

Syllabus

IN THE MATTER OF

ANNA R. BARLETTA, TRADING AS BARLETTA MANUFACTURING AND PACKING COMPANY, AND HERCULES A. BARLETTA

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

Docket 2907. Complaint, Aug. 21, 1936—Decision, Apr. 10, 1937

Where two individuals engaged in manufacturing, compounding, selling, and distributing a variety of flavoring extracts, in substantial competition with others engaged in the sale and distribution of such products—

Represented, through labels affixed to the bottles of their said products, and containing Italian words and coat of arms, and through counter display cards furnished to purchasers thereof, upon which display cards were likewise contained such words, that their said extracts were made, compounded and packaged by the Modern Italian Laboratory at Milan, Italy, and were imported into the United States, and that they had won a gold medal at an exposition held in Florence, Italy, in 1934 on account of excellence of their said products, and they were distributors of Italian-made extracts, facts being that, while samples compounded and made up by them in the United States and sent to exposition in Florence, Italy, in year in question were there displayed and awarded certificate of merit, their said extracts, labeled as aforesaid, were not made, prepared, compounded, or packed in Italy by any company, nor imported into the United States, but were made by said individuals at their place of business in New York City, and they were not distributors of extracts of Italian origin;

With effect of misleading large number of Italian-Americans among the purchasing public, who distinctly prefer, as superior to such products produced in this country, flavoring extracts produced in Italy, into belief that in buying such domestic products, labeled and described as above set forth, they were purchasing the preferred imported extracts of Italian origin, and with capacity and tendency to mislead and deceive purchasing public into the belief that such extracts were prepared, compounded and packaged in Italy and imported into the United States, and to induce such public, acting in such erroneous belief, to buy their said products and thereby unfairly divert trade to them from competitors who rightly and truthfully represent their merchandise and do not, in any wise, falsely represent the same; 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.

Mr. Joseph M. Ficco, of New York City, for respondents.

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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 Anna R. Barletta, an individual trading and doing business under the firm name of Barletta Manufacturing and Packing Company, and Hercules A. Barletta, 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, Anna R. Barletta, an individual, trading and doing business under the firm name and style of Barletta Manufacturing and Packing Company, and Hercules A. Barletta, husband of said Anna R. Barletta who has, or claims to have, some interest in said business the exact nature of which is to the Commission unknown, but who is in active charge of said business, have their office and principal place of business at 2100-2102 East 177th Street, in the Borough of Bronx and city and State of New York. Respondents are now and, for more than one year last past, have been engaged in the business of manufacturing, compounding, selling, and distributing 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 partnerships and with other corporations, individuals, and firms engaged in the business of manufacturing, selling, and distributing 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 manufacture, sell and distribute a large variety of flavoring extracts. To the bottles which contain said flavoring

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extracts are affixed labels, containing a reproduction of what appears to be an Italian coat of arms and the following wording:

Estratti Finissimi
Prodotti Importati
Strega
Laboratorio Moderno
Italiano
Napoli Milano
Italia

The translation for the foregoing Italian wording is as follows:

Finest Extracts
Imported Products
Strega
Modern Italian Laboratory
Naples Milan
Italy

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.

Respondents furnish counter display cartons to purchasers of their said flavoring extracts for use in displaying the same to the purchasing public. Upon said display cartons the following expressions appear in large and conspicuous lettering:

Estratti Finissimi Importati
Premiati Con Madaglia D'Oro
Laborator Moderno Italiano Napoli, Milano, Italia.
Distributore:
Barletta Mfg. & Packing Co.,
New York, N. Y.

the translation thereof being:

Finest Imported Extracts
Premium with Gold Medal
Modern Italian Laboratory—Naples, Milan, Italy
Distributors
Barletta Mfg. & Packing Co.
New York, N. Y.

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There is also furnished with said carton a display sign or card containing the following language:

Premiata con Madaglia D'Oro
Esposizione Campionaria, Firenze 1934
Oh Boy! Oh Boy!! Oh Boy!!!
What Flavor
Try the Famous
Italian Flavoring Extracts

Barletta Mfg. & Packing Co.
New York, N. Y.

the Italian words on said sign meaning that the alleged "Italian flavoring extracts" had won the Gold Medal at an exposition in Florence in 1934.

In their said place of business the respondents display prominently in a glass frame a diploma on which are pictured manufacturing, agricultural and transportation scenes and symbolical figures depicting commerce and trades. The language on said diploma is as follows:

Esposizione Mostra Campionaria
Diploma
FIRENZE 1934—II
de CROCE AL MERITO E MADAGLIO DI ORO
conferido Barleta Manufacturing & Packing Co.
NEW YORK CITY—
Estratti finissimi per liquori, non alcoolici,
sciroppi ed imitazione estratto di Vaniglia

and followed by the several signatures of officers of the exposition. The translation of said language is as follows:

COMMERCIAL EXPOSITION
DIPLOMA

FLORENCE
1934—XII
of the Cross of Merit and Gold Medal

conferred upon Barletta Manufacturing & Packing Co., New York City—Finest
Extracts for non-alcoholic liquors, syrups of imitation extract of Vanilla.

