

Complaint

IN THE MATTER OF

JOSEPH O. MAGGIONI, JOSEPH S. CAFIERO AND MAD-
ELINE CAFIERO, DOING BUSINESS AS L. P. MAGGIONI
& COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS
AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5129. Complaint, Feb. 5, 1944—Decision, Mar. 20, 1945

Where three partners engaged in packing and canning fish, oysters, shrimp and clams, and in the marketing, sale and distribution of said sea food products under their own brands and also under private or buyers' brands; selling (1) through a large number of legitimate intermediaries who acted as their agents and were paid commissions or brokerage fees; and (2) direct to a few buyers who were paid, directly or indirectly, commissions or brokerage fees on their own purchases of such sea food products—

Paid or granted, directly or indirectly, commissions, brokerage or other compensation in lieu thereof, to buyers of a substantial portion of their said sea food products in other States:

Held, That such paying and granting, directly or indirectly, of commissions, brokerage or other compensation in lieu thereof, to buyers of said sea food products on their own purchases, and the acts and practices of said partners in promoting sales of sea food products by such payments to buyers, were in violation of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Abrahams, Bouhan, Atkinson & Lawrence, of Savannah, Ga., for respondents.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are 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. Respondents, Joseph O. Maggioni, Joseph S. Cafiero and Madeline Cafiero, are partners, doing business as L. P. Maggioni & Company, having their principal office and place of business located at 401 West Bay Street, Savannah, Ga.

PAR. 2. The respondents are now engaged, and for many years prior hereto have engaged, in the business of packing and canning fish, oysters, shrimp and clams (all of which are hereinafter called "Sea Food Products") and in the marketing, sale and distribution of such sea food products in its own name and for its own account for resale.

The respondents sell and distribute their sea food products through two separate and distinct methods: (1) through a large number of legitimate intermediaries who act as their agents in negotiating the sale of sea food

products and for which services such intermediaries customarily are paid directly, or indirectly, commissions or brokerage fees; (2) through the sale of its sea food products direct to a few buyers who are paid, directly or indirectly, commissions or brokerage fees on their own purchases of such sea food products from the respondents.

The respondents to distinguish their sea food products from the sea food products sold by competitors, to facilitate sales utilize registered and unregistered trade-marks and brands for the various sea food products it sells. These brands are generally known as packers' or sellers' brands. Representative of the respondents' brands are:

Mermaid, Sea Zone, Daufuski, Warsaw, Coosaw, Sambo, Port Royal, Fox Inn, Crown, Off Shore, Jekyl Island, Magico, Maggioni, Magestic, English Ace.

Respondent also sells its sea food products under the labels or brands of its buyers, which brands or labels are generally known to the trade as private or buyers brands. Some of such buyers who incorrectly designate themselves as brokers also utilize registered and unregistered labels and brands, which labels and brands are utilized by the respective buyers in selling such buyers merchandise. Representative of respondents' buyers who purchase respondents' sea food products under their own buyers' brands or labels as well as under the sellers brands or labels is Wm. H. Stanley, Inc., of New York City, N. Y. This buyer purchases in its own name, and for its own account, large quantities of respondents' sea food products under its own registered private brand "Seaspray." Representative of respondent's buyers who purchase in their own name and for their own account respondents' sea food products exclusively under the sellers brands or labels are Haas-Guthman Co., Savannah, Ga. and Britt-McKinney Co., Inc., Greenville, S. C.

PAR. 3. The respondents, in the course and conduct of their said business, since June 19, 1936, have sold and distributed a substantial portion of their sea food products directly to buyers located in States other than the State in which the respondents are established, and as a result of said sales and the respondents' instructions such sea food products are shipped and transported across State lines to such buyers who are located in various States of the United States.

PAR. 4. The respondents since June 19, 1936, in connection with the interstate sale and distribution of sea food products in their own name and for their own account for resale, have sold such sea food products to buyers located in the various States of the United States other than the State where respondents are established and have been and are now paying or granting or have paid or granted, directly or indirectly, commissions, brokerage or other compensation or allowance or discounts in lieu thereof to buyers of said sea food products.

PAR. 5. The paying and granting by respondents, Joseph O. Maggioni, Joseph S. Cafiero and Madeline Cafiero, partners, doing business as L. P. Maggioni & Company, directly or indirectly, of commissions, brokerage or other compensation and allowances or discounts in lieu thereof to the buyers of said sea food products, on their own purchases, and the acts and practices of the respondents in promoting sales of sea food products by paying to buyers, directly or indirectly, commissions, brokerage or other compensation and allowances or discounts in lieu thereof, as set forth above, are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), the Federal Trade Commission on February 5, 1944, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violating the provisions of subsection (c) of section 2 of said act as amended.

After the issuance of said complaint the respondents in due course filed answer to said complaint and denied that their acts and practices were in violation of subsection (c) of section 2 of the Clayton Act as amended.

Thereafter the respondents requested and received permission from the Commission to withdraw their original answer and to file in lieu thereof an answer dated September 29, 1944, which substitute answer admitted all material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer; and the Commission, having duly considered the same and being now fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Joseph O. Maggioni, Joseph S. Cafiero, and Madeline Cafiero, are partners, doing business as L. P. Maggioni & Company and having their principal office and place of business located at 401 West Bay Street, Savannah, Ga.

PAR. 2. The respondents are now engaged, and for many years prior hereto have engaged, in the business of packing and canning fish, oysters, shrimp, and clams (all of which are hereinafter called "sea food products") and in the marketing, sale, and distribution of such sea food products in their own name and for their own account for resale.

