

Complaint

38 F. T. C.

IN THE MATTER OF
MACDOUGAL BROTHERSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4990. Complaint, June 30, 1943—Decision, Apr. 11, 1944*

Where two partners, engaged in interstate sale and distribution of potatoes, which they grew in Steuben County, New York, and packaged in fifteen, fifty and hundred pound bags for sale to retail chain store purchasers and to jobbers or wholesalers who resold to retailers, by whom the smaller bags were generally sold without being opened and the larger ones frequently used for display for sale, and sale therefrom—

Sold said potatoes marked or branded "Steuben Maid Little Maine Potatoes Packed by MacDougal Brothers Avoca, New York"; notwithstanding fact potatoes in question, sold and distributed in competition with those actually produced in Maine and packaged in bags bearing marks or brands accurately indicating their origin, and in competition also with those produced in other States and not falsely marked as Maine potatoes, were not grown in the State of Maine—shippers of which generally use either the State's registered trade mark "STATE OF MAINE," as licensed to do, or brand and designate their product as "Maine potatoes," preferred by dealers and consumers in many States and usually selling for a higher price than those grown in New York and other Eastern States;

With effect of misleading and deceiving substantial numbers of dealers and the consuming public into the erroneous belief that such potatoes were grown in the State of Maine, and with capacity and tendency unfairly to divert trade from competitors who do not misrepresent the origin of their potatoes:

Held, That the aforesaid 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.

Before *Mr. John W. Addison*, trial examiner.
Mr. Carrel F. Rhodes 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 Donald N. MacDougal and Dan A. MacDougal, individuals, doing business as MacDougal Brothers, hereinafter referred to as respondents, have 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, Donald N. MacDougal and Dan A. MacDougal, are individuals, trading as MacDougal Brothers with their offices and principal place of business located at Avoca in the State of New York. Respondents are now and have been for several years last past engaged in the advertising, sale and distribution of potatoes.

PAR. 2. In the course and conduct of said business, respondents grow, pack, sell and distribute potatoes represented by respondents to be "Little Maine Potatoes."

In the course and conduct of their said business, respondents have caused and now cause their said potatoes when sold to be shipped and transported from their place of business in the State of New York to dealers and purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product between and among the various States of the United States and in the District of Columbia.

The respondents are now, and at all times mentioned herein have been, in substantial competition in commerce, between and among the several States of the United States and in the District of Columbia, with other corporations and with partnerships, firms and individuals engaged in growing, selling and distributing potatoes. There are among such competitors in said commerce many who do not in any manner misrepresent the source of origin or State where their said potatoes are grown, and do not make any false statements in connection with the sale and distribution of their said products.

PAR. 3. In the course and conduct of their business in said commerce, as aforesaid, respondents have made and are now making, and have caused and are now causing, the publication of false and misleading statements and representations concerning their said product through circulars, magazines, newspapers and other means, circulated among purchasers and prospective purchasers, and stamped or stenciled on the bags and other covering in which said potatoes are packed when shipped and distributed. Among and typical, but not exclusive, of the false statements and representations contained in the said advertisements, so used and disseminated as aforesaid, are the following:

U. S. No. 1
Steuben Maid
Little Maine Potatoes
packed by
MacDougal Brothers of
Avoca, New York

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not herein set out, which purport to be descriptive of the source and State of origin where said potatoes are grown and of the nature and characteristics of the product, respondents have represented, directly or by implication, that said potatoes were grown in the State of Maine and are of the quality and character of potatoes grown in said State.

Potatoes grown in the State of Maine are noted for their fine quality and characteristics and command a higher price, better market and more ready sale than potatoes grown in other eastern States of the United States. Dealers and the public have a preference for potatoes grown in the State of Maine, and buy such potatoes on account of their quality and characteristics in preference to potatoes grown in other eastern States of the United States.

PAR. 5. The aforesaid statements and representations made by respondents in the manner above described are false and misleading. In truth and in fact, respondents' said potatoes are not grown in the State

of Maine and are not of the grade or quality, and do not possess the characteristics of Maine potatoes and do not command the high price and ready market of Maine potatoes, but are potatoes grown in the State of New York, and sell for less than Maine potatoes.

PAR. 6. The use by respondents of the above-described false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of dealers and the purchasing public into the erroneous belief that the said potatoes so offered for sale and sold by respondents are potatoes grown in the State of Maine, and dealers and the purchasing public have bought substantial quantities of said potatoes under such erroneous and mistaken belief.

PAR. 7. Among competitors of respondents doing business in commerce as aforesaid, there are many who do not misrepresent the source or State of origin and the quality, grade and characteristics of their potatoes sold and shipped in commerce in competition with respondents' said potatoes, and who do not offer for sale as Maine potatoes any potatoes not grown in the State of Maine. As a result of respondents' misrepresentation of the source of origin or State where their said potatoes are grown, trade has been diverted unfairly to respondents from their said competitors in commerce, and thereby injury has been done and is being done by respondents to competitors 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 respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition 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 June 30, 1943, issued and subsequently served its complaint in this proceeding upon Donald N. MacDougal and Dan A. MacDougal, copartners, trading as MacDougal Brothers, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of said act. After the issuance of said complaint (no answer having been filed thereto), testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before an examiner of the Commission theretofore duly designated by it, and 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, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief 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. Respondents, Donald N. MacDougal and Dan A. MacDougal, are copartners, trading as MacDougal Brothers, with their office and principal place of business at Avoca, N. Y. Respondents are engaged, and for several years last past have been engaged, in the sale and distribution of potatoes.

