

Complaint

IN THE MATTER OF

W. J. BUSH & COMPANY, INC.

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

Docket 3339. Complaint, Feb. 18, 1938—Decision, Mar. 8, 1939

Where a corporation engaged in manufacture and sale of two lines of perfumes, colognes, and other toilet preparations—

- (a) Affixed tags on the straw-covered bottles containing its "Mitcham Lavender," on which was printed trade name "Potter & Moore's Mitcham Lavender, London," and, in less conspicuous type, words "Printed in England," and attached to straw at bottom of bottle container thereof metal tag bearing label "Made in England," and set forth words, on stopper of bottle, "Potter & Moore, England," and made similar representations with reference to place of manufacture in connection with sale of its "Potter & Moore's Lavender Smelling Salts"; and
- (b) Set forth words, on paper labels on outside cardboard containers of its "Grenoville" perfume, "Extrait Oelliet Fane, Petit Model," followed by words "Grenoville, Paris, Made in France," and caused words "Oelliet Fane, Grenoville, Paris" to appear on side of smaller carton enclosed within large cardboard container, on which said matter first above referred to was set forth, and displayed same words on label affixed to glass container within said last-mentioned carton, and impressed on the glass at the bottom of the bottle the words "Grenoville, Made in France";

Notwithstanding fact said domestic preparations or products were respectively neither made by London firm of Potter & Moore, or Paris firm of Grenoville, long possessed of enviable reputations for excellence of their respective products, and were not made in England or France and imported into the United States, for which more costly products particularly, as for imported goods, wares, and merchandise, there is preference on part of substantial portion of members of buying public;

With effect of misleading customers and prospective customers into erroneous belief that its said perfumes and products, as aforesaid, were made by Potter & Moore of London and Grenoville of Paris, and with result that trade was unfairly diverted to it from its competitors who actually import into the United States from foreign countries perfumes and similar compounds there made, or who make, in this country, perfumes and similar products for sale to buying public and truthfully represent and advertise place of manufacture and quality thereof:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. S. Brogdyne Teu, II for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade

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Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that W. J. Bush & Co., Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, 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, W. J. Bush & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at Linden, in the State of New Jersey.

Respondent is now, and for some time last past has been, engaged in the manufacture, sale, and distribution of two certain lines of perfumes, colognes, and other toilet preparations, one being known as the Grenoville line of perfumes, and the other as the Potter & Moore line of Mitcham Lavender perfumes or toilet waters.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said products, when sold, to be transported from its principal place of business in New Jersey to purchasers located in States other than the State of New Jersey, and respondent now maintains a constant current of trade in commerce in said products manufactured, distributed, and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been, in substantial competition with other corporations and with individuals and firms likewise engaged in the business of distributing and selling perfumes, colognes, and other toilet preparations, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business as described in paragraph 1 hereof, certain of respondent's perfume products so sold bear labels, tags, and markings purporting to describe and refer to the place of origin or manufacture of said products in the following manner:

On the straw-covered bottle containing Mitcham Lavender respondent has affixed tags on which are printed the trade name "Potter & Moore's Mitcham Lavender, London" and in less conspicuous type, the words "Printed in England." Respondent also causes to be attached to the straw at the bottom of said bottle container a metal tag bearing the legend "Made in England," and on the stopper of said bottle is printed the words "Potter & Moore, England." Similar representations with reference to the origin of respondent's products are made

by tags, markings, and labels by respondent in connection with the sale of Potter & Moore's Lavender Smelling Salts.

On the paper label affixed by respondent to the outside cardboard container of Grenoville Perfume appears the legend "Extrait Oelliet Fane, Petit Model," followed by the words "Grenoville, Paris, Made in France." Enclosed in this cardboard container respondent places its perfume encased in a cylindrical carton. On the side of the carton respondent has caused the words "Oelliet Fane, Grenoville, Paris" to be printed. The same words also appear on a label affixed to the glass container within the cylindrical carton, and impressed in the glass at the bottom of the bottle are the words, "Grenoville, Made in France."

The use of such statements as hereinabove set forth serve as representations that said products were, and are, manufactured or compounded in England and France, respectively, and imported into this country.

The use of the above representations on the cartons and containers of respondent's products has the capacity and tendency to and does mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that the products of respondent are manufactured or compounded in France and England and imported into the United States. In truth and in fact none of the above referred to products of respondent are manufactured or compounded in France or England, but are manufactured or compounded in the United States.

