

Syllabus

IN THE MATTER OF
ARTHUR LONGFIELDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3823. Complaint, June 16, 1939—Decision, Oct. 24, 1939*

Where Worcestershire Sauce under name "Lea & Perrins Worcestershire Sauce" had long been made in accordance with private and secret formula and been extensively advertised in England and other parts of the world, and had come to be highly popular and, as imported or made and sold in the United States in bottles and with labels or wrappers of distinctive size and shape, to have Nation-wide popularity as product of recognized and uniform excellence, and to be identified by purchasing public principally by aforesaid highly distinctive containers and labels or wrappers; and thereafter an individual engaged in manufacture, sale and distribution of "Longfield's Celebrated Worcestershire Style Sauce," in competition with makers and sellers in the United States of said genuine "Lea & Perrins Worcestershire Sauce," made under the original, private, and secret recipe, and under sanction and control of English parent company—

- (a) Packaged his aforesaid "Worcestershire Style Sauce" in containers closely resembling those of "Lea & Perrins Worcestershire Sauce" with bottles of same distinctive size and shape and wrappers of same type and color and with typography, border, dividing lines, color scheme, and other distinctive features and printed matter, which simulated label and package of Lea & Perrins product aforesaid; and
- (b) Included and copied from label of latter, legend "From the recipe of a nobleman in the county," and enclosed same in scrolls which simulated those used on label of other and, in furtherance of such attempted simulation, used in center of his wrapper or label shield which closely resembled in appearance that used on Lea & Perrins label aforesaid;

Notwithstanding fact recipe for said individual's product was not furnished by nobleman in Worcestershire, England, and said product was not, as thus implied, made under secret recipe used by Lea & Perrins:

With tendency and capacity to induce members of public to form mistaken and erroneous belief that his said "Worcestershire Style Sauce" was in fact Worcestershire Sauce made and sold by Lea & Perrins, and with result, as consequence of such belief, induced by said acts and representations, that substantial numbers of purchasing public bought his said product, and trade was thereby unfairly diverted to him from his competitor aforesaid:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. Karl Stecher for the Commission.

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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 Arthur Longfield, an individual, hereinafter referred to as respondent, has violated the provisions of 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, Arthur Longfield, is an individual, with his principal place of business and office at 552 Myrtle Avenue, Brooklyn, N. Y. He is now, and has been for several years heretofore, engaged in the sale and distribution of a table sauce under the brand or label of "Longfield's Celebrated Worcestershire Style Sauce." This brand or label is attached to each bottle of said sauce. This sauce is for use in seasoning meats, fish, oysters, and other food when served for use. The sauce is put up in 5-ounce bottles and is sold at about 90 cents per dozen to retail dealers.

In the course and conduct of said business, respondent ships, or causes to be shipped or transported, said product when sold from the city of Brooklyn in the State of New York to the purchasers thereof located in various States other than the State of New York. There is now, and has been during all of the times herein mentioned, a course of trade in said product so sold by respondent in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of said business, respondent is now, and has been at all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling, or offering for sale, in commerce between and among the various States of the United States, products intended to be used for the same purposes as the product sold by respondent.

PAR. 3. Worcestershire sauce was originally made in the County of Worcestershire in England. In about the year 1835 John Wheeley Lea and William Perrins, chemists, commenced the manufacture and sale of this sauce from a private recipe which they, according to the tradition in the Lea and Perrins families, had acquired from an English nobleman, Sir Marcus Sandys, who had brought said recipe, or one similar thereto, from India, where similar, though more pungent, sauces were in vogue. To this article of commerce, new in England, Messrs. Lea & Perrins gave the name "Worcestershire Sauce." It was extensively advertised in England and most other parts of the world and became very popular. In about the year 1840 the sauce

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was first imported into the United States. It was imported in bottles wrapped and labeled ready for sale until 1877. From 1877 to 1898, it was brought over from England in casks, partly finished. Upon arrival in this country the manufacture of the sauce was completed according to the private formula of Messrs. Lea & Perrins above referred to. The bottling and labeling were then done in this country. From 1898 to 1911 the sauce was manufactured in the United States for Lea & Perrins by John Duncan's Sons under the original formula. From 1911 to 1930 the English firm of Lea & Perrins themselves conducted the manufacture of Lea & Perrins Sauce in New York City. Prior to June 1, 1930, there was organized a New York corporation known as Lea & Perrins, Inc., which was and is owned and controlled by the English corporation known as Lea & Perrins, Ltd. Lea & Perrins, Ltd., acquired the entire world-wide business of the English partnership of Lea & Perrins, manufacturers of Lea & Perrins Worcestershire Sauce. Since June 2, 1930, Lea & Perrins, Inc., has manufactured and sold Lea & Perrins Sauce, made under the original private and secret recipe, throughout the United States. The business of this corporation in the sale of Worcestershire Sauce in the United States amounts to more than one million dollars per year. Lea & Perrins Worcestershire Sauce is of recognized and uniform excellence and has had a Nation-wide popularity for many years. The wholesale price of Lea & Perrins Worcestershire Sauce is \$2.75 per dozen bottles. It retails at 30¢ per bottle. There is a preference among the consuming public for Lea & Perrins Worcestershire Sauce as against the Worcestershire Style Sauce of respondent.

