

IN THE MATTER OF

PAN-AMERICAN MANUFACTURING COMPANY, INC.

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

Docket 1472. Complaint, July 23, 1927—Decision, July 5, 1929

Where a corporation engaged in the manufacture and sale of extracts, ice cream powder, syrups and flavors for soft drinks, including an artificially colored and flavored product first made by itself and its predecessor in the form of a syrup and later as a concentrate, for use in making an artificial grape drink, and with the taste, smell and color of a genuine grape drink, but with only an infinitesimal amount of the juice or fruit thereof,

(a) Sold said product in competition with makers of and dealers in genuine grape juice, under the name "Grapico" and featured said word in the labels thereof, with only a relatively small notice, if any, of the artificial flavoring and coloring of the product; and

(b) Set forth said trade name, together with the words, in smaller letters, "Sparkling," and "Naturally Good," in its advertisements in trade periodicals, display cards, newspapers, boys' caps for customers' use, and in its price lists, order blanks, and stationery, with no such notice whatever, and upon the bottle caps or crowns supplied at its instance to customers outside the State, with only relatively small notice of such coloring and flavoring;

With the capacity and tendency to mislead and deceive purchasers of beverages made therefrom into believing the same to be composed wholly or in substantial amount of the juice or fruit of the grape and of placing in the hands of customers the means of committing a fraud upon the consuming public by enabling them to offer and sell said public a drink made substantially from imitation fruit flavors as and for one made from the true fruit:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. E. J. Hornibrook for the Commission.

Legier, McEnery & Waguespack, of New Orleans, La., and Mr. W. Parker Jones, of Washington, D. C., for respondent.

SYNOPSIS OF COMPLAINT

Receiving its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Louisiana corporation engaged in the manufacture of a concentrate or syrup under the name "Grapico," and in the sale thereof to bottling concerns through the various States, and with principal office and place of business in New Orleans, with naming product misleadingly, advertising falsely or misleadingly, and misbranding or mislabeling, in violation of the provisions of section 5

of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, in advertising its said products in publications of general circulation throughout various States, under its said trade name "Grapico," and in other advertising matter which it circulates in interstate commerce, displays pictures or designs of grape vineyards, bunches of grapes, and similar pictorial representations, together with the qualifying statements:

- Sparkling
- Grapico
- Naturally Good
- Acknowledged
- The Best
- Grape Drink
- On The Market
- Sparkling
- Grapico
- Naturally Good
- The Drink of The Nation

and also with numerous other similar statements in connection with its said trade name or brand, tending to and directly asserting or clearly importing or implying "to a substantial part of the purchasing public that said product is composed in whole or in part of the juice of the grape, when in truth and in fact said product is not made from juice of the grape or the fruit of the same."

Respondent further, as charged, markets its aforesaid products in bottles with molded labels featuring prominently a pictorial representation of a bunch of grapes, together with its said trade name or brand "Grapico," said use of grapes as a bottle mold or label and of such trade name or brand "Grapico," as alleged, either independently, or in conjunction with one another, and particularly with the product in question, artificially colored and flavored to simulate the appearance, taste and smell of grape juice, tending to and directly asserting or clearly importing and implying that the product in question is composed of pure grape juice.

The use by respondent, as charged, of its said trade name or brand "Grapico," in connection with its aforesaid artificially colored and flavored product, "has the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that such product is made of the juice of the grape or the fruit of the same, and said purchasing public buys respondent's product on the

strength of such misleading and deceptive trade name or brand," and respondent's said advertising matter, bottle mold, or label, and trade name or brand, whether used independently or in connection with one another "are calculated to and do have the effect of stifling and suppressing competition in the sale of beverages made in whole or in part from the juice of the grape or the fruit of the same, and further in diverting trade from truthfully marked goods"; to the prejudice of the public and of respondent's competitors of which there are a considerable number engaged in the manufacture and sale of beverages composed in whole or in part of the juice of the grape or fruit thereof.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Pan-American Manufacturing Co., Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act.

Thereupon respondent entered its appearance and filed its answer to the complaint, and formal hearings were had thereon before an examiner of the Commission theretofore duly appointed, and testimony and evidence were offered and received, and duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for hearing before the Commission on such complaint and answer, and on testimony and evidence, and the report of the examiner, and on the briefs of counsel (counsel for respondent did not appear at the time fixed for oral argument), and the Commission duly considered the same and now makes this report in writing and states its findings as to the facts and conclusion as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pan-American Manufacturing Co., Inc., is a Louisiana corporation, with its principal place of business in the city of New Orleans, in said State. It was incorporated in the year 1911.

