

Complaint

IN THE MATTER OF

CHICAGO MACARONI COMPANY, TRADING AS A. MORICI
AND G. MATALONE COMPANY

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

Docket 2843. Complaint, June 16, 1936—Decision, Aug. 12, 1936

Where a corporate wholesale grocer engaged, among other things, in preparing, packing, selling, and distributing a table oil composed of fifteen percent olive oil from Spain, and eighty-five percent cottonseed oil, or corn oil—

Labeled containers thereof with name "Italy Brand Table Oil", and set forth thereon Italian and English statements, and words "Packed by A. Morici & G. Matalone Co.", etc., and also pictorial representations of Italian medals or coins depicting persons showing Italian characteristics, and decorative floral sprays similar to those found on other Italian products, notwithstanding fact that no part of said product was produced in or imported from Italy, and same was not packed by the fictitious concern indicated through use of name "A Morici & G. Matalone Co.", but by aforesaid corporation, the ordinary American name of which included one of the great American cities;

With tendency and capacity to deceive and mislead purchasers and prospective purchasers thereof into belief that said product's olive oil ingredient was produced in or imported from Italy, and that said A. Morici and G. Matalone Company was an Italian or Italian-American concern engaged in importing olive oil from Italy, and distributors and purchasing public into erroneous belief that said statements and representations were true, and with effect of inducing members of public to purchase said product on account of such erroneous belief, and of unfairly diverting trade to it from competitors, among whom there are those who, as manufacturers, blenders, sellers, and distributors of olive oil, table oil and other like and similar products in interstate commerce, truthfully advertise and represent the merit, origin, and packing of their respective products, and do not advertise and represent the same or any part thereof as produced in or imported from Italy when such is not the case; to the substantial injury of competition in commerce:

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

Mr. Joseph C. Fehr for the Commission.

Mr. John A. Sbarbaro, of Chicago, Ill., 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

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Federal Trade Commission, having reason to believe that Chicago Macaroni Company, a corporation, trading as A. Morici and G. Matalone Company, hereinafter referred to as respondent, 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. Respondent, Chicago Macaroni Company, trading as A. Morici and G. Matalone Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business at 2148 Canalport Avenue, in the city of Chicago, in the State of Illinois. Respondent, for more than one year last past has been, and still is, engaged in the wholesale grocery business, and among other things prepares, packs, sells, and distributes a table oil which it labels "Italy Brand Table Oil." This preparation is a blend of olive oil and other vegetable oils intended for use in salads, cooking, baking, and other kitchen uses. When said product is sold, respondent transports or causes the same to be transported from its place of business in the State of Illinois to the purchasers thereof located in States of the United States other than the State of Illinois, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade in said product sold and distributed by respondent, in commerce between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent, in selling its table oil and for the purpose of creating a demand upon the part of the consuming public for said product, now causes, and for more than one year last past has caused, the containers in which said product is packed, sold and distributed to the consuming public, to be marked, branded and designated with certain descriptive advertising matter. By said means respondent makes and has made to the general public many unfair, false and misleading statements concerning its said "table oil."

On the front of such containers appear the following printed representations:

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ITALY BRAND

TABLE OIL

Un Purissimo composto di quidici per cento d'olio di oliva e ottanta cinque per cent d'altri olii vegetali.

Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

On the back of such containers the following appears:

ITALY BRAND

TABLE OIL

An excellent composition of fifteen per cent imported olive oil and eighty-five per cent of other vegetable oils.

Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

On both sides of such containers, the following appear:

ITALY BRAND

TABLE OIL

Best for salads, cooking, baking and all kitchen uses.

Olio di tavola per insalata frittura e uso di cucina in generale.

Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

Such labels further carry pictorial representations of several Italian medals or coins whereon are depicted persons showing Italian characteristics; a picture in the nude of a boy and a girl, the former being represented as dark and the latter as blond, in harmony with the Italian concept of beauty in the two sexes; and decorative floral sprays similar to those found on other Italian products.

PAR. 3. There are among the public many purchasers who use olive oils and table oils produced in or imported from Italy in preference to similar products produced in the United States, or produced in or imported from other foreign lands, believing that olive oil produced in, or imported from Italy is superior in quality to that produced in any other country.

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PAR. 4. The statements and representations set forth in paragraph 2 hereof have a tendency and capacity to deceive and mislead purchasers and prospective purchasers of said respondent's product into the belief:

(a) That the olive oil ingredient of its said product was produced in or imported from Italy;

(b) That said product is packed by A. Morici and G. Matalone Company and that said A. Morici and G. Matalone Company is an Italian concern and is engaged in the business of importing olive oil from Italy.

