

IN THE MATTER OF
GRANADA VINEYARDS, INC.

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

Docket 2720. Complaint, Feb. 13, 1936—Decision, July 21, 1938

Where a corporation engaged in purchasing and bottling wine and in sale thereof at wholesale to New England retailers, and with bottling plant and place of business in the East, where it bottled wine purchased by it in California and elsewhere—

- (a) Made use of word "Vineyards" in its corporate name, and displayed such representation on stationery, invoices, advertising matter, and labels attached to bottles in which it shipped its product, notwithstanding fact it owned no vineyard, and neither its immediate nor ultimate customers obtained wine produced or bottled by the original vintner, and it had never made, or caused to be made for its own use, any wine from a small vineyard leased by it, or ever harvested a crop of grapes therefrom;
- (b) Represented on stationery, invoices, etc., as above set forth, that it was a producer of wine, notwithstanding fact it produced no wines whatsoever, did not crush the grapes or other materials from which its wine was made, nor ferment the must thereof, and did not, by virtue of its operations, bring itself within the provisions of certain regulations of the Federal Alcohol Administration relating to nonindustrial use of distilled spirits and wine, under which bottler or packer of such wine, if also maker of not less than 75 percent thereof by crushing the grapes or other materials, fermenting the must, and clarifying the product, may describe himself on label or container as a producer; and
- (c) Falsely represented that it was an importer, notwithstanding fact it had never imported any wine whatsoever;

With the result of representing thereby to its customers, and furnishing them with means of representing to retail dealers and ultimate consuming public, that wines thus sold by it were sold by an actual importer of foreign wines and by a producer and manufacturer of domestic wines, without the intervention of a middleman or a middleman's profit, and of inducing the purchase of its wines by dealers and general public in understanding and belief that it was in fact an importer, producer, and vintner, and owner of the vineyards where the grapes were grown from which its wine was produced;

- (d) Represented on stationery, invoices, and other advertising matter, and on labels attached to bottles in which it shipped its said wines, and in various other ways, to its customers, whom it supplied thereby with means of representing to their vendees, both retailers and ultimate consuming public, that it had an office at Santa Rosa, Calif., or St. Helena, Calif., or both, and that its said office and place of business in the East was merely the office or headquarters of its "Eastern division," notwithstanding fact it had no office at either of said places, centers of important California wine-growing districts, visited latter center only intermittently through its wine buyer, and maintained no office or personnel there, and had only a post-

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office lockbox at the other, from which, under arrangements with postmaster, all mail addressed to it was forwarded to it at its said office in the East;

With capacity and tendency to lead customers to believe that its alleged vineyards were located at aforesaid points, and, coupled with words "Producers of high-grade wines," to lead to conclusion, ordinarily, that its said wines were produced by it from grapes grown in its own vineyards, located at one or the other, or both, of said important California wine centers; and

With effect of misleading and deceiving dealers and purchasing public into beliefs that wines sold by it were made from grapes grown in vineyards which it owned and operated, that it was an importer, maintained offices at one or the other, or both, of said California centers, and that its main and only office in said eastern city was merely office or headquarters of its Eastern division, and of inducing dealers, retailers, and purchasing public, acting on such beliefs, to buy its said wines, and thereby divert trade to it from competitors, including those who do own their own vineyards, maintain offices in California, and convert grapes grown in said vineyards into wine, or import wine offered and sold, and those who, as bottlers and blenders of wine, do not have offices as aforesaid, or produce or import their wines, or own their vineyards, and who do not in any manner misrepresent the character, location, nature, or extent of their business or the source of their wines; to the substantial injury of substantial competition in commerce:

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

Before *Mr. William C. Reeves* and *Mr. Charles P. Vicini*, trial examiners.

Mr. James M. Hammond for the Commission.

Friedman, Atherton, King & Turner, of Boston, Mass., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Granada Vineyards, Inc., hereinafter referred to as the respondent, has been and is 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. Respondent is a corporation organized, existing and doing business under the laws of the State of Massachusetts with its principal office and place of business at 95 Harvey Street, in the city of Cambridge in said State. It is now, and for more than 1 year last

