

## IN THE MATTER OF

## PREFERRED HAVANA TOBACCO COMPANY, ETC.

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

*Docket 4983. Complaint, June 23, 1943—Decision, Apr. 28, 1944*

Where a corporation continuously engaged at Tampa, Fla., in the manufacture of cigars from Havana tobacco and in interstate sale and distribution thereof to jobbers and retailers throughout the United States, since organization thereof in 1913, when it acquired all the stock and goodwill of (1) "Bustillo Bros. & Diaz, Inc., theretofore engaged in manufacture in Tampa, of cigars made exclusively from tobacco grown in Cuba and packed and branded by it under brand name "Flor del Mundo," and of (2) "Calixto Lopez & Co.," engaged prior to 1932 in manufacture, in Havana, at 48 and 50 Zuleta Street, of cigars packed and branded under names "Eden de Bances y Lopez Habana" and "Calixto Lopez Habana," acquiring also all the right, title and interest of said companies in and to the trade names and brands used by them, in addition to Bances y Lopez and Lopez Hermanos;

- (a) Represented that its said "Eden" brand of cigars were genuine Cuban cigars made at Havana, Cuba, of Cuban tobacco, and exported by a firm by the name of "Bances y Lopez" through use on the containers and bands of said cigars of designation "EDEN de Bances y Lopez Habana," the words "Vuelta Abajo," statement on the inside lid, in very small type and in capital letters;—"These cigars, now manufactured at Tampa, by SPANISH HAND WORKED METHOD of tobacco FULLY PREPARED IN CUBA—are identical with the famous IMPORTED EDENS made by us for over fifty years at Havana, Cuba," and legend on the outer front side of the container "Flor Fina Eldorados Claro Bances y Lopez Habana"; while statement "Formerly Eden—Imported" was so placed on the inside of the container as to be obscured by cigars when filled therewith;
- (b) Represented that the cigars branded and labeled as "Calixto Lopez" were manufactured in a three-story factory building operated at Havana, Cuba, by the Cuban firm of "Calixto Lopez & Co.," and imported into the United States, through use on containers and bands of such legends and matters as "Calixto Lopez Habana Flor Fina," "Calixto Lopez y Ca.," use, on the inside of the container lid, of full size picture of a factory building, with words, in large gilt letters "Calixto Lopez—Habana," and use thereof also in advertising material, including inside container cover labels, together with words in gold letters, immediately above and below the picture, "Calixto Lopez y Ca. Habana," and photographic likeness of the person Calixto Lopez, and address "Zulueta 48 y 50 Habana" beneath; and
- (c) Represented that the cigar labeled and branded "Flor del Mundo" (Flower of the World) originated with and was imported into the United States by the Cuban firm of "Bustillo Bros. & Diaz" located at Havana, through use on containers thereof, etc., of the words "Flor del Mundo de B. Bros. & D. Habana," and on the interior of the container in red letters the firm name "Bustillo Bros. & Diaz," with words "Tampa, Fla." beneath said line and hidden by cigars when contained therein;

Notwithstanding the fact that all the aforesaid brand names were employed in the sale of cigars made in and exported from Cuba prior to 1932, and since then manufactured exclusively at Tampa; no cigars were made at Havana thereafter in the factory building depicted, which since said year was used by it and its subsidiaries for Havana tobacco to be shipped to its Tampa factory; company in question, since 1932, made no cigars in Cuba; nor operated then or theretofore in Cuba any

such firms or enterprises as "Bustillo Bros. & Diaz, Inc.," or "B. Bros. & Diaz," "Bances y Lopez," or "Lopez Hermanos," trade names employed by it in connection with its Tampa-made cigars;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby into purchase of substantial quantities of said product, whereby substantial trade was diverted to it from its competitors:

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

*Mr. Marshall Morgan* for the Commission.

*Blumberg & Kleeblatt*, 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 Preferred Havana Tobacco Company, a corporation, trading also as Bustillo Bros. & Diaz, Inc., Calixto Lopez & Company, Lopez Hermanos, and Bances y Lopez, 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, Preferred. Havana Tobacco Company, hereinafter referred to as respondent, is a corporation, organized and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business located at No. 257 Fourth Avenue, New York City, with a factory located at No. 2111 N. Albany Street, Tampa, Fla., where respondent operates under its said corporate name and under various trade names, as will be more fully hereinafter related.

