

Syllabus

IN THE MATTER OF
BAYUK CIGARS, INC.

MODIFIED CEASE AND DESIST ORDER

Docket 1391. Order, Mar. 25, 1940

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on February 8, 1928, 12 F. T. C. 19, and in which (2) Circuit Court of Appeals for Third Circuit, on June 14, 1930, 14 F. T. C., 708, rendered decree modifying said order, (3) on November 21, 1930, 14 F. T. C. 708, amended said decree, and (4) on June 26, 1939, 29 F. T. C. 1574, rendered its substitute decree, (vacating prior modifying decree of May 8, 1939, 28 F. T. C. 1958), modifying said amended decree and also modifying order in question of Commission in certain particulars and affirming the same in other particulars—

- (a) Requiring respondent, its officers, directors, agents, representatives, servants and employees, on and after two years from June 26, 1939, and in connection with sale or distribution of cigars from any of its factories in interstate commerce, to cease and desist from using, as in said order in detail below specified, trade-mark or trade name "Havana Ribbon," as descriptive of such cigars as sold by it under such trade or brand name, and from using the word "Havana," or word or words of similar import, for cigars not composed entirely or in substantial part of tobacco grown in Cuba, and that the various provisos be adhered to, as set forth, in event of such use for cigars composed only in part of such tobacco—
- (b) Authorizing and permitting said corporation, pending expiration of period in question, and in event of adoption by it of new brand name containing the word "Ribbon", but without the word "Havana," to accept such name with words "Formerly Havana Ribbon," as below set forth—
- (c) Requiring and directing such corporation within two years and thirty days from June 26, 1939, to file with the Commission report in writing setting forth with particularity the manner in which it has complied with the terms aforesaid of the instant modified order; and
- (d) Requiring said respondent, its officers, directors, agents, representatives, servants, and employees, in connection with sale or distribution of cigars as above set forth, to cease and desist from using (1) "MAPACUBA," or other word, or words, of similar import for cigars not composed in whole or in part of tobacco grown in Cuba, and subject to provisions below set forth in event of such use for cigars composed in part only of such tobacco, and (2) depiction, simulating the flag, emblem, insignia or coat-of-arms of Cuba, map of Cuba, Cuban tobacco fields, city or Harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding, or labeling of any such cigars which are not composed in whole or in part of tobacco grown in Cuba, and subject to provisions set forth in event of such use in connection with cigars composed in part only thereof, and to cease and desist from (3) representing in any manner that any of its cigars contain or are composed in whole or in part of tobacco grown in Cuba, when such is not the fact.

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MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on February 8, 1928, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on June 14, 1930, the United States Circuit Court of Appeals for the Third Circuit rendered its decree modifying the aforesaid order of the Commission and on November 21, 1930 amended the aforesaid decree, and on June 26, 1939 rendered its substitute decree modifying its aforesaid amended decree and also modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court decree:

It is ordered, That the respondent Bayuk Cigars, Incorporated, its officers, directors, agents, representatives, servants, and employees, on and after 2 years from June 26, 1939, shall cease and desist, in connection with the sale or distribution of cigars from any of its factories in interstate commerce:

1. From using the trade-mark or trade name "Havana Ribbon" as descriptive of cigars of the type and composition or substantially of the type and composition lately and now sold under the aforesaid trade or brand name.

2. From using the word "Havana" or other word or words of similar import, alone, or in conjunction with the word "Ribbon," or any other word or words, either as a brand or trade name or as descriptive of cigars, unless such cigars are composed entirely or in substantial part of tobacco grown on the island of Cuba; *Provided*, That if the cigars be composed in part only of such tobacco, that fact shall be indicated by the brand or trade name (if the word "Havana" or like word occurs therein) the words of which that are descriptive of tobacco content shall be of uniform size, together with such accompanying descriptive words as may be necessary clearly to indicate the true composition and character of said cigars. If the word "Havana" or like word is not used in the brand name, but only in descriptive words applied to cigars composed in substantial part of Havana tobacco, such descriptive matter shall fairly indicate the true composition and character of the cigars. In all

such descriptive matter the filler tobaccos used in said cigars shall be set forth in the order of their predominance by weight in letters of equal size and conspicuousness. *Provided further*, That the words "Havana Filler" may, without other description, be applied, either as part of a brand name or otherwise, to cigars having a filler composed entirely of tobacco grown on the Island of Cuba.

