

Complaint

29 F. T. C.

IN THE MATTER OF
SMOKED PRODUCTS COMPANY AND THE SMOKED SALT
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 2783. Complaint, Apr. 24, 1936—Decision, Oct. 18, 1939

Where two corporations engaged in manufacture, offer and sale of their "smoked salt"; in advertising their said products through magazines, newspapers, booklets, pamphlets, and radio broadcasts—

Represented that meat cured or treated with "smoked salt" would be or was thereby subjected to smoke, and that "smoked salt" accomplished and did and could do all or everything that an old smokehouse could do in the curing or smoking of meat, through such statements, among others, as "The curing salt that puts actual hickory smoke into your meats," "* * * prepared by a patented process which coats each grain of salt with genuine hickory wood smoke," "* * * the salt is exposed to hickory wood smoke just like meat is exposed to smoke in the old-fashioned smoke-house * * *," "* * * gets the smoke farther and faster into the meat than when meat is smoked in a smokehouse," and "* * * sugar-cures and actually puts genuine hickory wood smoke into meats in one operation," and "All that a smokehouse can do is put hickory smoke into your meats—Old Hickory Brand Smoked Salt does the same thing";

Facts being when meat was cured and treated with their product it would not be and was not thereby subjected to smoke as such, and said product did not and could not do all or everything that the old smokehouse can and did do with respect to curing and smoking of meats;

With effect of misleading and deceiving members of purchasing public into the belief that said representations were true, and into purchase of their said products in reliance upon such belief, and of diverting trade to them from competitors who do not misrepresent the efficacy of their products:

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

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

Mr. Jay L. Jackson for the Commission.

Cushman, Darby & Cushman, of Washington, D. C., and *Kunkel & Kunkel*, of Cincinnati, Ohio, for respondents.

COMPLAINT¹

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

¹ By stipulation of the parties approved by the Commission on October 13, 1939, it was stipulated and agreed that the complaint be considered as amended by alleging, in addition

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Smoked Products Co., a corporation, and The Smoked Salt Co., Inc., hereinafter called respondents, have been and are, and that each of them 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 thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Smoked Products Co., has been for several years last past, and now is, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business at Cincinnati, in the State of Ohio, and a factory at Wyandotte, in the State of Michigan. Respondent, Smoked Products Co., is the owner and holder of certain patents covering or embracing the process of manufacturing so-called "smoked salt," and it has also been engaged in the sale and distribution of so-called "smoked salt" in commerce among and between the various States of the United States directly and through respondent, The Smoked Salt Co., Inc., a subsidiary, and also through a licensee under such patents, the Pennsylvania Salt Manufacturing Co., of Philadelphia, Pa.

Respondent, The Smoked Salt Co., Inc., has been for several years last past and now is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business at Cincinnati, in the said State of Ohio. It has also engaged in the sale in commerce among and between the various States of the United States of so-called "smoked salt." Respondent, Smoked Products Co., owns the stock of respondent, The Smoked Salt Co., Inc., controls and directs its business and dominates its affairs.

Respondents, Smoked Products Co. and The Smoked Salt Co., Inc., and also the licensee of respondent Smoked Products Co., Pennsyl-

to what is already alleged in the complaint, that the representations set out in subparagraph 2 of paragraph 2 of the complaint herein, and in subparagraph 3 of paragraph 2 of the complaint herein also tend to mislead and deceive the purchasing public into the erroneous beliefs that by the use of "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar Cure)," the meat itself will be smoked, and that the products, namely, "Old Hickory Smoked Salt," and "Old Hickory Smoked Salt (Sugar Cure)" do everything that the old smokehouse did, and to purchase from respondents "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar Cure)" in reliance upon such erroneous belief; that such practice of respondents has had and still has the capacity and tendency to divert and has diverted trade to respondents from competitors offering for sale or selling salt in interstate commerce, and further that the proposed substitute answer of respondents, dated April 17, 1930, to the complaint herein, if permitted by the Federal Trade Commission to be filed in lieu of the answer of the respondents filed May 27, 1930, should be considered as the substitute answer to the said complaint as amended by this stipulation.

Complaint

29 F. T. C.

vania Salt Manufacturing Co., transport or cause to be transported the so-called "smoked salt" from their said places of business at Cincinnati, in the State of Ohio, or from the factory of respondent, Smoked Products Co., at Wyandott, Mich., into and through the various States of the United States to purchasers of such so-called "smoked salt" at their various points of location.

Respondents in the course and conduct of their said business, have been and are engaged in competition with individuals, partnerships, and corporations offering for sale and selling salt in interstate commerce.

PAR. 2. In the course and conduct of their business as described in paragraph 1, respondents have offered for sale and sold, and each of them has offered for sale and sold, a product which they have, and each of them has, described and designated as "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar Cure)."

Respondents have advertised such products by or through magazines, newspapers, booklets, pamphlets and radio broadcasting, and in the course of such advertisements they have employed the following and other similar statements and representations purporting to be descriptions of their products:

The curing salt that puts actual hickory smoke into your meats.

Old Hickory is prepared by a patented process which coats each grain of salt with genuine hickory wood smoke.

In the preparation of Old Hickory *Smoked* Salt, the salt is exposed to hickory wood smoke just like meat is exposed to smoke in the old-fashioned smokehouse * * * And because of the rotating movement, each fine grain of salt is coated evenly on all sides with pure hickory smoke.

Old Hickory Smoked Salt—because it is pure salt coated with genuine hickory smoke—gets the smoke farther and faster into the meat than when meat is smoked in a smokehouse.

Old Hickory Smoked Salt sugar-cures and actually puts genuine hickory wood smoke into meats in one operation.

And said respondents further caused their said product to be advertised by means of a radio broadcast, in the course of which the following statements and representations were made:

All that a smokehouse can do is put hickory smoke into your meats—Old Hickory Brand Smoked Salt does the same thing.

In truth and in fact the word "smoked" when employed to designate or describe salt for use in curing and preserving or for use in smoking or flavoring meats signifies and means that the salt so designated or described has been directly subjected to the action and effect of, or directly impregnated or treated with, the smoke of burning wood during its course of combustion without intervening

agencies, electrical or otherwise, sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing and preserving or smoking or flavoring meats.

The product of respondents Smoked Products Co. and The Smoked Salt Co., Inc., has not been and is not subjected directly to the action and effect of, or directly treated or impregnated with, the smoke of burning wood during its course of combustion. In the manufacture of their so-called "Smoked Salt" the salt has not been and is not exposed to hickory wood smoke just like meat is exposed to wood smoke in the old fashioned smoke-house. The use of such so-called "smoked salt" does not transmit the same elements, substances, or properties or produce, or have the same effect or effects upon meats as does the method or process known as the smoke-house process or method, or as does the actual smoking of the meat itself in or by smoke as smoke is recognized and understood by the public.

PAR. 3. There have been for many years last past and now are competitors of respondents engaged in the sale of salt in interstate commerce, truthfully represented and described, for curing or preserving, or smoking, or flavoring meats.

PAR. 4. The practice of respondents, Smoked Products Co., and The Smoked Salt Co., Inc., in advertising their product as described in paragraph 2 hereof and in offering for sale and selling it as "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar-Cure)," has had and has the capacity and tendency to mislead and deceive, and has mislead and deceived, and does mislead and deceive the purchasing public into the belief that such product has been subjected directly to the action and effect of, or directly treated or impregnated with, the smoke of burning wood during its course of combustion sufficiently to acquire from such source alone its smoke or smoke effects, and into the purchase of respondents' Old Hickory Smoked Salt and Old Hickory Smoked Salt (Sugar-Cure) in reliance upon such erroneous belief.

Such practice of respondents also has had and has the capacity and tendency to divert and has diverted and does divert trade to respondents from competitors offering for sale or selling salt in interstate commerce.

PAR. 5. The above and foregoing practice of respondents has been and is all to the prejudice of the public and respondents' competitors, and in violation of the provisions 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 April 24, 1936, issued and served its complaint in this proceeding upon respondents, Smoked Products Co. and The Smoked Salt Co., Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the said complaint and the filing of respondents' answer thereto, the Commission, by order herein, granted respondents' motion for permission to withdraw said answer and to file in lieu thereof a substitute answer, and in connection therewith approved and filed a stipulation, executed by respondents' counsel, Messrs. Kunkel & Kunkel, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, agreeing and stipulating that the Commission's complaint be considered as amended as therein provided and that said substitute answer be considered as a substitute answer to said complaint as amended. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, as amended, substitute answer and stipulation and upon respondents' motion for disposition of the case upon the pleadings, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Smoked Products Co. and The Smoked Salt Co., Inc., have been and are now corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with their principal places of business located at Fifth and Butler Streets, in the city of Cincinnati, of said State. At all times material hereto respondents have been and are now engaged in the business of manufacturing, offering for sale, and selling a salt product, otherwise known as "smoked salt," in commerce among and between the various States of the United States, and in causing the same when sold or ordered to be shipped and transported to purchasers thereof located in States of the United States other than the State of origin of said shipment.

In the course and conduct of their aforesaid business, and at all times material hereto, respondents have been and are now engaged in competition with individuals, partnerships, and other corporations offering for sale and selling salt in interstate commerce.

