

Complaint

IN THE MATTER OF

MICHAEL P. BRIGANTI AND FRED C. MATTIA, TRADING
AS PREMIER COLOR WORKS AND MATTIA AND BRIG-
ANTI COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3826. Complaint, June 19, 1939—Decision, Dec. 28, 1939*

Where an individual engaged in manufacture and sale, under brand name
"Ave Maria," of line of effervescent and laxative products—

Set forth on tin containers in which his "Ave Maria Effervescent Preparation" and "Ave Maria Laxative Preparation" were packed, and on cardboard cartons in which such containers were enclosed, legend "* * * Made in U. S. A. from a highly recommended formula of Dr. Arnaldo Piutti, Director of the Pharmaceutical Institute of 'Reggio Università Di Napoli' (Italy)," and depicted reproductions of three gold medals and decorations and, immediately thereunder, legend "Highest awards in the Hygienic Divisions of International Expositions";

Facts being said products had not, as thus represented, been made from formulas recommended by such a person, and medals and decorations were not reproductions of original medals and decorations awarded such products at expositions, and products in question had not been exhibited at exhibitions as aforesaid nor thus awarded medals or other prizes at expositions, such as preferred by substantial number of persons among purchasing public, and especially Italian-Americans, as superior merchandise to that which has not received any such awards;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all such representations were true, and with result, as direct consequence of such mistaken belief, that number of said purchasing public bought substantial volume of his said products and trade in commerce was thereby diverted unfairly to him from competitors engaged in sale of effervescent and laxative products and who truthfully represent their merchandise; to the injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition.

Mr. Robert P. Bellinger 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 Michael P. Briganti and Fred C. Mattia, individually and as copartners trading as Premier Color Works and Mattia and Briganti Co., hereinafter referred to as respondents, have violated the provisions of said act, and it

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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. Respondents, Michael P. Briganti and Fred C. Mattia, are copartners doing business under the trade names of Premier Color Works and Mattia and Briganti Company, with their offices and principal place of business located at 382 Pearl Street, New York, N. Y.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the business of manufacturing and selling under the brand name of "Ave Maria" a line of effervescent and laxative products. Respondents cause said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia.

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

PAR. 3. In the course and conduct of their business, respondents are in substantial competition with other partnerships and with firms, corporations, and individuals engaged in the sale and distribution of effervescent and laxative products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, respondents offer for sale and sell an effervescent product designated "Ave Maria Effervescent Preparation" and a laxative product designated "Ave Maria Laxative Preparation." The tin containers in which said products are packed by respondents, and the cardboard cartons in which the containers are enclosed when the products are prepared for sale by respondents, have printed thereon statements and representations concerning the source of the formulas for said products and concerning purported awards made with respect to said products. The statement and representation concerning the source of the formulas is as follows:

* * * Made in U. S. A. from a highly recommended formula of Dr. Arnaldo Piutti, Director of the Pharmaceutical Institute of "Reggio Università" di Napoli' (Italy).

On the tin container and cardboard carton, in which respondents' said Ave Maria products are packaged, are depicted reproductions

of three gold medals and of a decoration. Immediately under said reproductions is the following statement:

Highest awards in the Hygienic Divisions of International Expositions.

In the manner and by the means aforesaid, respondents represent directly and by implication that their said "Ave Maria" products are manufactured from formulas recommended by one Dr. Arnaldo Piutti who is represented to be Director of the Pharmaceutical Institute of the Royal University of Naples (Italy); that the three medals and the decoration depicted on the containers and cartons of said "Ave Maria" preparations, as aforesaid, are reproductions of original medals and decorations awarded said products at various expositions and that respondents' products have received the highest awards in the Hygienic Divisions of International Expositions.

PAR. 5. The aforesaid statements and representations of respondents are false, misleading, and untrue. In truth and in fact said Ave Maria products are not made from formulas recommended by said Arnaldo Piutti. The medals and the decorations depicted on the containers and cartons, as aforesaid, are not reproductions of medals or decorations awarded said products at expositions. Said products were not exhibited at any international exposition and did not receive the awards depicted on the containers and cartons of the products. Respondents' said "Ave Maria" products have not been awarded any medals or other prizes at International expositions. Said products have not received any awards in the Hygienic Divisions of International Expositions.

