

IN THE MATTER OF
PHILIP MORRIS & CO., LTD., INCORPORATED

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

Docket 3865. Complaint, Aug. 5, 1939—Decision, Dec. 31, 1940

Where a domestic corporation engaged, in the United States, in manufacturing, distributing, and selling, among others, its "Philip Morris," "English Ovals," "Marlboro," and "Player's Navy Cut" cigarettes, under corporate name similar to that under which English commercial enterprise involving manufacture and sale of such products had long been carried on by intermediate owners, and as successor to said enterprise, and with wholly owned English subsidiary engaged in business concerned in that country—

- (a) Featured and emphasized upon the containers of its "Philip Morris" and "English Ovals" that part of its corporate name concluding with abbreviation "Ltd.," and deemphasized and set forth in relatively small type final and concluding word "Incorporated" therein, and set forth also upon containers thereof depictions which closely resembled the British Royal Arms, together with words, as case might be, "Special" and "Selection," or "By Special" and "Appointment," and words "London, W." and words, respectively, "English Blend" and "English Ovals," notwithstanding fact corporation in question was not English, but organized under laws of Virginia, products in question were not of English manufacture, but made in the United States, and it did not hold warrant entitling it to display British Royal Arms, with capacity and tendency, through such under-emphasis of words "Incorporated" or "Inc." in corporate title as set forth on containers in question, and enhanced through use of devices above described and such expressions as "English Blend," "English Ovals," "London, W.," and "By Special Appointment," to induce belief that it was an English corporation, and with capacity and tendency further, through use on packages in question of depiction closely resembling British Royal Arms, accompanied by other things indicative of English origin or manufacture, or of an English manufacturer, and including use of such expression as "By Special Appointment," to induce belief that it held royal warrant entitling it to display said Royal Arms, and that cigarettes contained in packages upon which expression appeared were of English manufacture;
- (b) Made use of expression "English Blend" in referring to its said "Philip Morris" cigarettes, ingredients of which included Latakia tobacco, much used by English manufacturers of pipe smoking mixtures in England and not used to any appreciable extent by other American manufacturers in their popular priced cigarettes, and of expression "English Ovals" in designating its brand, shaped in oval form, as customarily are shaped in England the better or more expensive cigarettes, and set forth upon containers of both, as aforesaid noted, expression "London, W.," notwithstanding fact both brands were made by it in Richmond, Va., and it had no connection with "London, W" district of London, England, other than place of business there of its wholly owned English subsidiary, with capacity and tendency,

through use of expressions "English Ovals" and "English Blend," lacking explicit and equally conspicuous disclosure of actual country of manufacture, to engender belief that cigarettes thus designated and described were of English manufacture, and, through use of "London, W," with further capacity and tendency so to do;

- (c) Set forth also upon containers of its "English Ovals," words "Factories London, Cairo, Hamilton, Canada, Richmond, Va.," and "Agents and Depots all over the world," and set forth upon containers of its "Philip Morris" cigarettes, along with other words and depictions above set forth, statement "Established over 80 years," when in fact, while latter phrase was not without justification, it did not operate factories either in Canada or Egypt, as above represented, nor maintain warehouses all over the world; and
- (d) Set forth also upon containers of its domestically made "Marlboro" brand, depiction of a heraldic device or design prominently displayed, and which closely resembled British Royal Arms, and made use of designation "Player's Navy Cut" upon its thus captioned brand, and of such matter on labels thereof, which in many respects were identical with, and in others substantially similar to, those set forth on labels and containers of the English cigarettes there made, and generally and largely sold throughout the British Isles under said name, and in comparatively small quantities only in the United States, in which were made said brand according to same formula as the "Player's" of English origin, with capacity and tendency to engender belief that its said thus designated "Player's Navy Cut" cigarettes were, in the absence of an explicit and conspicuous disclosure of actual country of manufacture, of English make;

