

IN THE MATTER OF

M. J. & H. J. MEYER 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 3086. Complaint, Mar. 24, 1937—Decision, May 7, 1941

Where Lea and Perrins' Worcestershire sauce had long been made in England and imported into the United States in bottles or containers, wrappers, and markings of a highly distinctive character, and, as thus made and imported, and later made in the United States in accordance with the original recipe and sold in the same distinctive container and dress of goods had come to be highly regarded as such product, identified by said distinctive containers, labels thereon, etc., and to be preferred to other sauces of the same general nature, of which it was by far the most expensive; and thereafter a competitor engaged in interstate sale and distribution of a much cheaper "Worcestershire sauce"—

- (a) Packaged its said sauce in containers which closely resembled those of said Lea & Perrins' Worcestershire sauce, having the same distinctive size and shape, wrappers of same type and color along with typography, border, dividing lines, color scheme, and to some extent identical wording placed in the identical position on the wrapper, and simulated other distinctive features in the printed matter of said prior and well-known product, including the Lea & Perrins facsimile signature; and
- (b) Represented to prospective purchasers and members of consuming public, through use of trade name "Pride of England Worcestershire Sauce" in describing its said wholly domestic product, that the same was made in England and imported into this country;

With tendency and capacity to induce members of the public to form the mistaken belief that its product was in fact the Worcestershire sauce made and sold by Lea & Perrins, Inc., and that it was made in England, with result of thereby inducing substantial numbers of them to purchase its said product, whereby trade was unfairly diverted to it from said Lea & Perrins and also from other competitors who do not simulate the dress and package of aforesaid concern or falsely represent their products as being of English origin:

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.

Before *Mr. W. W. Sheppard* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Alden S. Bradley and *Mr. Karl Stecher* for the Commission.

Mr. Harry Yarm, of New York City, for respondent.

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Complaint

COMPLAINT

Pursuant to the provisions of an 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," the Federal Trade Commission, having reason to believe that M. J. & H. J. Meyer Co., Inc., a corporation, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, M. J. & H. J. Meyer Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 145 Hudson Street, New York City, in said State. Respondent is now, and has been for several years last past, engaged at said location, among other things, in the distribution and sale of a table sauce, under the trade brand or label "Pride of England Worcestershire Sauce." This brand or label is attached to each bottle of said sauce and has also printed upon it in conspicuous type "M. J. & H. J. Meyer Co. Distributors." This sauce is for use in seasoning meats, fish, oysters, and other foods, when served at the table. This sauce is put up in 5-ounce bottles, and is sold as low as as 65 cents per dozen at wholesale, and retails for 10 cents a bottle. Said product is distributed by this respondent who sells and ships the same to wholesale grocers, who in turn sell the same to retail grocers, delicatessens, and the like, who in turn sell the same to hotels, restaurants, cafeterias, and other public eating places and to ultimate consumers thereof for family uses.

In the course and conduct of said business, respondent ships, or causes to be shipped or transported, said product, when so sold, from the said city of New York, in the State of New York, to said wholesale grocers, many of whom are located in points in various States other than the State of New York. There is now, and has been during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondent is now, and has been during all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling, or offering for sale, in commerce between and among the various States of the United States, to wholesale and retail grocers in the several States of the United States, products of domestic and

foreign origin used, and intended to be used, for the same purposes as described in paragraph 1 hereof.

PAR. 3. Worcestershire sauce was originally made in Worcestershire, England. Lea & Perrins, a copartnership of Worcestershire, England, began the manufacture and sale of Worcestershire sauce about one hundred years ago and began its importation into the United States about seventy years ago, and continued to import it in very large quantities until about the year 1898. In 1898 the partnership became incorporated under and by virtue of the laws of the State of New York and began the manufacture of the same in this country. Since then, it has been and now is, engaged in the business of selling and shipping Lea & Perrins' Worcestershire Sauce from New York City in said State of New York to wholesale grocers in every State of the United States. The business of this corporation, in the sale of Worcestershire Sauce in the United States, amounts to more than one million dollars per year. Lea & Perrins' Worcestershire Sauce is prepared according to a secret formula. This product is one of recognized and uniform excellence, and has enjoyed a nation-wide popularity for many years. The wholesale price of Lea & Perrins' Worcestershire Sauce is \$2.75 per dozen bottles; it retails at 30 cents per bottle. There is a preference among the consuming public for Lea & Perrins' Worcestershire Sauce, as against the Worcestershire sauce of respondent.

