

Complaint

IN THE MATTER OF

MORRIS HELLER, INDIVIDUALLY, AND TRADING AS
VENICE IMPORTING CO.

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

Docket 2074. Complaint, Oct. 25, 1932—Decision, Jan. 25, 1933

Where olive oil from Italy had come to be known among a substantial number of users and consumers and merchants and dealers as superior in quality and flavor to all other, and that from the world olive oil center, Lucca, had similarly become known for its fine quality and delicate flavor; and thereafter an individual engaged in sale and distribution of said product to retail grocers, advertised same as "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella Brand Choice Pure Olive Oil", notwithstanding fact it had no Italian origin; with capacity and tendency to mislead and deceive substantial numbers of dealers and consuming public into purchasing said oil as and for one imported from Italy:

Held, That such practices, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Mr. Charles F. Murphy, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged as Venice Importing Co., in the sale and distribution of olive oil to retail grocers in States other than New York, and with principal office and place of business in Brooklyn, with advertising falsely or misleadingly as to source or origin of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent sells olive oil having no Italian origin, under the designations "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella Brand Choice Pure Olive Oil"; with the capacity and tendency to mislead and deceive substantial numbers of retail grocer dealers and the consuming public into buying such oil as and for olive oil imported from Italy, preferred for its superior quality and flavor and especially in the case of that from the great olive oil center—Lucca—to other oils, and with the further tendency to and effect of prejudicing and injuring the public, unfairly diverting trade from and otherwise prejudicing and injuring competitors, and operating as a restraint upon and a detriment to

the freedom of legitimate and fair competition in the business of marketing olive oil.

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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on October 25, 1932, issued its complaint against Morris Heller, individually, and trading as Venice Importing Co., hereinafter referred to as respondent, and on October 26, 1932, caused the said complaint to be served upon respondent as required by law, in which complaint it was charged that respondent was using unfair methods of competition in interstate commerce in violation of the provisions of said act. By notice contained in said complaint respondent was notified and required to file with the Commission an answer to said complaint on or before the second day of December, A.D. 1932 (the same being more than 30 days after the service of said complaint) unless said time be extended by order of the Commission and in said notice respondent was further notified of the provisions of the Commission's rules of practice with respect to answer and failure to answer, said provision being set forth in *haec verba* in said notice and providing in part as follows (Rule III, sub. div. 3) :

Failure of the respondent to appear or to file answer within the time above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused his appearance to be entered in this proceeding nor has he at any time made or filed answer to said complaint. He has at no time requested that the time within which he might file answer be extended nor has the Commission granted any such extension of time.

Thereupon this proceeding came on for final hearing and the Federal Trade Commission acting pursuant to said act of Congress and its aforesaid rules of practice having duly considered the record and being fully advised in the premises makes this its report in writing stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Morris Heller, is an individual and trades under the name Venice Importing Co. Respondent maintains his principal office and place of business in the city of Brooklyn,

State of New York. He is and for more than two years last past has been engaged as hereinafter described in the business of selling and distributing olive oil to retail grocery dealers located in States other than the State of New York. In consummating such sales and in distributing said merchandise, respondent causes the olive oil so sold to be transported and delivered from his place of business in the city of Brooklyn, State of New York, through and into various other States of the United States to the respective purchasers thereof at their several points of location. At all times herein mentioned, there have been and are many individuals, partnerships and corporations engaged in the sale and distribution of olive oil to retail grocery dealers in commerce in, between and among the several States of the United States. Respondent has been and still is conducting his said business of selling and distributing in interstate commerce olive oil in direct, active competition with said individuals, partnerships, and corporations.

PAR. 2. In the sale and distribution of his olive oil to retail grocery dealers as hereinabove described, respondent has caused and still causes large and substantial quantities of his said olive oil to be advertised, offered for sale, sold and distributed under the designations, descriptions, and representations as follows: "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella Brand Choice Pure Olive Oil."

The designations, descriptions, or representations imported from Lucca, Italy, importato de Lucca Italia, mean to the retail grocery dealers and the consuming public that the olive oil so designated, described, and represented was imported from Lucca, Italy. The word "Reginella" being of Italian origin means to the retail grocery dealers and to the consuming public that the olive oil so designated, described, and represented is from Italy.

