

IN THE MATTER OF
L. FATATO, INCORPORATED

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

Docket 2029. Complaint, Apr. 28, 1932—Order, Sept. 21, 1932

Consent order requiring respondent, its agents, etc., in connection with the sale in interstate commerce of tomato paste not made in or imported from Italy or other foreign country or made from Italian or other foreign grown tomatoes, to cease and desist from using the word "Posillipo" on brands, labels, containers, or packages, or in advertisements or otherwise; or from using any other word, phrase, picture, etc., importing or suggesting such manufacture, importation or composition for the paste in question; subject to the permitted use of respondent's present wording, designs, etc. (minus word "Posillipo" for paste made from the "Plum-shaped tomatoes" grown in the United States or abroad, as in the order set forth and qualified as to adequate explanatory matter.

Mr. E. J. Hornibrook for the Commission.

Parsons & Constable, of New York City, for respondent.

COMPLAINT

Acting in the public interest and 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 L. Fatato, Inc., a corporation, 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. The respondent L. Fatato, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the city of Brooklyn in said State. It is now and for several years last past has been engaged in the wholesale grocery business in said city of Brooklyn. Among other things, it sells a canned tomato paste under the brand "Posillipo Tomato Paste." This paste resembles thick catsup and is made from peeled and crushed tomatoes and is used in making sauces for spaghetti and other edible dishes. This paste is sold to retail customers of respondent and many of such retail customers who buy said tomato paste are in business outside of the State of New York and when orders are received therefor from said retail customers such orders are filled by respondent by

shipping the said paste from the said city of New York to the respective places of business of said retail customers.

PAR. 2. In the course and conduct of its said business respondent is in competition with other individuals, copartnerships and corporations engaged in the sale and transportation between and among various States of the United States of tomato paste used for the same purposes as is respondent's.

PAR. 3. Posilipo Tomato Paste is manufactured for respondent from tomatoes grown in this country only. Part of this product is and has been made from the globular or round variety of tomato, and a part of it is and has been made from the plum-shaped Italian tomato technically called Vignette, which is grown in the State of California. The last-named variety of tomato has been grown in this country for about four years last past. The plum-shaped Vignette tomato is a native product of Italy and is now and has been for many years grown there, chiefly on the land bordering the Bay of Naples and near the city of Naples, and near the geographical location on the Bay of Naples, which is known as Posilipo. The paste which is and has been made from this plum-shaped Italian-grown tomato has an established reputation for being especially adapted as a sauce for spaghetti, particularly among Italians in this country and abroad.

PAR. 4. In aid of the sale of its said product, either when made of the globular shaped tomato or when made of the plum-shaped (vignette) tomato as aforesaid, respondent causes the cans or containers thereof to be labeled as follows:

With pictorial representation of a bunch of Italian or plum-shaped (vignette) tomatoes, together with a view of the Bay of Naples, with a view of Mt. Vesuvius in the background and a man and woman in the foreground dressed in Italian costume, the man eating spaghetti, and the said label has printed thereon, the words:

POSILIPO TOMATO PASTE

NAPLES STYLE

CONTENTS 6 OZ.

and the Italian words—

CONCENTRATA

INEL VUOTO

and

SALSA DI POMIDORO

TIPO NAPOLI

This above described label is upon the cans or containers of respondent's said tomato paste when it reaches the consuming public.

Order

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PAR. 5. There are among the said competitors of respondent those who sell a tomato paste, used for the same purposes as respondent's and made from the plum-shaped Italian (vignette) tomato, grown upon the lands described above, as bordering upon the Bay of Naples and imported into this country; there is one of respondent's said last described competitors who, prior to the placing upon the market of respondent's said product, labeled and sold and still labels and sells its product as Posillipo Brand Tomato Paste; there are still others of such competitors who manufacture and sell said paste made wholly of plum-shaped (vignette) tomatoes grown in the State of California.

PAR. 6. The aforesaid use by respondent of the label described in paragraph 4 hereof has the tendency and capacity to deceive the purchasing public into the belief that all of its said tomato paste is made from the plum-shaped (vignette) tomato grown in Italy, near the Bay of Naples, when in truth and in fact much of said product, so labeled and sold by respondent, is made from the common globular shaped tomato, and all of said product is made from tomatoes grown in the United States; and has the tendency and capacity to unfairly divert trade from said competitors to the respondent, and otherwise injure them.

PAR. 7. The above alleged acts and practices are all to the prejudice of the public and of respondent's said competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of said act of Congress.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission on the complaint of the Commission and the answer of the respondent, and after testimony had been taken in behalf of the Commission and the respondent thereupon having been granted by the Commission permission to withdraw its answer filed herein on the 27th day of May, 1932, and respondent having so withdrawn its answer and filed in lieu thereof an answer consenting that the Commission may make, enter, and serve upon it an order to cease and desist, and the Commission being fully advised in the premises,

It is ordered, That respondent, L. Fatato, Inc., a corporation, its agents, employees, and representatives, in connection with the sale, or offering for sale in interstate commerce, of tomato paste, cease and desist from using the word "Posilipo" on brands, labels, containers, packages, or in advertisements of the same, or otherwise, and from using thereon or therein any other word, phrase, picture,

or pictures, pictorial design, vignette, or device importing, implying, or suggesting that said tomato paste is manufactured in, or imported from, Italy, or any other foreign country, or manufactured from tomatoes grown in Italy or other foreign country, when such is not the fact; except that the wording, phrases, and designs of respondent's present label (minus the word "Posilipo") may be used as a brand or label, or in advertisements, of a tomato paste made from the "plum-shaped tomatoes" grown in the United States, or a foreign country, provided apt and adequate words or phrases are used in conjunction therewith and in close proximity thereto, clearly indicating that such product is made from tomatoes grown in the United States, or grown in such foreign country and manufactured in the United States, or such foreign country, as the case may be.

It is further ordered, That respondent shall, within 6 months 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.

Complaint

17 F.T.C.

IN THE MATTER OF

FRANK J. CLARK, AN INDIVIDUAL TRADING UNDER
THE NAME AND STYLE SYNCRO MOTORS COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5.
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2032. Complaint, May 10, 1932—Order, Sept. 21, 1932*

Consent order requiring respondent, his agents, etc., in connection with sale in interstate commerce of an automobile device variously described as "Syncro", "Syncro system ignition", and "High-frequency spark transformer", to cease and desist from—

Representing that proper installation and use thereof on an automobile, (1) reduces gasoline consumption per mile from 25 percent to 33 percent, (2) prolongs life of crank case oil and eliminates necessity for change oftener than 2,500 miles, (3) eliminates carbon formation, (4) prevents spark plug fouling, (5) enables quicker starting, (6) gives complete combustion, (7) saves gas and oil wonderfully, (8) is indispensable, (9) applies wonderful new form of electricity comparable with radio, (10) is miniature welding flame, and (11) creates an "ionized field" about the plug points exerting a chemical influence on gas; and, in connection with sale to prospective purchasers or agents, for resale, to cease and desist from—

Representing falsely that he has made any special selection of such "agents" by reason of their personal qualifications or otherwise, or has put on an advertising campaign to promote the sales of such agents, or has inquiries from dealers or other prospective customers awaiting agent's attention.

Mr. PGad B. Morehouse 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 Frank J. Clark, an individual, trading under the name and style Syncro Motors Co., has been and now is using unfair methods of competition in interstate commerce in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Frank J. Clark, under the name and style of Syncro Motors Co., at Battle Creek, Mich., for more than two years last past has been and now is engaged in the manufacture of a patented automobile accessory or device, variously known and described as "Syncro", "Syncro system ignition", and "High-frequency spark transformer". This device consists of a lacquered metal cylinder about $2\frac{5}{8}$ inches in diameter and $5\frac{1}{4}$ inches in length which readily may be suspended from the radiator tierod of any