The size and shape of the bottles containing Lea & Perrins' Worcestershire Sauce, and the features of Lea & Perrins' label or wrapper have for many years been, and are now, highly distinctive and constitute principally the means by which this product is identified by the purchasing public.

PAR. 4. Respondent's said sauce is sold under the trade brand or label of "Pride of England Worcestershire Sauce." It is a sauce strikingly similar in color, odor, and general appearance to Lea & Perrins' Worcestershire Sauce.

"Pride of England Worcestershire Sauce" is packed in 5-ounce bottles, which are the same distinctive size and shape as those used by Lea & Perrins in packing its product. Respondent, on its said bottles of "Pride of England Worcestershire Sauce," uses a wrapper of the same type of paper and of the same color as is used by Lea & Perrins, upon which the typography, border, dividing lines, color scheme, and other distinctive features in the printed matter, including a script signature of respondent written in black ink diagonally across the face of the wrapper and the wording on its said wrapper or label

simulate the label or wrapper now used by Lea & Perrins on its said product, and which Lea & Perrins has used for many years.

PAR. 5. The use by the respondent of labels and wrappers simulating the labels and wrappers used by Lea & Perrins on their said "Lea & Perrins' Worcestershire Sauce" and the use by the respondent of bottles of the same size and distinctive shape as those used by Lea & Perrins have had, and now have, the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that the respondent's Worcestershire Sauce is in fact Worcestershire Sauce manufactured and sold by Lea & Perrins. As a result of such erroneous and mistaken belief on the part of the members of the purchasing public induced by the acts and representations of the respondent, as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby unfairly diverting trade to the respondent from its said competitor, Lea & Perrins. As a result thereof, injury is done by respondent to competition in commerce among and between the various States of the United States.

PAR. 6. The said use by the respondent of the trade name "Pride of England" in designating its sauce, and the use of the word "Distributors" on the label thereof, serve as representations to prospective purchasers and members of the consuming public that said sauce is made in England and imported into this country. In truth and in fact, this sauce has been, for several years, and is now, manufactured by B. V. Voss in Brooklyn, N. Y. It is purchased from said Voss by respondent and packed and sold under the original "Pride of England" trade brand and label. It is not an imported product.

PAR. 7. There is a preference among a substantial portion of the purchasing and consuming public for Worcestershire Sauce made in England and there is a firm and fixed belief among such persons that it is superior to domestic products of like character. This preference is well known to those engaged in feeding the public and in selling such products to the public.

PAR. 8. The said use by respondent of the words "Pride of England" in designating its said product and of the word "Distributors" upon the label or wrapper thereof, has had and now has the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that respondent's Worcestershire Sauce is in fact Worcestershire Sauce manufactured in England. As a result of such erroneous and mistaken beliefs induced by the acts and representations of the respondent as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby un-

fairly diverting trade to the respondent from its said competitors who do not similarly misrepresent the character or place of origin of their respective products. As a result thereof, injury is done by respondent to competition in commerce among and between the various States of the United States.

PAR. 9. The above alleged acts and practices of respondents are each and all to the prejudice of the public, and of respondent's competitors, and constitute unfair methods of competition in commerce within the meaning of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 24, 1937, issued and subsequently served its complaint in this proceeding upon respondent, M. J. & H. J. Meyer Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, and Karl Stecher, attorneys for the Commission, and in opposition to the allegations of the complaint by Harry Yarm, attorney for the respondent, before W. W. Sheppard and Lewis C. Russell, trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the Commission having duly considered the matter 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. The respondent, M. J. & H. J. Meyer Co., Inc., is a New York corporation with its office and principal place of business located at 145 Hudson Street, New York, N. Y.

PAR. 2. The respondent is now and for many years last past has been engaged in the sale and distribution of a table sauce under the trade brand or label of "Pride of England Worcestershire Sauce." Respondent causes said product, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its said business, respondent is now and at all times mentioned herein has been engaged in substantial competition with various corporations, firms, and individuals selling in commerce between and among the various States of the United States products intended to be used for the same purposes as the product sold by respondent. A great many of said competitors designate and describe their said products as "Worcestershire sauce."

