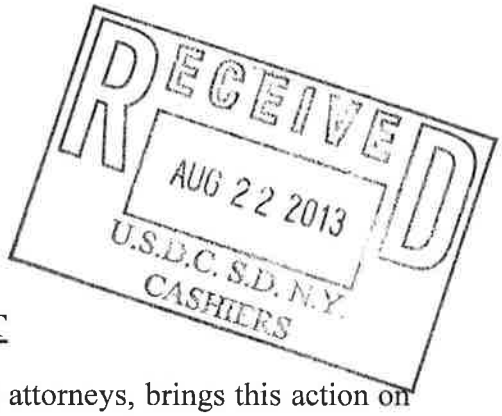
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FRANK TOSCANO, on behalf of himself and all others similarly situated, Plaintiff, vs. KANGADIS FOOD INC. d/b/a THE GOURMET FACTORY, Defendant.	CIV. No.: 13 CIV 5944 **DEMAND FOR JURY TRIAL**



CLASS ACTION COMPLAINT

Plaintiff, Frank Toscano ("Plaintiff"), by and through his attorneys, brings this action on behalf of himself and all others similarly situated against Kangadis Food Inc. d/b/a The Gourmet Factory ("Gourmet Factory"). This class action complaint is based upon personal knowledge as to the allegations regarding the Plaintiff and upon information and belief and Plaintiff's counsel's investigation as to the other allegations in the complaint. Plaintiff hereby alleges as follows:

NATURE OF THE ACTION

1. This is a proposed class action against Gourmet Factory for falsely and deceptively marketing its Capatriti brand 100% Pure Olive Oil ("Capatriti Oil" or the "Product"). Capatriti Oil is not "100% Pure Olive Oil," but rather olive-pomace oil, an industrially processed substance produced from olive pits, skins, and pulp using a combination of chemical solvents and high temperatures.

2. There is no law, regulation, or standard passed by a government, regulatory body, or organization that expressly permits olive-pomace oil to be labeled as olive oil. Instead, the International Olive Counsel, the United States Food and Drug Administration, and the United States Department of Agriculture have taken the position that olive-pomace oil is not olive oil.

3. There are real health and cost differences between olive oil and olive-pomace oil. Olive-pomace oil is an inferior product when compared to olive oil, and is accordingly priced lower at wholesale than olive oil.

4. The North American Olive Oil Association ("NAOOA") has filed an unfair competition complaint against Gourmet Factory in this Court for labeling Capatriti Oil as "100% Pure Olive Oil." The NAOOA applied for and received a preliminary injunction prohibiting Gourmet Factory from continuing to sell the Product as "100% Pure Olive Oil." *North American Olive Oil Associaton v. Kangadis Food Inc.*, 13-cv-868 (S.D.N.Y.).

5. In the opinion underlying the injunction, the Court stated that the "NAOOA has adequately shown that it is literally false, and not simply potentially misleading, to advertise Pomace as '100% Pure Olive Oil.'"

6. During the course of the briefing on the preliminary injunction, Gourmet Factory admitted that its sales would suffer if it were forced to label Capatriti Oil as olive-pomace oil. Its president also admitted that the Product contained olive-pomace oil instead of olive oil.

7. Plaintiff, through his counsel, has obtained testing on a sample of Capatriti Oil that he purchased, and confirmed through that testing that the Product Plaintiff purchased was olive-pomace oil.

8. Gourmet Factory's mislabeling has caused Plaintiff and members of the putative Class to purchase Capatriti Oil they would not have purchased and/or to pay more for the oil than they would have if the Product had been labeled as olive-pomace oil.

9. In response to the actions of Gourmet Factory, Plaintiff now brings this putative class action seeking damages and equitable relief as described more fully herein.

PARTIES

10. Defendant Gourmet Factory is a corporation organized under the laws of the state of New York, and maintains its principal place of business at 55 Corporate Drive, Hauppauge, New York 11788.

11. Gourmet Factory imports and distributes olive oils, olives, and other food products. In particular, Gourmet Factory markets and sells four types of olive oil under the Capatriti brand: (i) extra virgin olive oil; (ii) extra light olive oil, (iii) blended olive oil; and (iv) Capatriti Oil (branded as "100% Pure Olive Oil").

12. Plaintiff Frank Toscano is a citizen of the state of New Jersey, residing at 560 Duchess Court, Toms River, New Jersey 08753.

13. Plaintiff has purchased Capatriti Oil from supermarkets located in Toms River and Brick, New Jersey.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is a citizen of a different state than Defendant, there are more than 100 putative class members, and the aggregate amount in controversy exceeds $5,000,000.

15. This Court has personal jurisdiction over Defendant in this case because Defendant is incorporated in this state and has a principle place of business in this state.

16. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because Defendant conducts business in this district and a substantial part of the events giving rise to the claims occurred in this judicial district.

FACTUAL ALLEGATIONS

I. OLIVE-POMACE OIL IS NOT OLIVE OIL

A. Production Process of Olive Oil

17. To produce olive oil, olives are first harvested from olive trees using either manual or mechanical methods, followed by collection on clean nets under the trees and packing for transport to an olive mill.

18. At the olive mill, the olives are separated from any collected leaves and stems and washed with water only (no detergents or chemical compounds are permitted).

19. The olives are then crushed to emulsify the oil and water contained in the olive fruit flesh. The crushing, called "malaxion," causes oil droplets to form together and triggers the biochemical reactions that create the volatile compounds found in virgin olive oil. The crushing can be performed manually or mechanically, though it is usually done mechanically.

20. Next, the crushed olives are placed in a centrifuge, called a decanter, and through horizontal centrifugation oil is separated from any remaining solids. The olive oil is then placed in a vertical centrifuge for further elimination of any water. The resulting product is first-pressing olive oil.

21. The solids left over from the first pressing are then pressed again to produce more oil, which is again separated from the solids and water through centrifugation. The resulting product is second-pressing olive oil.

22. First-pressing olive oil, generally labeled as "extra-virgin olive oil," is regarded as being the most flavorful and desirable variety of olive oil. Consequently, it commands the

highest prices. Second-pressing olive oil may be labeled as "virgin," "light," "pure," or other designations, and commands lower prices.

23. Capatriti Oil is neither first-pressing nor second-pressing olive oil, but rather olive-pomace oil.

24. Olive pomace is the solid residue—including skins, pulp, seeds, and stems—left over after the production of olive oil. The amount of oil contained in olive pomace is so minuscule that it cannot be extracted by pressing. Accordingly, olive-pomace oil is produced via a completely different process using chemical solvents and high heat.

25. First, the olive pomace is dried. Then, a chemical solvent, such as hexane, is applied to the olive pomace to dissolve the fats, but not the rest of the solid pomace.

26. According to the United States Environmental Protection Agency ("EPA"), "[h]exane is used to extract edible oils from seeds and vegetables, as a special-use solvent, and as a cleaning agent." EPA, *Hexane*, Technology Transfer Network Air Toxics Web Site, *available at* http://www.epa.gov/ttnatw01/hlthef/hexane.html. Short term exposure to high levels of hexane causes mild central nervous system effects, including dizziness, giddiness, slight nausea, and headache. Long term exposure to airborne hexane is associated with polyneuropathy in humans, with numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue.

27. After the dousing with solvent, the pomace is heated to evaporate the solvent. The heating of the pomace is a crucial step and the pomace should not be heated above 194 degrees Fahrenheit (90 degrees Celsius), or there is a risk that polycyclic aromatic hydrocarbons like benzopyrene will form. Benzoprynes are dangerous because they can cause intracellular

oxidation (the aging and death of cells) or mutagenesis of genetic materials within cells of the human body – which can result in cancerous tumors.

28. The substance left over after the evaporation of the solvent is crude olive-pomace oil (defined *infra*), which is then further refined to remove substances that are unfit for human consumption, such as toxic polycyclic aromatic hydrocarbons.

29. Reasonable consumers expect a product labeled as "olive oil" to be oil mechanically pressed from olives. They do not expect a product labeled as "olive oil" to be oil created by treating industrial waste with chemical solvents and heat, which is what Capatriti Oil and other olive-pomace oils are.

B. Under No Definition Is "Olive-Pomace Oil" Permitted to be Called "Olive Oil"

30. There is no law, regulation, or standard promulgated by a government, regulatory body, or organization in the world that expressly permits olive-pomace oil to be labeled as olive oil. Instead, the oil should be labeled with a qualifier that distinguishes it from olive oil, such as "olive-pomace oil" or "olive-residue oil."

31. Specifically, neither the International Olive Counsel, the United States Food and Drug Administration, nor the United States Department of Agriculture expressly permit olive-pomace oil to be labeled as olive oil.

1. "Olive-Pomace Oil" is not Permitted to be Called "Olive Oil" Under International Olive Counsel Standards

32. According to the International Olive Counsel ("IOC") Trade Standard Applying to Olive Oils and Olive-Pomace Oils ("IOC Standard"),[1] "[o]live oil is the oil obtained solely from the fruit of the olive tree (*Olea europaea* L.), **to the exclusion of oils obtained using**

[1] International Olive Counsel, Trade Standard Applying to Olive Oils and Olive-Pomace Oils, COI/T.15/NC No. 3/Rev 6 at 2 (Nov. 2011), Exhibit 1.

solvents or re-esterification processes and of any mixture with oils of other kinds." Exhibit 1, § 2.1 (emphasis added). The IOC's olive oil designations break down into sub-designations of "virgin olive oil," "refined olive oil," and "olive oil."

33. "Virgin olive oils" are oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decantation, centrifugation, and filtration. Virgin olive oils are categorized into two major subcategories, "[v]irgin olive oils fit for consumption as they are" and "[v]irgin olive oils not fit for consumption as they are." Exhibit 1, §§ 2.1.1.1 and 2.1.1.2.

34. "Virgin olive oil fit for consumption as [it is]" includes extra virgin olive oil, virgin olive oil, and ordinary virgin olive oil. The IOC has specific definitions for these virgin olive oil categories based on the free acidity of the oil expressed as oleic acid. Exhibit 1, § 2.1.1.1.

35. "Virgin olive oil not fit for consumption as it is," designated "lampante virgin olive oil" has free acidity, express as oleic acid, of more than 3.3. grams per 100 grams and/or distinct organoleptic characteristics. This oil is intended for refining or technical use. Exhibit 1, § 2.1.1.2.

36. "Refined olive oil" is olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in the initial glyceridic structure. Exhibit 1, § 2.1.2.

37. "Olive oil" is a blend of refined olive oil and virgin olive oils fit for consumption as they are. Exhibit 1, § 2.1.3.

38. Conversely, "olive-pomace oil" is the oil obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by re-esterification

processes and of any mixture with oils of other kinds. Olive-pomace oil can be categorized into the categories of "crude olive-pomace oil," "refined olive-pomace oil," and "olive-pomace oil." Exhibit 1, § 2.2.

39. "Crude olive-pomace oil" on its own is not intended for human consumption. In its crude form it is intended for refining for use for human consumption or for technical use. Exhibit 1, § 2.2.1.

40. "Refined olive-pomace oil" is refined crude olive-pomace oil that has not had alterations in the initial glyceridic structure. Exhibit 1, § 2.2.2.

41. "Olive-pomace oil" is a blend of refined olive-pomace oil and virgin olive oils fit for consumption as they are. The IOC Standard specifically states **"[i]n no case shall this blend be called 'olive oil'"** Exhibit 1, § 2.2.3 (emphasis added).

2. Olive-Pomace Oil is not Permitted to be called "Olive Oil" by the United States Food and Drug Administration

42. The United States Food and Drug Administration, ("FDA") has promulgated in the Federal Register its position that olive-pomace oil, as a "solvent-extracted" oil, is a "residue oil" and not olive oil:

> FDA acknowledges that solvent extraction is a standard procedure for removing oil from substances having low oil contents, such as safflower and cotton seeds. Olives, however, have a high oil content and the oil is easily removed by a mechanical or physical process, such as pressing. Solvent extraction of oil from olives is used to remove the residual oil from the pomace and pits remaining from pressing operations. Solvent-extracted olive oil is lower in quality than pressed olive oils due to the higher free fatty acid content caused by breakdown to triglycerides by enzymes liberated from the olive material during the pressing operations. As the free fatty acid content increases, the flavor and keeping quality of the oil deteriorate and the oil must undergo several refining processes to make it suitable for human consumption. For these reasons, **the agency believes that it is reasonable to identify a solvent extracted olive oil as a "residue oil."**
>
> ....
>
> Several comments indicated that there is some confusion as to the proper labeling and nomenclature for various types of olive oils.

> The name "virgin olive oil" may be used only for the oil resulting from the first pressing of the olives and which is suitable for human consumption without further processing. The name "refined olive oil" refers to the oil obtained from subsequent pressings and which is made suitable for human consumption by refining processes which neutralize the acidity and remove particulate matter. **Oil extracted from olive pomace and pits by chemical means and refined to make it edible must be labeled either "refined olive-residue oil" or "refined extracted olive-residue oil."**[2]

3. "Olive-Pomace Oil" is not Permitted to be called "Olive Oil" by the United States Department of Agriculture

43. Similar to the IOC's standards, the United States Department of Agriculture ("USDA") defines "olive oil" as "the oil obtained solely from the fruit of the olive tree (*Olea europaea* L.), **to the exclusion of oils obtained using solvents** or re-esterification processes and of any mixture with oils of other kinds." United States Standards for Grades of Olive Oil and Olive-Pomace Oil (Oct. 24, 2010), Exhibit 2, § 52.1531(a) (emphasis added).

44. Olive-pomace oil is defined as the oil obtained by treating olive pomace (the product remaining after the mechanical extraction of olive oil) with solvents or other physical treatments, to the exclusion of oils obtained by synthetic processes and mixture with oils of other kinds.

45. In defining the grades of olive-pomace oil, the USDA specifically states: "**Olive-pomace oils shall not be labeled as 'olive oil.'**" Exhibit 2, § 52.1535 (emphasis in original).

C. There Are Real Health And Cost Differences Between "Olive Oil" and "Olive-Pomace Oil"

46. Olive oil has long been recognized has having salutatory effects on human health. Among its extensive benefits, olive oil has been reported to be effective to varying degrees in

[2] Virgin Olive Oil, Refined Olive Oil, and Refined Olive-Residue Oil; Termination of Consideration of Codex Standard, 47 Fed. Reg. 42,123-01 (Sept. 24, 1982) (emphasis added).

addressing human health problems such as cancer, heart disease, oxidative stress, blood pressure, diabetes, obesity, rheumatoid arthritis, and osteoporosis.

47. Olive-pomace oil, however, is lacking in the same health benefits as olive oil, such as extra virgin olive oil. Compared to extra virgin olive oil, olive-pomace oil can have twenty-percent (20%) less mono-saturated fat (the fat linked to lowering Low Density Lipoprotein (LDL), also known as the "bad cholesterol") and less comparative antioxidants. The antioxidant properties of olive oil are attributed to lowering oxidative stress, as well slowing down skin cancer and breast cancer.

48. Given its inferiorities compared to olive oil, olive-pomace oil generally costs less than other olive oil. This is demonstrated in Exhibits 3, 4, and 5, charts from the International Olive Oil Counsel tracking prices in representative markets inside the European Union for extra virgin olive oil, refined olive oil, and refined olive-pomace oil. Those markets account for a large share of world production and accordingly have significant impact on prices elsewhere in the world.

49. The lower cost of olive-pomace oil allows Gourmet Factory to sell Capatriti Oil at less than or equal to the price of real olive oil sold by its competitors, but greater than the Product could command without being falsely and misleadingly labeled as "100% Pure Olive Oil." Similarly, Gourmet Factory's misrepresentations as to the contents of Capatriti Oil allow it to sell a greater volume of the Product than it would be able to if Capatriti Oil were accurately labeled. As Gourmet Factory has captured an estimated 15% share of the olive oil market in the past six years, this may very well have already occurred.[3]

[3] *See* Affidavit of Themis Kangadis in Opp'n to Pl.'s Appl. for a Prelim. Inj. (Mar. 20, 2013), Exhibit 10, *infra*, at ¶ 7.

II. THIS FEDERAL COURT HAS PRELIMINARILY ENJOINED GOURMET FACTORY FROM SELLING POMACE OIL AS 100% PURE OLIVE OIL

50. On February 6, 2013, the NAOOA filed a complaint ("the NAOOA Complaint"), Exhibit 6[4] against Gourmet Factory in this Court, alleging that Gourmet Factory violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and New York's General Business Law §§ 349 and 350 by unlawfully, misleadingly, and deceptively misbranded Capatriti Oil as "100% Pure Olive Oil," when it actually is olive-pomace oil. A copy of the NAOOA Complaint is attached as Exhibit 6. The NAOOA Complaint seeks primarily declaratory and injunctive relief, and does not seek damages on behalf of the Class as defined herein.

51. Underlying the NAOOA Complaint was an expert report by "one of the foremost experts in the world on olive oil testing, Professor Lanfranco Conte." Exhibit 6 at ¶ 37. Professor Conte's March 6, 2013 expert report is attached as Exhibit 7.

52. Professor Conte tested Capatriti Oil purchased in New York and New Jersey. Declarations supporting the location of the purchases of the olive oil are attached as Exhibits 8 and 9 (Decl. of Brian Dougherty in Supp. of Pl.'s Mot. for Prelim. Inj. (Mar. 6, 2013) and Decl. of Ulysses Quiambao in Supp. of Pl.'s Mot. for Prelim. Inj. (Mar. 6, 2013)).

53. Professor Conte's tests on the Capatriti Oil determined that the Product was not 100% pure olive oil, or even olive oil, but instead consistent with olive-pomace oil, with a possible presence of additional seed oils. Exhibit 7 at ¶¶ 67-71.

54. During the briefing of NAOOA's application for preliminary injunction, Gourmet Factory's President, Themis Kangadis, submitted an affidavit in opposition to plaintiff's application for a preliminary injunction. That affidavit is attached as Exhibit 10.

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[4] *North American Olive Oil Associaton v. Kangadis Food Inc.*, 13-cv-868 (S.D.N.Y. Feb. 6, 2013).

55. In his affidavit, Mr. Kangadis admitted that Capatriti used olive-pomace oil instead of "olive oil." *See* Exhibit 10 at ¶ 51.

56. In its opposition to the imposition of the preliminary injunction, Gourmet Factory conceded that if it was "required to send certain notices to retailers and consumers about the presence of Olive-Pomace Oil in Capatriti, its sales of Capatriti certainly will plummet due to the negative publicity and its good-will will be forever tarnished, not just with Capatriti, but with all of its brands and products." Def's Mem. of Law in Opp'n to Pl.'s Mot. for a Prelim. Inj. ("NAOOA Opp'n") at 23.

57. On April 19, 2013, after briefing and oral argument, Judge Rakoff, of the Southern District of New York, entered a preliminary injunction. A copy of the order is attached as Exhibit 11. The preliminary injunction ordered Gourmet Factory "to take reasonable steps to provide notice of its past mislabeling as to tins of '100% Pure Olive Oil' containing Pomace that have not yet been sold to end consumers." Exhibit 11 at 2.

58. On April 24, 2013, the court issued its opinion and order supporting the entry of the preliminary injunction against Gourmet Factory. The opinion and order is attached as Exhibit 12. In the opinion and order, the Court specifically held:

> Unlike NAOOA's claim with respect to refined olive oil, however, the Court finds that NAOOA has adequately shown that **it is literally false, and not simply potentially misleading, to advertise Pomace as "100% Pure Olive Oil."** While Pomace may in some sense be "olive oil" in that it is an oil derived from olives, it is not remotely what the ordinary consumer understands "olive oil" to be. Indeed, in arguing that NAOOA should be required to post a bond, Kangadis affirmatively asserts that if consumers are notified "about the presence of Olive-Pomace Oil in Capatriti, its sales of Capatriti certainly will plummet." Def. Br. at 23. That assertion is telling, since it would be unfounded if consumers already understood the term "olive oil" to encompass an industrially processed substance like Pomace.

Exhibit 12 at 17 (emphasis added).

59. After briefing on Gourmet Factory's motion for reconsideration, on May 6, 2013, the court entered an amended preliminary injunction. A copy of the order is attached as Exhibit 13. The amended preliminary injunction granted Gourmet Factory's request to conduct a voluntary recall instead of engaging in a notice and sticker program "to ensure that consumers do not purchase Pomace that is falsely and misleadingly advertised as '100% Pure Olive Oil.'" Exhibit 13 at 3.

III. PLAINTIFF'S EXPERIENCE WITH CAPATRITI OIL

60. Plaintiff began purchasing Capatriti Oil at least four years ago, and has purchased approximately 12 101-fl. oz. cans during that period. The price Plaintiff paid for the Product ranged from $7.99 to $8.99 per can. Plaintiff always purchased Capatriti Oil when it was on sale, and the normal retail price ranged from $11.00 to $15.00 per can. Plaintiff made his purchases of Capatriti Oil at a Shoprite supermarket in Toms River, New Jersey, and at an A&P supermarket in Brick, New Jersey. The cans of the Product Plaintiff purchased were all identically labeled as "100% Pure Olive Oil." Photographs of the labeling of one of Plaintiffs' cans of Capatriti Oil are attached as Exhibit 14.

61. Plaintiff purchased the Product because he believed it to be reasonably priced for olive oil, and because of the health benefits of olive oil. **Plaintiff would never have purchased Capatriti Oil if he had known that it was olive-pomace oil, rather than olive oil.**

62. Prior to the commencement of this litigation, Plaintiff sent an unopened can of Capatriti Oil to Denele Analytical, Inc. ("Denele") in Turlock, California, for testing. Denele is an agricultural and environmental support laboratory certified by the USDA and the State of California's Environmental Laboratory Accreditation Program. Denele's testing capabilities include analysis of olive oil, nuts, plant tissue, soil, manure, lagoon and waste water, drinking and well water, silage, fertilizer, and feeds.

63. Denele tested Plaintiff's Capatriti Oil and produced a Sample Analysis Report, which is attached as Exhibit 15.

64. Plaintiff's test returned the following results:

Analyte	Method Ref.	Result	Units
Free Fatty Acid (FFA)		0.20	% as oleic
Peroxide Value (PER)	AATM 516-01	8.33	Meq/Kg
K 270nm (K270)	COI T20 Doc No. 19	1.314	abs
K 232nm (K232)	COI T20 Doc No. 19	> MAX	abs
Delta K (DELK)	COI T20 Doc No. 19	0.048	

65. The test results, when evaluated under the IOC or USDA standards, establish that the Capatriti Oil purchased by Plaintiff was olive-pomace oil instead of olive oil. The FFA, PER, and DELK analytes were all consistent with olive-pomace oil. Additionally, the K270 analyte was only consistent with olive-pomace oil—and inconstant with any variety of olive oil—establishing that the oil Plaintiff purchased was olive-pomace oil.

66. The initial test results yielded a value of the K232 analyte that was larger than the testing equipment was calibrated to measure. Accordingly, Denele Analytical performed a second analysis, in which the sample was diluted in order to yield a measurable value of the K232 analyte. Denele Analytical then multiplied the observed values for all analytes to factor out the dilution. A copy of the Sample Analysis Report for the second test is attached as Exhibit 16.

67. Plaintiff's second test returned the following results:

Analyte	Method Ref.	Result	Units
Free Fatty Acid (FFA)		0.20	% as oleic
Peroxide Value (PER)	AATM 516-01	8.33	Meq/Kg
K 270nm (K270)	COI T20 Doc No. 19	1.228	abs
K 232nm (K232)	COI T20 Doc No. 19	3.968	abs
Delta K (DELK)	COI T20 Doc No. 19	0.048	

68. The results of the second test were identical or nearly identical to those of the first test, and were again consistent with olive-pomace oil under the IOC and USDA standards. As with the first test, the result for the K270 analyte was only consistent with olive-pomace oil, and inconsistent with olive oil.

69. Plaintiff's test results are consistent with the conclusions of Professor Conte in the NAOOA Action that Capatriti Olive Oil was not 100% pure olive oil, or even olive oil, but olive-pomace oil. Exhibit 7 at ¶¶ 67-71.

70. More importantly, Plaintiff's test results are consistent with the admission of Mr. Kangadis that Gourmet Factory used olive-pomace oil instead of olive oil in its Capatriti Olive Oil. *See* Exhibit 10 at ¶ 51.

IV. PLAINTIFF AND THE PUTATIVE CLASS HAVE BEEN HARMED BY GOURMET FACTORY'S MISLABELING OF CAPATRITI OIL

71. Gourmet Factory's actions have harmed Plaintiff and the Class because consumers purchasing oil labeled as "100% Pure Olive Oil" have the reasonable expectation that the oil will be the unadulterated oil from the pressing of olives, not from a chemical process involving solvents and heat to extract oil from the residue of olive pits and skin.

72. Gourmet Factory's representation of "100% Pure Olive Oil" has had a tendency to and has actually deceived customers. This is illustrated by Gourmet Factory's admission that if it was "required to send certain notices to retailers and consumers about the presence of Olive-Pomace Oil in Capatriti, its sales of Capatriti certainly will plummet . . ." NAOOA Opp'n at 23.

73. Gourmet Factory's practice of mislabeling Capatriti Oil as "100% Pure Olive Oil" has caused Plaintiff and the Class to purchase oil they would not have purchased and/or to pay more for the oil than they would have absent Gourmet Factory's deception.

74. Based on the testing of NAOOA and the Plaintiff, as well as the admission of the President of Gourmet Factory, Gourmet Factory has acted knowingly and willingly in labeling Capatriti Oil as "100% Pure Olive Oil," and thereby has intentionally deceived consumers into purchasing the mislabeled olive-pomace oil.

CLASS ACTION ALLEGATIONS

75. Plaintiff brings claims pursuant to Federal Rule of Civil Procedure 23 individually and on behalf of the following Class:

> All people who purchased Capatriti brand "100% Pure Olive Oil" in the state of New Jersey.

76. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

77. The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, however, the number of Class members is at least in the thousands and members of the Class are numerous and geographically dispersed across New Jersey. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery.

