

IN THE MATTER OF
ARTHUR H. FERBER, TRADING AND DOING BUSINESS
AS THE FERBO CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4706. Complaint, Feb. 10, 1942—Decision, Jan. 19, 1943

Where an individual, engaged in the manufacture and interstate sale and distribution of various food products, including his "French Tang Vanilla Flavor" and "Sun-Cu-Nilla," which latter was essentially a concentrate of the former; by means of advertisements in newspapers and periodicals, and by radio continuities, circulars, leaflets, and other advertising literature—

Represented and implied that his said product was genuine vanilla extract or flavoring, markedly preferred by the public over synthetic or substitute products, through unqualified use of word "Vanilla" and terms "Vanilla Flavor" and "Vanilla Flavoring" as applied thereto;

The facts being chief flavoring ingredient thereof was vanillin, made from eugenol (derived from oil of cloves), and it contained practically no genuine vanilla;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that its said product was one in which the sole flavoring ingredient was genuine vanilla extract, and not "Imitation Vanilla", as usually designated by manufacturers of the genuine "Vanilla", "Vanilla Flavor" and "Vanilla Flavoring", and as a result of such mistaken belief to cause it to purchase substantial quantities of his said product:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. D. E. Hoopingarner and *Mr. S. F. Rose* for the Commission.
Shaffer & Pierson, 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 Arthur H. Ferber, an individual, trading and doing business as The Ferbo Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Arthur H. Ferber, is an individual, trading and doing business as The Ferbo Co., with his principal office and place of business located at 100 King's Road, Madison, N. J.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of various food products including a product for the flavoring of foods, designated as "French Tang" and "Sun-Cu-Nilla." Respondent has caused, and is now causing, said product, when sold, to be transported from his 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 his aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his 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 his said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by radio continuities, and by circulars, leaflets, and other advertising literature, are the following:

Mrs. Housewife: Have you ever longed for some really fine Vanilla Flavor? Try French Tang.

French Tang Vanilla Flavor.

Vanilla Flavor at its best.

You can't buy this French Tang Vanilla in stores.

French Tang Vanilla Flavor, "Sun-Cu-Nilla."

One pint of Vanilla Flavor for only 50¢.

PAR. 4. For a great many years the purchasing public has understood and believed that a flavoring compound designated and described as vanilla or vanilla flavor is a product in which the flavoring ingredient is derived from the bean or capsule of the vanilla plant, and when

purchasing a flavoring compound, advertised as vanilla or vanilla flavor, the purchasing public understands and believes that the sole flavoring ingredient therein is the extract of the vanilla bean or capsule. The respondent's product, while containing a small amount of the extract from the vanilla bean or capsule, is composed largely, insofar as the flavoring ingredients are concerned, of synthetic products and natural products other than the vanilla bean or capsule.

The purchasing public has a marked preference for genuine vanilla flavoring or extract over a product made from synthetic or substitute ingredients.

PAR. 5. The advertisements disseminated by respondent, as aforesaid, constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and that they fail to reveal that the flavoring ingredients of respondent's product are synthetic products and natural products other than the extract of the vanilla bean or capsule and that said product is an imitation vanilla flavoring.

PAR. 6. The use by respondent of said false advertisements has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's product is genuine vanilla flavoring or genuine vanilla extract derived from the bean or capsule of the vanilla plant when such is not the fact. As the result of such erroneous and mistaken belief, so engendered, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondent's product.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 10, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Arthur H. Ferber, an individual, trading and doing business as The Ferbo Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission there-

tofore duly designated by it, and such 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); 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, Arthur H. Ferber, is an individual, trading and doing business as The Ferbo Co., with his principal office and place of business located at 100 King's Road, Madison, N. J. Respondent is now and for a number of years last past has been engaged in the manufacture and in the sale and distribution of various food products, including a product designated as "French Tang Vanilla Flavor" and as "Sun-Cu-Nilla," designed for the flavoring of food.

