

IN THE MATTER OF
EDWIN CIGAR 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 4085. Complaint, Apr. 6, 1940—Decision, May 29, 1941

Where two corporations and four individuals who were officers, directors or stockholders therein and controlled their corporate activities; engaged, as case might be, in manufacturing cigars and in competitive interstate sale and distribution thereof, and of pipes, smoking tobacco, tobacco pouches, pipe and tobacco accessories, razor blades, shaving cream and novelties, under various corporate and trade names; in advertising their products by radio and through newspapers, magazines, catalogs and other medium—

- (a) Represented that Manila cigars, offered at a price of 1 cent each were full-sized, full-bodied and fine-flavored; that cigars offered as a \$2.50 bargain for 75 cents constituted a special offer and had the full-bodied natural aroma of rich Havana and Connecticut blended tobacco; that certain cigars offered at a "get acquainted" price of 25 for 75 cents or 3 cents each were of guaranteed 15 cent quality and were over-runs or cigars put aside for slight imperfections; that certain cigars selling for 3 cents each were made of genuine imported Havana tobacco by use of the words "GENUINE IMPORTED HAVANA" in heavy display type, accompanied by the qualification "The finest Conn. Shade-Grown and Broad-leaf tobaccos blended with," in inconspicuous and small type; that cigars offered in a close-out sale for 3 cents were perfect hand-made Lord Edwin Ambassador cigars selling for 35 years for 10 cents each and contained the choicest tobaccos, including Havana; and that cigars priced at 2 cents each or 100 for \$1.96 were perfect cigars, 5¼ inches in length, were fine, hand-made, blended-with-Havana cigars and equal in smoking satisfaction to those selling for 10 cents and more;

The facts being Manila cigars referred to were of small size and defective quality, the \$2.50 bargain for 75 cents, cigars had fillers of cheap domestic tobaccos originating elsewhere than in Connecticut and containing negligible amounts of Havana tobacco, if any, none of the various cigars sold at 3 cents each, were over-runs, etc., as above claimed, but all were of cheap and inferior quality, were not perfect, fine or hand-made, cigars, contained only a negligible amount of Havana tobacco, if any, and did not in any way comply with standards set up for Havana-manufactured cigars;

- (b) Represented that certain items of merchandise such as a cigar lighter, a chrome metal pocket cigar case, a 128-page illustrated book selling at book shops at \$2.50, and a handsome pocket cigar case were given free with purchase of a certain specified quantity of cigars or of certain pipes valued at \$2.50 each, that cigars were given "free of charge" in connection with the purchase of various lots of cigars, and that various lots were being sold at "inventory sales prices" and "off-season sales prices," setting out opposite such sales prices in parallel columns substantially higher prices designated as "reg-

ular price per hundred"; and that an oil silk tobacco pouch of a regular value of \$2, a high quality imported virgin root briar pipe of a regular value of \$1, and a sample 2-ounce bag or container of "Havana Picadura" tobacco of a regular value of 25 cents were being closed out at a combination or special price of \$1.19—

The facts being that none of the articles represented were given "free" but prices thereof were included in those of other articles with which they were offered; items of merchandise were not of value represented, the so-called \$2.50 book being in fact a paper-backed publication purchased by them at 8 or 9 cents per copy and the tobacco pouch pipe and tobacco quoted therewith never having sold at the prices represented; pipe was neither of high quality nor imported; and so-called "regular prices" per hundred of cigars offered at "inventory sales prices" and "off-season sales prices" were fictitious;

- (c) Represented that one of corporations above referred to, engaged as Edwin Cigar Company, Inc., in manufacture and sale of cigars, etc., occupied a large building as its factory and office, owned tobacco plantation and warehouses in Cuba and Connecticut, was an importer of tobacco and controlled the movement of cigar tobacco from the growing stage until sold as cigars to the ultimate consumer, through pictorial representations on letterheads, stationery, invoices and other materials, including a 12-story building represented as its factory and office building, pictures of a tropical scene and ocean-going vessels, of operators making cigars by hand and of an executive smoking a cigar, and through such legends as "Manufacturers of High Grade Cigars, Importers, Dealers, and Packers of Leaf Tobacco" and "Leaf Tobacco Warehouses, Havana, Cuba, Hartford, Conn., Suffield, Conn."; and that the other of the two corporations, engaged under name House of Westminster, Ltd., and also under trade names Westminster Steel Blade Co., and Westminster Steel Co., owned, operated, or controlled a steel company or steel blade company, wherein steel blades were manufactured for sale direct to the public;

The facts being aforesaid cigar company rented only the ground floor and basement of a six-story building, was not an importer but purchased stock from dealers in tobacco leaf, never owned any warehouses in cities referred to and did not own, charter or operate any steamships; and second corporation did not own, operate or control any steel or steel blade company, or manufacture steel razors, or sell directly from factory to consumer, but bought its products from others; and

Where said corporations and individuals, in advertising calculated to induce prospective purchasers to believe that second corporation above referred to was a British concern dealing principally in pipes and smoking accessories imported from England—

- (d) Made use on letterheads and other stationery of corporate name, House of Westminster, Ltd., printed in heavy old English Gothic type and also of simulations of the British Royal Coat of Arms and depiction of a Gothic cathedral or abbey harmonizing with the word "Westminster"; and made use in its catalogs, of English names such as "Park Royal," "Trafalgar Square," "Lord Rochester," "The Britisher," etc., to designate or describe pipes sold and distributed by them and listed and described therein certain pipe tobaccos as "Belvedere London Plug British Pipe Mixture"