The size and shape of the bottles containing Lea & Perrins Worcestershire Sauce and the features of the Lea & Perrins label or wrapper have for many years been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public.

PAR. 4. In the course and conduct of his business, as described in paragraph 1 hereof, Arthur Longfield, in connection with the sale and distribution of his Worcestershire Style Sauce, has packaged the same in a manner closely resembling in appearance the containers of Lea & Perrins Worcestershire Sauce. The same distinctive sizes and shapes of bottles have been used, the wrappers are of the same type and color of paper, with typography, border, dividing lines, color scheme, and other distinctive feature in the printed matter simulating the Lea & Perrins label and package.

In furtherance of this simulation, there has been copied from the Lea & Perrins label the following: "From the recipe of a nobleman in the country," which is inclosed in scrolls simulating those used on

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the label of Lea & Perrins Worcestershire Sauce. In truth, and in fact the recipe for respondent's sauce was not furnished by a nobleman in Worcestershire, England, and is not, as implied, made under the secret recipe used by Lea & Perrins, Inc. In furtherance of his attempt to simulate the label of Lea & Perrins, respondent has used in the center of said wrapper or label a shield closely resembling in appearance the shield used by Lea & Perrins, Inc., in the label on its Worcestershire Sauce.

PAR. 5. The use by the respondent of labels and wrappers simulating the labels and wrappers used by Lea & Perrins on its said Lea & Perrins Worcestershire Sauce and the same statement as to the source of the recipe under which the respondent's sauce is made as appears on the Lea & Perrins Worcestershire Sauce containers, as aforesaid, and the use by the respondent of bottles of the same size and distinctive shape as those used by Lea & Perrins, Inc., have had, and now have, the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that the respondent's Worcestershire Style Sauce is in fact the Worcestershire Sauce manufactured and sold by Lea & Perrins, Inc. As a result of such erroneous and mistaken belief on the part of the members of the purchasing public, induced by the acts and representations of the respondent, as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby unfairly diverting trade to the respondent from his said competitor, Lea & Perrins, Inc. As a result thereof, injury has been and is being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 6. 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 16, 1939, issued and on June 19, 1939, served its complaint in this proceeding upon the respondent, Arthur Longfield, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 an answer admitting all 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. The respondent, Arthur Longfield, is an individual with his principal place of business at 419 East 22d Street, New York, N. Y.

PAR. 2. The respondent is now and for several years last has been engaged in the manufacture, sale and distribution of a table sauce under the brand and label of "Longfield's Celebrated Worcestershire Style Sauce." Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than New York. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of said business, respondent is now and has been at all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling or offering for sale in commerce between and among the various States of the United States, products intended to be used for the same purposes as the product sold by respondent.

PAR. 4. Worcestershire Sauce was originally made in the County of Worcestershire in England. In about the year 1835, John Wheeley Lea and William Perrins, chemists, commenced the manufacture and sale of this sauce from a private recipe which they, according to the tradition in the Lea and Perrins families, had acquired from an English nobleman, Sir Marcus Sandys, who had brought said recipe, or one similar thereto, from India, where similar though more pungent, sauces were in vogue. To this article of commerce, new in England, Messrs. Lea & Perrins gave the name "Worcestershire Sauce." It was extensively advertised in England and most other parts of the world and became very popular. In about the year 1840 the sauce was first imported into the United States. It was imported in bottles wrapped and labeled ready for sale until 1877. From 1877 to 1898 it was brought over from England in

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casks, partly finished. Upon arrival in this country the manufacture of the sauce was completed according to the private formula of Messrs. Lea & Perrins above referred to. The bottling and labeling were then done in this country. From 1898 to 1911 the sauce was manufactured in the United States for Lea & Perrins by John Duncan's Sons under the original formula. From 1911 to 1930 the English firm of Lea & Perrins themselves conducted the manufacture of Lea & Perrins Sauce in New York City. Prior to June 1, 1930, there was organized a New York corporation known as Lea & Perrins, Inc., which was and is owned and controlled by the English corporation known as Lea & Perrins, Ltd. Lea & Perrins, Ltd., acquired the entire world-wide business of the English partnership of Lea & Perrins, manufacturers of Lea & Perrins Worcestershire Sauce. Since June 2, 1930, Lee & Perrins, Inc., has manufactured and sold Lea & Perrins Worcestershire Sauce, made under the original private and secret recipe throughout the United States. The business of this corporation in the sale of Worcestershire Sauce in the United States amounts to more than one million dollars per year. Lea & Perrins Worcestershire Sauce is of recognized and uniform excellence and has had a Nation-wide popularity for many years. The wholesale price of Lea & Perrins Worcestershire Sauce is about \$2.75 per dozen bottles. It retails at about 30¢ per bottle. There is a preference among the consuming public for Lea & Perrins Worcestershire Sauce as against the Worcestershire Style Sauce of respondent.

