

Order

43 F. T. C.

IN THE MATTER OF
A. P. W. PAPER COMPANY, INC.

MODIFIED ORDER TO CEASE AND DESIST

Docket 4747. Order, August 12, 1946

Modified order, pursuant to the provisions of section 5 of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which (1) original order issued on January 7, 1944, 38 F. T. C. 1; (2) the Circuit Court of Appeals for the Second Circuit in *A. P. W. Paper Company, Inc. v. Federal Trade Commission*, 149 F. (2d) 424, 40 F. T. C. 921, rendered its decision and on May 17, 1945, entered its decree reversing the Commission's said order and remanding the cause to the Commission for further proceedings in conformity with its opinion; (3) the Supreme Court on May 6, 1946, in *Federal Trade Commission v. A. P. W. Paper Company, Inc.*, 328 U. S. 193, 66 S. C. 932, 42 F. T. C. 909, affirmed the decision of said circuit court of appeals, and on June 19 issued its mandate affirming the judgment of said court; and, (4) said court of appeals on June 21, 1946, entered an order to the effect that the judgment of said Supreme Court be made its judgment, and that the decision of the said circuit court be affirmed—

Requiring respondent herein, its officers, etc., in connection with the offer, etc., of respondent's toilet tissues and paper towels in commerce, to cease and desist from using, subject to the permissible limits prescribed by a certain act of Congress as amended, the words "Red Cross", etc., as in said order below set out.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Marshall Morgan for the Commission.

Sullivan & Cromwell, of New York City, for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This matter coming on for further proceedings before the Federal Trade Commission, and it appearing that on January 7, 1944, the Commission made its findings as to the facts herein and concluded therefrom that the respondent A. P. W. Paper Co., Inc., had violated the provisions of the Federal Trade Commission Act, the Commission on January 7, 1944, issued, and thereafter served its order to cease and desist upon said respondent A. P. W. Paper Co., Inc.

Thereafter on February 16, 1944, respondent company filed in the United States Circuit Court of Appeals for the Second Circuit its petition to review and set aside the Commission's said order to cease and desist. On May 17, 1945, said court entered its decree reversing the Commission's said order and remanding the cause to the Commis-

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sion for further proceedings in conformity with the said court's opinion.

Thereafter on October 8, 1945, the Supreme Court of the United States granted certiorari in the matter and on May 6, 1946, said court rendered its decision affirming the decision of the United States Circuit Court of Appeals as rendered on May 17, 1945.

Thereafter, on June 19, 1946, the Supreme Court of the United States issued its mandate affirming the judgment of the United States Circuit Court of Appeals for the Second Circuit and on June 21, 1946, said Court of Appeals entered an order to the effect that the judgment of the said Supreme Court of the United States be made the judgment of the United States Circuit Court of Appeals for the Second Circuit and that the decision of the said circuit court be affirmed.

In conformity therefore with the final decree of the United States Circuit Court of Appeals for the Second Circuit, dated June 21, 1946, and pursuant to the provisions of the Federal Trade Commission Act, the Commission hereby issues this, its modified order, to cease and desist:

It is ordered, that the respondent, A. P. W. Paper Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate device, in connection with the offering for sale, sale and distribution of respondent's toilet tissues and paper towels in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

Using, subject to the permissible limits prescribed by the Act of January 5, 1905, as amended by section 4 of the act of 1910, the words "Red Cross" or any abbreviation or simulation thereof, either alone or in combination or connection with any other word or words, to designate, describe, or refer to respondent's products, or using or displaying on respondent's products or in any advertisement thereof, the mark of a Greek red cross, or any other mark, emblem, sign or insignia simulating or resembling such cross, without clearly and conspicuously stating in every instance, in immediate conjunction with any such designation or description of, reference to, or display upon respondent's products, or in any advertisement of such products, written or oral, the following:

This product is not sponsored or approved by or in any manner associated or connected with the American National Red Cross.

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.

IN THE MATTER OF

EARL H. SNOW AND PERSHING R. SNOW, TRADING AS
SNOW'S HATCHERIES

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

Docket 5339. Complaint, June 25, 1945—Decision, Aug. 12, 1946

A United States Record of Performance breeder or hatchery is understood by members of the poultry industry to be one operating under an official State agency cooperating with the Bureau of Animal Industry, United States Department of Agriculture, under what is known as the National Poultry Improvement Plan.

The National Poultry Improvement Plan as approved by the Secretary of Agriculture has for its objective, among other things, improvement in the production and breeding qualities of poultry and authoritative identification of breeding stock, hatching eggs and chicks with respect to the quality, by describing them in terms uniformly accepted in all parts of the United States.

Certain official terminology prescribed by the Plan, such as "United States Record of Performance", "Record of Performance" and their abbreviations, "U. S. R. O. P." and "R. O. P.", has acquired definite meaning throughout the industry and trade and when used to describe specified fowls, indicates that each thereof has an official performance or lineage record.

The terms, as respects the National Poultry Improvement Plan, "United States Record of Performance", and "Record of Performance" and the symbols "U. S. R. O. P." or "R. O. P." are not applicable to all poultry produced by a participant therein, and are misnomers for any fowl that has not been duly certified and registered as such. Thus a cockerel cannot become a "U. S. R. O. P." or an "R. O. P." male in the accepted meaning of said term until the passing of certain official tests when it has reached 6 months of age; the cockerel's condition and qualities at the end of the 6-months' period being essential items in its record of performance, which is not kept until after said official inspection and certification. Should such inspection not be officially made, or should the cockerel fail to pass the test when made, no record of performance has been established or is recognized, notwithstanding pedigree; and regulations of the plan provide that the use of the term "R. O. P. Sired" is permissible only when the males siring the chicks so described have been officially leg-banded as "U. S. R. O. P." males and registered as such. Accordingly, the progeny of mere wing-banded cockerels are not "R. O. P. Sired".

Where two partners, engaged in the interstate sale and distribution of chickens and baby chicks—

- (a) Falsely represented, directly or by implication, through statements in newspapers and trade journals, and in advertising folders, catalogs, price lists