PAR. 3. The said olive oil designated, described, and represented and marketed by respondent as imported from Lucca, Italy, importato de Lucca Italia, Reginella brand choice pure olive oil, was not imported from Lucca, Italy, and had no Italian origin.

PAR. 4. Olive oil imported from Italy has come to be known among a substantial number of the users and consumers of olive oil and among merchants and dealers in olive oil as being of a superior quality and flavor to all other olive oil. Lucca, Italy, is one of the largest olive oil centers in the world and the olive oil produced there and imported from there has become known among a substantial number of the users and consumers of olive oil and among merchants and dealers in olive oil for its fine quality and delicate flavor.

Order

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PAR. 5. Respondent's use of the words and phrases "Imported from Lucca, Italy", "Importato de Lucca Italia", "Reginella brand choice pure olive oil", in designating, describing and representing and offering for sale and selling his said olive oil as described in paragraph 2 hereof is false, misleading, and deceptive and has the capacity and tendency to mislead and deceive substantial numbers of retail grocery dealers and of the consuming public into purchasing said olive oil in the erroneous belief that said olive oil was imported from Italy.

CONCLUSION

The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in interstate 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the record 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 Morris Heller, individually and trading as Venice Importing Co., his agents, representatives, and employees in connection with the sale or offering for sale of olive oil in interstate commerce do cease and desist from using the following words, phrases, statements, or representations or any of them or any words, phrases, statements, or representations of like effect:

(a) Imported from Lucca, Italy;

(b) Importato de Lucca Italia;

unless or until respondent's olive oil is in fact imported from Lucca, Italy.

It is further ordered, That the respondent Morris Heller, individually and trading as Venice Importing Co. shall, within 60 days after the service upon him of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
THE ARMAND COMPANY, INC., ET AL.

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

Docket 1329. Complaint, June 27, 1925—Decision, Jan. 27, 1933

Where a corporation engaged in manufacture, preparation, and extensive advertisement of toilet articles and cosmetics, including face powder, cold cream, and other merchandise of similar description, and in the sale of its said largely demanded products, under its name and mark on packages and containers in which offered the public, through wholesale, and retail, druggists, chiefly, and under a sales plan in accordance with which it included with vendees' orders one fourth dozen units for each dozen purchased from it, and wholesale dealers purchasing its said products from others did not have the benefit of such additional units; in pursuance of a policy directed to the maintenance of the prices fixed by it for the resale of its products at wholesale and at retail, through the medium of specified discounts from uniform retail price lists enclosed with each product,

- (a) Made said policy generally known through order forms and trade papers, and otherwise, and its purpose to decline or discontinue dealings with those who refused to conform to said policy and prices, and did so decline or discontinue pending the giving of solicited oral, or written, assurances, or the signing or making of so-called "declarations of 'intention'", suggested by it, in accordance with which many dealers undertook both to respect its said prices and disavow any express or implied agreements so to do, and through the agreements thus in fact brought about, notwithstanding its studied disavowals, led to initiation or resumption of relations, discontinuance of price cutting and maintenance of its prices by dealers, including wholesale and retail drug concerns, and the many retail stores, and mail order department of a very large mail-order house; and
- (b) Entered into agreements with wholesale dealer customers, pursuant to which they obligated themselves not to resell, and did not resell, its products to price cutting retail dealers including mail order houses and department stores, and took steps to cut off price cutters' sources of supply;

With the result that competition in the distribution and sale of its aforesaid products among wholesale and between retail dealers was suppressed, said dealers were constrained to sell such products at the wholesale and retail dealer prices fixed by it as aforesaid, and were prevented from selling the same at such lower prices as they might desire, and ultimate purchasers were deprived of the advantage in price which they would have otherwise obtained from the natural and unobstructed flow of commerce in the products involved under methods of free competition:

Held, That such practices, under the conditions and circumstances set forth, were to the injury and prejudice of wholesale and retail dealers and the public, and constituted unfair methods of competition.