PAR. 2. Respondent is now, and for more than five years last past has been, engaged in the business of manufacturing various brands of cigars and selling and distributing the same to jobbers and retailers throughout the United States. All cigars sold and distributed by respondent are now and for more than five years last past have been manufactured by respondent at Tampa, Fla., as aforesaid, where they are packed, branded and labeled by respondent for sale and distribution to the purchasing public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold by it to be transported and delivered from its factory at Tampa, Fla., and from its principal office and place of business in New York City as aforesaid, through and into the various States of the United States other than the State of Florida or the State of New York, to the respective purchasers thereof at their respective points of location, and there is now and for more than five years last past, has been a constant current of trade and commerce by respondent in such cigars. In the course and conduct of its said business, respondent is now, and at all times since its organization has been, in substantial competition with other corporations and with firms, partnerships and individuals engaged likewise in the sale of cigars between and among the various States of

the United States. All orders for cigars are received by and payable at respondent company's New York Office.

PAR. 3. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana. The word "Havana," spelled "Habana" in the Spanish, is the name and designation of the tobacco on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar-purchasing and consuming public of the United States and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the Island of Cuba. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are, and for many years have been, in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco and have believed, and still believe, that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

For many years cigars made of Cuban or Havana tobacco were, and still are, manufactured in the city of Havana, Cuba, and were exported therefrom to the various markets of the world. Consequently such cigars became known in the trade and to the consuming public, and are still known, as Havana cigars and Cuban cigars, the terms being used interchangeably and synonymously. In fact the term "Havana" has been used for many years to designate and brand said cigars and has come to mean, when applied to said cigars, cigars manufactured from tobacco grown in the Island of Cuba.

Cuban tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured from such tobacco. For many years last past factories making cigars from Havana tobacco have been located in the United States, principally in and near the city of Tampa, Fla. Cigars manufactured at Tampa factories from tobacco grown in the Island of Cuba and imported into the United States are also known to the trade and to the public as Havana cigars.

PAR. 4. In the course and conduct of its said business, as described in paragraph 2 herein, respondent obtains orders for cigars through the medium of advertisements inserted in newspapers and other publications of general circulation and through salesmen and solicitors, and by mail.

The said cigars manufactured, sold and distributed by respondent in interstate commerce, as set forth in paragraph 2 herein, are and for many years last past have been sold and distributed by respondent in large and substantial quantities under various brand names and through the use of various trade names purporting to identify and designate the manufacturers of said respective brands. Among the brands so employed by respondent are Calixto Lopez, Flor del Mundo, and Eden. Among the trade names employed by respondent are Calixto Lopez & Co., Bustillo Bros. & Diaz, Inc., Lopez Hermanos, and Bances y Lopez. The containers for the said cigars manufactured by said respondent are the usual and customary boxes or cigar containers, of 25, 50 and 100 cigars each. A label, consisting of a paper band, is attached to each cigar.

## Complaint

PAR. 5. In the course and conduct of its said business, in connection with and for the purpose of inducing the sale and distribution of its said cigars in commerce, respondent has made and is now making various advertising and sales representations concerning such product.

Among the cigars manufactured and sold by respondent as aforesaid, is a cigar designated, labeled and branded as "EDEN." Imprinted on the outer lid of one of the containers for said "Eden" brand of cigars appears a design in which is centered the mark or legend:

EDEN  
de  
Bances y Lopez  
Habana.

Translated from the Spanish, this legend reads:

EDEN  
of or from  
Bances & Lopez  
Havana.

This same legend is repeated in a border running along the outer edges of the container.

At the left of the design appearing on the outer lid of the container, are the words "Vuelta Abajo" and at the bottom thereof the words or legend: "Grand Prix, St. Louis 1904—the only one awarded for excellence of quality."

On the outside end of said container appears other language in Spanish detailing awards won by this brand of cigar.

On the inside of the lid of said container appears a design centering a picture of a woman's face, immediately, above this design the word "EDEN," and immediately below the picture the word "HAVANA," each printed in heavy type, said words considered in connection therewith harmonizing with the language on the outside of the container, namely, "Eden de Bances y Lopez Habana."