78. There is a well-defined community of interest in the questions of law and fact involved affecting the Class, and these common questions predominate over any questions that may affect individual Class members. Common questions of fact and law include, but are not limited to, the following:

a. Whether Defendant's representation that Capatriti Oil is "100% Pure Olive Oil" is false;

b. Whether Defendant's representation that Capatriti Oil is "100% Pure Olive Oil" is misleading;

c. Whether Defendant knowingly or intentionally mislabeled Capatriti Oil;

d. Whether Defendant violated the New Jersey Consumer Fraud Act; and

e. Whether Defendant violated the Uniform Commercial Code—Sales.

79. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendant's common course of conduct because they all purchased Capatriti Oil with Defendant's "100% Pure Olive Oil" misrepresentation on the label.

80. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has no interests adverse to the interests of the other Class Members. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class.

81. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impracticable. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial

economy, and the fair and efficient handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice. Adjudication of individual Class members' claims with respect to the Defendant would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other Class members to protect their interests.

82. Plaintiff reserves the right to amend or modify the Class definition prior to filing a motion for class certification.

CAUSES OF ACTION

COUNT I

Violations of the New Jersey Consumer Fraud Act
N.J. STAT. ANN. § 56:8-1 *et seq.*

83. Plaintiff re-alleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

84. Capatriti Oil is "merchandise" within the meaning of the Consumer Fraud Act.

85. As described herein, Defendant's policies, acts, and practices were designed to, and did, result in the purchase and use of the products primarily for personal, family, or household purposes, and violated the New Jersey Consumer Fraud Act, which prohibits, "in connection with the sale or advertisement of any merchandise," "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact…." N.J. Stat. Ann. § 56:8-2.

86. Defendant consciously labeled its Capatriti Oil as being "100% Pure Olive Oil" despite knowing that the Product contained olive-pomace oil.

87. Defendant failed to disclose on the labeling of its Capatriti Oil that the oil contained therein was actually olive-pomace oil.

88. Defendant purposefully labeled its Capatriti Oil as "100% Pure Olive Oil" and not as olive-pomace oil, so that Plaintiff and the other putative class members would purchase Capatriti Oil.

89. Had Defendant disclosed olive-pomace oil as the actual contents of Capatriti Oil, Plaintiff and the Class would not have purchased the Product, or would have paid less for it.

90. The acts, omissions, and practices of Defendant detailed herein proximately caused Plaintiff and the Class to suffer an ascertainable loss in the form of money spent to purchase Capatriti Oil which they otherwise would not have spent.

91. As a result, Plaintiff has suffered an ascertainable loss of money and pursuant to N.J. Stat. § 56:8-19 is entitled to threefold damages.

COUNT II

Breach of Express Warranty Under the Uniform Commercial Code—Sales N.J. STAT. ANN. § 12A2-101, *et seq.*

92. Plaintiff re-alleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

93. Defendant's description of Capatriti Oil as "100% Pure Olive Oil" on the label of the Product was part of the basis of the bargain with Plaintiff and the Class, and therefore created an express warranty that the Product was100% Pure Olive Oil.

94. The Capatriti Oil purchased by Plaintiff and the Class was not 100% Pure Olive Oil, or any other type of olive oil. Rather, it was olive-pomace oil, a substance industrially manufactured by treating olive residue with chemical solvents and heat.

95. Accordingly, Defendant breached its express warranty to Plaintiff and the Class, and is liable for damages.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff, on his behalf and on behalf of the Class set forth herein, prays for relief as follows:

A. For an order certifying the Class as set forth herein and appointing Plaintiff and his counsel to represent the Class;

B. For an order awarding Plaintiff and the Class members actual and compensatory damages in an amount which may be proven at trial;

C. For an order awarding Plaintiff and the Class members punitive damages as appropriate;

D. For an order enjoining Defendant under the New Jersey Consumer Fraud Act, N.J. STAT. ANN. 56:8-19, from continuing to engage in the acts and practices as alleged herein;

E. For an order awarding Plaintiff and the Class pre- and post-judgment interest, as well as their reasonable attorneys' fees and costs pursuant to N.J. STAT. ANN. 56:8-19 and other statutes as may be applicable; and

F. For such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues so triable.

Date: August 22, 2013

Respectfully submitted,

FARUQI & FARUQI, LLP

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Attorneys for Plaintiff and the Class

EXHIBIT 1

INTERNATIONAL
OLIVE
COUNCIL

COI/T.15/NC No 3/Rev. 6
November 2011

ENGLISH
Original: FRENCH

Príncipe de Vergara, 154 – 28002 Madrid – España Telef.: +34 915 903 638 Fax: +34 915 631 263 - e-mail: iooc@internationaloliveoil.org - http://www.internationaloliveoil.org/

TRADE STANDARD APPLYING TO OLIVE OILS AND OLIVE-POMACE OILS

INTERNATIONAL
OLIVE
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COI/T.15/NC No 3/Rev. 6
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TRADE STANDARD APPLYING TO OLIVE OILS AND OLIVE-POMACE OILS

1. SCOPE

This standard applies to olive oils and olive-pomace oils that are the object of international trade or of concessional or food aid transactions.

2. DESIGNATIONS AND DEFINITIONS

2.1. **Olive oil** is the oil obtained solely from the fruit of the olive tree *(Olea europaea* L.), to the exclusion of oils obtained using solvents or re-esterification processes and of any mixture with oils of other kinds. It is marketed in accordance with the following designations and definitions:

2.1.1. Virgin olive oils are the oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decantation, centrifugation and filtration.

2.1.1.1. Virgin olive oils fit for consumption as they are include:

(i) Extra virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and the other characteristics of which correspond to those fixed for this category in this standard.

(ii) Virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 2 grams per 100 grams and the other characteristics of which correspond to those fixed for this category in this standard.

(iii) Ordinary virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 3.3 grams per 100 grams and the other characteristics of which correspond to those fixed for this category in this standard.[1/]

2.1.1.2. Virgin olive oil not fit for consumption as it is, designated lampante virgin olive oil, is virgin olive oil which has a free acidity, expressed as oleic acid, of more than 3.3 grams per 100 grams and/or the organoleptic characteristics and other characteristics of which correspond to those fixed for this category in this standard. It is intended for refining or for technical use.

2.1.2. Refined olive oil is the olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams and its other characteristics correspond to those fixed for this category in this standard. [2/]

2.1.3. Olive oil is the oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption as they are. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams and its other characteristics correspond to those fixed for this category in this standard.[3/]

2.2. **Olive-pomace oil** is the oil obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by re-esterification processes and of any mixture with oils of other kinds. It is marketed in accordance with the following designations and definitions:

2.2.1. Crude olive-pomace oil is olive-pomace oil whose characteristics correspond to those fixed for this category in this standard. It is intended for refining for use for human consumption, or it is intended for technical use.

1/ This designation may only be sold direct to the consumer if permitted in the country of retail sale. If not permitted, the designation of this product shall comply with the legal provisions of the country concerned.

2/ This designation may only be sold direct to the consumer if permitted in the country of retail sale.

3/ The country of retail sale may require a more specific designation.

2.2.2. Refined olive-pomace oil is the oil obtained from crude olive-pomace oil by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams and its other characteristics correspond to those fixed for this category in this standard.[1/]

2.2.3. Olive-pomace oil is the oil comprising the blend of refined olive-pomace oil and virgin olive oils fit for consumption as they are. It has a free acidity of not more than 1 gram per 100 grams and its other characteristics correspond to those fixed for this category in this standard.[2/] In no case shall this blend be called "olive oil".

3. PURITY CRITERIA

The identity characteristics comprising the purity criteria shall be applicable to olive oils and olive-pomace oils.

The limits established for each criterion include the precision values of the attendant recommended method.

3.1. Fatty acid composition as determined by gas chromatography (% m/m methyl esters):

- Myristic acid	≤ 0.05
- Palmitic acid	7.5 - 20.0
- Palmitoleic acid	0.3 - 3.5
- Heptadecanoic acid	≤ 0.3
- Heptadecenoic acid	≤ 0.3
- Stearic acid	0.5 - 5.0
- Oleic acid	55.0 - 83.0
- Linoleic acid	3.5 - 21.0
- Linolenic acid	≤ 1.0
- Arachidic acid	≤ 0.6
- Gadoleic acid (eicosenoic)	≤ 0.4
- Behenic acid	≤ 0.2*
- Lignoceric acid	≤ 0.2

1/ This product may only be sold direct to the consumer if permitted in the country of retail sale.

2/ The country of retail sale may require a more specific designation.

* Limit raised to ≤ 0.3 for olive-pomace oils.

3.2. *Trans* fatty acid content (% *trans* fatty acids)

	C18:1 T %	C18:2 T + C18:3 T %
- Edible virgin olive oils	≤ 0.05	≤ 0.05
- Lampante virgin olive oil	≤ 0.10	≤ 0.10
- Refined olive oil	≤ 0.20	≤ 0.30
- Olive oil	≤ 0.20	≤ 0.30
- Crude olive-pomace oil	≤ 0.20	≤ 0.10
- Refined olive-pomace oil	≤ 0.40	≤ 0.35
- Olive-pomace oil	≤ 0.40	≤ 0.35

3.3. Sterol and triterpene dialcohol composition

3.3.1. Desmethylsterol composition (% total sterols)

- Cholesterol	≤ 0.5
- Brassicasterol	≤ 0.1 *
- Campesterol	≤ 4.0
- Stigmasterol	< campesterol in edible oils
- Delta-7-stigmastenol	≤ 0.5
- Apparent beta-sitosterol: beta-sitosterol + delta-5-avenasterol + delta-5-23-stigmastadienol + clerosterol + sitostanol + delta 5-24-stigmastadienol	≥ 93.0

* Limit raised to ≤ 0.2 for olive-pomace oils.

3.3.2. Total sterol content (mg/kg)

- Virgin olive oils - Refined olive oil - Olive oil	≥ 1000
- Crude olive-pomace oil	≥ 2500
- Refined olive-pomace oil	≥ 1800
- Olive-pomace oil	≥ 1600

3.3.3. Erythrodiol and uvaol content (% total sterols)

- Edible virgin olive oils	≤4.5
- Lampante virgin olive oil	≤4.5[1/]
- Refined olive oil	≤4.5
- Olive oil	≤4.5
- Crude olive-pomace oil	>4.5[2/]
- Refined olive-pomace oil	>4.5
- Olive-pomace oil	>4.5

3.4. Wax content C40 + C42 + C44 + C46 (mg/kg)

- Edible virgin olive oils	≤250
- Lampante virgin olive oil	≤ 300[1/]
- Refined olive oil	≤ 350
- Olive oil	≤ 350
- Crude olive-pomace oil	> 350[2/]
- Refined olive-pomace oil	> 350
- Olive-pomace oil	> 350

1/ When the oil has a wax content between 300 mg/kg and 350 mg/kg it is considered a lampante virgin olive oil if the total aliphatic alcohol content is ≤ 350 mg/kg or the erythrodiol + uvaol content is ≤ 3.5%.

2/ When the oil has a wax content between 300 mg/kg and 350 mg/kg it is considered a crude olive-pomace oil if the total aliphatic alcohol content is > 350 mg/kg and the erythrodiol + uvaol content is > 3.5%.

3.5. Maximum difference between the actual and theoretical ECN 42 triacylglycerol content

- Edible virgin olive oils	≤	0.2
- Lampante virgin olive oil	≤	0.3
- Refined olive oil	≤	0.3
- Olive oil	≤	0.3
- Crude olive-pomace oil	≤	0.6
- Refined olive-pomace oil	≤	0.5
- Olive-pomace oil	≤	0.5

3.6. Stigmastadiene content (mg/kg)

- Edible virgin olive oils	≤ 0.10
- Lampante virgin olive oil	≤ 0.50

3.7. Content of 2-glyceryl monopalmitate

- Edible virgin olive oils and olive oil:

C:16:0 ≤ 14.0%; 2P ≤ 0.9%
C:16:0 > 14.0%, 2P ≤ 1.0%

- Non-edible virgin olive oils and refined olive oils:

C:16:0 ≤ 14.0%; 2P ≤ 0.9%
C:16:0 > 14.0%, 2P ≤ 1.1%

- Olive-pomace oils	≤ 1.2%
- Crude and refined olive-pomace oils	≤ 1.4%

3.8. Unsaponifiable matter (g/kg)

- Olive oils	≤ 15
- Olive-pomace oils	≤ 30

4. QUALITY CRITERIA

The limits established for each criterion and designation include the precision values of the attendant recommended method

	Extra virgin olive oil	Virgin olive oil	Ordinary virgin olive oil	Lampante virgin olive oil *	Refined olive oil	Olive oil	Crude olive-pomace oil	Refined olive-pomace oil	Olive-pomace oil
4.1 Organoleptic characteristics									
- odour and taste					acceptable	good		acceptable	good
- odour and taste (on a continuous scale):									
. median of defect	Me = 0	0 < Me ≤ 3.5	3.5 <Me ≤ 6.0**	Me > 6.0					
. median of the fruity attribute	Me > 0	Me > 0							
- colour					light yellow	light, yellow to green		light, yellow to brownish yellow	light, yellow to green
- aspect at 20°C for 24 hours					limpid	limpid		limpid	limpid
4.2. Free acidity % m/m expressed in oleic acid	≤ 0.8	≤ 2.0	≤ 3.3	> 3.3	≤ 0.3	≤ 1.0	no limit	≤ 0.3	≤ 1.0
4.3. Peroxide value in milleq. Peroxide oxygen per kg/oil	≤ 20	≤ 20	≤ 20	no limit	≤ 5	≤ 15	no limit	≤ 5	≤ 15

* It is not obligatory for the criteria in 4.1, 4,2 and 4.3 to be concurrent; one is sufficient.

** Or when the median of the defect is less than or equal to 3.5 and the median of the fruity attribute is equal to 0.

4. QUALITY CRITERIA (contd.)

	Extra virgin olive oil	Virgin olive oil	Ordinary virgin olive oil	Lampante virgin olive oil	Refined olive oil	Olive oil	Crude olive-pomace oil	Refined olive-pomace oil	Olive-pomace oil
4.4. Absorbency in ultra-violet ($K^{1\%}_{1cm}$)									
- 270 nm (cyclohexane) / 268 nm (iso-octane)	≤ 0.22	≤ 0.25	≤ 0.30		≤ 1.10	≤ 0.90		≤ 2.00	≤ 1.70
- Δ K	≤ 0.01	≤ 0.01	≤ 0.01		≤ 0.16	≤ 0.15		≤ 0.20	≤ 0.18
- 232 nm*	≤ 2.50**	≤ 2.60**							
4.5. Moisture and volatile matter (% m/m)	≤ 0.2	≤ 0.2	≤ 0.2	≤ 0.3	≤ 0.1	≤ 0.1	≤ 1.5	≤ 0.1	≤ 0.1
4.6. Insoluble impurities in light petroleum % m/m	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.2	≤ 0.05	≤ 0.05		≤ 0.05	≤ 0.05
4.7. Flash point	-	-	-	-	-	-	≥ 120°C	-	-
4.8. Trace metals mg/kg									
Iron	≤ 3.0	≤ 3.0	≤ 3.0	≤ 3.0	≤ 3.0	≤ 3.0		≤ 3.0	≤ 3.0
Copper	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.1		≤ 0.1	≤ 0.1
4.9. Fatty acid methyl esters (FAMEs) and fatty acid ethyl esters (FAEEs)	- ∑ FAME + FAEE ≤ 75 mg/kg or - ∑ FAME + FAEE > 75 mg/kg and ≤ 150 mg/kg and FAEE/FAME ratio ≤ 1.5								
4.10. Phenols content									

* This determination is solely for application by commercial partners on an optional basis.

** Commercial partners in the country of retail sale may require compliance with these limits when the oil is made available to the end consumer.

5. FOOD ADDITIVES

5.1. Virgin olive oils and crude olive-pomace oil:

none permitted.

5.2. Refined olive oil, olive oil, refined olive-pomace oil and olive-pomace oil: alpha-tocopherol permitted to restore natural tocopherol lost in the refining process.

Maximum level: 200 mg/kg of total alpha-tocopherol in the final product.

6. CONTAMINANTS

6.1. Heavy metals

The products covered by this standard shall comply with maximum limits being established by the Codex Alimentarius Commission but in the meantime the following limits will apply:

	Maximum permissible concentration
Lead (Pb)	0.1 mg/kg
Arsenic (As)	0.1 mg/kg

6.2. Pesticide residues

The products covered by this standard shall comply with those maximum residue limits established by the Codex Alimentarius Commission for these commodities.

6.3. Halogenated solvents

- Maximum content of each halogenated solvent 0.1 mg/kg
- Maximum content of the sum of all halogenated solvents 0.2 mg/kg

7. HYGIENE

7.1. It is recommended that the products intended for human consumption covered by the provisions of this standard be prepared and handled in accordance with the appropriate sections of the Recommended International Code of Practice – General Principles of Food Hygiene (CAC/RP 1-1969, Rev. 3 – 1997), and other relevant Codex texts such as Codes of Hygienic Practice and Codes of Practice.

7.2. The products intended for human consumption should comply with any microbiological criteria established in accordance with the Principles for the Establishment and Application of Microbiological Criteria (CAC/GL 21-1997).

8. PACKING

Olive oils and olive-pomace oils intended for international trade shall be packed in containers complying with the General Principles of Food Hygiene recommended by the Codex Alimentarius Commission (CAC/RCP 1 - 1969, Rev. 3 - 1997), and other relevant texts such as Codes of Hygienic Practice and Codes of Practice.

The containers used may be:

8.1. tanks, containers, vats, which permit the transportation in bulk of olive oils and olive-pomace oils;

8.2. metal drums, in good condition, hermetically-sealed, which should be internally covered with a suitable varnish;

8.3. metal tins and cans, lithographed, new, hermetically-sealed, which should be internally covered with a suitable varnish;

8.4. demi-johns, glass bottles or bottles made of suitable macromolecular material.

9. CONTAINER FILLING TOLERANCE

The volume occupied by the contents shall under no circumstances be less than 90% of the capacity of the container, except in the case of tin containers with a capacity of, or less than, 1 litre in which the volume occupied shall under no circumstances be less than 80% of the capacity of the container; this capacity is equal to the volume of distilled water at 20°C which the container can hold when full.

10. LABELLING

In addition to sections 2, 3, 7 and 8 of the Codex General Standard for the Labelling of Pre-packaged Foods (CODEX STAN 1-1985, Rev.1 - 1991) and the guidelines applying to food not intended for direct sale to consumers, the specific provisions providing the following information shall be applied:

10.1. On containers intended for direct sale to consumers

10.1.1. Name of the product

The labelling on each container shall indicate the specific designation of the product contained, complying in every way with the relevant provisions of this standard.

10.1.1.1. Designations of olive oils:

- Extra virgin olive oil
- Virgin olive oil
- Ordinary virgin olive oil[1/]
- Refined olive oil[1/]
- Olive oil[2/]

10.1.1.2. Designations of olive-pomace oils:

- Refined olive-pomace oil[1/]
- Olive-pomace oil[2/]

10.1.2. Net contents

The net contents shall be declared by volume in the metric system ("Système International" units).

10.1.3. Name and address

The name and address of the manufacturer, packer, distributor, importer, exporter or seller shall be declared.

[1/] This product may only be sold direct to the consumer if permitted in the country of retail sale.

[2/] The country of retail sale may require a more specific designation.

10.1.4. Country of origin

The name of the country of origin shall be declared. When the product undergoes substantial processing in a second country, the country in which such processing is carried out shall be considered as the country of origin for labelling purposes.

10.1.5. Indications of source and appellations of origin

10.1.5.1. Indications of source

The labels of virgin olive oils may indicate their source (country, region or locality) when they have been empowered to do so by their country of origin and when such virgin olive oils have been produced, packed and originate exclusively in the country, region or locality mentioned.

10.1.5.2. Appellations of origin

The labels of extra virgin olive oils may indicate their appellation of origin (country, region or locality) when they have been awarded such an appellation, in accordance with the terms provided under the regulations of their country of origin and when such extra virgin olive oil has been produced, packed and originates exclusively in the country, region or locality mentioned.

10.1.6. Lot identification

Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

10.1.7. Date marking and storage conditions

10.1.7.1. Date of minimum durability

In the case of pre-packaged products intended for the end consumer, the date of minimum durability (preceded by the words "best before end") shall be declared by the month and year in uncoded numerical sequence. The month may be indicated by letters in those countries where such use will not confuse the consumer; if the shelf life of the product is valid to December, the expression "end (stated year)" may be used as an alternative.

10.1.7.2. Storage instructions

Any special conditions for storage shall be declared on the label if the validity of the date of minimum durability depends thereon.

10.2. On forwarding packs of oils intended for human consumption

In addition to the details noted under section 10.1., the following inscription shall appear:

- number and type of containers held in pack.

10.3. On containers allowing the transportation in bulk of olive oils and olive-pomace oils

The labelling on each container shall include:

10.3.1. Name of the product

The name shall indicate the specific designation of the product contained, complying in every way with the provisions of this standard.

10.3.2. Net contents

The net contents shall be declared by weight or volume in the metric system ("Système International" units).

10.3.3. Name and address

The name and address of the manufacturer, distributor or exporter shall be declared.

10.3.4. Country of origin

The name of the exporting country shall be declared.

11. METHODS OF ANALYSIS AND SAMPLING

The methods of analysis and sampling given below are international referee methods. The latest version of these methods should be used.

11.1. Sampling

According to ISO 5555, "Animal and vegetable fats and oils - Sampling".

11.2. Preparation of the test sample

According to ISO 661, "Animal and vegetable fats and oils - Preparation of the test sample".

11.3. Determination of the fatty acid composition

According to COI/T.20/Doc. No 24, "Preparation of the fatty acid methyl esters from olive oil and olive-pomace oil", and ISO 5508, "Analysis by gas chromatography of methyl esters of fatty acids" or AOCS Ch 2–91.

11.4. Determination of the *trans* fatty acid content

According to COI/T.20/Doc. No 17/Rev. 1, "Determination of *trans* unsaturated fatty acids by capillary column gas chromatography", or ISO 15304 or AOCS Ce 1f–96.

11.5. Determination of the sterol composition and total sterol content

According to COI/T.20/Doc. No 10/Rev. 1, "Determination of the composition and content of sterols by capillary-column gas chromatography", or AOCS Ch 6-91.

11.6. Determination of the content of erythrodiol + uvaol

According to IUPAC no. 2.431, "Determination of the erythrodiol content". Capillary columns are recommended.

11.7. Determination of the sterol and triterpene dialcohols content for olive oils

According to COI/T.20/Doc. No 30, "Determination of the composition and content of sterols and triterpene dialcohols by capillary column gas chromatography"

11.8. Determination of the wax content

According to COI/T.20/Doc. No 18/Rev. 2 "Determination of wax content by capillary-column gas chromatography" or AOCS Ch 8-02.

11.9. Determination of the aliphatic alcohol content

According to COI/T.20/Doc. No 26 "Determination of aliphatic alcohols content by capillary gas chromatography".

11.10. Determination of the difference between the actual and theoretical ECN 42 triacylglycerol content

According to COI/T.20/Doc. No 20/Rev. 3, "Determination of the difference between actual and theoretical content of triacylglycerols with ECN 42", or AOCS 5b-89.

11.11. Determination of the stigmastadiene content

According to COI/T.20/Doc. No 11/Rev. 2, "Determination of stigmastadienes in vegetable oils", or COI/T.20/Doc. no. 16/Rev. 1, "Determination of sterenes in refined vegetable oils", or ISO 15788-1 or AOCS Cd 26-96.

11.12. Determination of the content of 2-glyceryl monopalmitate

According to COI/T.20/Doc. No 23, "Determination of the percentage of 2-glyceryl monopalmitate ".

11.13. Determination of the unsaponifiable matter

According to ISO 3596, "Determination of the unsaponifiable matter – Method using diethyl ether extraction", or AOCS Ca 6b-53 or ISO 18609.

The results should be expressed in g/unsaponifiable matter per kg/oil.

11.14. Determination of the organoleptic characteristics

According to COI/T.20/Doc. No 15/Rev. 3, "Organoleptic assessment of virgin olive oil".

11.15. Determination of the free acidity

According to ISO 660, "Determination of acid value and acidity", or AOCS Cd 3d-63.

11.16. Determination of the peroxide value

According to ISO 3960, "Determination of the peroxide value", or AOCS Cd 8b-90.

11.17. Determination of the absorbency in ultra-violet

According to COI/T.20/Doc. No 19/Rev. 2, "Spectrophotometric investigation in the ultraviolet", or ISO 3656 or AOCS Ch 5-91.

11.18. Determination of the moisture and volatile matter

According to ISO 662, "Determination of the moisture and volatile matter".

11.19. Determination of the insoluble impurities in light petroleum

According to ISO 663, "Determination of the insoluble impurities".

11.20. Determination of the flash point

According to the FOSFA International method.

11.21. Detection of trace metals

According to ISO 8294, "Determination of copper, iron and nickel by direct graphite furnace atomic absorption spectrometry".

11.22. Determination of the alpha-tocopherol

According to ISO 9936, "Determination of tocopherols and tocotrienols contents – Method using high-performance liquid chromatography".

11.23. Determination of traces of heavy metals

- Determination of lead: according to ISO 12193 or AOCS Ca 18c-91 or AOAC 994.02.

- Determination of arsenic: according to AOAC 952.13 or AOAC 942.17 or AOAC 985.16.

11.24. Detection of traces of halogenated solvents

According to COI/T.20/Doc. No 8/Corr. 1 "Determination of tetrachloroethylene in olive oils by gas-liquid chromatography".

11.25. Determination of the content of waxes and alkyl esters

According to COI/T.20/Doc. No 28 "Determination of the content of waxes, fatty acid methyl esters and fatty acid ethyl esters by capillary gas chromatography".

11.26. Determination of biophenols

According to COI/T.20/Doc. No 29 "Determination of biophenols in olive oils by HPLC".

EXHIBIT 2

United States
Department of
Agriculture

Agricultural
Marketing
Service

Fruit and
Vegetable
Programs

Processed
Products
Branch

United States Standards for Grades of Olive Oil and Olive-Pomace Oil

Effective October 24, 2010

This is the second issue of the United States Standards for Grades of Olive Oil published in the **FEDERAL REGISTER** on April 28, 2010 to become effective October 24, 2010. This issue supersedes the first issue, which has been in effect since March 22, 1948.

