

IN THE MATTER OF
**JACOB MOSS, DOING BUSINESS AS LONDON TOBACCO
COMPANY**

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

Docket 4126. Complaint, May 6, 1940—Decision, Mar. 10, 1943

Where an individual, engaged in the manufacture of cigarettes, tobacco, and other smoking supplies, and in the interstate sale and distribution thereof to wholesalers, jobbers, and retailers—

Represented that his business was a British concern or connected therewith, that his cigarettes were manufactured in England or from English tobacco, and that he was the holder of a royal warrant authorizing him to display the British royal coat of arms on his products, through use of word "London" in his trade name, and in designation of his "London Special Cigarettes," followed by simulation of the British royal coat of arms including British motto "Dieu et mon droit" on cigarette containers, and on counter advertising cards and circulars, and by variously displaying said brand and trade names on containers along with statement featuring "English Style Cigarettes" on the inside thereof;

The facts being that none of his merchandise was imported from foreign countries; the cigarettes in question were made by him in the United States from American tobacco plus a negligible amount of Turkish; and the other representations above set forth were false;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his business status and origin of said products, and thereby cause its purchase thereof:

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. Randolph Preston*, *Mr. Miles J. Furnas*, and *Mr. John P. Bramhall*, trial examiners.

Mr. DeWitt T. Puckett 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 Jacob Moss, an individual, trading as London Tobacco Co., 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:

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Complaint

PARAGRAPH 1. The respondent, Jacob Moss, is an individual, trading as London Tobacco Co. His place of business is at 132 Hanover Street, Boston, Mass. He is now and has been for more than 2 years last past engaged in manufacturing cigarettes, which he sells to wholesalers, jobbers, and retailers, throughout the United States and in the District of Columbia.

When orders are received for respondent's cigarettes, he causes them to be shipped from his aforesaid place of business in Boston, Mass., to the purchasers thereof located in States of the United States other than the State of Massachusetts, and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in cigarettes in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, respondent uses, and at all times herein mentioned has used, the aforesaid trade name "London Tobacco Company" in connection with the sale of cigarettes under the brand name "London Special Cigarettes." A crest, simulating the British royal coat of arms, is also used by respondent to identify said brand of cigarettes. Respondent advertises said cigarettes by means of the radio, circulars, pamphlets, and in various other ways.

PAR. 3. Respondent packs and sells his "London Special Cigarettes" in cardboard boxes. On the top of each box appears the following:

LONDON

SPECIAL

(Crest, simulating the British Royal Coat of Arms)

CIGARETTES

London Tobacco Company

The following statement appears inside the box:

LONDON

Special

ENGLISH STYLE CIGARETTES ARE BLENDED FROM THE HIGHEST GRADES OF NATURAL AROMATIC TOBACCOS—NO CHEMICAL OR ARTIFICIAL FLAVORING

LONDON TOBACCO CO.

Circulars used by respondent to advertise the aforesaid cigarettes feature a pictorial representation, which simulates the British royal coat of arms, and carry the following price representations:

Formerly	-----	25¢ pkg.
Reduced to	-----	15¢ pkg.

Complaint

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Said circulars also bear the statements "London Special Cigarettes" and "English Style Cigarettes * * *."

PAR. 4. Through the use of the word "London" as part of his trade name, and the word "English" in his advertising matter, and the statements and depictions hereinabove set out and referred to, and others similar thereto, but not set out herein, the respondent has represented, and now represents, that his is an English concern; that the cigarettes sold under the brand name "London Special Cigarettes" are manufactured or blended in England, or of British tobacco; that he is a royal warrant holder and entitled to use the British royal coat of arms in advertising his products; and that his said cigarettes have recently been reduced in price from 25 cents a package to 15 cents a package.

PAR. 5. The representations set out and referred to herein are untrue and misleading. In truth and in fact, the London Tobacco Co. is not a British concern, and respondent's said cigarettes are not manufactured or blended in England, or of British tobaccos, but are manufactured in the United States of America, of American and other tobaccos. Respondent is not a royal warrant holder, and is not entitled to use the British royal coat of arms in advertising his products. Respondent's cigarettes have not recently been reduced from 25 cents a package to 15 cents a package.

PAR. 6. There is a preference on the part of a portion of the purchasing public for merchandise manufactured in foreign countries. This is particularly true with respect to merchandise which bears the British royal coat of arms, the use of which is well known to many members of the purchasing public to mean that the manufacturer thereof holds a warrant, entitling him to display the said arms, and that the possession of such a warrant indicates that the holder has enjoyed the patronage of the British royal family or a member thereof.

PAR. 7. The representations set out and referred to in paragraph 3 hereof, used by respondent in the manner aforesaid, have the capacity and tendency to and have deceived and misled a substantial part of the purchasing public into the erroneous belief that said representations are true, and have caused and now cause a substantial portion of the purchasing public to purchase substantial quantities of respondent's cigarettes because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 6, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Jacob Moss, an individual, trading as London Tobacco 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 attorneys for the Commission, and in opposition thereto by the attorney for the respondent, before trial examiners of the Commission theretofore 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 examiners 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, find 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, Jacob Moss, is an individual, who for a number of years immediately preceding May 28, 1940, traded as London Tobacco Co., with his place of business located at 132 Hanover Street, Boston, Mass. Respondent was engaged in the manufacture of cigarettes, tobacco, and other smoking supplies, and in the sale and distribution of such merchandise to wholesalers, jobbers, and retailers for resale to the purchasing public.

