

Complaint

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IN THE MATTER OF
ARTE PRODUCTS COMPANY, INC.

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

Docket 2288. Complaint, June 11, 1935¹—Order, Dec. 9, 1935

Consent order requiring respondent, its officers, etc., in connection with the sale in interstate commerce of olive oil, compound vegetable oil, and related products, to cease and desist from—

- (a) Using words "Lucca" and "San Remo", alone or with any other word or words, and name of any other city, district or province of Italy, as a brand or label for olive oil, or in any other way so as to import or imply or to have capacity or tendency to confuse or mislead purchasers into believing that said product was produced in and imported from either Lucca, San Remo, or any other city or district or province of Italy, unless and until said statements are true;
- (b) Using word or words "Italy", "Italian Product", "Italian Oil", or "Imported from Italy", alone or with any other word or words, and using any pictorial representation of Italian flag or the coat-of-arms, or of any ruler or member of ruling house of Italy, alone or with words "Imported Product", or "Prodotto Importato", or other words describing said product, and using said words or pictorial representations as a brand or label for olive oil so as to import or imply or to have tendency or capacity to confuse or mislead purchasers into believing that said product is composed wholly of oils produced in and imported from Italy, unless and until such representations are true;
- (c) Using word "olio" to designate an oil product composed in part of olive oil and in part of other oils unless and until there appears in immediate conjunction therewith, and in clear and legible type in size equal to that of word "olio", other words which accurately describe the true content of the product; or
- (d) Using, in connection with oil composed in part of olive oil and in part of other oils, pictorial representations of olive branches, or words "Rima", "Latosca", or other words suggesting Italian origin, unless and until there appears, in conjunction therewith and in clearly legible and conspicuous type, words accurately describing the true content of the product.

Mr. Marshall Morgan for the Commission.

Mr. Morris Shapiro, of New York City, for respondent.

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Whereas the Federal Trade Commission did heretofore, to wit, on January 29, 1935, issue its complaint herein, charging and alleging that respondent herein is and has been guilty of unfair methods of competition in interstate commerce within the intent and meaning of

¹ Supplemental and amended.

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 Arte Products Company, Inc., a corporation, 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, Arte Products Company, Inc., is a corporation organized and existing under the laws of the State of New York, its principal place of business being at 18 Leonard Street, New York City. 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 oil to retail grocery dealers located in various States of the United States, and more particularly in the States of New Jersey 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 its 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 its business, Arte Products Company, Inc., the respondent herein, 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 in 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 Tuscany, Italy, is one of the great olive oil centers of the world, and the olive oil produced there and imported therefrom has become

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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 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.

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 its 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 one of respondent's cans appears the following label:

ARTE BRAND
SUPERFINE LUCCA
OLIVE OIL
IMPORTED FROM ITALY
TRADE MARK REGISTERED

On the other side of the can, beneath a design in gold, red and white, typifying the coat-of-arms of Italy, appear the words:

ITALIAN PRODUCT

On another container, beneath a design embodying in colors of red, white and green, the flag and coat-of-arms of Italy, appears the following label:

SPLENDOR
BRAND
PURE OLIVE OIL, SUPERFINE
IMPORTED FROM SAN REMO (ITALY)

On the label on the reverse side of this container appears the word "Italy", in a design of olive branches.

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A third can bears a label reading:

O SOLE MIO
VIRGIN EXTRA SUBLIME
OLIVE OIL
IMPORTED FROM
LUCCA—ITALY

The last above wording is set forth in conjunction with an olive wreath design. On the reverse side of the container appears a label giving a representation of a medal of award, and under this an inscription reading as follows:

O Sole Mio Italian Olive Oil is produced with selected ripe olives from the finest regions available. That is why the quality is uniformly of the best at all times.

