

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-852. Complaint, Oct. 19, 1964—Decision, Oct. 19, 1964

Consent order requiring Tampa, Fla., distributors of cigars for resale, to cease representing falsely that their cigars are made entirely from tobacco grown

Complaint

66 F.T.C.

in Cuba by the use of such brand names as "M & N Havana Specials," "Clear Havana," and "Habana."

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 Standard Cigar Company, and M & N Cigar Manufacturers, Inc., corporations, and Stanford J. Newman and Millard W. Newman, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of 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 Standard Cigar Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, and respondent M & N Cigar Manufacturers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, both corporations with their principal office and place of business located at 2701 16th Street in the city of Tampa, State of Florida.

Respondents Stanford J. Newman and Millard W. Newman, are officers of the corporate respondents.

They formulate, direct and control the acts and practices hereinafter set forth of the corporate respondents, including the acts and practices set forth. Their business address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of cigars to distributors, wholesalers, dealers and retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Florida to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR 4. In the course and conduct of their aforesaid business, and for purpose of inducing the sale of their cigars, the respondents have

made, or caused to be made, numerous statements and representations in connection with the advertising of their cigars through the use of brand names and other descriptive and identifying matter and materials which purport to indicate the composition, formulation or origin of their cigars.

Typical and illustrative of the aforesaid statements and representations are the following:

"M & N Havana Specials" "M & N Havana Panetelas"
"Clear Havana" "Mild Havana" "Habana"
"all fine Havana tobacco"

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import not specifically set out herein, the respondents represented that the cigars were made entirely from tobacco grown on the island of Cuba.

PAR. 6. In truth and in fact, respondents' cigars bearing the aforesaid descriptions and other similar terms were not made entirely from tobacco grown on the island of Cuba.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. By the aforesaid practices, respondents place in the hands of distributors, wholesalers, dealers and retailers, means and instrumentalities by and through which they may mislead the public as to the composition, formulation and origin of their cigars.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Decision and Order

66 F.T.C.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Standard Cigar Company and M & N Cigar Manufacturers, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the States of Florida and Ohio respectively, with their offices and principal places of business located at 2701 16th Street in the city of Tampa, State of Florida.

Respondents Stanford J. Newman and Millard W. Newman are officers of said corporations, and their address is the same as that of said corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Standard Cigar Company, and M & N Cigar Manufacturers, Inc., corporations, and their officers, and Stanford J. Newman and Millard W. Newman, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of cigars or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Havana," or any other term or terms indicative of tobacco grown on the island of Cuba, either alone or in

1015

Complaint

conjunction with any other terms, to describe, designate or in any way refer to cigars not made entirely from tobacco grown on the island of Cuba; except that cigars containing a substantial amount of tobacco grown on the island of Cuba may be described, designated, or referred to as "blended with Havana," or by any term of similar import or meaning, provided that the words "blended with," or other qualifying word or words, are set out in immediate connection or conjunction with the word "Havana," or other term indicative of tobacco grown on the island of Cuba, in letters of equal size and conspicuousness.

2. Placing in the hands of distributors, wholesalers, dealers and retailers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out above.

It is further ordered, That the respondents herein shall, within sixty (60) days after 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.

IN THE MATTER OF

ABC VENDING CORPORATION ET AL.*