Voluntary U.S. grade standards are issued under the authority of the Agricultural Marketing Act of 1946, which provides for the development of official U.S. grades to designate different levels of quality. These grade standards are available for use by producers, suppliers, buyers, and consumers. As in the case of other standards for grades of processed fruits and vegetables, these standards are designed to facilitate orderly marketing by providing a convenient basis for buying and selling, for establishing quality control programs, and for determining loan values.

The standards also serve as a basis for the inspection and grading of commodities by the Federal inspection service, the only activity authorized to approve the designation of U.S. grades as referenced in the standards, as provided under the Agricultural Marketing Act of 1946. This service, available as on-line (in-plant) or lot inspection and grading of all processed fruit and vegetable products, is offered to interested parties, upon application, on a fee-for-service basis. The verification of some specific recommendations, requirements, or tolerances contained in the standards can be accomplished only by the use of on-line inspection procedures. In all instances, a grade can be assigned based on final product factors or characteristics.

In addition to the U.S. grade standards, grading manuals or instructions for inspection of several processed fruits and vegetables are available upon request for a nominal fee. These manuals or instructions contain detailed interpretations of the grade standards and provide step-by-step procedures for grading the product.

Grade standards are issued by the Department after careful consideration of all data and views submitted, and the Department welcomes suggestions which might aid in improving the standards in future revisions. Comments may be submitted to, and copies of standards and grading manuals may be obtained from:

Chief, Processed Products Branch
Fruit and Vegetable Programs, AMS
U.S. Department of Agriculture
STOP 0247, Rm. 0709, So. Bldg.
1400 Independence Ave., SW
Washington, D.C. 20250-0247

UNITED STATES STANDARDS FOR GRADES OF OLIVE OIL AND OLIVE-POMACE OIL

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

Note: Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

§52.1531 Product description.

(a) **Olive oil** is the oil obtained solely from the fruit of the olive tree (*Olea europaea* L.), to the exclusion of oils obtained using solvents or re-esterification processes and of any mixture with oils of other kinds and shall meet the minimum requirements of Table I, found in **§52.1539** of these grade standards.

(b) **Virgin olive oils** are the oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, including thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decantation, centrifugation, and filtration and shall meet the minimum requirements of Table I, found in **§52.1539** of these grade standards. No additives of any kind are permitted.

(c) **Olive-pomace oil** is the oil obtained by treating olive pomace (the product remaining after the mechanical extraction of olive oil) with solvents or other physical treatments, to the exclusion of oils obtained by synthetic processes and mixture with oils of other kinds and shall meet the minimum requirements of Table I, found in **§52.1539** of these grade standards. Alpha-tocopherol is permitted to restore natural tocopherol lost in the refining process for refined olive pomace and olive-pomace oil. Maximum level: 200 mg/kg of total alpha-tocopherol is permitted in the final product.

§52.1532 Types of olive oil.

(a) Virgin olive oils

(1) Virgin olive oils fit for consumption without further processing include:

i. Extra virgin olive oil

ii. Virgin olive oil.

(2) Virgin olive oil not fit for consumption without further processing designated lampante virgin olive oil.

(b) Olive oil

(c) Refined olive oil

§52.1533 Types of olive-pomace oil

(a) Olive-pomace oil

(b) Refined olive-pomace oil

(c) Crude olive-pomace oil

§52.1534 Grades of olive oil

Olive oils are graded based on the minimum criteria outlined in Table I, as appropriate. The hierarchy for grades of virgin olive oil is extra-virgin olive oil, virgin olive oil, and virgin olive oil not fit for human consumption (lampante virgin olive oil). Lampante virgin olive oil is the lowest level of quality among the virgin olive oils and must be refined before consumption. Olive oil and refined olive oil fall below the virgin olive oil category in terms of hierarchy.

(a) **"U.S. Extra Virgin Olive Oil"** is virgin olive oil which has excellent flavor and odor (median of defects equal to zero and median of fruitiness greater than zero) and a free fatty acid content, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and meets the additional requirements as outlined in §52.1539, as appropriate.

(b) **"U.S. Virgin Olive Oil"** is virgin olive oil which has reasonably good flavor and odor (median of defects between zero and 2.5 and median of fruitiness greater than zero) and a free fatty acid content, expressed as oleic acid, of not more than 2.0 grams per 100 grams, and meets the additional requirements as outlined in §52.1539 as appropriate. Olive oil that falls into this classification shall not be graded above "U.S. Virgin Olive Oil" (this is a limiting rule).

(c) **"U.S. Virgin Olive Oil Not Fit For Human Consumption Without Further Processing"** sometimes designated as "**U.S. Lampante Virgin Olive Oil**," is virgin olive oil which has poor flavor and odor (median of defects between 2.5 and 6.0 or when the median of defects is less than or equal to 2.5 and the median of fruit is zero), a free fatty acid content, expressed as oleic acid, of more than 2.0 grams per 100 grams, and meets the additional requirements as outlined §52.1539 as appropriate. Olive oil that falls into this classification shall not be graded above "U.S. Virgin Olive Oil Not Fit for Human Consumption Without Further Processing" (this is a limiting rule). It is intended for refining or for purposes other than food use.

(d) **"U.S. Olive Oil"** is the oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption **without further processing.** It has a free fatty acid content, expressed as oleic acid, of not more than 1.0 gram per 100 grams, has acceptable odor and flavor characteristic of "virgin olive oil," and meets the additional requirements as outlined in §52.1539 as appropriate. Olive oil that falls into this classification shall not be graded above "U.S. Olive Oil" (this is a limiting rule). The maximum level permitted of total alpha-tocopherol in the final product is 200 mg/kg.

(e) **"U.S. Refined Olive Oil"** is the olive oil obtained from virgin olive oils by refining methods that do not lead to alterations in the initial glyceridic structure (basic glycerin-fatty acid structure). It has a free fatty acid content, expressed as oleic acid, of not more than 0.3 grams per 100 grams, is flavorless and odorless and meets the additional requirements as outlined in §52.1539 as appropriate. Olive oil that falls into this classification shall not be graded above "U.S. Refined Olive Oil" (this is a limiting rule). The addition of alpha-tocopherol is permitted to restore natural tocopherol lost in the refining process. The maximum level is 200 mg/kg of total alpha-tocopherol in the final product.

§52.1535 Grades of olive-pomace oil.

Olive-pomace Oils are graded based on the minimum criteria outlined in Table I, as appropriate. The hierarchy for grades from highest to lowest is olive-pomace oil, refined olive-pomace oil, and crude olive-pomace oil. Crude olive-pomace oil is the lowest level of quality among the olive-pomace oils and must be refined before consumption. **Olive-pomace oils shall not be labeled as "olive oil."**

(a) **"U.S. Olive-pomace Oil"** is the oil comprising a blend of refined olive-pomace oil and virgin olive oils fit for consumption without further processing. It has a free fatty acid content, expressed as oleic acid, of not more than 1.0 gram per 100 grams, acceptable flavor and odor slightly characteristic of olive oil, and meets the additional requirements as outlined in §52.1539, as appropriate. Olive pomace oil that falls into this classification shall not be graded above "U.S. Olive-pomace Oil" (this is a limiting rule).

(b) **"U.S. Refined Olive-pomace Oil"** is the oil obtained from crude olive-pomace oil by refining methods that do not lead to alterations in the initial glyceridic structure. It has a free fatty acid content, expressed as oleic acid, of not more than 0.3 grams per 100 grams, acceptable flavor and odor, and meets the additional requirements as outlined in §52.1539, as appropriate. Olive-pomace oil that falls

into this classification shall not be graded above "U.S. Refined Olive-pomace Oil" (this is a limiting rule).

(c) **"U.S. Crude Olive-pomace Oil"** is olive-pomace oil that meets the requirements as outlined in §52.1539, as appropriate. Olive oil that falls into this classification shall not be graded above "U.S. Crude Olive-pomace Oil" (this is a limiting rule). It is intended for refining for use for human consumption or for purposes other than food use.

§52.1536 Recommended sample unit size

(a) The sample unit size shall be 500 ml per sample.

(b) Oil should be kept in original unopened containers, when possible.

§52.1537 Recommended fill of container.

The recommended fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container be filled as full as practicable without impairment of quality.

§52.1538 Definition of Terms.

(a) **Absorbency in Ultraviolet (UV).** Spectrophotometric test which examines the olive oil and measures the absorption under ultraviolet light. These absorptions are expressed as K (extinction coefficient) for the specified wavelength. The two wave length regions are examined, 232 nanometers (nm) to calculate K232 and 270 nm to calculate K270 and 264-274 nm to calculate delta K (ΔK). This test provides information on the quality of the oil, state of preservation, and changes brought about through processing.

(b) **Color.** A subjective visual rating to assure that the oil does not have unusual color uncharacteristic of the product.

(c) **Desmethylsterol Composition.** A test used to indicate the origin and purity of the oil.

(d) **ECN 42 Content.** The maximum difference between the actual Equivalent Carbon Number 42 (ECN 42) triacylglycerol content of the oil molecules determined by High Performance Liquid Chromatography (HPLC) and the theoretical amount of ECN 42 triacylglycerol using the fatty acid composition. It is used to for the detection of seed oils and verifies authenticity and origin of oils.

(e) **Erythrodiol and Uvaol.** Two triterpenic alcohol components found in olive oil and olive-pomace oil. The levels present differentiate

oils that were pressed from oils that were produced by solvent extraction.

(f) **Fatty Acid Composition.** Fatty acids are the molecular components of fats and oils. Basic percentages of fatty acid types are documented for each oil within a certain range. This determination distinguishes between seed oils and olive oil.

(g) **Flavor and Odor.** Refers to the typical flavor and odor of olive oil or olive-pomace oil produced from olives and the degree of positive attributes such as, but not limited to olive, apple, green, sweet, grass, nutty, tomato and some negative attributes, such as, but not limited to musty, fusty, winey-vinegary, muddy-sediment, and rancid. The organoleptic characteristics are based on a continuous scale by a panel of tasters for virgin olive oil exclusively (See Table I).

(1) **Excellent flavor.** Refers to extra virgin olive oil produced from olives, with no defective flavor and having positive flavor attributes, such as, but not limited to olive, apple, green, sweet, grass, nutty, tomato and no negative flavor attributes.

(2) **Good flavor.** Refers to virgin olive oil produced from olives, some or no positive flavor attributes and some barely perceptible negative flavor attributes.

(3) **Acceptable flavor.** Characterizes olive oil or olive-pomace oil having little or no flavor.

(4) **Poor flavor.** Olive oil or olive-pomace oil that is off flavor or does not meet the minimum requirement for acceptable flavor.

(h) **Free Fatty Acid Content.** The percent by weight expressed in grams per 100 grams, as oleic acid. The free fatty acid is a measure of the quality of the oil, and reflects the care taken in producing the oil and quality of the in-going fruit.

(i) **Glyceridic Structure.** The molecular structure of fats and oils in the form of various esters corresponding to the reaction of glycerol with fatty acids. The fatty acid groups can replace one, two, or all three of the hydroxyl groups of the glycerol, resulting in mono-, di-, and triglycerides, respectively. Vegetable and animal fats and oils consist of triglycerides.

(j) **Linolenic Acid** is a fatty acid component found in olive oil. Its level is used to establish the purity of the olive oil. The fatty acid profile of olive oil and olive-pomace oil is well documented except

that linolenic acid limits vary by up to 1.5 percent according to where the oil is grown and harvested.

(k) **Median of Defects (M_d).** A calculation of the median score from a panel of tasters or an equivalent scoring method that characterizes the negative flavor and odor attributes of virgin olive oil, such as, but not limited to musty, fusty, winey-vinegary, muddy-sediment, and rancid.

(1) **Fusty.** A flavor defect attributable to poor storage conditions of the olives, usually promoting the bacterial growth of the *Clostridium* and *Pseudomonas* genera.

(2) **Muddy-sediment.** A flavor defect caused by storage of olives in contact with the sediment for long periods giving the oil a putrid flavor and odor.

(3) **Musty.** A flavor defect occurring when low temperatures and high humidity promote mold growth, mainly of the *Aspergillus* and *Penicilium* genera. The resulting oil has a mushroom-like odor.

(4) **Rancid**. A flavor defect caused by the oxidation of the oil and subsequent formation of aldehydes during the production process giving the oil a varnish, paint, or seed-like flavor and odor.

(5) **Winey-vinegary.** A flavor defect caused by the storage condition of the olives that causes aerobic fermentation by the growth of yeasts that produce ethanol, acetic acid, and ethyl acetate.

(l) **Median of Fruity (M_f)**. A calculation of the median score from a panel of tasters or an equivalent scoring method that characterizes virgin olive oil produced from olives, such as, but not limited to olive, apple, green, sweet, grass, nutty, tomato.

(m) **Organoleptic.** Organoleptic analysis consists of an evaluation based on visual, flavor and odor characteristics.

(n) **Peroxide Value.** A measure of the oxidation of olive oil expressed as milliequivalents of active oxygen per kilogram of oil.

(o) **2-Glyceryl Monopalmitate Content Determination.** This test is used to determine if the oil has been re-esterified by synthetic means or by addition of animal fat.

(p) **Stigmastadiene.** A steroid hydrocarbon found at low levels in virgin olive oil and crude olive-pomace oil. Analysis of its

content is used for the detection of refined oils (olive oil, olive-pomace oil, and some seed oils) in virgin olive oil.

(q) **Sterol Analysis.** Used to detect the presence of seed oil. Sterols are one of many minor constituents of oils that are characteristic indicators of impurity of the olive oil.

(r) **Trans Fatty Acid**. When oil is partially hydrogenated or refined, *trans* fatty acids form in which hydrogen atoms arrange on opposite sides of the double bond. Olive oil in its natural state does not consist of *trans* fatty acids. This test is used to determine if any processing has taken place such as, deodorization or de-coloring.

(s) **Triglyceride**. A component of oil formed by an ester of three fatty acids and glycerol, oleic acid being chief among them.

(t) **Wax Content.** A determination used to identify the presence of pomace oil or seed oil. Wax content is higher in pomace oil because wax is found in the skin of the olive fruit.

§52.1539 Ascertaining the grade.

The U.S. grades of olive oil or olive-pomace oil must meet the following minimum requirements, of the respective grades listed in Table I, as appropriate.

TABLE I

Quality Criteria	US Extra Virgin Olive Oil	US Virgin Olive Oil	Lampante Virgin Olive Oil[1/]	US Refined Olive Oil	US Olive Oil	US Olive-pomace Oil	US Refined Olive-pomace Oil	US Crude Olive-pomace Oil
(a) Organoleptic Characteristics								
- Odor And Flavor	Excellent	Good	Poor	Acceptable	Good	Good	Acceptable	N/A
- Odor And Flavor (On A Continuous Scale):								
• Median Of Defect (M_d)	$M_d = 0$	$0 < M_d \leq 2.5$	$M_d > 2.5$[2/]	N/A	N/A	N/A	N/A	N/A
• Median Of The Fruity (M_f)	$M_f > 0$	$M_f > 0$	N/A	N/A	N/A	N/A	N/A	N/A
• Color	Yellow To Green	Yellow To Green	Yellow To Green	Light Yellow	Light Yellow To Green	Light Yellow To Green	Light Yellow To Brownish Yellow	Dark Green, Brown, Or Black
(b) Free Fatty Acid Content, % m/m Expressed As Oleic Acid	≤ 0.8	≤ 2.0	> 2.0	≤ 0.3	≤ 1.0	≤ 1.0	≤ 0.3	No limit
(c) Peroxide Value, In Milleq. Peroxide Oxygen Per kg/oil	≤ 20	≤ 20	No Limit	≤ 5	≤ 15	≤ 15	≤ 5	No limit

1/ The criteria in (a), (b), and (c) is not required to be concurrent; one is sufficient (for lampante oil only).
2/ Or when the median of the defect attribute is less than or equal to 2.5 and the median of the fruity attribute is equal to 0.

TABLE I continued

	US Extra Virgin Olive Oil	US Virgin Olive Oil	Lampante Virgin Olive Oil	US Refined Olive Oil	US Olive Oil	US Olive-pomace Oil	US Refined Olive-pomace Oil	US Crude Olive-pomace Oil
Quality Criteria								
(d) Absorbency In Ultraviolet (UV) (K1% 1cm)								
- 270 nm	≤ 0.22	≤ 0.25	N/A	≤ 1.10	≤ 0.90	≤ 1.70	≤ 2.00	N/A
- Δ K	≤ 0.01	≤ 0.01	N/A	≤ 0.16	≤ 0.15	≤ 0.18	≤ 0.20	N/A
- 232 nm	≤ 2.50 6/	≤ 2.60 6/	N/A	N/A	N/A	N/A	N/A	N/A
Purity Criteria								
(e) Fatty Acid Composition As Determined By Gas Chromatography (% m/m Methyl Esters)	-Arachidic Acid (C20:0) ≤ 0.6 -Behenic Acid (C22:0)≤ 0.2 3/ -Gadoleic Acid (Eicosenoic) (C20:1) ≤ 0.4 -Heptadecanoic Acid (C17:0) ≤ 0.3 -Heptadecenoic Acid(C17:1) ≤ 0.3 -Lignoceric Acid (C24:0) ≤ 0.2 -Linoleic Acid (C18:2) 3.5 – 21.0					-Linolenic Acid (C18:3) ≤ 1.5 4/ -Myristic Acid (C14:0) ≤ 0.05 -Oleic Acid (C18:1) 55.0 – 83.0 -Palmitoleic Acid (C16:1) 0.3 – 3.5 -Palmitic Acid (C16:0) 7.5 – 20.0 -Stearic Acid (C18:0) 0.5 – 5.0		
(f) Trans Fatty Acid (T) Content (%) C18:1T 5/	≤ 0.05	≤ 0.05	≤ 0.10	≤ 0.20	≤ 0.20	≤ 0.40	≤ 0.40	≤ 0.20
(g) Trans Fatty Acid Content (%) C18:2T+C18:3T	≤ 0.05	≤ 0.05	≤ 0.10	≤ 0.30	≤ 0.30	≤ 0.35	≤ 0.35	≤ 0.10

3/ Limit raised to ≤ 0.3 for olive-pomace oils.

4/ Linolenic acid values between 1.0 and 1.5 percent would be subject to further testing listed in Table II.

5/ Fatty acid with 18 Carbon atoms (C) and one *trans* isomer (T)

6/ Commercial partners in the country of retail sale may require compliance.

TABLE I continued.

Purity Criteria	US Extra Virgin Olive Oil	US Virgin Olive Oil	Lampante Virgin Olive Oil	US Refined Olive Oil	US Olive Oil	US Olive-pomace Oil	US Refined Olive-pomace Oil	US Crude Olive-pomace Oil
(h) Desmethylsterol Composition (% Total Sterol)		- Brassicasterol ≤ 0.1[7/] - Campesterol ≤ 4.5 [8/] - Cholesterol ≤ 0.5 - Delta – 7 Stigmastenol ≤ 0.5 - Stigmasterol < Campesterol In Edible Oils Clerosterol + Sitostanol + Beta-Sitosterol + Delta 5-24-Stigmastadienol + Delta-5-23-Stigmastadienol+ Delta-5-Avenasterol ≥ 93.0						
(i) Total Sterol Content (mg/kg)	≥1000	≥1000	≥1000	≥1000	≥1000	≥1600	≥1800	≥2500

[7/] Limit raised to ≤ 0.2 for olive-pomace oils.

[8/] Campesterol values between 4.0 and 4.5 would be subject to further testing listed in Table II.

TABLE II. Confirmatory tests for products with linolenic acid values between 1.0 and 1.5 percent, and/or campesterol values between 4.0 and 4.5 percent.

Purity Criteria	US Extra Virgin Olive Oil	US Virgin Olive Oil	Lampante Virgin Olive Oil	US Refined Olive Oil	US Olive Oil	US Olive-pomace Oil	US Refined Olive-pomace Oil	US Crude Olive-pomace Oil
(j) Maximum Difference Between Actual And Theoretical ECN 42 Triacylglycerol Content	|≤0.2|	|≤0.2|	|≤0.3|	|≤0.3|	|≤0.3|	|≤0.5|	|≤0.5|	|≤0.6|
(k) Stigmastadiene Content (mg/kg)	≤0.15	≤0.15	≤0.50	≤50	≤50	≤120	≤120	≤0.50
(l) Erythrodiol and uvaol content (% total sterols)	≤4.5	≤4.5	≤4.5 9/	≤4.5	≤4.5	>4.5	>4.5	>4.5 10/
(m) Wax content C40+C42+C44+C46 (mg/kg)	≤250	≤250	≤300 9/	≤350	≤350	>350	>350	>350 10/
(n) Content of 2-glyceryl monopalmitate (2P) C16:0 ≤ 14% C16:0 > 14%	2P≤ 0.9% 2P≤ 1.0%	2P≤ 0.9% 2P≤ 1.0%	2P≤ 0.9% 2P≤ 1.1%	N/A	N/A	≤1.2%	≤1.4%	≤1.4%

9/ When the oil has a wax content between 300mg/kg and 350 mg/kg it is considered lampante virgin olive oil if the total aliphatic alcohol content is less than or equal to 350 mg/kg or the erythrodiol + uvaol content is less than or equal to 3.5 percent.

10/ When the oil has a wax content between 300 mg/kg and 350 mg/kg it is considered crude olive-pomace oil if the total aliphatic alcohol content is less than or greater than 350 mg/kg or the erythrodiol +uvaol content is less than or greater than 3.5 percent.

TABLE III. Optional requirements.

Quality Criteria	US Extra Virgin Olive Oil	US Virgin Olive Oil	Lampante Virgin Olive Oil	US Refined Olive Oil	US Olive Oil	US Olive-pomace Oil	US Refined Olive-pomace Oil	US Crude Olive-pomace Oil
(o) Moisture and volatile matter (% m/m)	≤ 0.2	≤ 0.2	N/A	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.1	≤ 1.5
(p) Insoluble impurities in light petroleum (% m/m)	≤ 0.1	≤ 0.1	N/A	≤ 0.05	≤ 0.05	≤ 0.05	≤ 0.05	N/A
(q) Flash point	N/A	N/A	N/A	N/A	N/A	N/A	N/A	≥ 120°C
(r) Trace metals (mg/kg) Iron copper	≤ 3.0 ≤ 0.1	≤ 3.0 ≤ 0.1	≤ 3.0 ≤ 0.1	≤ 3.0 ≤ 0.1	≤ 3.0 ≤ 0.1	≤ 3.0 ≤ 0.1	≤ 3.0 ≤ 0.1	N/A
(s) Unsaponifiable matter (g/kg)	≤15	≤15	≤15	≤15	≤15	≤30	≤30	≤30
(t) Aspect At 20°C (68°F) After 24 Hours	N/A	N/A	N/A	Limpid	Limpid	Limpid	Limpid	N/A
(u) Halogenated Solvents	Maximum content of each halogenated solvent 0.1 mg/kg Maximum content of all halogenated solvents 0.2 mg/kg							
(v) Heavy Metals Lead (Pb) Arsenic (As)	Maximum permissible content is 0.1 mg/kg							
(w) Pesticide Residues	The products covered by this standard shall comply with the maximum residue limits established by the U. S. Environmental Protection Agency.							

§52.1540 Methods of Analysis

The following methods shall be used as references in determining the characteristics for olive oil or olive-pomace oil. Alternative methods may be used, provided they give equivalent results.

(a) Sampling

Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.1 through 52.83).

(b) Preparation of the test sample

According to International Standards Organization (ISO) 661, "Animal and vegetable fats and oils – Preparation of the test sample".

(c) Determination of the fatty acid composition

According to International Olive Council (COI) COI/T.20/Doc. No. 24; ISO 5508, "Analysis by gas chromatography of methyl esters of fatty acids"; or American Oil Chemists Society (AOCS) Ch 2-91. "Preparation of methyl esters", AOCS Ce-66, ISO 5509, or IOC/T.20/24-2001.

(d) Determination of the trans fatty acid content

According to COI/T.20/Doc. No. 17; ISO 15304; or AOCS Ce 1f-96.

(e) Determination of the sterol composition and total sterol content

According to According to COI/T.20/Doc. No. 10, "Determination of the composition and content of sterols by capillary-column gas chromatography"; ISO 12228 or AOCS Ch 6-91.

(e) Determination of the content of erythrodiol + uvaol

According to IUPAC no. 2.431, "Determination of the erythrodiol content".

(f) Determination of the wax content
According to COI/T.20/Doc. No. 18/Rev.2, "Determination of wax content by capillary-column gas chromatography" or AOCS Ch 8-02.

(g) Determination of the difference between the actual and theoretical ECN 42 triacylglycerol content. According to COI/T.20/Doc. No. 23, "Determination of the difference between actual and theoretical content of triacylglycerol with ECN 42" or AOCS 5b-89.

(h) Determination of the stigmastadiene content

According to COI/T.20/Doc. No. 11, "Determination of stigmastadienes in vegetable oils", or COI/T.20/Doc. No. 16, "Determination of sterenes in refined vegetable oils"; ISO 15788-1; or AOCS Cd 26-96.

(i) Determination of the fatty acids in the 2-glyceryl monopalmitate

According to COI/T.20/Doc. No. 23, "Determination of percentage of 2-glyceryl monopalmitate".

(j) Determination of the unsaponifiable matter

According to ISO 3596, "Determination of the unsaponifiable matter method using diethyl ether extraction"; AOCS Ca 6b-53; or ISO 18609. The results should be expressed in grams of unsaponifiable matter per kilogram/oil.

(k) Determination of the organoleptic characteristics

According to COI/T.20/Doc. No. 15, "Organoleptic assessment of virgin olive oil".

(l) Determination of the free fatty acidity content

According to ISO 660, "Determination of acid value and acidity", or AOCS Cd3d-63.

(m) Determination of the peroxide value

According to ISO 3960, "Determination of the peroxide value," or AOCS Cd8b-90.

(n) Determination of the absorbency in ultraviolet. According to COI/T.20/Doc. No. 19, "Spectrophotometric investigation in ultraviolet"; ISO 3656; or AOCS Ch 5-91.

(o) Determination of the moisture and volatile matter

According to ISO 662, "Determination of moisture and volatile matter"

(p) Determination of the insoluble impurities in light petroleum

According to ISO 663, "Determination of the insoluble impurities".

(q) Determination of the flash point

According to the Federation of Oils, Seeds and Fats Associations (FOSFA) International method.