With result that many persons purchased said cigarettes in and by reason of their belief, induced by said legends, statements and depictions, that it had been established over 80 years, was an English corporation, held a warrant entitling it to display British Royal Arms, and operated factories in London and Hamilton and Richmond, and maintained warehouses all over the world, and that its "Player's Navy Cut" cigarettes were same as those generally and widely sold under that name in England, and that all four aforesaid brands were made in said country, for which, as foreign-made goods and articles and imported, there is a preference on the part of a portion of the purchasing public, and particularly so with respect to goods and articles upon which are displayed British Royal Arms, use of which is well known to many members of purchasing public as meaning that manufacturer holds warrant entitling him to display said arms, and that possession thereof indicates holder has enjoyed patronage of British royal family or member thereof:

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. Randolph W. Branch for the Commission.

McCanliss & Early and *Mr. George P. Brauburger*, of New York City, and *Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., 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 Philip Morris & Co., Ltd., Incorporated, a corporation, 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, Philip Morris & Co., Ltd., Incorporated, is a corporation organized and existing under the laws of the State of Virginia, and having an office and principal place of business at 119 Fifth Avenue, in the city and State of New York, and a factory and place of business in the city of Richmond in the State of Virginia.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling cigarettes of various names or brands, among which are "Philip Morris," "English Oval," "Player's Navy Cut," and "Marlboro," and other tobacco products.

Respondent causes, and has caused, its said cigarettes and other products, when sold, to be transported from its said places of business in the States of New York and Virginia to purchasers thereof located in various States of the United States, other than the States of New York and Virginia, and in the District of Columbia. Respondent maintains, and since its organization in 1919 has maintained, a course of trade in cigarettes and tobacco products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its cigarettes and other products, respondent causes certain printed matter and depictions indicating their source or origin, as set forth and described below, to be placed upon the containers of said cigarettes and other tobacco products.

Upon the "Philip Morris" container appear the words and depiction set forth below:

Established over 80 years
Philip Morris & Co., Ltd.,
Incorporated.

The words last quoted, except the word "Incorporated," are arranged in an arc, conspicuously placed and printed in heavy black type, the capital letters being approximately six thirty-seconds of an inch in height, the smaller letters in the abbreviations approximately three

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thirty-seconds of an inch in height, and the remaining letters approximately five thirty-seconds of an inch. The word "Incorporated" is printed across a chord of the arc in letters approximately one thirty-second of an inch in height in a light black type.

A depiction of a heraldic device or design, placed in the approximate center, which closely simulates the British Royal Arms. To the left and right of the device appear respectively the words "Special" and "Selection," the capital letters being approximately one-sixteenth of an inch and the others approximately one thirty-second of an inch in height.

London, W.

This appears immediately below the said device, the capital letters being approximately one-sixteenth of an inch and the others approximately one thirty-second of an inch in height.

English Blend

Upon the "English Ovals" container appear the words and depiction set forth below:

Philip Morris & Co., Ltd.

Incorporated.

The words quoted above, except for the word "Incorporated," are lettered with capitals approximately three-sixteenths of an inch in height, smaller letters in the abbreviations approximately one-sixteenth of an inch in height, and the remainder approximately one-fourth of an inch in height. The lettering of "Incorporated" is minute.

English Ovals

A depiction of a heraldic device or design, conspicuously placed, which closely simulates the British Royal Arms. To the left and right of the device appear respectively the words "By Special" and "Appointment," or "Special" and "Selection," the capital letters being slightly over one-sixteenth of an inch in height and the small letters slightly less than one-sixteenth of an inch in height.

London, W.

This appears immediately below the said device in letters approximately three thirty-seconds of an inch in height.

FACTORIES

London, Cairo, Hamilton, Canada,
Richmond, Va.

Agents and Depots all over the world

Philip Morris & Co., Ltd., Inc.,
New York, U. S. A.

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Upon the "Marlboro" container appears a depiction of a heraldic device or design, prominently displayed, which closely simulates the British Royal Arms.