PAR. 4. The business of the respondent herein was started about 1887. Until 1900, said business was carried on by M. J. Meyer, either individually or in partnership with his brother, H. J. Meyer. The business was incorporated in 1900 in the State of New York under the name of M. J. & H. J. Meyer Co., Inc., and said corporation has been in active operation since that time, maintaining its office and place of business in New York City. M. J. Meyer is the president of the corporation. About 1887 the said M. J. Meyer commenced the distribution and sale of a product which he called "Pride of England Worcestershire Sauce." Such sale and distribution was continued by the corporation after its organization. This sauce has at all times, except for a short period during the First World War, been manufactured in the United States. The size and shape of bottle, the wrapping, printing and text on the wrapper have been in continuous use in substantially the same form since about 1887. The bottle is a straight, long neck variety containing 5 fluid ounces so marked on the wrapper. The wrapper is a buff or straw-colored paper. Enclosed in a double line printed rectangular box about one-half the length of the bottle are the printed words, among others, "The Pride of England Brand Worcestershire Sauce." Near the bottom and enclosed within the box are the printed words "Distributors M. J. & H. J. Meyer Company." At the top of the printed box is printed "Shake the Bottle." All printing is in red including the lines enclosing the box except a facsimile signature "M. J. & H. J. Meyer Company," extending diagonally across the box, which is blue. This facsimile signature was placed on the wrapper about 1887. Re-

spondent's product sells at wholesale at around 70 cents per dozen bottles. The usual retail price is 10 cents per bottle. Between 1930 and 1937 the average sales were approximately \$9,000. Sales are made through brokers but shipments are made direct to purchasers.

PAR. 5. Worcestershire sauce was originally made in the County of Worcestershire, England, by Lea & Perrins in 1835. At that time it was designated as "Worcestershire Sauce." It was imported into the United States at an early date, the exact time being unknown. It is certain, however, that importations were made as early as 1849. The first agents in the United States importing and selling the sauce were John Duncan & Sons, with their place of business located in New York, N. Y. It was imported in bottles for sale to the purchasing public until 1877. From 1877 to 1898 it was imported in concentrated form, bottled in the United States and sold and distributed. Since 1898 the sauce has been manufactured in the United States in accordance with the original English recipe and bottled, sold, and distributed throughout the country by Lea & Perrins, Inc. The shape of the bottle, the wrapping of the bottle and printing thereon have at all times and are now substantially the same as were originally used by Lea & Perrins in 1835. The bottle first used contained 6 ounces. This was later changed to a 5-ounce bottle, the exact date of such change being unknown. The 5-ounce bottle has been used for a great many years, however. The bottle is of a straight long-neck variety, the neck being nearly as long as the remainder of the bottle. The wrapper is buff or straw-colored paper. Enclosed in a double line rectangular printed box about half the length of the bottle are the printed words, among others, "Lea & Perrins Sauce—The Original & Genuine Worcestershire Sauce." At the top of the printed box the words "Shake the Bottle" are printed. All printing, including the lines enclosing the box, are in red. On the bottom half of the printed box and extending diagonally is printed in blue the facsimile signature "Lea & Perrins." The exact date of the first use of this facsimile printed signature is not known. Such signature printed on the back of the wrapper enclosing the bottle was in use in 1874 and appears on a bottle exhibited in the United States in 1876. It was printed on the front of the wrapper for the first time about 1898. In 1891, Lea & Perrins filed application for registration of their trade-mark in the United States. This bears the facsimile signature "Lea & Perrins." This trade-mark is not used on the wrapper but is pasted on the bottle itself. Lea & Perrins Worcestershire Sauce is of recognized excellence and has had a nation-wide popularity for many years.

PAR. 6. There is a distinct and well-recognized preference among the consuming public for such sauce as compared with the Worcestershire sauce sold and distributed by the respondent herein or with similar sauce sold and distributed by the many competitors selling Worcestershire sauce. Lea & Perrins Worcestershire Sauce sells at wholesale for \$3 per dozen, less trade discount of ten percent and two percent off for cash or a net price of \$2.65. Sales are from four to five million bottles annually, amounting to from \$1,000,000 to \$1,500,000. It retails for approximately 30 cents per bottle and is the highest priced Worcestershire sauce on the market.

The size and shape of the bottles containing Lea & Perrins Worcestershire sauce and the various features of the Lea & Perrins wrapper have for a great many years been, and are now, highly distinctive and constitute principally the means by which the product has been and is identified by the purchasing public.

PAR. 7. In the course and conduct of its business as hereinbefore described, the respondent, in connection with the sale and distribution of its Worcestershire sauce, packages the same in containers which closely resemble in appearance the containers of Lea & Perrins Worcestershire sauce. The same distinctive size and shape of bottle is used; the wrappers are of the same type and color of paper, with typography, border, dividing lines, color scheme and to some extent the identical wording, placed in the identical position on the wrapper. Other distinctive features in the printed matter including the facsimile signature simulate the Lea & Perrins, Inc., package consisting of container, wrapper, and label.