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with pictorial representations of a crown, etc., and made statement to the effect that said corporation would accept subscriptions for all English publications together with a list of publications with prices as charged in the British Empire;

The facts being corporation above referred to was not and never had been a British company or affiliated with any such company, represented no English publications, did not accept subscriptions and was not informed with reference thereto, the numerous pipes it branded, sold, and advertised with distinctly British names and as imported were not British or English pipes and imported from England, from which many of the finest pipes of the world come, and various mixtures of pipe tobacco as aforesaid were not British tobacco or a mixture of tobaccos originating in the British Empire, but consisted almost entirely of tobaccos grown in the United States,

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, with result that members of the purchasing public bought substantial quantities of their products, and trade was unfairly diverted from competitors:

Held, That such acts and practices were to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Neil P. Cullom and *Mr. Henry W. Steingarten*, of New York City, for Edwin Cigar Co., Inc., House of Westminster, Ltd., Max Rosenblum, Leonard R. Edwin, Jules M. Cole and Mrs. Max Rosenblum.

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 Edwin Cigar Co., Inc., a corporation, trading also as Cigar Makers' Federation; House of Westminster, Ltd., a corporation, trading also as Westminster Pipe Co., Westminster Steel Blade Co., and Westminster Steel Co.; Max Rosenblum, Jules M. Cole, and Leonard R. Edwin, individually, and as officers and directors of Edwin Cigar Co., Inc., and House of Westminster, Ltd., and trading also as Cigar Makers' Federation, Westminster Pipe Co., Westminster Steel Blade Co., and Westminster Steel Co.; Mrs. Max Rosenblum, individually and as an officer and director of Edwin Cigar Co., Inc., and as director of House of Westminster, Ltd.; and Fredi Mannara, John Schwab, Ruth Hess, Charles Grothe, and Park G. Shaw, individuals, trading as Cigar Makers' Federation, hereinafter referred to as respondents, have 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.

the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Edwin Cigar Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 100 East Sixteenth Street, New York, N. Y.

Respondent, House of Westminster, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 191 Fourth Avenue, New York, N. Y.

Respondents Max Rosenblum, Leonard R. Edwin, Jules M. Cole and Mrs. Max Rosenblum are, respectively, president, vice president and secretary, assistant secretary, and treasurer, of respondent Edwin Cigar Co., Inc., and all are directors of said company and of respondent House of Westminster, Ltd. Respondents Leonard R. Edwin and Jules M. Cole are respectively president and treasurer and directors of House of Westminster, Ltd.

Respondent, Edwin Cigar Co., is now, and for more than 3 years last past, has been engaged in the manufacture and in the sale and distribution of cigars in commerce among and between the various States of the United States and in the District of Columbia.

Cigars manufactured by respondent, Edwin Cigar Co., Inc., for more than 3 years last past have also been advertised and sold through the medium of the trade name Cigar Makers' Federation, using the address 35 R. Irving Place, New York, N. Y., said trade name being employed by Edwin Cigar Co., Inc., in conjunction with respondents, Jules M. Cole of 191 Fourth Avenue, New York, N. Y., Fredi Mannara of 406 East One Hundred and Twentieth Street, New York, N. Y., John Schwab of 6401 Melmetto Street, Brooklyn, N. Y., Ruth Hess, 813 Wayne Avenue, York, Pa., Park G. Shaw, 21 Franklin Street, Dalls-town, Pa., and Charles Grothe, 173 East Cottage Street, York, Pa., all employees of the Edwin Cigar Co., Inc.

Respondent, House of Westminster, Ltd., since its incorporation under the laws of the State of New York in the year 1937, has been engaged in the manufacture of cigars and in the sale and distribution of cigars, pipes, smoking tobacco, tobacco pouches, pipe and tobacco accessories, razor blades, shaving cream and novelties in commerce among and between the various States of the United States and in the District of Columbia. Respondents, House of Westminster, Ltd., Leonard R. Edwin and Jules M. Cole, also employ the trade name Westminster Pipe Co. in connection with the sale of pipes, smoking tobacco, cigars, and related products, and trade also in razor blades.

under the trade names of Westminster Steel Blade Co. and Westminster Steel Co.

Respondents, Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole, own and control each of said herein-named companies, including Cigar Makers' Federation and direct the activities and control the policies and affairs of each, including the conduct of sales and the character of advertising representations made in connection therewith.

The individual respondents and the corporate respondents act in conjunction and cooperation with each other in the performance of the acts and practices hereinafter alleged.

The business of each of said hereinbefore-mentioned companies is maintained and conducted by respondents Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole from an identical location in the city of New York, N. Y., namely, the basement and ground floor of 34 Union Square.

PAR. 2. Respondents cause their products, when sold by them, to be transported from their aforesaid places of business in the State of New York to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

In the course and conduct of their said business the respondents, trading as hereinbefore described, are now and have been in competition with other individuals, partnerships, and corporations also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of cigars, pipes, smoking tobacco, tobacco pouches, pipe and tobacco accessories, razor blades, shaving creams and various novelties.

PAR. 3. Respondents, in the course and conduct of their business and for the purpose of inducing the purchase of their various products, have set forth in radio advertising and in newspapers and magazines, catalogs, and other advertising media circulated and distributed, various representations purporting to cover the nature, quality, character, grade, and price of their said products.

Typical of the representations so made by the respondents, in connection with the offering for sale and sale of its cigars and other products are the following:

1. That Manila cigars, offered at a price of 1 cent each, are full size, full-bodied, fine-flavored cigars.

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2. That cigars offered for sale as a \$2.50 bargain for only 75 cents constitute a special offer and have the full-bodied, natural aroma of rich Havana and Connecticut blended tobaccos.