It is further ordered, That pending the expiration of said period of 2 years from June 26, 1939, the respondent Bayuk Cigars, Incorporated, upon the adoption of some new brand name containing the word "Ribbon" but eliminating the word "Havana" may, during said period of 2 years, but not thereafter, accompany such new brand name with the words "Formerly Havana Ribbon" without the addition of other qualifying language; *Provided, however*, That such accompanying words be in letters substantially smaller than the new brand name.

It is further ordered, That within the period of 2 years and 30 days from June 26, 1939, Bayuk Cigars, Incorporated, be, and it is hereby directed and ordered to file with Commission a report in writing setting forth with particularity the manner in which it has complied with the aforesaid terms of this modified order.

It is further ordered, That the respondent Bayuk Cigars, Incorporated, its officers, directors, agents, representatives, servants, and employees, shall cease and desist, in connection with the sale or distribution of cigars from any of its factories in interstate commerce;

1. From using the word "Mapacuba" or other word or words of similar import, as or in a brand name for or as descriptive of any such cigars which are not composed in whole or in part of tobacco grown on the Island of Cuba.

2. From using the word "Mapacuba," or other word or words of similar import, as or in a brand name for or as descriptive of any such cigars which are composed in part only of tobacco grown on the Island of Cuba, unless said word be immediately followed and accompanied by a word or words in letters of substantial size, visibility, and conspicuousness, clearly and unequivocally indicating or stating that such cigars are not composed wholly, but in part only, of tobacco grown on the Island of Cuba;

3. From using a depiction simulating the flag, emblem, insignia, or coat-of-arms of the Republic of Cuba, map of Cuba, Cuban tobacco fields, city or harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding, or labeling of any such cigars which are not composed in whole or in part of tobacco grown on the Island of Cuba;

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4. From using a depiction simulating the flag, emblem, insignia or coat-of-arms of the Republic of Cuba, map of Cuba, Cuban tobacco fields, city or harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding or labeling of any such cigars which are composed in part only of tobacco grown in the Island of Cuba, unless such depiction be accompanied by a word or words in letters of substantial size, visibility and conspicuousness, clearly and unequivocally indicating or stating that such cigars are not composed wholly, but in part only, of tobacco grown on the Island of Cuba;

5. From representing in any other manner whatsoever that any of said cigars contain or are composed in whole or in part of tobacco grown on the Island of Cuba when such is not true in fact

It is further ordered, That the respondent, within 30 days after the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the five prohibitions of this modified order immediately hereinabove set forth.

Syllabus

IN THE MATTER OF
H. N. HEUSNER & SON

MODIFIED CEASE AND DESIST ORDER

Docket 2355. Order, Mar. 25, 1940

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which original order issued on May 29, 1937, 24 F. T. C. 1370, and in which Court of Appeals for Third Circuit, on Aug. 10, 1939, in *H. N. Heusner & Son v. Federal Trade Commission*, 106 F. (2d) 596, 29 F. T. C. 1580, rendered its decree modifying order of the Commission in question so as to allow respondent two years from date thereof within which to eliminate word "Havana" from brand name and labels of its cigars not made of Havana tobacco, sold by it as "Heusner's Original Havana Smokers" and "Martinez Havana Smokers"—

Requiring respondent, its officers, representatives, employees, or agents, on and after two years from Aug. 10, 1939, and in connection with offer for sale and distribution of cigars in interstate commerce and in the District of Columbia, to cease and desist from representing, through use of words "Havana" or "Habana," or otherwise as below set forth, that cigars not manufactured entirely from tobacco grown in Cuba are Havana cigars.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on May 29, 1937, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on August 10, 1939, the United States Circuit Court of Appeals for the Third Circuit rendered its decree modifying the aforesaid order of the Commission so as to allow the respondent 2 years from the date thereof within which to eliminate the word "Havana" from the brand name and labels of cigars not made of Havana tobacco and sold by it as "Heusner's Original Havana Smokers" and "Martinez Havana Smokers."

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court decree;

It is ordered, That the respondent, H. N. Heusner & Son, a corporation, its officers, representatives, employees, or agents, individually or corporate, on and after 2 years from August 10, 1939, shall cease and desist, in connection with the offering for sale, sale, and distribution of cigars in interstate commerce and in the District of Columbia;