(r) Determination of the trace metals

According to ISO 8294, "Determination of copper, iron and nickel by direct graphite furnace atomic absorption spectrometry".

(s) Determination of the alpha-tocopherol

According to ISO 9936, "Determination of tocopherols and tocotrienols contents – Method using high-performance liquid chromatography".

(t) Detection of traces of halogenated solvents
According to COI/T.20/Doc. no. 8, "Determination to tetrachlorethylene in olive oils by gas-liquid chromatography".

(u) Determination of traces of heavy metals.

Determination of lead: according to ISO 12193, AOCS Ca 18c-91 or AOAC 994.02.

Determination of arsenic: according to AOAC 952.13, AOAC 942.17, or AOAC 985.16.

§52.1541 Ascertaining the grade of a lot.

The grade of a lot of olive oil or olive-pomace oil covered by these standards is determined by the procedures set forth in the **Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products** (7 CFR 52.1 through 52.83). Provided that:

(a) Such sample complies with the applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act;

(b) Such sample complies with the product description;

(c) Such samples meet the indicated grade with respect to quality factors not rated by scorepoints; and

1. None of the samples falls more than one grade below the indicated grade because of any quality factor to which a limiting rule applies; and

2. The number of deviants does not exceed the applicable acceptance number indicated in the sampling plans ("deviants" means sample units that fall into the next grade below the indicated grade).

(d) Required analysis on each lot shall include but is not limited to the following:

1. Determination of the organoleptic characteristics;
2. Determination of free fatty acid content (as oleic acid);
3. Determination of peroxide value;
4. Determination of absorbency in ultraviolet;
5. Determination of the fatty acid composition;
6. Trans fatty acid;
7. Desmethylsterol composition (% Total Sterol); and
8. Total sterol content

(e) Any additional analysis outlined in Table II or Table III found in §52.1539 of this subpart will be performed at the request of the applicant or when indicated by test results.

(f) **Lot inspection.** A lot of olive oil or olive-pomace oil is considered as meeting the requirements for the intended grade:

1. The requirements of §52.1539 specified in Table I are met;

2. If applicable, the additional requirements of §52.1539 specified in Table II are met;

3. If the criteria for the individual analyses are not exceeded for the applicable grade designation; and

4. If any of the provisions contained in the above subparagraphs are not met, then the grade is determined by considering such provisions in connection with succeedingly lower grades until the grade of the lot, if assignable, is established.

(g) **Single sample unit.** Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements of the intended grade:

1. The requirements of §52.1539 specified in Table I are met.

2. If applicable, the additional requirements of §52.1539 specified in Table II.

3. If the criteria for the individual analyses are not exceeded for the applicable grade designation.

(h) **In-plant.** See Lot Inspection except that the quality criteria in §52.1539 Table I may be the sole basis for the grade, if appropriate.

§52.1542 Score sheet for olive oil and olive-pomace oil.

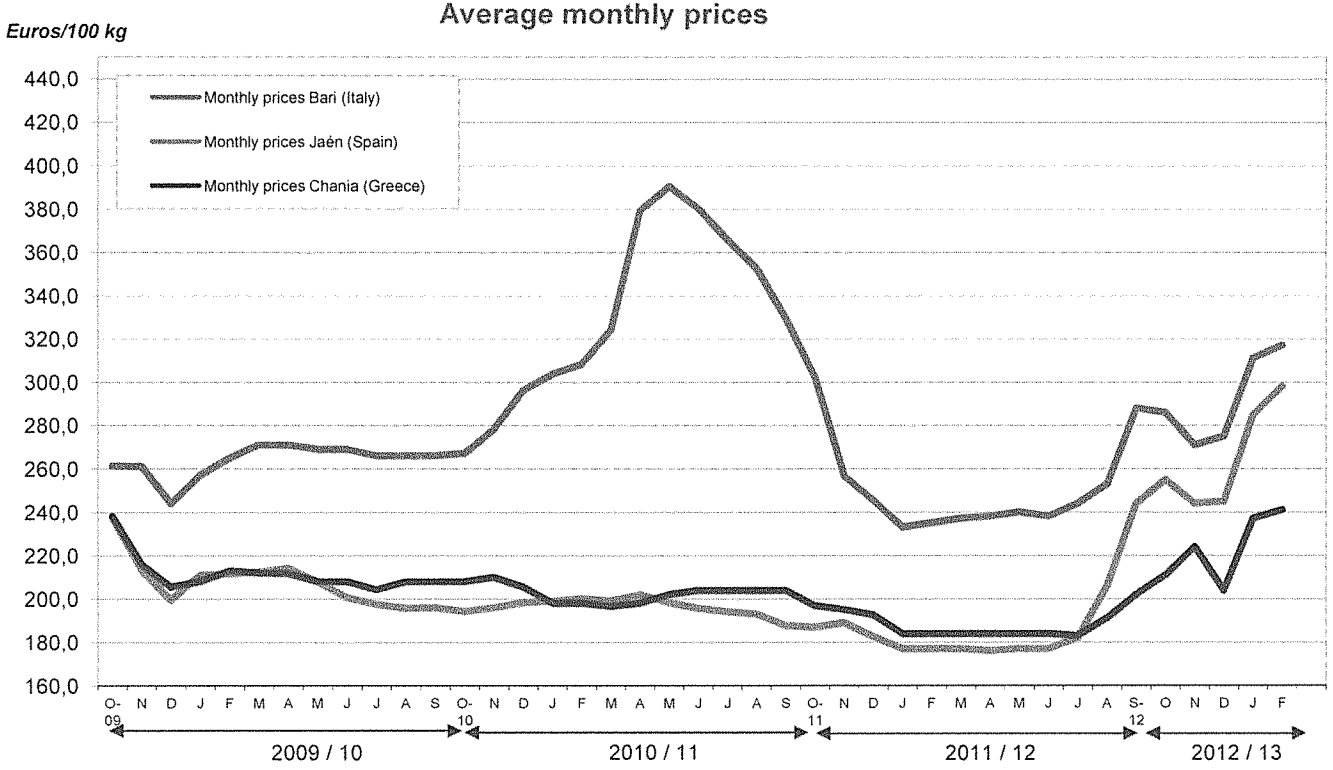
The following score sheet may be used to summarize the factors determining the various grades:

Size and kind of container ..... Container code or markings ..... Label..... Net contents (liquid measure)..... Free acidity (as oleic) ..... Organoleptic Characteristics..... -Median of Defects..... -Median of Fruity..... Flavor and Odor.....(Excellent, Good, Acceptable, Poor) Color.....(Normal, Off) Peroxide value ..... Absorbency in UV ..... 270 nm ..... 232 nm ..... ΔK ..... Fatty acid composition..... (Meets) (Fails) Trans fatty acid content..... Desmethylsterol composition ....(Meets) (Fails) Total sterol content ..... Stigmastadiene content..... Difference between actual and theoretical ECN 42 triacylglycerol content ..... Erythrodiol and uvaol content..... Wax content ..... 2-glyceryl monopalmitate content ..... Alpha tocopherol content..... Other analyses .....
U.S. Grade
"U.S. Extra Virgin Olive Oil" **"U.S. Virgin Olive Oil" 1/** **"U.S. Lampante Olive Oil" 1/** **"U.S. Olive Oil"1/** **"U.S. Refined Olive Oil" 1/** **"U.S. Olive-pomace Oil" 1/** **"U.S. Refined Olive-pomace Oil" 1/** **"U.S. Crude Olive-pomace Oil"1/** **1/ Indicates limiting rule**

MOVEMENTS IN PRODUCER PRICES

EXTRA VIRGIN OLIVE OIL

Average monthly prices



Source: International Olive Council - March 2013

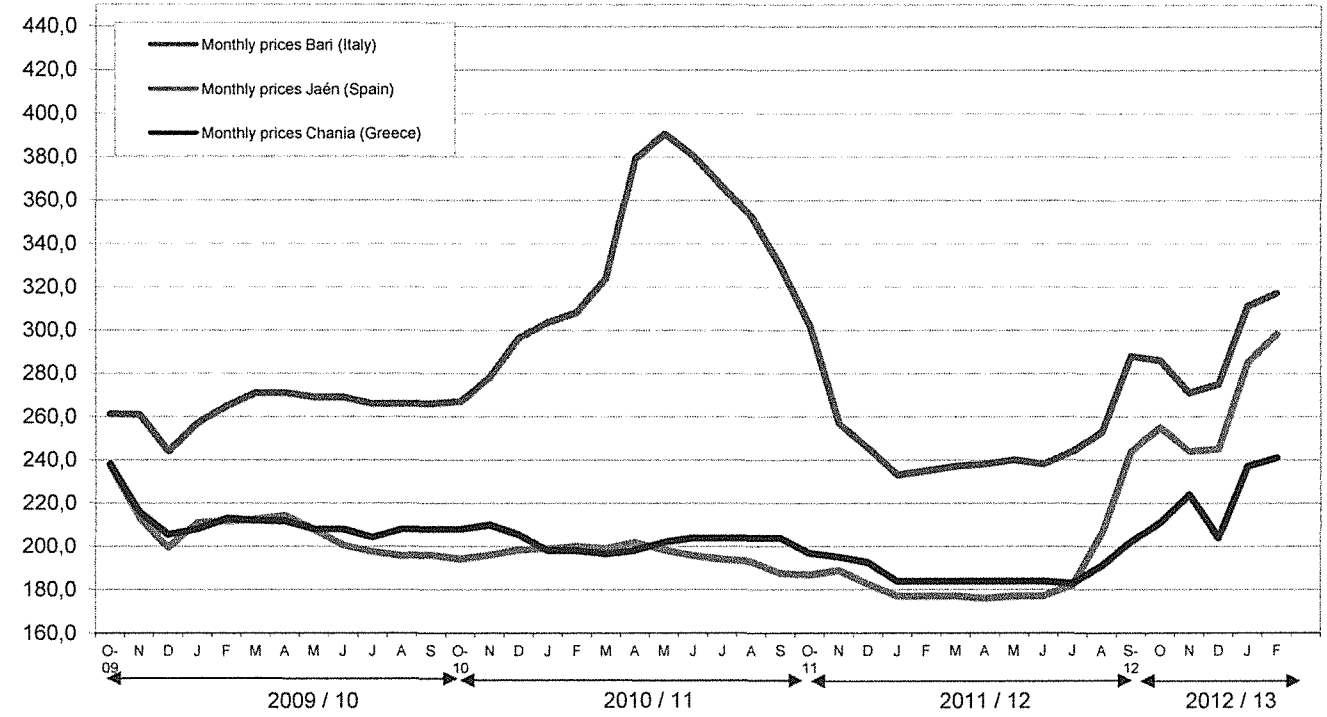
EXHIBIT 3

MOVEMENTS IN PRODUCER PRICES

EXTRA VIRGIN OLIVE OIL

Average monthly prices

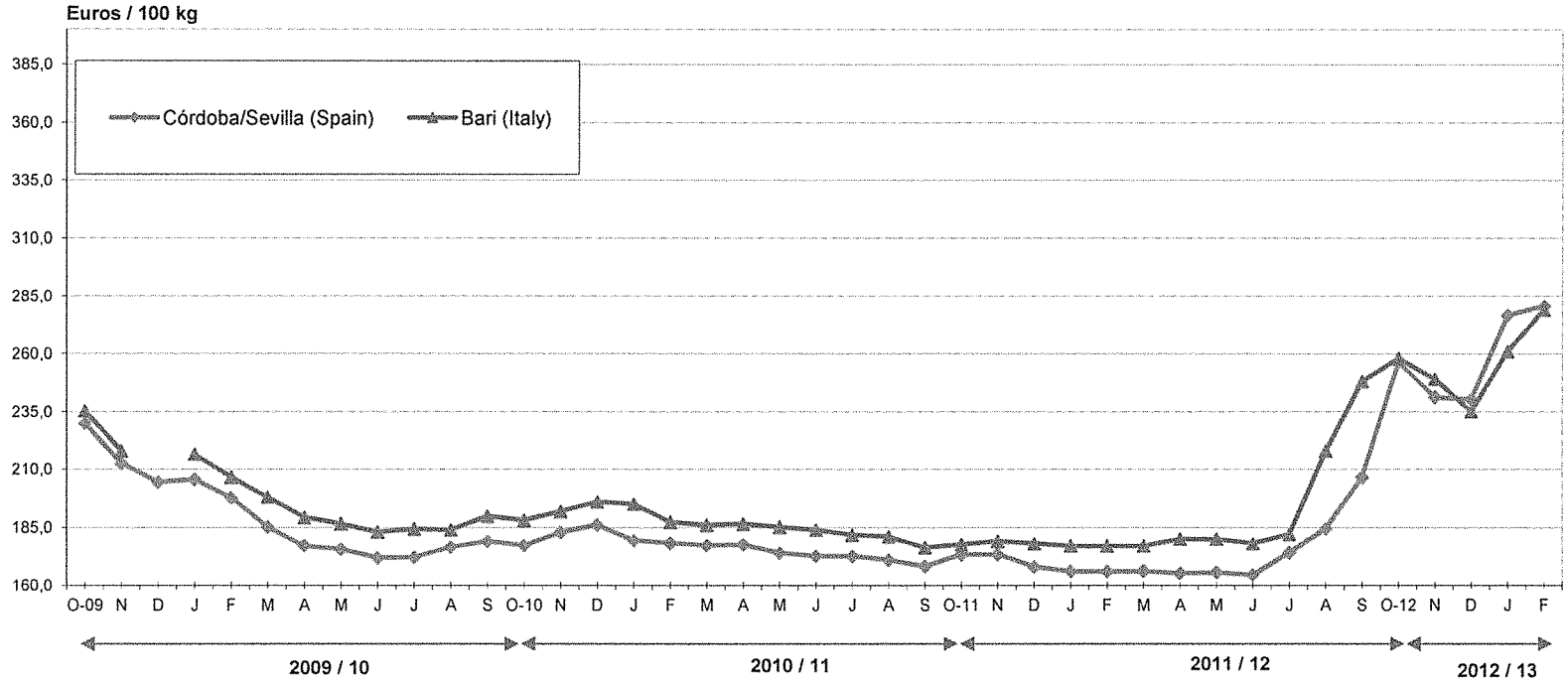
Euros/100 kg



Source: International Olive Council - March 2013

EXHIBIT 4

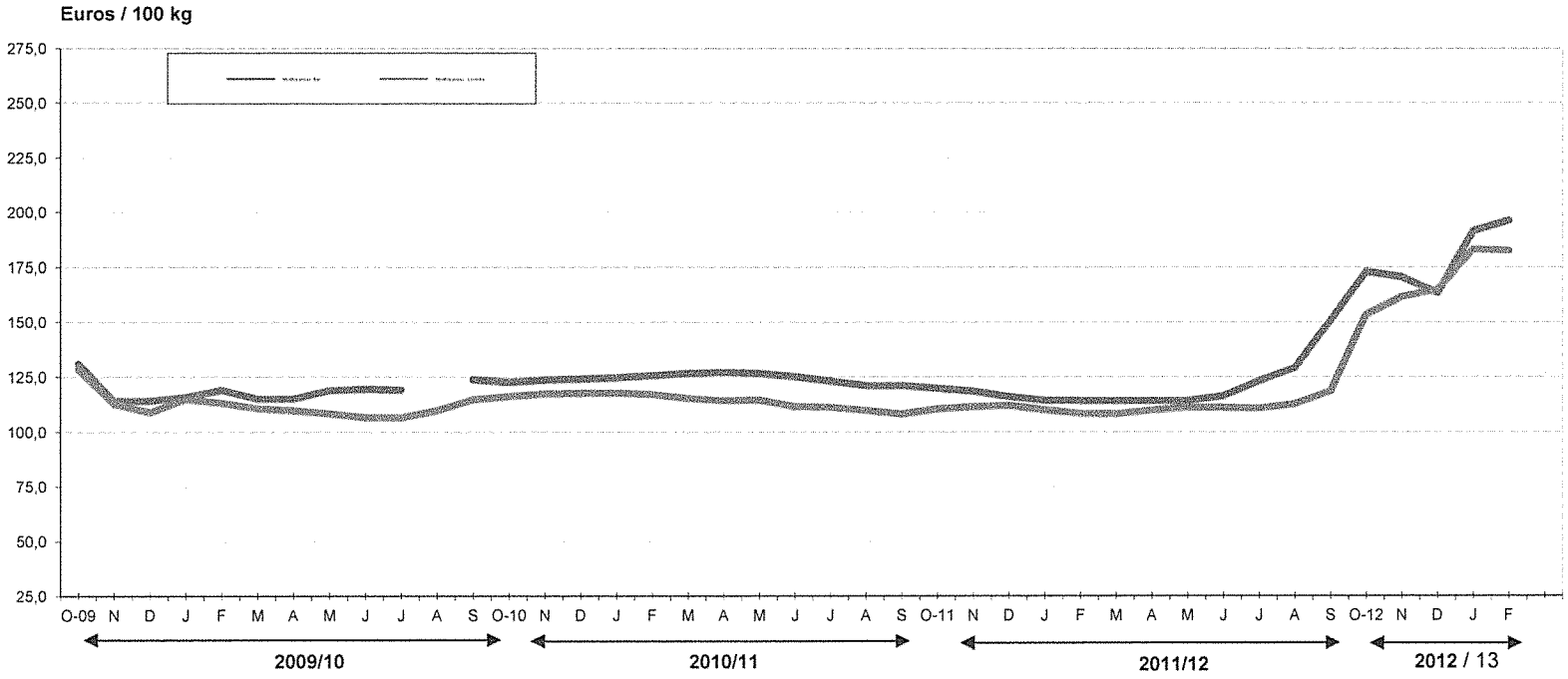
MOVEMENTS IN PRODUCER PRICES
REFINED OLIVE OIL
Average monthly prices



Source: International Olive Council - March 2013

EXHIBIT 5

MOVEMENTS IN REFINERY PRICES
REFINED OLIVE-POMACE OIL
Average monthly prices



Source: International Olive Council - *March 2013*

EXHIBIT 6

JUDGE RAKOFF

JS 44C/SDNY
REV. 7/2012

CIVIL COVER SHEET

13 CV 0868

FEB 0 6 2013

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS	DEFENDANTS
North American Olive Oil Association ("NAOOA")	Kangadis Food Inc., d/b/a The Gourmet Factory

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER	ATTORNEYS (IF KNOWN)
Timothy J. Treanor, SIDLEY AUSTIN LLP, 787 Seventh Avenue New York, New York 10019, (212) 839-5300	

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

NAOOA brings suit under 15 U.S.C. § 1125(a), and N.Y. Gen. Bus. Law §§ 349 & 350 to stop Defendant's deceptive marketing.

Has this or a similar case been previously filed in SDNY at any time? No [X] Yes [ ] Judge Previously Assigned

If yes, was this case Vol. [ ] Invol. [ ] Dismissed. No [ ] Yes [ ] If yes, give date _____ & Case No _____

IS THIS AN INTERNATIONAL ARBITRATION CASE? No [X] Yes [ ]

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

CONTRACT
- [ ] 110 INSURANCE
- [ ] 120 MARINE
- [ ] 130 MILLER ACT
- [ ] 140 NEGOTIABLE INSTRUMENT
- [ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- [ ] 151 MEDICARE ACT
- [ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- [ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- [ ] 160 STOCKHOLDERS SUITS
- [ ] 190 OTHER CONTRACT
- [ ] 195 CONTRACT PRODUCT LIABILITY
- [ ] 196 FRANCHISE

REAL PROPERTY
- [ ] 210 LAND CONDEMNATION
- [ ] 220 FORECLOSURE
- [ ] 230 RENT LEASE & EJECTMENT
- [ ] 240 TORTS TO LAND
- [ ] 245 TORT PRODUCT LIABILITY
- [ ] 290 ALL OTHER REAL PROPERTY

PERSONAL INJURY
- [ ] 310 AIRPLANE
- [ ] 315 AIRPLANE PRODUCT LIABILITY
- [ ] 320 ASSAULT, LIBEL & SLANDER
- [ ] 330 FEDERAL EMPLOYERS' LIABILITY
- [ ] 340 MARINE
- [ ] 345 MARINE PRODUCT LIABILITY
- [ ] 350 MOTOR VEHICLE
- [ ] 355 MOTOR VEHICLE PRODUCT LIABILITY
- [ ] 360 OTHER PERSONAL INJURY

ACTIONS UNDER STATUTES

CIVIL RIGHTS
- [ ] 441 VOTING
- [ ] 442 EMPLOYMENT
- [ ] 443 HOUSING/ ACCOMMODATIONS
- [ ] 444 WELFARE
- [ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- [ ] 446 AMERICANS WITH DISABILITIES -OTHER
- [ ] 440 OTHER CIVIL RIGHTS (Non-Prisoner)

PERSONAL INJURY
- [ ] 362 PERSONAL INJURY - MED MALPRACTICE
- [ ] 365 PERSONAL INJURY PRODUCT LIABILITY
- [ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY
- [ ] 370 OTHER FRAUD
- [ ] 371 TRUTH IN LENDING
- [ ] 380 OTHER PERSONAL PROPERTY DAMAGE
- [ ] 385 PROPERTY DAMAGE PRODUCT LIABILITY

PRISONER PETITIONS
- [ ] 510 MOTIONS TO VACATE SENTENCE 20 USC 2255
- [ ] 530 HABEAS CORPUS
- [ ] 535 DEATH PENALTY
- [ ] 540 MANDAMUS & OTHER

PRISONER CIVIL RIGHTS
- [ ] 550 CIVIL RIGHTS
- [ ] 555 PRISON CONDITION

FORFEITURE/PENALTY
- [ ] 610 AGRICULTURE
- [ ] 620 OTHER FOOD & DRUG
- [ ] 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- [ ] 630 LIQUOR LAWS
- [ ] 640 RR & TRUCK
- [ ] 650 AIRLINE REGS
- [ ] 660 OCCUPATIONAL SAFETY/HEALTH
- [ ] 690 OTHER

LABOR
- [ ] 710 FAIR LABOR STANDARDS ACT
- [ ] 720 LABOR/MGMT RELATIONS
- [ ] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT
- [ ] 740 RAILWAY LABOR ACT
- [ ] 790 OTHER LABOR LITIGATION
- [ ] 791 EMPL RET INC SECURITY ACT

IMMIGRATION
- [ ] 462 NATURALIZATION APPLICATION
- [ ] 463 HABEAS CORPUS- ALIEN DETAINEE
- [ ] 465 OTHER IMMIGRATION ACTIONS

BANKRUPTCY
- [ ] 422 APPEAL 28 USC 158
- [ ] 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS
- [ ] 820 COPYRIGHTS
- [ ] 830 PATENT
- [ ] 840 TRADEMARK

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 BLACK LUNG (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID TITLE XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 TAXES (U.S. Plaintiff or Defendant)
- [ ] 871 IRS-THIRD PARTY 26 USC 7609

OTHER STATUTES
- [ ] 400 STATE REAPPORTIONMENT
- [ ] 410 ANTITRUST
- [ ] 430 BANKS & BANKING
- [ ] 450 COMMERCE
- [ ] 460 DEPORTATION
- [ ] 470 RACKETEER INFLU-ENCED & CORRUPT ORGANIZATION ACT (RICO)
- [ ] 480 CONSUMER CREDIT
- [ ] 490 CABLE/SATELLITE TV
- [ ] 810 SELECTIVE SERVICE
- [ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE
- [ ] 875 CUSTOMER CHALLENGE 12 USC 3410
- [X] 890 OTHER STATUTORY ACTIONS
- [ ] 891 AGRICULTURAL ACTS
- [ ] 892 ECONOMIC STABILIZATION ACT
- [ ] 893 ENVIRONMENTAL MATTERS
- [ ] 894 ENERGY ALLOCATION ACT
- [ ] 895 FREEDOM OF INFORMATION ACT
- [ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- [ ] 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND $_____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: [X] YES [ ] NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

☐ a. all parties represented

☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ]1	[ ]1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ]3	[ ]3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ]5	[ ]5
CITIZEN OF ANOTHER STATE	[ ]2	[ ]2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ]4	[ ]4	FOREIGN NATION	[ ]6	[ ]6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

North American Olive Oil Association
3301 Route 66
Suite 205, Bldg. C
Neptune, NJ 07753

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Kangadis Food Inc., d/b/a The Gourmet Factory
55 Corporate Drive
Hauppauge, NY 11788

DEFENDANT(S) ADDRESS UNKNOWN
REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 2/6/13

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT
[ ] NO
☒ YES (DATE ADMITTED Mo ____ Yr 1998)
Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court. GORENSTEIN

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE RAKOFF

13 CV 0868

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTH AMERICAN OLIVE OIL ASSOCIATION,

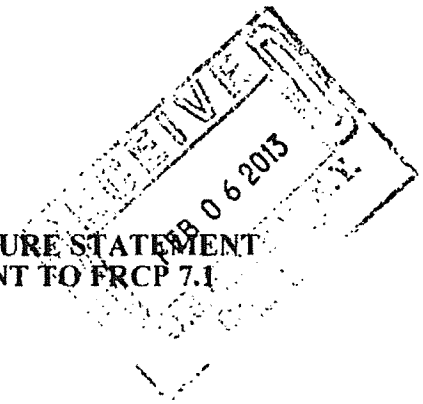
Plaintiff,

-against-

KANGADIS FOOD INC., d/b/a THE GOURMET FACTORY,

Defendant.

Case No.



DISCLOSURE STATEMENT PURSUANT TO FRCP 7.1

Pursuant to Federal Rule of Civil Procedure 7.1, plaintiff North American Olive Oil Association ("NAOOA"), by and through its undersigned counsel, hereby certifies that NAOOA is a subsidiary section of the Association of Food Industries ("AFI"), a private 501(c)(6) non-profit organization; AFI is not a publicly held entity, and has no parent company. No publicly held entity owns ten percent (10%) or more of AFI.

SIDLEY AUSTIN LLP

By: _____

Timothy J. Treanor (ttreanor@sidley.com)
787 Seventh Avenue
New York, New York 10019
(212) 839-5300

Attorneys for Plaintiff NORTH AMERICAN OLIVE OIL ASSOCIATION

AO 440 (Rev 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

NORTH AMERICAN OLIVE OIL ASSOCIATION

Plaintiff

v.