PAR. 2. In the course and conduct of their aforesaid business respondents have offered for sale and sold, and each of them has offered for sale and sold, salt products designated and described as "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar cure)" and advertised such products by and through magazines, newspapers, booklets, pamphlets, and radio broadcasts, and in the course of such advertisements have employed and employ the following and other similar statements and representations purporting to be descriptive of their said products:

The curing salt that puts actual hickory smoke into your meats.

Old Hickory is prepared by a patented process which coats each grain of salt with genuine hickory wood smoke.

In the preparation of Old Hickory *Smoked Salt*, the salt is exposed to hickory wood smoke just like meat is exposed to smoke in the old-fashioned smoke-house * * * And because of the rotating movement, each fine grain of salt is coated evenly on all sides with pure hickory smoke.

Old Hickory Smoked Salt—because it is pure salt coated with genuine hickory smoke—gets the smoke farther and faster into the meat than when meat is smoked in a smokehouse.

Old Hickory Smoked Salt sugar-cures and actually puts genuine hickory wood smoke into meats in one operation.

And said respondents further caused their said product to be advertised by means of a radio broadcast, in the course of which the following statements and representations were made:

All that a smokehouse can do is put hickory smoke into your meats—Old Hickory Brand Smoked Salt does the same thing.

PAR. 3. The aforesaid statements and representations imply and represent that meats which are cured or treated with respondents' "smoked salt" product will be or is thereby subjected to smoke and that said product when applied to meat accomplishes, does, or can do all or everything that an old smokehouse does or can do. In truth and in fact, when meat is cured and treated with respondents' said product, the same will not be and is not thereby subjected to smoke as such, and said product does not and cannot do all or everything that the old smokehouse can do or does with respect to the curing and smoking of meats.

PAR. 4. The aforesaid representations as so made by respondents have had and have a capacity and tendency to mislead and deceive, and do mislead and deceive, members of the purchasing public into the belief that said representations are true and into the purchase of respondents' said products in reliance upon such erroneous belief, and the same have had the capacity and tendency to divert, and do divert, trade to respondents from competitors who do not misrepresent the efficacy of their products.

Order

29 F. T. C.

CONCLUSION

The aforesaid acts and practices of respondents, Smoked Products Co. and The Smoked Salt Co., Inc., are all to the prejudice of the public and respondents' 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, as amended by stipulation, the substitute answer of respondents and upon respondents' motion that the case be disposed of on the pleadings, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Smoked Products Co., a corporation and The Smoked Salt Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of their salt products in interstate commerce, do forthwith cease and desist from:

1. Representing that meat cured or treated with "smoked salt" will be or is thereby subjected to smoke, or
2. Representing that "smoked salt" accomplishes, does, or can do all or everything that an old smokehouse does in the curing or smoking of meat.

It is further ordered, That 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.

Complaint

IN THE MATTER OF
PENNSYLVANIA SALT MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2784. Complaint, Apr. 24, 1936—Decision, Oct. 18, 1939*

Where a corporation engaged in manufacturing, offering, and selling its "smoked salt" to purchasers in other States; in advertising its said "Old Hickory Smoked Salt" through magazines, newspapers, booklets, pamphlets, and radio broadcasts—

Represented that meat cured or treated with "smoked salt" would be or was thereby subjected to smoke, and that "smoked salt" accomplished and did and could do all or everything that an old smokehouse could do in the curing or smoking of meat, through such statements, among others, as " * * * eliminates the old-fashioned smokehouse, with its extra steps and its fire hazard, because Old Hickory cures and smokes in one operation," "Why bother with the old-fashioned smokehouse when you can salt, sugar-cure, and smoke the most delicious meats you ever tasted, with Old Hickory Brand Smoked Salt all in one operation?", and "All that a smokehouse can do is to put hickory smoke into your meats * * * Old Hickory Brand Smoked Salt does the same thing";

Facts being when meat was cured and treated with its product it would not be and was not thereby subjected to smoke as such, and said product did not and could not do all or everything that the old smokehouse can and did do with respect to curing and smoking of meats;

With effect of misleading and deceiving members of purchasing public into the belief that said representations were true, and into purchase of its said product in reliance upon such belief, and of diverting trade to it from competitors who do not misrepresent the efficacy of their products:

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

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

Mr. Jay L. Jackson for the Commission.

Cushman, Darby & Cushman, of Washington, D. C., for respondent.

COMPLAINT¹

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 Pennsyl-

¹ By order dated May 21, 1936, Commission granted application to dismiss complaint as to General Laboratories, Inc., because of its dissolution on December 31, 1935, prior to the issuance of such complaint.

By stipulation of the parties approved by the Commission on October 13, 1939, it was stipulated and agreed that the complaint be considered as amended by alleging, in addition to what is already alleged in the complaint, that the representations set out in para-