

Complaint

IN THE MATTER OF

PENNSYLVANIA SALT MANUFACTURING COMPANY

COMPLAINT, 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 Pennsylv-

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-

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vania Salt Manufacturing Co. and General Laboratories, Inc., hereinafter designated 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, Pennsylvania Salt Manufacturing Co., is now and has been for several years last past a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at Philadelphia, in said State. It is now, and for several years last past has been, engaged in the manufacture of various products, including salt, and in the sale of its products among and between the various States of the United States directly and through its subsidiary, respondent, General Laboratories, Inc. It operates plants both in the State of Pennsylvania and in the State of Michigan.

Respondent, General Laboratories, Inc., is now and for several years last past has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business in the city of Philadelphia in the State of Pennsylvania, and engaged in the sale of salt in commerce among and between the various States of the United States. It has been and is a subsidiary of respondent, Pennsylvania Salt Manufacturing Co., which owns all of its stock, supervises, directs, dominates, and controls its business.

It has been and is the practice of respondents to cause their product when sold to be transported from their place of business in the State of Pennsylvania, or from their operating plant which is situated at Wyandott in the State of Michigan, to purchasers located in various other States of the United States.

In the course and conduct of their business respondents, Pennsylvania Salt Manufacturing Co. and General Laboratories, Inc., have been and now are, and each of them has been and now is in competi-

graph 2 of the complaint herein tend to mislead and deceive the purchasing public into the erroneous beliefs that by the use of "Old Hickory Smoked Salt," the meat itself will be smoked, and that the product, namely, "Old Hickory Smoked Salt," does everything that the old smokehouse did, and to purchase from respondents "Old Hickory Smoked Salt" in reliance upon such erroneous beliefs; 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, 1939, 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, 1936, should be considered as the substitute answer to the said complaint as amended by this stipulation.

tion with individuals, partnerships and corporations engaged in the sale of 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 and sold, a product which they have and each of them has described and designated, and continue to describe and designate as "Old Hickory Smoked Salt" and "Old Hickory Smoked Salt (Sugar-Cure)."

Respondents have widely advertised, and continue to advertise, such product by or through magazines, newspapers, booklets, pamphlets, and radio broadcasting. In their advertisements by radio broadcasting it has been and is the practice of respondents to emphasize the value of their said product by reference to its alleged character as "Smoked Salt." The following is typical of their representations and of the representations of each of them in such forms of advertising:

EARLY MORNING MARKETS

Opening Announcement: "Each morning, except Sunday, at this time, the market comes to you through courtesy of the makers of Old Hickory Smoked Salt. Listen in for the free offer of a meat curing book which Old Hickory will make in a moment."

Closing Announcement: "Insist on Old Hickory Smoked Salt. Be sure that the salt you buy bears the Old Hickory Label so that you will get the true wood smoke flavor. Old Hickory is the original and genuine smoke salt, and to get the BEST results, you should insist on Old Hickory."

* * * * *

Old Hickory Smoked Salt 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?

All that a smokehouse can do is to put hickory smoke into your meats

* * * Old Hickory Brand Smoked Salt does the same thing.

The flavor is delicious and think of the time and bother it saves! You get a rich sugar cure, and smoking all in one operation.

* * * * *

Respondents, Pennsylvania Salt Manufacturing Co. and General Laboratories, Inc., have further caused the following representations and statements to appear in printed advertisements and advertising matter circulated or distributed among purchasers and prospective purchasers in the various States of the United States:

Smokes and sugar cures.

The Curing Salt that puts actual hickory-smoke into your Meats.

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

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Delicious, savory hams and bacon with the genuine hickory smoke flavor! That's what you get when you cure your meat with Old Hickory Smoked Salt because Old Hickory is actually smoked with genuine hickory-wood smoke.

Old Hickory is prepared by a patented process which coats each grain of salt with hickory-wood smoke. Thus, Old Hickory Smoked Salt penetrates, curing and flavoring every fibre of the meat, quickly and uniformly, from rind to bone—all in one operation.

Old Hickory Smoked Salt (sugar cure is a complete cure—it salts, sugar cures and puts actual hickory-wood smoke into meat in one operation).