3. That an oil silk tobacco pouch of a regular value of \$2, a high quality imported virgin root briar pipe of a regular value of \$1, and a sample 2-ounce bag or container of "Havana Picadura" tobacco of a regular value of 25 cents, are being closed out at a combination or special price of \$1.19.

4. That certain cigars offered at a "get acquainted" price of 25 for 75 cents or 3 cents each are of guaranteed 15-cent quality and that such cigars are over-runs or cigars put aside for slight imperfections.

5. That certain cigars selling for 3 cents each are made of genuine imported Havana tobacco by the use of the words "GENUINE IMPORTED HAVANA TOBACCO," in a 1-column box and printed in heavy display type accompanied by the following qualification:

The finest Conn. shade-grown tobacco blended with

in small, illegible type:

6. That cigars offered in a close-out sale for 3 cents each are perfect, handmade Lord Edwin Ambassador cigars selling for 35 years at 10 cents each and contain the choicest tobaccos, including Havana.

7. That cigars priced at 2 cents each or 100 for \$1.96 are perfect cigars, 5¼" in length, and are fine, handmade blended with Havana and equal in smoking satisfaction of cigars selling at 10 cents and more.

8. That certain items of merchandise such as a cigar lighter, a chrome metal pocket cigar case, a 128-page illustrated book selling in book shops at \$2.50, a handsome pocket cigar case, and other articles, are given free with the purchase of a certain specified quantity of cigars or with the purchase of certain of respondents' pipes valued at \$2.50 each.

9. That cigars are given "free of charge" in connection with the purchase of various lots of cigars.

10. That various lots of cigars are being sold at "inventory sales prices" and "off season sales prices," opposite the sales prices of which are set out in parallel columns substantially higher prices designated as "regular price per hundred."

11. That the respondent, Edwin Cigar Co., Inc., occupies a large building as a factory and office, owns tobacco plantations and warehouses in Havana, Cuba, Hartford, Connecticut, and Suffield, Connecticut, and that it is an importer of tobacco and controls the movement of cigar tobacco from the growing stage until sold as cigars to

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the ultimate consumer, which representations are made by means of pictorial representations appearing on letterheads, stationery, invoices and other material, such as the picture of a 12-story building represented to be respondent's factory and office building, the picture of a tropical plantation scene and an ocean-going vessel, the picture of operators seated at a bench or table making cigars by hand, the picture of a box of cigars, and the picture of an executive smoking a cigar, and in addition to such picturizations there also appears the following legend:

Manufacturers of
High Grade Cigars
Importers, Dealers and Packers of
Leaf Tobacco

and to the right of said picturizations the following:

Leaf Tobacco Warehouses
Havana, Cuba Hartford, Conn.
Suffield, Conn.

12. That the respondent, House of Westminster, Ltd., owns, operates, and controls a steel company or steel plant wherein razor blades are manufactured for sale direct to the public.

PAR. 4. The foregoing statements and representations made by the respondents as well as others of similar import which are not specifically set out herein are false, deceptive, and misleading. In truth and in fact, the Manila cigars advertised by the respondent were not full size, full-bodied, or fine-flavored cigars, but on the contrary were of small size and defective quality. The cigars advertised as a \$2.50 bargain were not a blend of Havana and Connecticut tobaccos but instead were cigars the fillers of which are composed almost wholly of cheap, domestic tobacco originating in a State or States other than Connecticut, and containing, if any, only a negligible amount of real Havana filler. The oil silk tobacco pouch represented as being of a value of \$2 has never possessed such value or ever sold at such price. The pipe represented to be of high quality imported virgin root briar of a value of \$1 was not a briar pipe of such value, was not an imported pipe and was not of high quality. The tobacco represented in said combination offer as being of a regular value of 25 cents for 2 ounces has never had such value or ever sold at such price. The cigars of the respondents offered for sale at 3 cents each or 25 for 75 cents were not composed of genuine imported Havana tobacco, nor did they contain any appreciable amount of Havana tobacco or Connecticut shade-grown and broad-leaf tobacco blended with Havana as a filler. Said cigars were not

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over-runs or cigars put aside for slight imperfections, but on the contrary were regular run cigars made of cheap material including filler designed to sell at 3 cents each, and were not of 15-cent quality, and in no way conform to accepted standards of Havana blended cigars. The Lord Edwin Ambassador cigars which are sold at 3 cents each do not contain any appreciable amount of Havana tobacco and are not 10-cent grade cigars. Furthermore, said cigars are not of the same character and quality as those formerly sold as a 10-cent Havana cigar. The various cigars sold by the respondent at the price of 3 cents each are all of cheap and inferior quality and are not perfect cigars, fine, hand-made or blended with Havana, but in fact do not contain any appreciable amount of Havana tobacco and do not in any way conform to recognized standards employed by reputable manufacturers in the manufacture of Havana blended cigars, and are not of 10-cent quality.

The articles of merchandise, including cigars, which the respondent represents are given free or without charge are not free in any instance as the prices of the so-called "free items of merchandise" are included in the prices of the other articles of merchandise. The price paid by the purchaser is the regular price which would be paid for the combination of various items, including the so-called "free" goods. Furthermore, the items of merchandise are not of a value represented by the respondents. As an example, the 128-page illustrated book represented as selling for \$2.50 is in fact a cheap, paper-back publication purchased by the respondent for 8 or 9 cents each.

