

Complaint

IN THE MATTER OF

DAVID LEVINE, LEWIS LEVINE AND BENJAMIN LEVINE,
TRADING AS COLOMBO EXTRACT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2349. Complaint, Mar. 29, 1935—Decision, Jan. 23, 1936*

Where a firm, engaged in the manufacture and sale of flavoring extracts—

- (a) Represented in and by advertisements, labels, stationery, and in other ways, that they imported and exported the extracts made and sold by them, and that said products were imported into the United States from foreign countries, facts being said various statements were false and said products were made in New York City of ingredients purchased by them in said city, and in various other cities of the United States;
- (b) Set forth on the labels on the bottles containing their said extracts the Italian words "Soli rappresentanti in America per la preparazione dei famosi genuini estratti", notwithstanding the fact that they were not "sole representatives in America for the preparations of such famous genuine extracts", made in Italy or any other foreign country and neither exported nor imported, as aforesaid, any of the goods dealt in by them;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers into the belief that their said flavoring extracts were imported, and that they were importers thereof and thereby to induce the purchasing public, some of whom prefer imported extracts over the domestic products, and some of whom prefer to buy such products from the importers and exporters thereof, to buy its said extracts from them in such belief; and

With result of diverting trade to them from competitors, among whom there are those who make such products of domestic ingredients without representing the same as imported or themselves as importers or exporters, and those who import their extracts from various foreign countries and export the same from the United States and truthfully represent themselves as importers and exporters and their said products as imported from various foreign countries; to the substantial injury of substantial competition in interstate commerce:

Held, That such acts and practices were all to the injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. Edward L. Smith and *Mr. John W. Hilldrop* for the Commission.

Mr. Milton H. Goldstricker, of New York City, for respondents.

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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 Fed-

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eral Trade Commission having reason to believe that David Levine, Lewis Levine and Benjamin Levine, doing business as Colombo Extract Company, a partnership, hereinafter referred to as respondents, have been and are 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. Respondents, David Levine, Lewis Levine, and Benjamin Levine, are a partnership doing business under the trade name, Colombo Extract Company, with their principal office and place of business in New York City in said State. They are now and for more than two years last past have been engaged in the manufacture of flavoring extracts in New York City aforesaid and in the sale thereof between and among the various States of the United States. They now cause and for more than two years last past have caused such flavoring extracts, when sold by them, to be transported from their place of business in New York City aforesaid to the purchasers thereof located in the State of New York and to other purchasers located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondents in said flavoring extracts. In the course and conduct of their business said respondents are now and have been for more than two years last past in substantial competition in commerce between and among various States of the United States, with corporations, individuals, firms, and other partnerships engaged in the sale of flavoring extracts between and among the various States of the United States.

PAR. 2. In the course and conduct of their business respondents, in soliciting the sale of their flavoring extracts and in selling the same between and among the various States of the United States, have represented for more than two years last past and still represent in and by their advertisements, labels, stationery, and in other ways that they import and export the flavoring extracts which they manufacture and sell and that such extracts sold by the respondents are imported into the United States from foreign countries, when in truth and in fact said respondents are neither importers nor exporters of flavoring extracts and when in truth and in fact the flavoring extracts made, offered for sale and sold by them are manufactured by them in the city of New York aforesaid from ingredients purchased by the said respondents in the said city of New York and various other cities of the United States.

PAR. 3. There are among the competitors of the respondents and have been for more than two years last past, manufacturers of

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flavoring extracts in the United States who manufacture such extracts from ingredients purchased in the United States but who do not represent that the extracts sold by them are imported or that such competitors are importers or exporters; there are also among such competitors persons, firms, partnerships, and corporations who import such extracts from various foreign countries and export the same from the United States and who truthfully represent themselves to be importers and exporters and that the flavoring extracts sold and offered for sale by them are imported from various foreign countries.

PAR. 4. There is a portion of the purchasing public in the United States who prefer imported flavoring extracts over and above flavoring extracts not imported from foreign countries. There is also a portion of the purchasing public who prefer to buy flavoring extracts from importers and exporters thereof. The acts and practices of the respondents as described in paragraph 2 hereof, have the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the belief that the flavoring extracts sold and offered for sale by the respondents are imported into the United States from foreign countries, that the respondents are in fact importers of such flavoring extracts and exporters thereof and thereby to induce the purchasing public to purchase flavoring extracts from respondents in such belief. Thereby trade is diverted to respondents from their competitors who do not misrepresent the origin of the flavoring extracts dealt in by them and thereby substantial injury is done by the respondents to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of the respondents are all to the injury and prejudice of the public and competitors of respondents 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.

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 the 29th day of March 1935, issued and served its complaint in this proceeding upon respondents, David Levine, Lewis Levine, and Benjamin Levine, trading as Colombo Extract Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by John W. Hildrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Milton H. Goldstricker, attorney for the respondents; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in defense thereto (oral arguments being waived); and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, David Levine, Lewis Levine, and Benjamin Levine, are a partnership doing business under the trade name, Colombo Extract Company, with their principal office and place of business in New York City in said State. They are now and for more than two years last past have been engaged in the manufacture of flavoring extracts in New York City aforesaid and in the sale thereof between and among the various States of the United States. They now cause and for more than two years last past have caused such flavoring extracts, when sold by them, to be transported from their place of business in New York City aforesaid to the purchasers thereof located in the State of New York and to other purchasers located in various other States of the United States, and there is now and has been for more than two years last past a constant current of trade and commerce by respondents in said flavoring extracts. In the course and conduct of their business said respondents are now and have been for more than two years last past in substantial competition in commerce between and among various States of the United States, with corporations, individuals, firms and other partnerships engaged in the sale of flavoring extracts between and among the various States of the United States.

