

Complaint

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IN THE MATTER OF
JOHN B. CANEPA COMPANY

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

Docket 3744. Complaint, Mar. 24, 1939—Decision, Apr. 16, 1940

Where a corporation engaged in the manufacture, sale, and distribution of macaroni and spaghetti products which it packed, sold, and distributed in long containers—

Represented directly or by implication through advertisements, booklets, and labels attached to its products and disseminated in interstate commerce that its macaroni and spaghetti products were of the finest quality because they were made in long lengths and that such products of other manufacturers which were not made in such lengths were not genuine and not of finest quality and that true criterion of genuineness and quality of such products was length in which made, through such typical statements as "I hate to brag but only the finest macaroni (or spaghetti) is made long," or "I hate to brag but genuine macaroni (or spaghetti) is made long," and through depictions in booklets and other advertising matter containing such statements, and representations of the long containers in which the company sold and distributed its said products;

The facts being such statements and representations used and disseminated as aforesaid by it were misleading and unfair, genuine macaroni and spaghetti of finest quality are made both in long and short lengths and offered for sale in both forms, and said products of finest quality are in some instances first made in long lengths and then cut into short lengths and thus offered for sale and sold, and length in which products aforesaid are offered is no criterion of quality and genuineness thereof;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and into purchasing substantial quantities of its said products because of such mistaken and erroneous opinion or belief thus created:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. L. E. Creel, Jr. and *Mr. Curtis C. Shears* for the Commission.

Mr. John Harrington of Fyffe & Clark, of Chicago, Ill., for respondent.

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 John B. Canepa Co., a corporation, hereinafter referred to as respondent, has 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. Respondent, John B. Canepa Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois and having its principal office and place of business at 310 West Grand Avenue in the city of Chicago, State of Illinois. Respondent is now, and has been for more than 2 years last past, engaged in the manufacture, sale, and distribution of macaroni and spaghetti products. In the course and conduct of its business respondent causes its products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Illinois, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products, among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said products in booklets, on labels attached to its products in elongated packages, and on other written or printed matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined by the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said products, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said products by various means, for the purpose of inducing, directly or indirectly, the purchase of its said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

I hate to brag, but only the finest macaroni is made long;

I hate to brag, but only the finest spaghetti is made long;

I hate to brag, but genuine macaroni is made long;

I hate to brag, but genuine spaghetti is made long;

* * * Insist on Red Cross products packed in The Original Full Length Packages. This is your guarantee against inferior substitutes. You may have wondered at times why Red Cross Macaroni and Spaghetti by comparison appear unusually long. * * * So be sure that you get Red Cross Macaroni and Spaghetti because only the finest can be made long.

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The respondent packs, sells, and distributes its spaghetti and macaroni products in long containers. Booklets and other advertising matter of the respondent, containing the aforesaid statements and representations, also contain in direct connection therewith pictorial representations of the long containers in which respondent sells and distributes its said products.

By the means and in the manner aforesaid, together with other statements, not herein set out, of similar import and meaning and disseminated as aforesaid, respondent represents to prospective purchasers situated in various States of the United States and in the District of Columbia that respondent's macaroni and spaghetti products are genuine and are of the finest quality because they are made in long lengths, that macaroni and spaghetti products which are not made in long lengths are not genuine and are not of the finest quality, that macaroni and spaghetti products which are not offered for sale in long lengths are not genuine and are not of the finest quality and that the length in which spaghetti and macaroni products are offered for sale is a true criterion of the genuineness and quality of such products and of the length in which such products were made.

PAR. 3. The said statements and representations of the respondent, used and disseminated as aforesaid, are grossly exaggerated, misleading, and untrue. In truth and in fact, genuine macaroni and spaghetti products containing the finest quality ingredients are made in long lengths and in short lengths and are offered for sale and sold in such forms. Genuine macaroni and spaghetti products containing the finest quality ingredients are made in long lengths and are thereafter cut into short lengths and are offered for sale and sold in short lengths. The length in which macaroni and spaghetti products are offered for sale is not a true criterion of the quality or genuineness of such products or of the length in which such products were made.

PAR. 4. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, with respect to said products, has had and now has the capacity and tendency to, and does, and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and into purchasing substantial amounts of said products of respondent because of said erroneous and mistaken belief.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and

constitute 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 24th day of March 1939, issued and served its complaint in this proceeding upon respondent John B. Canepa Co., a corporation, charging it with the use of unfair and deceptive acts and practices 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 Curtis C. Shears, Esq., attorney for the Commission, and in opposition to the allegations of the complaint by John Harrington, Esq., attorney for the respondent before Randolph Preston, an examiner of the Commission theretofore duly designated by it, 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, oral arguments not having been requested; 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. Respondent, John B. Canepa Co., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois and having its principal office and place of business at 30 West Grand Avenue, in the city of Chicago, in the State of Illinois. It is now, and for more than 2 years last past has been engaged in the manufacture, sale, and distribution of macaroni and spaghetti products, maintaining a course of trade in said products among and between various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business during the period hereinbefore mentioned, the respondent has disseminated or caused to be disseminated in interstate commerce advertisements, booklets, and labels attached to its products, for the purpose of induc-

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ing increased sales of same. Among and typical of said advertisements and other aforesaid representations are the following:

I hate to brag, but only the finest macaroni is made long—
and

I hate to brag, but genuine Spaghetti is made long.

