

IN THE MATTER OF
NORTHWESTERN EXTRACT COMPANY

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

Docket 5641. Complaint, Mar. 1, 1949—Decision, Apr. 21, 1950

Where a corporation engaged in the manufacture and interstate sale and distribution of extracts and concentrates, including its "Imitation Grape Sparkle Beverage Base No. 179," to bottlers for their use in the manufacture of a soft drink known as "Grape Sparkle"; in advertising said "Grape Sparkle" in trade periodicals—

Represented through the use of said trade name and through such statements as "Grape Sparkle Soda" and reference to "Grape Leaf Shaped" decalcomanias in color, available for distribution to customers, and through decalcomanias transmitted by it to its bottlers for use by them and retailers in advertising and promoting the sale of "Grape Sparkle," bearing the words, among others, "Grape Sparkle Soda" printed upon a picturization of a green leaf of the grapevine, that the product in question was prepared from the fruit or natural juice of the grape;

The facts being that while said beverage simulated the odor, appearance, and taste of a grape product, it derived said characteristics chiefly from imitation ingredients and was an imitation grape product;

With result of placing in the hands of bottlers and retailers means and instrumentalities through which they might and did represent said product as prepared by the use of the fruit or natural juice of the grape; and with tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that the representations and depictions involved therein were true, and thereby induce it to purchase substantial quantities of said product:

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.

Mr. William L. Taggart for the Commission.

Mr. Roy R. Stauff, of Milwaukee, Wis., 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 the Northwestern Extract Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commis-

sion 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. Northwestern Extract Co. is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin with its principal place of business located at 214-216 North Broadway, Milwaukee, Wis.

PAR. 2. Respondent is now and for several years last past has been engaged in the manufacture of extracts and concentrates which it sells and distributes to bottling plants located in various States of the United States. One of said extracts or concentrates is designated by it as "Imitation Grape Sparkle Beverage Base No. 179." Said product is used by bottlers in the manufacture of a soft drink known as "Grape Sparkle."

Respondent causes its said product when sold to be transported from its place of business in the State of Wisconsin to purchasers thereof located in various other States. When the soft drink "Grape Sparkle" has been prepared by the use of respondent's said product, it is frequently shipped by bottlers to retailers located in States other than the State in which such shipments originate. Respondent maintains and has maintained a course of trade in its said extract or concentrate between and among the various States of the United States and bottlers of the product "Grape Sparkle" maintains and have maintained a course of trade in said product between and among the various States of the United States.

PAR. 3. In the course and conduct of its business respondent has disseminated and has caused the dissemination of various advertisements concerning the product "Grape Sparkle" made by the use of its said concentrate or extract by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and has caused the dissemination of advertisements concerning said product "Grape Sparkle" by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said "Grape Sparkle" in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the advertisements disseminated and caused to be disseminated as hereinbefore set forth is that appearing in the publication, National Bottlers' Gazette, issue of November 1946, a copy of which is as follows:

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Delicious
GRAPE
SPARKLE
SODA

This New Four-Color Grape
Leaf Shaped Decalcomania,
size 7½" X 7½" available
for your customer's win-
dows and back bars.

A
NORWESCO
PRODUCT

A TASTY,
ENJOYABLE
DRINK . . .

SPOTLIGHTING
A TASTY TREAT
a Proven
SALES REPEAT

Outstanding
Grape
Flavor

NORTHWESTERN
EXTRACT CO.

Serving Bottlers Since 1906

214-216 N. Broadway Milwaukee 2, Wis.

Appearing as part of this advertisement are picturizations of two leaves of the grape vine.

PAR. 4. In the course and conduct of its business respondent has also transmitted a decalcomania to bottlers buying its product by means of the United States mails or in commerce by other means, designed and intended to be used and which is used by bottlers and retailers in advertising and promoting the sale of "Grape Sparkle." A copy of said decalcomania is as follows:

Delicious
GRAPE
SPARKLE
SODA

A
NORWESCO
PRODUCT

A TASTY,
ENJOYABLE
DRINK . . .

These words are printed upon a picturization of a green leaf of the grape vine.

PAR. 5. By means of the statements and picturizations set out in paragraphs 3 and 4 and the use of the trade name "Grape Sparkle" respondent represented and thereby placed in the hands of bottlers and retailers means and instrumentalities by and through which they may and have represented that the product "Grape Sparkle" is prepared by the use of the fruit or natural juice of the grape.

PAR. 6. The aforesaid statements, picturizations, and trade name are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Grape Sparkle," while simulating the odor, appearance, and taste of a product prepared by the use of the fruit or natural juice of the grape, derives its odor, appearance, and taste chiefly from imitation ingredients and is an imitation grape product.

PAR. 7. The use by the respondent of the aforesaid false advertisements has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements, representations, and picturizations contained therein are true and cause a portion of the purchasing public to purchase substantial quantities of the product "Grape Sparkle" because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondent, as alleged herein, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning and intent 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 March 1, 1949, issued and subsequently served its complaint in this proceeding upon the respondent, Northwestern Extract Co., a corporation, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After respondent filed its answer to the complaint, a written stipulation was entered into by and between the respondent, by its counsel, and Daniel J. Murphy, chief of trial division, for the Commission, in which it was stipulated and agreed that, subject to the approval of the Commission, the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of this matter without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same and

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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. Northwestern Extract Co. is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin with its principal place of business located at 214-216 North Broadway, Milwaukee, Wis.

