

Syllabus

IN THE MATTER OF

BANFI PRODUCTS CORPORATION AND HARRY MARIANI,
JOHN MARIANI, PAUL MARIANI, AND JOSEPH B. MARIANICOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3598. Complaint, Sept. 21, 1938—Decision, Feb. 10, 1939*

Where a corporation and four individuals, officers thereof and in control of its advertising policies and business activities and acting in concert with one another, engaged in selling and distributing Montecatini Salts or laxative medicine in crystal and powder form, plain and iodated, and allegedly extracted from the Italian springs thus named, to purchasers in the District of Columbia and in other States, in substantial competition with others engaged in sale and distribution of similar products in commerce among the various States and in said District, and including many who do not make any misrepresentations concerning the qualities and properties of their respective products and their effectiveness—

Represented in their advertising in pamphlets, circulars, advertisements in newspapers and periodicals, radio broadcasts, and other advertising media circulated generally throughout the United States, either directly in English or in Italian, that due to qualities and properties of said Montecatini Salts they constituted an effective and competent remedy or treatment for diseases of the stomach, liver and heart, and for constipation, headaches, rheumatism, high blood pressure, uric acid, and various other conditions, and were always good for any minor ailment, and effective in the treatment of virtually all ailments, and that they constituted a mild, efficacious laxative and were harmless and could be used freely and without irritation;

Facts being they were not a competent treatment or remedy for diseases of the stomach, liver, and heart, or for headaches, bad breath, rheumatism, gout, obesity, high blood pressure, and rash, blotches, or pimples, or for uric acid or other ailments, and were not effective as a treatment for all minor ailments, nor harmless, and could not be used freely without irritation, and had no beneficial value except as a laxative or purgative in cases of temporary or occasional constipation, and, whether plain or iodated or in crystal or powder form, had no value in treating any ailment or the symptoms thereof except when such conditions or symptoms could be relieved by a laxative or purgative, and use thereof freely constituted a drastic purge which would irritate intestines;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that all said representations and implications were true, and with result, as a direct consequence of such belief, that number of the consuming public purchased substantial volume of their products and trade was diverted unfairly to them from competitors likewise engaged in distribution and sale of laxatives and other medicinal preparations in commerce and who truthfully advertise their respective products and the effectiveness thereof; to the injury of competition in commerce:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. John M. Russell for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Banfi Products Corporation, a corporation, and Harry Mariani, John Mariani, Paul Mariani, and Joseph B. Mariani, individuals, hereinafter referred to as respondents, have violated the provisions of 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. Banfi Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and respondents Harry Mariani, John Mariani, and Paul Mariani, individuals, are president, treasurer, and secretary, respectively, thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have co-operated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and principal place of business is located at 206 Spring Street in the city of New York, State of New York.

PAR. 2. Respondents now are and for over 2 years last past have been engaged in the sale and distribution of a laxative medicine known as Montecatini Salts, in crystal and powder form, plain and iodated, claimed by them to have been extracted from the waters of the Montecatini Springs in Italy. Respondents cause said product, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Montecatini Salts in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, respondents are in active and substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar products in commerce between and among

the various States of the United States and in the District of Columbia. Among such competitors there are many who do not make any misrepresentations or false statements concerning the qualities and properties of their respective products and of their effectiveness when taken.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said Montecatini Salts by members of the purchasing public, respondents have made, by means of pamphlets, circulars, advertisements inserted in newspapers and periodicals, by radio broadcasts, and other advertising media circulated generally throughout the United States, many representations, either directly as hereinafter stated in the English language, or their equivalent in the Italian language, concerning the qualities and properties of Montecatini Salts and their effectiveness when taken, among and typical of which are the following:

The Office of the Census in Washington published * * * its bulletin showing an increase of mortality in * * * diseases of the stomach, the liver, and the heart * * * We warn those suffering from similar diseases * * * to stop their ailments promptly. The causes sometimes might prove fatal * * * use Montecatini Salts.

Use * * * simple Montecatini Salts if you suffer from constipation, headaches, bad breath, acidity of the stomach, and liver trouble * * * and Iodized Salts if you are troubled with rheumatism, gout, obesity, high blood pressure, and rash.

Montecatini Iodized Salts are good for the skin when you have blotches or pimples * * * uric acid * * *.

If there is someone who might think that Montecatini Salts are not good for almost all illnesses, we wish to reassure them by saying that this is not so.

Montecatini Salts is always good for any minor ailment.

Montecatini Salts are a mild efficacious laxative.

These Salts can be used freely with no fear of harming you.

Montecatini Salts are an ideal remedy because they clean the intestines without irritating them.

All of said statements together with similar statements occurring in the respondents' advertising literature and radio broadcasts purport to be descriptive of the respondents' product and of its effectiveness when taken. In all of their advertising literature, radio broadcasts, and through other means, respondents, directly or by inference through the statements and representations herein set out and other statements of similar import and effect, represent that due to the qualities and properties of said Montecatini Salts, such salts are an effective and competent remedy or treatment for diseases of the stomach, liver, and heart, and for constipation, headaches, bad breath, acidity of the stomach, rheumatism, gout, obesity, high blood pressure, rash, blotches, pimples, and uric acid; that said salts are always good for any minor ailment and effective in the treatment of

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virtually all ailments; that said salts constitute a mild efficacious laxative; and that they are harmless and can be used freely and will clean the intestines without irritation.

