

Complaint

IN THE MATTER OF

JOHN DRUCQUER, TRADING AS DRUCQUER & SONS

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

Docket 4125. Complaint, May 4, 1940—Decision, Nov. 23, 1940

Where an individual engaged in sale and distribution of blended tobaccos and other tobacco products from his place of business in California to purchasers in other States and in the District of Columbia; in statements and representations relative to source and origin of his products and place of manufacture or blending thereof, which he caused to be printed on labels, wrappers, or coverings of packages in which his products were wrapped when shipped, and which he otherwise published and circulated among purchasers and prospective purchasers in various States—

Represented, directly and by implication, that his tobaccos and tobacco products were made or blended in London, England, and imported into the United States from England, through such statements as "Tobacco manufacturers * * * manufactured by Drucquer & Sons of London, England," and "Drucquer & Sons, late of the Strand and Regent Street, London, England," notwithstanding the fact he did not maintain a factory or place of business in London, and his said products were not such products there made and blended, or tobacco products manufactured and blended in England, such as preferred by many members of the purchasing public, and he did not import his said products from England into the United States, but manufactured or blended same at his place of business in California;

With result that many members of purchasing public were led into erroneous and mistaken belief that he had place of business in London, as above set forth, where he made and blended tobacco products which he imported and sold and distributed in the United States, and substantial number of said public were led to purchase his said products because of such erroneous and mistaken belief, and with capacity and tendency to mislead and deceive substantial portion of such public into the erroneous and mistaken belief that said representations were true, and that he operated place of business in London where such products were manufactured, etc., as above set forth, and with result, as consequence of such belief, that number of members of said public purchased substantial volume of his said products:

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. Carrel F. Rhodes, for the Commission.

Mr. Edward A. Martin, of Berkeley, Calif., for respondent.

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 John Drucquer, an

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individual, trading as Drucquer and Sons, 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, John Drucquer, is an individual, with his principal office and place of business located at 2201 Shattuck Avenue, Berkeley, Calif.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged at Berkeley, Calif., in blending tobaccos and in manufacturing cigarettes made of blended tobacco, and in advertising, selling, and distributing said products. Respondent packages said products in cartons, wrappers and containers upon which are placed various pictorial representations, scrolls, words and phrases descriptive of the source, origin, character, and quality of his said products, the blend of tobacco of which they are made and the name and designation of the maker or manufacturer thereof.

Said respondent now sells and ships, and for more than 1 year last past has sold and shipped, his said products, so packaged and marked, directly by mail, parcel post, express, and otherwise, from his principal place of business in Berkeley, Calif., to purchasers thereof at their several points of location in the State of California and in the various other States of the United States, and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course of trade in said products so sold by respondent in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of the business set out and described in paragraph 2 hereof, the respondent, for the purpose of inducing the purchase of his said cigarettes, tobaccos, and other products offered for sale and sold by him, has caused and now causes his said products to be packed in cartons, wrappers, and containers bearing pictorial representations, words, phrases, and statements concerning the composition, workmanship, and blend of tobacco from which they are made and the origin and place of manufacture of said products so sold by him, principal of which pictorial representations is a picture of a lion rampant holding the cross of St. George in its right forepaw, accompanied by a scroll, upon which is printed, "Per Ardua." Typical of the statements and representations are the following, in large type, easily discernible:

* * * * *

Tobacco Manufacturers

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Manufactured by Drucquer and Sons of London, England

Drucquer and Sons

and in small type, hardly discernible, is printed:

Late of The Strand and Regent Street, London

PAR. 4. In truth and in fact, respondent's business is not located in London, England, and never was at any time during the period in question here, and the tobacco products and tobacco designated, described, and represented as in paragraph 3 hereof set out, were manufactured, blended, and otherwise processed by respondent at his place of business in Berkeley, Calif.

PAR. 5. A substantial part of the American public have a preference for tobacco products manufactured, and tobaccos blended and otherwise processed in England, by English concerns, over domestically manufactured tobacco products and domestically blended and processed tobacco.

PAR. 6. Such use of the lion and the cross of St. George suggests and simulates the use made of the British Royal Coat of Arms, in which a lion rampant appears, by manufacturers and traders who have been granted such privilege by the British Government or some member of the British Royal Family as a reward for long, faithful or distinguished service to the British Government, or to the Royal Family or some member thereof, which grant gives a prestige to the holder and his products not enjoyed by others.

PAR. 7. The said designations, descriptions, and representations as hereinabove set out and described and the said pictorial representation of a lion rampant, with the cross of St. George so used by respondent, imply and suggest to the purchasing and consuming public, especially to persons of English blood or origin, and to other purchasers having a preference for tobacco blended in England, and cigarettes and like products made of English blended tobacco, that said tobacco and products made therefrom were blended, manufactured or made in England, by Drucquer and Sons of London, England, and imported from England, when such is not the fact; and have had and now have the capacity and tendency to induce, and have induced, a substantial number of the purchasing public to buy respondent's said product, because of said erroneous beliefs.

