

Syllabus

IN THE MATTER OF
GIACOMO LAGUARDIA TRADING AS HERBA MEDICINAL LABORATORY

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

Docket 2878. Complaint, July 15, 1936—Decision, Jan. 5, 1937

Where an individual engaged in the sale of various liquids, compounds, solutions, and other matter represented by him as derived from, compiled of, or concocted from, herbs of various kinds—

Represented, in advertisements in periodicals of interstate circulation and in advertising literature circulated throughout the various States and in other ways, that he was a great specialist on herbs, and that the commodities or various medicaments, liquids, etc., prepared by him under various trade names, such as "Stomatic Tea," "Rheumatic Tea," "Renal Tea," "Pile-Aid," and "Vegetoliva Liniment," constituted competent treatments or effective remedies for stomach and digestive disorders, and numerous ailments and conditions, including excess weight, skin ailments, pains in arms, etc., and that only at his store would herbs be found that were adapted for such various maladies, etc.;

Facts being he was not a great specialist in herbs, and herbs of like nature to those blended by him could readily be procured, and curative or therapeutic value of his various liquids, compounds, etc., was not as efficacious as represented by him, either in treatment, relief, or cure of such various ailments or diseases, and such various liquids, etc., would not reduce weight, clear skin of impurities, etc., or cure diseases of the stomach or intestines, and were not a competent or effective treatment for any diseases, etc., for which named;

With result that various members of the purchasing public throughout the various States were misled and deceived by such statements into the false belief that the same were true, and that his said various preparations had a definite curative and therapeutic effect in treatment of maladies and diseases of the body, as represented by him, and were induced to use his course of treatment rather than that of a pathologist or other physician, and of thereby causing a substantial and unfair diversion of trade to him from competitors, among whom there are those engaged in the preparation, sale and transportation in commerce of compounds and toxins and solutions for treatment, cure and remedy of diseases and ailments similar to or identical with those listed by said individual, and who do not falsely represent or exaggerate the curative or therapeutic value thereof; to the substantial injury of competition in commerce:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Alden S. Bradley for the Commission.

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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 Giacomo LaGuardia, trading as Herba Medicinal Laboratory, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the name of Herba Medicinal Laboratory, and maintains his office and principal place of business at 537 Broadway, in the city of New York, State of New York.

PAR. 2. Respondent is now and for more than five years last past has been engaged in the sale and distribution of various liquids, compounds, solutions, and other matter represented by him to be derived from, compiled of, or concocted from, herbs of various kinds and nature, and represented to have a medicinal and therapeutic value, and respondent causes said commodities, when sold, to be transported from its place of business in the city and State of New York to the purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia.

PAR. 3. In the course and conduct of his business respondent is in competition with other persons, firms, copartnerships, and corporations selling herb remedies and drugs, liquids, compounds, solutions, and medicaments for like use and purpose, and who likewise sell and transport the same to purchasers thereof into and through the various States of the United States other than the State in which such persons, firms, copartnerships, and corporations are located.

PAR. 4. In the course and conduct of the business of the respondent he has, without regard to underlying causes, represented by advertisements published in various articles having interstate circulation, by advertising literature circulated throughout the various States of the United States, by radio broadcasts, and in other manners that:

(a) LaGuardia's Herbs are a competent treatment or an effective remedy for—

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| (1) Stomach acid, | (15) Cough, |
| (2) Swollen or painful stomach, | (16) Bronchitis, |

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| (3) Indigestion, | (18) Pains, |
| (4) Inflammation of the liver, | (19) Swellings, |
| (5) Headache, | (20) Bad digestion, |
| (6) Coated tongue, | (21) Constipation, |
| (7) Tiredness, | (22) Inflammation of the kidneys, |
| (8) Nervous disturbances, | (23) Kidney trouble, |
| (9) Backaches, | (24) Intestinal catarrh, |
| (10) Rheumatism, | (25) Head pains, |
| (11) Purification of blood, | (26) Sleepiness, |
| (12) Eczema, | (27) Bad breath, or |
| (13) Asthma, | (28) "Any of the ailments concern- |
| (14) Hay fever, | ing the digestive system; |
| (17) Colds, | |