KANGADIS FOOD INC., d/b/a THE GOURMET FACTORY

Defendant

JUDGE RAKOFF

Civil Action No. 13 CV 0868

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* KANGADIS FOOD INC.
76-01 77TH AVENUE
GLENDALE, NEW YORK, 11385

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Timothy J. Treanor
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 839-5300
ttreanor@sidley.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

RUBY J. KRAJICK

CLERK OF COURT

Date: 02/06/2013

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

JUDGE RAKOFF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13 CV 0868

----------X

NORTH AMERICAN OLIVE OIL ASSOCIATION,

Plaintiff,

vs.

KANGADIS FOOD INC., d/b/a THE GOURMET FACTORY,

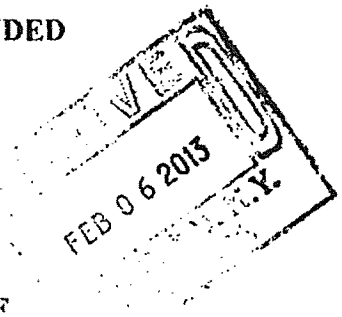
Defendant.

----------X

No. _____
ECF CASE

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED



COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1. Plaintiff, the North American Olive Oil Association ("NAOOA," or "the Association"), by and through its undersigned counsel, hereby files this Complaint against Defendant Kangadis Food Inc., d/b/a The Gourmet Factory ("Gourmet Factory"), and avers as follows:

NATURE OF THE ACTION

2. Pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and New York's General Business Law §§ 349 and 350, Plaintiff NAOOA brings this action against Defendant Gourmet Factory for its unlawful, misleading, and deceptive misbranding of edible oil products sold to consumers and businesses. Defendant markets oils for human consumption under the "Capatriti" brand as "100% Pure Olive Oil." But Defendant's "100% Pure Olive Oil" is nothing of the sort; instead of "olive oil," Gourmet Factory's adulterated product consists of mostly – if not completely – an industrially produced, chemically derived fat known as "olive-pomace oil" or "olive-residue oil" (collectively referred to hereinafter as "Pomace").

3. Pomace is a byproduct extracted from leftover olive skins and pits using a combination of chemical solvents and high temperatures. Unsurprisingly, because Pomace can

be obtained only through heating and solvent treatments, it does not appear in pure olive oil. And, although it comes from olives, it is *not* olive oil.

4. Calling a product "olive oil" when it contains Pomace or any other non-olive oil is barred by an array of olive-oil-making conventions, standard industry practices, international regulations, and federal and state laws. According to every authority that might form the basis for consumer expectations, a product containing more than a negligible amount of Pomace must contain a prominent disclosure of that fact on the label. Gourmet Factory does not disclose its use of Pomace, and instead misleads purchasers as to the very nature of its product by, among other things, disguising Pomace as "100% Pure Olive Oil."

5. The NAOOA has reason to believe that Gourmet Factory's misbranding is either intentional or reflects a profound disregard for quality control. Olive oil and Pomace arise out of distinct production processes; the price of Pomace is a fraction of the price of authentic olive oils (typically as much as 30% to 40% less); and any reasonable quality-control check would detect the presence of Pomace. A packer or distributor of olive oils therefore does not unwittingly mislabel Pomace as olive oil.

6. Mislabeling Pomace as olive oil causes substantial injury to consumers, competitors, and the market for olive oils. Mislabeling food products is particularly egregious because a consumer is entitled to know what he or she is ingesting. Moreover, marketing a product as something that it is not severely damages the overwhelming majority of olive oil producers who sell authentic olive oil and market it truthfully. Gourmet Factory's conduct is exactly this sort of egregious misconduct. By selling a product it represents to be olive oil at implausibly low prices, Gourmet Factory diverts olive-oil-seeking-consumers away from authentic products, and dupes them into purchasing something that is *not* olive oil. Producers, distributors, and retailers of olive oils then suffer from artificially deflated prices, the diversion of customers seeking legitimate olive oil, and the erosion of consumer confidence in the olive oil market, and in food labeling in general. The NAOOA is filing this action to stop Gourmet Factory's harmful and destructive business practices.

law, which are so related to the federal claims brought herein as to form part of the same case or controversy.

10. Venue is proper in this District under 28 U.S.C. §§ 1391 (b)(1)-(2) and (d) because a substantial part of the acts giving rise to this claim occurred in this jurisdiction, and because Defendant resides in this District for venue purposes. Defendant's widespread sales of oil products throughout this District are sufficient to subject it to personal jurisdiction if this District were a separate state.

FACTUAL BACKGROUND

I. Olive Oil Has Long Been Prized For Its Culinary Value And Health Benefits.

11. Olive oil comes from the fruit of the olive tree (*Olea europaea* L.), a species native to the Mediterranean basin. Olive tree cultivation was first documented as far back as 4,000 B.C., in parts of what is now Syria and Iran, with sources as old as Egyptian hieroglyphics and the Bible discussing olive oil production. By the time of the Roman Empire, olive oil had become a staple of Mediterranean trade. Although olive production has, in recent years, spread to Australia, South Africa, Chile, Argentina, and the United States, nearly 95 percent of the world's olive oil continues to be produced in the Mediterranean basin.

12. Since ancient times, people have recognized olive oil's substantial and beneficial effects on human health. Olive oil contains monounsaturated fatty acids, which leading health care professionals consider a "healthy dietary fat" that can lower bad LDL cholesterol and raise good HDL cholesterol. For this reason, the United States Food and Drug Administration ("FDA") approved a qualified heart health claim for olive oil in 2004 that was based on more than 70 clinical intervention studies conducted in a number of countries. A diet with olive oil as a main source of fat has been linked to health benefits favorably affecting susceptibility to cardiovascular disease, diabetes, stroke, cancer, and more. Evidence shows that olive oil helps the body absorb beneficial nutrients from vegetables and other healthy ingredients in meals. Olive oil also is an excellent source of vitamins E and K.

13. Consumers use olive oil in many ways. Many add olive oil to salad dressings, marinades, baked goods, sauces, and pastas. In addition, olive oil's high smoke point makes it one of the most stable fats for cooking and frying, and, unlike some other oils, many of its healthful qualities persist after heating.

14. Given the many health benefits and culinary uses of olive oils, it is no surprise that the market for olive oil has grown enormously over the last several decades. Since 1990, total consumption of olive oil in the United States has more than doubled, reaching 70 million gallons in 2009. With broader consumer recognition of olive oil's considerable health benefits, consumption in the United States seems poised to continue to increase for years to come.

II. Pomace Is Not Olive Oil.

15. "Olive oil," as it is scientifically, commercially, and legally defined, is "the oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption as they are." The components of this blend consist of: virgin olive oil, defined as "the oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decantation, centrifugation and filtration;" and refined olive oil, defined as "the olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in the initial glyceridic structure."[1]

16. In contrast, Pomace is a highly processed industrial fat derived by applying heat and chemical solvents to the olive skins and pits left over from the production of olive oil. *See* 47 Fed. Reg. 42123 (Sept. 24, 1982) ("[S]olvent extraction is a standard procedure for removing oil from substances having low oil contents, such as safflower and cotton seeds. Olives, however, have a high oil content and the oil is easily removed by a mechanical or physical process, such as pressing. Solvent extraction of oil from olives is used to remove the residual oil

[1] International Olive Council, Trade Standard Applying to Olive Oils and Olive-Pomace Oils, COI T.15/NC No.3/Rev 6 at 3.3.3 (Nov. 2011) [hereinafter "IOC Trade Standards"].

from the pomace and pits remaining from pressing operations."). The cost of producing oil in this manner is a fraction of the cost of producing olive oil.

III. No Law, Regulation, Or Standard Permits Pomace To Be Labeled As Olive Oil.

17. Although Pomace can sometimes be refined or mixed with olive oil to make it fit for human consumption, no recognized regulatory body or organization in the world permits Pomace or products containing Pomace to be passed off as "olive oil." Rather, these oils must be labeled as some form of "olive-pomace" or "olive-residue oil."

18. According to the FDA, "[s]olvent-extracted olive oil is lower in quality than pressed olive oils due to the higher free fatty acid content caused by breakdown to triglycerides by enzymes liberated from the olive material during the pressing operations. As the free fatty acid content increases, the flavor and keeping quality of the oil deteriorate and the oil must undergo several refining processes to make it suitable for human consumption. For these reasons, the agency believes that it is reasonable to identify a solvent extracted olive oil as a 'residue oil.'" 47 Fed. Reg. 42123 (Sept. 24, 1982).

19. Despite vigilant policing by responsible industry members, the cost disparities between olive oil and other vegetable oils nevertheless create a financial incentive for fraudsters to adulterate olive oils with cheaper oils (such as Pomace or seed oils) and disguise it as olive oil.

20. This type of fraud, if left unchecked, is both very profitable and difficult for the average consumer to detect. The industrial processes used to refine impurities out of Pomace ends up yielding a product that is essentially flavorless, and thus, may not be immediately noticeable to a consumer as something other than a refined oil – especially when mixed with other ingredients in salad dressings or sauces. The differences between Pomace and olive oil are readily apparent, however, through basic chemical testing.

21. Various state, federal, and international bodies have promulgated standards to guard against deceptive mislabeling, including standards to distinguish olive oil from Pomace. Relevant here are three regulatory bodies: the FDA, the New York State legislature, and the

International Olive Council. They have adopted standards that reflect the longstanding industry practices that underlie relevant consumer expectations.

A. The FDA Labeling Requirements

22. The FDA has promulgated the following definitions for classifying olive-derived oils:

> The name "virgin olive oil" may be used only for the oil resulting from the first pressing of the olives and which is suitable for human consumption without further processing. The name "refined olive oil" refers to the oil obtained from subsequent pressings and which is made suitable for human consumption by refining processes which neutralize the acidity and remove particulate matter. Oil extracted from olive pomace and pits by chemical means and refined to make it edible must be labeled either "refined olive-residue oil" or "refined extracted olive-residue oil." Blends of virgin olive oil and refined olive oil may be labeled as "olive oil," but blends of olive oil with other edible fats or oils must be labeled in accordance with 21 C.F.R. § 102.37.

47 Fed. Reg. 42,123 (Sept. 24, 1982).

23. 21 C.F.R. § 102.37(b) in turn provides that: "When the label bears any representation, other than in the ingredient listing, of the presence of olive oil in the mixture, the descriptive name shall be followed by a statement of the percentage of olive oil contained in the product."

B. New York's Agriculture And Markets Law

24. Similarly, under New York law, "olive oil" is defined as the oil "obtained solely from the fruit of the olive tree (*olea europaea*), to the exclusion of oils obtained using solvents or reesterification processes and of any mixture with oils of other kinds." N.Y. Agric. & Mkts. Law § 204-a(1)(a). "[R]efined olive oil" is the "olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in the initial glyceridic structure. It has free acidity, expressed as oleic acid, of not more than 0.3 grams per hundred grams." *Id.* § 204-a(1)(c). "Olive-pomace oil" is "oil obtained by treating olive pomace with solvents or other physical treatments." *Id.* § 204-a(1)(b).

25. New York's legislature has made it "unlawful for any person to manufacture, pack, possess, sell, offer for sale and/or expose for sale any compound or blended oil of any kind which purports to be an olive oil mixture unless the container thereof be permanently and conspicuously labeled "compound oil" or "blended oil" with a statement of the different ingredients thereof and the specific percentage of olive oil, the total percentage of other vegetable oils and the specific percentage of each other ingredient comprising more than one-half of one per centum of the mixture." *Id.* § 204-a. In particular, no olive oil containing "more than one-half of one per centum" of Pomace may legally be sold in New York unless it is "conspicuously labeled 'compound oil or 'blended oil,'" and unless its label discloses the presence and amount of Pomace therein. *Id.*

26. "Failure to meet the[se] standards . . . shall render olive oil sold in intrastate commerce in the state misbranded." *Id.* § 204-a(3)(b).

C. The International Olive Council's Chemical And Labeling Requirements

27. The International Olive Council ("IOC") promulgates the world-recognized standards used to determine the quality and purity of olive oils. Although the United States is not an IOC member, the IOC's standards undergird the FDA and New York olive oil regulations.

28. The IOC was formed in 1959, in Madrid, Spain, under the auspices of the United Nations, with the purpose of creating universal industry trade standards. Today, IOC member countries account for 98% of the world's olive oil production.

29. The IOC actively monitors and seeks to prevent olive oil fraud throughout its member countries. In addition, the IOC has certified a small number of laboratories around the world that meet rigorous guidelines for performing chemical and sensory tests of olive oils.[2]

30. The IOC has developed a number of tests that enable one to differentiate olive oil from Pomace. For example:

[2] International Olive Council, List Of Chemical Testing Laboratories Recognized By The International Olive Council For The Period From 1.12.2011 to 30.11.2012, T.21/Doc. n° 13/Rev. 14 (Nov. 2011)

a. Erythrodiol and uvaol are two compounds commonly found in Pomace and grapeseed oil. If these compounds constitute more than 4.5 percent of an oil's total sterol content, then the oil is not olive oil. It is either Pomace or grapeseed oil. *See* IOC Trade Standards at 3.3.3.

b. Olive skins contain almost all of an olive's wax. Thus, authentic olive oil, which is pressed from olive flesh, contains only miniscule amounts of wax; Pomace, which is made, in part, from olive skins, contains significant amounts of wax. As a result, oils that have a wax content in excess of 350 mg/kg are Pomace, not olive oil. *See* IOC Trade Standards at 3.4.

c. A ratio greater than 0.3 between triacylglycerols with equivalent carbon number 42 (ECN 42) and the theoretical ECN 42 (a number calculated using standard formulations based on an oil's fatty acid composition) demonstrates the presence of Pomace and/or seed oils. *See* IOC Trade Standards at 3.5.

31. Under IOC standards, just like under FDA and New York regulations, no one can label Pomace as olive oil. Nor is it permissible to blend Pomace with olive oil and labeling the mixture as "olive oil." IOC Trade Standards at 2.2.3 ("In no case shall this blend be called 'olive oil.'").

IV. Laboratory Testing Confirms That Capatriti-Brand Products Are Not "100% Pure Olive Oil" And Instead Contain Pomace.

32. Gourmet Factory has gained significant market share by selling purported "olive oil" at implausibly low prices – prices that have been more in line with prices for Pomace than for olive oil. Specifically, under the Capatriti brand, Gourmet Factory sells its "100% Pure Olive Oil" at prices far below those of competitors selling an authentic, 100% olive oil product. Legitimate producers selling olive oil cannot match such prices, except by selling their products at a loss.

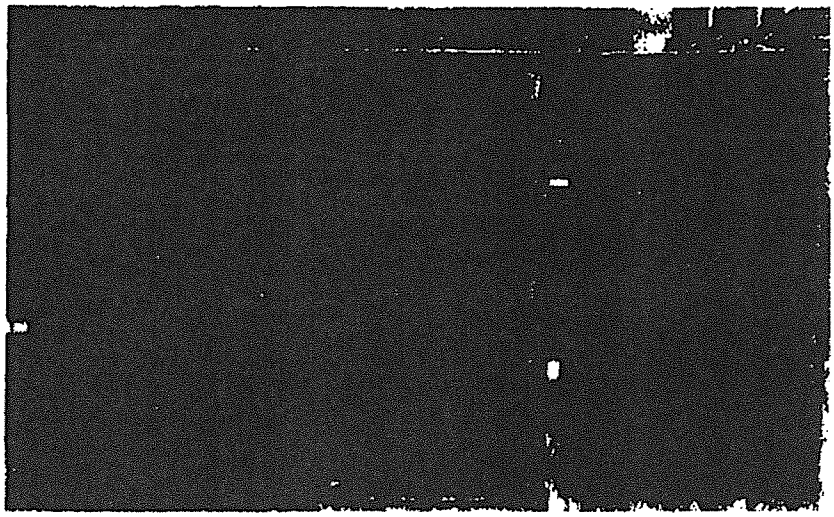
33. For example, a review of Capatriti's tins in grocery stores in New York and surrounding regions reveals that a 101-ounce tin of Capatriti's "100% Pure Olive Oil" sells for between $8.99 and $14.99; whereas a 101-ounce tin of similarly labeled olive oil from NAOOA members sells for between $19.99 and $29.99. Gourmet Factory's prices – one-third to one-half of what its competitors charge to sell authentic products – are more consistent with the typical prices charged for Pomace.

34. Gourmet Factory is acutely aware of the difference between pure olive oil and Pomace. In 2008, the Connecticut legislature adopted criteria used by the IOC to measure olive oil quality and punish the sale of olive oils that – to cut production costs – are watered down with hazelnut, soy, or peanut oils. *See* Conn. Agencies Regs. § 21a-100-8 (2008) (adopting IOC standards of identify for olive oils and pomace oils). NAOOA supported adoption of these standards. In 2009, however, Dennis Kangadis, Gourmet Factory's vice president, tried and failed to enjoin the Connecticut Department of Consumer Protection from enforcing these criteria and banning misbranded olive oil that did not comply with those standards.[3] Gourmet Factory's counsel at the time stated that "The Gourmet Factory's reputation and business relationships have already been harmed by [the] adoption of the state Olive Oil Standards."

35. As a result of Connecticut's adoption of IOC standards and Gourmet Factory's lawsuit to forestall their enactment, Gourmet Factory clearly was on notice about the relevant standards that distinguish olive oil from Pomace.

36. The NAOOA retained an independent third party that specializes in imported food safety to purchase tins of Capatriti-brand "100% Pure Olive Oil" from store shelves in New York and New Jersey for testing in August 2012. Images of three such products – each from separate lots (52312, 61812, and 71612), – acquired by the third party are reproduced below:

[3] *See Kangadis Food, Inc. v. Farrell*, No. CV-084041370-S, 2009 WL 1140487 (Conn. Super. Ct. Mar. 26, 2009).



37. The independent third party sampling company then carefully packed and shipped nine tins of the Capatriti-brand "100% Pure Olive Oil" – three from each of the three lots – to one of the foremost experts in the world on olive oil testing, Professor Lanfranco Conte.

38. Professor Conte previously served for ten years as the Chief Chemist for the Food Fraud Detection Unit at Italy's Ministry of Agriculture. He currently is a Full Professor of Food Chemistry at the University of Udine, Italy, where he teaches Food Chemistry, Chemical Analysis of Foods, and Food Quality Certification, and is the Chair of the Educational Board of Food Science and Technology Course, Chair of the Course in Food Science and Technology, and Head of the Department of Food Science. He is an executive member of multiple scientific and regulatory bodies, including: the Olive Oil Chemist Experts of the European Union, the International Olive Council, the European Food Safety Authority, and the Olive Oil Division at the European Federation of Scientific Society for the Study of Lipids (co-chair of the Managing Board). He has authored approximately 150 scientific papers in peer-reviewed journals and four book chapters, serves as a peer-reviewer for several scientific journals, and serves as the co-editor of the Italian Journal of Food Sciences.

39. Professor Conte received the nine tins on September 11, 2012. He then stored them in a dry, temperature-controlled room, which he uses to store numerous olive oil samples for research purposes. Professor Conte then prepared samples for testing by following a

generally accepted methodology that is designed to ensure that the laboratory is blind to the identity of the brand of oil being tested. He chose one tin from each lot at random, stirred the oil within the tin to account for any separation or settling, and then carefully filled two 500-milliliter, opaque bottles with oil from each tin, which he labeled with the corresponding lot numbers. Professor Conte then submitted the samples for a full suite of testing at an IOC-certified laboratory in Madrid, Spain.

40. Upon receiving the results in late October 2012, Professor Conte definitively concluded that the samples of "100% Pure Olive Oil," contrary to their labels' assertions, were not olive oil. Based on a number of separate objective chemical criteria, these samples of "100% Pure Olive Oil" were, at best, some type of Pomace, and, at worst, may also contain seed oils. As such, none of the samples was – or could properly be labeled, represented, or commonly understood to be – olive oil.

41. The results did not leave room for doubt. On several criteria, the samples exceeded *by five to six times* the established thresholds for distinguishing olive oil from Pomace:

	Maximum for Olive Oil	Capatriti Lot No. 52912	Capatriti Lot No. 61812	Capatriti Lot No. 71612
Wax content	≤ 150 mg/kg	1,862 mg/kg	2,238 mg/kg	2,181 mg/kg
Erythrodiol & Uvaol content	≤ 4.5%	26.4%	20.7%	22.3%
ECN 42 Triacylglycerol	≤ 0.3	1.1	0.6	0.4

42. These results cannot be blamed on merely poor quality olive oil or the handling and storage of the particular tins purchased for testing. These results simply could not have occurred if these lots of ostensibly "100% Pure Olive Oil" contained only oils extracted from olives exclusively through mechanical methods. In other words, markers of Pomace and seed oil at these levels do not appear in olive oil by happenstance. Importantly, no matter what standard is used to determine olive oil quality, or distinguish between olive oil and Pomace or seed oils,

the fact remains that the chemical profile of the Capatriti-brand "100% Pure Olive Oil" cannot be reconciled with the chemical profile of olive oil – a defect that Gourmet Factory does not disclose on its labeling.

43. Furthermore, because of the extreme differences in production processes between Pomace and olive oil, the presence of pomace oil in even one tin means that all of the tins with the same lot code contain Pomace.

V. Gourmet Factory's Mislabeling And Anticompetitive Conduct Has Caused Harm To the NAOOA, Its Members, And The Public.

44. The results of the NAOOA's independent testing demonstrate that Gourmet Factory, under the Capatriti brand, mislabels its "100% Pure Olive Oil." Instead of 100% pure olive oil, the oil either is completely Pomace, or is adulterated with Pomace and/or other seed oils. In light of the below-market prices at which Gourmet Factory sells Capatriti-brand olive oil, and given the unlikelihood that such exceptional test results could occur by chance in all three lots that were randomly selected for testing, the NAOOA believes that Gourmet Factory has used Pomace or adulterated oils in far more than the above-described three lots, and has been willfully and deceptively passing off Pomace and/or seed oil as "100% Pure Olive Oil."

45. Gourmet Factory's actions have caused harm and are likely to continue to cause harm to the public. Consumers purchasing something labeled "100% Pure Olive Oil" believe that they are purchasing a product that adheres not just to federal, state, and international guidelines, but that meets the basic, millennia-old understanding that "olive oil" means the unadulterated oil that comes from pressing olives – *not* from a chemical process that uses heat and solvents to extract oil from the residue of an olive's pits and skin. Gourmet Factory's mislabeling thus has a tendency to and actively does deceive consumers. The strong consumer preference for olive oil over Pomace is evidenced by the almost complete lack of consumer demand for Pomace for human consumption in the United States despite the significantly cheaper price of Pomace compared to olive oil.

46. Gourmet Factory's mislabeling constitutes unfair competition because it allows Gourmet Factory to obtain a premium price for inferior Capatriti-brand Pomace – misrepresented to be "100% Pure Olive Oil" – which can be manufactured at a fraction of the cost of authentic olive oils sold by members of the NAOOA and other legitimate producers of olive oils. The price differential between Pomace and authentic olive oil enables Gourmet Factory to unjustly enrich itself at the expense of consumers and legitimate business competitors, such as Plaintiff's members.

47. Gourmet Factory has introduced its adulterated and misbranded edible oil into interstate commerce, offering it for sale in several states. For instance, Plaintiff purchased oils from the offending lots described above in New York and New Jersey. All of these oils bore the same deceptive representation that their contents were nothing but "100% Pure Olive Oil" when, in fact, they should have been labeled as Pomace or labeled as a blend containing seed oils.

48. On information and belief, Gourmet Factory has acted willfully in misbranding its products. Passing off Pomace or oil made from non-olive sources (e.g. seeds) as "100% Pure Olive Oil" is not something that can be done by accident or through mere negligence. Accordingly, on information and belief, Plaintiff alleges that Gourmet Factory intends and knows that its oils are not "100% Pure Olive Oil," and Gourmet Factory intends to deceive consumers into purchasing its adulterated edible oil products.

49. These actions have harmed Plaintiff and its constituent members in several ways. Members of the NAOOA sell olive oil products that directly compete with Defendant's products. The NAOOA's members, however, sell properly labeled products at comparatively higher prices. They are unable to compete on price when Gourmet Factory falsely and deceptively labels something other than olive oil as "100% Pure Olive Oil."

50. The presence of misbranded olive oil in the market also diminishes the positive public perception of olive oil quality, not to mention consumer faith in food labeling in general, exacerbating the irreparable harm to Plaintiff and its members caused by Gourmet Factory's misconduct.

51. To assist the olive oil industry in its efforts to ensure the accuracy of product labeling through regular testing, any statutory damages or other financial recovery the NAOOA obtains in this case will be earmarked to fund its continuing efforts to hold producers and distributors of olive oils accountable to consumers and to maintaining a level playing field for healthy competition.

CAUSES OF ACTION

FIRST COUNT
False Advertising And Unfair Competition Under The Lanham Act 15 U.S.C. § 1125(a)(1)

52. The NAOOA hereby repeats and realleges, as is fully set forth herein, the allegation set forth in paragraphs 1 through 51 above.

53. Gourmet Factory's false and misleading descriptions or representations of fact concerning the nature, characteristics, and qualities of products sold in interstate commerce as olive oil – including, but not limited to, Capatriti-brand "100% Pure Olive Oil" – are material, literally false, misleading, and in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Gourmet Factory's use of the phrases "100% pure olive oil" to advertise and market its adulterated products is literally and demonstrably false.

54. Gourmet Factory's conduct is willful, deliberate, intentional, and in bad faith.

55. Because Pomace can be produced and sold far more cheaply than authentic olive oil, Gourmet Factory's willful misrepresentation is material, in that it is likely to influence consumer purchasing decisions.

56. Because the difference between Pomace and authentic olive oil is not visible to the naked eye, consumers must necessarily rely on a label's representations about the contents within. Accordingly, Gourmet Factory's false and misleading representations are likely to and do deceive consumers – including potential purchasers of olive oils sold by members of the NAOOA – into purchasing Gourmet Factory's mislabeled oil instead of higher-priced, authentic olive oil, giving Gourmet Factory an unfair competitive advantage and harming consumers.

57. Plaintiff NAOOA and its members – who directly compete with Defendant – have been and will likely continue to be damaged by Plaintiff's false and misleading representations.

58. Plaintiff NAOOA and its members have suffered and, unless Gourmet Factory is enjoined, will likely continue to suffer irreparable injury by reason of the false and misleading claims made by Gourmet Factory about its adulterated products.