PAR. 5. There is a preference on the part of certain of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States; this is particularly true regarding perfumes, colognes, and other toilet preparations manufactured in France and such goods so manufactured and imported command from that said part of the purchasing public a higher price in the market of the United States than do domestic perfumes, colognes, and other toilet preparations of the same nature and description.

PAR. 6. For many years the English firm of Potter & Moore of Tysson Street, Dalston, London, and the French firm of Grenoville, 42 Rue de Paradis, Paris, France, have enjoyed enviable reputations for the excellence of their products. Among the products of the aforesaid Potter & Moore is Potter & Moore's Mitcham Lavender, and among the products of the aforesaid Grenoville is Grenoville's Perfumes. The above representations made by respondent have the capacity and tendency to, and do, mislead customers and prospective customers into the erroneous belief that the products of respondent

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as described by the tags, labels, and markings affixed to said products are manufactured by Potter & Moore of London and Grenoville of Paris. In truth and in fact said products are not manufactured by Potter & Moore of London and by Grenoville of Paris, but are compounded by respondent corporation.

As a result of the use of the aforesaid labels, tags, and markings, trade has been unfairly diverted to respondent from its competitors who actually import into the United States from foreign countries perfumes and similar products manufactured in foreign countries, or who manufacture or compound perfumes and similar products in this country for sale to the buying public and who truthfully represent and advertise the place of origin and quality of their products.

PAR. 7. The acts and practices of respondent 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 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 the Federal Trade Commission Act, the Federal Trade Commission, on the 18th day of February 1938, issued and served its complaint in this proceeding upon said respondent, W. J. Bush & Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a stipulation of facts, signed and executed by the respondent through R. R. Webb, its treasurer, and W. T. Kelly, 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 charges stated in the complaint, or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts, its conclusion based hereon, 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, accepted, and filed, and the Commission having duly considered the same and being 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. Respondent, W. J. Bush & Co., Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, which has its principal place of business located at New York, N. Y., and a factory located at Linden, N. J.

Until June 15, 1938, and for more than 1 year prior to that date, respondent has been engaged in the manufacture and sale of two lines of perfumes, colognes, and other toilet preparations, one being known as the Grenoville line of perfumes and the other as the Potter and Moore line of Mitcham Lavender perfumes or toilet waters.

PAR. 2. The respondent caused its products when sold to be transported from its factory in Linden, N. J., to purchasers located in States other than the State of New Jersey and respondent maintained a constant course of trade in commerce in its products manufactured and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct of its business the respondent has been in substantial competition with other corporations and with individuals and firms likewise engaged in the business of manufacturing and selling perfumes, colognes, and other toilet preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the conduct of its business, as herein set out, certain of respondent's perfume products bear labels, tags, and markings purporting to describe and refer to the place of manufacture of said products in the following manner:

On the straw-covered bottle containing Mitcham Lavender, the respondent has affixed tags on which are printed the trade name "Potter & Moore's Mitcham Lavender, London," and in less conspicuous type the words "Printed in England." The respondent has also caused to be attached to the straw at the bottom of the bottle container a metal tag bearing the label "Made in England," and on the stopper of the bottle are printed the words "Potter & Moore, England." Similar representations with reference to the place of manufacture of respondent's products are made by tag markings and labels by respondent in connection with the sale of Potter & Moore's Lavender Smelling Salts.

On the paper label attached by respondent to the outside cardboard container of Grenoville perfume appears the label "Extrait Oelliet Fane, Petit Model," followed by the words "Grenoville, Paris, Made in France." Enclosed in this cardboard container respondent places its perfume encased in a carton on the side of which respondent has caused the words "Oelliet Fane, Grenoville, Paris" to be printed.

The same words also appear on a label affixed to the glass container within the carton and impressed in the glass at the bottom of the bottle are the words "Grenoville, Made in France."

The use of such statements as herein set out serve as representations that respondent's products were and are manufactured in England or France and imported to the United States.

The use of the above representations by the respondent has the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that the products of respondent are manufactured in France and England and are imported into the United States. In truth and in fact none of the respondent's products are manufactured in France or England but are manufactured in the United States.

PAR. 5. There is a preference on the part of certain members of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States. This is particularly true regarding perfumes, colognes, and other toilet preparations manufactured in France and imported into the United States. Such goods so manufactured and imported command from the purchasing public a higher price on the markets in the United States than do those perfumes, colognes, and other toilet preparations of the same nature and description.