In their advertising of cigars at inventory sales prices and off-season sales prices which show the regular price per hundred to indicate the so-called saving to the purchaser, the respondents designate as regular price per hundred prices for said cigars which are in fact fictitious, and prices at which respondents have never sold said cigars.

The respondent, Edwin Cigar Co., Inc., does not have or occupy an office building in New York, N. Y., or any such building as that pictured on its letterhead. On the contrary, said respondent rents only the ground floor and basement of a six-story building located at 100 E. Sixteenth Street. Said respondent, Edwin Cigar Co., Inc., is not an importer of tobacco leaf, but on the contrary purchases its leaf tobacco from a general stock carried by other dealers in tobacco leaf, and has never owned, and does not now own, any tobacco plantations or any warehouses in Havana, Cuba, Hartford, Conn., or Suffield, Conn., and does not charter or operate any steamships.

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The respondent, House of Westminster, Ltd. does not now own, operate or control, and never has owned, operated, or controlled any steel company or steel plant. Said respondent does not manufacture and has never manufactured any steel razor or other blades, does not own or operate any razor blade machinery, does not temper, sharpen, or hone razor blades and does not sell direct from any factory to consumers or save any middleman's profit to the consumer on razor blades. On the contrary, the said Westminster razor blades so advertised, represented and sold by the respondent, House of Westminster, Ltd., are bought by said respondent from a blade manufacturing company located in the State of New York, said manufacturing company selling blades to respondent as orders are received therefor and also selling alike to drug stores and shaving supply companies generally throughout the United States.

PAR. 5. For many years craftsmen of England have specialized in the manufacture of pipes for use in smoking tobacco. Such craftsmen have become highly skilled in this work and English pipes have acquired and now possess, and for some time past have possessed, the reputation of being among the finest products of the pipemaker's skill. Many of the finest pipes, particularly those made of briar root, are made in England and are imported into the United States. Such pipes have long been considered as fine pipes and bear a reputation for excellence among pipe purchasers.

PAR. 6. For the purpose of misleading and deceiving members of the purchasing public, and to cause them to believe that the respondents are an English concern and deal exclusively in pipes and other smoking accessories from England, the respondents have adopted the following acts and practices in so making such representations:

1. The use of the corporate or trade name of "House of Westminster, Ltd."
2. The printing of the corporate name "House of Westminster, Ltd." on letterheads and other stationery in heavy Old English Gothic type.
3. The placing upon letterheads and other stationery, in addition to said corporate name, a pictorial representation of what appears to be the English coat-of-arms.
4. The placing on letterheads and other stationery of a pictorial representation of a gothic cathedral or abbey, harmonizing with the word "Westminster."
5. The use on letterheads and stationery of pictorial representations of English scenes of historical significance, such as Lord Nelson's monument in Trafalgar Square.

6. The use of English names in the various catalogs issued by the respondent, House of Westminster, Ltd., to designate or describe the pipes sold and distributed by the respondents, of which the following are examples: "Park Royal," "Lord Rochester," "The Britisher," "The Duke of Normandy," "The Duke of Windsor," "The Lancashire," and "Trafalgar Square."

7. The statement in their catalogue issued under the name of respondent, House of Westminster, Ltd., to the effect that said respondent will accept subscriptions for all English publications, together with a list of certain publications with prices as charged in the British Empire.

8. The use of British names to designate or describe certain pipe tobaccos in catalogues issued by the respondent, House of Westminster, Ltd., of which the following are examples:

"Belvedere London Plug Cut British Pipe Mixture"

with pictorial representation of a crown;

"House of Westminster British Mixture"

with pictorial representation of an English guardsman in uniform;

"Royal Guard Pipe Mixture"

with pictorial representation of mounted knights in armor carrying lances, and beneath this the word "British" and pictorial representation of a crown.

PAR. 7. In truth and in fact respondent, House of Westminster, Ltd., is not now and never has been a British company or branch or agent of any British company and is not now and never has been affiliated with any British company; does not represent all or any English publications, does not accept and has not accepted subscriptions to English publications and does not furnish and is not in a position to furnish information and subscription prices about the hundreds of magazines and newspapers printed in the British Empire. Numerous pipes branded, advertised and sold by respondent with distinctive British names were and are not English pipes imported from London or elsewhere in the British Empire; various pipes advertised in language indicating they were imported were and are not imported; various pipe mixtures sold under such labels as "Belvedere London Plug Cut," "House of Westminster Mixture," and "Royal Guard Pipe Mixture"

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are not British tobacco or a blend or mixture of British tobacco or tobaccos originating in the British Empire, but consist instead almost wholly of various types and blends of pipe smoking tobacco grown in different States of the United States.

PAR. 8. The use by the respondents of the false, deceptive, and misleading statements and representations hereinabove set out, in connection with the offering for sale and sale of their said products, has had, and now has, the capacity and tendency to, and does, mislead and deceive, and has misled and deceived, many dealers and members of the purchasing public into erroneous and mistaken beliefs that said representations are true, and into the purchase of substantial quantities of respondents' products on account of said beliefs induced as above set out. As a result thereof, trade has been diverted unfairly to the respondents from competitors who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States of cigars, tobacco, pipes and other smoking accessories, and who do not misrepresent the nature, character, quality, or price of their products, or the nature or size of the business conducted by them. In consequence thereof, injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 April 6, 1940, issued and subsequently served its complaint in this proceeding upon each of the respondents, charging them with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of formal answers by respondents Edwin Cigar Co., Inc., a corporation, House of Westminster, Ltd., a corporation, Max Rosenblum, Leonard R. Edwin, Jules M. Cole, and Mrs. Max Rosenblum, individuals, informal answers in the form of letters by respondents John Schwab, Ruth Hess, Charles Grothe, and Park G. Shaw, individuals (no answer having been filed by respondent Fredi Mannara), testimony and other evidence in sup-