SECOND COUNT
Unfair Competition And False Advertising Under New York Law
New York Gen. Bus. Law §§ 349 and 350

59. The NAOOA hereby repeats and realleges, as is fully set forth herein, the allegations set forth in paragraphs 1 through 58, above.

60. The misleading misrepresentations and willful conduct of Gourmet Factory constitute unfair trade practices in violation of New York Gen. Bus. Law § 349 and false advertising under New York Gen. Bus. Law § 350-e.

61. Gourmet Factory's deceptive labeling is consumer-oriented; it is expressly aimed at deceiving consumers into buying an adulterated and inferior product.

62. Gourmet Factory's false labeling is material. Not only does it misrepresent the very nature of the products Gourmet Factory sells, but consumers cannot tell, at the point of purchase, whether Capatriti's tins labeled as "100% Pure Olive Oil" actually do contain such oil or instead contain Pomace or some other seed oil blend. Thus, Gourmet Factory's misrepresentations are likely to mislead a reasonable, price-sensitive consumer acting reasonably under the circumstances.

63. The NAOOA, on behalf of itself and its constituent members, has suffered injury and, unless Gourmet Factory is enjoined, will likely continue to suffer harm, as a result of Gourmet Factory's anticompetitive and deceptive conduct.

64. Gourmet Factory's conduct is willful, deliberate, intentional, and in bad faith.

DEMAND FOR JUDGMENT

65. WHEREFORE, Plaintiff NAOOA respectfully requests that the Court enter judgment for NAOOA and against Gourmet Factory:

A. Finding that Gourmet Factory's characterization and marketing adulterated products as "100% Pure Olive Oil":

(1) constitutes a misrepresentation of the nature, characteristics, and qualities of its goods in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

(2) constitutes deceptive practices, unfair competition, and false advertising under New York General Business Law §§ 349 and 350; and

(3) was knowing, intentional, and/or in bad faith;

B. Preliminarily and permanently enjoining Gourmet Factory, its respective officers, directors, employees, agents, subsidiaries, representatives, distributors, dealers, parents, related companies, and all persons in active concert or participation with any of them from engaging in any sales, marketing, advertising, or labeling that implies or makes any representations that products containing impermissible amounts of Pomace or other non-olive oils are "olive oil," and from making any claim that could mislead any person into believing that Gourmet Factory's adulterated products are "100% Pure Olive Oil," until appropriate and reasonable safeguards are put into place that would detect and prevent similar instances of adulteration and/or contamination;

C. Requiring Gourmet Factory to cease and desist immediately from marketing, advertising, or selling the mislabeled oils challenged in this Complaint or any other similarly mislabeled olive oil products, until appropriate and reasonable safeguards are put into place that would detect and prevent similar instances of adulteration and/or contamination;

D. Requiring Gourmet Factory to take reasonable steps to notify retailers and the ultimate purchasers of its products deceptively mislabeled as "100% Pure Olive Oil" of the presence of Pomace or other adulterations;

E. Awarding the NAOOA treble statutory damages for Gourmet Factory's willful, intentional, and bad faith conduct under N.Y. Gen. Bus. Law §§ 349(h) and 350-e;

F. Granting the NAOOA its costs and expenses in this action, including investigation expenses, expert fees, and reasonable attorneys' fees;

G. Granting the NAOOA such other relief against Gourmet Factory as this Court may deem just and proper.

DEMAND FOR A JURY TRIAL

66. Plaintiff NAOOA hereby requests a trial by jury on all issues so triable.

Dated: February 6, 2013

Respectfully submitted,

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Attorneys for the North American Olive Oil Association

EXHIBIT 7

EXPERT REPORT OF PROF. LANFRANCO CONTE

1. My name is Professor Lanfranco Conte.

2. In late 2012, I was asked to evaluate the contents of purported "olive oil" sold under the Capatriti brand. In particular, I was asked to verify that the oil at issue was, in fact, olive oil, and had not been adulterated by other types of seed or olive-pomace oil.

3. Set forth below are the opinions that I expect to express in this matter and the basis for these opinions. I hold all of these opinions to a reasonable degree of scientific certainty. I arrived at these opinions after employing scientifically recognized methods and practices, which are repeatable, verifiable, and reliable, and by using a reputable laboratory regularly relied upon by experts, scholars, and regulators. I reserve the right to amend these opinions to the extent that I review additional information.

I. QUALIFICATIONS

4. Attached as Exhibit 1 is my current curriculum vitae, which summarizes my qualifications and experience.

A. Education

5. I received a Masters (MS) in Biological Science from the University of Bologna. My thesis focused on the Chemistry of Fermentation. Earlier, I earned my five-year, secondary-school diploma, in 1971, as a Chemist Expert.

B. Current Position

6. Currently, I occupy the following positions:

a. Full professor at University of Udine, 1992 – present

b. Head of the Department of Food Science, 2000 – 2003, and 2012 – present

c. Executive member of several domestic and international scientific and regulatory bodies, including:

- Olive Oil Chemists Expert of the European Union, 1993 – 2001 (chairperson), 2001 – present (Italian delegate)
- International Olive Council (member of Olive Oil Chemistry Group and of the Technical Restricted Committee)
- Italian Group of Codex Alimentarius Fats and Oils Italian Group (coordinator) and the Codex Alimentarius Fats and Oils Committee (Italian delegate)
- European Food Safety Authority (Member of the WG on Previous cargoes update of the Contaminants Panel)
- European Federation of Scientific Society for the Study of Lipids (member of the Managing Committee and Co-chair of the Olive Oil Division)

- Italian Chemical Society (Italian Delegate at EUCHEMS Food Chemistry Division and chairperson of the Food Chemistry Group)
- Italian Society for Fat Research (Chairperson)
- Committee for Edible Fats and Oils Analytical Methods Updating of Italian Ministry of Agriculture (Coordinator) and the Italian Technical Committee for Fats and Oils (Chairperson of Vegetable oils WG) of Italian Ministry of Industry

C. Prior Relevant Experience

7. I have held the following prior positions:

a. Chair of Educational Board of Food Science and Technology, 2000 – 2006

b. Chief Chemist for the Food Fraud Detection Unit at Italy's Ministry of Agriculture, 1982 – 1992: In this position, I carried out analytical control on several foods, including olive and vegetable oils, dairy products, wine and related products, feedstuffs, honeys, preserved foods. The purpose of the work was to check the quality and purity of foods and feedstuffs, uncover frauds, and then collaborate with judicial authorities when necessary to impose penalties. Among other areas of focus, I worked heavily on uncovering the presence of extraneous oils in olive oils, the presence of refined and pomace oils in extra virgin olive oils, and the presence of inferior seed oils in superior seed oils (e.g., sunflower or soybean oils in corn or grapeseed oils).

c. Technical Assistant at the University of Bologna, 1973 – 1981: In this position, I researched the characterizations of edible fats and oils with the aim of establishing composition standards useful to check for purity: characterizations of olive oils, zero erucic acid rapeseed, grapeseed oil, wheat germ oils and many others: fatty acids, sterols, tocopherols analysis carried out by gas chromatography and/or gas chromatography-mass spectrometry. Lipid oxidation was also deeply studied and several compounds were identified.

8. Also, I have authored more than 130 scientific papers in peer-reviewed journals and 4 book chapters, am a peer-reviewer for several scientific journals, and serve as the co-editor of the Italian Journal of Food Sciences.

II. EXPLANATION OF OLIVE OIL

A. The Olive Oil Production Process

9. Preliminarily, it would be useful to remind the reader of what olive oil is and the different categories that consumers can buy at retail markets.

10. Olive oil is found mainly inside the flesh of olive tree fruits, while minor amounts are contained in the seed and in the fruit skin (botanically named "exocarp").

The Harvesting Step

11. Olive fruits are harvested either manually or by using pneumatic or mechanical devices suitable for detaching fruits from the tree. Fruits are recovered on clean nets that are positioned under the trees and are placed in plastic or wood boxes (the use of bags, either of plastic or of vegetable fiber, is usually avoided to maintain the fruits in good condition and to avoid any injuries that could damage the fruit and negatively affect the quality of the resulting oil).

12. Within a short time, fruits are carried to the olive mill, where they are separated from extraneous parts (e.g. leaves, stems) using a reverse flow of air. Then, the fruits are washed with tap water (no detergents or other chemical compounds are permitted) and are transported to the crushing system.

The Crushing Step

13. The crushing step is critical for emulsifying the oil and water that are contained in the fruit flesh. This crushing, called the "malaxion," causes the oil to coalesce and triggers biochemical reactions that create the volatile compounds found in virgin olive oils. In modern times, crushing is usually carried out by machines that work at very high speed depending on their characteristics: hammer crushers work at 1500-2800 rpm, while those using disks work at 1200-1400 rpm.

The Centrifuging and Decanting Step

14. Next, a centrifuge (called a "decanter") separates the resulting oil from any remaining solid parts (e.g., residues of fruit) by means of horizontal centrifugation. The speed of the decanter depends on several factors, most importantly volume. More water is then eliminated by a vertical centrifuge.

B. Olive Oil Standards

15. According to the International Olive Council's Trade Standards, a copy of which is attached as Exhibit 2, virgin olive oils are the oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decantation, centrifugation and filtration.

Virgin Olive Oils

16. Virgin olive oils **fit for consumption** as they are include:

a. *Extra virgin olive oil*, which is virgin olive oil with a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and the other characteristics of which correspond to those fixed for this category in this standard).

b. *Virgin olive oil* with a free acidity, expressed as oleic acid, of not more than 2 grams per 100 grams and the other characteristics of which correspond to those fixed for this category in this standard

c. *Ordinary virgin olive oil*, which is virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 3.3 grams per 100 grams and the other characteristics of which correspond to those fixed for this category in

this standard. This category is no longer permitted for sale in the European Union; rather it may be sold only directly to the consumer where permitted in the country of sale. If not permitted, the designation of this product shall comply with the legal provisions of the country concerned.

17. Virgin olive oil **not fit for consumption** without further processing is designated *lampante virgin olive oil*. Lampante has a free acidity, expressed as oleic acid, of more than 3.3 grams per 100 grams and/or the organoleptic characteristics and other characteristics which correspond to those fixed for this category in this standard. It is intended for refining or for technical use.

Refined Olive Oils

18. Non-virgin and lampante olive oils can be refined for consumption through chemical or physical treatment. For example, free acidity exceeding the limit can be removed by free fatty acids distillation or by chemical neutralization with alkali. The color can be corrected by treatment with bleaching agents (active earths and/or charcoal). And, at the end, deodorization can be applied to remove most undesirable flavor characteristics. By these treatments, however, some accompanying reactions take place, in which the oil's polyphenols and tocopherols concentrations are dramatically reduced.

19. By blending refined olive oil with different amounts of virgin olive oil, producers can obtain two subcategories of olive oil, according to the International Olive Council Trade Standards:

a. *Refined olive oil* is the olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams and its other characteristics correspond to those fixed for this category in this standard

b. *Olive oil* is the oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption as they are. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams and its other characteristics correspond to those fixed for this category

C. Olive-Pomace Oil

20. After separating olive oil from the fruit solids by means of a decanter, the remaining solids – called "Pomace" or "olive residue" – contain a small amount of oil (from 1% to 7%, depending on the separation power of the decanter). To extract the oil from this residue, it is taken to a different factory, where it undergoes drying before the oil is removed through the use of heat and solvents. Drying is critical because high temperatures are applied, which can lead to pyrolysis of organic matter and the formation of toxic polycyclic aromatic hydrocarbons (PAHs).

21. The resulting crude olive pomace oil must undergo refining to remove a number of substances that could involve characteristics not suitable for human consumption. Refining of crude pomace oil should be carried out under strict regulations to ensure that PAHs are removed.

22. Because olive oil is ultimately derived only from mechanical extraction, whereas pomace oil must be heated and refined, pomace oil does not and cannot occur naturally in olive oil. The presence of pomace oil cannot be attributed to poor handling or storage practices during shipment or by retailers or consumers (such as storing oil at high temperature or exposing it to light

or air). As a result, the presence of pomace oil in even one bottle means that all of the bottles made from the same oils contain pomace.

23. According to the IOC's Trade Standards, the types of Pomace are defined as follows:

a. *Refined olive-pomace oil* is the oil obtained solely from crude olive-pomace oil by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams and its other characteristics correspond to those fixed for this category in this standard. This oil cannot be sold at retail for consumption.

b. *Olive-pomace oil* is the blend of refined olive-pomace oil and virgin olive oils. It has a free acidity of not more than 1 gram per 100 grams and its other characteristics correspond to those fixed for this category in this standard. Although this blend may be sold at retail for consumption, in no case can it be called "olive oil."

D. Price Differences Between Pomace and Olive Oil.

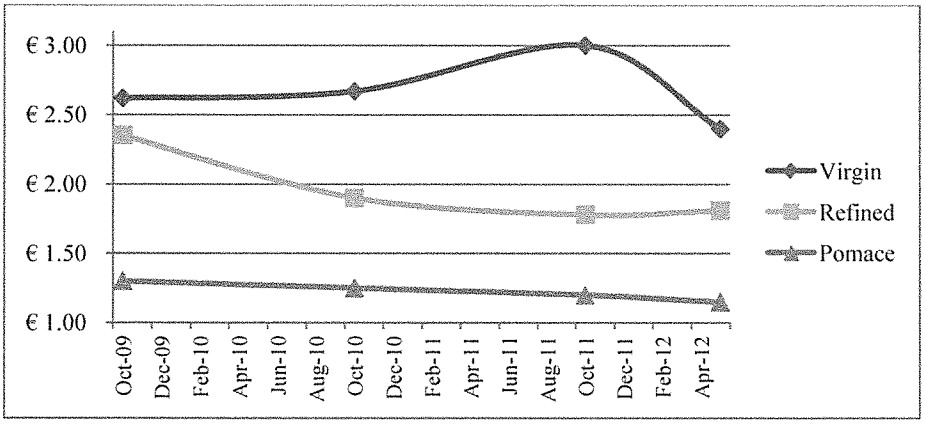
24. According to the International Olive Council, the average price for oils in bulk are as follows, a representative sample comparison of which follows in Chart 1:

a. Refined olive-pomace sells for between € 1.10 and € 1.25 per kilogram (depending on the exact exchange rate, between $ 1.45 and $ 1.65);

b. Refined olive oil sells for between € 1.70 and € 2.35 per kilogram(depending on the exact exchange rate, between $ 2.24 and $ 3.10);

c. Virgin olive oil typically sells for between € 1.80 and € 2.60 per kilogram, but may sell for as high as € 3.80 per kilogram (depending on the exact exchange rate, between $ 2.37 and $ 6.03).

Chart 1: Average producer/refinery prices of Virgin Olive, Refined Olive, and Pomace oils, in Euros per kilogram between October 2009 – May 2012[1]



[1] Data for this Chart was derived from individual charts found on the IOC website, all of which are attached as Exhibits 6, 7, and 8, and which are also available at: International Olive Council, EU Producer Prices, *available at* www.internationaloliveoil.org/estaticos/view/133-eu-producer-prices.

E. Other Differences Between Pomace and Olive Oil.

25. Authentic and unrefined olive oil retains more healthful qualities than do refined or pomace oils. Refining an oil strips it of the beneficial polyphenols that are so often associated with olive oil healthfulness claims.

26. Recent research further suggests that pomace oil contains harmful contaminants that otherwise do not appear, or appear in lesser quantities, in olive oil.[2]

III. PAST AND PRESENT FORMS OF ADULTERATING OLIVE OILS

27. Olive oil is one of the most valuable edible oils. Accordingly, miscreants have attempted to obtain an unfair advantage by mixing it with lower quality oils since at least the time of the Roman Empire, and continue to do so to this day. Over time, as the means of adulterating evolved, producers and industry watchdogs developed new methods for detecting the fraud.

A. Adulteration with Cheap Seed Oils and Mineral Oils

28. After the development of gas chromatographic techniques, in the early 1950s, the analysis of fatty acids composition was applied as a routine analytical determination. This test originally showed whether seed oils had been added, for, at that time, the seed oils commonly used in such frauds (e.g., sunflower, safflower, and rapeseed oils) had fatty acids compositions quite different from olive oils, and presented high amount of linoleic, erucic, and linolenic acids.

29. In response to this method of detection, miscreants began mixing olive oils with mineral oils, which do not contain fatty acids, and thus, can be made to mimic the fatty acids composition of olive oil. Mineral oils, however, cannot undergo saponification. As a result, testers began looking for unsaponifiable matter to detect the presence of mineral oils.

B. Adulteration with Enhanced Seed Oils

30. By the 1960s, scientific advances made it possible to modify the fatty acid composition of selected seed oils (safflower, sunflower) to produce oils rich in oleic acid. It made it difficult to detect this type of sophisticated fraud using traditional gas chromatography and saponification tests. Testers thus began to couple gas chromatography with mass spectrometry to evaluate the sterols fraction present in the oil. Sterols have been dubbed "the finger print" of oil because the sterols fraction depends on the botanical origin of oils and is not influenced by the modification of fatty acids composition. In other words, even if a miscreant managed to alter the chemical makeup of selected seed oils to resemble the fatty acid composition of olive oils, the sterols composition still would not be the same, making it possible to detect the presence of the selected seed oils.

C. Adulteration with Olive-Pomace Oils

31. After these tests were introduced, one of the only avenues remaining for modern oil-fakers was to use a vegetable oil with both fatty acid and sterol compositions matching those of

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[2] *See* P.Q. Tranchida, et. al., *A Rapid Multidimensional Liquid-Gas Chromatography Method for the Analysis of Mineral Oil Saturated Hydrocarbons in Vegetable Oils*, J. Chromatog. A 1218, at 7476-7480 (2011); S. Moret, et al., *Occurrence of C15-C45 Mineral Paraffins in Olives and Olive Oils*, Food Add. Contam. 20, at 417-26 (2003).

olive oil.[3] The obvious choice was pomace oil, which is industrially extracted from the solid residue of olive fruits after all of the olive oil has been removed. For a time, this most-recent practice largely went undetected. However, researchers eventually developed two effective methods to fight this fraud.

32. The first is based on the presence of two peculiar compounds – erythrodiol and uvaol – that are mainly located in the skin of fruits, including olives (these compounds are present in grapeseed oil, too, as it is extracted from grape marcs in which skin and seeds are mainly present).

33. Erythrodiol and uvaol content in olive pomace oils is usually five to eight times higher than in olive oil because of the higher amount of fruit skin used to make pomace and the industrial extraction process used to obtain oil from the skins of olives.

34. Official limits for erythrodiol and uvaol in mechanically extracted oils (extra virgin, virgin, ordinary, and lampante) require an amount lower-than-or-equal-to 4.5% of total sterols, whereas in pomace oils their concentration can reach 15% to 27%.

35. After the evaluation of erythrodiol and uvaol became an official method for detecting the presence of pomace oil in olive oil, miscreant producers developed a way to remove these markers from pomace oil, which led, in turn, to the development of a new test to detect fraud. Because pomace oil unavoidably comes from olive skins, attention was given to other compounds that are found in this anatomical part of the olive fruit – namely, waxes.

36. Waxes, which are present on the surface of every fruit, consist of esterified long chain fatty alcohols. Waxes , and behave uniquely when subjected to certain chemical processes (including saponification) that can be used to reveal their presence in a scientific test called thin layer chromatography.

37. Waxes cannot be removed from pomace oil without an accompanying dramatic loss of triacylglycerols (meaning: oil), which is not economically feasible for perpetrators of fraud. In mechanically extracted oils (extra virgin, virgin, ordinary) wax content is usually very low (the limit is 250 mg/kg, but usually the wax content in mechanically extracted oils is much lower, i.e., 150 mg/kg or less). For refined olive oils, this limit is slightly higher due to the slight increase in wax concentration that occurs during refining (no more than 350 mg/kg). Anything above 350 mg/kg, however, represents a level of wax that could not occur naturally in mechanically extracted olive oil, even after refining, and, thus, indicates the existence of a solvent-extracted oil such as crude pomace, refined pomace, and/or olive pomace oil.

38. As a result, using proven, reliable, and generally-accepted scientific techniques, in the majority of cases, mixtures of olive oil and pomace oil are readily detected by testing erythrodiol and uvaol content, which usually surpasses 15% in adulterated oils. And in the few cases where faked oils have a concentration of erythrodiol and uvaol below the legal limit for olive oil ($\leq 4.5\%$), proven, reliable, and generally-accepted scientific techniques can nevertheless easily detect mixtures of olive oil containing pomace oil based on wax contents that exceed normal limits. Thus, testing makes the fraudulent passing off of pomace oil as olive oil readily apparent.

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[3] Among oils not extracted from olives, hazelnut oil had been used because of its chemical composition in terms of fatty acids and sterols was closely similar to olive oils. However, the analysis of triacylglycerol as performed by the "ΔECN42" method, uncovered the use of hazelnut adulteration.

39. The fraudulent practice of adulterating olive oil with pomace oil and passing off the mixture as "olive oil" is well-known, and the methods of detecting such fraud are well-established and straightforward. As a result, based on my experience and knowledge of the olive oil industry, the practice among reputable large-scale producers and packers of olive oil is to perform reasonable quality-control checks on oils to detect adulteration prior to offering the olive oil for sale to consumers. These checks are often performed before purchasing oils, before accepting delivery of oils, and/or prior to bottling oils.

40. Because a reasonable quality-control process would alert a distributor to the presence of any material amount of pomace, when tests identify the presence of pomace oil in even a single bottle mislabeled as "olive oil," the only reasonable conclusion is that, at best, fundamental problems existed in the quality control measures or that, at worst, fraud has occurred.

IV. ANALYSIS OF SAMPLES

A. Sample preparation

41. Samples from three lots of the brand of oil at issue were received at the University of Udine. Each arrived unopened in a three-liter tin bearing the label "100% Pure Olive Oil" (Figure 1). Three tins were received for each sample lot. As is standard laboratory practice, the samples were stored at a temperature of 15° Celsius in a dry room.

Figure 1: Tin of samples

42. As is standard laboratory practice, before unsealing, one tin for each sample was then carefully shaken to homogenize the oils inside, opened, and poured into two dark, glass 500-mL bottles, for a total of six such bottles. To minimize the presence of air, pure nitrogen was pumped into the top of each bottle before sealing it.

43. To further ensure the objectivity of testing and ensure that the brand name and distributor of the samples remained anonymous to the laboratory, each of these test bottles was

labeled as follows: Lanfranco Conte GFO 71612; Lanfranco Conte GFO 52912; Lanfranco Conte GFO 61812 (Figure 2):

Figure 2: Bottled samples

B. Choice of laboratory

44. Because I wanted to ensure reliable chemical test results, and work with a laboratory that specializes in scientific testing of olive oils, I chose a laboratory that has been certified by the International Olive Council as one that follows the strictest quality assurance protocols. To receive IOC certification, laboratories must satisfy ISO 17025, which ensures the precision of each step of the analytical procedure applied within the laboratory. The IOC yearly evaluates laboratories that perform chemical and sensory testing of olive oil and certifies only a small number that consistently meet its strict standards. IOC quality assurance laboratory protocols have been scientifically designed to ensure valid results and are world-recognized for producing reliable results. Attached as Exhibit 3 is the IOC's current list of approved laboratories and in Exhibit 4 its list of current list of approved sensory panels.

45. For this test, I chose the laboratory of Instituto de la Grasa y sus Derivados in Sevilla, Spain, which has been IOC certified for each of the past several years.

C. Choice of analytical parameters

46. To guarantee the use of methods that have been recognized as reliable by the scientific community, I asked the laboratory to analyze the samples according to the official methods of the IOC.

