

Complaint

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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.

ing that respondent herein is and has been guilty of 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", approved September 26, 1914; and

Whereas, This Commission having reason to believe that respondent herein has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, other than and in addition to those in relation to which the Commission issued its complaint as aforesaid, and it appearing to said Commission that a further proceeding by it in respect thereof would be in the public interest:

Now, therefore, Acting in the public interest, pursuant to the provisions of the Act of September 26, 1914, aforesaid, the Federal Trade Commission charges that Morris Heller, individually, and trading as "Venice Importing Company", 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. Respondent, Morris Heller, an individual trading as "Venice Importing Company", at 66 North Sixth Street, Brooklyn, N. Y., and hereinafter referred to as respondent, is, and for more than two years last past has been engaged, as hereinafter described, in the business of selling and distributing olive oil and vegetable compound or salad oil to retail grocery dealers in various States of the United States, more particularly the States of New Jersey, Pennsylvania, and Connecticut. In consummating such sales and in distributing such products, respondent causes the olive oil and vegetable compound oil so sold to be transported and delivered from his place of business in New York City, State of New York, through and into various other States of the United States, to the respective purchasers thereof at their respective points of location. In the course and conduct of his business, the respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of olive oil and vegetable compound oil and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. 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 quality and flavor superior to all others. Lucca, in the territorial division of

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Tuscany, Italy, is one of the great olive oil centers of the world, and the olive oil produced there and imported therefrom has become noted among users and consumers of olive oil and among merchants and dealers in olive oil for its superior quality and delicate flavor. Lucca olive oil is considered the best and finest of all olive oil and is preferred by the trade and consumers alike, especially consumers of Italian blood or origin. Practically all olive oil coming from Lucca, Italy, is packed in cans there, the amount exported in bulk from Lucca being inconsequential. The amount of olive oil produced in the Lucca district from olives grown there is not sufficient for Italian consumption. It is much cheaper to import olive oil in bulk. Large quantities of olive oil are imported in bulk from Spain into the United States. Spanish olive oil is substantially cheaper than genuine Italian olive oil, and the oil obtained by blending Spanish oil in substantial proportions with Italian oil is neither as expensive nor as desirable as pure Italian olive oil produced from olives grown in Italy, consumers preferring Italian olive oil. The Italian word "Olio" indicates and is accepted as meaning, particularly to persons of Italian blood and origin, the juice or liquid which is extracted from the olive. The Italian words "Da" and "Dall", as used by respondent in labeling his cans, mean, and are intended to mean, "from", and the Italian word "Marca" means "brand".

PAR. 3. In the sale and distribution of olive oil and vegetable compound oil to retail grocery dealers, as hereinabove described, respondent has caused and still causes large and substantial quantities of his said products to be labeled, branded, offered for sale, sold, and distributed under designations, descriptions, and representations indicating and intended to indicate Italian origin.

On the front of one of respondent's cans used by him in the sale of olive oil in interstate commerce as aforesaid, appears the following label, employed in connection with a design of olive branches surrounding a likeness of Princess Jolanda, daughter of King Victor Emmanuel III of Italy:

Pure Olive Oil Virgin Registered Trade Mark Reginella Brand Imported From
Lucca Italy

On the reverse side of the can this same label is printed in Italian. This label, with its design containing the representation of Princess Jolanda, appears in both English and Italian on an olive oil container issued and used by respondent at a later date, except that the bottom line of the earlier label, which read "Imported From Lucca, Italy" has been changed to read "Imported Pure Olive Oil."

On another can appears a registered trade mark containing a pictorial representation of a girl standing between olive branches, and the following label printed in both English and Italian:

Giovinezza Brand Virgin Extra Pure Olive Oil Imported from Lucca Italy

On the side of the can is printed in English and Italian the following:

Giovinezza Brand Olive Oil Is An Italian Product * * *

On the face of another can, above and below a picture of two maidens, appears the following label in both English and Italian:

Abbondanza Brand Pure Virgin Olive Oil Imported from Lucca Italy

Another can on its face, and above and below a picture of a maiden and an olive tree, carries the following label in both English and Italian:

Imported Virgin Olive Oil Venus Brand Imported from Lucca Italy

On another can, in connection with the picture of the smiling face of a girl, appears the following label, printed in both English and Italian:

Italian Product Olive Oil Muriel Brand Imported from Lucca Italy

On another can, showing a picture of a small boy perched on a wall, appears the following label:

Idalo Brand Pure Virgin Olive Oil Imported from Lucca Italy

Another can showing a picture of a maiden holding a basket and gathering olives, bears the following label in English and Italian:

Pure Olive Oil Imported from Lucca Italy

Another can carrying a pictorial design of a sprig of olives and the face of a woman wearing a mantilla bears the following label in English and Italian:

La Palina Brand Pure Olive Oil Imported from Lucca Italy

Another can bears the following label, in both English and Italian, used in connection with the design of an olive branch:

Italian Product Lucca Extra Virgin Extra I Olive Oil Tuscany Brand Imported from Italy

The words "Lucca" and "Tuscany" appear on this label in large black type. The word "Brand" is printed under the word "Tuscany" in letters so small as to be almost illegible except on close inspection.

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A can using a similar design of an olive branch is labeled in both English and Italian:

Italian Product Lucca Extra Virgin Extra I Olive Oil Kanares Brand Imported from Italy

Another can has a picture of the face of a little girl encircled by a wreath of olives and bears the following label in both English and Italian:

Italian Product Extra Virgin Olive Oil Estelle Brand Imported from Lucca Italy

Another can employing the design of a little girl's face encircled by a wreath of olives, is labeled in English with Italian equivalent as follows:

Italian Product Extra Virgin Olive Oil Lorraine Brand Imported from Lucca Italy

On another can, using as a design a picture of the head and shoulders of a woman together with a wreath of olives, appears the following label, printed in both English and Italian:

Italian Product Extra Virgin Olive Oil Stella Mia Brand Imported from Lucca Italy

Near the bottom of the design of the woman's head on this can appears a representation in red, white, and green of the coat-of-arms of Italy.

Still another can used by respondent as a container for olive oil sold by him in interstate commerce contains a design or pictorial representation of an olive branch and of two small children on a bed of olive branches and roses, and the following label printed in both English and Italian:

Italian Pure Olive Oil La Salute Brand Pure Olive Oil Imported from Genoa Italy

In addition to selling olive oil, respondent also sells and has sold in interstate commerce vegetable and salad oils composed of cotton seed, corn or sesame oil, blended with a small amount of olive oil. In connection with the sale by him in interstate commerce of such blended vegetable and salad oils, respondent employs various designs and labels.

On one container for salad oil appears the following printed in Italian only,

Ollo Da Lucca

in heavy, conspicuous type.

On one side of the face of this can, under the words "Da Lucca", in small inconspicuous type, in English, appears the word "Brand".

Below this in English, in type much smaller and less conspicuous than that used in connection with the words "Da Lucca", appears the following:

Pure Olive Oil Twenty Per Cent and High Grade Vegetable Oil Eighty Per Cent
With Vegetable Flavor and Color

On the reverse side of this can, above the words "Da Lucca", appears the Italian word "Marca" in small type. Below the words "Da Lucca" appears the following in small Italian script:

Olivo puro d' oliva venti per cento con la migliore qualita d' olia vegetabile
ottanta per cento con aroma e colore

On the two narrow sides of this can, in large heavy type easily read at a distance, appear the words:

Olivo Da Lucca

meaning in Italian:

Olive oil from Lucca

On another container used by respondent in the sale of vegetable oil appears a design employing the outspread wings of a bird in full flight, the coat-of-arms of Italy representing the head of the bird, and below this a floral design consisting largely of olive blossoms. In connection with these designs appears the following label:

Olivo Sopraffino Balbo Brand

the first three words being printed in heavy type.

Below this language appears the following:

Consisting eighty per cent vegetable oil twenty per cent virgin Olive Oil
the words "Olive Oil" being printed in larger, heavier type than the rest of the quotation.

On another container used for the sale of blended salad oil appears the following label, printed in large, heavy type:

OLIO ROMANINI

and immediately below this in small inconspicuous type the words "Brand". Near the bottom of the can appears the following, printed in relatively small inconspicuous type with the exception that the words "Olive oil" are in heavier, larger type:

This can contains a delicious blended salad oil comprised of eighty per cent
choice vegetable oil and twenty per cent pure imported virgin Olive Oil

The above language in similar type and arrangement appears on the other side of the can in Italian.

On two sides of another can used in the sale of salad oil appears the following label:

Olivo Sopraffino Da Sorrento Brand

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the words "Olio" and "Da Sorrento" being printed in large heavy type. Beneath this label appears the following in much smaller type, in both English and Italian:

This can contains a delicious blended salad oil, comprised of eighty per cent choice vegetable oil and twenty per cent pure imported virgin Olive Oil

the words "olive oil" again being printed in larger type.

Labeling identical with that employed in the "Da Sorrento" brand is used by respondent on still another container for salad oil with the exception that the words "Da Luccia" appear in heavy type under the words "Olio Sopraffino" in place of the words "Da Sorrento".

The words, designations, descriptions, and representations "Lucca", "Tuscany", "Imported From Lucca Italy", "Italian Product", "Imported From Italy", "Imported From Genoa Italy", "Olio", "Reginella", "Giovinezza", "Abbondanza", "Idalo", "La Palina", "Lorraine", "Stella Mia", "La Salute", "Da Luccia", "Marca", "Sopraffino", "Balbo", "Romanini", and "Da Sorrento", and pictorial representations of Italian scenes and of the flag or coat-of-arms of Italy as used and employed by respondent in labeling products sold by him in interstate commerce are of Italian meaning, implication, and suggestion and indicate to retail grocery dealers and to the consuming public, especially to persons of Italian blood or origin, and are and were intended to indicate and mean, that the olive oil and vegetable compound or salad oil products thus variously designated, described, and represented, were imported respectively from Lucca, Genoa, or from Italy.

PAR. 4. The truth and the facts are that the said olive oil designated, described, marked, and represented by respondent with the words "Lucca", "Genoa", "Tuscany", "Da Lucca", and "Imported From Lucca Italy", was not imported from the regions, districts, or places stated, nor wholly from Italy, and that sold under labels showing representations of the flag or coat-of-arms of Italy and of Italian scenes and containing words of Italian suggestion such as "Olio", "Reginella", "Giovinezza", "Abbondanza", "Idalo", "La Palina", "Lorraine", "Stella Mia" and "La Salute" were not imported wholly from Italy, the so-called Italian olive oil handled and sold by respondent herein consisting of Italian oil blended by him with at least twenty-five percent of a cheaper oil imported from Spain in bulk, the resulting product being thereafter sold by respondent as Italian oil; and the vegetable compound or salad oils bearing labels employing in large type the Italian word "Olio", meaning olive oil, and other words of Italian meaning or suggestion, such as "Da Luccia", "Balbo", "Romanini" and "Da Sorrento", do not contain any Italian olive oil, nor even Spanish oil, except in small quantity, but are and

have been composed largely of vegetable oils, mainly cottonseed or corn, produced in the United States, and of sesame oil.

PAR. 5. Respondent in further connection with his business of selling and distributing olive oil in interstate commerce, has resorted to and adopted, and still resorts to and adopts, the practice of mixing Spanish and Italian oil in one large tank from which said tank numerous cans or small containers are thereafter filled, variously labeled, marked or branded so as to convey the impression upon the purchaser of the same that they contain different types, grades, and qualities of olive oil. Likewise respondent resorts to and has resorted to the practice of employing various labels or brands on compound or salad oils, indicating different brands or types, all drawn from the same tank. Respondents labels, brands, marks, and representations, embracing some 30 or 40 brand names, including those on his vegetable compound or salad oil products, are not used in a manner to indicate origin of the product in the respondent herein, nor to identify or distinguish commercial source, nor do they indicate type, grade, or quality in connection or association with origin or commercial source.

PAR. 6. Said respondent in the further conduct of his said business of selling and distributing olive oil and vegetable or salad oil in interstate commerce has failed or refused to advertise or otherwise to identify and associate many of the above-referred to products with his business, thereby placing in the hands of the retail grocer or other dealers in various States an instrument enabling and permitting the retailer more easily to substitute respondent's goods for those of another.

PAR. 7. Respondent's use of the words, designations, descriptions, and representations, "Lucca", "Genoa", "Tuscany", "Da Lucca", "Imported From Lucca Italy", and "Imported From Italy", pictorial representations of Italian scenes and of the flag or coat-of-arms of Italy, and of further words of Italian suggestion such as "Reginella", "Giovinezza", "Abbondanza", "Idalo", "La Palina", "Lorraine", "Stella Mia", and "La Salute" in designating, describing, and representing, offering for sale and selling his said olive oil as described in paragraphs 3 and 4 hereof, is false, misleading, and deceptive and has the capacity and tendency to mislead and deceive a substantial number of retail grocery dealers and of the consuming public into purchasing said olive oil in the erroneous belief that it was imported entirely from Lucca, Genoa, or from Italy when such is not the fact; and respondent's use of the Italian words "Olio", "Da Sorrento", "Balbo", "Romanini", and "Da Luccia" in designating, describing, and representing, offering for sale and selling a vegetable compound or salad oil containing a small percentage of Spanish olive oil, as de-

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scribed in paragraphs 3 and 4 hereof is likewise 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 vegetable compound or salad oil in the belief that it was and is composed wholly or largely of Italian, olive oil or olive oil when such is not the fact.