Since 1860, Red Cross Macaroni products have borne the reputation of being the finest quality possible to manufacture. Insist on Red Cross products, packed in the original full length packages. This is your guarantee against inferior substitutes. You may have wondered at times why Red Cross Macaroni and Spaghetti by comparison appear unusually long. There is a very definite reason for this.

On or about July 12, 1938, the respondent changed its advertisements and the representations on its packages as aforesaid from the language above quoted, and in lieu thereof made use of the following:

I hate to brag, but genuine Macaroni is made long.
and

I hate to brag, but genuine Spaghetti is made long.

PAR. 3. Respondent has packed and packs, sold and sells, distributed and distributes its spaghetti and macaroni in long containers. Booklets and other advertising matter containing the aforesaid statements and representations also contain, in direct connection therewith, pictorial representations of the long containers in which respondent sells and distributes its products. By the means and in the manner aforesaid, together with other statements of similar import disseminated as aforesaid, respondent has represented and represents to prospective and potential purchasers in various States of the United States and in the District of Columbia that its macaroni and spaghetti products are of the finest quality because they are made in long lengths, and that the macaroni and spaghetti products of other manufacturers which are not made in long lengths are not genuine and not of the finest quality, and that the length in which macaroni and spaghetti products are offered for sale is the true criterion of the genuineness and quality of such products.

PAR. 4. Said statements and representations used and disseminated by the respondent as aforesaid, are misleading and unfair. In truth and in fact, genuine macaroni and spaghetti products of the finest quality are made both in long lengths and in short lengths, and are offered for sale in both such forms. Genuine macaroni and spaghetti of the finest quality are in some instances first made in long lengths and thereafter cut into short lengths, and in this latter form are offered for sale and sold. The length in which macaroni and spa-

ghetti products are offered for sale is not a criterion of the quality and genuineness of the product.

PAR. 5. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations, and advertisements, disseminated as aforesaid, with reference to its products and, by comparison, to the products of other manufacturers, have had and now have the capacity and tendency to, and did and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and into purchasing substantial quantities of said products of respondent because of such mistaken and erroneous opinion or belief, thus created.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 the respondent, testimony and other evidence taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, 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, John B. Canepa Co., a corporation, its officers, 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 macaroni or spaghetti products, 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 products, which advertisements represent, directly or through implication:

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That the lengths in which macaroni or spaghetti products are manufactured or sold by the respondent, or any of its competitors, are in any way indicative of the genuineness or quality of such products.

It is further ordered, That the respondent 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.

Syllabus

IN THE MATTER OF
INDIAN RIVER MEDICINE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3940. Complaint, Nov. 3, 1939—Decision, Apr. 17, 1940*

Where a corporation engaged in compounding and in selling and distributing its "Scalf's Indian River Tonic" to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution in commerce as aforesaid, of products for use in connection with treatment of ailments, diseases, and conditions for which it represented and claimed its preparation to be a treatment, and including many who do not falsely represent their products or the benefits to be derived from the use thereof; in advertisements of its said preparation which it disseminated and caused to be disseminated through the mails, insertion in newspapers and periodicals of general circulation, and circulars and other printed or written matter distributed in commerce among the various States, and through continuities broadcast from stations of extrastate audience, and otherwise, and which were intended and likely to induce direct or indirect purchase of its said preparation—

- (a) Represented, directly or indirectly, that its said "Scalf's Indian River Tonic" would prevent and cure colds and build up resistance to other minor ailments, and that it constituted a competent or effective remedy or cure for rheumatism and competent and effective treatment for removing or overcoming causes of such symptomatic conditions as sleeplessness, nervousness, indigestion, and aches and pains in the head and joints; and
- (b) Represented, as aforesaid, that it was a cure or remedy for ailments of the liver, kidneys, and stomach and would increase weight, restore strength, and build up the general health of the user, and was composed of natural vegetable ingredients, and constituted a competent cure or remedy for asthma and had substantial value in the treatment thereof, and afforded positive or certain relief from chronic ailments;

Facts being it would not prevent or cure colds, serve to build up resistance to other ailments, was not a competent or effective cure or remedy for rheumatism, had no value for removing or overcoming causes of sleeplessness, nervousness, or indigestion, and was not a cure or remedy for and had no therapeutic value in the treatment of other ailments and conditions above set forth, would not accomplish results claimed therefor as aforesaid, and was not composed of natural vegetable ingredients, and would not afford positive or certain relief for any ailments, and its aforesaid statements, representations, and advertisements were false and misleading;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and claims were true, and of causing substantial portion of said public, because of such belief, to purchase its product, and with the result that trade was thereby diverted unfairly to it from its competitors likewise