

Complaint

IN THE MATTER OF
SUPERIOR HUMUS & PEAT MOSS CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 4654. Complaint, Dec. 5, 1941—Decision, Oct. 5, 1943*

Where a corporation, engaged in mining commercial peat and in the interstate sale and distribution thereof to dealers and also direct to nurserymen, florists, farmers, and poultrymen—

Represented that its said product was "moss peat" through use of words "Peat Moss" in its corporate name and in advertising circulars and on the boxes in which its peat was packed and sold;

When in fact its said peat was not the preferred "moss peat"—derived from Sphagnum moss with high absorptive capacity and acidity, very low ash content and germicidal properties, and availability for uses for which the other type could not be employed—but was a mixture of sedge and Hypnum peat, with relatively low absorptive capacity and acidity and higher ash content, lacking germicidal properties, and with tendency, under certain conditions, to harbor insects and micro-organisms;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the character and properties of product in question, thereby causing purchase of said product as a result of such mistaken belief:

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. Andrew B. Duvall*, trial examiner.

Mr. James I. Rooney and *Mr. Randolph W. Branch* 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 Superior Humus & Peat Moss Corporation, 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, Superior Humus & Peat Moss Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 137-165 Queens Boulevard, Jamaica, L. I., N. Y.

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PAR. 2. Said respondent is now and for more than one year last past has been engaged in the mining and in the sale and distribution of commercial peat to wholesalers and retailers for resale, and directly to those engaged in the agricultural industry, such as nurserymen, florists, farmers and poultrymen. Respondent causes said product, when sold, to be shipped from its places of business either at Jamaica, L. I., N. Y., or from Poughkeepsie, N. Y., to the purchasers thereof, who are located at points 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 commercial peat in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its product, respondent has falsely represented, by the use of the words "Peat Moss" in connection with and as part of its corporate name and by various other means, such as pamphlets, newspapers and trade publications circulated generally among the purchasing public, and by means of labels on boxes in which its said product is shipped to the purchasing public, that the commercial peat sold and distributed by it is "Peat Moss."

PAR. 4. There are many forms and varieties of peat. Their characteristics, physical properties and chemical compositions greatly differ. Peat Moss, more correctly described as Moss Peat, signifies and is commonly understood by those engaged in the agricultural and kindred industries, to be a well defined variety of peat formed predominately by the small stems and leaves of various species of Sphagnum mosses. Such variety of peat is used extensively as bedding for dairy cattle and horses; as poultry litter; as a source of humus-forming organic matter for the purpose of improving soils and as a packing material for shipping or storing perishable articles such as fruits, vegetables, tubers, bulbs, and seedlings. It possesses certain distinct properties and characteristics not found in other varieties of peat. Among such peculiar properties and characteristics are its high water absorbing capacity, its strong acid reaction, its uniformly low mineral and nitrogen content, its capacity to prevent infection from disease organisms in plant life, and its ease in handling. Because of these characteristics and qualities Moss Peat is preferred by the purchasing public over other varieties of peat and commands a higher price.

PAR. 5. Respondent's product designated, described, and advertised as "Peat Moss" is a peat composed mainly of moderately decomposed rootlets and rhizomes derived from various sedges and the stems from species of Hypnum and is properly identified as "Sedge Peat." It has a relatively low water absorbing capacity, varies in reaction

from acid to alkaline, and may contain injurious soluble salts. When cultivated for crops it undergoes decomposition and is apt to harbor disease organisms. Such variety of peat becomes brittle and powdery when dry and cannot be successfully employed for many of the uses for which Moss Peat is accepted.

PAR. 6. Respondent by using the words "Peat Moss" in describing and identifying his product falsely represents, directly and by implication, that said product is "Moss Peat" and that it possesses all the beneficial qualities and characteristics of Moss Peat as heretofore set forth and described.

PAR. 7. The use by the respondent of the false, deceptive, and misleading designation and description of its product, designated as aforesaid, has had and now 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 Moss Peat and that said product possesses all of the qualities and characteristics of Moss Peat and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

PAR. 8. 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 December 5, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Superior Humus & Peat Moss Corporation, a corporation, charging it 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 before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by the respondent), 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

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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, Superior Humus & Peat Moss Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 137-165 Queens Boulevard, Jamaica, L. I., N. Y.

Respondent is now and for some 5 years last past has been engaged in the mining of commercial peat, and in the sale and distribution thereof to wholesale and retail dealers for resale, and also directly to persons engaged in the agricultural industry, such as nurserymen, florists, farmers, and poultrymen. The mine or pit from which respondent obtains its peat is located near Poughkeepsie, Dutchess County, N. Y.