PAR. 2. Respondent manufactures at its plant in the said city of New Orleans, extracts, ice cream powder, sirups, and various flavors for soft drinks.

Since May 14, 1926, it has been manufacturing and selling in interstate commerce, a concentrate under the name of "Grapico."

This concentrate is sold to bottlers for the purpose of making an imitation grape drink. Respondent acquired the formula for making "Grapico" and all rights in connection therewith, in the spring of 1926, from J. J. Crossman & Sons, a defunct corporation, which latter concern had been, since the year 1914, manufacturing said "Grapico" and selling and advertising the same as such extensively in interstate commerce.

PAR. 3. "Grapico" was first made in the form of a syrup by respondent, and its said predecessor. It is now manufactured in the form of a concentrate. It was formerly shipped in barrels and is now shipped in gallon bottles from respondent's plant in New Orleans, in the State of Louisiana, to various bottling works or companies located in several of the States of the United States.

PAR. 4. Respondent, in the sale of "Grapico" concentrate, is in competition with Welch Grape Juice Co. and other corporations, co-partnerships, and individuals making and selling real grape juice in interstate commerce, as well as with those corporations, co-partnerships, and individuals making and selling in interstate commerce, imitations of grape flavor and color for the purpose of flavoring and coloring beverages under their respective brands or trade names.

Respondent has three customers residing outside of the State of Louisiana, who sell the finished beverage made from "Grapico" concentrate under the name "Grapico" and they are:

Grapico Bottling Works, Birmingham, Ala.  
One company operating at Natchez, Miss.  
One company operating at Picaunee, Miss.

PAR. 5. "Grapico" concentrate, when used as directed by respondent, produces an artificially-colored and artificially-flavored drink which tastes like, smells like, and resembles in color a drink made from grapes.

The amount of grape juice or fruit of the grape in "Grapico" is infinitesimal. These statements were made in the testimony of the president of respondent:

There would be hardly any grape juice in the finished beverage.

We do not claim grapico is made from grape juice or made from the fruit of the vine.

We claim that it is an artificially-colored and flavored grape drink.

"Grapico" concentrate sells for \$7.50 per gallon. The finished "Grapico" beverage sells to the ultimate customer for 5 cents per 7-ounce bottle.

PAR. 6. Since October, 1906, and until the year 1928, respondent generally used the label carrying the words:

ONE GALLON  
GRAPICO IMITATION  
GRAPICO CONCENTRATE  
ARTIFICIALLY FLAVORED AND COLORED

The printed word "Grapico" on this label is several times the size of the printed words "Artificially Flavored and Colored" and the words "Grape Concentrate" are approximately four times as large as the word "imitation." This label was used by respondent on its bottles in which it shipped "Grapico" concentrate in interstate commerce.

In 1928 the respondent learned of an investigation being carried on by the Federal Trade Commission. It then adopted and is now using the following label on bottles containing "Grapico" concentrate:

IMITATION  
GRAPICO CONCENTRATE SYRUP  
ARTIFICIALLY FLAVORED AND COLORED  
GRAPICO SYRUP  
GRAPICO  
NATURALLY GOOD  
SYRUP

Pan-American Manufacturing Company  
Mfg.  
New Orleans, Louisiana.

At times, the word "Grapico," standing alone, has been stenciled on Grapico syrup which was shipped to respondent's customers residing outside the State of Louisiana.

In the month of July, 1927, one R. R. Rochelle, a customer of respondent who makes a beverage from "Grapico" concentrate and sells the same under the name "Grapico" and who conducts his bottling business under the name and style of Grapico Bottling Works at Birmingham, Ala., caused to be erected at the State fairgrounds in said city, a stand or booth from which he dispensed and sold the finished beverage "Grapico" during said fair time of said

year. He caused to be erected on the top of said stand or booth, signs advertising "Grapico," upon which said signs appeared bunches of grapes, a picture of a bottle of "Grapico" with the word "Grapico" thereupon and also with the words: "Drink Sparkling Grapico, Naturally Good." No explanation was made on these signs that "Grapico" is an imitation, artificially colored and flavored drink. This stand or booth and the said signs appearing on the top thereof were erected without the knowledge or consent of respondent.

