

Complaint.

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FEDERAL TRADE COMMISSION
v.
UNITED ALLEGRETTI COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 715—November 17, 1921.

SYLLABUS.

Where a corporation, engaged in the manufacture and sale of chocolate creams as the Allegretti Chocolate Cream Company and as successor to a business founded by one Ignatio Allegretti, advertised and sold its product under its trade names "Allegretti's," "Allegretti," and "Original Allegretti," so that said product became widely and favorably known as such, and it acquired a valuable good will in said trade names as applied to candies and had successfully restrained others from using the name Allegretti; and thereafter a competing business, stockholders of which included (1) one Francis B. Allegretti, the moving spirit in its organization, not related to the original Allegretti, nor ever theretofore connected with the manufacture of candy, (2) his three brothers to whom he gave one share of stock each and who likewise had never theretofore had experience in candy making, (3) a man who claimed to have learned the business of making chocolate creams from a nephew and former employee of the original Allegretti, and (4)—but not until more than three years after its organization—a nephew of said original Allegretti,

- (a) Adopted the name United Allegretti Company;
- (b) Characterized and advertised its product as "United Allegretti Delicious Chocolates," "Our justly famous chocolate creams," and "United Allegretti's famous cream chocolates"; and
- (c) Labeled its boxes "United Allegretti's Delicious Chocolates," the word "United" being minimized and the word "Allegretti" made extremely prominent, the boxes also containing on the inside a notice warning the public against similarity of name of other products;

With intent thereby to mislead and confuse the trade and the public, and with a tendency and effect so to do;

Held, That such simulation of corporate and trade names, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the United Allegretti Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an Act of Congress approved September 26th, 1914, entitled "An Act to create a Federal Trade

Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, United Allegretti Company, is now and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Dakota, having its principal factory, office, and place of business located in Chicago, Ill.

PAR. 2. That respondent now [is] and for more than two years last past [has been] engaged in the business of manufacturing and selling to the trade its brands of chocolate candy among the several States of the United States, the Territories thereof, and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That in the year 1863, one Ignatio Allegretti established in Washington, D. C., the business of manufacturing and selling chocolate candies and other confections for which goods he established a wide reputation. He extended the business during the succeeding years to San Francisco, Chicago, New York, and other sections of the country. In 1893 he transferred the business to his sons, or associated them with him in the business and a corporation was organized under the laws of the State of Illinois, under the name of the "Allegretti Chocolate Cream Company" with its headquarters in the city of Chicago. This corporation succeeded to the business of the said Ignatio Allegretti. Its trade names for its products were also transferred to and owned by the corporation aforesaid, which trade names were as follows: "Allegretti's Cream Chocolates," "Allegreti Cream Chocolates," "Allegretti's," and "Allegretti."

PAR. 4. In 1917 the respondent was chartered in South Dakota and license was obtained in Illinois to do business in that State. Since that time it has been conducting business in the city of Chicago, manufacturing and selling in interstate commerce cream chocolates and other confections. It denominates its product as "United Allegretti Delicious Cream Chocolates." It described in its circular price lists, its only mode of advertising, this product as "Our famous cream chocolates." In one statement it professes to be represented on the Pacific coast by a jobbing concern known as Charles W. Mesick & Company, who use a letterhead on which appears the following: "United Allegretti's Famous Cream Chocolates." The box in which the respondent packs its candies is labeled on the outside "United Allegretti's Delicious Chocolates," while on the inside

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of the box cover is printed the following: "Warning. We warn the public against the similarity of names of our United Allegretti's Delicious Chocolates. We are in no way whatever connected with any other concern. The genuine United Allegretti's Delicious Chocolates always bear our name on each package. Signed, United Allegretti Company, Inc., 660-662 Grand Ave., Chicago, Ill." At the bottom of its letterheads is printed this statement, "United Allegretti Company is distinct from and has no connection whatever with any other concern of a similar name."