Respondents, Pennsylvania Salt Manufacturing Co. and General Laboratories, Inc., have further caused the following representations and statements to appear in printed advertisements and advertising matter circulated or distributed among purchasers and prospective purchasers in various States of the United States:

Old Hickory Smoked Salt is pure salt smoked with genuine hickory smoke that delights the palate of the most fastidious.

Why You Should Use Only Old Hickory for Smoked Salt Curing. Old Hickory Smoked Salt is the only curing salt that gives a genuine, wholesome, delicious hickory flavor to meats because Old Hickory is the only curing salt that is actually smoked with genuine hickory wood smoke.

This famous Old Hickory salt-curing method was originated, perfected and patented by meat-curing experts. By using Old Hickory, you eliminate all the drudgery, dirt, danger and doubt of the old-fashioned smokehouse * * * cure and smoke and at the same time * * * and retain all the natural goodness and health-giving qualities of the fresh meat itself.

Only with genuine Old Hickory Smoked Salt can you get these outstanding meat-curing results. And here is why this is so. 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. Huge rotating drums, containing 99.6% pure white salt, are used. Into these drums the smoke of the hickory wood is forced, until every grain of salt is thoroughly coated with the flavor, color and fragrance of hickory smoke. And because of the rotating movement, each fine grain of salt is coated evenly on all sides with pure hickory smoke.

Old Hickory is unlike other curing salts because it is salt actually smoked with hickory smoke. Curing with Old Hickory Smoked Salt gives that same delicious flavor which has made Virginia hams famous throughout the world.

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 smoke-house. The pure salt in Old Hickory cures the meat quickly and thoroughly right through to the bone. The hickory smoke goes right along with the salt, giving that delicious appetizing flavor, which only Old Hickory Smoked Salt can give.

There is only one
genuine *Smoked* Salt—
Old Hickory!

In truth and in fact the word "smoked," when used to designate or describe salt for use in curing and smoking or flavoring meats,

signifies and means to the purchasing public that the product so designated and described has been subjected directly to the action and effect of, or directly treated or impregnated with, the smoke of burning wood during the course of its 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 smoking or flavoring meats.

The product of respondents, Pennsylvania Salt Manufacturing Co. and General Laboratories, 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 smoke in the old fashioned smoke-house," nor does use of respondents' product give to hams "that same delicious flavor which has made Virginia hams famous throughout the world." The use of such so-called smoked salt does not transmit the same elements, or substances, or properties or produce or have the same effects upon meats as does the method or process known as the smoke-house method or process, or as does the smoking of the meat itself by or in smoke as it 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, Pennsylvania Salt Manufacturing Co. and General Laboratories, 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 respondent, Pennsylvania Salt Manufacturing Co., charging it 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 respondent's answer thereto, the Commission, by order herein, granted respondent's 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 respondent's counsel, Arlon V. Cushman, of Messrs. Cushman, Darby and Cushman, 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 respondent's 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. Respondent, Pennsylvania Salt Manufacturing Co., has been and is now a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in the Widner Building in the city of Philadelphia of said State. At all times material hereto respondent has been and is 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 its aforesaid business, and at all times material hereto, respondent has been and is 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 its aforesaid business respondent has offered for sale and sold salt products designated and described as "Old Hickory Smoked Salt," and advertised such products by and through magazines, newspapers, booklets, pamphlets, and radio broadcasts, and in the course of such advertisements has employed and employs the following and other similar statements and representations purporting to be descriptive of its said products:

Old Hickory Smoked Salt 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?

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

The flavor is delicious and think of the time and bother it saves! You get a rich sugar cure, and smoking all in one operation.

PAR. 3. The aforesaid statements and representations imply and represent that meats which are cured or treated with respondent's "smoked salt" product will be or are 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 respondent's 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 respondent 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 respondent's said products in reliance upon such erroneous belief, and the same have had the capacity and tendency to divert, and do divert, trade to respondent from competitors who do not misrepresent the efficacy of their products.

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CONCLUSION

The aforesaid acts and practices of respondent, Pennsylvania Salt Manufacturing Co., are all to the prejudice of the public and 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, as amended by stipulation, the substitute answer of respondent and upon respondent's 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Pennsylvania Salt Manufacturing Co., a corporation, 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 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 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.

H. P. CLEARWATER

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Syllabus