PAR. 2. In the course and conduct of their aforesaid business respondents cause potatoes, when sold, to be shipped and transported from their place of business in the State of New York to purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in potatoes in commerce between and among various States of the United States.

PAR. 3. Respondents grow potatoes in Steuben County, New York. They package the potatoes so grown in containers, including 15-pound, 50-pound, and 100-pound bags, which are marked or branded:

STEUBEN MAID
LITTLE MAINE
POTATOES

Packed by

MACDOUGAL BROTHERS

Avoca, New York

After being so packed, such potatoes are shipped and distributed by respondents in commerce as aforesaid. Some of said potatoes are purchased by retail chain stores, and some are purchased by jobbers or wholesalers who resell them to retail dealers. The retail chain stores and retail dealers in turn offer such potatoes for sale to members of the consuming public. The smaller packages of potatoes are generally sold to consumers without having been opened. In the case of the larger packages, the potatoes are frequently displayed for sale in and sold from such packages.

PAR. 4. Large sums of money have been spent advertising the merits and promoting the sale of potatoes grown in the State of Maine. The State of Maine owns a trade-mark which, under certain conditions, it licenses shippers to place on packages or containers of potatoes grown in Maine. This registered trade-mark is "STATE OF MAINE." Shippers of Maine potatoes who do not use the "STATE OF MAINE" trade-mark generally use a mark or brand designating such potatoes as Maine potatoes. Dealers and consumers in many other States are familiar with the characteristics of and have a preference for potatoes grown in the State of Maine. Maine potatoes also generally command a higher price than potatoes grown in New York and certain other Eastern States. The potatoes produced in Steuben County, New York, and packaged in bags bearing respondents' marks and brands as set out above are sold and distributed in competition with potatoes which are actually produced in the State of Maine and packaged in bags bearing marks or brands which accurately indicate their origin. Respondents' potatoes are also sold and distributed in competition with potatoes produced in States other than the State of Maine which are not falsely marked or branded as being Maine potatoes.

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PAR. 5. The use by respondents of the word "Maine" in the manner aforesaid has had, and has, the capacity and tendency to, and does, mislead and deceive substantial numbers of dealers and of the consuming public into the erroneous belief that potatoes so packaged and offered for sale were grown in the State of Maine, as well as the capacity and tendency unfairly to divert trade to respondents from competitors who do not misrepresent the origin of their potatoes.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all 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, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Donald N. MacDougal and Dan A. MacDougal, individuals, trading as MacDougal Brothers, or under any other name, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of potatoes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, through the use of the word "Maine" or otherwise, that potatoes not grown in the State of Maine are Maine potatoes.

2. Representing in any manner that potatoes were grown in a State or locality different from that in which they were actually grown.

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.

Complaint

IN THE MATTER OF
BISHOP & BABBIN, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5000. Complaint, July 9, 1943—Decision, Apr. 11, 1944*

Where a corporation, engaged in interstate sale and distribution of potatoes which it grew in Steuben County, New York, and packaged in fifteen, fifty and hundred pound bags for sale to retail chain store purchasers and to jobbers or wholesalers who resold to retailers, by whom such smaller packages were generally sold without being opened, and larger ones were frequently for display for sale and sale therefrom—

Sold said potatoes marked or branded "LITTLE MAINE farms B & B POTATOES Packed by BISHOP & BABBIN, INC., ATLANTA, N. Y.," with the word "farms" less prominently displayed, and in some instances printed or stenciled in a different color than "Little Maine"; notwithstanding fact potatoes in question, sold and distributed in competition with those actually produced in Maine and packaged in bags bearing marks brands accurately indicating their origin, and in competition also with those produced in other States and not falsely marked as Maine potatoes, were not grown in the State of Maine—shippers of which generally use either the State's registered trade mark "STATE OF MAINE," as licensed to do, or brand their product as Maine potatoes, preferred by dealers and consumers in many States and usually selling for a higher price than those grown in New York and other Eastern States;

With effect of misleading and deceiving substantial numbers of dealers and the consuming public into the erroneous belief that such potatoes were grown in the State of Maine, and with capacity and tendency unfairly to divert trade from competitors who do not misrepresent the origin of their potatoes:

Held, That the aforesaid acts and practices were all to the prejudice and injury of the public and competitors, and constituted unfair and deceptive acts and practices therein.

Before *Mr. John W. Addison*, trial examiner.
Mr. Carrel F. Rhodes 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 Bishop & Babbin, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission 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, Bishop & Babbin, Inc., is a corporation, organized and existing under the laws of the State of Maine with its principal office and place of business located in the city of Atlanta, State of New York. Respondent is now and for several years last past has been engaged in the advertising, sale and distribution of potatoes.