

Syllabus

IN THE MATTER OF

W. T. WAGNER'S SONS COMPANY

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

Docket 3932. Complaint, Oct. 19, 1939—Decision, Feb. 23, 1940

Where a corporation engaged in manufacture of soda water and other soft drinks and in sale and distribution thereof to purchasers in various other states, in offer and advertisement of its "Wagner English Club Soda" in newspapers and other publications of general circulation throughout various States—

Represented directly or by implication that its product aforesaid was imported from England or made of ingredients imported therefrom and that only soda water there made had properties possessed by said product, through use of word "English" in designation thereof and through such depictions as head of one of British Buckingham guards, large bottle labeled "Wagner English Club Soda," Westminster Clock or Big Ben, and head of London policeman in characteristic helmet, together with such accompanying statements as "British as the Buckingham Guards" and "* * * like the sodas served in regimental clubs," "* * * distinctively British in the added leisure it gives to drinking * * *," "Pour Wagner's in your glass and discover what every Englishman knows: It's the soda that makes or mars the drink," "Wagner English Club Soda guards the liveliness of your drink * * * just as Big Ben, brooding over the House of Parliament, guards the hours for wayfaring Londoners," "* * * has the true British quality of holding life and flavor in a drink," and featured in advertisements aforesaid "Wagner The *English* Club Soda";

Notwithstanding fact neither product in question nor ingredients thereof were made in and imported from England, such as preferred by substantial number of members of purchasing public in the United States, but product aforesaid was made in United States from domestic ingredients and did not have any properties possessed by soda water made in England not possessed by other such water made in United States from domestic ingredients;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true and, by reason thereof, into purchase of substantial quantities of its said product;

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

Mr. Karl Stecher for the Commission.

Bettinger, Schmitt & Kreis, of Cincinnati, Ohio, for respondent.

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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 W. T. Wagner's Sons Co., a corporation, hereinafter referred to as the respondent, has violated and is now violating 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, W. T. Wagner's Sons Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and having its office and principal place of business located at 1920-26 Race Street in the city of Cincinnati, State of Ohio, and a branch office and place of business in the city of Dayton, State of Ohio. Respondent is now, and has been for several years last past, engaged in the business of manufacturing soda water and other soft drinks and in the sale and distribution thereof in commerce between and among various States of the United States. Respondent causes said products when sold to be transported from its aforesaid places of business to the purchasers thereof at their respective points of location in various States of the United States other than the State of Ohio. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said soda water and other soft drinks in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of one of two cargoes, respondent has caused said product to be branded "Wagner English Club Soda" and has caused various statements and representations, including pictorial representations relative to said product, to be inserted in advertisements in newspapers and other publications having a general circulation throughout various States of the United States. Among and typical of said statements and representations relative to said product "Wagner English Club Soda" are the following:

A large picture showing the head of one of the British Buckingham guards and also a large bottle labeled "Wagner English Club Soda." On said picture is the following printing: "BRITISH AS THE BUCKINGHAM GUARDS." Beneath said picture is the following:

* * * And as crisp as a guardsman's salute! Chill-charging gives this fine mixer its greater liveliness * * * Its linger-longer bubbles * * * makes it like the sodas served in regimental clubs. Wagner English Club Soda is distinctively British in the added leisure it gives to drinking * * * just as

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British in the way it points up the liquor flavor. Made for zestful drinking * * * as tangy on the tongue as a barrack-room yarn that takes time in the telling * * * Wagner's makes any drink taste better. Pour Wagner's in your glass and discover what every Englishman knows: It's the soda that makes or mars the drink.

A large picture showing the "Westminster Clock" in the Parliament Clock Tower, London, with the following shown in large letters to the side of the tower and above other spires of the Parliament House: "BRITISH as Big Ben." Beneath the letter "B" in BRITISH is the head of a London policeman wearing the characteristic helmet. Beneath the picture is the following:

Wagner ENGLISH Club Soda guards the liveliness of your drink * * * just as Big Ben, brooding over the House of Parliament, guards the hours for way-faring Londoners. There's time for leisurely appreciation when you mix with Wagner's, for it has the true British quality of holding life and flavor in a drink * * * right 'til the last drop's gone. It's the same long life you would get in the fine sodas served in Mayfair drawing-rooms * * * the same crisp, zestful tang that points up the bouquet of any liquor. Pour Wagner's in your glass and enjoy your drink * * * with its British accent on good taste.