PAR. 2. In the course and conduct of his business respondent caused his merchandise, when sold, to be transported from his place of business in the State of Massachusetts to purchasers thereof located in various other States of the United States. Respondent maintained a course of trade in his merchandise in commerce among and between the various States of the United States.

PAR. 3. Among the various brands of cigarettes manufactured and sold by respondent was a brand designated by him as "London Special Cigarettes." These cigarettes were packed and sold by respondent in cardboard boxes, each box containing 20 cigarettes. On the top of each box appeared the following:

Findings

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LONDON

SPECIAL

(Pictorial representation simulating the British Royal Coat of Arms, including the inscription "Dieu et mon droit," which is the motto of Great Britain)

CIGARETTES

London Tobacco Co.

The words "London Special" also appeared on the side of the box. The following statement appeared inside the box:

LONDON

SPECIAL

ENGLISH STYLE CIGARETTES ARE BLENDED FROM THE HIGHEST GRADES OF NATURAL AROMATIC TOBACCOS—NO CHEMICAL OR ARTIFICIAL FLAVORING

LONDON TOBACCO CO.

Counter advertising cards and circulars supplied by respondent for use by retail dealers in displaying his cigarettes also featured the name "London Special," together with the pictorial representation simulating the British Royal Coat of Arms.

PAR. 4. Through the use of the word "London" as a part of his trade name and to designate and describe his cigarettes, and through the use of the pictorial representation simulating the British royal coat of arms, respondent represented that his business was a British concern or was connected with a British concern, that his cigarettes were manufactured in England or were manufactured from British tobacco, and that he was the holder of a royal warrant authorizing him to display the British royal coat of arms on his products.

PAR. 5. The Commission finds from the evidence that these representations were false and misleading. Respondent's business was not a British concern, nor had it any connection or affiliation with any British concern. The cigarettes so advertised and sold by respondent were not manufactured in England, nor did they contain any British tobacco. They were manufactured by respondent in the United States from American tobacco plus a negligible amount of Turkish tobacco obtained by respondent in the United States. All of the other products sold by respondent were likewise of domestic rather than foreign origin. Respondent was not the holder of a royal warrant and was not authorized to display the British royal coat of arms on his products.

There is a preference on the part of a substantial portion of the purchasing public for merchandise imported from foreign countries, this being particularly true as to cigarettes, tobacco, and other smoking supplies imported from England.

PAR. 6. The Commission finds further that the use by respondent of the false and misleading representations herein set forth, including the use of the word "London" in his trade name, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's business status and with respect to the origin of respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief engendered by such representations.

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 trial examiners of the Commission theretofore duly designed by it, report of the trial examiners 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, Jacob Moss, individually, and trading, as London Tobacco 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, and distribution of respondent's cigarettes, tobacco, and other smoking supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "London," or any other word or words indicative of England, as a part of respondent's trade name; or otherwise representing, directly or by implication, that respondent's business is a British concern or that it has any connection with any British concern.
2. Using the word "London," or any other word or words indicative of England, to designate or describe any product which is not

manufactured in England or manufactured from materials imported from England.

3. Representing, directly or by implication, that any domestic product is imported from England or any other foreign country.

4. Using on respondent's products or in respondent's advertising any pictorial representation of the British royal coat of arms or any simulation thereof; or otherwise representing, directly or by implication, the respondent is the holder of a royal warrant authorizing him to display the British royal coat of arms on his products or in his advertising.

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.

Syllabus

IN THE MATTER OF
PARFUM L'ORLE, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4511. Complaint, May 29, 1941—Decision, Mar. 11, 1943*

Where a corporation, engaged in interstate sale and distribution of perfumes and related products—

- (a) Represented, through use of its corporate and trade name "Parfum L'Orle, Inc.," which it featured about its place of business, on its stationery, business and display cards, and other matter, and in conjunction with French brand names of its products in advertisements in newspapers and on labels attached thereto and on containers thereof, including designation "Parfum Lodorante" to designate its products as a whole, that it was a French company and that its perfume was made entirely in France;
- (b) Represented, through inclusion of words "London" and "Paris" in some of its advertisements along with its said corporate name, and on its labels and packages, that it maintained offices and business houses in London, England, and Paris, France; and
- (c) Represented, through use of certain typically French names, including "Princess De Cone," "Madam D'Epinay," "Madame Adelaide," "Madame De Maintenon," and "Madame De Pompadour," as brand names for its products, and use of terms "Parfum L'Odorante" and "L'Orle Odeurs," together with such depictions in advertisements and on labels and containers as women gathering flowers in a large field, together with the words "Sunny France's flowers form the rare essences from which L'Orle's exquisite fragrances are produced," that products in question were made in France and imported into the United States;

When in fact it was not a French company but a New York State corporation; it never maintained any office or place of business in either foreign city; and while for a time it had an arrangement with an English concern which actively distributed and advertised its products both in England and France, said arrangement was not in existence during the period herein involved; it never had a manufacturing establishment in Paris but its products were made in the United States from perfume essences and oils imported from France and combined in this country with domestic ingredients;

- (d) Adopted and made use of a merchandising plan under which it furnished its dealer-customers with so-called reorder blanks on one side of which it set forth its said products by their French trade names and in another column trade names of certain nationally advertised, well-known competitive perfumes; instructed its representatives to create the impression with dealers and the public generally, of a marked similarity between its own and the other respective products; suggested in "cut-off" advertisements "Send us the name of your favorite type fragrance"; and filled orders thus received, listing brands of perfumes of other manufacturers with its own products corresponding to the brand name of the competitive products listed as aforesaid; with tendency to imply that its products were identical with competitive named perfumes;