

Modified Order

30 F. T. C.

IN THE MATTER OF

HERBERT L. SMITH

MODIFIED CEASE AND DESIST ORDER

Docket 1467. Order, Dec. 20, 1939

Order, in response to motion, modifying cease and desist order of March 14, 1932, 16 F. T. C. 89, so as to require respondent, his agents, etc., in connection with offer, etc., in commerce, of cigars, to cease and desist from using word "Havana" or other words, etc., indicative of Cuban origin, etc., to describe, etc., cigars not made from tobacco grown on island of Cuba, as in said order set forth.

Mr. Marshall Morgan for the Commission.

Mr. L. A. Spiess, of Washington, D. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST, ETC.

This matter coming on to be heard by the Commission upon the motion of the Chief Counsel for the Commission, filed November 1, 1939, that the Commission modify the order to cease and desist entered herein on March 14, 1932, and it appearing that notice that said motion would be heard by the Commission on November 15, 1939, was duly served upon respondent, and that respondent thereupon appeared by counsel on November 15, 1939, and was duly heard by the Commission upon said motion, together with the Chief Counsel for the Commission, and the Commission having duly considered the said motion, including argument of counsel, and the record herein, and being now fully advised in the premises.

It is ordered, That the motion to modify the order to cease and desist issued herein on March 14, 1932, be, and the same hereby is, granted in all respects.

It is further ordered, That the order to cease and desist issued herein on March 14, 1932, be, and the same hereby is, modified so as to read as follows:

This proceeding having been heard by the Federal Trade Commission upon the entire record, including the complaint of the Commission, and the answer of the respondent thereto, the stipulation as to the facts agreed upon and approved; and the Commission having made its findings as to the facts and its conclusion that said respondent has been, and is, violating the provisions of section 5 of the 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."

It is now ordered, That Herbert L. Smith, his agents, individual or corporate, representatives, servants, employees, and successors in business on and after 2 years and 30 days from August 10, 1939, in connection with the offering for sale, sale, and distribution of cigars in commerce, as commerce is defined in the Federal Trade Commission Act, do cease and desist from:

Using the word "Havana" or any other word or words, terms, or picturizations indicative of Cuban origin or descriptive of Cuba, alone or in conjunction with any other word or words, to describe, designate, or in any way to refer to cigars which are not made from tobacco grown on the island of Cuba.

It is further ordered, That within the period of 2 years and 30 days from August 10, 1939, the respondent Herbert L. Smith, be and is hereby directed and ordered to file with the Federal Trade Commission a report in writing setting forth with particularity the manner in which he has complied with the terms of this order.

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IN THE MATTER OF
YARDLEY OF LONDON, INC.

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

Docket 2330. Complaint, Mar. 15, 1935—Decision, Dec. 20, 1939

Where a domestic corporation, subsidiary of an English concern of London, engaged at its place of business in the United States in mixing, compounding, and manufacturing, among other toilet requisites, cosmetics and products, soaps, perfumes, powders, bath salts, facial creams, brilliantines, and after-shaving lotions, from such domestic products, as case might be, as alcohol, distilled water, mineral oil, borax, waxes, glycerin, menthol crystals, salt crystals, magnesium, and petroleum jelly, and from such imported products as perfume concentrates, milling chips or ribbons, imported waxes and others, and in sale and distribution of its various products from its place of business to retail dealer purchasers at various points in the several States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of like and similar products in commerce as aforesaid—

- (a) Represented, in advertisements in newspapers and other publications circulating among the various States and in said District, and on labels as below set forth and otherwise, that said products were English and imported, through use of words "London," "English," or "Old English," and other words, depictions, etc., indicative of English origin, and made use of such terms and phrases as "33 Old Bond Street," "Straight from Bond Street" and word "London" as part of its corporate name, in connection with offer of said various products;
- (b) Made use of labels which were identical with those used by the parent company in England, and there made, for its perfumes compounded in this country, from London perfume concentrates, domestic alcohol and distilled water, and placed in bottles made, in some instances, in the United States from English molds and designs, and which consisted of old English print depicting vendors of lavender flowers in London in the 1770's, and bore inscription "YARDLEY'S OLD ENGLISH LAVENDER—Yardley & Company, Ltd., London—Est. 1770," and sold its said perfume, thus bottled and labeled, in containers bearing the same imprint and words "YARDLEY Old English LAVENDER—33 Old Bond Street, London,"; and
- (c) Made use of such words as "English," "Old English," "33 Old Bond Street, London," in describing its Complexion Cream and other products made as above set forth, and made use of label substantially identical with that employed on its perfume, as above described, on its bath salts, together with words "YARDLEY London," and set forth on boxes in which bottles of its said salts, thus labeled, were packed, words "YARDLEY LAVENDER BATH SALTS—Established in England in 1770," together with designation or reproduction on top of each box of Royal Coat of Arms with familiar lion and unicorn, and legend, underneath, "By Appointment to H. M. The Queen—YARDLEY—33 Old Bond Street, London";