Beneath the design on the inside lid of said container appears the following printed respectively in very small type and in capital letters:

These cigars, now manufactured at Tampa, by SPANISH HAND WORKED METHOD of tobacco FULLY PREPARED IN CUBA—are identical with the famous IMPORTED EDENS made by us for over fifty years at Havana, Cuba.

The only language in said legend that can be read at any distance is that composed of said capital letters, which from left to right reads as follows:

SPANISH HAND WORKED METHOD—FULLY PREPARED IN CUBA—IMPORTED EDENS.

Said language in capital letters, in fact, can be read at a much greater distance than the remainder of said supposedly qualifying legend.

## Complaint

38 F. T. C.

On the outer front side of said Eden container appears the legend in Spanish:

Flor Fina  
Eldorados Claro  
Bances y Lopez  
Habana.

On the inside of said container at the top and back thereof and in a position that would be obscured were the container filled with cigars, appears the legend:

Formerly Eden—Imported.

Bands affixed by respondent to various types of its Eden brand of cigars read respectively:

Eden Oportuno—Habana—Printed in Cuba  
and  
Eden  
de  
Bances y Lopez  
Habana.

On the outside of the lid of another container for cigars now, and for many years last past, used by respondent, Preferred Havana Tobacco Company, appears a label printed in large gilt letters reading:

Calixto Lopez  
Habana  
Flor Fina.

Around the upper edges of said container extending all the way around the box appears the following legend in Spanish:

Calixto Lopez y Ca.

This legend, translated in English, reads:

Calixto Lopez & Co.

On the inside of the lid of this container appears a full size picture of a factory building, together with the wording in large gilt letters:

Calixto Lopez—Habana.

Immediately below the lower right hand corner of the rectangular border enclosing this picture in smaller type appear the words:

Printed in Cuba.

In advertising material distributed in commerce including inside cover labels for cigar containers, this full size picture of a factory building appears in the center of a rectangular design in red and gold. Immedi-

ately above and below the picture of the factory building appear respectively in gold letters, the following:

Calixto Lopez  
Calixto Lopez y Ca. Habana

The last line above translated reads:

Calixto Lopez & Co. Havana.

The name of said firm in Spanish also appears in the picture, as a large sign running along the top of the building.

Surrounding the picture of the building appears a border of gold premium coins or medals and around these language in Spanish stating that said Calixto Lopez cigars have been exhibited and have won numerous prizes at various international expositions.

Beneath the rectangular gilt border surrounding said factory picture at the lower right corner thereof appear in small type the words:

Printed in Cuba.

On another label employed to designate and advertise said Calixto Lopez cigars in commerce appears a photographic likeness of the person Calixto Lopez, beneath which the following address is given:

Zulueta 48 y 50 Habana,

which translated reads:

Zulueta 48 and 50 Havana.

Centered on the outside of the lid of another container employed in commerce by respondent in connection with the sale of its said cigars, in conspicuous black type, appears the following brand name:

Flor del Mundo  
de  
B. Bros. & D.  
Habana.

Translated, said brand name reads:

Flower of the World  
from  
B. Bros. & D.  
Havana.

On the back side of the interior of said container appears, in red letters, the firm name "Bustillo Bros. & Diaz," and below this line where it would not be visible if there were cigars in the box the words:

Tampa, Florida.

PAR. 6. By means of the herein described branding, labeling and advertising representations of respondent, Preferred Havana Tobacco Company's, various brands of cigars sold and distributed by it in com-

merce, and others of like tenor and effect, respondent represents and has represented to the purchasing public that its Eden Brand of cigars are genuine Cuban cigars manufactured at Havana, Cuba, of Cuban tobacco and come from and are exported by a firm by the name of Bances and Lopez, located at Havana, Cuba; that said Eden cigars were made in Cuba from tobacco fully prepared in Cuba by Spanish Hand Worked Method and thereafter imported into the United States; that the cigar branded and labeled as "Calixto Lopez" was and is manufactured in a three-story factory building operated at Havana, Cuba, by the Cuban firm of Calixto Lopez & Company; that material advertising such cigar was printed in Cuba; that cigars labeled and branded "Calixto Lopez" are and were imported into the United States from Cuba and have taken premiums at many international expositions; and that the cigar labeled and branded "Flor del Mundo" (Flower of the World) originates with and is imported into the United States by the Cuban firm of Bustillo Bros. & Diaz located at Havana, Cuba.