47. The IOC was established in 1959 to promulgate standards that virtually all manufacturers of olive oil follow – today, 98% of the world's olive oil is produced under the IOC's auspices. The IOC has set forth the following chemical standards for the various olive oil categories, each of which is designed to identify the quality and purity of oil, and which are detailed in full in Exhibit 2:

Table 1: Olive oil categories and related characteristics according to IOC Trade Standard (COI/T.15/NC No 3/Rev. 6 – November 2011)

Category		Extra Virgin Olive Oil	Virgin Olive Oil	Ordinary Virgin Olive Oil	Lampante Olive Oil	Refined olive oil	Olive oil composed of refined and virgin olive oils	Crude olive-pomace oil	Refined olive-pomace oil	Olive-pomace oil
Acidity (%)		≤ 0.8	≤ 2.0	≤ 3.3	> 3.3	≤ 0.3	≤ 1.0	N/A	≤ 0.3	≤ 1.0
Peroxide index mEq O 2/kg		≤ 20	≤ 20	≤ 20		≤ 5	≤ 15	-	≤ 5	≤ 15
Waxes mg/kg (1), (2)		≤ 250	≤ 250	≤ 250	≤ 300	≤ 350	≤ 350	> 350	> 350	> 350
2-glycerol monopalmitate (%)		≤ 0.9 if total palmitic acid % ≤ 14 % ≤ 1.0 if total palmitic acid % > 14 %	≤ 0.9 if total palmitic acid % ≤ 14 % ≤ 1.0 if total palmitic acid % > 14 %	≤ 0.9 if total palmitic acid % ≤ 14 % ≤ 1.0 if total palmitic acid % > 14 %	≤ 0.9 if total palmitic acid % ≤ 14 % ≤ 1.1 if total palmitic acid % > 14 %	≤ 0.9 if total palmitic acid % ≤ 14 % ≤ 1.1 if total palmitic acid % > 14 %	≤ 0.9 if total palmitic acid % ≤ 14 % ≤ 1.1 if total palmitic acid % > 14 %	≤ 1.4	≤ 1.4	≤ 1.2
Stigmastadiene mg/kg (4)		≤ 0.10^{-3}	≤ 0.10^{-3}	≤ 0.10^{-3}	≤ 0.50	-	-	-	-	-
Difference: ECN42 (HPLC) and ECN42 (theoretical calculation		≤ |0.2|	≤ |0.2|	≤ |0.2|	≤ |0.3|	≤ |0.3|	≤ |0.3|	≤ |0.6|	≤ |0.5|	≤ |0.5|
K 270		≤ 0.22	≤ 0.25	≤ 0.30	-	≤ 1.10	≤ 0.90	-	≤ 2.00	≤ 1.70
Delta-K		≤ 0.01	≤ 0.01	-	-	≤ 0.16	≤ 0.15	-	≤ 0.20	≤ 0.18
Organoleptic evaluation Median defect (Md)		Md = 0	Md ≤ 3.5	≤ 3.5Md ≤ 6 (5)	Md > 6	-	-	-	-	-
Organoleptic evaluation Fruity median (Mf)		Mf > 0	Mf > 0	-	-	-	-	-	-	-
Fatty acid Composition		Myristic (%)	≤ 0.05	≤ 0.05	-	≤ 0.05	≤ 0.05	≤ 0.05	≤ 0.05	≤ 0.05
Sterol Composition	Linolenic (%)	≤ 1.0	≤ 1.0		≤ 1.0	≤ 1.0	≤ 1.0	≤ 1.0	≤ 1.0	≤ 1.0
	Arachidic (%)	≤ 0.6	≤ 0.6		≤ 0.6	≤ 0.6	≤ 0.6	≤ 0.6	≤ 0.6	≤ 0.6
	Eicosenoic (%)	≤ 0.4	≤ 0.4		≤ 0.4	≤ 0.4	≤ 0.4	≤ 0.4	≤ 0.4	≤ 0.4
	Behenic (%)	≤ 0.2	≤ 0.2		≤ 0.2	≤ 0.2	≤ 0.2	≤ 0.3	≤ 0.3	≤ 0.3
	Lignoceric (%)	≤ 0.2	≤ 0.2		≤ 0.2	≤ 0.2	≤ 0.2	≤ 0.2	≤ 0.2	≤ 0.2
	Palmitic (%)	7.5-20.0	7.5-20.0		7.5-20.0	7.5-20.0	7.5-20.0	7.5-20.0	7.5-20.0	7.5-20.0
	Palmitoleic (%)	0.3-3.5	0.3-3.5		0.3-3.5	0.3-3.5	0.3-3.5	0.3-3.5	0.3-3.5	0.3-3.5
	Heptadecanoic (%)	≤ 0.3	≤ 0.3		≤ 0.3	≤ 0.3	≤ 0.3	≤ 0.3	≤ 0.3	≤ 0.3
	Heptadecenoic (%)	≤ 0.3;	≤ 0.3;		≤ 0.3;	≤ 0.3;	≤ 0.3;	≤ 0.3;	≤ 0.3;	≤ 0.3
	Stearic (%)	0.5-5.0	0.5-5.0		0.5-5.0	0.5-5.0	0.5-5.0	0.5-5.0	0.5-5.0	0.5-5.0
Sterol Composition	Oleic (%)	55.0-83.0	55.0-83.0		55.0-83.0	55.0-83.0	55.0-83.0	55.0-83.0	55.0-83.0	55.0-83.0
	Linoleic (%)	3.5-21.0	3.5-21.0		3.5-21.0	3.5-21.0	3.5-21.0	3.5-21.0	3.5-21.0	3.5-21.0
	Total transoleic isomers (%)	≤ 0.05	≤ 0.05	≤ 0.05	≤ 0.10	≤ 0.20	≤ 0.20	≤ 0.20	≤ 0.40	≤ 0.40
	Total translinoleic + translinolenic isomers (%)	≤ 0.05	≤ 0.05	≤ 0.05	≤ 0.10	≤ 0.30	≤ 0.30	≤ 0.10	≤ 0.35	≤ 0.35
	Cholesterol (%)	≤ 0.05	≤ 0.05	≤ 0.05		≤ 0.05	≤ 0.05	≤ 0.05	≤ 0.05	≤ 0.05
	Brassicasterol (%)	≤ 0.1	≤ 0.1	≤ 0.1		≤ 0.1	≤ 0.1	≤ 0.2	≤ 0.2	≤ 0.2
	Campesterol (%)	≤ 4.0	≤ 4.0	≤ 4.0		≤ 4.0	≤ 4.0	≤ 4.0	≤ 4.0	≤ 4.0
	Stigmasterol (%)	< Camp	-	< Camp		< Camp	< Camp	-	< Camp	-
	Betasitosterol (%) (5)	≥ 93.0	≥ 93.0	≥ 93.0		≥ 93.0	≥ 93.0	≥ 93.0	≥ 93.0	≥ 93.0
	Delta-7-stigmastenol (%)	≤ 0.5	≤ 0.5	≤ 0.5		≤ 0.5	≤ 0.5	≤ 0.5	≤ 0.5	≤ 0.5
	Total sterols (mg/kg)	≥ 1 000	≥ 1 000	≥ 1 000		≥ 1 000	≥ 1 000	≥ 2500	≥ 1800	≥ 1600
	Erythrodiol and uvaol (%)	≤ 4.5	≤ 4.5	≤ 4.5		≤ 4.5	≤ 4.5	> 4.5	> 4.5	> 4.5

(1) Oils with a wax content of between 300 mg/kg and 350 mg/kg are considered to be lampante olive oil if the total aliphatic alcohol content is less than or equal to 350 mg/kg or if the erythrodiol and uvaol content is less than or equal to 3.5 %.

(2) Oils with a wax content of between 300 mg/kg and 350 mg/kg are considered to be crude olive-residue oil if the total aliphatic alcohol content is above 350 mg/kg and if the erythrodiol and uvaol content is greater than 3.5 %.

(3) Limit at ≤ 0.05 mg/kg has been proposed and should be adopted at IOC Plenary session in 2012-2013

(4) Total isomers which could (or could not) be separated by capillary column.

(5) Or when the median of the defect is less than or equal to 3.5 and the median of the fruity attribute is equal to 0.

(6) Total: Delta-5.23-stigmastadienol+chlerosterol+beta-sitosterol+sitostanol+delta-5-avenasterol+delta-5.24-stigmastadienol.

V. ANALYTICAL RESULTS AND RELATED DISCUSSION

48. The full results of the laboratory testing are attached in full as Exhibit 5. The six most relevant results, alongside the limits promulgated by the IOC, appear in table 2, below.

Table 2: Analytical results of samples

Test	Limit for olive oil	Lot 52912	Lot 61812	Lot 71612	Significance	Analysis
Waxes C40-C46 (mg/kg)	≤ 350	1862	2238	2181	A higher value indicates that the sample is not olive oil, but rather contains pomace oil	Each sample is not olive oil; instead, they each contain pomace oil
Erythrodiol + uvaol percentage	≤ 4.5%	26.4%	20.7%	22.3%	A higher value indicates that the sample is not olive oil, but rather contains pomace oil or grapeseed oil	Each sample is not olive oil; instead, they each contain pomace oil or grapeseed oil
ΔECN42 (Absolute value)	≤ |0.3|	1.1	0.6	0.4	A higher value indicates that the sample is not olive oil, but rather contains seed or pomace oil	Each sample is not olive oil; instead, they each contain pomace oil, and two may contain seed oil
K270	≤ 0.90	1.07	1.24	1.16	A higher value indicates presence of refined oil (seeds or pomace) or oxidation	Each is refined or oxidized
Trans oleic acid percentage	≤ 0.20%	0.29%	0.21%	0.19%	A higher value indicates that the sample is not olive oil, but rather contains seed or pomace oil	Samples 52912 and 61812 are not olive oil; instead, they contain seed or pomace oil
Free fatty acids (g oleic acid/100 g of oil)	≤ 1.0 (usually > 0.2)	0.05	0.11	0.18	The higher the value, the worse the fruit quality; the lower the value, the more heavily refined the oil	Each is refined

A. Sample 52912

Waxes (C40-C46)

49. Because waxes are found mainly on the skin of fruits, pomace oils contain a very high amount of these compounds. For refined and olive oil, the absolute limit is established at 350 mg/kg. The value recorded for sample 52912 (1862 mg/kg), is five times greater than the maximum conceivable amount of wax one could find in olive oil, and clearly reveals this sample to contain pomace oil.

Sterols composition (Erythrodiol + uvaol)

50. The content of erythrodiol + uvaol recorded for sample 52912 (26.4%) far exceeds the limit for olive oil (4.5%). Instead, this sample is not olive oil, but rather, given the other parameters described above and below, it is most likely that the oil contains pomace oil.

ΔECN42

51. The limit for olive oil is |0.3|, and even pomace oil cannot register a number greater than |0.5|. Here, the recorded value for sample 52912 (|1.1|) was far beyond these limits and could indicate a mixture of pomace oil with other seed oils.

UV Absorption at 270 nm (K270)

52. UV absorption depends on the presence of conjugated double bonds that can be formed by refining as well as by oxidation. The value recorded for sample 52912 (1.07) far exceeds the limit established for olive oil (≤ 0.90). This sample therefore cannot be olive oil; instead, it must contain pomace oil (pomace oil has a K270 value ≤ 1.70).

Fatty acid composition/trans-oleic acid percentage

53. Although much of the fatty acids composition of sample 52912 was consistent with any oil extracted from olives, the amount of trans-oleic acid (0.29%), exceeded the limit for olive oil (0.20%), and indicates that sample 52912 contains pomace oil. Given the other parameters described above and below, it is more likely that the oil contains a pomace oil instead of grapeseed oil.

Free fatty acids

54. If this parameter exceeds 0.8 g of free oleic acid per 100 g of oil, this means that olive fruits were not of good quality prior to milling (for example, due to improper storage). On the other hand, however, even in very high quality extra virgin oils, some amount of free acidity naturally occurs, so this value in mechanically extracted olive oils almost never drops below 0.2. Hence, a level below 0.2 indicates a high amount of refining. The 0.05 value recorded for sample 52912 is so low that this oil must have been refined. This factor alone, though, cannot adequately differentiate a refined olive oil from pomace oil, as both are refined.

B. Sample 61812

Waxes (C40-C46)

55. Because waxes are found mainly on the skin of fruits, pomace oils contain a very high amount of these compounds. For refined and olive oil, the absolute limit is established at 350 mg/kg. The value recorded for sample 61812 (2238 mg/kg), is six times greater than the maximum amount of wax one might find in olive oil, and clearly reveals this sample to contain pomace oil.

Sterols composition (Erythrodiol + uvaol)

56. The content of erythrodiol + uvaol recorded for sample 61812 (20.7%) far exceeds the limit for olive oil (4.5%). Instead, this sample is not olive oil, but rather, given the other parameters described above and below, it is most likely that the oil contains pomace oil.

ΔECN42

57. The limit for olive oil is |0.3|, and even pomace oil cannot register a number greater than |0.5|. Here, the recorded value for sample 61812 (|0.6|) was far beyond these limits and could indicate a mixture of pomace oil with other seed oils.

UV Absorption at 270 nm (K270)

58. UV absorption depends on the presence of conjugated double bonds that can be formed by refining as well as by oxidation. The value recorded for sample 61812 (1.24) far exceeds the limit established for olive oil ($\leq$ 0.90). This sample therefore cannot be olive oil; instead, it must contain pomace oil (pomace oil has a K270 value $\leq$ 1.70).

Fatty acid composition/trans-oleic acid percentage

59. Although much of the fatty acids composition of sample 61812 was consistent with any oil extracted from olives, the amount of trans-oleic acid (0.21%), exceeded the limit for olive oil (0.20%), and indicates that sample 61812 contains a pomace oil or a grapeseed oil. Given the other parameters described above and below, it is more likely that the oil contains a pomace oil instead of grapeseed oil.

Free fatty acids

60. If this parameter exceeds 0.8 g of free oleic acid per 100 g of oil, this means that olive fruits were not of good quality prior to milling (for example, due to improper storage). On the other hand, however, even in very high quality extra virgin oils, some amount of free acidity naturally occurs, so this value in mechanically extracted olive oils almost never drops below 0.2. Hence, a level below 0.2 indicates a high amount of refining. The 0.11 value recorded for sample 61812 is so low that this oil must have been refined. This factor alone, though, cannot adequately differentiate a refined olive oil from pomace oil, as both are refined.

C. Sample 71612

Waxes (C40-C46)

61. Because waxes are found mainly on the skin of fruits, pomace oils contain a very high amount of these compounds. For refined and olive oil, the absolute limit is established at 350 mg/kg. The value recorded for sample 71612 (2181 mg/kg), is six times greater than the maximum amount of wax one might find in olive oil, and clearly reveals this sample to contain pomace oil.

Sterols composition

62. The content of erythrodiol + uvaol recorded for sample 71612 (22.3%) far exceeds the limit for olive oil (4.5%). Instead, this sample is not olive oil, but rather, given the other parameters described above and below, it is most likely that the oil contains pomace oil.

ΔECN

63. The limit for olive oil is |0.3|, and even pomace oil cannot register a number greater than |0.5|. Here, the recorded value for sample 71612 (|0.4|) was above the limit for olive oil, and within the range of pomace oil, which indicates that this sample contains a pomace oil.UV Absorption at 270 nm (K270).

64. UV absorption depends on the presence of conjugated double bonds that can be formed by refining as well as by oxidation. The value recorded for sample 71612 (1.16) far exceeds the limit established for olive oil ($\leq$ 0.90). This sample therefore cannot be olive oil; instead, it must contain pomace oil (pomace oil has a K270 value $\leq$ 1.70).

Fatty acid composition/trans-oleic acid percentage

65. The fatty acids composition of sample 71612 is consistent with any oil extracted from olives.

Free fatty acids

66. If this parameter exceeds 0.8 g of free oleic acid per 100 g of oil, this means that olive fruits were not of good quality prior to milling (for example, due to improper storage). On the other hand, however, even in very high quality extra virgin oils, some amount of free acidity naturally occurs, so this value in mechanically extracted olive oils almost never drops below 0.2. Hence, a level below 0.2 indicates a high amount of refining. The 0.18 value recorded for sample 71612 is so low that this oil must have been refined. This factor alone, though, cannot adequately differentiate a refined olive oil from pomace oil, as both are refined.

VI. CONCLUSIONS

67. It is my opinion to a reasonable degree of scientific certainty that sample 52912 is not olive oil. Its chemical composition, especially the abnormal sterol composition, wax content, and ΔECN, are consistent with olive-pomace oil, with the possible presence of additional seed oils.

68. It is my opinion to a reasonable degree of scientific certainty that sample 61812 is not olive oil. Its chemical composition, especially the abnormal sterol composition, wax content, and ΔECN, are consistent with olive-pomace oil, with the possible presence of additional seed oils.

69. It is my opinion to a reasonable degree of scientific certainty that sample 71612 is not olive oil. Its chemical composition, especially the abnormal sterol composition, wax content, and ΔECN, are consistent with olive-pomace oil.

70. In short, three samples from three lots were sent to me for analysis, and testing revealed that *each of the three samples* (and thus, each of the three lots) was comprised of a substance that was *not olive oil*.

71. Because pomace oil is readily detectable, its presence in three separate lots leads me to conclude that the producer and/or distributor of this oil either fails to employ appropriate safeguards and quality-control checks or intentionally adulterates its oils.

VII. REFERENCES

International Olive Council Trade Standard applying to olive oils and olive-pomace oils, COI/T.15/NC No 3/Rev. 6 November 2011.

International Olive Council Decision no. Dec-19/99-v/2011 IOC certificate for the recognition of olive oil testing laboratories Madrid (Spain), 25 November 2011.

International Olive Council List of chemical testing laboratories recognised by the international olive council for the period from 1.12.2011 au 30.11.2012 - T.21/Doc. n° 13/Rev. 14 11.2011.

International Olive Council Resolution no. RES-2/90-IV/04 IOOC recognition of laboratories undertaking the sensory analysis of virgin olive oils.

International Olive Council List of laboratories undertaking the sensory analysis of virgin olive oils recognised by the international olive council for the period from 1.12.2011 au 30.11.2012 T.28/Doc. nº 3/Rev. 14 11.2011.

ISO/IEC 17025: 2005; General requirements for the competence of testing and calibration laboratories.

P.Q. Tranchida, et. al., *A Rapid Multidimensional Liquid-Gas Chromatography Method for the Analysis of Mineral Oil Saturated Hydrocarbons in Vegetable Oils*, J. Chromatog. A 1218, at 7476-7480 (2011).

S. Moret, et al., *Occurrence of C15-C45 Mineral Paraffins in Olives and Olive Oils*, Food Add. Contam. 20, at 417-26 (2003).

Executed on 1/03/, 2013 at Udine, Italy.

Lanfranco Conte

EXHIBIT 1

CV Lanfranco Conte

Name: Lanfranco
Surname: Conte
Born in 1953, may, 22nd,
Married, two daughters
Educational:
Secondary School Diploma as Expert in Chemistry,
Graduation in Biological Sciences at Bologna University in the Academic year 1976/77 by an experimental thesys in the field of Fermentative Chemistry.
Professional:
1972: Some months of experiences on industrial effluent depuration at Sutcliffe&Speakman, Leight, Lancashire, UK
1973-1982, cooperation in researches in the field of chemistry and technology of fats and oils at Institute of Industrie Agrarie of Bologna University; main topics of research: purity and quality of vegetable oils and lipid; researches on autooxidation of fats, studied both on model system (methyl oleate and methyl linoleante and linolenate) and on authentic samples, evaluation of chemical composition of several natural substances/foods a royal jelly, honeys, vinegars.
1982-1992 Chief analyst at laboratory for Food Fraud Detection of the Italian Ministry of Agriculture; within this frame, he was engaged in activity of control and fight against frauds, e.g. detection of seeds oil in olive oils, extraneous milk in buffalo and sheep cheese, methanol and diethylene glycol in wines and extraneous sugars in wines.
In the same years, cooperation with Institute of Marine Biology, researches dealing with composition of sterols and hydrocarbons of different marine organisms and evaluation of composition of lipid fraction of plankton.
In academic years 1987/88, 1988/89 and 1989/90, he was contract professor of Food Industry at Udine University and in 1991/1992 contract professor of Food industry at Ancona University
1992-1994 Associate professor in Food Chemical Analysis at Udine University,
1994-nowadays Full professor of Food Chemistry at the same University. He also teaches Chemical analysis of foods, Food Quality management, certification and laboratory accreditation, Fats and oils technology

Academic roles
1995-2003 Chairman of Educational Committee of Course of “Laurea” in Food Science and Technology
1999-2003 member of Evaluation Board of Researches, Educational and Administration (Nucleo di Valutazione) of Udine University.
2000-2003 Head of Department of Food Science;
2003- 2009 Chairman of Course of “laurea” in Food Science and Technology
2012 – present Head of Department of Food Science;

Professional roles
1985-nowadays Member of Italian Technical Committee for Fats and Oils (Ministry of

Industry), from 2009 chairperson of subcommittee Vegetable Oils
1993- 2001 Chairman of EEC Olive Oil Chemical Experts Group (DG VI);
1997- 2000 Chairman of Oil Chemistry Committee of International Olive Oil Council (IOOC).
2000-nowadays Chairman of Italian Ministry of Agriculture Subcommittee for Analytical methods of fats and oils;
2001- nowadays italian delegate at EEC Olive Oil Chemical Experts Group (DG VI)
Italian delegate at Codex Alimentarius Fats and oils Committee in 2003, 2007 and 2007 in London and 2011 in Penang (Malaysia); in 2009, L. Conte became the coordinator of Codex Alimentarius Fats and Oils Committee Italian Group.
In 2009, L. Conte was a member of Quality and Impact board at University of Uppsala, engaged in evaluation of Research of Food Chemistry and Technology Unit.
2008 - nowadays, member of Certification Committee of AQUA FVG mark
2009 - nowadays member of Certification Committee (now Board for Surveillance of Independence) of North East Institute for Quality (INEQ - Italy)
2011 - nowadays member of the WG "previous cargoes" of the CONTAM Panel of EFSA

Other informations
L.Conte is member of Italian Chemical Society (divisions of Food Chemistry – chairperson- and of Science of Separation) and chairperson of Italian Society for Fat Researches, member of the managing committee of Euro Fed Lipid and Co-chairperson of EFL Olive Oil Division.
He is member, as well, of Association of Official Agricultural Chemists (AOAC) and of American Oil Chemist Society (AOCS)

L. Conte has been teacher in a number of courses of Masters in Quality Olive oil Production (Master at University of Pisa, Perugia and Teramo), Master in Food quality assessment (University of Reggio Calabria) and within the framework of courses for professional developing in the field of olive oil production and educational of olive oil tasters, all recognized by Italian Ministry of Agriculture.
In the field of fatty substances, his researches dealed with natural sources of lipids characterization, olive oils purity and quality assessment, as well as studies on model system dedicated to fats auto oxidation, both for what is concerning fatty acids as well as sterols. The influence of unsaturation as lipid oxidation promotion factor was studied as well as the influence of antioxidant substances.
The antioxidant activity of phenolics of virgin olive oils, as well as the antioxidant activity of plant extracts (*Labiatae* family) and of a number of essential oils was studied by means of several approaches to its evaluation.
In the latter case, activity was checked on different unsaturated substrates (swine fat and soybean oil).
Also problems regarding the presence of some xenobiotics (PAHs, MOSH, MOAH, Phtalates) were studied in deep. Within this latter field, the evaluation of substances present as traces lead him to be engaged in the development of dedicated analytical methods and instrumentations, as well. Wide attention has been devoted to coordinated (SPE-GC, SPE-LC) and hyphenated techniques (LC-LC, LC-LC-GC)

In other fields, he worked on honeys characterisation, also coordinating some national ring test for method assessment.
He also developed a number of researches on volatiles compounds of several foods as honeys, salami, alcoholic and non alcoholic beverages, meat preserves, virgin olive oils, cheese; methods applied were based on dynamic stripping and cold trapping and solid phase microextraction.

L.Conte had been and is responsible for research units within several national researcher projects founded by public or private bodies, at present, he is national coordinator of a research project by Italian Ministry of Research focusing on triacylglycerols analysis that involves three Italian Universities

In 2005 he was invited by the Government of the Province of Shaanxi (China) as expert in olive oil production and in 2012, April he was invited in Bejing on behalf of Italian Embassy within a meeting to certify quality of Italian produced oils and control chain set up in Italy, while in 2012, June, he was invited in Bejing to a meeting with Chinese Ministry of Agriculture Standard elaboration Committee.

L.Conte is author or co-author of more than 130 printed papers on peer reviewed journals and invited speaker to a number of international symposiums. He ha been member of Scientific Committee of several national and international symposium (Euro Fed Lipid in Athens, Gothebotrg, Graz, Rotterdam, Cracow, Antalya, ISF in Sydney, 2009).

EXHIBIT 2

INTERNATIONAL
OLIVE
COUNCIL

COI/T.15/NC No 3/Rev. 6
November 2011

ENGLISH
Original: FRENCH

Príncipe de Vergara, 154 – 28002 Madrid – España Telef.: +34 915 903 638 Fax: +34 915 631 263 - e-mail: iooc@internationaloliveoil.org - http://www.internationaloliveoil.org/

TRADE STANDARD APPLYING TO OLIVE OILS

AND OLIVE-POMACE OILS

INTERNATIONAL
OLIVE
COUNCIL

COI/T.15/NC No 3/Rev. 6
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TRADE STANDARD APPLYING TO OLIVE OILS AND OLIVE-POMACE OILS

1. SCOPE

This standard applies to olive oils and olive-pomace oils that are the object of international trade or of concessional or food aid transactions.

2. DESIGNATIONS AND DEFINITIONS

2.1. **Olive oil** is the oil obtained solely from the fruit of the olive tree *(Olea europaea* L.), to the exclusion of oils obtained using solvents or re-esterification processes and of any mixture with oils of other kinds. It is marketed in accordance with the following designations and definitions:

2.1.1. Virgin olive oils are the oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decantation, centrifugation and filtration.

2.1.1.1. Virgin olive oils fit for consumption as they are include:

(i) Extra virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and the other characteristics of which correspond to those fixed for this category in this standard.

(ii) Virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 2 grams per 100 grams and the other characteristics of which correspond to those fixed for this category in this standard.

(iii) Ordinary virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 3.3 grams per 100 grams and the other characteristics of which correspond to those fixed for this category in this standard.[1/]

2.1.1.2. Virgin olive oil not fit for consumption as it is, designated lampante virgin olive oil, is virgin olive oil which has a free acidity, expressed as oleic acid, of more than 3.3 grams per 100 grams and/or the organoleptic characteristics and other characteristics of which correspond to those fixed for this category in this standard. It is intended for refining or for technical use.

2.1.2. Refined olive oil is the olive oil obtained from virgin olive oils by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams and its other characteristics correspond to those fixed for this category in this standard. [2/]

2.1.3. Olive oil is the oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption as they are. It has a free acidity, expressed as oleic acid, of not more than 1 gram per 100 grams and its other characteristics correspond to those fixed for this category in this standard.[3/]

2.2. **Olive-pomace oil** is the oil obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by re-esterification processes and of any mixture with oils of other kinds. It is marketed in accordance with the following designations and definitions:

2.2.1. Crude olive-pomace oil is olive-pomace oil whose characteristics correspond to those fixed for this category in this standard. It is intended for refining for use for human consumption, or it is intended for technical use.

1/ This designation may only be sold direct to the consumer if permitted in the country of retail sale. If not permitted, the designation of this product shall comply with the legal provisions of the country concerned.

2/ This designation may only be sold direct to the consumer if permitted in the country of retail sale.

3/ The country of retail sale may require a more specific designation.

2.2.2. Refined olive-pomace oil is the oil obtained from crude olive-pomace oil by refining methods which do not lead to alterations in the initial glyceridic structure. It has a free acidity, expressed as oleic acid, of not more than 0.3 grams per 100 grams and its other characteristics correspond to those fixed for this category in this standard.[1/]

2.2.3. Olive-pomace oil is the oil comprising the blend of refined olive-pomace oil and virgin olive oils fit for consumption as they are. It has a free acidity of not more than 1 gram per 100 grams and its other characteristics correspond to those fixed for this category in this standard.[2/] In no case shall this blend be called "olive oil".

3. PURITY CRITERIA

The identity characteristics comprising the purity criteria shall be applicable to olive oils and olive-pomace oils.

The limits established for each criterion include the precision values of the attendant recommended method.

