territory allotted to such dealer.

*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  
EDWARD E. PARTAIN, TRADING AS PAR-TEX HOSIERY  
MILLS

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

*Docket 3510. Complaint, July 26, 1938—Decision, Jan. 10, 1939*

Where an individual engaged in sale of men's and women's hosiery through agents whom he supplied with samples, sales kits, letter of introduction, and other supplies and printed matter, and who solicited sale of his said products directly by house-to-house canvassing—

- (a) Represented, directly, that hosiery purchased would be of quality, grade, texture, and color corresponding to samples selected by purchaser, and that it was woven with a special lock stitch which prevented it from snagging, running, or developing holes, and that it would last from 6 to 12 months and was guaranteed, and that he would replace, with new, worn hosiery which failed to wear as represented, facts being hosiery supplied was inferior in grade, texture, and quality to that represented by his said agents and, in many instances, not of size and color indicated by purchaser, was not woven as above set forth, nor so as to prevent it from snagging, running, or developing holes, and it did not last for period of time specified and he did not make replacements as promised and guaranteed, but included with goods shipped guarantee which differed from that represented by his salesmen or representatives;
- (b) Made use of word "Mills" in trade name employed by him, and represented that he was the only hosiery manufacturer in the State of Texas selling direct to the consumer, facts being he did not make women's hose offered and sold by him, but purchased said product from various manufacturers thereof; and
- (c) Delayed unduly and unreasonably correction of mistakes in filling orders, and failed and neglected to make promised adjustments, and retained hosiery sent in for exchange or adjustment of mistakes and failed and neglected to refund purchaser's money and refused adjustments on ladies' hose without payment ranging from 35 to 45 cents a pair;

With effect of misleading and deceiving purchasers and prospective purchasers into erroneous belief that such representations were true, and into purchase of his said product in and on account of such beliefs, and with result that trade was thereby unfairly diverted to him from competitors who do not misrepresent the character and quality of their products or their business status:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

*Mr. Charles S. Cox* for the Commission.

*Coke & Coke*, of Dallas, Tex., for respondent.