PAR. 5. That the name under which respondent was incorporated, the location of its business, the names, brands, and marks of its goods, as well as its advertising matter shows that its purpose was and is to deceive the public and lead the public to believe that its candies were the same as those manufactured and sold by the Allegretti Chocolate Cream Company, its competitor; that the tendency of such actions is to deceive and mislead the purchasing public, and that by reason of these facts and the facts set out in the foregoing paragraphs of this complaint, the respondent has been guilty of unfair methods of competition in commerce as defined and prohibited by Section 5 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to 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," the Federal Trade Commission issued and served a complaint upon the respondent, United Allegretti Company, charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent, United Allegretti Company, having entered its appearance by its attorney, Francis B. Allegretti, and having filed its answer herein, hearings were had and evidence was thereupon introduced in support of its answer before John W. Bennett, an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for a final hearing and the Commission, having heard argument of counsel and having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is now, and at all times since on or about the 25th day of April, 1917, has been, a corporation organized under and existing by virtue of the laws of the State of South Dakota, and said respondent now is and at all times since on or about August 2, 1917, has been licensed to do business in the State of Illinois, having its principal place of business in the city of Chicago, in said State.

PAR. 2. That the respondent is now, and for more than two years last past has been, manufacturing candies, including chocolate creams, in the city of Chicago, State of Illinois, and selling and shipping them under its own brand to the trade among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged, and especially with the Allegretti Chocolate Cream Company of Chicago, Ill., the said Allegretti Chocolate Cream Company being also engaged in the manufacture of chocolate creams, and their sale and shipment in interstate commerce.

PAR. 3. That at the time of the late Civil War in the United States, about the year 1863, one Ignatio Allegretti began in Washington, D. C., the manufacture and sale of chocolate creams, and later extended such business to Baltimore, Md., and New York, N. Y. (but the evidence submitted in this proceeding does not establish with definiteness the extent, volume, and other details of such business); that prior to 1892 said Ignatio Allegretti had established in San Francisco, Calif., a business of manufacturing chocolate creams, and in shipping them and selling them in other States, including New York, Maryland, and Illinois, among others; that said Ignatio Allegretti specialized in the manufacture of chocolate creams, and had three or four stores in San Francisco, Calif., where such creams were sold; that upon the signs displayed by these stores, and upon the cartons or packages in which said chocolate creams were packed, shipped, and distributed, the word "Allegretti" was prominently displayed, and was used in connection with the words "Cream Chocolates" or "Chocolate Creams"; that such candies manufactured by said Ignatio Allegretti had a high reputation in the trade; that in 1893 said Ignatio Allegretti, having met with business reverses in San Francisco, went to Chicago, Ill., and established a similar business in said city, and after coming to Chicago said Ignatio Allegretti associated with him in business his two sons Nicholas Allegretti and Joseph Allegretti and did business under the name of Allegretti

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Brothers, producing chocolate creams similar to, or identical with, those previously produced in San Francisco, Calif., and displaying prominently upon signs and upon cartons or containers for said goods the word "Allegretti" in connection with chocolate creams; that in 1896 said Ignatio Allegretti and the said sons formed a corporation under the name, "Allegretti Chocolate Cream Company," which corporation was organized under and is existing by virtue of the laws of the State of Illinois; that said corporation succeeded to the business of said Ignatio Allegretti and his said sons which have been conducted under the name of "Allegretti Brothers"; that the trade names for their products were also transferred by said Allegretti Brothers to, and were and are owned by the said corporation, which trade names are: "Allegretti's" and "Allegretti"; that the goods made under these trade names were and are considered by the trade of high quality and are sought after by the trade in candies; that said Ignatio Allegretti had at various times employed his nephews, Benedetto Allegretti, Giacomo Allegretti, and Frank Allegretti, in his business, and that they secured or asserted that they had secured in the course of their employment, the formulas of said Ignatio Allegretti for making the said chocolate creams, and they had followed him to Chicago and about 1896, and subsequent thereto, had also engaged in the making of chocolate creams on their own accounts, and had sold such candies under the name of "Allegretti," but without the consent of said Ignatio Allegretti, nor of the Allegretti Chocolate Cream Company; that subsequent to the engaging of Ignatio Allegretti's nephews, or some of them, in the manufacture and sale of chocolate creams, and in the use by them of the name "Allegretti" in that connection, said Allegretti Chocolate Cream Company has used the words "Original Allegretti" on its packages and in its advertising; that it protested against the use of the word "Allegretti" by said competitors, and sought injunctive relief in the Illinois or Federal courts against a number of said competitors, and secured such relief against Allegretti Company, Giacomo Allegretti and others, Frank Allegretti, Inc., and others, and Benedetto Allegretti Chocolate Cream Company and others, on the ground of unfair competition through their use of the name "Allegretti" in connection with the manufacture and sale by them of chocolate creams; that since its organization in 1896 said Allegretti Chocolate Cream Company has been continuously and is now engaged in the business of manufacturing chocolate creams, in the city of Chicago, State of Illinois, and in shipping and selling the same in interstate commerce; that at or about the time that the nephews of Ignatio Allegretti engaged in competition with said Allegretti Chocolate Cream Com-