Another container bears a label reading:

O SOLE MIO
PURE
OLIVE OIL
IMPORTED PRODUCT

On the top of this container is stamped in raised letters the following:

IMPORTED
FROM
ITALY

Another container has a label reading on its face:

SPLENDOR
BRAND
PURE OLIVE OIL
SUPERFINE
IMPORTED PRODUCTS

Above the wording on this can is a conspicuous design of the flag of Italy in its colors of green, white and red, together with a further and smaller design in red, white and blue, representing the Italian coat-of-arms. Near the bottom of the container is a large pictorial representation in colors, circular in shape, of an Italian scene.

Still another container has a label on its face reading:

ARTE
BRAND
SUPERFINE PURE
OLIVE OIL
IMPORTED PRODUCT

Beneath such wording appears a pictorial representation of a maiden holding an olive branch aloft in one hand and in the other a platter of

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olives. On one side of the container appear the words, "IMPORTED PRODUCT", and above these, a reproduction in colors of the Italian coat-of-arms; on the other side, the words in Italian, "PRODOTTO IMPORTATO", with a pictorial representation in colors of the flag of Italy.

A can of vegetable compound oil, labeled near the bottom of the can, in English, as containing 20 per cent of olive oil with 80 per cent of other vegetable oils, bears the following brand in Italian, printed in large letters:

"OLIO
RIMA"

These Italian words are worked into a design representing sprigs of the olive in bloom, with bees sucking honey from the blossoms.

The container for a product labeled as consisting of 15 per cent olive oil and 85 per cent cottonseed and peanut oil, bears on its face in large letters, as a brand, the Italian words, "LA TOSCA", together with a large, conspicuous design representing olive branches in bloom.

The designations, descriptions and representations, "SUPERFINE LUCCA OLIVE OIL", "IMPORTED FROM ITALY", "ITALIAN PRODUCT", "IMPORTED FROM SAN REMO, ITALY", "O SOLE MIO", "VIRGIN EXTRA SUBLIME OLIVE OIL IMPORTED FROM LUCCA—ITALY", "O SOLE MIO ITALIAN OIL", "OLIO RIMA" and "LA TOSCA", and the pictorial representations of Italian scenes, of the flag and coat-of-arms of Italy, and the word "Italy" in a design of olive branches, as used and employed by respondent in labelling products sold by it 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 oil products thus variously designated, described and represented, were imported, respectively, from Lucca or San Remo, Italy, or from Italy.

PAR. 4. The truth and the facts are that the said olive oil, designated, described, marked and represented by respondent as being imported from Lucca, Italy, from San Remo, Italy, or from Italy, as being a product of Italy, and that sold under labels showing representations of the Italian flag, the coat-of-arms of Italy and of Italian scenes, were not imported from the regions, districts or places stated, nor wholly from Italy, and the so-called Italian oil handled and sold by respondent herein consists of Italian oil blended with and containing at least 30 per cent of a cheaper oil imported in bulk from Spain, the resulting product being thereafter labeled and sold as Italian oil; and the vegetable compound oils bearing labels employing

Italian words in large type with pictures of olives in bloom, do not contain Italian olive oil, but are and have been composed largely of domestic vegetable oils produced in the United States, with a small quantity of Spanish olive oil added.

PAR. 5. Respondent, in further connection with its 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 oils 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 to the purchaser that the same contain different types, grades and qualities of olive oil. Respondent's labels, brands, marks and representations including those on its vegetable compound products, are not used in a manner to indicate origin of the products in the respondent, 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 its business of selling and distributing olive oil and vegetable compound oil in interstate commerce, has failed and refused to advertise or otherwise to identify and associate such products with respondent's business; thereby placing in the hands of the retail grocer or other dealer, 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 and phrases, "SUPERFINE LUCCA OLIVE OIL", "IMPORTED FROM ITALY", "ITALIAN PRODUCT", "IMPORTED FROM SAN REMO ITALY", "O SOLE MIO", "VIRGIN EXTRA SUBLIME OLIVE OIL IMPORTED FROM LUCCA, ITALY", and of the Italian flag or coat-of-arms of Italy, of the word "Italy" with a design of olive branches and of Italian scenes, in designating, describing and representing, offering for sale and selling its 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 substantial numbers of retail grocery dealers and of the consuming public into purchasing olive oil in the erroneous belief that said olive oil was imported entirely from Lucca and San Remo, Italy, or from Italy; and respondent's use of the Italian words "Olio", "Rima", and "La Tosca", in pictorial designs showing the olive in bloom, in designating, describing and representing, offering for sale and selling of vegetable compound oil containing a small percentage of Spanish olive oil, as described 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

