

IN THE MATTER OF

RINALDO J. SOLARI, TRADING AS JOHN SOLARI & COMPANY AND AS PAR-EX PRODUCTS COMPANY

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

Docket 4895. Complaint, June 12, 1945¹—Decision, Oct. 7, 1946

Where an individual engaged among other things in the interstate sale and distribution of a food product which he designated "Par-Ex Hollandaise Sauce"—

Represented through use of the word "Hollandaise" for his said sauce, and on labels attached to containers, and in advertising streamers or stickers furnished to merchants for use in the display thereof, that his said product was made according to the generally accepted practice in making Hollandaise sauce and that its fatty content was exclusively butter;

The facts being that his said product was not genuine Hollandaise sauce as long known to and understood by cooks, chefs, housewives, and a substantial portion of the consuming public and as specified in recipes, cook books and other publications, namely, a sauce in which a substantial portion, and the only fatty ingredient is butter, but contained approximately 70 percent vegetable oil and only about 10 percent butter;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that his said product was genuine Hollandaise sauce and thereby to induce the purchase thereof, whereby trade was diverted unfairly to him from competitors who sold and distributed the genuine and more costly Hollandaise sauce, to the injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Messrs. Jacob J. & Jay O. Kramer, of New York City, for respondent.

AMENDED 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 Rinaldo J. Solari, an individual trading as John Solari & Co. and as Par-Ex Products Co., hereinafter referred to as respondents, has violated the provisions of

¹ Amended.

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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rinaldo J. Solari is an individual trading as John Solari & Co. and as Par-Ex Products Co. with his office and principal place of business located at 65 Beach Street in the city of New York, State of New York.

PAR. 2. Respondent is engaged in the sale and distribution of a food product designated by him as Par-Ex Hollandaise Sauce. Respondent causes his said product, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said product 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 as aforesaid, respondent has been and is in competition with corporations and with other individuals, firms and partnerships selling and distributing Hollandaise sauce 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 aforesaid business and for the purpose of describing and identifying his product and inducing the sale thereof respondent attaches labels to the containers of his said product upon which the following is printed:

PAR-EX Brand HOLLANDAISE SAUCE

A delicious dressing suitable for serving with all hot dishes.

Respondent also furnishes streamers or stickers to merchants who purchase his product for resale to the public, to be displayed in stores and in aid of selling the said product upon which the following statements are used:

**A RARE TREAT—PAR-EX HOLLANDAISE
SAUCE—FOR SALE HERE.**

**Your Favorite Vegetable Tastes Better
Served with PAR-EX HOLLANDAISE SAUCE
Something Different—Something New.**

PAR. 5. Hollandaise sauce is a sauce the fatty ingredient of which consists wholly of butter. Said sauce consists of an emulsion of butter, yolk of eggs, lemon juice, and vinegar. The fact that its fatty content consists of butter has for many years past been known to cooks, chefs,

housewives, and the consuming public; and cook books and publications generally, containing recipes for such such, indicate butter as the fatty constituent thereof.

PAR. 6. Through the use of the words "Hollandaise Sauce," as aforesaid, respondent represents that his product is a sauce made according to the generally accepted recipe for hollandaise sauce and that its fatty content consists wholly of butter. In truth and in fact, respondent's product is not made according to the generally accepted recipe for hollandaise sauce as known to the public, in that its fatty content is not composed wholly of butter but consists principally of vegetable oil with only a small amount of butter. Respondent's sauce is composed of approximately 70 percent vegetable oil, 20 percent fresh egg yolk, 10 percent butter, with a small quantity of salt and a minimum of flavor. Said product is not hollandaise sauce but contains the ingredients generally used in the manufacture of mayonnaise, a product sold at a price considerably less than hollandaise sauce.

PAR. 7. The use by the respondent of the foregoing false statements has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that his product is genuine hollandaise sauce, and to induce the purchasing public to purchase substantial quantities of said product as the result of such erroneous belief.

As a result, trade has been diverted unfairly to the respondent from competitors in commerce who sell and distribute genuine hollandaise sauce. In consequence thereof, injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors 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 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 January 25, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Rinaldo J. Solari, an individual trading as John Solari & Co., and as Par-Ex Products Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondent's answer to said complaint, testimony and other evidence were taken before 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 hearing on the complaint, answer, testimony, and other evidence, report of the trial examiner, and brief in support of the complaint. Upon consideration of the matter, an amended complaint was issued on June 12, 1945, and subsequently served upon respondent. Thereafter, certain additional facts were stipulated into the record and the matter regularly came on for final hearing on the amended complaint, testimony and other evidence taken pursuant to the first complaint (said testimony and other evidence having been considered in support of and in opposition to the amended complaint insofar as competent and material), report and supplemental report of the trial examiner, and brief and supplemental brief in support of the complaint (no brief having been filed by respondent and 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, Rinaldo J. Solari, is an individual trading as John Solari & Co., and as Par-Ex Products Co., with his office and principal place of business at 65 Beach Street, New York, N. Y. As a part of his business, respondent is engaged in the sale and distribution of a food product designated by him as "Par-Ex Hollandaise Sauce."