Upon the "Player's Navy Cut" container appear the words and depiction set forth below:

A marine scene upon which is superimposed a life ring bearing conspicuously the words "Player's Navy Cut." In the center of the ring is a depiction of the head and shoulders of a bearded sailor in a uniform which, so far as it is shown, is such as was once used in the British Royal Navy.

A depiction of a pretentious edifice identified as "Nott" Castle."

Established by
John Player & Sons,
England.

PAR. 4. Cigarettes known as "Player's Navy Cut," manufactured in England, are generally and largely sold throughout the British Isles and the Dominion of Canada, and in the United States. The packages in which they are contained and sold are in many respects identical with, in others substantially similar to, and as a whole are close simulations of, those in which the "Player's Navy Cut" cigarettes manufactured by respondent are offered and sold.

PAR. 5. Through the use of the statements and depictions hereinabove set out and described, and others similar thereto not herein set forth, respondent has represented: That it has been established for over 80 years; that it is an English corporation; that it holds a warrant entitling it to display the British Royal Arms; that it operates factories, in London, England; Cairo, Egypt; Hamilton, Canada; and Richmond, Va.; that it maintains warehouses all over the world; that its "Philip Morris," "English Ovals," and "Player's Navy Cut" cigarettes are manufactured in England, and that the last named are manufactured by John Player & Sons and are the same cigarettes as those generally and widely sold under that name in England.

PAR. 6. The aforesaid representations used and disseminated as aforesaid by respondent are misleading and untrue. In truth and in fact respondent has not been established for 80 years, and is not an English corporation. It does not hold a warrant entitling it to display the British Royal Arms. It does not operate factories in Cairo, Egypt, and in Hamilton, Canada. Such manufacturing as it may conduct in England is carried on through a subsidiary corporation organized and existing under the laws of England. It does not maintain warehouses all over the world. Its "Philip Morris," "English Ovals," and "Player's Navy Cut" cigarettes are not manufactured in England. The last-named cigarettes are not manufactured by John Player &

Sons, nor are they the same cigarettes as those generally and widely sold in England under that name.

PAR. 7. There is a preference on the part of a portion of the purchasing public for goods and articles which are manufactured in foreign countries and imported into the United States. This is particularly true with respect to goods and articles upon which are displayed the British Royal Arms, the use of which is well known to many members of the purchasing public to mean that the manufacturer thereof holds a warrant entitling him to display the said arms and that the possession of such a warrant indicates that the holder has enjoyed the patronage of the British Royal Family or a member thereof.

PAR. 8. The foregoing representations made by respondents with respect to the place of manufacture of their goods, the status of respondent as the holder of a British royal warrant, the length of time which it has been in business, the identity of the manufacturer of its goods and the place of its incorporation are calculated to, and have a tendency to, and do, mislead a substantial part of the purchasing public into the erroneous and mistaken belief that such untrue and misleading statements and claims are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's goods.

PAR. 9. 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 the 5th day of August 1939, issued and served its complaint in this proceeding upon said respondent, Philip Morris & Co. Ltd., Incorporated, a corporation, charging it with the use of unfair acts and practices in commerce in violation of the provisions of said act. On September 15, 1939, the respondent filed its 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 respondent's counsel, Lee McCanliss, 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 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Philip Morris & Co. Ltd., Incorporated, is a corporation organized and existing under the laws of the State of Virginia, and having an office and principal place of business at 119 Fifth Avenue, in the city and State of New York, and a factory and place of business in the city of Richmond in the State of Virginia.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, distributing, and selling cigarettes of various names or brands, among which are "Philip Morris," "English Ovals," "Player's Navy Cut," and "Marlboro," and other tobacco products.

Respondent causes, and has caused, its said cigarettes and other products, when sold, to be transported from its said places of business in the States of New York and Virginia to purchasers thereof located in various States of the United States, other than the States of New York and Virginia, and in the District of Columbia. Respondent maintains, and since its organization in 1919 has maintained, a course of trade in cigarettes and tobacco products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and to influence the purchase of its cigarettes, respondent causes to be placed upon the containers of said cigarettes, as set forth and described below, certain printed matter and depictions.