PAR. 5. The representations and implications so made and used by the respondents with respect to the nature of their products and their effectiveness in use are grossly exaggerated, false, and misleading. In truth and in fact Montecatini Salts, plain and iodated, whether in crystal or powder form, are not a competent treatment or remedy for diseases of the stomach, liver, and heart; for headaches, bad breath, rheumatism, gout, obesity, high blood pressure, and rash; for blotches or pimples; or for uric acid or other ailments. Said salts are not effective as a treatment for all minor ailments and they are not harmless and cannot be used freely without irritating the intestines.

In truth and in fact, said Montecatini Salts have no beneficial value except as a laxative or purgative in cases of temporary or occasional constipation and said salts, plain or iodated, whether in crystal or powder form, have no value in treating any ailment or the symptoms thereof except when such condition or symptom can be relieved by a laxative or a purgative. The use of said salts freely constitutes a drastic purge and will irritate the intestines.

PAR. 6. Each and all of the false and misleading representations and implications made by the respondents in describing their product and its effectiveness when used, as hereinabove set out, have had and have a tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations and implications are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' products with the result that trade in said commerce has been diverted unfairly to respondents from competitors likewise engaged in the business of distributing and selling laxatives and other medicinal preparations in said commerce who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 21st day of September 1938, issued its complaint in this proceeding and caused it to be served upon the respondents Banfi Products Corporation, Harry Mariani, John Mariani, Paul Mariani, and Joseph B. Mariani, charging them with the use of unfair methods of competition and unfair or deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw their answer and to substitute therefor an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, 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 complaint and substitute answer, and the Commission, having duly considered the matter 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. The respondent, Banfi Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. The respondents, Harry Mariani, John Mariani, and Paul Mariani, are respectively the president, treasurer, and secretary of Banfi Products Corporation. The office and principal place of business of the respondent is located at 206 Spring Street, City of New York, N. Y. The respondents, Harry Mariani, John Mariani, Paul Mariani, and Joseph B. Mariani, have control of the advertising policies and business activities of the corporate respondent, and the respondents have all cooperated each with the other and have acted in concert in doing the acts and things hereinafter set forth.

PAR. 2. The respondents are, and for over 2 years last past have been, engaged in the sale and distribution of a laxative medicine known as Montecatini Salts, in crystal and powder form, plain and iodated, claimed by them to have been extracted from the waters of the Montecatini Springs in Italy, and they cause the said product, when sold, to be transported from their place of business in the State of New York to purchasers located in the District of Columbia and in other States of the United States.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the product, Montecatini Salts, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the business in the sale and distribution of Montecatini Salts, the respondents are, and have been, in substantial competition with other corporations, firms, and individuals engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors there are many who do not make any misrepresentations concerning the qualities and properties of their respective products and their effectiveness when used by members of the public.

PAR. 4. By means of pamphlets, circulars, advertisements in newspapers and periodicals, radio broadcasts, and other advertising media circulated generally throughout the United States, the respondents have made many representations in the course and conduct of their said business, either directly in the English language or in equivalent expressions in the Italian language, as hereinafter stated, concerning the qualities and properties of Montecatini Salts and the effectiveness of their use by members of the public. Among such representations and typical of them are the following:

The Office of the Census in Washington published * * * its bulletin showing an increase of mortality in * * * diseases of the stomach, the liver and the heart * * * We warn those suffering from similar diseases * * * to stop their ailments promptly. The causes sometimes might prove fatal * * * use Montecatini Salts.

Use * * * simple Montecatini Salts if you suffer from constipation, headaches, bad breath, acidity of the stomach and liver trouble * * * and Iodized Salts if you are troubled with rheumatism, gout, obesity, high blood pressure, and rash.

Montecatini Iodized Salts are good for the skin when you have blotches or pimples * * * uric acid * * *.

If there is someone who might think that Montecatini Salts are not good for almost all illnesses, we wish to reassure them by saying that this is not so.

Montecatini Salts is always good for any minor ailment.

Montecatini Salts are a mild efficacious laxative.

These Salts can be used freely with no fear of harming you.

Montecatini Salts are an ideal remedy because they clean the intestines without irritating them.

All of said statements together with similar statements occurring in the respondents' advertising literature and radio broadcasts purport to be descriptive of the respondents' product and of its effectiveness when taken. In all of their advertising, literature, radio broadcasts, and through other means, respondents, directly or by inference through the statements and representations herein set out and other

statements of similar import and effect, represent that due to the qualities and properties of said Montecatini Salts such salts are an effective and competent remedy or treatment for diseases of the stomach, liver, and heart, and for constipation, headaches, bad breath, acidity of the stomach, rheumatism, gout, obesity, high blood pressure, rash, blotches, pimples, and uric acid; that said salts are always good for any minor ailment and effective in the treatment of virtually all ailments; that said salts constitute a mild efficacious laxative; and that they are harmless and can be used freely and will clean the intestines without irritation.