PAR. 2. Respondent causes his aforesaid product, when sold, to be transported from his place of business in the State of New York to purchasers thereof at their points of location in various other States of the United States, and maintains and has maintained a course of trade in said product in commerce between and among various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of describing and identifying his product and inducing the sale thereof, respondent attaches labels to the containers in which his product is packaged upon which the following is printed:

PAR-EX Brand HOLLANDAISE SAUCE

A delicious dressing suitable for serving with all hot dishes

Respondent also furnishes point-of-sale advertising material in the form of streamers or stickers to merchants who purchase his product

Findings

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for resale to the public for display by such merchants in their stores to aid in the selling of said product. Said streamers or stickers bear the following statements:

Your Favorite Vegetable Tastes Better Served With

PAR-EX HOLLANDAISE SAUCE

Something Different

Something New

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A Rare Treat

Try It

PAR-EX HOLLANDAISE SAUCE

For Sale Here

PAR. 4. The only fatty ingredient used in genuine hollandaise sauce is butter, and this ingredient constitutes a substantial portion of the entire sauce. The fact that butter is used exclusively as the fatty content in hollandaise sauce has for many years been known to and understood by cooks, chefs, housewives, and a substantial portion of the consuming public. Cook books and other publications which contain recipes for such sauce prescribe butter as the fatty constituent thereof. A sauce made in simulation of hollandaise sauce by the substitution of vegetable oils or other fatty ingredients in lieu of butter is not genuine hollandaise sauce.

PAR. 5. Through the use of the word "Hollandaise" to describe his said sauce, respondent represents that his product is a sauce made according to the generally accepted practice in making hollandaise sauce and that its fatty content is exclusively butter. As a matter of fact, however, respondent's product contains approximately 70 percent vegetable oil and only about 10 percent butter. Because of this substitution of vegetable oil in lieu of butter as the major ingredient in respondent's product, said product is not a true hollandaise sauce; and, further, because of this substitution, respondent is enabled to sell his said product at a price lower than the price of a true hollandaise sauce.

PAR. 6. In the sale and distribution of his aforesaid product, respondent has been, and is, in competition with corporations, firms, partnerships, and individuals selling and distributing hollandaise sauce between and among various States of the United States and in the District of Columbia. The use by respondent of the designation "Hollandaise" for his sauce and his representations that his said sauce is hollandaise sauce have the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that his product is genuine hollandaise sauce and to induce the purchase of his said product as a result of such erroneous belief. As a result, trade

has been diverted unfairly to respondent from competitors in commerce who sell and distribute genuine hollandaise sauce, and in consequence thereof injury has been done, and is now being done, by respondent to competition in commerce between and among various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors 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 Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report and supplemental report by the trial examiner, and brief and supplemental brief in support of the complaint (respondent not having filed brief and oral argument not having been requested); 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, respondent, Rinaldo J. Solari, an individual, trading as John Solari & Co., Par-Ex Products Co., or under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of any sauce for use with food, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "Hollandaise," or any simulation thereof, to designate, describe, or refer to a sauce in which the fatty ingredient is not exclusively butter, or representing in any manner that a sauce in which the fatty ingredient is not butter is hollandaise sauce.

It is further ordered that respondent shall, within 60 days after the 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.

Complaint

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IN THE MATTER OF
FRENCH SARDINE COMPANY OF CALIFORNIA

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

Docket 5456 Complaint, Aug. 5, 1946—Decision, Oct. 7, 1946

Where a corporation engaged in the packing of canned sea food products, principally canned sardines, and in the interstate sale and distribution thereof (1) through legitimate intermediaries who acted as its agents and to whom it paid commissions and brokerage fees for such services, and (2) to direct buyers, in some cases designating themselves "brokers," who, contrary to the operations of a broker, purchased for their own accounts for resale, transmitted their own purchase orders direct to said corporation—which invoiced such buyers and collected the purchase price therefrom—warehoused commodities, and insured them at their own expense and in their own names and for their own accounts, taking title and assuming all risk incident to ownership—

Paid or granted to such direct buyers, directly or indirectly, commissions or brokerage, or other compensation, allowances, or discounts in lieu thereof, on such purchases made in their own names and for their own accounts for resale:

Held, That the paying and granting by it, directly or indirectly, of commissions or brokerage, etc., to buyers of its products who purchased in their own names and for their own accounts for resale, as above set forth, constituted a violation of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. John V. Morris, of Terminal Island, Calif., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe 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, French Sardine Co. of California, is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 171-181 Fish Harbor Wharf, Terminal Island, Calif.

PAR. 2. The respondent, since June 19, 1936, has been, and is now, engaged in the business of packing, selling, and distributing canned sea-food products, principally canned sardines, canned tuna, and