PAR. 2. Respondent is now and for several years last past has been engaged in the manufacture of extracts and concentrates which it sells and distributes to bottling plants located in various States of the United States. One of said extracts or concentrates is designated by it as "Imitation Grape Sparkle Beverage Base No. 179." Said product is used by bottlers in the manufacture of a soft-drink food product known as "Grape Sparkle."

Respondent causes its said product when sold to be transported from its place of business in the State of Wisconsin to purchasers thereof located in various other States. Respondent maintains and has maintained a course of trade in its said extract or concentrate between and among the various States of the United States, and bottlers of the produce "Grape Sparkle" maintain and have maintained a course of trade in said product between and among the various States of the United States.

PAR. 3. In the course and conduct of its business respondent has disseminated and has caused the dissemination of advertisements concerning the product "Grape Sparkle" made by the use of its said concentrate or extract, in commerce as "commerce" is defined in the Federal Trade Commission Act, by way of the following copy in the October 1946 and November 1946 trade magazines, "The American Carbonator & Bottler" and "National Bottler's Gazette" for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said "Grape Sparkle" in such commerce, to wit:

Delicious	This New Four-Color Grape
GRAPE	Leaf Shaped Decalcomania
SPARKLE	size 7½" X 7½" available
SODA	for your customer's windows
	and back bars.
A	A TASTY
NORWESCO	ENJOYABLE
PRODUCT	DRINK . . .

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SPOTLIGHTING
A TASTY TREAT
a Proven
SALES REPEAT

Outstanding
Grape
Flavor

NORTHWESTERN
EXTRACT CO.

Serving Bottlers Since 1806

214-216 N. Broadway Milwaukee 2, Wis.

Appearing as part of this advertisement are picturizations of two leaves of the grape vine.

PAR. 4. In the course and conduct of its business respondent has also transmitted a decalcomania to bottlers buying its product in commerce as "commerce" is defined in the Federal Trade Commission Act, designed and intended to be used and which is used by bottlers and retailers in advertising and promoting the sale of "Grape Sparkle." A copy of said decalcomania is as follows:

A	Delicious	A TASTY
NORWESCO	GRAPE	ENJOYABLE
PRODUCT	SPARKLE	DRINK . . .
	SODA	

These words are printed upon a picturization of a green leaf of the grape vine.

PAR. 5. By means of the statements and picturizations set out in paragraphs 3 and 4 and the use of the trade name "Grape Sparkle" respondent represented and thereby placed in the hands of bottlers and retailers means and instrumentalities by and through which they may and have represented that the product "Grape Sparkle" is prepared by the use of the fruit or natural juice of the grape.

In truth and in fact, "Grape Sparkle," while simulating the odor, appearance, and taste of a product prepared by the use of the fruit or natural juice of the grape, derives its odor, appearance, and taste chiefly from imitation ingredients and is an imitation grape product. The Commission therefore finds that the aforesaid statements, picturizations, and trade name are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 6. The use by the respondent of the aforesaid false advertisements has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that

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the statements, representations, and picturizations contained therein are true and cause a portion of the purchasing public to purchase substantial quantities of the product "Grape Sparkle" because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the meaning and intent of the Federal Trade Commission Act.

Commissioner Ayres absent.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into by and between the respondent, by its counsel, and Daniel J. Murphy, Chief of Trial Division, for the Commission, in which stipulation the respondent waived all intervening procedure and further hearing as to said facts, 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 respondent, Northwestern Extract Co., 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, or distribution of its extract or concentrate used by bottlers in the manufacture of a soft-drink food product known as "Grape Sparkle," or any other product of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

(1) Disseminating or causing to be disseminated any advertisement, by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, by the use of the words "Grape Sparkle," or the word "Grape," or any other word or words of similar import or meaning, or in any other manner, that said product is prepared from the fruit or natural juice of the grape: *Provided, however*, That the foregoing shall not be construed to prohibit the use in advertising of the words "Grape Sparkle" or the word "Grape" if it is made prominently to appear in said ad-

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vertising that the product is an imitation, artificially colored and flavored.

(2) Disseminating or causing to be disseminated, by any means, any advertisement, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product, which advertisement contains any representation prohibited in paragraph (1) of this order.

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.

Commissioner Ayres absent.

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IN THE MATTER OF

HENRY G. PEARL AND MILDRED PEARL, TRADING AS
PEARL GARMENT CO., MODE CRAFT CO., AND MODE
CRAFTCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND AN ACT
OF CONGRESS APPROVED OCT. 14, 1940*Docket 5489. Complaint, Apr. 1, 1947—Decision, May 10, 1950*

Where three partners engaged in the manufacture and interstate sale and distribution of women's wearing apparel made from fabrics or piece goods, which were composed in some cases of 100 percent virgin wool, and in others of varying combinations of wool and reused wool and cotton, and were "wool products" within the intent and meaning of the Wool Products Labeling Act, and subject to its provisions—

Sold misbranded coats, which, labeled as 100 percent wool, contained only 70 percent wool and 20 percent reused wool and labels on which, in certain instances, contained no reference to the fiber content of the cotton interlining; and sold wool skirts which did not have on or affixed thereto the required stamp, tag, label or other means of identification showing the percentage of the total fiber weight of "wool," "reprocessed wool," "re-used wool," fiber other than wool, and other information called for by said act and rules and regulations promulgated thereunder:

Held, That such acts and practices were in violation of the provisions of the Wool Products Labeling Act of 1939 and said rules and regulations, and were to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. William L. Pack*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Isadore H. Hermann, of Camden, N. J., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Henry G. Pearl and Mildred Pearl, individually and as copartners trading as Pearl Garment Co., Mode Craft Co., and Mode Craft, hereinafter referred to as respondents, have violated the provisions of said acts, and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect