

Complaint

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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

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. Said respondents, Jacob Needle and Ray Needle are copartners trading and doing business as the Eldeen Spice Company, with their office and principal place of business at 336 Delancey Street, city of New York and State of New York. Respondents are now, and for more than one year last past, have been engaged in the business of a jobber of foodstuffs, including a variety of flavoring extracts. Respondents sell and distribute said products in commerce between and among the various States of the United States and the District of Columbia; causing said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York.

PAR. 2. In the course and conduct of their business aforesaid, respondents are now, and for more than one year last past have been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing foodstuffs and flavoring extracts in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, the respondents sell a large variety of flavoring extracts. To the bottles which contain said flavoring extract are affixed labels, containing a reproduction of what appears to be an Italian coat of arms and the following wording:

Brevetto no. C135—Registration 352

Estratti-Bertola

Insuperabili

Premiati-alle Esposizioni

Milano e Firenze—1903

ROSOLIO ROSA

Laboratorio—Chimico

Nazionale

Milano

Italia

PRODOTTI IMPORTATI

Agenti Generali

Paramount Sales Co.

N. Y. U. S. A.

½ Oz.

The translation for the foregoing Italian wording is as follows:

Diploma No. C-135—Registration 352

BERTOLA EXTRACT

Incomparable

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First Prize at the Ex-
positions in Milan and
Florence—1903

ROSOLIO ROSA

National Chemical Laboratory

Milan Italy

Imported Products

General Agents

Paramount Sales Co.

N. Y. U. S. A.

½ Oz.

Said representations made upon the labels, as aforesaid, indicate and imply to the members of the purchasing public that the said flavoring extracts are prepared, compounded, and packaged by the National Chemical Laboratory at Milan, in Italy, and are imported into the United States. Said language further implies that the said product was awarded first prize at certain expositions in the cities of Milan and Florence, Italy, in competition with other flavoring extracts there exhibited. In truth and in fact, said flavoring extracts are not prepared, compounded and packaged by a National Chemical Laboratory in Milan, Italy, and are not imported into the United States; they were not exhibited at any Italian exposition, and were awarded no medals or other prizes; but, on the contrary, said flavoring extracts are prepared, compounded and packaged in the State of New York by an American manufacturer.

There is a large number of Italian-Americans among the purchasing public who show a preference for goods produced abroad, under the belief that they are superior to those produced in this country, said belief prevailing particularly in extracts and the like. These purchasers are led to believe, because of the statements contained on the label and the fact that said label is printed in the Italian language, that they are buying an imported extract of superior merit to the domestic product. There are among respondents' competitors many who sell both the domestic and imported products, and who, in the course and conduct of their business, honestly and truthfully represent their merchandise.

PAR. 4. The above and foregoing representations, as shown by the labels used by respondents, as described in paragraph 3, have the capacity and tendency to, and do mislead and deceive the purchasing public into the belief that the said flavoring extracts so labeled are prepared, compounded and packaged abroad, and imported into the United States, and have the capacity and tendency to, and do induce the said purchasing public, acting in such erroneous belief, to purchase respondents' product, thereby diverting trade to the respondents.

from those of their competitors who do not misrepresent and falsely label their products; and in this manner respondents do substantial injury to competition in interstate commerce.

PAR. 5. The above acts and things done or caused to be done by the respondents, were and are each and all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 19th day of August 1936, issued and served its complaint in this proceeding upon respondents Jacob Needle and Ray Needle, trading as the Eldeen Spice Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 31, 1936, the respondents filed their answer, in which answer they admitted all the material allegations of the complaint to be true, and stated that they waived hearing on the charges set forth in the said complaint and consented that without further evidence or other intervening procedure the Commission might issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of the law charged in the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. Respondents Jacob Needle and Ray Needle are co-partners trading and doing business as the Eldeen Spice Company, with their office and principal place of business located at 336 Delancey Street, city of New York and State of New York. Respondents are now and for more than one year last past have been engaged in the business of jobbing foodstuffs, including a variety of flavoring extracts. They sell and distribute said products in commerce between and among the various States of the United States

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and the District of Columbia, causing said products when sold to be shipped from their place of business in the State of New York to purchasers thereof located in states of the United States other than the State of New York. In the course and conduct of their business as aforesaid respondents are now and for more than one year last past have been in substantial competition with other partnerships and with corporations, firms, and individuals engaged in the business of selling and distributing foodstuffs and flavoring extracts in commerce between and among the various States of the United States and in the District of Columbia. There is now and for more than one year last past has been a constant current of trade in commerce between and among the various States of the United States and in the District of Columbia in said products sold by respondents.

PAR. 2. In the course and conduct of their business as aforesaid, respondents sell a large variety of flavoring extracts. To the bottles which contain said flavoring extracts are affixed labels containing a reproduction of what appears to be an Italian coat of arms and the following wording:

Brevetto No. C135—Registration 352
 Estratti-Bertola
 Insuperabili
 Premiati alle Esposizioni
 Milano e Firenze—1903
 ROSOLIO ROSA
 Laboratorio—Chimico
 Nazionale
 Milano
 Italia
 PRODOTTI IMPORTATI
 Agenti Generali
 Paramount Sales Co.
 N. Y. U. S. A
 ½ Oz.

The translation of the above and foregoing Italian wording is as follows:

Diploma No. C135—Registration 352
 BERTOLA EXTRACT
 Incomparable
 First Prize at the
 Expositions in Milan
 and Florence—1903.
 ROSOLIO ROSA
 National Chemical Laboratory
 Milan Italy
 Imported Products

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General Agents
Paramount Sales Co.,
N. Y. U. S. A.
½ Oz.

