

Syllabus

IN THE MATTER OF

CERTIFIED PRODUCTS COMPANY, INC., AND JEROME
C. ARDCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2500. Complaint, July 18, 1935—Order, Nov. 5, 1935*

Consent order requiring respondents, their several officers, etc., in connection with the sale or offer for sale in interstate commerce of brushes, dusters, brooms, mops, and other furnishings and equipment of like nature, forthwith to cease and desist from—

- (a) Making or publishing any false or fraudulent representations for the purpose of enticing any person from the employ of any competitor into the employ of the respondents or either of them;
- (b) Making or publishing any false or fraudulent statements disparaging the financial condition or business policy of any competitor; or
- (c) Maliciously enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their business.

Before *Mr. John W. Norwood*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Beddow, Ray & Jones, of Birmingham, Ala., for respondents.

COMPLAINT

Count 1

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Certified Products Company, Inc., a corporation, and Jerome C. Ard, a natural person, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Certified Products Company, Inc., is, and at all times hereinafter mentioned was, a corporation organized in the year 1932, and existing under and by virtue of the laws of the State of Alabama, having its principal office and place of business located in the city of Birmingham, Ala. Respondent Jerome C. Ard, is a natural person, a resident of the city of Birmingham, State of Alabama. Respondent Jerome C. Ard is also the president and general manager of respondent, Certified Products Company, Inc.

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Respondent, Certified Products Company, Inc., has been, since its organization in 1932, and now is, under the direction, supervision, and management of respondent, Jerome C. Ard, in his official capacity as related above, engaged in the sale of brushes, dusters, brooms, mops and other furnishings and equipment of like nature, kind and design.

Such sales are and have been made to purchasers and users thereof located in the various States of the United States of America and in the District of Columbia through the medium of personal or individual solicitation of prospective users and purchasers in interviews had for that purpose, whereupon orders for various items of said merchandise are procured, and pursuant to such orders shipment is made by respondent, Certified Products Company, Inc., from its place of business in the city of Birmingham, State of Alabama, and various warehouses maintained by it for the purpose of storing its merchandise, to users and purchasers located in the various States of the United States and in the District of Columbia, and there now is and has been, since the year 1932, a constant current of trade and commerce by the respondent, Certified Products Company, Inc., in the merchandise above listed and designated between and among the various States of the United States and the District of Columbia. In the course and conduct of its business respondent, Certified Products Company, Inc., now is and has been, since the year 1932, in substantial competition with other corporations, firms, persons, and copartnerships engaged in the sale of like articles between and among the various States of the United States and the District of Columbia.

PAR. 2. There are in the various States of the United States other corporations, persons, firms, and copartnerships engaged in the business of selling brushes, dusters, brooms, mops, and other furnishings and equipment of like nature, kind and design to users and purchasers thereof located throughout the various States of the United States, and pursuant to such sales said persons, firms, corporations, and copartnerships make shipments from their various respective places of business to such users and purchasers located in the various States of the United States other than the State of the location of such persons, firms, corporations, and copartnerships so selling.

PAR. 3. Among such competitor corporations, persons, firms, and copartnerships is a certain corporation styled The Fuller Brush Company, a corporation existing under and by virtue of the laws of the State of Connecticut and having its principal offices and place of business in Hartford, in the State of Connecticut.

PAR. 4. Since the organization of the respondent, Certified Products Company, Inc., acting by and through its duly authorized officials, agents, and employees and particularly through the person of Jerome C. Ard, its president and general manager, and respondent Jerome C. Ard, in his personal and individual capacity, have continuously enticed and attempted to entice, for the purpose of employing the same, employees of The Fuller Brush Company, a corporation, as aforesaid, and have endeavored to appropriate and have appropriated values created by the competitor, The Fuller Brush Company, a corporation by enticing and attempting to entice employees of The Fuller Brush Company, a corporation, to violate the contractual relations of such employees with the competitor, The Fuller Brush Company, a corporation, by enticing and endeavoring to entice such employees from the employ of the said The Fuller Brush Company, a corporation, to enter into the employ of the respondent, Certified Products Company, Inc.; the value so appropriated and attempted to be appropriated being the training, experience, and ability of such employees as salesmen in their particular field of competition.

PAR. 5. The enticing and the attempts to entice, as related in the paragraph last above, have been made throughout the various States of the United States and the District of Columbia by the named respondents and each of them.

PAR. 6. The acts and practices of the respondents, Certified Products Company, Inc., and Jerome C. Ard, are prejudicial and injurious to respondents' competitor, The Fuller Brush Company, which said competitor is engaged in identically the same business as the respondents, and such acts and practices occasion substantial injury to substantial competition in interstate commerce.

The above acts and practices done and caused to be done by the respondents, are and were, each and all, to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent 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.

Count 2

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission, having reason to believe that Certified Products Company, Inc., a corpora-

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tion, and Jerome C. Ard, a natural person, hereinafter referred to as respondents, have been, and now are, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Certified Products Company, Inc., is, and at all times hereinafter mentioned was, a corporation organized in the year 1932, and existing under and by virtue of the laws of the State of Alabama, having its principal office and place of business located in the city of Birmingham, Ala. Respondent, Jerome C. Ard, is a natural person, a resident of the city of Birmingham, State of Alabama. Respondent Jerome C. Ard is also the president and general manager of respondent, Certified Products Company, Inc. Respondent, Certified Products Company, Inc., has been, since its organization in 1932, and now is, under the direction, supervision, and management of respondent, Jerome C. Ard, in his official capacity as related above, engaged in the sale of brushes, dusters, brooms, mops, and other furnishings and equipment of like nature, kind, and design.

Such sales are and have been made to purchasers and users thereof located in the various States of the United States of America and in the District of Columbia through the medium of personal or individual solicitation of prospective users and purchasers in interviews had for that purpose, whereupon orders for various items of said merchandise are procured, and pursuant to such orders shipment is made by respondent, Certified Products Company, Inc., from its place of business in the city of Birmingham, State of Alabama, and various warehouses maintained by it for the purpose of storing its merchandise, to users and purchasers located in the various States of the United States and in the District of Columbia, and there now is and has been, since the year 1932, a constant current of trade and commerce by the respondent, Certified Products Company, Inc., in the merchandise above listed and designated between and among the various States of the United States and the District of Columbia. In the course and conduct of its business respondent, Certified Products Company, Inc., now is and has been, since the year 1932, in substantial competition with other corporations, firms, persons, and copartnerships engaged in the sale of like articles between and among the various States of the United States and the District of Columbia.

PAR. 2. There are in the various States of the United States other corporations, persons, firms, and copartnerships engaged in the busi-

ness of selling brushes, dusters, brooms, mops, and other furnishings and equipment of like nature, kind, and design to users and purchasers thereof located throughout the various States of the United States, and pursuant to such sales said persons, firms, corporations, and copartnerships make shipments from their various respective places of business to such users and purchasers located in the various States of the United States other than the State of the location of such persons, firms, corporations, and copartnerships so selling.

PAR. 3. Among such competitor corporations, persons, firms, and copartnerships is a certain corporation styled The Fuller Brush Company, a corporation existing under and by virtue of the laws of the State of Connecticut and having its principal office and place of business in Hartford, in the State of Connecticut.

PAR. 4. Respondent, Certified Products Company, Inc., acting by and through its duly authorized officials, agents, and employees, and particularly through the person of Jerome C. Ard, its president and general manager, and respondent, Jerome C. Ard, in his personal and individual capacity, have since the organization of the respondent corporation in 1932 continuously and persistently, among the personnel of the respondent corporation, disparaged the financial status, management, and business policies of the competitor, The Fuller Brush Company, by uttering, issuing, and making to the personnel of the respondent corporation statements of a nature derogatory to the financial status, management, and business policies of the said competitor, The Fuller Brush Company, to the hurt and injury of the same, the effect and result of such statements being to entice and in enticing employees of the competitor, The Fuller Brush Company, to sever the contractual relationship between such employees and the competitor, The Fuller Brush Company, such statements being persuasive of the personnel of the respondent corporation to transmit the same to the employees of the competitor, The Fuller Brush Company, thereby appropriating and endeavoring to appropriate to respondent corporation's own separate use and benefit values created by the competitor, The Fuller Brush Company, to wit, the experience, training, and knowledge of such employees.