port of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Henry W. Steingarten, of counsel for respondents Edwin Cigar Co., Inc., House of Westminster, Ltd., Max Rosenblum, Leonard R. Edwin, Jules M. Cole, and Mrs. Max Rosenblum before Randolph Preston, an examiner of the Commission theretofore duly designated by it. During the progress of such hearings Henry W. Steingarten for and on behalf of the respondents represented by him, in open hearing, admitted for the purposes of this proceeding all the material allegations of fact contained in the complaint except subdivision 5 of paragraph 6 and denied the legal conclusion of the complaint. 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 the said complaint, answers, testimony, admissions and other evidence, report of the trial examiner and exception of certain of the respondents thereto, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission, having duly considered the matter and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Edwin Cigar Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 100 East Sixteenth Street, New York, N. Y.

Respondent House of Westminster, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 191 Fourth Avenue, New York, N. Y.

Respondent Leonard R. Edwin is the son of respondents Max Rosenblum and Mrs. Max Rosenblum and is an officer and director in respondents Edwin Cigar Co., Inc., and House of Westminster, Ltd.

Respondent Max Rosenblum is the father of respondent Leonard R. Edwin and for a period of years during the time alleged in the complaint was an officer of respondent Edwin Cigar Co., Inc., and a director of House of Westminster, Ltd.

Respondent Mrs. Max Rosenblum (otherwise known as Sadie Rosenblum) is the wife of respondent Max Rosenblum and mother

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of respondent Leonard R. Edwin and was for a period of years alleged in the complaint an officer and director of respondent Edwin Cigar Co., Inc., and held stock of respondent House of Westminster, Ltd., as a nominee of respondents Leonard R. Edwin and Jules M. Cole.

Respondent Jules M. Cole is an officer and director of respondents Edwin Cigar Co., Inc., and House of Westminster, Ltd., and was during a period of time alleged in the complaint a partner or associate in Cigar Makers' Federation.

Respondents Fredi Mannara and John Schwab were, during a substantial portion of time alleged in the complaint, employees of respondent Edwin Cigar Co., Inc., and partners or associates in Cigar Makers' Federation.

Respondents Ruth Hess, Charles Grothe, and Park G. Shaw were, during a substantial portion of time alleged in the complaint, partners or associates in Cigar Makers' Federation.

PAR. 2. The respondents are now, and at various times mentioned in the complaint have been engaged in the sale and distribution of the products hereinafter named and have caused said products, when sold, to be transported to purchasers located in the several States of the United States and in the District of Columbia, and have maintained a constant course of trade and commerce in said products sold and distributed between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents have been, and are now, in active competition with various persons and partnerships and other corporations also engaged in the sale of similar articles of merchandise in commerce in various States of the United States and in the District of Columbia.

PAR. 4. Respondent Edwin Cigar Co., Inc., during a substantial part of the time alleged in the complaint has been engaged in the manufacture, sale, and distribution in commerce of cigars to consumers, both in its own name, and through the medium of the Cigar Makers' Federation, using said name in conjunction with respondents Jules M. Cole, Fredi Mannara, John Schwab, Ruth Hess, Park G. Shaw, and Charles Grothe.

Cigar Makers' Federation was a partnership or association composed of respondents Jules M. Cole, Fredi Mannara, John Schwab, Ruth Hess, Park G. Shaw, and Charles Grothe. It was organized by respondent Jules M. Cole and the policies, acts, and practices of said federation were controlled and directed by respondent Jules M.

Cole and respondent Edwin Cigar Co., Inc., and its officers and directors.

Respondent House of Westminster, Ltd., subsequent to its incorporation in the year 1937 has been, and is now, engaged in the sale and distribution in commerce of cigars, pipes, smoking tobacco, tobacco pouches, pipe and tobacco accessories, razor blades, shaving cream, and novelties. In connection with the aforesaid sale and distribution of razor blades this respondent has employed the trade name Westminster Steel Co.

During all or a portion of the time alleged in the complaint respondents Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole have owned and/or controlled and directed the policies, business, and affairs of both corporate respondents and, in conjunction and cooperation with the corporate and other individual respondents, have done and performed the acts and practices hereinafter set out.

PAR. 5. The corporate respondents and the individual respondents Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole, have in connection with the offering for sale, sale, and distribution of the aforesaid products, caused to be made by radio and by insertion in newspapers, magazines, catalogs and other media circulated in commerce, various representations with respect to the nature, quality, character, grade, and price of the said products. Typical of such representations are the following:

1. That Manila cigars, offered at a price of 1 cent each, are full-sized, full-bodied, fine-flavored cigars.

2. That cigars offered for sale as a \$2.50 bargain for only 75 cents constitute a special offer and have the full-bodied, natural aroma of rich Havana and Connecticut blended tobaccos.

3. That an oil silk tobacco pouch of a regular value of \$2, a high-quality imported virgin root briar pipe of a regular value of \$1, and a sample 2-ounce bag or container of "Havana Picadura" tobacco of a regular value of 25 cents are being closed out at a combination or special price of \$1.19.

4. That certain cigars offered at a "get acquainted" price of 25 for 75 cents or 3 cents each, are of guaranteed 15-cent quality and that such cigars are over-runs or cigars put aside for slight imperfections.