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and of the consuming public into purchasing said vegetable compound oil, in the belief that it was and is composed wholly or largely of Italian olive oil or of olive oil.

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

The respondent herein having filed its answers respectively to the original complaint and to the supplemental and amended complaint in this proceeding, and having subsequently filed with this Commission its motion that it be permitted to withdraw its said answers and that it be permitted to file in lieu thereof, as a substituted answer, the draft of a proposed substituted answer annexed to the said motion; and the Commission having duly considered the said motion—

It is hereby ordered, That the said motion be and the same is hereby granted; that the said answers be and the same are hereby withdrawn; and that the said proposed substituted answer be, and the same is hereby filed in lieu of the said answers so withdrawn.

And the said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaints in this proceeding, and having stated in its said substituted answer that it does not contest the said proceeding, and having consented in its said substituted answer that the Commission, without a trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon the said respondent, an order to cease and desist from the methods of competition charged in the complaints; and the Commission being fully advised in the premises:

It is hereby further ordered, That the respondent, Arte Products Company, Inc., its 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 words "Lucca" and "San Remo", 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 for olive oil, 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 from either the Lucca district of the province of Tuscany, or the San Remo district of the province of Liguria, Italy, or from any other city or 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 "Prodotto Importato", or any other word or words describing 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 words "Rima", "Latosca", 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.

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It is further ordered, That the respondent within 90 days from and after the date of service upon it of this order, shall file with the Commission a report, or reports, in writing, setting forth in detail the manner and form in which it is complying with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

VASCO PRODUCTS, INC. AND WILLIAM M. LEA AND
KITTIE M. LEA, DOING BUSINESS AS LEA'S TONIC
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2139. Complaint, Dec. 21, 1933—Decision, Dec. 10, 1935*

Where a corporation engaged in the sale of a proprietary hair preparation, and two individuals, partners, owners of the secret formula thereof; in advertising and describing said preparation and its nature and results in newspapers, periodicals, circulars and pamphlets, and through purported testimonials from users—

- (a) Designated and described the same as a tonic, and represented that, through its application and use on the scalp or hair, bodily functions were stimulated so that pigmentation was produced and color imparted to the hair, facts being that there is nothing known to medical science which, taken internally or applied externally, will stimulate the chromatophores or melanoblasts that cause hair pigmentation in the human system, or cause them to function so that pigment will be supplied to the hair and give it color, and said preparation, the ingredients of which had long been well known to physicians and dermatologists, was not a tonic and had no tonic effect upon any part of the system, and its functioning in imparting color to the hair was that of a dye or dying agent; and
- (b) Represented that use of said preparation would cure dandruff and make the hair grow abundantly and stop its falling out, facts being there was no internal or external treatment known to medical science which would achieve those results;

With effect of misleading and deceiving dealers in and users of proprietary articles or preparations for the hair and scalp into believing such representations to be true, and into purchasing said hair preparation instead of products of competitors, and with capacity and tendency so to mislead and deceive, and with result of thereby diverting trade from competitors to themselves:

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

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

Mr. Edward E. Reardon for the Commission.

Mr. George E. Edelin, of Washington, D. C. and *Mr. Edwin R. Dickenson*, of Tampa, Fla., for respondents.

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