The respondents sell and distribute their sea food products through two separate and distinct methods: (1) through a large number of legitimate intermediaries who act as their agents in negotiating the sale of sea food products and for which services such intermediaries customarily are paid, directly or indirectly, commissions or brokerage fees; and (2) through the sale of their sea food products direct to a few buyers who are paid, directly or indirectly, commissions or brokerage fees on their own purchases of such sea food products from the respondents.

The respondents, to distinguish their sea food products from the sea food products sold by competitors and to facilitate sales, utilize registered and unregistered trade-marks and brands for the various sea food products sold by them. These brands are generally known as packers' or sellers' brands. Representative of the respondents' brands are:

Mermaid, Sea Zone, Daufuski, Warsaw, Coosaw, Sambo, Port Royal, Fox Inn, Crown, Off Shore, Jekyl Island, Magico, Maggioni, Magestic, and English Ace.

Respondents also sell their sea food products under the labels or brands of their buyers, which brands or labels are generally known to the trade as

private or buyers' brands. Some of such buyers who incorrectly designate themselves as brokers also utilize registered and unregistered labels and brands, which labels and brands are utilized by the respective buyers in selling such buyers' merchandise. Representative of respondents' buyers who purchased respondents' sea food products under their own buyers' brands or labels, as well as under the sellers' brands or labels, was Wm. H. Stanley, Inc., of New York City, N. Y. This buyer purchased in its own name, and for its own account, large quantities of respondents' sea food products under its own registered private brand "Seaspray." Representative of respondents' buyers who purchased in their own name, and for their own account, respondents' sea food products exclusively under the sellers' brands or labels were Haas-Guthman Co., Savannah, Ga., and Britt-McKinney Co., Inc., Greenville, S. C.

PAR. 3. The respondents, in the course and conduct of their said business, since June 19, 1936, have sold and distributed a substantial portion of their sea food products directly to buyers located in States other than the State in which the respondents are established, and as a result of said sales and the respondents' instructions such sea food products are shipped and transported across State lines to such buyers who are located in various States of the United States.

PAR. 4. The respondents, since June 19, 1936, in connection with the interstate sale and distribution of sea food products in their own name and for their own account for resale, have sold such sea food products to buyers located in the various States of the United States other than the State where respondents are established and have been and are now paying or granting, or have paid or granted, directly or indirectly, commissions, brokerage, or other compensation, or allowance or discount in lieu thereof, to buyers of said sea food products.

CONCLUSION

The paying and granting by respondents, Joseph C. Maggioni, Joseph S. Cafiero, and Madeline Cafiero, partners doing business as L. P. Maggioni & Company, directly or indirectly, of commissions, brokerage, or other compensation, and allowances or discounts in lieu thereof, to the buyers of said sea food products, on their own purchases, and the acts and practices of the respondents in promoting sales of sea food products by paying to buyers, directly or indirectly, commissions, brokerage, or other compensation, and allowances or discounts in lieu thereof, as set forth above, are in violation of subsection (c) of section 2 of the Clayton Act as amended.

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, which answer admits, with certain exceptions, the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of subsection (c) of section 2 of the Act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. Title 15, Sec. 13).

It is ordered, That the respondents, Joseph O. Maggioni, Joseph S. Cafiero, and Madeline Cafiero, doing business as L. P. Maggioni & Company or under any other name, and their agents, employees, and representatives, directly or through any corporate or other device, in connection with the sale and distribution of sea food products or any other commodity in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to any buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases made for such buyer's own account.

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

OSTREX COMPANY, INC. AND DAVID STEUERMAN AND
LILLIAN STEUERMAN TRADING AS STEUERMAN AD-
VERTISING AGENCY

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

Docket 4894. Complaint, Jan. 25, 1943—Decision, Mar. 21, 1945

Where two individuals who were the advertising agents of a corporation prior to its dissolution, and assisted in the preparation and dissemination of advertising material used by it in behalf of its medical preparation Ostrex, and one of whom owned and carried on the business after said dissolution and the death of the owner, her father; through advertisements in newspapers and periodicals and by other means, directly and by implication—

Represented that such conditions as an exhausted, worn-out rundown feeling and body weakness might not be attributable to age but might be due to body deficiencies of iron, Vitamin B₁, calcium and phosphorus; that said preparation contained a sufficient quantity of each of said ingredients to supply such deficiencies, and that use thereof would remedy the aforesaid conditions when they were due to such deficiencies; and that it contained tonics and stimulants which corrected subnormal conditions in persons over 40 when caused by said deficiencies;

The facts being it had no therapeutic value in the treatment of an exhausted, worn-out, and rundown feeling or body weakness, except insofar as such conditions—in many cases associated with old age, or result of disease, with no relationship to body deficiencies of iron or of calcium, phosphorus, and Vitamin B₁—were due to a body deficiency of iron; while said preparation did provide an adequate amount of iron in cases where there was actual deficiency thereof, it did not provide a therapeutic amount of the other substances, such as should be administered in cases of actual deficiencies thereof (though supplying the minimum daily nutritional requirement of Vitamin B₁, and amounts of calcium and of phosphorus which might be of assistance in preventing deficiencies in said minerals); and, while an iron tonic, it contained no ingredients generally designated as tonics and stimulants;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such statements and representations were true and of thereby inducing its purchase:

Held, That said 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.

Mr. Jesse D. Kash 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 Ostrex Company, Inc., a corporation, and David Steuerman, and Lillian Steuerman, individuals, trading as Steuerman Advertising Agency, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Com-