PAR. 3. The representations made upon the labels as set forth in paragraph 2 hereof indicate and imply to the members of the purchasing public that the said flavoring extracts are prepared, compounded, and packaged by the National Chemical Laboratory at Milan, Italy, and are imported into the United States. Said language further implies that the said products were awarded first prize at certain exhibitions in the cities of Milan and Florence, Italy, in competition with other flavoring extracts there exhibited. In truth and in fact said flavoring extracts are not and were not prepared, compounded or packaged by a National Chemical Laboratory in Milan, Italy, and are not and were not imported into the United States. They were not exhibited at any Italian exposition and were awarded no medals or other prizes; but on the contrary said flavoring extracts are and were prepared, compounded and packaged in the State of New York by an American manufacturer.

PAR. 4. There are a large number of Italian-Americans among the purchasing public who show a preference for goods produced abroad, under the belief that they are superior to those produced in this country, said belief prevailing particularly in extracts and the like. These purchasers are led to believe, because of the statements contained on the label and the fact that said label is printed in the Italian language, that they are buying imported extract of superior merit to the domestic product. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, many who sell and distribute in commerce flavoring extracts, and who do not misrepresent the origin or place of manufacture of such products.

PAR. 5. The above and foregoing representations, as shown by the labels used by respondents as described in paragraph 2 hereof, have the capacity and tendency to and do mislead and deceive the purchasing public into the belief that the said flavoring extracts so labeled are prepared, compounded and packaged abroad, and imported into the United States; and have the capacity and tendency to and do induce the said purchasing public, acting in such erroneous belief, to purchase respondents' products, thereby diverting trade to the respondents from their competitors, who rightfully and truthfully represent their products; and in this manner respondents do substantial injury to competition in interstate commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondents, Jacob Needle and Ray Needle, copartners trading as the Eldeen Spice Company, are to the prejudice of the public and of respondents' 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 respondents, 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 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, Jacob Needle and Ray Needle, individually and as copartners trading as the Eldeen Spice Company, their representatives, agents, servants, and employees, in connection with the offering for sale, sale, and distribution of flavoring extracts or compounds in interstate commerce or in the District of Columbia, do cease and desist

1. From directly or indirectly advertising, designating, or representing, through the use of words of any foreign language, or symbols or picturizations, or through any other means or in any manner, that flavoring extracts or compounds manufactured or compounded in the United States are manufactured or produced in Italy or in any other foreign country and imported into the United States.

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

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The Commission, as of Jan. 7, 1937, made similar findings and orders to cease and desist in three other cases, in which complaints issued as of Aug. 19, 1936, and in which the respondents, with principal places

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of business in New York City in the first two cases, and in Brooklyn, N. Y., in the third case, were as follows:

SOLOMON HORNICK AND FANNIE HORNICK, TRADING AS ITALIAN-AMERICAN SPICE COMPANY, Docket 2903;

TRIESTE IMPORTING COMPANY, Docket 2904; and

SAUL COHEN AND DAVID JAWETZ, TRADING AS EAGLE SPICE COMPANY, Docket 2905.

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

Mr. Astor Hogg for the Commission.

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

IN THE MATTER OF
BERNHART P. HOLST, DOING BUSINESS AS HOLST
PUBLISHING COMPANY, ET AL.

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

Docket 2652. Complaint, Dec. 10, 1935.—Decision Jan. 12, 1937

Where an individual engaged in the publication of an encyclopedia or reference work designated as "The Progressive Reference Library," and theretofore sold under different names, since its original publication about 1895 as "Teachers' and Pupils' Cyclopedia," and in the sale thereof to purchasers in various states; an individual engaged as agent and manager for said publisher in the transaction and operation of the latter's business; and two individuals engaged, in California, as agents for and under arrangements with said publisher, in the sale of said "Reference Library" and extension service from their places of business in the two California cities involved, and through their own personal solicitation and that of the agents, subagents, or salesmen employed by them, and selling said reference work and service on an installment contract basis; in substantial competition with others who do not represent that they are giving their respective sets free to purchasers of an extension service, or to purchasers of any other service or books, and do not represent that their respective books have been revised, enlarged, and brought up to date, or make other untrue representations similar to those hereinbelow set forth, but accurately and truthfully represent the nature and character of their respective books and the various services rendered by them in connection with the sale thereof—

- (a) Represented, in soliciting and selling such books and service as hereinbefore described, that the purchaser or prospective purchaser was on a preferred list and would be given a ten volume set of said "Library" free, for the reason, ostensibly, that such purchaser or prospective purchaser had exceptional ability in his or her chosen trade, profession, or avocation, and that, in order to take advantage of such pretended free offer, it was only necessary that the particular person approached write the publisher a letter of commendation, after opportunity to study the books, and subscribe to a ten year loose leaf extension service to keep said "Library" current and up-to-date as represented, and at a cost of \$49.50, for the payment of which sum, in monthly or other payments, purchaser obligated himself by signed contract; facts being there was no such selection, purchase price of said "Reference Library" was included in the amount purportedly charged for the ten-year extension service, same offer was made to all prospective purchasers alike, without regard to any ability exhibited by them in any particular trade or profession, and aforesaid representations were made solely to induce purchase of said "Progressive Reference Library";
- (b) Represented, as aforesaid, that said "Library," as thus published and sold by them, had been revised, enlarged, and brought down to date, facts being that, while it might contain some slight enlargements and revisions, to all intents and purposes it had not been materially revised and enlarged since its original publication in or about 1895; and