

Complaint.

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IN THE MATTER OF
**CARMINA MUSTARI AND CAV. FRANCESCO BRAGNO,
PARTNERS DOING BUSINESS UNDER THE TRADE
NAME AND STYLE OF BRAMU PACKING COMPANY.**

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

Docket 1235—December 23, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a cooking and salad oil packed in containers which prominently displayed the name "Mazola" and were distinctive in shape, dress, design and appearance; widely advertised and sold said oil and the same became associated in the mind of the purchasing and consuming public with the containers in which packed; and the corporation built up and acquired a large and extensive market therefor; and thereafter a dealer engaged in the sale of a competitive product to retailers whose customers were of foreign extraction and often unable to read the inscriptions upon the containers, .

- (a) Sold his product in containers which prominently displayed the name "Granola" and closely resembled in shape, size, general appearance, color, design and dress, those of said corporation; and
- (b) Suggested to prospective customers that such competitive product, so labeled and packed, might be sold as and for the oil of such corporation, and advised and urged retail dealers so to do;

With the result that a substantial part of the consuming public was misled and deceived into believing such product to be the oil of such corporation and induced to purchase the same in that belief:

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

Mr. T. John Butler for the Commission.

COMPLAINT.

Acting in the public interest 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 charges that Carmina Mustari and Cav. Francesco Bragno, partners doing business under the trade name and style Bramu Packing Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are partners doing business under the trade name and style Bramu Packing Company, with their place

of business in the city of Chicago, State of Illinois, and engaged in the business of selling various food products, including cooking and salad oils, at wholesale to retail dealers located at points in various States of the United States. They cause said products when so sold to be transported from their said place of business in the city of Chicago, Ill., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are, and at all times hereinafter mentioned have been in competition with other individuals, partnerships and corporations engaged in the business of selling food products, including cooking and salad oils, in interstate commerce between and among various States of the United States.

PAR. 2. Among the competitors of respondents referred to in paragraph 1 hereof was at all times hereinafter mentioned and still is the Corn Products Refining Company, a corporation organized under the laws of the State of New Jersey with its general office in the City and State of New York. Prior to the acts and things done by respondents hereinafter set out, said competitor had manufactured and sold and still manufactures and sells in the course of its said interstate business a certain cooking and salad oil named by said competitor, and sold under the name of "Mazola." During the entire time said competitor has made and sold said "Mazola" as hereinbefore set out, said competitor has widely advertised said "Mazola" throughout the United States, and its said product during said time has enjoyed a widespread popularity and demand amongst the consuming public in various States of the United States and in those sections of the United States wherein said competitor and respondents have been and now are in competition, and said "Mazola" had before the doing of the acts and things done by respondent hereinafter set out, become associated and is still associated in the public mind with its said name and with the containers and the dress of the containers in which said product is packed and sold, said containers being dressed with a design printed in yellow and brown and prominently displaying the word "Mazola."

PAR. 3. Since about January, 1923, respondents have sold in the course of their interstate business hereinbefore referred to, a cooking and salad oil named and sold under the name "Granola," and ever since said date have caused the same to be packed, shipped and sold in containers dressed with a design printed in yellow and brown and prominently displaying the said name "Granola," said containers of respondents closely simulating the containers of aforesaid competitor in shape, general appearance, color, design, and dress.

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PAR. 4. Since said date respondents, with the intent and design to profit by and appropriate to themselves aforesaid popularity and demand enjoyed by said "Mazola," have in soliciting orders for and making sales of said Granola to retail dealers, suggested or caused to be suggested to said retail dealers that said Granola might be passed off to the consuming public as and for said Mazola, and in many instances advised and urged said retail dealers, or have caused them to be advised and urged, to so pass off respondents' said product. Respondents have thus placed in the hands of many retail dealers the means of committing a fraud upon the public and have suggested, urged and advised many retail dealers to perpetrate such fraud.

PAR. 5. The above alleged acts and things done by respondents had and still have the capacity and tendency to and do mislead and deceive many of the consuming public into the belief that respondents' said product "Granola" is aforesaid product "Mazola" manufactured by the Corn Products Refining Company, and to cause many of the public to purchase respondents' said product in that belief.