5. That certain cigars selling for 3 cents each are made of genuine imported Havana tobacco by the use of the words "GENUINE IMPORTED HAVANA" in a 1-column box printed in heavy display type, accompanied by the qualification:

The finest Conn. Shade-Grown and Broad-leaf tobaccos blended with inconspicuously printed in small type;

6. That cigars offered in a close-out sale for 3 cents each are perfect, handmade Lord Edwin Ambassador cigars selling for 35 years at 10 cents each and contain the choicest tobaccos, including Havana.

7. That cigars priced at 2 cents each or 100 for \$1.96 are perfect cigars, 5¼ inches in length, and are fine, handmade blended-with-Havana cigars, and equal in smoking satisfaction to cigars selling for 10 cents and more.

8. That certain items of merchandise such as a cigar lighter, a chrome metal pocket cigar case, a 128-page illustrated book selling in book shops at \$2.50, a handsome pocket cigar case, and other articles, are given free with the purchase of a certain specified quantity of cigars or with the purchase of certain of respondents' pipes valued at \$2.50 each.

9. That cigars are given "free of charge" in connection with the purchase of various lots of cigars.

10. That various lots of cigars are being sold at "inventory sales prices" and "off-season sales prices," opposite the sale prices of which are set out in parallel columns substantially higher prices designated as "regular price per hundred."

11. That the respondent, Edwin Cigar Co., Inc., occupies a large building as a factory and office, owns tobacco plantations and warehouses in Havana, Cuba, and in Hartford and Suffield, Connecticut, and that it is an importer of tobacco and controls the movement of cigar tobacco from the growing stage until sold as cigars to the ultimate consumer, which representations are made by means of pictorial representations appearing on letterheads, stationery, invoices, and other material, such as the picture of a 12-story building represented to be respondent's factory and office building, the picture of a tropical plantation scene and an ocean-going vessel, the picture of operators seated at a bench or table making cigars by hand, the picture of an executive smoking a cigar, and in addition, to such picturization there also appears the following legend:

"Manufacturers of High Grade Cigars

Importers, Dealers and Packers of Leaf Tobacco"

and to the right of said picturizations there also appears the following:

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Leaf Tobacco Warehouses Havana, Cuba, Hartford, Conn. Suffield, Conn."

12. That respondents, House of Westminster, Ltd., owns, operates, and controls a steel company or steel plant wherein razor blades are manufactured for sale direct to the public.

PAR. 6. The respondents named in paragraph 5 hereof have engaged in acts, practices, and representations calculated to mislead and deceive and to induce purchasers or prospective purchasers to believe that respondent House of Westminster, Ltd., is a British concern dealing principally in pipes, and smoking accessories imported from England and have, by the means set forth in said paragraph 5, caused to be circulated in commerce representations with respect to respondent House of Westminster, Ltd., and with respect to the products offered for sale and sold by it, such as:

1. The use of the corporate name House of Westminster, Ltd., and the use of letterheads and other stationery bearing the corporate name "House of Westminster, Ltd.," printed in heavy Old English Gothic type.

2. The use of letterheads and other stationery bearing, in addition to said corporate name, a pictorial representation simulating the British Royal Coat of Arms.

3. The use of letterheads and other stationery bearing a pictorial representation of a Gothic cathedral or abbey harmonizing with the word "Westminster."

4. The use of English names in the various catalogs issued by the respondent, House of Westminster, Ltd., to designate or describe the pipes sold and distributed by the respondents, of which the following are examples: "Park Royal," "Lord Rochester," "The Britisher," "The Duke of Normandy," "The Duke of Windsor," "The Lancashire," and "Trafalgar Square."

5. The statement in their catalog issued under the name of respondent House of Westminster, Ltd., to the effect that said respondent will accept subscriptions for all English publications, together with a list of certain publications with prices as charged in the British Empire.

6. The use of British names to designate or describe certain pipe tobaccos in catalogs issued by the respondent House of Westminster, Ltd., of which the following are examples:

"Belvedere London Plug Cut British Pipe Mixture" with pictorial representation of a crown;

"House of Westminster British Mixture" with pictorial representation of an English guardsman in uniform;

"Royal Guard Pipe Mixture"

with pictorial representation of mounted knights in armor carrying lances, and beneath this the word "British" and pictorial representation of a crown.

PAR. 7. The representations made, of which those set out in paragraph 5 hereof, as well as others of similar import which are not specifically set out herein, are false, deceptive, and misleading.

In truth and in fact the Manila cigars advertised by the respondents were not full-sized, full-bodied, or fine-flavored cigars, but on the contrary were of small size and defective quality.

The cigars advertised as a \$2.50 bargain for only 75 cents were not a blend of Havana and Connecticut tobaccos, but instead were cigars the fillers of which were composed almost wholly of cheap domestic tobacco originating in a State or States other than Connecticut and contained, if any, a negligible amount of Havana tobacco.

The oil silk tobacco pouch represented as a regular \$2 value never possessed such value and never was sold at such price. The pipe represented to be of high quality imported virgin briar root of a value of \$1 was not a briar pipe of such value, was not an imported pipe, and was not of high quality. The tobacco represented in combination offer with the tobacco pouch and pipe as having a regular value of 25 cents for 2 ounces has never had such value and never was sold at such price.

The cigars offered for sale on a "get acquainted" basis at 3 cents each or 25 for 75 cents were not composed, as represented, of the "finest Connecticut Shade-Grown and Broad-leaf tobaccos blended with GENUINE IMPORTED HAVANA," nor were they over-runs or cigars put aside for slight imperfections but, on the contrary, were cigars made of cheap material, were designed and manufactured to sell at 3 cents each, and were not of the 15-cent quality claimed. Furthermore, the cigars offered at 3 cents each were advertised by a 1-column box containing the words "Genuine Imported Havana" in display type, with the qualification thereof so inconspicuously stated in fine print as to mislead or deceive the public.