PAR. 8. The use by respondent of the false, misleading, and deceptive representations, statements, and assertions hereinabove set forth, including those in paragraphs 5 and 6 herein, constitute practices and methods of competition which tend to and do, (a) confuse, prejudice, and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, (c) operate as a restraint upon and a detriment to free and legitimate competition in the business of marketing olive oil, and (d) place in the hands of retail grocers and dealers an instrument which permits them more easily to substitute the goods of respondent for those of another.

PAR. 9. Said false, misleading, and deceptive acts, practices, and methods of respondent, under the circumstances and conditions hereinabove alleged are unlawful, and constitute unfair methods of competition 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 coming on for final hearing by the Federal Trade Commission on the record, including the supplemental and amended complaint of the Commission issued under 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", and respondent's answer thereto in which respondent waives hearing on the charges set forth in said complaint, refrains from contesting the proceeding and, pursuant to the provisions of the Commission's Rules of Practice with respect to answers, consents that the Commission may make, enter, and serve upon respondent an order to cease and desist from unfair methods of competition set forth in the said supplemental and amended complaint herein, and the Commission being advised in the premises—

It is now ordered, That the respondent, Morris Heller, individually, and trading as Venice Importing Company, his officers, agents, servants, and employees, in connection with the offering for sale and sale in interstate commerce, and in the District of Columbia, of olive oil, compound vegetable oil and related products, do cease and desist from:

(1) The use of the word "Lucca" alone or in connection or conjunction with any other word or words, and from the use of 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 imply or to have the capacity or tendency to confuse, mislead, or deceive purchasers into believing that said product was produced in and imported either from the Lucca district of the Province of Tuscany, or from any other city or any district or province of Italy, unless and until said statements are true in fact and said olive oil was produced in and imported respectively from the city, district, or province of Italy stated or indicated.

(2) The use of the word "Italy" or the words "Italian Product", "Italian Oil", or "Imported From Italy", alone or in connection or conjunction with any other word or words, and from the use of any pictorial representation of the Italian flag or of the coat-of-arms of Italy, or of any ruler or member of the ruling house of Italy, alone or in conjunction with the words "Imported Product", or any other word or words describing the said product, and from the use of the said word or words or pictorial representation or representations as a brand or label for olive oil so as to import or imply, or having the tendency or capacity to confuse, mislead, or deceive purchasers into believing that said product is composed wholly of oils produced in and imported from Italy, unless and until such statements and representations are true in fact and said olive oil was produced in and imported from Italy.

(3) The use of the word "olio" to designate or describe an oil product composed in part of olive oil and in part of other oils unless and until there appears in immediate connection and conjunction with the word "olio" and in clear and legible type or lettering in size equal to that of the word "olio", other word or words which accurately and truthfully describe and designate the true content of the product; and from the use, in connection with an oil composed in part of olive oil and in part of other oils, of pictorial representations of olive branches, or the word "Romanini" or other word or words indicating or suggesting Italian origin, unless and until there appears in connection and conjunction therewith and in clearly legible and conspicuous type a word or words accurately and truthfully describing and designating the true content of the product.

It is further ordered, That the respondent within 60 days from and after the date of service upon him of this order, shall file with the Commission a report, or reports, in writing, setting forth in detail the manner and form in which he is complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

SAMUEL KRONOVET, AS AN INDIVIDUAL, AND TRADING
AS WESTBURY KNITTING MILLSCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2532. Complaint, Aug. 30, 1935—Order, Nov. 11, 1935*

Consent order requiring respondent individual, his agents, etc., in connection with the sale or offer in commerce between the States and in the District of Columbia of knitted garments, to cease and desist from—

- (a) Using the words "Knitting" and "Mills" as a part of his trade name in advertisements or in any way, until and unless he actually owns, operates and controls the factory or factories wherein said knitted garments sold and distributed by him are actually knitted and made; or
- (b) Representing by advertisements, by general business stationery or in any manner or means whatever, that he is the knitter or manufacturer of the knitted garments sold by him, subject to the qualification hereinabove set forth.

Mr. John W. Hilldrop for the Commission.

COMPLAINT

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 having reason to believe that Samuel Kronovet, as an individual and trading as Westbury Knitting Mills, has been, or is, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The said respondent, Samuel Kronovet, is an individual trading under the name and style of Westbury Knitting Mills, with his principal place of business located in the city of New York, State of New York. Respondent is now, and for more than one year last past has been engaged in the sale of knitted garments to the trade between and among various States of the United States; causing said products, when sold, to be shipped from his place of business in the State of New York to purchasers thereof located in the various States of the United States, other than the State of New York; and in the course and conduct of his business the respondent, Samuel Kronovet, was at all times herein referred to in competition with other individuals, firms, partnerships, and corporations likewise en-