

IN THE MATTER OF
G. KRUEGER BREWING COMPANY

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

Docket 4434. Complaint, Dec. 26, 1940—Decision, Aug. 7, 1941

Where a corporation engaged in brewing its "Ambassador Beer," and in competitive interstate sale and distribution thereof; by means of interstate newspaper advertising—

Represented, directly or by implication, that said product was composed wholly of barley malt and hops and contained no other cereals or fermentable ingredients, through use of such statements as " * * Only the choicest barley malt and hops are used in brewing this distinctively different product," when in fact said product was not an "all-malt beer," in which barley malt and hops are used exclusively, and which is well-known to the beer-drinking public and in demand by a portion thereof, but was product in brewing of which other fermentable grains or cereals were used in addition to malt and hops;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such advertisements were true, and with capacity to induce its purchase of substantial quantities thereof as a result of such belief, whereby trade was diverted unfairly by it from its competitors who truthfully advertise their products, to the injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, 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. W. W. Sheppard*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Guggenheimer & Untermeyer, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that G. Krueger Brewing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, G. Krueger Brewing Co., is a corporation organized, existing, and doing business under and by virtue of

the laws of the State of New Jersey, with its office and principal place of business located at Newark, N. J.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the business of brewing, selling, and distributing beer under the brand name Ambassador Beer. Respondent causes its said product when sold to be transported from its aforesaid place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said product 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 as aforesaid respondent has been and is in competition with other corporations and individuals and with firms and partnerships selling and distributing beer in commerce in and among the various States of the United States and in the District of Columbia. Among such competitors in said commerce are many who do not in any manner misrepresent their said products or the ingredients composing same, and who do not make any other false statements in connection with the sale and distribution of their said products.

PAR. 4. In the course and conduct of its aforesaid business respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false and misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinbefore set forth, by United States mails, by advertisements in newspapers and periodicals and by pamphlets, circulars, and other advertising matter are the following:

A custom brewed beer for cultured taste, Ambassador is designed to meet the present day demand for a lighter, milder, more delicately flavored beer. Only the choicest barley malt and hops are used in brewing this distinctively different product.

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Through the use of the statements and representations hereinbefore set forth and others similar thereto not specifically set out herein, respondent has represented directly or by implication that its product Ambassador Beer is composed wholly of barley malt and hops.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product Ambassador Beer is not wholly composed of barley malt and hops but includes corn and other grains or cereals.

PAR. 6. The term "only the choicest barley malt and hops" when applied to beer is understood by the purchasing public as denoting a beer composed wholly of barley and hops and not containing any other cereal or fermentable ingredients and such beer has been well known to the beer drinking public and there is a demand on the part of a substantial portion of the purchasing public for such beer.

PAR. 7. The use by the respondent of the foregoing false and misleading advertisements disseminated, as aforesaid, has a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false advertisements are true and to induce the purchasing public to purchase substantial quantities of respondent's product as the result of such belief.

As a result trade has been diverted unfairly by the respondent from its competitors in commerce who truthfully advertise their products. In consequence thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods in 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 the 26th day of December 1940, issued and thereafter served its complaint in this proceeding upon the respondent, G. Krueger Brewing Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive

acts and practices in commerce in violation of the provisions of said act. On January 16, 1941, the respondent filed its answer in this proceeding. Thereafter, and on April 11, 1941, at a hearing duly scheduled and held at Brooklyn, N. Y., it was agreed by and between counsel for the respondent and counsel for the Commission that, subject to the approval of the Commission, a stipulation as to the facts read into the record 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 Commission may proceed upon said statement of facts to make its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon and issue its order disposing of this proceeding without the presentation of argument or filing of briefs. Respondent expressly waived the filing of the trial examiner's report on the evidence. Thereafter, this proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved and accepted, 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, G. Krueger Brewing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 75 Belmont Avenue, in the city of Newark, State of New Jersey.

PAR. 2. The respondent is now and for more than 2 years last past has been engaged in the business of brewing, selling, and distributing beer under the trade mark "Ambassador Beer." Respondent causes its said product, when sold, to be transported from its aforesaid place of business in the State of New Jersey to purchasers thereof located in various other States of the United States. Respondent maintains and at all times mentioned herein 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 business as aforesaid, respondent has been and is in competition with other corporations and individuals and with firms and partnerships selling and distributing beer in commerce in and among the various States of the United States.

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PAR. 4. In the course and conduct of its aforesaid business respondent has disseminated and has caused the dissemination of advertisements concerning its said product by means of newspaper advertisements in commerce as "commerce" is defined in the Federal Trade Commission Act, and respondent has also disseminated and has caused to be disseminated, advertisements concerning its product by newspaper advertising in commerce as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in said act.