Upon the "Philip Morris" container appear the words and depiction set forth and described below:

Established over 80 years
Philip Morris & Co., Ltd.,
Incorporated

The words last quoted, except the word "Incorporated", are arranged in an arc, conspicuously placed and printed in heavy black type, the capital letters being approximately six thirty-seconds of an inch in height, the smaller letters in the abbreviations approximately three thirty-seconds of an inch in height, and the remaining letters approxi-

mately five thirty-seconds of an inch. The word "Incorporated" is printed across a chord of the arc in letters approximately one thirty-second of an inch in height in a light black type.

A depiction of a heraldic device or design, placed in the approximate center, which closely resembles the British Royal Arms. To the left and right of the device appear respectively the words "Special" and "Selection," the capital letters being approximately one sixteenth of an inch and the other approximately one thirty-second of an inch in height.

Immediately below this depiction appear the words "London, W." and "English Blend," the first in capital letters approximately one-sixteenth of an inch and the others approximately one thirty-second of an inch in height, and the second in conspicuous capital letters of white.

Upon the "English Ovals" container appear the words and depiction set forth and described below:

English Ovals
Philip Morris & Co. Ltd.
Incorporated.

The words last quoted above, except for the word "Incorporated," are lettered with capitals approximately three-sixteenth inch in height, smaller letters in the abbreviations approximately one-sixteenth inch in height, and the remainder approximately one-fourth inch in height. The lettering of "Incorporated" is minute.

A depiction of a heraldic device or design, conspicuously placed, which closely resembles the British Royal Arms. To the left and right of the device appear respectively the words "By Special" and "Appointment," or "Special" and "Selection," the capital letters being slightly over one-sixteenth inch in height and the smaller letters slightly less than one-sixteenth inch in height.

Immediately below the depiction appears "London, W." in letters approximately three thirty-second inch in height.

The following also appear upon the container:

FACTORIES
London, Cairo, Hamilton, Canada,
Richmond, Va.

Agents and Depots all over the world
Philip Morris & Co., Ltd., Inc.,
New York, U. S. A.

Upon the "Marlboro" container appears a depiction of a heraldic device or design, prominently displayed, which closely resembles the British Royal Arms.

Upon the "Player's Navy Cut" container appear the words and depiction set forth and described below:

Upon the front a marine scene upon which is superimposed a life ring bearing conspicuously the words "Player's Navy Cut." In the center of the ring is a depiction of the head and shoulders of a bearded sailor in a uniform which, so far as it is shown, is such as was once used in the British Royal Navy.

Upon the back a depiction of a pretentious edifice identified "Nott" Castle," and the words:

Established by
John Player & Sons,
England

PAR. 4. Cigarettes known as "Player's Navy Cut," manufactured in England, are generally and largely sold throughout the British Isles and in comparatively small quantities in the United States; "Player's" cigarettes of Canadian manufacture are sold in the Dominion of Canada. The labels on the packages in which they are contained and sold are in many respects identical with, in others substantially similar to, and as a whole are close simulations of, those in which the "Player's Navy Cut" cigarettes of American manufacture distributed by respondent are offered and sold. The Canadian "Player's" are not sold in the United States. The English "Player's" are sold in the United States only in tins containing 50 cigarettes or more, whereas respondent's "Player's" are sold in cardboard packages containing 20 cigarettes.

PAR. 5. Many persons have purchased respondent's said cigarettes by reason of their belief, induced by the legends, statements, and depictions hereinabove set forth, that respondent has been established over 80 years; that it is an English corporation; that it holds a warrant entitling it to display the British Royal Arms; that it operates factories in London, Egypt, Hamilton, Canada, and Richmond, Va.; that it maintains warehouses all over the world; that its "Philip Morris," "English Ovals," "Marlboro," and "Player's Navy Cut" cigarettes are manufactured in England, and that the last named are the same cigarettes as those generally and widely sold under that name in England.