PAR. 2. In the course and conduct of their business respondents, in soliciting the sale of their flavoring extracts and in selling the same between and among the various States of the United States, have represented for more than two years last past and still represent in and by their advertisements, labels, stationery and in other ways that they import and export the flavoring extracts which they

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manufacture and sell and that such extracts sold by the respondents are imported into the United States from foreign countries, when in truth and in fact said respondents are neither importers nor exporters of flavoring extracts and when in truth and in fact the flavoring extracts made, offered for sale and sold by them are manufactured by them in the city of New York aforesaid from ingredients purchased by the said respondents in the said city of New York and in various other cities of the United States. On the bottles containing the flavoring extracts of respondents, which respondents sell and distribute in interstate commerce, labels are fixed containing the following words in Italian, to wit: "Soli rappresentanti in America per la preparazione dei famosi genuini estratti", the English translation of which is as follows: "Sole representative in America of the famous preparations of this extract." On the letterheads, statements and invoices of respondents there appear the words "Importers and Exporters." The foregoing advertisements, statements and representations by respondents are false and misleading. In truth and in fact, respondents are not the sole representative in America of any famous or other preparation or preparations made in Italy or any foreign country, and neither export nor import any of the goods, wares or merchandise by them advertised, sold and distributed in interstate commerce.

PAR. 3. There are among the competitors of the respondents and have been for more than two years last past, manufacturers of flavoring extracts in the United States who manufacture such extracts from ingredients purchased in the United States but who do not represent that the extracts sold by them are imported or that such competitors are importers or exporters; there are also among such competitors persons, firms and corporations who import such extracts from various foreign countries and export the same from the United States and who truthfully represent themselves to be importers and exporters and that the flavoring extracts sold and offered for sale by them are imported from various foreign countries.

PAR. 4. There is a portion of the purchasing public in the United States who prefer imported flavoring extracts over and above flavoring extracts not imported from foreign countries. There is also a portion of the purchasing public who prefer to buy flavoring extracts from importers and exporters thereof. The acts and practices of the respondents as described in paragraph 2 hereof, have the tendency and capacity to mislead and deceive purchasers and prospective purchasers into the belief that the flavoring extracts sold and offered for sale by the respondents are imported into the United States from foreign countries, that the respondents are in fact importers of such

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flavoring extracts and exporters thereof, and thereby to induce the purchasing public to purchase flavoring extracts from respondents in such beliefs. Thereby trade is diverted to respondents from their competitors who do not misrepresent the origin of the flavoring extracts dealt in by them and thereby substantial injury is done by the respondents to substantial competition in interstate commerce.

CONCLUSION .

The above alleged acts and practices of the respondents are all to the injury and prejudice of the public and competitors of respondents 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and evidence taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, briefs filed herein by John W. Hilldrop, counsel for the Commission, and Milton H. Goldstricker, attorney for the respondents (oral argument being waived), and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 ordered, That the respondents, David Levine, Lewis Levine, and Benjamin Levine, trading as Colombo Extract Company, their agents, servants and employees, in the advertising, sale, and distribution in interstate commerce of their commodity, to wit, flavoring extracts, cease and desist from:

(1) Advertising and representing by labels on bottles and other containers, letterheads, invoices, in newspapers, journals, periodicals, through radio broadcasts, or by any other method, means or device:

(a) That they import or export the flavoring extracts which they manufacture and sell in interstate commerce as aforesaid; that such extracts or the ingredients composing the same are by respondents imported into the United States from foreign countries; that respondents are either importers or exporters; or that respondents are the sole representatives in America for their said commodity.

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(b) That any of the aforesaid flavoring extracts or other merchandise which respondent manufactures, advertises, sells and distributes in interstate commerce, or any of the ingredients composing same, are manufactured in any foreign country or imported into the United States until and unless the said products are so manufactured or imported.

(2) Using on the labels placed on their bottles or other containers in which respondents' flavoring extracts are shipped and distributed in interstate commerce the words, "Soli representanti in America per la preparazione dei famosie genuini estratti", or words in any language which state, import or imply that respondents are the sole representatives in America of the famous preparations of the extract contained, labelled and advertised in said bottles or containers.

And it is hereby further ordered, That the said respondents, David Levine, Lewis Levine, and Benjamin Levine, trading as Colombo Extract Company, shall within 60 days after the service upon them of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which they shall have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF
ARCO SHIRT CORPORATION

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

Docket 2591. Complaint, Oct. 21, 1935—Order, Jan. 23, 1936

Consent order requiring respondent corporation, its officers, etc., in connection with the sale or offer for sale in interstate commerce of shirts, to cease and desist from use of the word "Manufacturers" in its advertisements, letterheads, invoices, business cards, catalogs, bulletins or any other advertising matter distributed in interstate commerce, and from use of the word "Manufacturer" in any way which may have the tendency or capacity to confuse, mislead or deceive purchasers or prospective purchasers into the belief that it owns, operates and controls a factory or factories, wherein its products are made, when such is not the fact.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. John Darsey for the Commission.

Mr. Daniel J. Levowitz, of New York City, for respondent.

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 the Arco Shirt Corporation, a corporation, has been and 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business at 486 Broadway, in the city of New York, State of New York. It is engaged in the sale and distribution of men's shirts, and causes said garments when sold to be transported from its said principal place of business in the State of New York into and through other States of the United States to said vendees at their respective places of business.

In the course and conduct of its said business respondent is in competition with other corporations, individuals, partnerships, and firms engaged in the sale of similar garments between and among various States of the United States,