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past, has been engaged in the business of purchasing and bottling wines and of selling and distributing said wines in commerce between and among the various States of the United States and in the District of Columbia, causing said products, in the course and conduct of its business when sold, to be shipped from its said place of business in Cambridge, Mass., into and through the various States of the United States and the District of Columbia to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and in the District of Columbia. In the course and conduct of its business, as aforesaid, respondent is now, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of purchasing and importing wines and in the ownership and operation of vineyards and the producing of wines therefrom and in the sale thereof in trade and commerce between and among the various States of the United States and the District of Columbia; and in the course and conduct of its business, as aforesaid, respondent is, and for more than 1 year last past has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of importing, processing, manufacturing, and bottling wines and in the selling thereof 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, respondent has upon its premises at Cambridge, Mass., a bottling plant wherein wine, not imported but purchased by it in California and other places and shipped to its plant at Cambridge, Mass., is bottled. Respondent owns and operates no vineyard, manufactures no wine, imports no wine, and has no office either at St. Helena, Calif., or Santa Rosa, Calif., and the office described as "Eastern Division, 95 Harvey Street, Cambridge, Mass." on its stationery, advertising, and other commercial literature, is its principal and only office.

PAR. 3. In the course and conduct of its business, as aforesaid, by the use of the term "vineyards" in its corporate name and on its stationery, invoices, and advertising matter and on the labels attached to the bottles in which said respondent ships said wines, and in other ways, said respondent represents to its customers and furnishes said customers with the means of representing to their vendees, both the retailers and the ultimate consuming public, that the said wines so sold by the respondent are sold by a producer and manufacturer of wines without the intervention of a middleman or any middleman's

profits and induces the buying of its wines by dealers, purchasers, prospective purchasers, and the general public on the understanding and belief that respondent is the owner of a vineyard or vineyards and is the direct producer of wines therefrom, whereas in truth and in fact respondent owns no vineyard and the vendees thereof are not obtaining wine bottled by the original vintner.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent also represents on its stationery, invoices, and advertising matter, on the labels attached to the bottles in which it ships said wine, and in various other ways, to its customers and furnishes said customers with the means of representing to their vendees, both the retailers and the ultimate consuming public, and it has an office at either Santa Rosa, Calif., or St. Helena, Calif., or both; that its office at Cambridge, Mass., is merely the office or headquarters for its "Eastern division" and that it is a "producer" and "importer" of wines; whereas in truth and in fact respondent maintains no office at either Santa Rosa, Calif., or St. Helena, Calif., and the office described as being the headquarters of its Eastern division is its main and only office, and whereas in truth and in fact, respondent is not an importer or producer of wines.

PAR. 5. There are among the competitors of respondent engaged in the sale of wines, as set forth in paragraph 1 hereof, corporations, firms, partnerships, and individuals who do own their own vineyards and who do maintain offices in California and who do convert the grapes grown therein into wine or who do import wine which is offered for sale and sold in interstate commerce; there are likewise other corporations, firms, partnerships, and individuals engaged in interstate commerce who are bottlers of wine who do have offices in California or who do produce or import wines or who do own their own vineyards; there are likewise other firms, corporations, partnerships, and individuals engaged in interstate commerce who are bottlers of wine who do not have offices in California, or who do not import wine or who do not own vineyards; which competitors do not in any manner misrepresent the character, location, nature, or extent of their business or the source of their wines.

PAR. 6. The representations made by respondent, as hereinbefore set forth, are calculated to and have a capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the wine sold by respondent is manufactured in vineyards owned and operated by the respondent; that respondent is an importer of wine; that it does maintain offices at Santa Rosa, Calif., or at St. Helena, Calif., or both; and that its main and only office at Cambridge,

Mass., is merely the office or headquarters for its "Eastern division" and these representations have a capacity and tendency to and do induce dealers, retailers, and the purchasing public, acting on such belief, to purchase the said wines of the respondent, thereby diverting trade to respondent from its competitors who do not misuse the word "vineyards" in their corporate names; or otherwise, and who do import wines and who do maintain offices in California and who do not in any other manner misrepresent the nature, type, source, or origin of their wines, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent 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 the Federal Trade Commission Act, the Federal Trade Commission on February 13, 1936, issued and served its complaint in this proceeding upon the respondent, Granada Vineyards, Inc., 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 respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James M. Hammond, Esq., attorney for the Commission, before William C. Reeves and Charles P. Vicini, examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Lee M. Friedman, Esq., and Frank L. Kozol, Esq., attorneys for the respondent, and said testimony and other evidence were 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, briefs in support of the complaint and in opposition thereto, and the oral argument of counsel, aforesaid, 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 a corporation organized, existing and doing business under the laws of the State of Massachusetts with its principal office and place of business at 95 Harvey Street, in the city of Cambridge in said State.