PAR. 7. In truth and in fact the various statements and representations made and used by respondent, Preferred Havana Tobacco Company, and the acts and practices employed by it in the sale and offering for sale of its said cigars are and were false, deceptive and misleading in the following, among other particulars:

1. Respondent's said "Eden brand of cigars are not, and for many years last past, have not been made at Havana, Cuba, or elsewhere in the Island of Cuba and are not now and for many years last past have not been imported from Cuba into the United States.

2. No cigars are manufactured at Havana, Cuba, in the factory building depicted in respondent's advertising as the home of Calixto Lopez cigars by the firm of Calixto Lopez and Company, or by any other person or firm. Said alleged factory building located in the city of Havana has not been used in the manufacture of cigars for many years, but in truth and in fact said building is now and for many years last past has been used as a factory where cigarettes are manufactured, and as a warehouse or storage space for cigar leaf tobacco.

3. There is no business, company or concern by the name of Calixto Lopez or Calixto Lopez & Company located at Zulueta 48 and 50, or elsewhere in Havana, Cuba, engaged in the manufacture or sale or exportation of cigars.

4. There is no firm or person by the name of Bustillo Bros. & Diaz or B. Bros. & Diaz located at Havana, Cuba, or elsewhere in Cuba, engaged in the manufacture or sale or exportation of cigars under the brand name of "Flor del Mundo" or any other brand or name.

5. The labels employed by respondent in advertising and describing its said Calixto Lopez brand of cigars were not printed in Cuba.

6. Respondent's "Eden" brand of cigars advertised and labeled as coming from and originating with the firm of Bances & Lopez of Havana, Cuba, did not and do not come from Cuba, and they are not imported products, but on the contrary are now and for many years last past have been manufactured by respondent at Tampa, Fla. In truth and in fact, there is no such company or firm as that of Bances and Lopez located or operating at Havana or elsewhere in Cuba.

7. There is no corporation or stock company by the name of Bustillo Bros. & Diaz located or operating at Tampa, Fla., nor are the names Calixto Lopez & Company, Lopez Hermanos, and Bances y Lopez those

of partnerships, stock companies or other business enterprises actually engaged in the manufacture and sale of cigars at Tampa, Fla.;

8. Respondent corporation, Preferred Havana Tobacco Company, in truth and in fact is not engaged in the importation and sale of Cuban-made cigars, but on the contrary since approximately the year 1912 has operated a factory in its corporate name in the city of Tampa, Fla., manufacturing cigars there from both Cuban and American tobacco, employing in such connection such trade names as Bustillo Bros. & Diaz, Inc., and Bustillo Bros. & Diaz, Calixto Lopez & Company, Bances y Lopez, Lopez Hermanos and other Spanish names to the Commission unknown.

PAR. 8. The use by respondent of the said false and misleading statements and representations in describing, designating, labeling, branding, and advertising its said cigars has a tendency and capacity to and does mislead and deceive, and has misled and deceived, purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that such statements and representations are and were true, and into the purchase of substantial quantities of respondent's products as a result of such belief, and places and has placed in the hands of retailers and dealers an instrument and means of deceiving the purchasing public into the belief that respondent's cigars so described, designated, labeled, branded and advertised are and were manufactured in Cuba at or near the city of Havana and thereafter imported into the United States. The aforesaid false and misleading statements further have a tendency to and do divert and have diverted trade to respondent from its competitors engaged in the sale of cigars between and among the various States of the United States who truthfully represent their products. As a consequence thereof, substantial injury has been done and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent, as alleged herein, 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.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 23, 1943, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of an answer by respondent a stipulation as to the facts was entered into between Richard P. Whiteley, Assistant Chief Counsel for the Commission, and Blumberg & Kleeblatt, counsel for respondent. This stipulation provides that the facts set forth therein shall be taken as the facts in this proceeding and in lieu of testimony in support of or in opposition to the allegations of said complaint. Respondent expressly waived the filing of a report upon the evidence by the Trial Examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission

## Findings

38 F. T. C.

on the complaint and stipulation as to the facts, said stipulation having been accepted and approved by the Commission; 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 based thereon.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Preferred Havana Tobacco Company, is a corporation, organized in 1913 under the laws of the State of Delaware, having its principal office and place of business located at No. 257 Fourth Avenue, New York City with a factory located at No. 2111 N. Albany Street, Tampa, Fla., where respondent has operated, and now operates, under its said corporate name, and under various trade names, as will be more fully hereinafter related.