There are among the purchasing public a substantial number of persons, especially among Italian-Americans, who have a preference for goods which have received awards at expositions, under the belief that such merchandise is superior to merchandise which has received no such awards.

PAR. 6. Each and all of the foregoing false and misleading statements and representations, made by respondents in offering for sale and selling their "Ave Maria" products, as hereinbefore set out, had and now has the capacity and tendency to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the purchasing public has purchased a substantial volume of respondents' said "Ave Maria" products, with the result that trade in commerce among and between the various States of the United States and in the District of Columbia, has been diverted unfairly to respondents from competitors engaged in the business of selling effervescent or laxa-

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tive products, and who truthfully represent their merchandise. As a result thereof, injury has been done and is 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 respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition 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 June 19, 1939, issued, and on June 20, 1939 served its complaint in this proceeding upon the respondents Michael P. Briganti and Fred C. Mattia, individually and as copartners, trading as Premier Color Works and Mattia and Briganti Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

On December 15, 1939, the respondent, Fred C. Mattia, individually and as the sole owner of and trading as Premier Color Works and Mattia and Briganti Co., filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, except that said respondent therein alleged that on September 29, 1939, the respondent, Fred C. Mattia, purchased the entire interest of his copartner, Michael P. Briganti, in the business operated under the trade names of Premier Color Works and Mattia and Briganti Co., and since said date has been and is now the sole owner and proprietor thereof, in which the said Michael P. Briganti owns no interest, and has not been connected therewith in any manner since thus disposing of his interest. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, and the said answer thereto of the individual respondent, Fred C. Mattia, 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

PARAGRAPHS 1. Respondent, Fred C. Mattia, individually is the sole owner and proprietor of the business which he operates under the trade names of Premier Color Works and Mattia and Briganti Co.,

with his office and principal place of business located at 382 Pearl Street, New York, N. Y.

PAR. 2. The said respondent is now and for more than one year last past has been engaged in the business of manufacturing and selling under the brand name of "Ave Maria" a line of effervescent and laxative products. Said respondent causes said products when sold to be transported from his place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia.

Said respondent maintains and at all times herein mentioned has maintained a course of trade in said products 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 his business said respondent is in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of effervescent and laxative products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his business said respondent offers for sale and sells an effervescent product designated "Ave Maria Effervescent Preparation" and a laxative product designated "Ave Maria Laxative Preparation." The tin containers in which said products are packed by said respondent and the cardboard cartons in which the containers are enclosed when the products are prepared for sale by said respondent, have printed thereon statements and representations concerning the source of the formulas for said products and concerning purported awards made with respect to said products. The statement and representation concerning the source of the formulas is as follows:

* * * Made in U. S. A. from a highly recommended formula of Dr. Arnaldo Piutti, Director of the Pharmaceutical Institute of "Reggio Universita" Di Napoli (Italy).

On the tin container and cardboard carton in which said respondent's Ave Maria products are packaged, are depicted reproductions of three gold medals, and of a decoration. Immediately under said reproductions is the following statement:

Highest awards in the Hygienic Divisions of International Expositions.

In the manner and by the means aforesaid the said respondent represents directly and by implication that his said Ave Maria products are manufactured from formulas recommended by one Dr. Arnaldo Piutti, who is represented to be Director of the Pharmaceutical In-

stitute of the Royal University of Naples (Italy) ; that the three medals and the decoration depicted on the containers and cartons of said Ave Maria preparations as aforesaid are reproductions of original medals and decorations awarded said products at various expositions, and that said respondent's products have received the highest awards in the Hygienic Divisions of International Expositions.

PAR. 5. The aforesaid statements and representations of said respondent are false, misleading and untrue. In truth and in fact, said Ave Maria products are not made from formulas recommended by said Arnaldo Piutti. The medals and the decorations depicted on the containers and cartons, as aforesaid, are not reproductions of medals or decorations awarded said products at expositions. Said products were not exhibited at any international exposition and did not receive the awards depicted on the containers and cartons of the products. Said respondent's Ave Maria products have not been awarded any medals or other prizes at international expositions. Said products have not received any awards in the Hygienic Divisions of International Expositions.