PAR. 5. The enticing and the attempts to entice, as related in the paragraph last above, have been made throughout the various States of the United States and the District of Columbia by the named respondents and each of them.

PAR. 6. The acts and practices of the respondents, Certified Products Company, Inc., and Jerome C. Ard, are prejudicial and injurious to respondents' competitor, The Fuller Brush Company,

which said competitor is engaged in identically the same business as the respondents, and such acts and practices occasion substantial injury to substantial competition in interstate commerce.

The above acts and practices done and caused to be done by the respondents are and were, each and all, to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent 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.

ORDER TO CEASE AND DESIST

The respondents herein having filed their answer to the complaint in this proceeding and having subsequently filed with this Commission their motion that they be permitted to withdraw such answer and that they be permitted to file in lieu thereof a substitute answer, a draft of such proposed substitute answer being annexed to said motion and being made part thereof; and the Commission, having duly considered said motion, issued an order permitting the withdrawal of the original answer filed by the respondents and permitted the filing of the proposed substitute answer in lieu of the original.

And the said respondents in and by their said substitute answer having waived hearing on the charges set forth in the complaint in this proceeding and having stated in said substitute answer that they do not desire to contest the said proceeding, and having consented in their said substitute answer that the Commission, without a hearing, without evidence, and without findings as to the facts or other intervening procedure might make, enter, issue, and serve upon the said respondents, and each of them, an order to cease and desist from the methods of competition charged in the complaint, and the Commission being fully advised in the premises—

It is hereby ordered, That the respondents, Certified Products Company, Inc., a corporation, and Jerome C. Ard, or either of them, and their several officers, agents, servants, and employees, in connection with the sale or offering for sale in interstate commerce of brushes, dusters, brooms, mops, and other furnishings and equipment of like nature, kind, and design, shall forthwith cease and desist:

(1) From making or publishing any false or fraudulent representations for the purpose of enticing any person from the employ of any competitor into the employ of the respondents or either of them.

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(2) From making or publishing any false or fraudulent statements disparaging the financial condition or business or business policy of any competitor.

(3) From maliciously enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their business.

It is hereby further ordered, That the respondents shall, within 60 days from the day of the date of the service upon them of this order, file with this Commission their report in writing stating the manner and form in which they have complied with this order.

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IN THE MATTER OF
**MORRIS HELLER, INDIVIDUALLY, AND TRADING AS
VENICE IMPORTING COMPANY**

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

Docket 2074. Complaint, July 5, 1935¹—Order, Nov. 8, 1935

Consent order requiring respondent, individually, and doing business as aforesaid, his officers, etc., in connection with the offer for sale and sale in interstate commerce and in the District of Columbia, of olive oil, compound vegetable oil and related products, to cease and desist from—

- (a) Using the word "Lucca" or the name of any other city or of any district or province of Italy as a brand or label or in any other way so as to import or have the capacity or tendency to confuse or mislead purchasers into the belief that said product was produced in and imported from the Lucca district of the Province of Tuscany, or from any other city or district or province of Italy, unless in fact so produced in and imported from said city, etc.;
- (b) Using the word or words "Italy", "Italian Product", "Italian oil", or "Imported from Italy", or depiction of the Italian flag or coat-of-arms, or ruler or member of the ruling house, either alone or with words "Imported Product", or other words describing the same or using said word or words or depictions or representations as a brand or label for olive oil so as to import or have the tendency or capacity to confuse or mislead purchasers into the belief that said product was composed wholly of oils produced in and imported from Italy unless in fact so produced and imported;
- (c) Using the word "Ollo" to designate or describe a product composed in part of olive oil and in part of other oils without using in immediate conjunction therewith, in clear type or lettering of equal size, other word or words accurately and truthfully describing the true content thereof; or
- (d) Using in connection with such a product depictions of olive branches or word "Romanini" or other word or words indicating or suggesting Italian origin unless qualified and explained as hereinabove set forth.

Mr. Marshall Morgan for the Commission.

Lamb & Lerch, Finkler & Finkler and Parsons & Constable, of New York City, for respondent.

COMPLAINT¹

Whereas, The Federal Trade Commission did heretofore, to wit, on October 25, 1932, issue its complaint herein, charging and alleg-

¹ Supplemental and amended.