PAR. 6. As early as 1846, one Philip Morris conducted, in London, England, a business in the manufacture, sale, and export of tobacco products. After his death in or about 1873, his widow and his brother Leopold conducted the business as a partnership until 1880, when Leopold acquired the widow's interest. The business was incorporated by Leopold in 1888 under the name of Philip Morris & Co., Ltd. In 1894, the business was transferred to a new corporation of the same

name and one William Curtis Thomson, who had previously been connected with the enterprise, became the dominating influence in it.

The business was reincorporated under the same name in 1920, and continued to be dominated by the Thomson interests until 1937.

The different English companies exported cigarettes to the United States, the first importation being not later than 1872, through an exclusive sales agency, Eckmeyer and Co.

In 1902, a New York corporation, Philip Morris & Co., Ltd., was organized, the Eckmeyer interests and the English interests each owning or controlling half of the capital stock. This company continued to import English made "Philip Morris" cigarettes until 1932, and also began and continued the manufacture of cigarettes in the United States. To this company the English company assigned its business, labels, trade-marks, and good will in the United States and its colonies.

In 1907, another New York corporation, also called Philip Morris & Co., Ltd., was organized, which acquired all the assets of the predecessor company. All of its stock was owned by the English company and the Thomson interests, and the bonds by the Eckmeyer interests. Mr. Thomson was president of this new company, dominated its policies and spent much time in New York attending to its business.

In 1919, the respondent, a Virginia corporation, was organized. It acquired all the assets of the New York corporation except cash and marketable securities, and the New York corporation went out of business.

In 1937, respondent, through a wholly owned English subsidiary, Philip Morris & Company, Limited, acquired the entire business of the then existing English company except for cash and marketable securities, which it has since conducted.

Upon these facts, although a number of corporate entities have intervened between the original founder and the respondent, there has been so unbroken a continuity in the commercial life of the enterprise that the Commission cannot find respondent's use of the phrase "Established over 80 years" to be without justification.

PAR. 7. The belief by purchasers of respondent's cigarettes that respondent is an English corporation is attributable in part to the substantially greater prominence given to the abbreviation "Ltd." in its corporate name as set forth on certain of respondent's labels, as compared to that given to the word "Incorporated" or its abbreviation, "Inc.," which is also a part of the corporate name. The effect of this underemphasis is enhanced by the use of a device resembling the British Royal Arms and expressions such as "English Blend," "English Ovals," "London, W" and "By Special Appointment."

The Commission therefore finds that such underemphasis of "Incorporated" or "Inc." has the tendency and capacity to induce the belief that respondent is an English corporation, although in fact it is organized under the laws of the State of Virginia.

PAR. 8. The Commission also finds that the use on packages containing the respondent's "Philip Morris," "English Ovals," and "Marlboro" cigarettes of a depiction bearing a close resemblance to the British Royal Arms, has the capacity and tendency to induce the belief that the respondent holds a royal warrant entitling it to display those arms, when it is accompanied, as here, by other things indicative of English origin or of an English manufacturer. The use of such a depiction has the capacity and tendency to engender the belief that cigarettes contained in the packages upon which it appears are of English manufacture as does the use of the expression "By Special Appointment" when used in connection therewith.

In fact, the cigarettes are not of English manufacture, nor does respondent hold a warrant entitling it to display the British Royal Arms. All of the various brands of cigarettes involved in this proceeding are manufactured in the United States.

PAR. 9. Respondent does not operate factories either in Hamilton, Canada or in Cairo, Egypt, as represented. Through its wholly owned subsidiary, Philip Morris & Co., Limited, it manufactures cigarettes in England, but such cigarettes are not sold in the United States. Respondent does not, as it has claimed, maintain warehouses all over the world.

PAR. 10. Respondent's, "English Ovals," cigarettes are made in an oval shape. At the time this brand was put on the American market, the oval shape was, and still is, in England, the usual shape for the better or more expensive cigarettes.