In this advertisement there also appears a large bottle labeled "Wagner English Club Soda."

In large conspicuous letters on each of the above advertisements appear the words "WAGNER THE ENGLISH CLUB SODA."

The above quotations and advertisements are not exclusive, but are merely illustrative of the type and character of the representations used by respondent in advertising its product "Wagner English Club Soda."

PAR. 3. Through the use of the aforesaid statements and representations by respondent and others of similar import or meaning not herein set out, including the use of the word "English" in the designation of said product, the respondent represents directly or by implication that said "Wagner English Club Soda" is imported from England, or that it is made of ingredients imported from England, and that only soda waters made in England have the properties possessed by "Wagner English Club Soda."

PAR. 4. The aforesaid statements and representations by respondent are false and misleading. Respondent's "Wagner English Club Soda" is not manufactured in England and imported into the United States. The ingredients of said soda water are not imported from England. Said soda water is made in the United States from domestic ingredients. Said soda water does not have any properties possessed by soda waters made in England which are not possessed by other soda waters made in the United States from domestic ingredients.

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PAR. 5. There is a substantial number of members of the purchasing public in the United States who have a preference for soda waters made in England or made from ingredients imported from England.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations had and has the tendency and capacity to, and did and does, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said "Wagner English Club Soda" because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 October 19, 1939, issued and on October 20, 1939, served its complaint in this proceeding upon the respondent, W. T. Wagner's Sons Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 26, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint, and stated that prior to the issuance of said complaint it had discontinued the statements, representations, and advertisements set forth in said complaint and that it would not in the future make such statements or representations. Thereafter, the respondent having waived all intervening procedure and further hearing as to said facts, this proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission, having duly considered the matter and now being 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. Respondent, W. T. Wagner's Sons Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and having its office and principal place of business located at 1920-26 Race Street in the city of Cincinnati, State of Ohio, and a branch office and place of business in the city of Dayton,

State of Ohio. Respondent is now, and has been for several years last past, engaged in the business of manufacturing soda water and other soft drinks and in the sale and distribution thereof in commerce between and among various States of the United States. Respondent causes said products, when sold, to be transported from its aforesaid places of business to the purchasers thereof at their respective points of location in various States of the United States other than the State of Ohio. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in soda water and other soft drinks in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of one of its products, respondent caused said product to be branded "Wagner English Club Soda" and caused various statements and representations, including pictorial representations relative to said product, to be inserted in advertisements in newspapers and other publications having a general circulation throughout various States of the United States. Among and typical of said statements and representations relative to said product, "Wagner English Club Soda" are the following:

A large picture showing the head of one of the British Buckingham guards and also a large bottle labeled "Wagner English Club Soda". On said picture is the following printing: "BRITISH AS THE BUCKINGHAM GUARDS." Beneath said picture is the following:

* * * And as crisp as a guardsman's salute! Chill-charging gives this fine mixer its greater liveliness * * * its linger-longer bubbles * * * makes it like the sodas served in regimental clubs. Wagner English Club Soda is distinctively British in the added leisure it gives to drinking * * * just as British in the way it points up the liquor flavor. Made for zestful drinking * * * as tangy on the tongue as a barrack-room yarn that takes time in the telling * * * Wagner's makes any drink taste better. Pour Wagner's in your glass and discover what every Englishman knows: It's the soda that makes or mars the drink.

