

Syllabus

IN THE MATTER OF
LEKAS AND DRIVAS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4815: Complaint, Aug. 14, 1942—Decision, July 7, 1943*

Where a corporation, engaged in the importation and sale of its "Aristocratic Imported Virgin Olive Oil" and "L. & D. Olive Oil", in advertisements in newspapers, periodicals, circulars, and other advertising literature, and by radio broadcasts—

- (a) Represented that its olive oil had value as a tonic and would invigorate and build up the vital organs; and that use thereof would promote and maintain health, and prevent such diseases as appendicitis, gallstones, and bladder infections; and
- (b) Represented that the nutritive value of its olive oil was three and one-half times greater than that of dried meat; that it contained 45 times more calories than fresh meat; that use thereof supplied substantial quantities of vitamins A, E, and F, and that it was second only to cod liver oil in vitamin A content;

The facts being that olive oil does not have therapeutic and medicinal values thus attributed to it, being practically a pure fat and acting as such in nutrition; it contains very small amounts of vitamin A and E, content of former being in no way comparable to that of cod liver oil or ranking second thereto; it has no therapeutic value in the treatment of any condition where use of such vitamins might be beneficial and no specific value in treatment of any disease or condition; vitamin F is not generally known or recognized by the medical or biochemical professions; and comparison of the nutritive value of olive oil with that of meat on the basis of caloric content is misleading, since it supplies only pure fat or fatty acids and food value of meat lies chiefly in its proteins; and

- (c) Represented that its olive oil, applied externally, would cure many skin irritations and relieve neuralgia and rheumatic aches;

The facts being the value obtained from external use thereof was that of a lubricant, and while it might be beneficial to the skin when a deficiency of natural oils existed, it has little or no therapeutic value in the treatment of skin irritations other than as a lubricant or as an oily base for other drugs, and none in the treatment or alleviation of pain resulting from neuralgia or rheumatism other than facilitating rubbing or massage;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby causing it to purchase substantial quantities of said product:

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

Before *Mr. John L. Horner*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. James Madison Blackwell and *Mr. Louis S. Lewis*, of New York City, for respondent.

Complaint

37 F. T. C.

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 Lekas and Drivas, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Lekas and Drivas, Inc., a corporation organized under the laws of the State of New York, is now, and for several years last past has been, engaged in importing and selling olive oil. Respondent's olive oil is advertised and sold under the brand names "Aristocratic Imported Virgin Olive Oil" and "L. & D. Olive Oil." Respondent's principal office and place of business is at 19-21 Roosevelt Street, New York, N. Y.

In the course and conduct of its business as aforesaid, the respondent causes, and for several years last past has caused, its olive oil, when sold, to be transported from its said place of business in New York, to the purchasers thereof located in various States of the United States and in the District of Columbia. Respondent maintains and at all times herein mentioned has maintained, a course of trade in said product in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product 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:

There does exist, however, the elixir of health, and that is the Olive Oil, the good Olive Oil, as the "Aristocratic".

The "Aristocratic" and the "L and D" are the two famous brands of Olive Oil of the house of Lekas and Drivas, the brands of Olive Oil by means of which you secure perfect success in the preparation of your dishes, you secure health for yourself and for your family.

In many countries of the Mediterranean despite poverty and the lower standards of living, such ailments as appendicitis, gallstones and infections of the bladder are almost unknown. A general state of health prevails. This is attributed to the regular use of olive oil in the diet.

Olive oil has about three and one-half times more nutritive value than dried meat and about forty-five times more calories than fresh meat.

It contains vitamins A, E and F, and the percentage of its vitamin A content is second only to that of cod liver oil, the king of tonics.

When used regularly, olive oil helps to purify the entire system.

Grown-up persons find that olive oil massages cure many skin irritations, relieve neuralgia and even rheumatic aches.

Olive Oil is truly a prime essential to gracious and healthful living.

For radiant beauty olive oil has been the favorite of beauty specialists, since the time of ancient Greece—Internally it tones up vital organs. Externally it is the means to a skin as smooth as alabaster.

For the complexion * * * stimulating.

PAR. 3. Through the use of the aforesaid representations and others of similar import not specifically set out herein the respondent has represented, among other things, that olive oil is the elixir of health and will promote and maintain health; that it will prevent such ailments as appendicitis, gallstones, and infections of the bladder; that it has three and one-half times more nutritive value than dried meat; that it contains a substantial amount of vitamin A; that it contains vitamins E and F; that it will purify the entire system; that, when applied, externally, it assures a smooth skin, stimulates the circulation, cures many skin irritations, and relieves neuralgia and rheumatic aches; and that it has a tonic effect upon the vital organs of the body.