Since its organization in 1933, it has been engaged in the business of purchasing and bottling wines and of selling and distributing said wines in commerce between and among the various States of the United States and in the District of Columbia, causing said products when sold, in the regular course of its business, to be shipped from its place of business at Cambridge, Mass., into and through the various States of the United States and the District of Columbia. In the operation of its business, as aforesaid, respondent is now, and has, since the time of its organization, been in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the business of purchasing, importing, processing, and bottling of wines, and in the ownership and operation of vineyards and the production of wines therefrom and in the sale thereof in trade and commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the conduct of its business, as aforesaid, respondent maintains upon its premises at Cambridge, Mass., a bottling plant wherein wine, not imported, but purchased by it in California and other places and shipped to its plant at Cambridge, Mass., is bottled. It deals entirely as a wholesaler, selling its product to retailers throughout New England.

PAR. 3. In the conduct of its business, as aforesaid, respondent makes use of the word "Vineyards" in its corporate name "Granada Vineyards, Inc." It also represents that it is an "importer" and "producer" of wine. These representations appear on respondent's stationery, invoices, advertising matter, and on the labels attached to the bottles in which it ships its wine. By this means, respondent represents to its customers and furnishes said customers with the means of representing to retail dealers and the ultimate consuming public that the said wines so sold by it are sold by an actual importer of foreign wines and by a producer and manufacturer of domestic wines without the intervention of a middleman or a middleman's profit, and induces the buying of its wines by dealers, purchasers, and the general public on the understanding and belief that respondent is in fact an importer, producer, and vintner, and the owner of the vineyards where the grapes are grown from which its wine is produced; that it is the direct importer or producer of the wine

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sold by it. Whereas, the testimony and evidence in this case shows that the respondent imports or produces no wines whatsoever; owns no vineyards, and respondent's customers, either immediate or ultimate, are not obtaining wine produced by or bottled by the original vintner. The respondent does lease a small vineyard of about 100 acres but has never manufactured or caused to be manufactured any wine therefrom for its own use, and in fact, at the time the testimony in this case was taken, had never harvested a crop of grapes therefrom.

Respondent bottles about 250,000 gallons of wine annually. It purchases most of this wine in California and ships the same to its Cambridge, Mass. plant in tank cars where it is clarified, blended, and bottled. All of the wine sold by it was in fact wine at the time it was received and required no further treatment, except possibly filtering and clarification.

The respondent holds a license to operate a bonded winery, and early in its existence produced several thousand gallons of wine, but since 1934 it has made none. It has never imported any wine whatsoever.

PAR. 4. In the course of its business, as aforesaid, respondent also represents on its stationery, invoices, and advertising matter, on the labels attached to the bottles in which it ships said wine, and in various other ways, to its customers and furnishes said customers with the means of representing to their vendees, both retailers and the ultimate consuming public, that it has an office at Santa Rosa, Calif., or St. Helena, Calif., or both; that its office at Cambridge, Mass., is merely the office or headquarters of its "Eastern division." The respondent maintains no office at either Santa Rosa, Calif., or St. Helena, Calif., and its office at Cambridge, Mass., described as being the headquarters of its "Eastern division" is its main and only office. The respondent maintained only a post-office lockbox at Santa Rosa, Calif., and arranged with the postmaster there to forward all mail addressed to it to its office at Cambridge, Mass. St. Helena, Calif., was only visited intermittently by respondent's wine buyer. No office or personnel were maintained there.

Both Santa Rosa and St. Helena, Calif., are centers of important California wine-growing districts, and the use of the names of those cities by the respondent was undoubtedly calculated to lead its customers to believe that its alleged vineyards were located at these points. This conclusion, coupled with the words "producers of high grade wines" would ordinarily lead to the conclusion that respondent's wines were produced by it from grapes grown in its own vineyards located at Santa Rosa or St. Helena, or both.

PAR. 5. Regulations No. 4 of the Federal Alcohol Administration Division of the Treasury Department relating to the nonindustrial use of distilled spirits and wine, promulgated December 30, 1935, and effective as of December 15, 1936, provides, with reference to domestic wine, that if the bottler or packer is also the person who made not less than 75 percent of such wine by crushing the grapes or other materials, fermenting the must and clarifying the resulting wine, such bottler or packer may describe himself on the label or container of said wine as a producer. This respondent, however, does not either crush the grapes or other materials from which its wine is made, nor does it ferment the must of any of it.

PAR. 6. There are among the competitors of respondent engaged in the sale of wines, as set forth in paragraph 1 hereof, corporations, firms, partnerships, and individuals engaged in interstate commerce who do own their own vineyards and who do maintain offices in California and who do convert the grapes grown therein into wine or who do import wine which is offered for sale and sold in interstate commerce; there are likewise other corporations, firms, partnerships, and individuals engaged in interstate commerce who are bottlers and blenders of wine who do not have offices in California or who do not produce or import wines or who do not own their own vineyards, which competitors do not in any manner misrepresent the character, location, nature, or extent of their business or the source of their wines.