Bustillo Bros. & Diaz, Inc., is a corporation, organized in 1913 under the laws of the State of Delaware. Said corporation is the successor of Bustillo Bros. & Diaz, a partnership, which since about 1898, had manufactured in the city of Tampa, Fla., cigars made exclusively from tobacco grown on the Island of Cuba. Said cigars were packed and branded by said corporation and by its predecessor partnership under the brand name of "Flor del Mundo."

Calixto Lopez & Co., is a corporation, organized in 1908 under the laws of the State of New Jersey. Prior to the year 1932 the said Calixto Lopez & Co. had manufactured in the city of Havana, at the address 48 and 50 Zuleta Street, and imported from Cuba into the United States, cigars packed and branded under the brand names "Eden de Bances y Lopez" and "Calixto Lopez."

"Habana"

"Habana"

In the year 1913, respondent, Preferred Havana Tobacco Company, acquired all of the stock and good will of Bustillo Bros. & Diaz, Inc., and Calixto Lopez & Co., respectively, including all the right, title and interest of said companies in and to the trade names and brand names used by them. Corporate respondent since 1913 has continuously used the brand names "Eden de Bances y Lopez," "Calixto Lopez," and "Flor del Mundo"

"Habana"

"Habana"

"Habana"

and the trade names Bustillo Bros. & Diaz, Calixto Lopez & Co., Bances y Lopez and Lopez Hermanos, among others, as will be more fully shown hereinafter.

PAR. 2. Respondent is now, and continuously since the year 1913 has been, engaged in the business of manufacturing various brands of cigars and selling and distributing the same to jobbers and retailers throughout the United States. All cigars sold and distributed by respondent are now and since the year 1913 have been manufactured by respondent at Tampa, Fla., as aforesaid, where they are packed, branded and labeled by respondent for sale and distribution to the purchasing public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold by it to be transported and delivered from its factory at Tampa, Fla., and from its principal office and place of business in New York City as aforesaid, through and into the various States of the United States other than the State of Florida or the State of New York, to the respective purchasers thereof at their respective points of location, and there is now and for more than

five years last past has been a constant current of trade and commerce by respondent in such cigars. In the course and conduct of its said business respondent is now and at all times since its organization has been in substantial competition with other corporations and with firms, partnerships, and individuals engaged likewise in the sale of cigars between and among the various States of the United States. All orders for cigars are received by and payable at respondent company's New York office.

PAR. 3. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana, Capital of the Republic of Cuba. The word "Havana," spelled "Habana" in the Spanish, is also the name and designation of the tobacco of the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar-purchasing and consuming public of the United States and by cigar manufacturers and dealers throughout the United States as meaning and designating tobacco which has been grown on the Island of Cuba. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are and for many years have been in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco, and have believed and still believe that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

Cigars made of Cuban or Havana tobacco were for many years and still are manufactured in the city of Havana, Cuba, and exported therefrom to the various markets of the world. Such cigars became known in the trade and to the consuming public and are still known as Havana cigars and Cuban cigars, the terms being used interchangeably and synonymously. In fact, the term "Havana" has been used for many years to designate and brand said cigars and has come to mean, when applied to said cigars, cigars manufactured from tobacco grown in the Island of Cuba. For many years past it has been and still is the practice and custom of the American cigar manufacturing trade to employ the word "Havana" in branding and labeling cigars made from tobacco grown on the Island of Cuba to thereby indicate the origin of the tobacco composing the cigar, such term being employed alike on cigar containers, on cigar bands, and in advertising, and to use also in such connection Spanish words, scenes, and Spanish sounding names. Cuban tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured from such tobacco. For many years last past factories making cigars from Havana tobacco have been located in the United States, principally in and near the city of Tampa, Fla., and in the territory immediately surrounding said city and known as the Tampa district. Cigars manufactured at Tampa factories from tobacco grown in the Island of Cuba and imported into the United States are also known to the trade and to the public as "Havana cigars" and as "Tampa cigars" and have acquired a wide and favorable reputation.