PAR. 2. Respondent causes and has caused his product, when sold, to be transported from his 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 has maintained a course of trade in his 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 his business and for the purpose of inducing the purchase of his product, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of advertisements concerning his 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, advertisements concerning his product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in respondent's advertisements disseminated and caused to be disseminated as herein set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by

radio continuities, and by circulars, leaflets, and other advertising literature, are the following:

MRS. HOUSEWIFE: HAVE YOU EVER LONGED FOR SOME <i>Really Fine</i>	
VANILLA FLAVOR? TRY <i>French Tang</i>	(Com. Ex. No. 4)
<i>French Tang</i> VANILLA FLAVOR	(Com. Ex. No. 2)
VANILLA FLAVOR At Its BEST	(Com. Ex. No. 11)
French Tang Vanilla Flavoring "SUN-CU-NILLA"	(Com. Ex. No. 8)

PAR. 4. For many years the purchasing public has understood and believed that a flavoring product designated and described as "Vanilla," "Vanilla Flavor," or "Vanilla Flavoring" is a product in which the sole flavoring ingredient is genuine vanilla, that is, the extract derived from the bean of the vanilla plant. There is a marked preference on the part of the public for genuine vanilla flavoring or extract over products made from synthetic or substitute ingredients.

PAR. 5. The principal ingredients of respondent's product, French Tang Vanilla Flavor, are: Essence of American grown figs, commercial vanillin made from eugenol (derived from oil of cloves), coumarin, burned sugar or caramel, alcohol, and water. The chief flavoring ingredient is the vanillin. The product contains practically no genuine vanilla, that is, extract obtained from the vanilla bean. Respondent's Sun-Cu-Nilla is essentially the same as the French Tang, except that it is sold in the form of a concentrate rather than as a liquid. Persons purchasing the Sun-Cu-Nilla must add a certain quantity of water to it in order to produce the flavoring compound.

PAR. 6: There are a number of manufacturers of vanilla flavoring products in the United States who use as the sole flavoring ingredient in their products the extract of the vanilla bean. Products so made are known generally in the trade as "Vanilla," "Vanilla Extract," "Extract of Vanilla," "Vanilla Flavor," and "Vanilla Flavoring." Some of these manufacturers also make and sell flavoring compounds such as that sold by respondent, but such products are referred to in the trade and usually designated by the manufacturer as "Imitation Vanilla," and clearly distinguished from the genuine vanilla product.

PAR. 7. The Commission therefore finds that the unqualified terms "Vanilla Flavor" and "Vanilla Flavoring," as used by respondent to designate and describe his product, are misleading and deceptive in that they represent and imply that respondent's product is genuine vanilla extract or flavoring rather than an imitation vanilla flavoring made from synthetic or substitute ingredients; and that respondent's advertisements constitute false advertisements in that they contain such misleading and deceptive representations, and for the further reason that they fail to disclose affirmatively the true nature of respondent's product.

PAR. 8. The Commission further finds that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's product is one in which the sole flavoring ingredient is genuine vanilla extract from the vanilla bean, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's product as a result of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Arthur H. Ferber, individually, and trading as The Ferbo Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's food flavoring product designated as "French Tang Vanilla Flavor" and as "Sun-Cu-Nilla," or any other product of substantially similar composition, whether sold under the same names or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement

(a) uses the term "Vanilla," "Vanilla Flavor," or "Vanilla Flavoring," or any other term of similar import, to designate or describe

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respondent's product, unless such term is immediately preceded by the word "Imitation" in equally conspicuous type; or

(b) represents in any manner or by any means that respondent's product is genuine vanilla extract or flavoring.

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 respondent's product, which advertisement contains any representation prohibited in paragraph 1 hereof.

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

Compl'snt

IN THE MATTER OF
MONO SERVICE COMPANY

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

Docket 4834. Complaint, Sept. 16, 1942—Decision, Jan. 19, 1943

Where a corporation, engaged in the manufacture of paper cups, and in the competitive interstate sale and distribution thereof, including certain ice cream cups, lids of some of which, bearing star on inside thereof, entitled chance ice cream purchaser securing a cup enclosed therewith to extra cup—
Sold its said cups and lids so marked to wholesalers, jobbers, and ice cream manufacturers who resold them, so packed, to retailers for sale to the purchasing public in accordance with aforesaid sales plan, involving game or sale of chance to procure additional cup for original purchase money, and use of a lottery scheme or game of chance in distribution of ice cream to consuming public; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries, contrary to an established public policy of the United States Government, and in competition with many who do not use any such plan or method;

With the result that many dealers and ultimate purchasers of ice cream were attracted by its said sales plan and the element of chance involved therein, and were induced thereby to buy and sell its merchandise in preference to that of its competitors aforesaid; and with tendency and capacity to divert trade in commerce unfairly to it from them:

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

Mr. J. W. Brookfield, Jr. for the Commission.

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 Mono Service 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mono Service Co., is a corporation, organized and operating under the laws of the State of New Jersey with its principal office and place of business located at 349 Oraton Street, Newark, N. J. Respondent is now and for sometime last past has been engaged in the manufacture of paper cups including cups