PAR. 8. The use by the respondent of the trade name "Pride of England Worcestershire Sauce" in designating and describing its product serves as a representation to prospective purchasers and members of the consuming public that respondent's sauce is made in England and imported into this country. In truth and in fact, respondent's sauce is not of English origin but is manufactured wholly within the United States.

PAR. 9. The use by the respondent of the trade name "Pride of England" in designating its sauce and the use of containers, wrappers, and labels which simulate the containers, wrappers, and labels and printing thereon used by Lea & Perrins, Inc., on its said Lea & Perrins Worcestershire sauce, has had, and now has, the tendency and capacity to induce members of the public to form the mistaken and erroneous belief that respondent's Worcestershire sauce is in fact the Worcestershire sauce manufactured and sold by Lea & Perrins, Inc., and that said sauce is made in England. As a result of

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such erroneous and mistaken belief on the part of the members of the purchasing public, induced by the acts and representations of the respondent, as aforesaid, substantial numbers of the purchasing public have purchased respondent's product, thereby unfairly diverting trade to the respondent from its said competitor, Lea & Perrins, and thereby also diverting trade unfairly from those of its competitors in commerce among and between the various States of the United States who do not simulate the dress and package of the Lea & Perrins product, or falsely represent their products as being of English origin.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition 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 respondent, testimony and other evidence taken before W. W. Sheppard and Lewis C. Russell, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein by Alden S. Bradley and Karl Stecher, counsel for the Commission, and by Harry Yarm, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, M. J. & H. J. Meyer Co., Inc., 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 Worcestershire sauce, whether sold under that name or under any other name, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., in marketing its Worcestershire sauce, or in any other manner, that respondent's product is Worcestershire sauce manufactured and distributed by Lea & Perrins, Inc.

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2. Using wrappers, containers, or labels which simulate the distinctive wrappers, containers, or labels used by Lea & Perrins, Inc., on its Worcestershire sauce.

3. Using the words "Pride of England" or any other words which designate English origin, in any way, to refer to or describe Worcestershire sauce which is not made in England.

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
AMERICAN LECITHIN COMPANY, 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 4173. Complaint, July 5, 1940—Decision, May 7, 1941

Where four domestic and two foreign corporations, and various officers and directors thereof, interested in the production, sale, and distribution of lecithin and lecithin products, in the United States;

Acting on the initiative assumed by the president of one of said domestic corporations, manufacturer of soybean oil and desirous of developing and exploiting uses for the lecithin byproduct resulting from such manufacture, and confronted with a situation in which competitive and diffused control of essential patents and patent rights in this country and abroad imposed obstacles to its proceeding under certain patented foreign processes relative to extracting lecithin from soybean oil—

- (a) Entered into and carried out an agreement directed to the formation of a new corporation in which were merged their various theretofore competitive and conflicting interests with respect to employment of patents and patent rights in production and sale of lecithin and lecithin products in the United States and possessions and Canada, and under which, in consideration of various agreements, obligations, payments, etc., they
1. Undertook, as respects American interests involved, to refrain from exporting the products concerned;
 2. Undertook, as respects German and Danish corporations concerned, to refrain from importing such product;
 3. Undertook to assign to said new corporation all their rights and interest in the secrets concerning apparatus, devices, and processes, and letters patent and patent applications for the United States and Canada relating to the manufacture, use, and sale of lecithin and its products, and to acknowledge validity of such patents, and not to contest those thereafter acquired or developed by said new corporation;
 4. Made said new corporation exclusive distributor of the lecithin to be produced by aforesaid American manufacturer and by a second domestic corporate manufacturer, with which former shared exclusive domestic manufacturing rights under various patents thereby pooled and controlled; and
 5. Made a fourth domestic corporation, theretofore engaged in the sale of products involved under certain patents or patent rights, exclusive agent of said new corporate exclusive distributor;

With result that through said agreement and concert of action they eliminated potential competition between aforesaid domestic manufacturers and foreign concerns for business in lecithin in the United States and Canada and in foreign countries, restrained each other from contesting patents governing the production, processing, or use of lecithin, and monopolized trade and commerce therein and in products thereof in themselves; and

Where said new exclusive distributing corporation, to promote the ends which aforesaid arrangement was designed to reach—