PAR. 4. In the course and conduct of its said business, as described in paragraph 2 herein, respondent obtains orders for cigars through the medium of advertisements inserted in newspapers and other publications of general circulation, and through salesmen and solicitors, and by mail.

## Findings

38 F. T. C.

The said cigars manufactured, sold and distributed by respondent in interstate commerce, as set forth in paragraph 2 herein, are and for many years last past have been sold and distributed by respondent in large and substantial quantities under various brand names and through the use of various trade names. Among the brands so employed by respondent are Calixto Lopez, Flor del Mundo, and Eden. Among the trade names employed by respondent are Calixto Lopez & Co., Bustillo Bros. & Diaz, Inc., Lopez Hermanos, and Bances y Lopez. The containers for the said cigars manufactured by said respondent are the usual and customary boxes or cigar containers, of 25, 50 and 100 cigars each. A label, consisting of a paper band, is attached to each cigar.

PAR. 5. In the course and conduct of its said business, in connection with and for the purpose of inducing the sale and distribution of its said cigars in commerce, respondent has made and is now making various advertising and sales representations concerning such products.

Among the cigars manufactured and sold by respondent as aforesaid, is a cigar designated, labeled and branded as "EDEN." Imprinted on the outer lid of one of the containers for said "Eden" brand of cigars appears a design in which is centered the mark or legend:

EDEN  
de  
Bances y Lopez  
Habana.

Translated from the Spanish, this legend reads:

EDEN  
of or from  
Bances & Lopez  
Havana

This same legend is repeated in a border running along the outer edges of the container.

At the left of the design appearing on the outer lid of the container are the words "Vuelta Abajo," and on the outside end of said container appears other language in Spanish detailing awards won by this brand of cigar.

On the inside of the lid of said container appears a design centering a picture of a woman's face, immediately above this design the word "EDEN," and immediately below the picture the word "HAVANA," each printed in heavy type, said words considered in connection therewith harmonizing with the language on the outside of the container, namely, "Eden de Bances y Lopez Habana."

Beneath the design on the inside lid of said container appears the following, printed respectively in very small type and in capital letters:

These cigars, now manufactured at Tampa, by SPANISH HAND WORKED METHOD of tobacco FULLY PREPARED IN CUBA—are identical with the famous IMPORTED EDENS made by us for over fifty years at Havana, Cuba.

The capital-letter words, "SPANISH HAND WORKED METHOD FULLY PREPARED IN CUBA IMPORTED EDENS," can be read at a much greater distance than the remaining words in said legend.

394

## Findings

On the outer front side of said Eden container appears the legend in Spanish:

Flor Fina  
Eldorados Claro  
Bances y Lopez  
Habana.

On the inside of said container, at the top and back thereof and in a position that would be obscured were the container filled with cigars, appears the legend:

Formerly Eden—Imported.

Bands affixed by respondent to various types of its Eden brand of cigars read respectively:

Eden Opportuno—Habana—Printed in Cuba  
and  
Eden  
de  
Bances y Lopez  
Habana.

On the outside of the lid of another container for cigars now and for many years last past used by respondent, Preferred Havana Tobacco Company, appears a label printed in large gilt letters reading:

Calixto Lopez  
Habana  
Flor Fina.

Around the upper edges of said container, extending all the way around the box, appears the following legend in Spanish:

Calixto Lopez y Ca.

This legend, translated in English, reads:

Calixto Lopez & Co.

On the inside of the lid of this container appears a full-size picture of a factory building, together with the wording in large gilt letters:

Calixto Lopez—Habana.

In advertising material distributed in commerce, including inside cover labels for cigar containers, this full-size picture of a factory building appears in the center of a rectangular design in red and gold. Immediately above and below the picture of the factory building appear, respectively, in gold letters, the following:

Calixto Lopez  
Calixto Lopez y Ca. Habana

The last line above translated reads:

Calixto Lopez & Co. Havana

## Findings

38 F. T. C.

The name of said firm in Spanish also appears in the picture, as a large sign running along the top of the building.