PAR. 6. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission issued and served its complaint upon respondents Carmina Mustari and Cav. Francesco Bragno, partners doing business under the trade name and style of Bramu Packing Company, charging said respondents with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondents did not make any answer herein, but in lieu thereof and in lieu of testimony of witnesses and other evidence respondents have duly executed and filed herein an agreed statement of facts wherein it is stipulated and agreed by the respondents that the Federal Trade Commission may take the facts contained in such agreed statement of facts as the facts in this proceeding, and may accept and consider the same as proved in lieu of testimony or other evidence, and may proceed forthwith to make its findings

as to the facts and conclusions and order disposing of this proceeding and may base the same upon said agreed statement of facts in whole or in part, and the Federal Trade Commission having duly considered the record and being fully advised in the premises, makes this its report and states its findings as to the facts and its conclusions as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents are and for more than two years last past have been partners doing business under the trade name and style, Bramu Packing Company, and have had and now have their place of business in Chicago, Ill., and during all of said time have been and now are engaged in the business of selling various food products, including cooking and salad oils at wholesale to retail dealers engaged in business at many different points in various States of the United States; that respondents have caused their said products, including cooking and salad oils, when so sold, to be transported from their said place of business in Chicago, Ill., into and through other States of the United States, particularly into Colorado and into Wisconsin, and there to be delivered to their said customers in such other States of the United States; that in the course and conduct of their said business respondents for more than two years last past have been and now are in competition with other individuals, partnerships and corporations engaged in the business of selling food products, including cooking and salad oils, in interstate commerce between and among the various States of the United States; that among the cooking and salad oil respondents have sold and caused to be transported in interstate commerce, was a certain cooking and salad oil named by respondents "Granola."

PAR. 2. Among the competitors of respondents in the sale of cooking and salad oil in commerce among the States at all times during the two years last past and now, Corn Products Refining Company, a corporation organized and existing under the laws of the State of New Jersey, having its general offices in New York City, New York, has been and is an active competitor; that for a long time prior to the time when respondents commenced packing their said cooking and salad oil in containers marked and labeled "Granola," said Corn Products Refining Company had been engaged in the manufacture and sale of, and still manufactures and sells, in commerce among the States, a certain cooking and salad oil in containers dressed with a design printed in yellow and brown, prominently

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displaying the name "Mazola"; that for more than two years last past said Corn Products Refining Company has made and sold said Mazola and has widely advertised the said cooking and salad oil named Mazola throughout the United States; that by such advertising and through salesmanship and other efforts said Corn Products Refining Company has built up and has a large and extensive market for its said cooking and salad oil Mazola in the various States of the United States and said Mazola has become and is known to the purchasing and consuming public by the appearance, coloring, design and dress of the containers in which the same has been packed by said Corn Products Refining Company and sold to the purchasing and consuming public; that said Corn Products Refining Company packed its said cooking and salad oil Mazola in containers of the sizes and capacities to hold and contain $\frac{1}{4}$ -gallon, $\frac{1}{2}$ -gallon, 1 gallon and 5 gallons, which said containers were made in uniform and distinctive shape, dress, design and appearance, the design being printed upon the front or face thereof in yellow and brown prominently displaying the name, Mazola; that said design consisted of a yellow background with dark brown perpendicular stripes, with the word "Mazola" inscribed upon the face of said container in large letters, the letters of said word being relatively smaller at the ends of said inscription than the letters in the middle thereof; that the containers in which respondents packed their said cooking and salad oil for sale and transportation in commerce among the States, and in which it was sold and transported in commerce among the States, were and are of the sizes and capacities to contain $\frac{1}{4}$ -gallon, $\frac{1}{2}$ -gallon, 1 gallon and 5 gallons, and were similar in shape to the general appearance, color, design and dress, to the container used by its said competitor, Corn Products Refining Company, to pack its said cooking and salad oil Mazola for sale and transportation in commerce among the States; that the design upon the front or face of the container so used by respondents consisted of a yellow background with dark brown perpendicular stripes, with the word Granola inscribed upon the face of said container in large letters so as prominently to display the said name Granola, the said letters being relatively smaller at the ends of said inscription than the letters in the middle thereof; that the containers of respondents were dressed in a similar dress and were and are similar in design and appearance to the containers used by its said competitor, Corn Products Refining Company, and closely simulated and simulate the containers of its said competitor in shape, general appearance, color, design, and dress.

PAR. 3. That since January, 1923, respondents have sold in commerce among the States their said cooking and salad oil Granola, and have caused the same to be packed, sold, and transported out of the State of Illinois through and into other States of the United States, particularly into the States of Colorado and Wisconsin, which said cooking and salad oil was delivered to respondent's customers in other States of the United States, including Colorado and Wisconsin, packed in respondent's said containers, which said containers closely resembled and resemble and are similar to the containers of its said competitor, Corn Products Refining Company in shape, general appearance, color, design and dress, and are made in corresponding sizes, the containers of respondent being almost identical in such characteristics with those of its said competitor.