PAR. 5. Among the statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinbefore set forth, are the following:

A custom brewed beer for cultured tastes, Ambassador is designed to meet the present day demand for a lighter, milder, more delicately flavored beer. Only the choicest barley malt and hops are used in brewing this distinctively different product.

Through the use of the statements and representations hereinbefore set forth, respondent represented directly or by implication that its product "Ambassador Beer" is composed wholly of barley malt and hops and does not contain any other cereals or fermentable ingredients.

PAR. 6. The foregoing representations are false, misleading, and deceptive. In truth and in fact other fermentable grains or cereals are used in brewing said product in addition to barley malt and hops.

PAR. 7. The Commission finds that while certain members of the purchasing public would not be led to believe, through the use by the respondent of the statement "only the choicest barley malt and hops are used in brewing this distinctively different product," that only barley malt and hops are used in brewing said product, the use by the respondent of such statement has the capacity and tendency to mislead a substantial number of the purchasing public into the mistaken and erroneous belief that said beer is composed wholly of barley malt and hops to the exclusion of all other cereals or fermentable ingredients. Barley malt and hops are used exclusively in brewing approximately 2 percent of the beer brewed and consumed in the United States, such beer being known as "all-malt beer." Such beer is and has been well known to the beer drinking public and there is a demand on the part of a portion of such public for this particular kind of beer.

PAR. 8. The Commission further finds that the advertisement set out herein in paragraph 5 appeared in the Newark Evening News,

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Newark, N. J., in the July 19, 1939, issue, and that said newspaper has an interstate circulation. Said advertisement is not being used at the present time and has not been used by the respondent since July 19, 1939.

PAR. 9. The use by the respondent of the foregoing misleading and deceptive advertisements disseminated as aforesaid, had a tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such advertisements were true and to induce the purchasing public to purchase substantial quantities of respondent's product as the result of such belief.

As a result, trade has been diverted unfairly by the respondent from its competitors in commerce who truthfully advertise their products. In consequence thereof, injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found were to the prejudice and injury of the public and of respondent's 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 complaint of the Commission, the answer of the respondent and a stipulation as to the facts entered into by counsel for respondent herein, and 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, G. Krueger Brewing Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its product "Ambassador Beer," or any other beer containing fermentable ingredients other

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than and in addition to barley malt and hops, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement, by any means, in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or by implication that only barley malt and hops are used in brewing said beer.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said beer, which advertisement contains the representation prohibited in paragraph 1 hereof.

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.

Syllabus

IN THE MATTER OF
CASIMIRO MUOJO, TRADING AS ALVI CO.
AND AS ALVI, INC.

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

Docket 4484. Complaint, Apr. 5, 1941—Decision, Aug. 7, 1941

Where an individual engaged in interstate sale and distribution of a hair dye cosmetic variously designated as "Vitale Instantaneous Hair Dye," "Vitale Rapid Hair Coloring," etc.; by means of advertisements disseminated through the mails and otherwise, including newspaper advertisements offering free samples, and circulars, leaflets, and other advertising literature sent in response to requests for such samples and in reply to inquiries—

- (a) Represented that his said hair dye cosmetic was scientific, safe, and free from harmful, dangerous, and injurious chemicals, that it would end premature gray hair and produce a permanent, natural, uniform shade, that it gave the hair the warmth, color, lustre, and glint of youth and would have no ill effects, its statements accompanying samples including the representations "can be used by all persons having perfect skin and hair," along with advice, when in doubt, to apply a few drops of the product "behind the ear or on the arm," and statement that "If no redness appears on the following morning, you can use VITALE with the assurance that it will do no harm," it asserting in various advertising that it was "free from any harmful material," "SAFE FOR SCALP AND HAIR," "perfectly safe," etc.;

Facts being his said cosmetic was a chemical dye which was not capable of producing results claimed, and was not safe or harmless, in that it contained the toxic coal tar derivative paraphenylenediamine in sufficient quantity to cause skin irritation and violent local dermatitis when used as prescribed, and, if absorbed into the body, to result in vertigo, gastritis, exophthalmos, and asthma, among other ailments, while its application to eyebrows or eyelashes might cause blindness; and

- (b) Failed to reveal, in such advertisements, facts material in the light of the representations contained therein, and that use of said hair dye cosmetic under prescribed or usual conditions might result in injury to health, in that they contained no warning against use of product on the eyelashes or eyebrows, nor adequate warnings as to the necessity of a proper skin patch test before each application to the hair, in order to determine user's toxic reaction;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that his said representations were true, and of inducing it, because of said belief, to purchase his preparation:

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. James L. Baker for the Commission.

Mr. Alfred C. Ditolla, of New York City, for respondent.