The size and shape of the bottles containing Lea & Perrins Worcestershire Sauce and the features of the Lea & Perrins label or wrapper have for many years been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public.

PAR. 5. In the course and conduct of his business as hereinabove described, Arthur Longfield, in connection with the sale and distribution of his Worcestershire Style Sauce, has packaged the same in a manner closely resembling in appearance the containers of Lea & Perrins Worcestershire Sauce. The same distinctive sizes and shapes of bottles have been used, the wrappers are of the same type and color of paper, with typography, border, dividing lines, color scheme, and other distinctive features in the printed matter simulating the Lea & Perrins label and package.

In furtherance of this simulation there has been copied from the Lea & Perrins label the following: "From the recipe of a nobleman in the county," which is enclosed in scrolls simulating those used on the label of Lea & Perrins Worcestershire Sauce. In truth and in

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fact the recipe for respondent's sauce was not furnished by a nobleman in Worcestershire, England, and is not, as implied, made under the secret recipe used by Lee & Perrins, Inc. In furtherance of his attempt to simulate the label of Lea & Perrins, respondent has used in the center of said wrapper or label a shield closely resembling in appearance the shield used by Lea & Perrins, Inc., on the label of its Worcestershire Sauce.

PAR. 6. The use by the respondent of labels and wrappers simulating the labels and wrappers used by Lea & Perrins on its said Lea & Perrins Worcestershire Sauce and the same statement as to the source of the recipe under which the respondent's sauce is made as appears on the Lea & Perrins Worcestershire Sauce containers, as aforesaid, and the use by the respondent of bottles of the same size and distinctive shape as those used by Lea & Perrins, Inc., have had, and now have, the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that respondent's Worcestershire Style Sauce is in fact the Worcestershire Sauce manufactured and sold by Lea & Perrins, Inc. As a result of such erroneous and mistaken belief on the part of the members of the purchasing public, induced by the acts and representations of the respondent, as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby unfairly diverting trade to the respondent from his said competitor, Lea & Perrins, Inc.

CONCLUSION

The aforesaid acts and practices of 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 and unfair and deceptive acts and practices 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 respondent, in which answer respondent admits all the material allegations of fact set forth in the complaint, and states that he waives all intervening procedure and further hearing as to the 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, Arthur Longfield, his representatives, agents and employees, directly or through any corporate

or other device, in connection with the offering for sale, sale, and distribution of Worcestershire Style Sauce in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., in marketing their Worcestershire sauce, or in any other manner, that respondent's Worcestershire sauce is manufactured and distributed by Lea & Perrins, Inc., or is the same as the Worcestershire sauce manufactured and distributed by Lea & Perrins, Inc.

2. The use of wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., on its Worcestershire sauce.

3. The use of any design or insignia on wrappers, containers, labels, or in any other manner which simulate the design or insignia used by Lea & Perrins, Inc., in connection with their Worcestershire sauce.

4. Representing that the recipe used in the manufacture of respondent's Worcestershire sauce has any foreign or special origin when such is not the fact.

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.

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IN THE MATTER OF
PETERSIME INCUBATOR COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3883. Complaint, Aug. 31, 1939—Decision, Oct. 28, 1939*

Where a corporation engaged in the manufacture of its "Petersime Electro-Thermo Bath" for applying dry heat to the body, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia; in advertisements which it disseminated through the mails, through newspapers and periodicals of general circulation, through circulars and other printed matter distributed in commerce among the various States, and through other means, and which were intended and likely to induce purchase of said device—

- (a) Represented, directly or by implication, that use thereof provided a way to better health and constituted a cure or remedy for overweight or underweight, and for low metabolism, and would cleanse the system and keep it fit, insuring protection against disease and cleansing system of poisons, toxins, and wastes; and
- (b) Represented, as aforesaid, that said device was a cure or remedy for and had substantial therapeutic value in the treatment of many diseases and ailments and, more particularly, rheumatism, arthritis, sciatica, gout, kidney trouble, nervousness, high blood pressure, colds, fatigue, poor elimination, neurosis, frayed nerves, insomnia, neuritis, and lumbago;

Facts being it was, as aforesaid, device for applying dry heat to body, would not effect permanent change in weight in either direction (unless limited to temporary loss of weight), would not have any direct influence on basal metabolism or promote better health, or eliminate, cleanse, etc., poisons, toxins, and wastes that could not be taken care of by normal processes of elimination, and was not a cure or remedy for rheumatism and numerous other ailments and conditions above claimed, and regular use thereof might be harmful, especially to people who were debilitated and with deficient circulation;

With tendency and capacity to mislead and deceive prospective purchasers of said device into erroneous and mistaken belief that said representations were true, and to induce them to purchase said device because of such belief; and

- (c) Failed to reveal in its advertisements that regular use of its said electrothermo bath might be harmful and especially to debilitated individuals and those with deficient circulation;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Lynn C. Paulson for the Commission.