PAR. 5. The representations and implications so made and used by the respondents with respect to the nature of their products and their effectiveness in use are grossly exaggerated, false, and misleading. In truth and in fact Montecatini Salts, plain and iodated, whether in crystal or powder form, are not a competent treatment or remedy for diseases of the stomach, liver, and heart; for headaches, bad breath, rheumatism, gout, obesity, high blood pressure and rash; for blotches or pimples; or for uric acid or other ailments. Said salts are not effective as a treatment for all minor ailments and they are not harmless and cannot be used freely without irritating the intestines.

In truth and in fact, said Montecatini Salts have no beneficial value except as a laxative or purgative in cases of temporary or occasional constipation and said salts, plain or iodated, whether in crystal or powder form, have no value in treating any ailment or the symptoms thereof except when such conditions or symptom can be relieved by a laxative or a purgative. The use of said salts freely constitutes a drastic purge and will irritate the intestines.

PAR. 6. Each and all of the false and misleading representations and implications made by the respondents in describing their product and its effectiveness when used, as hereinabove set out, have had and have a tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations and implications are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' products with the result that trade in said commerce has been diverted unfairly to respondents from competitors likewise engaged in the business of distributing and selling laxatives and other medicinal preparations in said commerce who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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CONCLUSION

The above acts and practices of the respondents, Banfi Products Corporation, Harry Mariana, John Mariani, Paul Mariani, and Joseph B. Mariani, are to the prejudice of the public and of the competitors of respondent Banfi Products Corporation, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commisison Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Banfi Products Corporation, and its officers, and Harry Mariani, John Mariani, Paul Mariani, Joseph B. Mariani, and their respective representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a laxative medicine in crystal or powder form, either plain or iodated now designated by the name of Montecatini Salts, or any other laxative medicine composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or under any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said salts, which advertisements represent, directly or through implication, that such salts constitute a remedy or cure for diseases of the stomach, liver, and heart, for constipation, headaches, bad breath, acidity of the stomach, rheumatism, gout, obesity, high blood pressure, rash, blotches, pimples, or uric acid, or that such salts constitute a compe-

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tent and effective treatment for any of such diseases or ailments; that said salts are always good for any minor ailment and are effective in the treatment of virtually all ailments; that said salts constitute a mild efficacious laxative or will clean the intestines without irritation unless such representations are limited to cases of temporary or occasional constipation; and that said salts are harmless and can be freely used with safety.

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.

IN THE MATTER OF
MITCHELL BAZELON AND CHARLES HARRIS INDIVID-
UALLY AND AS COPARTNERS TRADING UNDER THE
FIRM NAMES AND STYLES OF PARK-LANE CANDY
COMPANY AND CHARRIS SPECIALTY COMPANY

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

Docket 3083. Complaint, Mar. 18, 1937—Decision, Feb. 15, 1939

Where two individuals engaged as partners in sale and distribution of items of merchandise including cocktail shakers, watches, pipes, and numerous other items of novelty merchandise, as cataloged and offered and variously packaged and assembled so as to involve use of a lottery scheme when sold and distributed to ultimate consumers, and which were composed of (1) seventeen $\frac{1}{2}$ -pound boxes of chocolate candy, four 1-pound boxes thereof, two 1-pound fancy boxes thereof and 1 cocktail shaker set, together with 600-hole punchboard for sale under a plan and in accordance with board's explanatory legend by which purchaser paid for chance, amount ranging from 1 cent to 5 cents, depending upon particular numbers punched, and received in accordance with success in selection of certain numbers, one of said boxes of candy, and under which purchaser of last punch on board received the cocktail shaker set; (2) of groups or combinations of articles, together with punchboards, for sale and distribution to public under a plan or scheme in accordance with which purchaser received for penny (or 5-cent chance, as case might be) article of merchandise, value of which was in excess of cost of purchase or nothing, dependent upon success or failure in selecting certain numbers; and of (3) various other assortments involving different arrangements, but, in all, punchboards or push cards for sale and distribution thereof to ultimate consumer by lot or chance—

Sold to jobbers and wholesalers, for display and resale to purchasing public by retail dealer purchasers thereof, in accordance with aforesaid sales plans, such assortments, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of their products in accordance with such sales plans, in violation of a long-established public policy of the common law and criminal statutes and contrary to established public policy of the United States Government, and in competition with many who are unwilling to offer or sell merchandise packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve game of chance or sale of a chance to win by chance, and refrain therefrom;

With effect of inducing customers to buy their said products in preference to similar or like merchandise offered and sold by their competitors and with result that many dealers in and ultimate purchasers of candy and other articles of merchandise were attracted by their said method and manner of packing such candy and other merchandise, and by element of chance involved in sale thereof as above described, and were induced by reason of said plan or method to purchase substantial volume of such candy and