PAR. 6. For many years the English firm, Potter & Moore of Tysson Street, Dalston, London, and the French firm of Grenoville, 42 Rue de Paradis, Paris, France, have enjoyed enviable reputations for the excellence of their products.

The representations herein set-out and used by respondent have the capacity and tendency to, and do, mislead customers and prospective customers into the erroneous belief that respondent's perfumes, herein described, are manufactured by Potter & Moore of London and Grenoville of Paris. In truth and in fact the products of the respondent are not manufactured by Potter & Moore of London and Grenoville of Paris but are manufactured by the respondent in the United States.

As a result of the use by respondent of the representations herein set out, trade has been unfairly diverted to respondent from its competitors who actually import into the United States from foreign countries perfumes and similar compounds manufactured in foreign countries or who manufacture perfumes and similar products in this country for sale to the buying public and who truthfully represent and advertise the place of manufacture and the quality of their products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into between the respondent herein and W. T. Kelly, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, W. J. Bush & Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of its perfumes, colognes, and other toilet preparations, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "Made in England," or any other word or words indicating English origin, on the labels, cartons, or containers of perfumes, colognes, and other toilet preparations made or compounded in the United States.

2. Using the words or names "Potter & Moore's Mitcham Lavender of London," or "Potter & Moore, England," or any other word, words, or names which may indicate English origin on the labels, cartons, or containers of perfumes, colognes, and other toilet preparations made or compounded in the United States without clearly and conspicuously stating in immediate connection or conjunction therewith that such products are made or compounded in the United States.

3. Using the words "Made in France" or any other word or words indicating French origin on the labels, cartons, or containers of perfumes, colognes, and other toilet preparations, made or compounded in the United States.

4. Using the words or names "Extrait Oelliet Fane" or "Grenoville, Paris," or any other word, words, or names which may indicate French origin on the labels, cartons, or containers of perfumes,

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colognes, and other toilet preparations, made or compounded in the United States without clearly and conspicuously stating in immediate connection or conjunction therewith that such products are made or compounded in the United States.

It is further ordered, That the respondent shall within 60 days after 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 this order.

Syllabus

IN THE MATTER OF

STAR TOBACCO COMPANY, SPERLING TOBACCO COMPANY, KEY STORES, INC., ET AL.

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

Docket 3412. Complaint, May 9, 1938—Decision, Mar. 8, 1939

Where three corporations and two individuals (1) engaged as jobbers, distributors, and wholesalers in selling tobacco and confectionery products to retailers in the Wilkes-Barre trading area, and in purchasing such products, which are made in many different States and some of which include certain widely known, nationally advertised articles in constant demand by consuming public and necessary largely or entirely to tobacco and confectionery retail business, from manufacturers located, for the most part, in States other than Pennsylvania, and (2) constituting a large and important part of jobbers, distributors, and wholesalers of such products in said large and important outlet and market therefor to manufacturers, producers, and distributors located therein, and to those located in other States, and particularly in the eastern half of the United States, and constituting (3) in said area, a group sufficiently influential in the trade as to be able to control and influence flow of trade and commerce within, to and from such area, and (4) naturally and normally in competition with each other in the conduct of their respective businesses, and in actual and potential competition with others engaged in purchase of such products from manufacturers in other States and in resale thereof in Pennsylvania and neighboring States; and four individuals who held responsible executive positions in such concerns or businesses and directed policies and practices thereof—

Entered into and carried out an agreement, combination, understanding, and conspiracy among themselves to prevent competing dealers in such products in said area from obtaining the same directly from the manufacturers thereof, and, incident thereto and as a part thereof, to fix and establish uniform prices at which aforesaid concerns should sell their products, and prevent others from selling at lower prices, and thus suppress, hinder, and lessen competition in substantial interstate commerce in sale and distribution of such products in said territory; and for the accomplishment of said purposes—

- (a) Exacted and procured pledges and other promises and agreements from their said concerns and from manufacturers and producers of such products serving said area, to the effect that such dealers, manufacturers, and producers would support, adhere to, and enforce program above set forth;
- (b) Used, in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats thereof, and other united action against confectionery manufacturers, dealers, and others to induce and require them, and to attempt to induce and require them, to agree and conform to and support and enforce their program and refrain from selling such products to other dealers, jobbers, distributors, and wholesalers not parties thereto; and