There are among the purchasing public a substantial number of persons, especially among Italian-Americans, who have a preference for goods which have received awards at expositions, under the belief that such merchandise is superior to merchandise which has received no such awards.

PAR. 6. Each and all of the foregoing false and misleading statements and representations made by said respondent in offering for sale and selling his Ave Maria products, as hereinbefore set out, had and now has the capacity and tendency to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the purchasing public has purchased a substantial volume of the said respondent's Ave Maria products, with the result that trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to said respondent from competitors engaged in the business of selling effervescents or laxative products and who truthfully represent their merchandise. As a result thereof, injury has been done and is being done by said respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of said respondent, as herein found, are all to the prejudice and injury 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 and the answer of the respondent, Fred C. Mattia, individually, and as the sole owner of and trading as Premier Color Works and Mattia and Briganti Company, in which answer said respondent admits all the material allegations of fact set forth in said complaint, and in addition thereto alleges that on September 29, 1939, the respondent, Fred C. Mattia, purchased the entire interest of his copartner, Michael P. Briganti, in the business operated under the trade names of Premier Color Works and Mattia and Briganti Company, and since said date has been and is now the sole owner and proprietor thereof, in which the said Michael P. Briganti owns no interest, and has not been connected therewith in any manner since thus disposing of his interest, and states that he waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Fred C. Mattia, an individual, trading as Premier Color Works and Mattia and Briganti Co., or trading under any other name or names, his agents, servants, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of his line of effervescent and laxative products designated by the brand name of "Ave Maria," "Ave Maria Effervescent Preparation," "Ave Maria Laxative Preparation," or by any other name or names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the formulas from which said products are manufactured are or were originated or recommended by an official or representative of the Royal University of Naples, or by any other person or persons who in truth and in fact have not originated or recommended said formulas.

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2. Representing through the use of medals or any other decoration depicted on the containers or cartons in which said products are packaged, or in any other manner that said products have been awarded any medals, prizes, or other awards of merit by any International Exposition or any other Exposition or by any divisions thereof until and unless said products have in fact won the awards represented.

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

It is further ordered, That this case be closed as to the individual respondent Michael P. Briganti, without prejudice to the right of the Commission to reopen the same and continue the prosecution thereof in the event such action is warranted by the facts.

Syllabus

IN THE MATTER OF
HOWARD D. JOHNSON COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3827. Complaint, June 21, 1939—Decision, Dec. 28, 1939*

Where a corporation engaged in manufacture of ice cream and other food products, and in sale and distribution thereof to purchasers in other States, in substantial competition with others engaged in sale and distribution of such various products, and including competitors selling and distributing in commerce and in the District of Columbia ice cream and food products, who do not misrepresent in any manner whatsoever the nature, character, quality, or method of manufacture of products thereof, nor make misrepresentations of any other character or nature to induce public to purchase their products; in advertisements which it disseminated through the mails, through newspapers of general circulation, and through circulars and other printed or written matter distributed among the various States, and through broadcasts from radio stations of extra-State audience and otherwise, and which were intended and calculated to induce purchase of its products—

Referred to its ice cream as "home made" and to its food as "wholesome—home cooked," and, in further connection with its trade name, referred to its business as makers of "home made ice cream, candies and pastries," and thereby represented to public that said products were in fact home made in the manner and of the ingredients characteristic of the preparation of such products in the home for consumption in the home, as distinguished from factory-made products made of ingredients and by ordinary means of production used in factories making such products for sale, facts being its said products were made in factory of the ordinary ingredients and by the ordinary methods of production used in factories making such products for sale;

With effect of deceiving and misleading prospective purchasers and purchasers of its products into belief that such representations were true, and with result, as consequence of such mistaken and erroneous beliefs, that substantial portion of purchasing public was induced to and did purchase ice cream and other food products from it, and trade was thereby unfairly diverted in such products to it from its competitors; to the injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Karl Stecher for the Commission.

Mr. Joseph T. Brennan, of Wollaston, Mass., for respondent.