pany and [began] using the "Allegretti" name, the device of doves holding in their beaks the letters of the word "Allegretti" was adopted by the Allegretti Chocolate Cream Company, but the lettering remained practically the same as before.

PAR. 4. That in 1917, the respondent was chartered in South Dakota and license was obtained from the State of Illinois to do business in that State; that since that time it has been conducting business in the city of Chicago, manufacturing and selling in interstate commerce chocolate creams; that it denominates its product as "United Allegretti Delicious Chocolates," and "Distinctively Delicious Chocolate Creams"; that it has described in its price list circular, its principal mode of advertising, this product as "Our Justly Famous Chocolate Creams"; that respondent has been represented on the Pacific coast by a jobber known as Charles W. Mesick & Company, who has used a letterhead upon which appears the following words: "United Allegretti's Famous Cream Chocolates"; that the boxes in which respondent packs, ships, and distributes its candies are labeled on the outside "United Allegretti's Delicious Chocolates," while on the inside of the box cover is printed the following: "Warning. We warn the public against similarities of name of our United Allegretti's Delicious Chocolates. We are in no way connected with any other concern. The genuine United Allegretti's Delicious Chocolates always bear our name on each package. Signed, United Allegretti Company Inc., 660-662 Grand Avenue, Chicago, Illinois"; that at the bottom of respondent's letter is printed this statement: "United Allegretti Company is distinct from and has no connection with any other concern of a similar name"; that in the labels upon the cartons in which respondent packs, ships, and distributes its candies the word "Allegretti" is made extremely prominent, and the qualifying word, "United," minimized in size; that as part of the device upon its cartons and upon its letterheads respondent has adopted a "spread-eagle"; that while some of respondent's cartons, to wit, pound packages, resemble in color and form the packages of similar size used by the Allegretti Chocolate Cream Company, others do not; that persons in the trade consider the Chocolate Creams of respondent inferior to the chocolate creams of its competitor, the Allegretti Chocolate Cream Company.

PAR. 5. The United Allegretti Company, as originally organized, had a capitalization of \$10,000, consisting of 1,000 shares of \$10 each; \$3,000 has been paid in. The original stockholders and the amount of their holdings respectively were:

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	Shares.
John B. Agosto.....	99
Benedicti Agosto.....	50
Francis B. Allegretti.....	97
John Allegretti.....	1
James S. Sebree.....	1
Joseph E. Allegretti.....	1
Louis Allegretti.....	1