(b) That the respondent is "a great specialist" in herbs;

(c) That only at respondent's store will herbs be found adapted for anyone of your troubles;

(d) That respondent's Rejuvenatic Tea or Rejuvenating Tea is an effective treatment for the above-named ailments, or that it will enable persons to get thin or to reduce weight, or that it corrects the cause of excessive weight acquired by indiscretions in eating, by lack of exercise, or by any other means;

(e) That respondent's Clear Skin Tea is a competent treatment for all diseases of the skin, or that it effectively combats disorders of the skin, irritations, small boils, pimples or other eruptions caused by irregular eliminations or otherwise;

(f) That respondent's Scol Diuretic Renal Tea would be of value in eliminating residues or that it absorbs the minor irritations of the urethral and vesical canals;

(g) That respondent's Pile-Aid is a competent treatment or an efficacious remedy for the various forms of hemorrhoids or that it completely dries up hemorrhoids or eradicates burns, pruritus, loss of blood or inflammations; or that these conditions will disappear as if by magic;

(h) That respondent's Vegetolina Liniment is a proper remedy for pains in the arms, legs, back or shoulders caused by intemperance, or that a single application when applied to affected joints would cause the pains to disappear as if by magic;

and many other statements of like nature and effect.

PAR. 5. Respondent sells the commodities prepared by him under various trade names, such as:

Stomatic Tea and Tonic,
Rheumatic Tea,
Renal Tea,
Pile-Aid,
Vegetolina Liniment,

and various other names applied to commodities vended by him.

PAR. 6. In truth and in fact the compounds, solutions, and concoctions of the respondent are not so efficacious as represented by him, either in the treatment, relief, or cure of the various symptoms, ailments, or diseases listed under number (1) through (28) of paragraph

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4 of this complaint, and the same do not have the therapeutic or medical value as represented by respondent in reducing the weight of the person taking the same, clearing the skin of impurities, of small boils, pimples, and other eruptions; will not cure diseases of the stomach and intestines, is no competent or effective treatment for acid regurgitation, gas, swelling of the stomach, vertigo, headache, coated tongue, constipation, kidney or liver disorders, or any other ailments and diseases above set forth. Respondent is not a great specialist in herbs and herbs of like nature can be procured at places other than the respondent's store. The preparations concocted and compounded by the respondent are not an effective cure for "any of the ailments concerning the digestive system."

Customers and potential customers throughout the various States of the United States have been deceived and misled by the statements of the respondent as above related into the false beliefs that the statements of the respondent were and are true, and that, as represented by the respondent, the preparations concocted by him as above stated had and have a definite and valuable therapeutic effect in the treatment of the maladies and diseases of the human body as represented by him. The said statements and representations also had and have a tendency and capacity to and do cause members of the consuming public, in reliance upon the erroneous beliefs as above set forth, to purchase and use the course of treatment of respondent instead of purchasing and using the remedies and products of competitors of the respondent for the treatment of the maladies, diseases and pathological conditions of the human body, including those set forth in the statements of the respondent and in other statements by the respondent as being conditions for which the use of one or more of respondent's products have a curative value.

PAR. 7. There are among the competitors of respondent persons, firms, copartnerships, and corporations engaged in the preparation, sale, and transportation in interstate commerce of compounds, concoctions, and solutions for the treatment, cure, and remedy of diseases and ailments similar to or identical with those listed in paragraph 4 of this complaint and who do not falsely represent or exaggerate the curative or therapeutic values of the same.

PAR. 8. The acts and practices of the respondent in representing the curative and therapeutic claims of the commodities prepared and sold by him, serve as inducements to purchasers and prospective purchasers to purchase substantial quantities of the commodity or commodities prepared and sold by the respondent, and have a tendency and capacity to and do divert a substantial volume of trade from the competitors of the respondent to respondent, with the result that sub-

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stantial injury was and is done by respondent to substantial competition in commerce as hereinabove set out.

PAR. 9. The above acts and practices of the respondent are all to the injury and prejudice of the public and a substantial number of competitors of the respondent in interstate commerce, and constitute 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.