PAR. 8. The aforesaid acts and practices of 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 May 4, 1940, issued and on May 8, 1940, served its complaint in this proceeding upon the respondent, John Drucquer, an individual, trading as Drucquer & Sons, charging him with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 27, 1940, the respondent filed his answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent's counsel, Edward A. Martin, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts, together with the facts admitted by the answer, to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, John Drucquer, is an individual trading and doing business under the name Drucquer & Sons, with his office and principal place of business located in Berkeley, Calif.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing blended tobaccos and other tobacco products. Respondent causes said products, when sold, to be transported from his place of business in Berkeley, Calif., to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the purchase of his products, respondent has caused statements and representations relative to the source and origin of

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his products and the place of manufacture or blending of his tobaccos to be printed on labels placed on the wrappers or covering of packages in which his tobaccos and tobacco products were wrapped when shipped, and has otherwise published and circulated such statements and representations among purchasers and prospective purchasers of such products situated in the various States in the United States and in the District of Columbia. Among and typical of the statements and representations circulated and distributed by respondent are the following:

Tobacco manufacturers * * * manufactured by Drucquer & Sons of London, England.

Drucquer & Sons, late of the Strand and Regent Street, London, England.

The aforesaid statements and representations by respondent, as above set out, purport to be descriptive of the source and origin of respondent's tobaccos and tobacco products and the place of manufacturing and blending same. In the manner and by the means aforesaid, respondent has represented, directly and by implication, that his tobaccos and tobacco products are manufactured or blended in London, England, and imported into the United States from England.

PAR. 4. The aforesaid statements and representations by respondent with respect to the source and origin of his said products and the place of manufacture or blending thereof are false, misleading, and deceptive. In truth and in fact, respondent does not maintain a factory or place of business in London, England, where his tobaccos and tobacco products are made and blended, and he does not import such products from England into the United States. The tobaccos and tobacco products sold by respondent are manufactured or blended by him at his place of business in Berkeley, Calif.

Many members of the purchasing public prefer tobacco products manufactured and blended in England, and the statements and representations used by respondent, as hereinabove set forth, have led many members of the purchasing public into the erroneous and mistaken belief that respondent has a place of business in London, England, where he manufactures and blends tobacco products, which he imports and sells and distributes in the United States, and have led a substantial number of the purchasing public to purchase respondent's said products because of this erroneous and mistaken belief

PAR. 5. The use by the respondent of the statements and representations above set forth, in offering for sale and selling his products, had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the

erroneous and mistaken belief that said representations are true, and that respondent operates a place of business in London, England, where said tobacco products are manufactured or blended and that said tobaccos are imported from England. As a direct result of this erroneous and mistaken belief, a number of members of the purchasing public have purchased a substantial volume of respondent's products.

CONCLUSION

The aforesaid acts and practices of 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, the answer of the respondent and stipulation as to the facts entered into by the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that, without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, John Drucquer, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of tobaccos and tobacco products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the statement "Drucquer & Sons of London, England," or any other statement indicating that respondent owns or operates a place of business in London, England.

2. Representing, through the use of the statement "Manufactured by Drucquer & Sons of London, England," or any statement indicating English origin, that tobaccos and tobacco products made, manufactured, or blended in the United States are imported from England.

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.

Syllabus

IN THE MATTER OF

WHOLESALE LIQUOR DISTRIBUTORS' ASSOCIATION OF
NORTHERN CALIFORNIA, INC., LIQUOR TRADES' STA-
BILIZATION BUREAU, INC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4093. Complaint, Apr. 18, 1940—Decision, Nov. 28, 1940*

Where numerous individuals and concerns interested and engaged in sale of liquor at wholesale in territory comprising northern part of California and western part of Nevada, and including various corporations engaged, in course and conduct of their respective businesses, in competition with other distillers, importers, and wholesale liquor dealers who were located outside of said States and who, upon sale of their products, shipped and transported same from their places of business located outside such States into States in question to purchasers thereof, and embracing—

I. Individuals and concerns which were members of a wholesale liquor distributors' association (and through which they and those associated with them in industry operated as herein below indicated), with membership of some 69 northern California wholesale liquor dealers operating in aforesaid territory, or so-called "Northern California Territory," and engaged in purchasing, in the course and conduct of their businesses, for sale to local retail liquor dealers and resale by latter to general public, wines, whiskies, and other alcoholic beverages from distillers, importers, and jobbers of such beverages, whose places of business were located outside State of California, and in causing wines and beverages to be shipped and transported from such other States to the places of business of said wholesale liquor dealers in said State, in which there had been, for a number of years last past, number of cooperative buying organizations, small jobbers and wholesale liquor dealers referred to by concerns, individuals, and organizations herein as "irregular" distributors, and engaged in business of buying and selling such beverages at wholesale and, in course and conduct of their said businesses, in purchasing such beverages from distillers, importers, and wholesalers, great majority of whom were located in other States, and products of which, when thus purchased, were shipped from seller's place of business into State of California to aforesaid purchasers, or "irregular" distributors, by whom said beverages, when received, were sold and distributed to retail liquor dealers in State in question and to purchasing public;

II. Certain corporations engaged in distilling and importing alcoholic beverages, which constituted large and important part of the distillers and importers in the United States and in said northern California territory, and a group so large and influential in the trade as to be able to control and influence flow of trade and commerce in said beverages in the United States and within, to and from said trade area, and which had been, and would have still been, in free and active competition with each other and with other distillers and importers of such beverages in said territory, but for unlawful conspiracy, combination, understanding, and agreement herein described; and