

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.

Complaint

38 F. T. C.

PAR. 2. In the course and conduct of its said business respondent grows, packs, sells and distributes potatoes, represented by respondent to be "Little Maine Farms B and B Potatoes."

In the course and conduct of its said business respondent has caused and now causes its said potatoes when sold to be shipped and transported from its place of business in the State of New York to dealers and purchasers 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 between and among the various States of the United States and the District of Columbia.

The respondent is now and at all times mentioned herein has 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 certain 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 its said business in said commerce, as aforesaid, respondent has made and is now making and has caused and is now causing the publication of false and misleading statements and representations concerning its 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:

LITTLE MAINE
FARMS

and B B POTATOES

U. S. Grade No. 1

Bagged by Bishop & Babbin, Inc.

LITTLE MAINE FARMS

ATLANTA, N. Y.

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, respondent has 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 characteristics and fine quality 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 respondent in the manner above described are false and misleading. In truth and in fact respondent's said potatoes are not grown in the State of Maine, and are not of the grade and 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 respondent 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 respondent 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 respondent 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 respondent's 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 respondent's misrepresentation of the source or origin or State where his said potatoes are grown trade has been diverted unfairly to respondent from its said competitors in commerce and thereby injury has been done and is being done by respondent 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 respondent as herein alleged are all to the prejudice and injury of the public and of respondent's 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 July 9, 1943, issued and subsequently served its complaint in this proceeding upon Bishop & Babbin, Inc., a corporation, charging it 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

38 F. T. C.

FINDINGS AS TO THE FACTS

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 at Atlanta, N. Y. Respondent is engaged, and for several years last past has been engaged, in the sale and distribution of potatoes.

PAR. 2. In the course and conduct of its aforesaid business respondent causes potatoes, when sold, to be shipped and transported from its place of business in the State of New York to purchasers located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in potatoes in commerce between and among various States of the United States.

PAR. 3. Respondent grows potatoes in Steuben County, New York, and also purchases potatoes grown by others in said county. It packages the potatoes so grown or purchased in containers, including 15-pound, 50-pound, and 100-pound bags, which are marked or branded:

LITTLE MAINE

farms

B & B

POTATOES

Packed by

BISHOP & BABBIN, INC.

ATLANTA, N. Y.

In some instances the word "farms" is printed or stenciled in a different color than the words "Little Maine," and in all instances it is less prominently displayed. On some bags, after the words "Bishop & Babbin, Inc." the words "Little Maine Farms" appear before the words "Atlanta, New York." Potatoes produced in Steuben County, New York, after being so packaged, are shipped and distributed by respondent 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 in 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 respondent's brands as set out above are sold and distributed by respondent in competition with potatoes which are actually

253

Order

produced in the State of Maine and packaged in bags or containers bearing marks or brands which accurately indicate their origin. Respondent's 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.

PAR. 5. The use by respondent 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 respondent, as herein found, are all 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 on 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Bishop & Babbin, Inc., a corporation, its officers, 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 respondent shall, within 60 days after the 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.

IN THE MATTER OF

LEONARD BLOCK, MELVIN BLOCK AND BETTY ROBERTS,
TRADING AS GOLD MEDAL HAARLEM OIL COMPANY

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

Docket 4865. Complaint, Nov. 3, 1942—Decision, Apr. 13, 1944

Where three individuals engaged in the compounding and interstate sale and distribution of their "Gold Medal Haarlem Oil" and "Gold Medal Haarlem Oil Capsules"; by means of advertisements in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature, directly and by implication—

- (a) Represented that said preparation was a prompt, efficient, safe and harmless treatment for ailments and diseases of the kidneys and bladder, would flush excess waste matters from the former, would keep the blood free therefrom, and from poisons, and acid; was an effective treatment for weak kidneys and irritations of the bladder and would restore them to a healthy state of activity regardless of the underlying cause; and would provide relief from scanty, burning and smarting urine passage and clean out kidneys that had become clogged; and
- (b) Represented that scanty, burning and smarting urine passage, aches, pains, joint agony, sciatica, neuritis, neuralgia, lumbago, rheumatism, backache, nervousness, leg cramps, getting up nights, moist palms, puffy eyes, nagging pains, dizzy spells and swollen ankles might be symptomatic of ailments and diseased conditions of the kidneys or bladder which might be treated effectively by it;

The facts being that such preparation was an irritant diuretic which was not a remedy or cure for ailments and diseases of the kidneys or bladder irrespective of their cause, and had no therapeutic value in the treatment of diseased or injured kidneys; and conditions above described were not symptomatic of ailments treated successfully by its use; and

- (c) Failed to reveal facts material in the light of its said representations in that indiscriminate use of said irritant diuretic under prescribed or usual conditions by persons whose kidneys were injured or diseased might interfere with their proper functioning, and prolonged administration thereof might injure normal kidneys;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that said representations were true and that preparation in question was in all cases safe for use, and with the tendency and capacity to cause such portion of the public to purchase their preparation as a result thereof:

Held, That aforesaid 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. S. F. Rose for the Commission.

Breed, Abbott & Morgan, of New York City, for respondents.

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 Leonard Block, Melvin Block and Betty Roberts, trading as Gold Medal Haarlem Oil Company, have violated the provisions of said act, and it appearing to the Commission