PAR. 4. The representations set out and referred to herein are false and misleading. In truth and in fact, olive oil will not promote or maintain health. It is of no value in the prevention of appendicitis, gallstones, or infections of the bladder. It does not contain a substantial amount of vitamin A nor does it contain a demonstrable amount of vitamin E. There is no essential nutrition factor which is generally recognized and characterized by a majority of the medical or biochemical professions as "vitamin F," and olive oil does not contain a significant quantity of those substances sometimes erroneously designated by the name "Vitamin F." Olive oil will not purify or accomplish any specific effect upon the entire system. When

applied externally, it will not relieve neuralgia or rheumatic aches and is of no value in treating skin irritations or stimulating circulation other than to serve as an emollient and as a lubricant to facilitate massage. It is not a tonic and has no direct influence upon any of the vital organs of the body. The nutritive value of olive oil is not three and one-half times more than that of dried meat.

PAR. 5. The use by the respondent of the acts and practices herein set forth had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into an erroneous and mistaken belief that its said olive oil contains the substances and will accomplish the results set forth in its advertising matter, and to purchase substantial quantities of respondent's olive oil as a result of such mistaken and erroneous belief.

PAR. 6. The acts and practices of 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 August 14, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Lekas and Drivas, Inc., 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, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before a trial 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto (oral argument 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, Lekas and Drivas, Inc., a corporation, organized under the laws of the State of New York, is now, and for

several years last past has been engaged in importing and selling olive oil. Respondent's olive oil is advertised and sold under the brand names "Aristocratic Imported Virgin Olive Oil" and "L. & D. Olive Oil." Respondent's principal office and place of business is at 19-21 Roosevelt Street, New York, N. Y.

In the course and conduct of its business as aforesaid, the respondent causes, and for several years last past has caused, its olive oil, when sold, to be transported from its said place of business in the State of New York to the purchasers thereof located in various other States of the United States. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said product in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said product by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated, and has caused the dissemination of, false advertisements concerning its said product by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of its said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers and periodicals, by circulars, leaflets, pamphlets, and other advertising literature, and by continuities broadcast from radio stations which have the power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State from which said broadcasts originate, are the following:

There does exist, however, the elixir of health, and that is the Olive Oil, the good Olive Oil, as the "Aristocratic."

The "Aristocratic" and the "L and D" are the two famous brands of Olive Oil of the house of Lekas and Drivas, the brands of Olive Oil by means of which you secure perfect success in the preparation of your dishes, you secure health for yourself and for your family.

In many countries of the Mediterranean despite poverty and the lower standards of living, such ailments as appendicitis, gallstones and infections of the bladder are almost unknown. A general state of health prevails. This is attributed to the regular use of olive oil in the diet.

Olive oil has about three and one-half times more nutritive value than dried meat and about forty-five times more calories than fresh meat.

It contains vitamins A, E and F, and the percentage of its Vitamin A content is second only to that of cod liver oil, the king of tonics.

Findings

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When used regularly, olive oil helps to purify the entire system.

Grown-up persons find that olive oil massages cure many skin irritations, relieve neuralgia and even rheumatic aches.

Olive Oil is truly a prime essential to gracious and healthful living.

For radiant beauty olive oil has been the favorite of beauty specialists, since the time of ancient Greece—Internally it tones up vital organs. Externally it is the means to a skin as smooth as alabaster.

For the complexion * * * stimulating.

PAR. 3. Through the use of the aforesaid representations and others of similar import not specifically set out herein, the respondent has represented that its olive oil has therapeutic value in the treatment and prevention of various diseases and conditions. In this connection the respondent represents that its olive oil has value as a tonic and will invigorate and build up the vital organs and that its use will promote and maintain health and prevent such diseases and conditions as appendicitis, gallstones, and infections of the bladder. By the same means the respondent further represents that its olive oil, when applied externally, will cure many skin irritations and relieve neuralgia and rheumatic aches. It is further represented by the respondent that the nutritive value of its olive oil is three and one-half times greater than that of dried meat and that it contains forty-five times more calories than fresh meat and that the use of said olive oil supplies substantial quantities of vitamins A, E, and F and is second only to cod liver oil in vitamin A content.