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 July 15, 1936, issued and served its complaint in this proceeding upon respondent, Giacomo LaGuardia, trading as Herba Medicinal Laboratory, charging him 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 respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now 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. Respondent is an individual, doing business under the name of Herba Medicinal Laboratory, at 537 Broadway, New York, N. Y. He is now and for more than five years last past has been engaged in the sale of various liquids, compounds, solutions, and other matter represented by him to be derived from, compiled of, or concocted from, herbs of various kinds, and represented to have a medicinal and therapeutic value. The respondent causes such commodities, when sold, to be transported from his place of business

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in the city and State of New York to the purchasers thereof located in States of the United States other than the State of New York and maintains a constant current of trade and commerce in said product among and between the various States of the United States.

PAR. 2. The respondent is in competition with other persons, firms, copartnerships, and corporations selling herb remedies and drugs, liquids, compounds, solutions, and medicaments for like or similar use and purpose, and who likewise sell, transport or cause to be transported their respective commodities into and through the various States of the United States other than the State wherein they are located.

PAR. 3. Respondent represents and has represented by advertisements published in various periodicals having an interstate circulation, by advertising literature circulated throughout the various States of the United States, and in other manners; (1) that his various liquids, compounds, solutions, and medicaments constitute competent treatments or effective remedies for stomach acid, swollen or painful stomach, indigestion, inflammation of the liver, headache, coated tongue, tiredness, nervous disturbances, backaches, rheumatism, purification of blood, eczema, asthma, hay fever, cough, bronchitis, colds, pains, bad digestion, swellings, constipation, inflammation of the kidneys, kidney trouble, intestinal catarrh, head pains, sleepiness, bad breath, and "any of the ailments concerning the digestive system"; (2) that the respondent is "a great specialist" in herbs; (3) that only at respondent's store will herbs be found that are adapted for the various maladies, ills, and conditions of the human body above named; (4) that respondent's Rejuvenatic Tea or Rejuvenating Tea is an effective treatment for the above named ailments, and that it will enable persons to get thin or to reduce weight, and that it corrects the cause of excessive weight acquired by indiscretions in eating, by lack of exercise, or by any other means; (5) that respondent's Clear Skin Tea is a competent treatment for all diseases of the skin, and that it effectively combats disorders of the skin, irritations, small boils, pimples, or other eruptions caused by irregular elimination or otherwise; (6) that respondent's Scol Diuretic Renal Tea is of value in eliminating residues and that it absorbs the minor irritations of the urethral and vesical canals; (7) that respondent's Pile-Aid is a competent treatment and efficacious remedy for the various forms of hemorrhoids and that it completely dries up hemorrhoids or eradicates burns, pruritus, loss of blood or inflammations; and that these conditions will disappear as if by magic; (8) that respondent's Vegetolina Liniment is a proper and competent remedy for pains in the arms, legs, back, or shoulders caused by

intemperance, and that a single application when applied to affected joints will cause the pains to disappear as if by magic; and respondent has made many other statements and representations of like nature and effect.

PAR. 4. Respondent sells the commodities prepared by him under various trade names, such as:

Stomatic Tea and Tonic,
Rheumatic Tea,
Renal Tea,
Pile-Aid,
Vegetolina Liniment,

and various other names applied to commodities vended by him.

PAR. 5. The curative or therapeutic value of the various liquids, compounds, concoctions, and solutions of the respondent are not so efficacious as represented by him, either in the treatment, relief, or cure of the various ailments or diseases named hereinabove. They will not reduce weight, clear the skin of impurities, or small boils, pimples, and other eruptions, will not cure diseases of the stomach and intestines, and they are not a competent or effective treatment for any of the diseases, maladies, or conditions of the body above named. Respondent is not a great specialist in herbs, and herbs of like nature to those vended by respondent can be readily procured.

PAR. 6. Various members of the purchasing public throughout the various States of the United States have been misled and deceived by the statements of the respondent as above related into the false belief that such statements were and are true, and that the preparations concocted by respondent, as herein stated, had and have a definite curative and therapeutic effect in the treatment of maladies and diseases of the human body as represented by him. Various members of the purchasing public likewise have been induced to use the course of treatment of the respondent rather than a course of treatment of a pathologist or other physician, thereby causing a substantial diversion of trade to the respondent from competitors in commerce among and between the various States of the United States.