In truth and in fact, no part of said product was produced in or imported from Italy. Nor is it true, as represented, that said product is, or has been, packed by A. Morici and G. Matalone Company. The representations made by the respondent with respect to its "table oil" and the ingredients thereof, as well as the packing thereof, are false, misleading, and untrue.

PAR. 5. There are among the competitors of the respondent in interstate commerce, blenders, sellers, and distributors of like and similar products who truthfully advertise and represent the merit, origin, and packing of their respective products and who do not advertise and represent that said products or any part of said products were produced in or imported from Italy when such is not the case.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 4 hereof and into the purchase of respondent's product on account of such beliefs. Thereby trade is unfairly diverted to respondent from respondent's competitors in interstate commerce referred to in paragraph 5, and as a consequence thereof substantial injury is done by respondent to competition in interstate commerce.

PAR. 7. Said acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in 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,"

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the Federal Trade Commission, on the 16th day of June 1936, issued and served its complaint in this proceeding upon the respondent, Chicago Macaroni Company, a corporation trading as A. Morici and G. Matalone Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of said respondent's answer thereto, the respondent, through its attorney, John A. Sbarbora, filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in which substituted answer the respondent stated that it waived hearing on the charges set forth in the complaint, that it admitted all of the material allegations of the complaint to be true and that it consented that the Commission may, without trial, without further evidence and without any intervening procedure, make, enter, issue and serve upon it, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondent, and the Commission having duly considered 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 facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Chicago Macaroni Company, trading as A. Morici and G. Matalone Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business at 2148 Canalport Avenue, in the city of Chicago, in the State of Illinois. Respondent, for more than one year last past has been, and still is, engaged in the wholesale grocery business, and among other things prepares, packs, sells, and distributes a table oil which it labels "Italy Brand Table Oil." This table oil, which is a brand of olive oil and other vegetable oils intended for use in salads, baking and other kitchen uses, is mixed and prepared by respondent in its own factory and packed in cans varying in content from one quart to one gallon. The preparation is a mixture containing 15% olive oil and 85% cottonseed oil or corn oil. The olive oil which respondent uses in preparing this table oil is not produced in Italy but is produced in Spain and from thence imported to the United States in

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barrels or drums, each barrel or drum containing 55 gallons and each individual drum being marked "Product of Spain."

In manufacturing its table oil, respondent makes use of a mixing tank which will hold 366 gallons and is so labeled. When it is desired that a supply of the table oil be made, one drum or barrel of this Spanish olive oil is first dumped into this mixing tank. The mixing tank is then filled with either cottonseed oil or corn oil. By means of an electrical mixing apparatus the two oils are thus blended together in the mixing tank. When this process is completed the oil is piped into cans and sealed. Either cottonseed oil or corn oil, but never the two together, is used with the olive oil for blending into the finished product. As thus blended, the product is known and sold to the trade as "Italy Brand Table Oil."

Respondent transports its product or causes the same to be transported from its place of business in the city of Chicago, in the State of Illinois, to the purchasers thereof located in States of the United States other than the State of Illinois, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade in said product sold and distributed by respondent, in commerce between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than one year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Most of respondent's customers are of Italian nationality and extraction. When respondent sells its product it causes, and for more than one year last past has caused, the containers in which said product is packed, sold and distributed to the consuming public, to be marked, branded, and designated with certain descriptive advertising matter. In said ways and by said means respondent makes and has made to the general public many unfair, false and misleading statements concerning its said table oil.

On the front of each container of "Italy Brand Table Oil" appear the following printed representations:

ITALY BRAND

TABLE OIL

Un Purissimo composto di quindici per cento d'olio di oliva e ottanta cinque per cent d'altri olii vegetali.

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Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

On the back of such containers the following appears:

ITALY BRAND

TABLE OIL

An excellent composition of fifteen per cent imported olive oil and eighty-five per cent of other vegetable oils.

Packed by

A. Morici & G. Matalone Co.

Chicago, Ill.

These labels further carry pictorial representations of several Italian medals or coins whereon are depicted persons showing Italian characteristics; and decorative floral sprays similar to those found on other Italian products. Respondent also represents its product as having been packed by "A. Morici & G. Matalone Co." which company is non-existent, except as a trade name used by respondent in connection with the sale of its products. Respondent's selection and use of this trade name further tends to designate and characterize its "Italy Brand Table Oil" as a product of Italy, packed by an Italian or Italian-American concern. The manufacturer, packer, and distributor of the aforesaid "Italy Brand Table Oil" is, in fact, the Chicago Macaroni Company, the respondent herein.

PAR. 3. There are among the public many purchasers who use olive oils and table oils produced in or imported from Italy in preference to similar products produced in the United States, or produced in or imported from other foreign lands, believing that olive oil produced in or imported from Italy is superior in quality to that produced in any other country.