Respondent's, "Philip Morris," one of the so-called "popular price" brands of cigarettes, described as "English Blend," contains, among other tobaccos, one known as Latakia, a mild tobacco grown in Syria and having a peculiar and distinctive aroma. These cigarettes contain this tobacco in a quantity sufficient to be significant in the finished product. It is generally favored as a component of pipe smoking mixtures in England and is much used by English manufacturers of such mixtures. It is not used to any appreciable extent by other American manufacturers in their popular priced cigarettes.

Both brands are manufactured by respondent at Richmond, Va.

The Commission finds that the use of the expressions "English Ovals" and "English Blend" in the absence of an explicit and equally conspicuous disclosure of the actual country of manufacture, has the capacity and tendency to engender the belief that the cigarettes so designated or described are of English manufacture.

The Commission further finds that the use of the expression "London, W" has the capacity and tendency to engender the belief that the cigarettes contained in packages upon which it appears are of English manufacture. In fact, respondent has no connection with the "London, W", district of the city of London, England, except that its wholly owned English subsidiary has a place of business there. In consequence the Commission finds that the use of this expression in the manner indicated herein is wholly without justification in fact.

PAR. 11. The package in which respondent's American made "Player's Navy Cut" cigarettes are sold closely resembles that in which cigarettes of the same name of English manufacture as widely sold in England and to an extent in the United States.

Respondent's, "Player's Navy Cut," cigarettes are manufactured for it by The American Tobacco Co. in the United States. In September 1901, Imperial Tobacco Co. of Great Britain and Ireland was organized through a combination of a large number of English companies manufacturing and distributing tobacco products, among them John Player & Sons. At that time Imperial Tobacco Co. of Great Britain and Ireland acquired the name "Player's Navy Cut." In September 1902, Imperial Tobacco Co. of Great Britain and Ireland entered into an agreement with The American Tobacco Co. providing, among other things, that Imperial Tobacco Co. transferred all of its brands for use in the United States to The American Tobacco Co., which was to have the sole right to manufacture and distribute "Player's Navy Cut" cigarettes in the United States.

On July 7, 1922, the American Tobacco Co. conveyed a number of trade-marks and trade names, including those containing the word "Player's," to Philip Morris-International Corporation. On June 21, 1926, Philip Morris-International Corporation reconveyed all of the brands covered by the agreement of July 7, 1922, and immediately thereafter The American Tobacco Co. reconveyed brands containing the word "Player's" to Philip Morris-International Corporation, the latter agreeing that such cigarettes should be manufactured for it by The American Tobacco Co. as long as the latter desired to make such cigarettes. At this time Philip Morris-International Corporation was a wholly owned subsidiary of respondent, and, upon the dissolution of Philip Morris-International Corporation on June 30, 1926, its brands and trade-marks, including those of which the word "Player's" formed a part, were assigned to respondent.

The labels on the packages in which respondent sells its American-made "Player's Navy Cut" cigarettes closely resemble the labels upon the packages in which "Player's Navy Cut" cigarettes manufactured in England and the Dominion of Canada are sold.

The American Tobacco Co. purchases from Imperial Tobacco Co. of Great Britain and Ireland a number of "Player's Navy Cut" cigarettes of English manufacture, which it sells to respondent, and which in turn respondent distributes. These, however, are not imported in cardboard packs resembling those in which respondent distributes its "Player's Navy Cut" cigarettes of American manufacture, but are in tins of 50 or more. No American-made "Player's" are sold in tins. No Canadian-made "Player's" are sold in the United States.

The "Player's" made in the United States are made according to the same formula as those of English origin, have the same characteristics, and to the ordinary consumer are indistinguishable. There is no American preference for cigarettes manufactured by the original John Player or his successors, and such preference as exists in the United States for the English-made "Player's" is due to their English origin.

We find that the use of the package described herein for respondent's American-made "Player's Navy Cut" cigarettes has the capacity and tendency to engender the belief that such cigarettes are of English manufacture, in the absence of an explicit and conspicuous disclosure of the actual country of manufacture.