On another label employed to designate and advertise Calixto Lopez cigars manufactured at Tampa, Fla., appears a photographic likeness of the person Calixto Lopez, beneath which the following address is given:

Zulueta 48 y 50 Habana

which translated reads:

Zulueta 48 and 50 Havana

Centered on the outside of the lid of another container employed in commerce by respondent in connection with the sale of its said cigars, in conspicuous black type, appears the following brand name:

Flor del Mundo

de

B. Bros. & D.

Habana

Translated, said brand name reads:

Flower of the World

from

B. Bros. & D.

Havana

On the back side of the interior of said container appears in red letters the firm name "Bustillo Bros. & Diaz," and below this line, where it would not be visible if there were cigars in the box, the words:

Tampa, Florida.

PAR. 6. The Commission finds that through the use of the herein described branding, labeling, and advertising representations by respondent, Preferred Havana Tobacco Company, in connection with the offering for sale and sale of its said cigars in commerce, including the geographical suggestions or implications contained in the trade and brand names and labels employed by respondent in describing, labeling, branding, and advertising its said cigars, respondent has represented that its said Eden brand of cigars are genuine Cuban cigars manufactured at Havana, Cuba, of Cuban tobacco, and come from and are exported by a firm by the name of Bances and Lopez located at Havana, Cuba; that said Eden cigars are made in Cuba from tobacco fully prepared in Cuba and thereafter imported into the United States; that the cigar branded and labeled as "Calixto Lopez" is manufactured in a three-story factory building operated at Havana, Cuba, by the Cuban firm of Calixto Lopez & Company; that cigars labeled and branded "Calixto Lopez" are imported into the United States from Cuba; and that the cigar labeled and branded "Flor del Mundo" (Flower of the World) originates with and is imported into the United States by the Cuban firm of Bustillo Bros. & Diaz located at Havana, Cuba.

PAR. 7. The Commission finds that the foregoing claims, statements, and representations of respondent are misleading and deceptive. In truth and in fact, respondent's said "Eden" or "Eden de Bances y Lopez"

brand of cigars is not and since the year 1932 has not been manufactured in or imported from the Island of Cuba, but on the contrary has been manufactured exclusively since said date at Tampa, Fla.

No cigars have been manufactured by the firm of Calixto Lopez & Company or by any other person or firm at Havana, Cuba, since 1932, in the factory building depicted in respondent's advertising as the home of Calixto Lopez cigars. Said factory building, located at Zulueta 48 and 50, Havana, Cuba, is now and since the year 1932 has been used by respondent and its subsidiaries for the purpose of purchasing, curing, and storing Havana tobacco for shipment to respondent's factory at Tampa, Fla.; and the brand names "Eden de Bances y Lopez" and "Calixto Lopez" are names which were employed in the sale of cigars which were manufactured in and exported from Cuba prior to the year 1932, and since said date manufactured at Tampa, Fla. The label on which there appears a photographic likeness of the person Calixto Lopez, and beneath it the address "Zulueta 48 y 50 Habana," is a label formerly employed in connection with the manufacture of the "Calixto Lopez" cigar at Havana, Cuba, prior to the year 1932. Not since the said year 1932 has Calixto Lopez & Company manufactured cigars in Cuba.

Respondent does not now own, control, operate, or maintain and since 1932 has not owned, controlled, operated, or maintained any cigar factory in Cuba. There do not now operate or exist in Cuba and at no time past have there operated or existed in Cuba any such firms or enterprises as Bustillo Bros. & Diaz, Inc., or B. Bros. & Diaz, Bances y Lopez, or Lopez Hermanos, said names being in fact trade names employed by respondent since 1913 and 1932, respectively, in connection with the manufacture and sale of cigars produced at its factory at Tampa, Fla.

In truth and in fact, respondent is not now engaged in the importation and sale of Cuban-made cigars, but on the contrary operates a factory in its corporate name in the city of Tampa, Fla., manufacturing cigars there from Havana tobacco and employing in such connection the brand and trade names as hereinbefore related.

PAR. 8. The use by respondent of the misleading and deceptive statements and representations herein set forth has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of such belief. In consequence thereof, substantial trade has been diverted to respondent from its competitors.