A large picture showing the "Westminster Clock" in the Parliament Clock Tower, London, with the following shown in large letters to the side of the tower and above other spires of the Parliament House: "BRITISH as Big Ben." Beneath the letter "B" in BRITISH the head of a London policeman wearing the characteristic helmet. Beneath the picture is the following:

Wagner ENGLISH Club Soda guards the liveliness of your drink * * * just as Big Ben, brooding over the House of Parliament, guards the hours for way-faring Londoners. There's time for leisurely appreciation when you mix with Wagner's, for it has the true British quality of holding life and flavor in a drink * * * right 'til the last drop's gone. It's the same long life you would

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get in the fine sodas served in Mayfair drawing-rooms * * * the same crisp, zestful tank that points up the bouquet of any liquor. Pour Wagner's in your glass and enjoy your drink * * * with its British accent on good taste.

In this advertisement there also appears a large bottle labeled "Wagner English Club Soda."

In large conspicuous letters on each of the above advertisements appear the words "WAGNER THE ENGLISH CLUB SODA."

The above quotations and advertisements are not exclusive, but are merely illustrative of the type and character of the representations used by respondent in advertising its product "Wagner English Club Soda".

PAR. 3. Through the use of the aforesaid statements and representations by respondent and others of similar import or meaning not herein set out, including the use of the word "English" in the designation of said product, the respondent represented directly or by implication that said "Wagner English Club Soda" was imported from England, or that it was made of ingredients imported from England, and that only soda waters made in England had the properties possessed by "Wagner English Club Soda."

PAR. 4. The aforesaid statements and representations by respondent were false and misleading. Respondent's "Wagner English Club Soda" was not and is not manufactured in England and imported into the United States. The ingredients of said soda water were not and are not imported from England. Said soda water was made and is made in the United States from domestic ingredients. Said soda water did not and does not have any properties possessed by soda waters made in England which were not and are not possessed by other soda waters made in the United States from domestic ingredients.

PAR. 5. There is a substantial number of members of the purchasing public in the United States who have a preference for soda waters made in England or made from ingredients imported from England.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations had the tendency and capacity to, and did, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations were true and into the purchase of substantial quantities of respondent's said "Wagner English Club Soda" because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute 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 said complaint, and the respondent, having waived all intervening procedure and further hearing as to 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, W. T. Wagner's Sons 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 soda water in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. The use of the word "English" to designate or describe its soda water.

2. Representing, directly or by implication, that its soda water is imported from England, or that such soda water is made of ingredients imported from England.

3. Representing, directly or by implication, that only soda waters made in England have the properties possessed by its soda water.

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.

IN THE MATTER OF
I. SEKINE 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 3624. Complaint, Oct. 7, 1938—Decision, Feb. 24, 1940

Where a corporation engaged in manufacturing or assembling and preparing for trade toothbrushes through boring and inserting in imported handles, imported bristles, and in selling and distributing its said toothbrushes to customers in other States and in District of Columbia, in active and substantial competition with others engaged in sale and distribution of toothbrushes and hand brushes in commerce as aforesaid—

Obliterated words or legends "Japan" or "Made in Japan." set forth on bristle head of such handles in harmony with practice and requirement in protection of consuming public of marking imported articles conspicuously and as legibly, indelibly and permanently as nature thereof will permit so as to indicate to ultimate purchaser name of country of origin, by bristles' insertion in holes bored in handles aforesaid at precise location of such marks of origin, and stamped elsewhere in conspicuous place on handle of finally assembled commodity in bold gold lettering words "This Brush Is Made in U. S. A."; notwithstanding fact toothbrushes in question were not wholly there made but facts were as above set out and representations thus made by it with respect to character, origin and nature of manufacture of its said products were false, misleading and untrue;

With effect of misleading and deceiving purchasers or prospective purchasers of said toothbrushes through use of aforesaid sales methods whereby identification mark was obliterated or concealed in final fabrication of finished article and words aforesaid were placed thereon, into erroneous belief that said products had been made wholly from materials produced in United States, and as products there made were such as were decidedly preferred and purchased by substantial portion of purchasing public as American-made and superior to similar articles made in foreign countries, and with result that trade was thereby diverted to it from others likewise engaged in manufacture, distribution and sale of toothbrushes and who truthfully represent their products, including character and origin thereof; to injury of competition in commerce:

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

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

Mr. John R. Phillips, Jr., for the Commission.

Mr. James W. Bevans, of New York City, for respondent.