PAR. 2. Respondent causes and has caused its peat, when sold, to be shipped from its place of business at Jamaica, L. I., N. Y., or from Poughkeepsie, N. Y., to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and for some 5 years last past has maintained a course of trade in its product in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent has represented, through the use of the words "Peat Moss" in its corporate name and in advertising circulars distributed among prospective customers, and on the boxes in which its peat is packed and sold, that its product is moss peat.

PAR. 4. There are two general classes of peat: (1) moss peat, and (2) reed, sedge, and Hypnum peats. Moss peat is derived from Sphagnum moss and is found in cool, northern regions where the rainfall is relatively high and where fogs of long duration occur. Reed, sedge, and Hypnum peats are found principally in the more southerly, moderate temperature regions. There are pronounced differences between the two types of peat. Moss peat possesses a high capacity for absorbing water, a higher degree of acidity, and a very low ash content. It also possesses germicidal properties. Reed, sedge, and Hypnum peats, on the other hand, have a relatively low capacity for water absorption, a lower degree of acidity, and a higher ash content. They are lacking in germicidal properties, and

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in fact have a tendency under certain conditions to harbor insects and microorganisms.

There is a marked difference, also, in the uses which can be made of the two types of peat. Moss peat is the only type of peat which can be used satisfactorily for stable bedding and as a litter for poultry. Likewise, it is the only type which can be used for surgical dressings, this being due to its high degree of acidity and its germicidal properties. In the shipping or storing of such articles as vegetables, fruits, bulbs, and seedlings, moss peat is preferable because of its germicidal characteristics. Moss peat is also preferable as a mulch and as a soil conditioner because of its high absorptive capacity and high acidity.

PAR. 5. The evidence discloses that respondent's product is not moss peat but is a mixture of sedge and Hypnum peats. It further appears from the evidence that there is a marked preference on the part of users of peat for moss peat over sedge or Hypnum peat, and that such users understand the term "peat moss" as indicating that the product so designated is moss peat derived from Sphagnum moss. The Commission therefore finds that the term "Peat Moss," as used by respondent in its corporate name and otherwise to designate and describe its product, is erroneous and misleading.

PAR. 6. The Commission finds further that the use by respondent of this erroneous and misleading term as set forth herein has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and properties of respondent's product, and the tendency and capacity to cause such members of the public to purchase respondent's product as a result of the erroneous and mistaken belief so engendered.

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 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

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(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, Superior Humus & Peat Moss Corporation, a corporation, and its officers, 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 peat in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Peat Moss" or "Moss Peat," or any other words of similar import, to designate or describe any peat not derived from Sphagnum moss; or otherwise representing, directly or by implication, that any peat is moss peat when such peat is not derived from Sphagnum moss.

2. Using the words "Peat Moss" or "Moss Peat," or any other words of similar import, as a part of or in connection with respondent's corporate or trade name; provided, however, that this order shall not be construed as prohibiting the use in such name of the word "Peat" when accompanied by the word "Moss."

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

HENRY P. KINNEKE, TRADING AS MILWAUKEE
IMPORTING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4980. Complaint, June 18, 1943—Decision, Oct. 5, 1943*

Where an individual, who was engaged in the packaging and interstate sale and distribution of "Malt Cereal" coffee substitute purchased by him from malsters, and who had taken over an extensive mail order business developed by his father, numerous customers of which had become accustomed, over a period of many years, due to the reputation of the product, and that of the firm for satisfactory service, to prepay orders sent through the mails—

Solicited orders by means of advertising urging potential customers to place their requirements "now" for the next 6 months since, when raw materials were depleted, he could not guarantee delivery "because of inability to manufacture until the law so provides" and setting forth that in view of past service of the particular customer he "would again appreciate the pleasure of serving you"; and in all instances in which those replying placed orders and made prepayment therefor, retained the payments but frequently failed to ship the merchandise ordered; and, to forestall complaints due to non-delivery, adopted practice of sending to customers postal cards giving various false and fraudulent reasons, including asserted shortages of material, offer that "if you wish to cancel the order * * * your money or invoice will be cancelled, though we dislike to have this information, as, many customers have purchased for the past 30 to 40 years," and assertion that the firm, having secured a number of carloads of choice material was malting and roasting 24 hours a day to fulfill delinquent orders;

The facts being he did no malting or roasting but, as aforesaid, merely purchased and repacked the finished product for shipment to customers; the real reason for his failure to fulfill orders was that he had spent the money received in payment thereof and was unable to buy either the product or sacks in which to package it for resale; and his sources of supply were at all times ready, willing and able to supply the product and necessary sacks or bags, provided payment was forthcoming;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into purchase of and prepayment for substantial quantities of product in question as a result of such erroneous beliefs:

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.

Before *Mr. J. E. Cox*, trial examiner.

Mr. Merle P. Lyon for the Commission.