The four Allegrettis named above are brothers and a distinct family from that of Ignazio Allegretti who founded the Allegretti Chocolate Cream Business and claim no relationship to him. All are residents of Chicago. None of them has had any experience or other connection with the manufacture of candies. Francis B. Allegretti is a lawyer and conceived or adopted the plan of organizing the company and received 100 shares of stock for his services and disbursements, of which he gave one share each to his three brothers. Two of them are interested in drug stores and the third, Louis, is a pharmacist. Their only connection with respondent's business has been handling its candies with others, on commission or for the usual profit. James S. Sebree is the agent who obtained the incorporation of the company in South Dakota. John B. Agosto claims to have learned the business of making chocolate creams from Giacomo Allegretti, nephew of Ignazio Allegretti, by whom he and his father were formerly employed. Benedicti Agosto is a brother of John B. Agosto and a dentist. The Agostos are no blood relation of Ignazio Allegretti. Francis B. Allegretti seems to have conceived or adopted the plan of putting himself and his three brothers into a corporation with John B. Agosto, a practical candy maker, so as to give the company a basis for connecting the name of Allegretti with it, although they had no active interest in the business and three of them had but one share each. The Allegrettis named remained the only stockholders of that name up to September, 1920, more than three years after the organization of the company, when Frank Allegretti, nephew of Ignazio Allegretti and a stranger to the other Allegrettis except Francis B. Allegretti, was employed as a candy maker, receiving shares of stock in lieu of wages; his employment has not been continuous by the company. Prior to September, 1920, John B. Agosto had had charge of the candy making of the company.

PAR. 6. The name "United Allegretti" as used by respondent on its containers, trade-marks, labels, letterheads, circulars, and advertising matter is calculated to and reasonably tends to mislead dealers and the public into the belief that the name represents a union of other chocolate cream and candy makers named Allegretti, particu-

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larly the Allegretti Chocolate Cream Company, as composing the respondent corporation and responsible for the chocolate creams manufactured and sold by it.

PAR. 7. The dealers and public know of the existence of the original Allegretti chocolate creams, but confusion exists in their minds between the various candies sold under that name, including those of the Allegretti Chocolate Cream Company and the United Allegretti Company. Chocolate Creams made by the United Allegretti Company are sold in theaters in Chicago as "Allegrettis."

PAR. 8. That the adoption of the name "United Allegretti Company" by respondent, the trade names, brands and marks upon the packages containing its goods, and upon its letterheads and its advertising matter indicate that its purpose was and is to confuse and deceive the public and lead the public to believe that its chocolate creams were and are the same as those of the Allegretti Chocolate Cream Company, its competitor; that especially the use of the word "Allegretti" with the qualifying word "United" was intended to confuse and deceive the public; that the probable and usual tendency of such actions as those of the respondent above detailed is to confuse, deceive, and mislead the purchasing public in the buying of chocolate creams, and make it more difficult for the public to distinguish between the goods of the Allegretti Chocolate Cream Company and of the respondent herein.

CONCLUSIONS.

Under the conditions and circumstances set forth in the foregoing findings of facts, the acts and practices of respondent herein constitute unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of the 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 of the Commission, the answer of the respondent, the testimony and the evidence, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions of Section 5 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,"

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Now, therefore, it is ordered, That the respondent United Alleghetti Company, its officers, directors, members, representatives, agents, and servants cease and desist:

From using as its corporate name, or displaying upon its letter-heads, stationery, circulars or advertising matter and in its trade-marks, trade names, labels or devices, in connection with the sale of its chocolate creams and candies in interstate commerce, or upon cartons, containers or packages in which its chocolate creams and candies are packed, shipped, marketed or distributed in interstate commerce, the words "United Alleghetti"; also from using as its corporate name or so displaying the name "Alleghetti," or other form thereof, alone or in combination with any other word or words, except and unless preceded, in type or lettering of equal size, by the name "Frank" or other first or Christian name or names in full, of one or more stockholders in good faith, of the surname "Alleghetti," and except and unless accompanied by an explanation in substance as follows, so placed in relation to the trade-mark or name, device or label wherever used or displayed and in such size of lettering as to be easily and naturally read in connection therewith:

This company is not in any way connected with the Alleghetti Chocolate Cream Company.

And it is further ordered, That the respondent shall file with the Federal Trade Commission within 60 days from the date of this order its report in writing stating the manner and form in which this order has been conformed to, and shall attach to such report two copies of all circulars, catalogues, stationery, advertisements, trade-marks, trade devices, trade names, or trade labels, distributed or displayed to the public by respondent in connection with the sale of its goods in interstate commerce subsequent to the date of this order.

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