PAR. 4. The statements and representations set forth in paragraph 2 hereof have a tendency and capacity to deceive and mislead purchasers and prospective purchasers of said respondent's product into the belief:

(a) That the olive oil ingredient of its said product was produced in or imported from Italy;

(b) That said A. Morici & G. Matalone Company is an Italian or Italian-American concern engaged in the business of importing olive oil from Italy.

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In truth and in fact, no part of said product was produced in or imported from Italy. Nor is it true, as represented, that said product is, or has been, packed by A. Morici & G. Matalone Company, the fact being that said product is, and has been, packed by the Chicago Macaroni Company, the respondent herein.

PAR. 5. There are, among the competitors of the respondent in interstate commerce, manufacturers, blenders, sellers, and distributors of olive oil, table oil, and other like and similar products who truthfully advertise and represent the merit, origin, and packing of their respective products and who do not advertise and represent that their products or any part of them were produced in or imported from Italy, when such is not the case.

PAR. 6. The use of each and all of the foregoing false and misleading statements and representations by the respondent, as set out in paragraphs 2 and 3 hereof, have had and do have the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous belief that said statements and representations are true, and have induced and do induce members of the public to purchase respondent's said product on account of such erroneous belief, to the consequent damage and injury of distributors and to the injury of the general public. Said representations have unfairly diverted trade to respondent from competitors and thereby substantial injury has been done by respondent to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, are unfair methods of competition in commerce and constitute a violation of Section 5 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."

ORDER TO CEASE AND DESIST

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission motion that it be permitted to withdraw its said answer 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 answer be and the same is hereby withdrawn; and that the said proposed substituted answer be and the same is filed in lieu of the said answer hereby withdrawn,

The said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its substituted answer that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that it consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon said respondent an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the record and being now fully advised in the premises:

It is hereby further ordered, That the respondent, Chicago Macaroni Company, a corporation, trading as A. Morici and G. Matalone Company, its officers, agents, servants, representatives and employees in the sale or offering for sale by it in interstate commerce and in the District of Columbia of its "Italy Brand Table Oil" do forthwith cease and desist from:

Representing, directly or indirectly, through circulars, catalogs, labels or any other form of printed matter or by radio broadcasting, or in any other manner:

(a) That the olive oil ingredient of its said product was produced in or imported from Italy, until and unless said olive oil ingredient of its said product is actually produced in or imported from Italy:

(b) That said A. Morici & G. Matalone Company is an Italian or Italian-American concern engaged in the business of importing olive oil from Italy:

and from making any other representations of similar tenor or import.

And it is hereby further ordered, That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report, in writing, setting forth the manner and form in which it has complied with this order.

IN THE MATTER OF
ROY C. GREENBERG AND SARAH J. ROSENHEIM, TRAD-
ING AS NEWAY MANUFACTURING COMPANY

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

Docket 2858. Complaint, June 30, 1936—Decision, Aug. 12, 1936

Where two individuals engaged in the manufacture, distribution, and sale of certain surgical latex bandages; in advertising the same in various periodicals of interstate circulation usually read by canvassers and sales agents, and by letters and circulars sent and distributed throughout the various States, to induce purchase of said products by persons suffering from certain ailments and afflictions and to induce persons to become their canvassers and sales agents—

- (a) Falsely represented that said bandage was porous and allowed the skin to breathe and the wound to heal much quicker, and that doctors and hospitals were aware that it offered the safest way on earth for them to treat patients, and that it held snugly while permitting healing air to reach the sore spot, and, while admitting air, kept out dirt and germs and offered the safest bandage known, and did not reopen the wound and resisted water;
- (b) Represented that it was no longer necessary to buy costly ankle braces, through use thereof as directed, nor to buy expensive devices for bunions or arch supports, through following directions given for such purposes, and that it was used to assist in slenderizing large and unsightly ankles; and
- (c) Represented that a salesman could start in a new business that would pay always increasing income, and "take up to \$72.00 first week";

Facts being said products were not porous in any degree unless stretched, in which event circulation was impaired, with likelihood of injury instead of benefit, nor were they, not stretched, porous, so as to permit ingress and egress of fluids, nor, in view of the usual internal causes of swollen ankles, did they, as an external bandage, possess curative value for such condition, nor, by reason of the openings required and their own non-adhesive quality, were they indicated for corns and bunions, and said various misrepresentations, as respects the effect of said products and earnings to be made from the sale thereof, were grossly exaggerated, false, and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations respecting the effectiveness of said product in the treatment of such ailments and malformations were true, and that results claimed by them would be obtained by the purchaser thereof upon use of said bandages, and with the result that a substantial number of the consuming public purchased a substantial volume of its products as a result thereof, and trade was unfairly diverted to them from competitors who truthfully advertise their respective products; to the substantial injury of competitors:

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