The "Lord Edwin Ambassador" cigars offered at 3 cents which were represented as having sold for 35 years at 10 cents each and as containing the choicest tobaccos, including Havana, do not contain any appreciable amount of Havana tobacco, are not 10-cent grade

cigars, and, furthermore, are not of the same character and quality as those formerly sold as a 10-cent Havana cigar.

The various cigars sold by respondents at the price of 3 cents each are all of cheap and inferior quality and are not perfect cigars, fine, hand-made, or blended with any substantial quantity of Havana tobacco, but in fact contain only a negligible amount of Havana tobacco, if any, and do not in any way conform to recognized standards employed by reputable manufacturers in the manufacture of Havana blended cigars, and are not of 10-cent quality.

The articles of merchandise, including cigars, which the respondents represented as given "free" are not free in any instance, as the prices of so-called "free" items of merchandise are included in the prices of other articles in conjunction with which they are offered. The price paid by the purchaser is the regular price which would be paid for the combination of various items, including the so-called "free" goods. The items of merchandise are not of the value represented by respondents. As an example, the 128-page illustrated book represented as selling for \$2.50 is in fact a cheap paper-backed publication purchased by the respondent at a cost of 8 cents or 9 cents per copy.

The representations of so-called regular prices per hundred of cigars offered at "inventory sale prices" and "off-season sale prices" to indicate alleged savings to the purchaser are in fact fictitious, and cigars of this quality have not been sold by respondents at the so-called regular price.

The representations as to the size and content of business operations of respondents, including the physical properties owned, occupied, or operated, are grossly exaggerated. In fact respondents rent only the ground floor and basement of a six-story building located at 100 East Sixteenth Street, New York, N. Y., which premises have also been designated as 102 East Sixteenth Street, 34 Union Square, 190 Fourth Avenue, 191 Fourth Avenue, and 192 Fourth Avenue. Respondent Edwin Cigar Co. is not an importer of tobacco but, on the contrary, purchases its leaf tobacco from a general stock carried by dealers in tobacco leaf and has never owned, and does not now own, any warehouses in Havana, Cuba, or Hartford and Suffield, Conn., and does not charter or operate any steamships.

Respondent House of Westminster, Ltd., does not own, operate, or control any steel company or steel plant and does not manufacture, and has never manufactured, steel razor or other blades, does not own or operate any razor blade machinery, does not temper, sharpen, or hone razor blades, and does not sell such blades direct from factory to consumer or save the purchaser the middleman's profit on razor blades.

On the contrary, the so-called Westminster blades sold by respondent are bought by it from others.

PAR. 8. For many years English craftsmen have specialized in the manufacture of pipes for use in smoking tobacco and have become highly skilled in this work. English pipes have acquired and now possess, and for some time past have possessed, the reputation of being among the finest products of the pipemaker's skill. Many of the finest pipes, particularly those made of briar root, are made in England and are imported into the United States. Such pipes have long been considered to be fine pipes and bear a reputation for excellence among pipe purchasers.

In order to mislead and deceive and to cause members of the purchasing public to believe that respondent House of Westminster, Ltd., is an English concern dealing principally, if not exclusively, in pipes and other smoking accessories from England, the respondents referred to in paragraph 6 hereof adopted the acts and practices and made the representations set out therein when in truth and in fact respondent House of Westminster, Ltd., is not now, and never has been, a British company, or branch or agent of any British company, and is not now, and never has been, affiliated with any British company, does not represent all or any English publications, does not accept and has not accepted subscriptions to any English publications, and does not furnish and is not in a position to furnish information about and subscription prices of the many magazines and newspapers printed in the British Empire.

Numerous pipes branded, advertised, and sold by respondent with distinctively British names were not and are not British pipes imported from London or elsewhere in the British Empire. Various pipes advertised in language indicating they were imported were not and are not in fact imported.

Various mixtures of pipe tobacco offered for sale or sold under such labels as "Belvedere London Plug Cut British Pipe Mixture," "House of Westminster British Mixture," and "Royal Guard Pipe Mixture" with the word "British" appearing thereunder, accompanied by pictorial representations carrying implications of British origin, are not British tobacco or a blend or mixture of tobacco or tobaccos originating in the British Empire but consist almost entirely of various types and blends of pipe smoking tobacco grown in different States of the United States.

PAR. 9. The record in this proceeding affords no reason for believing that respondents Fredi Mannara, John Schwab, Ruth Hess, Charles

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Grothe, and Park G. Shaw were more than workmen or employees of and acting under the control and direction of the other respondents.

PAR. 10. The use by respondents of the aforesaid false, deceptive and misleading acts and practices and the dissemination of the aforesaid false, deceptive and misleading statements and representations in connection with the offering for sale and sale of the various articles of merchandise named has had, and now has, the capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and implications are true. As a result thereof members of the purchasing public, because of such erroneous and mistaken belief, have purchased substantial quantities of said products and trade has been unfairly diverted to respondents from their competitors.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 all respondents except Fredi Mannara, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, including admissions made in open hearing for the purposes of this proceeding by counsel for respondents Edwin Cigar Co., Inc., House of Westminster Ltd., Max Rosenblum, Mrs. Max Rosenblum, Leonard R. Edwin, and Jules M. Cole, report of the trial examiner and exception of certain of the respondents thereto, brief filed by counsel for the Commission (counsel for respondents not having filed brief and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that certain of said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Edwin Cigar Co., Inc., a corporation and House of Westminster, Ltd., a corporation, their officers, representatives, agents, and employees, respondents Max Rosenblum, Sadie Rosenblum (Mrs. Max Rosenblum), Leonard R. Edwin, and Jules

M. Cole, individuals, either jointly or severally, and their representatives, agents, and employees directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cigars, pipes, smoking tobacco, pouches, pipe and tobacco products and accessories, razor blades, shaving cream, and novelties in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Representing that the nature, size or extent of respondents' business, including physical properties owned, occupied, or operated, is different from or greater than is the fact.