Respondent advertises its products in trade journals such as the Carbonator and Botler and the National Bottlers Gazette, both being magazines of general circulation among the bottling trade throughout the United States. On page 167 of the April, 1927, issue of the Carbonator and Botler, "Grapico" is advertised in very large conspicuous letters, but no reference is made to its being an artificially colored or imitation drink. The same is true of the May, issue of the Carbonator and Botler. The same is true of the April, 1927, issue of the National Bottlers Gazette.

Commissioner's Exhibits 12, 13, and 16 are large yellow signs 18 by 20 inches, upon which appear in very prominent red and yellow letters the words "Drink of the Nation" and "Drink Sparkling Grapico, Naturally Good, in Bottles." These signs were sent to respondent's customers who reside outside the State of Louisiana for the purpose of advertising the finished beverage "Grapico."

Exhibit 14 is a sign 10 by 7 inches bearing the same words as Exhibits 12, 13, and 16, and was sent out to respondent's customers residing outside of the State of Louisiana for the purpose of advertising the finished beverage "Grapico."

None of the said signs referred to in the two preceding paragraphs state that "Grapico" is an imitation drink or that it is artificially colored or flavored.

The bottle caps or crowns used in bottling the finished beverage "Grapico" are made by a firm in New Orleans which has no connection with respondent, but when "Grapico" concentrate is sold to a customer outside of the State of Louisiana, the customer is told where such caps can be procured, or if the customer prefers, the respondent orders the same to be shipped to the bottler at the bottler's expense. Commissioner's Exhibits 17 and 18 are samples of these caps. Commissioner's Exhibit 17 bears the word "Grapico" in very large letters and the words "Artificially Flavored and Colored" in much smaller letters. In Commissioner's Exhibit 18 there appears the word "Grapico" in very large letters and the words "imitation, color and flavor" in much smaller letters. Commissioner's Exhibit 17

is the cap now used in bottling "Grapico," and Exhibit 18 is the cap which was used prior to February, 1929.

Commission's Exhibit 19 is a price list sent to the customers and prospective customers of respondent, residing outside of the State of Louisiana, and carries the word "Grapico" in very large letters with the word "sparkling" and the words "naturally good" in much smaller letters, but does not explain that "Grapico" concentrate is artificially colored and flavored or that it is an imitation product.

Commission's Exhibit 28 is an order blank which refers to "Grapico" without the explanation that the same is artificially colored and flavored, and an imitation.

The stationery of respondent has printed thereupon the words "Grapico" in very large letters without the explanation that "Grapico" is artificially flavored and colored and is an imitation. Respondent also sent to its customers residing outside of the State of Louisiana, a quantity of boys' caps to be given to boys to wear, which caps bear the word "Grapico" in large red letters, and in smaller white letters, the words "sparkling" and "naturally good." No other words appear upon these caps.

The World Bottling Co. is a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with its principal place of business in the city of New Orleans. Fifty per cent of the capital stock of this company is owned by respondent and the officers and directors of respondent company are the same as those of the World Bottling Co. The World Bottling Co. bottles all of "Grapico" finished beverage which is sold in Louisiana. The World Bottling Co. advertises "Grapico" beverage extensively in the New Orleans Picayune, the New Orleans Times-Picayune, and New Orleans State Item, all daily newspapers of general circulation in the State of Louisiana, and of extensive circulation in the States of Alabama and Mississippi.

Par. 7. Respondent's said advertisements, brands, labels, descriptions, and representations of its said product have the capacity and tendency to mislead and deceive purchasers of beverages made from said "Grapico" concentrate into the belief that said beverage is composed in whole or contains a substantial amount of the juice of the grape or the fruit of the same.

Par. 8. Respondent's said acts and practices place in the hands of its customers the means of committing a fraud upon the consuming public by enabling said customers to offer for sale and sell to the consuming public a drink made substantially from imitation fruits flavors as and for drinks made from true fruit.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint and evidence received by a trial examiner heretofore duly appointed by the Commission, and the briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That the respondent, Pan-American Manufacturing Co., Inc., its representatives, agents, servants, employees, and successors, cease and desist from:

Using, in connection with the sale in interstate commerce of any beverage concentrate or syrup the word "Grapico" as a trade name, brand, or label, or as a designation of a product not composed of the juice of the grape.

*It is further ordered,* That the respondent, Pan-American Manufacturing Co., Inc., shall within 60 days after the service upon them of a copy 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 the order to cease and desist hereinbefore set forth.