PAR. 4. In truth and in fact said flavoring extracts are not prepared, compounded and packaged by a modern Italian laboratory in Naples or Milan, Italy; they are not imported into the United States by the respondents and distributed by them. Said extracts were not exhibited at any Italian exposition, and no medals or other distinctions were awarded to them. On the contrary, said flavoring

extracts are prepared, compounded and packaged by the respondents in the State of New York. The said diploma was not awarded to the respondents because of the excellence of their products; but, on the contrary, said exposition was a charitable undertaking for the purpose of aiding a national association of families of soldiers killed in the Great War, and the products exhibited at said exposition were restricted solely to those produced within the limits of the province of Florence. Said diploma is in fact spurious in that it does not represent a bona fide award, but was bought by respondents through an alleged official of said exposition who had no authority to sell the same.

PAR. 5. There are among the purchasing public many Italian-Americans 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 that they are in fact buying an imported extract because of the fact that said labels and display cartons, cards, and diploma are printed in the Italian language and contain express representations that said flavoring extracts were manufactured in Italy and imported to this country.

There are among respondent's 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. 6. The above and foregoing representations, as shown by the labels, display advertising and otherwise, 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 and represented 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. 7. 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 21st day of August 1936, issued and served its complaint in this proceeding upon the respondent Anna R. Barletta, an individual, trading as Barletta Manufacturing and Packing Company, and Hercules A. Barletta, charging them 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 thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Astor Hogg, attorney for the Commission, before W. W. Sheppard, a trial examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Joseph M. Ficco, attorney for the respondents. The said testimony and other 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 other evidence, and briefs in support of the complaint and in opposition 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. Respondent Anna R. Barletta is an individual trading and doing business as Barletta Manufacturing and Packing Company, and Hercules A. Barletta is the husband of said Anna R. Barletta, and is one of the operators of the business of the concern, having charge of the management of said business and directing its sales policy. Their office and principal place of business is located at 2100-2102 East 177th Street, in the Borough of Bronx, city and State of New York. For several years last past respondents have been engaged in the business of manufacturing, compounding, selling and distributing a variety of flavoring extracts. They sell and distribute said products in commerce between and among the various States of the United States, and ship their products when sold from their place of business in the city of New York to the purchasers thereof located in the various States of the United States other than the State of New York. Respondents are now, and for more than one year last past have been in substantial competition with other

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individuals, firms, partnerships, and corporations likewise engaged in the business of selling and distributing flavoring extracts in commerce between and among the various States of the United States.

PAR. 2. Respondents, in offering for sale and selling their flavoring extracts in interstate commerce, affixed and affix to the bottles containing such extracts, labels which bear an Italian coat of arms and the following wording:

Estratti Finissimi
Prodotti Importati
Strega
Laboratorio Moderno
Italiano
Napoli Milano
Italia

The English translation of the foregoing Italian wording is as follows:

Finest Extracts
Imported Products
Strega
Modern Italian Laboratory
Naples Milan
Italy
* * *

ESTRATTI FINISSIMI
PRODOTTI INSUPERABILI
STREGA
LABORATORIO MODERNO
Italiano Co.
Premiati
FIRENZE ITALIA
MCMXXXIV

The English translation of the above Italian language is as follows:

Finest extracts
Insuperable products
Modern Laboratory Italian Company
Prize, Florence, Italy, 1934
Premiata Croce al Merito e Medaglia d'Oro
FIRENZE—1934
Distributors
Barletta Mfg. & Packing Co.
New York, N. Y.

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Respondents furnished counter display cards to the purchasers of their flavoring extracts for use in displaying the same to the purchasing public. Upon said cards the following expressions appear in large and conspicuous lettering:

Estratti	Finissimi	Importati
Premiata Con Medaglia D'Oro		
Laboratorio Moderno Italiano Napoli, Milano, Italia		
Distributore:		
Barletta Mfg. & Packing Co.,		
New York, N. Y.		

The English translation of the foregoing Italian wording is as follows:

Finest	Imported	Extracts
Premium with Gold Medal		
Modern Italian Laboratory—Naples, Milan, Italy		
Distributors:		
Barletta Mfg. & Packing Co.,		
New York, N. Y.		

PAR. 3. In and by such representations made by the respondents upon the labels affixed to the bottles of their flavoring extracts and on the display cards furnished as aforesaid, they represented to members of the purchasing public that the said flavoring extracts were manufactured, compounded and packaged by the Modern Italian Laboratory at Milan, Italy, and were imported into the United States, and that respondents had won a gold medal at an Exposition held in Florence, Italy, in 1934, on account of the excellence of their extracts, and that they were distributors of Italian made extracts.