PAR. 7. Among the competitors of the respondent are persons, firms, partnerships, and corporations engaged in the preparations, sale, and transportation in commerce, as herein set out, of compounds, concoctions, and solutions for the treatment, cure, and remedy of diseases and ailments similar to or identical with those listed herein in paragraph 3 and who do not falsely represent or exaggerate the curative or therapeutic value of said products.

The acts and practices of the respondent in misrepresenting the curative and therapeutic claims of the commodities prepared and sold

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by him, serve as inducements to purchasers and prospective purchasers to purchase substantial quantities of the commodity or commodities prepared and sold by the respondent, and have a tendency and capacity to and do unfairly divert a substantial volume of trade from such competitors of the respondent to respondent, with the result that substantial injury was and is done by respondent to competition in commerce as hereinabove set out.

CONCLUSION

The aforesaid acts and practices of the respondent, Giacomo LaGuardia, trading as Herba Medicinal Laboratory, are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce, within the intent and meaning 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on December 31, 1936, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has 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 respondent, Giacomo LaGuardia, trading as Herba Medicinal Laboratory or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of medicinal products designated by him as Stomachic Tea and Tonic Rheumatic Tea, Renal Tea, Pile-Aid, and Vegetolina Liniment or of any other products of substantially the same composition and ingredients sold under the same or any other names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing or causing to be represented:

(a) That the said products have an effective, curative, or remedial value in the cure or treatments of the diseases and ailments of the human body, such as stomach acid, swollen or painful stomach, indigestion, inflammation of the liver, headache, coated tongue, tiredness, nervous disturbances, backaches, rheumatism, purification of blood.

eczema, asthma, hay fever, cough, bronchitis, colds, pains, bad digestion, swellings, constipation, inflammation of the kidneys, kidney trouble, intestinal catarrh, head pains, sleepiness, bad breath, or "any of the ailments concerning the digestive system";

(b) That Stomatic Tea and Tonic, Rheumatic Tea, Renal Tea, Pile-Aid and Vegetolina Liniment or other products of the same or substantially the same ingredients, have any effective therapeutic value for the treatment of diseases of the skin, acid regurgitation, gas, swelling of the stomach, vertigo, headache, constipation, and like diseases;

(c) That respondent is a great specialist in the diagnosis or treatment of ailments, maladies, or conditions of the human body.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF
**JACOB NEEDLE AND RAY NEEDLE, TRADING AS THE
ELDEEN SPICE COMPANY**

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

Docket 2902. Complaint, Aug. 19, 1936—Decision, Jan. 6, 1937

Where two partners engaged in jobbing food stuffs—

Sold a large variety of flavoring extracts, upon the bottle labels of which there were set forth an apparent depiction of an Italian coat of arms and various Italian words indicating and implying to members of purchasing public that said extracts were prepared, compounded and packaged by the National Chemical Laboratory at Milan, Italy, and were imported into the United States, and that they had been awarded first prize at certain expositions in Milan and Florence in competition with other flavoring extracts there exhibited, facts being said extracts were compounded and packaged in the State of New York by an American manufacturer, and said various representations were false;

With effect of misleading and deceiving purchasing public and large number of Italian-Americans included therein, who preferred, as superior to those produced in this country, goods produced abroad, and particularly so in the case of extracts and the like, into the belief that such extracts, thus labeled, were prepared, compounded and packaged abroad and imported into the United States, and of inducing such public, thus composed, misled into believing, by said acts and practices, that they were buying imported extracts of superior merit to domestic product, into purchasing their said products in aforesaid erroneous belief, and of thereby diverting trade to them from their competitors who rightfully and truthfully represent their products; to the substantial injury of competition in commerce:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Astor Hogg for the Commission.

Caputi & Caputi, of New York City, for respondents.

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 Jacob Needle and Ray Needle, copartners, trading and doing business as the Eldeen Spice Company, hereinafter referred to as the respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the