PAR. 4. The foregoing statements and representations, disseminated by the respondent in the manner hereinabove described, are false, misleading, and deceptive. Olive Oil does not have the therapeutic and nutritional value attributed to it by the respondent. It is practically a pure fat and acts as a fat in nutrition. Fatty acids, such as those supplied by butter, lard, and olive oil, are an essential part of the diet and, consequently, olive oil is of value when used with other foods so far as total nutrition is concerned.

Olive oil contains very small amounts of vitamins A and E. Its vitamin A content is in no way comparable to that of cod liver oil and it does not rank second to cod liver oil in vitamin A content. The use of olive oil will not supply substantial quantities of vitamins A or E and has no therapeutic value in the treatment of any condition where the use of such vitamins might be beneficial. Representations that respondent's olive oil has special therapeutic value or other beneficial properties because of a vitamin F content are deceptive and misleading, as vitamin F is not generally known or recognized by the medical profession or the biochemical profession.

Olive Oil, when taken internally, does not have any specific therapeutic value in the treatment of any disease or condition. It is not a tonic and will not invigorate or build up the vital organs. The use of olive oil will not prevent appendicitis, gallstones, or infections of the bladder.

The value obtainable from the external use of olive oil is that of a lubricant. When a deficiency of natural oils exists the use of olive oil might be beneficial to the skin. However, it has little or no therapeutic value in the treatment of irritations of the skin other than to serve as a lubricant or as an oily base for other drugs. It has no value in the treatment or alleviation of pain resulting from neuralgia or rheumatism other than the beneficial effects which might be obtained from the rubbing or massage facilitated by the use of olive oil as a lubricant.

Since olive oil supplies only pure fat or fatty acids and since the food value of meat consists chiefly in protein, it is misleading to compare the nutritive value of olive oil with meat on the basis of caloric content.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as hereinbefore described, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's olive oil has therapeutic value in the treatment and prevention of various diseases and conditions and has value as a tonic which will invigorate and build up the vital organs, and causes such members of the purchasing public to purchase substantial quantities of respondent's olive oil because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence in support of, and in opposition to, the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; 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.

Order

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It is ordered, That the respondent Lekas and Drivas, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of olive oil, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference,

(a) That respondent's olive oil, when taken internally, has any specified therapeutic value in the treatment or prevention of any disease or condition.

(b) That respondent's olive oil is a tonic or that its use will invigorate or build up vital organs.

(c) That respondent's olive oil will have any value in preventing appendicitis, gallstones, or infections of the bladder.

(d) That respondent's olive oil, when applied externally, has any therapeutic value in the treatment of irritations of the skin other than that supplied by a lubricant.

(e) That respondent's olive oil has any therapeutic value in the treatment or alleviation of pain resulting from neuralgia or rheumatism other than the beneficial effects which might be obtained from the rubbing or massage facilitated by the use of olive oil as a lubricant.

(f) That the nutritional value of olive oil is comparable to, or of greater value than, dried or fresh meat.

(g) That respondent's olive oil supplies substantial quantities of vitamins A or E or that it has any therapeutic value in the treatment of any condition where the use of such vitamins might be beneficial.

(h) That respondent's olive oil contains vitamin F.

2. 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 respondent's olive oil, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions, thereof.

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.

Complaint

IN THE MATTER OF

MAURICE J. KELLNER, DOING BUSINESS AS M. J.
KELLNER, BROKER, ETC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (c) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914*Docket 4796. Complaint, Aug. 6, 1942—Decision, July 8, 1943*

Where an individual, engaged as a broker of general food products and other miscellaneous merchandise, and also as a jobber thereof—

Received and accepted from numerous sellers in other states on purchases on his own account for resale, brokerage fees or allowances or discounts in lieu thereof:

Held, That in receiving and accepting such brokerage fees or allowances, or discounts in lieu thereof, from sellers upon his purchases in interstate commerce, as aforesaid, he violated the provisions of Subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. E. S. Ragsdale for the Commission.

Gottlieb & Schwartz and Libit & Lindauer, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Maurice J. Kellner, is an individual, doing business under the name and style of M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co. and O-K Sales Co., having his principal office and place of business located at 8th and Madison Streets, Springfield, Ill.

PAR. 2. The respondent is now and for many years prior hereto has been engaged in business as a broker of general food products and other miscellaneous merchandise and has conducted such business under the name and style of M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co. and O-K Sales Co.

PAR. 3. The respondent is now and for many years prior hereto has also been engaged in business as a jobber of general food products and other miscellaneous merchandise and has also conducted such jobbing enterprises under the name and style of M. J. Kellner, broker,