PAR. 4. As a matter of fact said flavoring extracts so labeled and described were not manufactured, prepared, compounded or packed in Italy by any company, and are not and were not imported into the United States. Respondents are not distributors of extracts of Italian origin. On the contrary said flavoring extracts were compounded and made up wholly in the United States, and none of the extracts sold by respondents are of Italian origin. The evidence shows that in the year 1934 samples of respondents' extracts were displayed at an Exposition held in Florence, Italy, and that as a result thereof the officials of the said Exposition awarded respondents a Certificate of Merit, but the samples so exhibited were compounded and made up in the United States and sent by respondents from the United States to such Exposition. All of the flavoring

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extracts sold by respondents are manufactured by them at their place of business in New York City.

PAR. 5. There are a large number of Italian-Americans among the purchasing public in the United States who have a distinct preference for flavoring extracts produced in Italy, under the belief that such extracts are superior to those produced in this country. These purchasers are led to believe because of the statements contained on the labels, cartons, and other advertising literature of respondents, and the fact that such representations are in the Italian language, that they are buying imported extracts of Italian origin for which they have a preference. To label a domestic extract as one of Italian origin causes such extract to have added sales value, and enables dealers in extracts so labeled to sell same more readily than would otherwise be the case.

PAR. 6. The above and foregoing representations have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said flavoring extracts are and were prepared, compounded, and packaged in Italy and imported into the United States, and have the capacity and tendency to induce the purchasing public acting under such erroneous belief to purchase respondents' products, thereby unfairly diverting trade to the respondents from their competitors who rightfully and truthfully represent their merchandise and who do not in any wise falsely represent their products; and in this manner respondents do substantial injury to competition in commerce, among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Anna R. Barletta and Hercules A. Barletta 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, the answer of respondents, testimony and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in

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support of the allegations of said complaint and in opposition thereto, and briefs filed herein, 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, Anna R. Barletta and Hercules A. Barletta, individually and trading as Barletta Manufacturing and Packing Company, or trading under any other name or names, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of flavoring extracts or compounds in interstate commerce and in the District of Columbia, do cease and desist from:

Representing, directly or indirectly, through the use of any foreign language, symbol, or picturization, or through any other means or device, or in any manner, that flavoring extracts compounded or manufactured 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 respondents 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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IN THE MATTER OF

PERFECTION STEEL BODY COMPANY, TRADING AS
PERFECTION BURIAL VAULT COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2325. Complaint, Mar. 12, 1935—Decision, Apr. 12, 1937

Where a corporation engaged in the manufacture of air-seal type, ferreous metal burial vaults, and in the sale thereof to jobbers and funeral directors and undertakers, in substantial competition with those engaged in the sale and distribution of metal, stone, concrete, cement, and other burial vaults in commerce between and among the various States—

- (a) Represented, through certificates of warranty and through magazines, booklets, circulars, and other advertising media having wide circulation among its customers and prospective customers in the several States, prior to, but not since, year 1932, that its said vaults were rust-resisting and waterproof and verminproof and had the capacity to resist corrosion, exclude water and other substances and vermin from entrance from the grave into the casket, and that its said vaults afforded perfect protection; and
- (b) Made use of warranties or guaranties, in connection with sale and offer of said vaults, under which, prior to, but not since, the year 1932, it undertook, irrespective of location or conditions in any plot of a cemetery where original vault was buried, and regardless of care or lack of care with which same was originally placed in the grave, to furnish a new vault without cost to the purchaser "upon proof of claim that this vault failed to give protection";

Facts being that, while (1) its said vaults were made by it with great care, by skilled workmen, of specially processed and considerably more costly metals of highest grade and quality obtainable in domestic market, and, by their very nature, exclusive of air, moisture, vermin, and water until the natural process of rust and corrosion, to which they were resistant, but which they could not prevent, had advanced to stage of producing tiny holes or pits permitting penetration, (2) were equal to standard metal vaults made by responsible and reputable members of the industry in question, and were an established part of the funeral supply industry and a lawful subject for sale, purchase, and transportation in interstate commerce, and (3), at time of sealing, were capable of sustaining weight of earth incident to burial and protecting remains from accelerated decay due to entrance of moisture, air, water, and vermin and other deleterious agents for period of years, depending upon underground and climatic conditions in particular locality, and below set forth conjunction of circumstances, no ferreous metal, buried, has absolute or predictable rate of corrosion, which varies with locality, particular underground conditions, and qualities and chemical content of different soils, all ferreous metal burial vaults will rust

¹ Count 2 of the complaint alleging violation of the National Industrial Recovery Act dismissed November 9, 1935.