2. Representing as the customary or regular prices of articles of merchandise, prices which are in fact fictitious and in excess of the prices at which such articles of merchandise are regularly and customarily offered for sale or sold.

3. Representing that articles of merchandise, the cost of which is included in the purchase price of other merchandise in combination with which such articles are offered, are "free" or "included free," either by the use of the terms stated or other term or terms of similar import or meaning.

4. Representing that the usual and customary prices at which respondents sell or offer for sale articles or merchandise in the regular course of business are "inventory sale" prices, "off-season sale" prices, "introductory" prices or other special prices.

5. Representing that cigars of small size or defective quality are full-sized, full-bodied, and fine-flavored cigars, either by the use of the terms stated or other term or terms of similar import or meaning.

6. Using the term "Havana," or any other term or terms indicative of tobacco grown on the island of Cuba, either alone or in conjunction with any other terms, to describe, designate or in any way refer to cigars not made entirely from tobacco grown on the island of Cuba; except that cigars containing a substantial amount of tobacco grown on the island of Cuba may be described, designated, or referred to as "blended with Havana," or by any term of similar import or meaning, provided that the words "blended with," or other qualifying word or words, are set out in immediate connection or conjunction with the word "Havana," or other term indicative of tobacco grown on the island of Cuba, in letters of equal size and conspicuousness.

7. Using the fictitious name "Westminster Steel Co.," or otherwise representing that respondents, or any of them, manufacture the razor blades sold or offered for sale by them, or own, control, or operate any facilities for the manufacture of such blades, or that

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purchasers of such blades receive the benefit of savings resulting from purchasing directly from the manufacturer.

8. Representing that respondents, or any of them, are importers of tobacco leaf.

9. Representing as being imported, either by the use of the word "imported" or in any other manner, merchandise which has not been actually imported from a foreign country.

10. Using the name "House of Westminster, Ltd.," as a corporate, trade or other name, or using any other distinctively British name to describe, designate, or refer to any business which is not a British concern or branch, or agent of or affiliated with a British concern; or using in connection with any such business, on letterheads, stationery, or otherwise, any pictorial representation simulating the British Royal Arms, or a Gothic cathedral or abbey, or any other representations of similar import or meaning.

11. Using the names "Park Royal," "Lord Rochester," "The Britisher," "The Duke of Windsor," "The Lancashire," or any other distinctively British names, to describe, designate, or refer to pipes not imported from England.

12. Using the names "Belvedere London Plug Cut British Pipe Mixture," with pictorial representation of a crown, "House of Westminster British Mixture," with pictorial representation of an English guardsman in uniform, "Royal Guard Pipe Mixture" with pictorial representation of mounted knights in armor and beneath this the word "British" and pictorial representation of a crown, or any other distinctively British names, either separately or in conjunction with pictorial representations importing or implying British origin, to describe, designate, or refer to smoking tobaccos not imported from England.

It is further ordered, That respondents shall, within 60 days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That the complaint be, and it is, hereby dismissed as to respondents Fredi Mannara, John Schwab, Ruth Hess, Charles Grothe, and Park G. Shaw.

IN THE MATTER OF

JOSEPH GLUCK & COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket #221. Complaint, Aug. 6, 1940—Decision, May 29, 1941

Where a corporation engaged in importing rugs and in competitive interstate sale and distribution thereof to various wholesale and retail dealers—

Made use of names "Kirman," "Irak," "Mossoul," or "Mosul" and "Karavan" to designate and describe their said products in invoices and in circulars to dealers and in otherwise referring thereto, and set forth designation "Kirman" conspicuously on labels attached to said "Kirman" rugs together with depiction of an Oriental scene, and on labels attached to its "Karavan" and "Irak" rugs set forth one or the other of those designations together with the familiar Turkish star and crescent and writing in what appeared to be Arabic, with the words "Made in France" in smaller type and on smaller labels on all such rugs;

Notwithstanding fact, the rugs in question, while they so closely simulated true Oriental rugs as to be indistinguishable therefrom by a large portion of the purchasing public, were not, as indicated and suggested by designations employed, and as long understood by a substantial portion of the purchasing public, those products made in the Orient and more particularly in certain parts of southwestern Asia, with pile of silk and wool, threads of which are knotted by hand in a special manner and which, because of their texture, beauty and durability, are decidedly preferred by many members of the purchasing public, but were woven on power looms at factories in France, of cotton or jute or a combination of both, and did not possess all the characteristics of genuine Orientals;

With capacity and tendency to mislead purchasers and prospective purchasers into the erroneous belief that the rugs thus designated were true Oriental rugs and to induce their purchase by reason thereof, and thereby to divert trade unfairly to it from competitors engaged in interstate sale of rugs of various kinds, both genuine Oriental and domestic, who truthfully represent their products, and with effect of placing in the hands of retail dealers means of misleading and deceiving the public, to the injury of competition in commerce;

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

Mr. Randolph W. Branch for the Commission.

Diamond, Rabin, Botein & Mackay, of New York City, for respondent.