PAR. 7. The representations made by the respondent, as herein-above set forth, have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that the wine sold by respondent is manufactured from grapes grown in vineyards owned and operated by the respondent; that respondent is an importer of wine; that it does maintain offices at Santa Rosa, Calif., or at St. Helena, Calif., or both; and that its main and only office at Cambridge, Mass., is merely the office or headquarters for its "Eastern division"; and these representations have a capacity and tendency to and do induce dealers, retailers, and the purchasing public, acting on such beliefs, to purchase the said wines of the respondent, thereby diverting trade to respondent from its competitors who do not misuse the word "Vineyards" in their corporate names; or otherwise, and who do produce their own wines from their own vineyards, who do import wines and who do maintain offices in California and who do not in any other manner misrepresent the nature, type, source, or origin of their wines, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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CONCLUSION

The aforesaid acts and practices of the respondent, Granada Vineyards, Inc., 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before William C. Reeves and Charles P. Vicini, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral argument by James M. Hammond, Esq., counsel for the Commission, and by Lee M. Friedman, Esq., and Frank L. Kozol, Esq., counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Granada Vineyards, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its wines, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing through the use of the word "vineyards" in its corporate name, on its stationery, or advertising literature, or in any other way by word or words of like import, that it owns or controls vineyards unless and until respondent shall own, operate, or control a vineyard or vineyards where are grown and produced the fruits from which its said wines are manufactured;

2. Representing in any manner whatsoever that it is an "importer" of wine unless and until, in the usual course and conduct of its business it receives in this country, through customs, shipments of wine from a foreign port;

3. Representing in any manner whatsoever that it is a "producer" of wine unless and until it makes not less than 75 percent of such wine by crushing the grapes or other materials, fermenting the must, and clarifying the resulting wine;

4. Representing in any manner whatsoever that it has offices at Santa Rosa or St. Helena, Calif., or any other place or places, unless and until it actually maintains a permanent and bona fide office at the place so designated;

5. Representing in any manner whatsoever that its main or principal office or plant is merely the office or plant of its "Eastern division," or using any other representation or collection of representations calculated to or tending to create the impression that its main office, plant, or factory is located at a point other than its actual situs, or that it owns, controls, or operates properties, offices, or plants which are not so owned, controlled, or operated by it.

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

IN THE MATTER OF

G. F. PERGANDE AND M. F. PERGANDE, DOING BUSINESS
AS PERGANDE INSTITUTE, PERGANDE CIVIL SERVICE
INSTITUTE, ETC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2911. Complaint, Aug. 28, 1936—Decision, July 21, 1938*

Where two individuals engaged as partners, and, later, through instrumentality of a corporation organized and controlled by them, in the sale and distribution, among the various States and in the District of Columbia, of courses of study and instruction to prepare students for examinations for civil service positions under the United States Government, and also of other correspondence courses of study and instruction—

- (a) Falsely represented, through inclusion of term "Civil Service" in various trade names employed by them in the conduct of their aforesaid business, and in connection with and in the promotion of the sale of the aforesaid courses of study for United States Civil Service positions, and depiction, in advertising and printed matter circulated to prospective students, of the United States Capitol, or the dome thereof, together with expressions containing the term "Civil Service," such as "Civil Service Opportunities" and "Civil Service Library," that their said school was connected with, or an agency of, or authorized or approved by the United States Government or the United States Civil Service Commission;
- (b) Represented that the instruction material used in their said courses was approved, authorized, recommended, or endorsed by the aforesaid Commission as a means of preparing applicants for United States Civil Service positions, through the use of general, unqualified, and unrestricted statements of sales of material or books to the United States Government and the statement in advertisements for salesmen for its courses "Sells U. S. Gov't.," notwithstanding fact it sold no correspondence courses to any branch or department of the Federal Government, and such sales as were made to any such branch or department were of books on Civil Service subjects, and it sold neither books nor other material to aforesaid Commission, which never used, endorsed, or approved same, and sales made to any branch of the Government were to divisions thereof wholly disconnected from said Commission, and had no significance in showing approval by it of books and material involved;
- (c) Represented that their said material was endorsed or used by schools, business colleges, or other educational institutions, through statements in their advertising matter circulated to prospective students which imported and implied that large numbers of educational institutions used its material for classroom instruction, that material purchased for such use was in considerable volume for study material, and that such institutions, by reason of such use, endorse and approve the same, facts being that