#### CONCLUSION

The foregoing acts and practices of respondent as herein found are all to the prejudice 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 upon the complaint of the Commission, answer of the respondent, and a

## Order

38 F. T. C.

stipulation as to the facts entered into between counsel for the Commission and counsel for the respondent which provides, among other things, that without further evidence or other intervening procedure the Commission may enter and serve upon respondent findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, Preferred Havana Tobacco Company, a corporation, trading as Bustillo Bros. & Díaz, Inc., Calixto Lopez & Company, Lopez Hermanos, and Bances y Lopez, or trading under any other name, and its representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cigars in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using as a brand name, firm name, or otherwise, the words or terms "Eden de Bances y Lopez Habana," "Flor del Mundo de B. Bros. & D. Habana," or "Calixto Lopez y Ca. Habana," or any other word, words, or terms, or any pictorial representation, indicating Cuban manufacture or a Cuban manufacturing location in connection with cigars not made or manufactured in the city of Havana, Cuba, from Cuban tobacco.

2. Using the words or term "Fully Prepared in Cuba," or any other words or terms indicating or implying Spanish or Cuban origin, in connection with cigars made or manufactured in the United States, unless the tobacco used in making such cigars is a product of Cuba and has been treated and processed in Cuba as represented, and such words or terms are accompanied by a statement in letters of at least equal conspicuousness that such cigars are of domestic manufacture and that the language "Fully Prepared in Cuba" refers only to the tobacco in such cigars.

3. Using the word "Imported," or any other word or words of similar import, to designate, describe, or refer to any cigar not made or manufactured in a foreign country and imported into the United States, or otherwise misrepresenting the origin of respondent's products.

*It is further ordered*, That nothing contained herein shall operate to prohibit the use by respondent of the word "Havana," alone or in conjunction with any other appropriate word or words, to describe or designate only the type or origin of tobacco composing its cigars, if such tobacco was grown in and is the product of the Island of Cuba.

*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  
MAURICE KRESSIN, TRADING UNDER THE NAME  
UNITED DELIVERY SYSTEM, AND  
ESTHER KRESSIN

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

*Docket 4873. Complaint, Nov. 24, 1942—Decision, May 1, 1944*

Where a husband and wife engaged in the interstate sale and distribution of postcards, envelopes, and form letters, designed to be used by creditors and collection agencies in obtaining information concerning debtors—the cards, addressed to “UNITED DELIVERY SYSTEM, Distribution Department, 639 NEW YORK AVENUE, N. W., WASHINGTON, D. C.” and containing on the reverse side, among other matter, “Return this notice promptly, UNITED DELIVERY SYSTEM, Distribution Department, UNCLAIMED PACKAGE DIVISION, WASHINGTON, D. C., Package Reference Number, A package bearing your name and address is held at your risk—subject to your forwarding directions below.” and “CONSIGNEE MUST BE IDENTIFIED”; under the instruction “Deliver the Above Package to” calling for name and address of debtor and, under “For Identification I Refer You to My Employer and bank,” their name and address: and the form letters, using the same trade name and address, and such matter as “MERCHANDISE, Distribution Department, Specialists in Package Deliveries” and other statements calculated to create the impression of a storage, shipping and distribution concern, including the words “Unclaimed Package Division,” inquiring of the recipient when addressed to other than debtors, as to whether he could advise as to the present address of the debtor, and stating that “we have a package addressed to the above party and we understand that there has been some change in their address.” and “We would appreciate your kindness in advising us of their present location”; and that they were “enclosing a self addressed and stamped envelope, and would appreciate any information,” etc.; and, where employed for contacting the debtors directly, having appropriate changes such as “we have a package for you which we would like to complete delivery of,” etc.; and in both cases, including blanks for the name and address of the debtor and those of his employer and bank;

Making use of a plan under which material in question was sent by them—along with unaddressed envelopes bearing their return address and a notation “Postmaster—Important. If this letter cannot be delivered to address shown, please forward to last address.”—to their customers, who addressed the envelopes to the last known addresses of the debtors about whom information was sought and returned them in bulk to said persons in Washington, who there mailed said material to the debtors, sent to the customers, identified by a code number placed on the forms, the information received, and sent to debtors replying thereto a few paper cups or a six-inch cardboard ruler or some similar article of trivial value “in order to comply with the post office regulations”—

Falsely represented, through use of said name, “United Delivery System,” and placed in the hands of others the means of representing, through use of said cards and form letters, to the debtors and others, that the information was desired for use in connection with the delivery of goods to the proper consignees;

The facts being said name as thus used was merely a disguise to conceal from the addressee the true nature of said persons’ business;