PAR. 12. There is a preference on the part of a portion of the purchasing public for goods and articles which are manufactured in foreign countries and imported into the United States. This is particularly true with respect to goods and articles upon which are displayed the British Royal Arms, the use of which is well known to many members of the purchasing public to mean that the manufacturer thereof holds a warrant entitling him to display the said arms and that the possession of such a warrant indicates that the holder has enjoyed the patronage of the British Royal Family or a member thereof.

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, the answer of the respondent and a stipulation as to the facts entered into between

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, Philip Morris & Co. Ltd., Incorporated, 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 cigarettes in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the phrase "London, W" or any other words or phrases of similar import in connection with the advertising or packaging of any cigarettes which were in fact manufactured in any place other than England.

2. Using the word "English" or other words of similar import to in any way refer to the shape or blend of any cigarettes which were in fact manufactured in any place other than England, unless in immediate connection therewith the place of manufacture is clearly and conspicuously set forth.

3. Using any depiction of the British Royal Arms or any simulation thereof or the words "Special Appointment" or "By special appointment."

4. Using the word "Limited" or its abbreviation "Ltd." as part of its corporate name, or in any other manner, unless the word "Incorporated" or its abbreviation "Inc." appears in letters of the same size and boldness as do "Limited" or "Ltd."

5. Representing that respondent operates factories or warehouses in London, England, Cairo, Egypt, or Hamilton, Canada, or in any other place in which it does not operate such factories or warehouses.

6. Using the name "Player's Navy Cut" as a designation of any cigarette not manufactured in England, unless in immediate connection with such name the country of manufacture of said cigarettes is set forth in letters of the same size or conspicuousness as is the trade name "Player's Navy Cut."

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
DAVID H. FULTON, DOING BUSINESS AS VENDOL
COMPANY

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

Docket 3895. Complaint, Sept. 16, 1939—Decision, Dec. 31, 1940

Where an individual engaged in interstate sale and distribution of his "Vendol" medicinal preparation for constipation and related conditions; in advertisements thereof which he disseminated and caused to be disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter which were distributed in commerce in the various States, and through radio broadcasts of extra-state audience, and through pamphlets, booklets, and advertising copy setting forth testimonial letters, and which advertisements were intended and likely to induce purchase of his said product—

- (a) Represented that said "Vendol" was a remedy or cure and effective treatment for constipation, stomach disorders, liver ailments, muscle, joint and body pains, rheumatism, headaches, dizziness, excess acidity, gas, cramps, indigestion, skin disorders, bad breath, palpitation, bloating, stiffness, and declining health; and in all cases brought relief to sufferers from constipation, stomach and liver disorders, pains in muscles and back, headache and rheumatism;

Facts being that it was not a remedy or cure for the diseases or conditions of which stomach disorders and other ailments and conditions above set forth are symptoms, and had no therapeutic value in treatment of such symptoms or conditions in excess of that afforded by a laxative with mild diuretic and slightly antacid effect, and, while it might give temporary relief from constipation and from stomach and liver disorders, muscular and back pains and headaches, when such conditions were definitely due to constipation or need of a diuretic, it did not in all cases bring relief to sufferers from constipation and various other disorders and ailments above enumerated;

- (b) Represented that it assured good digestion and enabled one to eat all kinds of food without fear of acid indigestion and prevented acidity, gas, cramps, burning stomach, and constipation and was a tonic and beneficial in toning system, and soothed nerves and relieved and ended sleeplessness or insomnia and strengthened stomach and digestive organs, was an appetizer and increased strength and energy, promoted new vigor and made one seem years younger;

Facts being it would not accomplish various results claimed for it as above set forth, was not a tonic, did not beneficially affect nervousness or relieve sleeplessness, strengthen stomach or digestive organs or promote vigor and make one appear younger, and had little value in stimulating appetite and was not an appetizer;

- (c) Represented that it would overcome or cure irregularity and that constipation or irregularity of the bowels is the cause of indigestion, skin disorders,