PAR. 4. That during the two years last past respondents have solicited orders for their said product packed in said containers, and have made sales of their said product Granola to retail dealers in various States of the United States other than the State of Illinois and have caused the said cooking and salad oil Granola to be packed in said containers, and have caused the same, so packed to be transported out of the State of Illinois into other States of the United States and there delivered to its customers; and in making such sales respondents' salesmen have suggested to their prospective customers that said cooking and salad oil Granola, when packed and labeled in respondents' said containers might be passed off and sold to the consuming public as and for the cooking and salad oil of respondents' said competitor, Corn Products Refining Company, known as Mazola, and respondents' salesmen have advised and urged retail dealers to pass off and sell said cooking and salad oil Granola as and for said cooking and salad oil Mazola; that respondents have sold their said cooking and salad oil Granola in their said containers principally to Italian retail grocers, who in turn have sold the same to Italians, being part of the consuming public, many of whom were unable to read the inscription upon said containers; that a substantial proportion of the purchasers of said cooking and salad oil Granola were deceived into the belief that they were purchasing the cooking and salad oil Mazola; that many customers of such retail dealers asked for said cooking and salad oil known as Mazola, but were by said retail dealers handed Granola packed in respondents' said containers; that the said purchasers paid for such cooking and salad oil in the belief that they had purchased and received Mazola, and did not know that Granola had been so substituted for Mazola.

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PAR. 5. The said containers used by respondents for packing their said cooking and salad oil Granola for sale and transportation out of the State of Illinois through and into other States of the United States in interstate commerce, had the capacity and tendency to mislead and deceive, and has misled and deceived a substantial part of the consuming public into the belief that the respondents' said product Granola was and is Mazola, manufactured by respondents' said competitor, Corn Products Refining Company, and respondents' said customers have caused members of the public to purchase respondents' said product in the belief that it was the product of Corn Products Refining Company, its competitor.

PAR. 6. That the use of said container by respondents in commerce among the States as aforesaid, and the foregoing acts and things done by said respondents, were to the prejudice of the purchasing public and to the prejudice of the consuming public, and to the prejudice of respondents' competitors, particularly Corn Products Refining Company, and constitute and are unfair methods of competition in commerce among the States.

CONCLUSION.

The practices of respondent under the conditions and circumstances described in the foregoing findings were and are unfair methods of competition in commerce and constitute a violation 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" (38 Stat. 719).

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and a stipulation as to the facts with exhibits thereto attached, wherein and whereby it was agreed that said stipulation as to the facts and exhibits attached thereto should be taken by this Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such stipulation and exhibits to enter its report and findings as to the facts and its order disposing of this proceeding, and the Commission having made and filed its finding as to the facts and its conclusion that respondents have violated 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,"

It is ordered, That the respondents, Carmina Mustari and Cav. Francesco Bragno, doing business under the trade name and style, Bramu Packing Company, their representatives, agents, servants and employees do cease and desist:

(1) From placing the word "Granola" upon the containers in which the oil sold and distributed by respondents is marketed.

(2) From selling or offering for sale or otherwise disposing of cooking or salad oil or other oil for food purposes in any container bearing any imitation of the word "Mazola" or so similar to the word "Mazola" in design or sound as to be calculated to confuse the oil product or products of respondents with the oil product "Mazola" of the Corn Products Refining Company.

(3) From selling or offering for sale or otherwise disposing of cooking or salad oil or other oil for food purposes in any container of yellow and brown coloring matter or design of dress in imitation of coloring matter and design of dress of the container of the oil product "Mazola" sold and distributed by the Corn Products Refining Company.

(4) From inducing and enabling or procuring retail dealers to substitute cooking or salad oil or other oil for food purposes sold and distributed by respondents for the oil product "Mazola" sold and distributed by the Corn Products Refining Company and from doing any other act or thing directly or indirectly to cause the substitution of respondents' product or products for the product "Mazola" of the Corn Products Refining Company.

It is further ordered, That respondents, Carmina Mustari and Cav. Francesco Bragno, partners, doing business under the trade name and style of Bramu Packing Company, shall, within sixty days after the service upon them, or either of 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 they have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF
IDEAL BABY SHOE CO.

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

Docket 1146—December 31, 1924.

SYLLABUS.

Where an individual long engaged in the manufacture and sale of shoes exclusively for infants and young children under the trade-mark "Ideal Baby Shoe" and the trade name Ideal Baby Shoe Co.; sold said shoes under the brand "Ideal"; featured said mark and name upon the containers thereof and upon her stationery and other trade literature and in extensive advertisements; and developed a business which extended into every State and included thousands of retail dealers; and thereafter a competitor engaged in the manufacture and sale of shoes closely resembling those made by said individual, but inferior in grade and quality and sold at a lower price, adopted and featured the corporate name "Ideal Baby Shoe Co." on its letterheads, billheads, catalogues, and other trade literature and upon the containers of its shoes; with the result that the trade and public was misled and deceived in reference to the identity of the two organizations and caused to purchase such competitor's products as and for those of the older concern, to the injury of said individual:

Held, That such appropriation and use of the trade name of a competitor, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Samuel H. Holland of Chicago, Ill., for respondent.

COMPLAINT.

Acting in the public interest 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 charges that Ideal Baby Shoe Co., 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 said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Chicago, in said State. It is, and for about a year last past, has been engaged in the manufacture of shoes for young infants and children and the sale thereof to wholesale and retail dealers located at points in the various States of the United