3.1. Fatty acid composition as determined by gas chromatography (% m/m methyl esters):

- Myristic acid	$\leq$ 0.05
- Palmitic acid	7.5 - 20.0
- Palmitoleic acid	0.3 - 3.5
- Heptadecanoic acid	$\leq$ 0.3
- Heptadecenoic acid	$\leq$ 0.3
- Stearic acid	0.5 - 5.0
- Oleic acid	55.0 - 83.0
- Linoleic acid	3.5 - 21.0
- Linolenic acid	$\leq$ 1.0
- Arachidic acid	$\leq$ 0.6
- Gadoleic acid (eicosenoic)	$\leq$ 0.4
- Behenic acid	$\leq$ 0.2*
- Lignoceric acid	$\leq$ 0.2

1/ This product may only be sold direct to the consumer if permitted in the country of retail sale.

2/ The country of retail sale may require a more specific designation.

* Limit raised to $\leq$ 0.3 for olive-pomace oils.

3.2. *Trans* fatty acid content (% *trans* fatty acids)

	C18:1 T %	C18:2 T + C18:3 T %
- Edible virgin olive oils	≤ 0.05	≤ 0.05
- Lampante virgin olive oil	≤ 0.10	≤ 0.10
- Refined olive oil	≤ 0.20	≤ 0.30
- Olive oil	≤ 0.20	≤ 0.30
- Crude olive-pomace oil	≤ 0.20	≤ 0.10
- Refined olive-pomace oil	≤ 0.40	≤ 0.35
- Olive-pomace oil	≤ 0.40	≤ 0.35

3.3. Sterol and triterpene dialcohol composition

3.3.1. Desmethylsterol composition (% total sterols)

- Cholesterol	≤ 0.5
- Brassicasterol	≤ 0.1 *
- Campesterol	≤ 4.0
- Stigmasterol	< campesterol in edible oils
- Delta-7-stigmastenol	≤ 0.5
- Apparent beta-sitosterol: beta-sitosterol + delta-5-avenasterol + delta-5-23-stigmastadienol + clerosterol + sitostanol + delta 5-24-stigmastadienol	≥ 93.0

* Limit raised to ≤ 0.2 for olive-pomace oils.

3.3.2. Total sterol content (mg/kg)

- Virgin olive oils - Refined olive oil - Olive oil	≥ 1000
- Crude olive-pomace oil	≥ 2500
- Refined olive-pomace oil	≥ 1800
- Olive-pomace oil	≥ 1600

3.3.3. Erythrodiol and uvaol content (% total sterols)

- Edible virgin olive oils	≤4.5
- Lampante virgin olive oil	≤4.5[1/]
- Refined olive oil	≤4.5
- Olive oil	≤4.5
- Crude olive-pomace oil	>4.5[2/]
- Refined olive-pomace oil	>4.5
- Olive-pomace oil	>4.5

3.4. Wax content C40 + C42 + C44 + C46 (mg/kg)

- Edible virgin olive oils	≤250
- Lampante virgin olive oil	≤300[1/]
- Refined olive oil	≤350
- Olive oil	≤350
- Crude olive-pomace oil	> 350[2/]
- Refined olive-pomace oil	> 350
- Olive-pomace oil	> 350

1/ When the oil has a wax content between 300 mg/kg and 350 mg/kg it is considered a lampante virgin olive oil if the total aliphatic alcohol content is ≤ 350 mg/kg or the erythrodiol + uvaol content is ≤ 3.5%.

2/ When the oil has a wax content between 300 mg/kg and 350 mg/kg it is considered a crude olive-pomace oil if the total aliphatic alcohol content is > 350 mg/kg and the erythrodiol + uvaol content is > 3.5%.

3.5. Maximum difference between the actual and theoretical ECN 42 triacylglycerol content

- Edible virgin olive oils	≤	0.2
- Lampante virgin olive oil	≤	0.3
- Refined olive oil	≤	0.3
- Olive oil	≤	0.3
- Crude olive-pomace oil	≤	0.6
- Refined olive-pomace oil	≤	0.5
- Olive-pomace oil	≤	0.5

3.6. Stigmastadiene content (mg/kg)

- Edible virgin olive oils	≤ 0.10
- Lampante virgin olive oil	≤ 0.50

3.7. Content of 2-glyceryl monopalmitate

- Edible virgin olive oils and olive oil:

C:16:0 ≤ 14.0%; 2P ≤ 0.9%
C:16:0 > 14.0%, 2P ≤ 1.0%

- Non-edible virgin olive oils and refined olive oils:

C:16:0 ≤ 14.0%; 2P ≤ 0.9%
C:16:0 > 14.0%, 2P ≤ 1.1%

- Olive-pomace oils	≤ 1.2%
- Crude and refined olive-pomace oils	≤ 1.4%

3.8. Unsaponifiable matter (g/kg)

- Olive oils	≤ 15
- Olive-pomace oils	≤ 30

4. QUALITY CRITERIA

The limits established for each criterion and designation include the precision values of the attendant recommended method

	Extra virgin olive oil	Virgin olive oil	Ordinary virgin olive oil	Lampante virgin olive oil *	Refined olive oil	Olive oil	Crude olive-pomace oil	Refined olive-pomace oil	Olive-pomace oil
4.1 Organoleptic characteristics									
- odour and taste					acceptable	good		acceptable	good
- odour and taste (on a continuous scale):									
. median of defect	Me = 0	0 < Me ≤ 3.5	3.5 <Me ≤ 6.0**	Me > 6.0					
. median of the fruity attribute	Me > 0	Me > 0							
- colour					light yellow	light, yellow to green		light, yellow to brownish yellow	light, yellow to green
- aspect at 20°C for 24 hours					limpid	limpid		limpid	limpid
4.2. Free acidity % m/m expressed in oleic acid	≤ 0.8	≤ 2.0	≤ 3.3	> 3.3	≤ 0.3	≤ 1.0	no limit	≤ 0.3	≤ 1.0
4.3. Peroxide value in milleq. Peroxide oxygen per kg/oil	≤ 20	≤ 20	≤ 20	no limit	≤ 5	≤ 15	no limit	≤ 5	≤ 15

* It is not obligatory for the criteria in 4.1, 4,2 and 4.3 to be concurrent; one is sufficient.

** Or when the median of the defect is less than or equal to 3.5 and the median of the fruity attribute is equal to 0.

4. QUALITY CRITERIA (contd.)

	Extra virgin olive oil	Virgin olive oil	Ordinary virgin olive oil	Lampante virgin olive oil	Refined olive oil	Olive oil	Crude olive-pomace oil	Refined olive-pomace oil	Olive-pomace oil
4.4. Absorbency in ultra-violet ($K^{1\%}_{1cm}$)									
- 270 nm (cyclohexane) / 268 nm (iso-octane)	≤ 0.22	≤ 0.25	≤ 0.30		≤ 1.10	≤ 0.90		≤ 2.00	≤ 1.70
- Δ K	≤ 0.01	≤ 0.01	≤ 0.01		≤ 0.16	≤ 0.15		≤ 0.20	≤ 0.18
- 232 nm*	≤ 2.50**	≤ 2.60**							
4.5. Moisture and volatile matter (% m/m)	≤ 0.2	≤ 0.2	≤ 0.2	≤ 0.3	≤ 0.1	≤ 0.1	≤ 1.5	≤ 0.1	≤ 0.1
4.6. Insoluble impurities in light petroleum % m/m	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.2	≤ 0.05	≤ 0.05		≤ 0.05	≤ 0.05
4.7. Flash point	-	-	-	-	-	-	≥ 120°C	-	-
4.8. Trace metals mg/kg									
Iron	≤ 3.0	≤ 3.0	≤ 3.0	≤ 3.0	≤ 3.0	≤ 3.0		≤ 3.0	≤ 3.0
Copper	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.1	≤ 0.1		≤ 0.1	≤ 0.1
4.9. Fatty acid methyl esters (FAMEs) and fatty acid ethyl esters (FAEEs)	- ∑ FAME + FAEE ≤ 75 mg/kg or - ∑ FAME + FAEE > 75 mg/kg and ≤ 150 mg/kg and FAEE/FAME ratio ≤ 1.5								
4.10. Phenols content									

* This determination is solely for application by commercial partners on an optional basis.

** Commercial partners in the country of retail sale may require compliance with these limits when the oil is made available to the end consumer.

5. FOOD ADDITIVES

5.1. Virgin olive oils and crude olive-pomace oil:

none permitted.

5.2. Refined olive oil, olive oil, refined olive-pomace oil and olive-pomace oil: alpha-tocopherol permitted to restore natural tocopherol lost in the refining process.

Maximum level: 200 mg/kg of total alpha-tocopherol in the final product.

6. CONTAMINANTS

6.1. Heavy metals

The products covered by this standard shall comply with maximum limits being established by the Codex Alimentarius Commission but in the meantime the following limits will apply:

	Maximum permissible concentration
Lead (Pb)	0.1 mg/kg
Arsenic (As)	0.1 mg/kg

6.2. Pesticide residues

The products covered by this standard shall comply with those maximum residue limits established by the Codex Alimentarius Commission for these commodities.

6.3. Halogenated solvents

- Maximum content of each halogenated solvent 0.1 mg/kg
- Maximum content of the sum of all halogenated solvents 0.2 mg/kg

7. HYGIENE

7.1. It is recommended that the products intended for human consumption covered by the provisions of this standard be prepared and handled in accordance with the appropriate sections of the Recommended International Code of Practice – General Principles of Food Hygiene (CAC/RP 1-1969, Rev. 3 – 1997), and other relevant Codex texts such as Codes of Hygienic Practice and Codes of Practice.

7.2. The products intended for human consumption should comply with any microbiological criteria established in accordance with the Principles for the Establishment and Application of Microbiological Criteria (CAC/GL 21-1997).

8. PACKING

Olive oils and olive-pomace oils intended for international trade shall be packed in containers complying with the General Principles of Food Hygiene recommended by the Codex Alimentarius Commission (CAC/RCP 1 - 1969, Rev. 3 - 1997), and other relevant texts such as Codes of Hygienic Practice and Codes of Practice.

The containers used may be:

8.1. tanks, containers, vats, which permit the transportation in bulk of olive oils and olive-pomace oils;

8.2. metal drums, in good condition, hermetically-sealed, which should be internally covered with a suitable varnish;

8.3. metal tins and cans, lithographed, new, hermetically-sealed, which should be internally covered with a suitable varnish;

8.4. demi-johns, glass bottles or bottles made of suitable macromolecular material.

9. CONTAINER FILLING TOLERANCE

The volume occupied by the contents shall under no circumstances be less than 90% of the capacity of the container, except in the case of tin containers with a capacity of, or less than, 1 litre in which the volume occupied shall under no circumstances be less than 80% of the capacity of the container; this capacity is equal to the volume of distilled water at 20°C which the container can hold when full.

10. LABELLING

In addition to sections 2, 3, 7 and 8 of the Codex General Standard for the Labelling of Pre-packaged Foods (CODEX STAN 1-1985, Rev.1 - 1991) and the guidelines applying to food not intended for direct sale to consumers, the specific provisions providing the following information shall be applied:

10.1. On containers intended for direct sale to consumers

10.1.1. Name of the product

The labelling on each container shall indicate the specific designation of the product contained, complying in every way with the relevant provisions of this standard.

10.1.1.1. Designations of olive oils:

- Extra virgin olive oil
- Virgin olive oil
- Ordinary virgin olive oil[1/]
- Refined olive oil[1/]
- Olive oil[2/]

10.1.1.2. Designations of olive-pomace oils:

- Refined olive-pomace oil[1/]
- Olive-pomace oil[2/]

10.1.2. Net contents

The net contents shall be declared by volume in the metric system ("Système International" units).

10.1.3. Name and address

The name and address of the manufacturer, packer, distributor, importer, exporter or seller shall be declared.

[1/] This product may only be sold direct to the consumer if permitted in the country of retail sale.

[2/] The country of retail sale may require a more specific designation.

10.1.4. Country of origin

The name of the country of origin shall be declared. When the product undergoes substantial processing in a second country, the country in which such processing is carried out shall be considered as the country of origin for labelling purposes.

10.1.5. Indications of source and appellations of origin

10.1.5.1. Indications of source

The labels of virgin olive oils may indicate their source (country, region or locality) when they have been empowered to do so by their country of origin and when such virgin olive oils have been produced, packed and originate exclusively in the country, region or locality mentioned.

10.1.5.2. Appellations of origin

The labels of extra virgin olive oils may indicate their appellation of origin (country, region or locality) when they have been awarded such an appellation, in accordance with the terms provided under the regulations of their country of origin and when such extra virgin olive oil has been produced, packed and originates exclusively in the country, region or locality mentioned.

10.1.6. Lot identification

Each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot.

10.1.7. Date marking and storage conditions

10.1.7.1. Date of minimum durability

In the case of pre-packaged products intended for the end consumer, the date of minimum durability (preceded by the words "best before end") shall be declared by the month and year in uncoded numerical sequence. The month may be indicated by letters in those countries where such use will not confuse the consumer; if the shelf life of the product is valid to December, the expression "end (stated year)" may be used as an alternative.

10.1.7.2. Storage instructions

Any special conditions for storage shall be declared on the label if the validity of the date of minimum durability depends thereon.

10.2. On forwarding packs of oils intended for human consumption

In addition to the details noted under section 10.1., the following inscription shall appear:

- number and type of containers held in pack.

10.3. On containers allowing the transportation in bulk of olive oils and olive-pomace oils

The labelling on each container shall include:

10.3.1. Name of the product

The name shall indicate the specific designation of the product contained, complying in every way with the provisions of this standard.

10.3.2. Net contents

The net contents shall be declared by weight or volume in the metric system ("Système International" units).

10.3.3. Name and address

The name and address of the manufacturer, distributor or exporter shall be declared.

10.3.4. Country of origin

The name of the exporting country shall be declared.

11. METHODS OF ANALYSIS AND SAMPLING

The methods of analysis and sampling given below are international referee methods. The latest version of these methods should be used.

11.1. Sampling

According to ISO 5555, "Animal and vegetable fats and oils - Sampling".

11.2. Preparation of the test sample

According to ISO 661, "Animal and vegetable fats and oils - Preparation of the test sample".

11.3. Determination of the fatty acid composition

According to COI/T.20/Doc. No 24, "Preparation of the fatty acid methyl esters from olive oil and olive-pomace oil", and ISO 5508, "Analysis by gas chromatography of methyl esters of fatty acids" or AOCS Ch 2–91.

11.4. Determination of the *trans* fatty acid content

According to COI/T.20/Doc. No 17/Rev. 1, "Determination of *trans* unsaturated fatty acids by capillary column gas chromatography", or ISO 15304 or AOCS Ce 1f–96.

11.5. Determination of the sterol composition and total sterol content

According to COI/T.20/Doc. No 10/Rev. 1, "Determination of the composition and content of sterols by capillary-column gas chromatography", or AOCS Ch 6-91.

11.6. Determination of the content of erythrodiol + uvaol

According to IUPAC no. 2.431, "Determination of the erythrodiol content". Capillary columns are recommended.

11.7. Determination of the sterol and triterpene dialcohols content for olive oils

According to COI/T.20/Doc. No 30, "Determination of the composition and content of sterols and triterpene dialcohols by capillary column gas chromatography"

11.8. Determination of the wax content

According to COI/T.20/Doc. No 18/Rev. 2 "Determination of wax content by capillary-column gas chromatography" or AOCS Ch 8-02.

11.9. Determination of the aliphatic alcohol content

According to COI/T.20/Doc. No 26 "Determination of aliphatic alcohols content by capillary gas chromatography".

11.10. Determination of the difference between the actual and theoretical ECN 42 triacylglycerol content

According to COI/T.20/Doc. No 20/Rev. 3, "Determination of the difference between actual and theoretical content of triacylglycerols with ECN 42", or AOCS 5b-89.

11.11. Determination of the stigmastadiene content

According to COI/T.20/Doc. No 11/Rev. 2, "Determination of stigmastadienes in vegetable oils", or COI/T.20/Doc. no. 16/Rev. 1, "Determination of sterenes in refined vegetable oils", or ISO 15788-1 or AOCS Cd 26-96.

11.12. Determination of the content of 2-glyceryl monopalmitate

According to COI/T.20/Doc. No 23, "Determination of the percentage of 2-glyceryl monopalmitate ".

11.13. Determination of the unsaponifiable matter

According to ISO 3596, "Determination of the unsaponifiable matter – Method using diethyl ether extraction", or AOCS Ca 6b-53 or ISO 18609.

The results should be expressed in g/unsaponifiable matter per kg/oil.

11.14. Determination of the organoleptic characteristics

According to COI/T.20/Doc. No 15/Rev. 3, "Organoleptic assessment of virgin olive oil".

11.15. Determination of the free acidity

According to ISO 660, "Determination of acid value and acidity", or AOCS Cd 3d-63.

11.16. Determination of the peroxide value

According to ISO 3960, "Determination of the peroxide value", or AOCS Cd 8b-90.

11.17. Determination of the absorbency in ultra-violet

According to COI/T.20/Doc. No 19/Rev. 2, "Spectrophotometric investigation in the ultraviolet", or ISO 3656 or AOCS Ch 5-91.

11.18. Determination of the moisture and volatile matter

According to ISO 662, "Determination of the moisture and volatile matter".

11.19. Determination of the insoluble impurities in light petroleum

According to ISO 663, "Determination of the insoluble impurities".

11.20. Determination of the flash point

According to the FOSFA International method.

11.21. Detection of trace metals

According to ISO 8294, "Determination of copper, iron and nickel by direct graphite furnace atomic absorption spectrometry".

11.22. Determination of the alpha-tocopherol

According to ISO 9936, "Determination of tocopherols and tocotrienols contents – Method using high-performance liquid chromatography".

11.23. Determination of traces of heavy metals

- Determination of lead: according to ISO 12193 or AOCS Ca 18c-91 or AOAC 994.02.

- Determination of arsenic: according to AOAC 952.13 or AOAC 942.17 or AOAC 985.16.

11.24. Detection of traces of halogenated solvents

According to COI/T.20/Doc. No 8/Corr. 1 "Determination of tetrachloroethylene in olive oils by gas-liquid chromatography".

11.25. Determination of the content of waxes and alkyl esters

According to COI/T.20/Doc. No 28 "Determination of the content of waxes, fatty acid methyl esters and fatty acid ethyl esters by capillary gas chromatography".

11.26. Determination of biophenols

According to COI/T.20/Doc. No 29 "Determination of biophenols in olive oils by HPLC".

EXHIBIT 3

INTERNATIONAL OLIVE COUNCIL | CONSEJO OLEICOLA INTERNACIONAL | CONSEIL OLEICOLE INTERNATIONAL | CONSIGLIO OLEICOLO INTERNAZIONALE | المجلس الدولي للزيتون

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T.21/Doc. nº 13/Rev. 14
11.2011

LISTE DES LABORATOIRES D'ANALYSES CHIMIQUES AGRÉÉS PAR LE CONSEIL OLÉICOLE INTERNATIONAL POUR LA PÉRIODE DU 1.12.2011 AU 30.11.2012

LISTA DE LOS LABORATORIOS DE ANÁLISIS QUÍMICOS RECONOCIDOS POR EL CONSEJO OLEÍCOLA INTERNACIONAL PARA EL PERIODO DEL 1.12.2011 AU 30.11.2012

LIST OF CHEMICAL TESTING LABORATORIES RECOGNISED BY THE INTERNATIONAL OLIVE COUNCIL FOR THE PERIOD FROM 1.12.2011 AU 30.11.2012

ELENCO DEI LABORATORI DI ANALISI CHIMICA RICONOSCIUTI DAL CONSIGLIO OLEICOLO INTERNAZIONALE PER IL PERIODO DAL 1.12.2011 AU 30.11.2012

According to Resolution RES-2/78-IV/98 which the International Olive Council (IOC) adopted on 4 June 1998, IOC recognition is awarded, subject to annual review, to olive oil testing laboratories that:

- submit an application to the IOC Executive Secretariat which, in the case of public laboratories, should be submitted through the supervisory governmental authorities;

- provide proof that they have been accredited by a national accreditation body, describing any accreditation awarded and specifying the date on which it was issued (or, provisionally, a declaration to the effect that they are taking steps to obtain laboratory accreditation);

- prove they are proficient in applying the testing methods recommended in the IOC trade standard for olive oil and olive-pomace oil by participating in a check test organised by the IOC Executive Secretariat.

During its autumn session the IOC endorses the list of olive oil testing laboratories that are awarded recognition for the period running from 1 December to 30 November. The list is divided into:

. public or private laboratories that issue test certificates at the request of third parties;

. laboratories belonging to olive oil companies that analyse their own oils.

———

LABORATOIRES D'ANALYSES CHIMIQUES
LABORATORIOS DE ANÁLISIS QUÍMICOS
CHEMICAL TESTING LABORATORIES
LABORATORI DI ANALISI CHIMICA

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EXHIBIT 4

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T.28/Doc. nº 3/Rev. 14
11.2011

LISTE DES LABORATOIRES D'ANALYSE SENSORIELLE DES HUILES D'OLIVE VIERGES AGRÉÉS PAR LE CONSEIL OLÉICOLE INTERNATIONAL POUR LA PÉRIODE DU 1.12.2011 AU 30.11.2012

LISTA DE LOS LABORATORIOS DE ANÁLISIS SENSORIAL DE LOS ACEITES DE OLIVA VÍRGENES RECONOCIDOS POR EL CONSEJO OLEÍCOLA INTERNACIONAL PARA EL PERIODO DEL 1.12.2011 AU 30.11.2012

LIST OF LABORATORIES UNDERTAKING THE SENSORY ANALYSIS OF VIRGIN OLIVE OILS RECOGNISED BY THE INTERNATIONAL OLIVE COUNCIL FOR THE PERIOD FROM 1.12.2011 AU 30.11.2012

ELENCO DEI LABORATORI D'ANALISI SENSORIALE DEGLI OLI DI OLIVA VERGINI RICONOSCIUTI DAL CONSIGLIO OLEICOLO INTERNAZIONALE PER IL PERIODO DAL 1.12.2011 AU 30.11.2012

According to Resolution RES-2/90-IV/04 which the International Olive Council (IOC) adopted on 18 June 2004, IOC recognition is awarded, subject to annual review, to laboratories which are approved by the competent authority of their country as a laboratory responsible for the official control of virgin olive oils by sensory analysis, and which fulfil the following conditions:

- An application for recognition, transmitted by the competent authority that approved the laboratory for the sensory testing of virgin olive oils, has to be submitted to the IOC Executive Secretariat.

- The application for recognition has to be accompanied by proof that the laboratory holds accreditation for the sensory analysis of virgin olive oils according to the method adopted by the Council.

- The application also has to be accompanied by full details on the characteristics of the sensory testing laboratory: installations, equipment, activities, staff, position, experience and activity of the panel leader, membership of the panel of tasters, and average monthly number of tastings of virgin olive oils.

- The laboratory has to obtain a satisfactory evaluation in the periodic tests organised by the IOC to check the competence of panels undertaking the tasting of virgin olive oils.

During its autumn session the IOC endorses the list of olive oil taste panels that are awarded recognition for the period running from 1 December to 30 November.

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(Uses the panel of another Member State, pursuant to article 4 § 1.)

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EXHIBIT 5

MINISTERIO DE ECONOMÍA Y COMPETITIVIDAD

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INFORME ANALÍTICO

ENAC
ENSAYOS
Nº 719/LE1198

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Núm. Boletín : 3913 **Re. Salida :** 2953

Nº Muestra : 1200707

Registro muestra : 09/10/2012
Inicio análisis : 15/10/2012
Finalización análisis : 29/10/2012

Nº Muestras : 1

T.Análisis : Información Privada

Muestra de : Aceite de Oliva contenido en una botella de vidrio, de 500 ml..cerrada con un tapón precinto de plástico negro. Lleva una etiqueta pegada con cinta adhesiva, que dice: " Lanfranco Conte; GFO 52912 ". Sobre la etiqueta, aparece escrito con rotulador el número 1.

T. Medida : Individual

Código Web : -

Ac	Nombre Determinación	Resultado	Método
	Análisis Organoléptico		CE 2568/91 an. XII (CE 640/08)
	Mediana Atributo Frutado	0.0	
	Mediana Defecto Mayoritario	6.2	
	Clasificación UE	LAMPANTE	
	Ácidos Grasos Libres	0.05 % expresado en ácido oleico	CE2568/91(II) (mod.702/07)
	Índice de Peróxidos	8 mEq. O2/Kg	CE 2568/91 anexo III
	Espectrometria UV		CE2568/91(IX) mod.183/93
	K270	1.07	
	K232	3.50	
	Delta K	0.06	
*	Determinación Esteroles por Cromatografia Gaseosa		CE 2568/91 anexo V
*	Colesterol	0.1 %	
*	Brasicasterol	<0.1 %	
*	Campesterol	3.1 %	
*	Estigmasterol	1.3 %	
*	Beta- Sitosterol Aparente	93.9 %	
*	Delta - 7- Estigmastenol	0.4 %	
*	Eritrodiol+Uvaol	26.4 %	
*	Esteroles Totales	2638 ppm (mg/kg)	
*	Determinación de Ceras por C.G.		CE 2568/91 anexo IV
*	Alifáticas C40+C42+C44+C46	1862 ppm (mg/kg)	
*	Estigmastadienos en Aceite de Oliva Virgen	<0.01 ppm (mg/kg)	CE 2568/91 anexo XII
*	Monopalmitato de glicerilo	0.98 %	Reglamento 702/2007
	Composición de Ácidos Grasos por GC Capilar		R. CE 2568/91 Anexo X
	C-14:0 (Mirístico)	0.01 %	
	C-16:0 (Palmítico)	11.7 %	
	C-16:1 (Palmitoleico)	1.0 %	

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ENAC
ENSAYOS
Nº719/LE1198

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NIF : CNTLFR53E22D643E

Núm. Boletín : 3913 **Re. Salida** : 2953

Nº Muestra : 1200707

Muestra de : Aceite de Oliva contenido en una botella de vidrio, de 500 ml.,cerrada con un tapón precinto de plástico negro. Lleva una etiqueta pegada con cinta adhesiva, que dice: " Lanfranco Conte; GFO 52912 ". Sobre la etiqueta, aparece escrito con rotulador el número 1.

T. Medida : Individual

Ac	Nombre Determinación	Resultado	Método
	C-17:0 (Margárico)	0.1 %	
	C-17:1 (Margaroleico)	0.2 %	
	C-18:0 (Esteárico)	3.0 %	
	C-18:1 (Oleico)	72.7 %	
	C-18:2 (Linoleico)	9.6 %	
	C-18:3 (Linolénico)	0.7 %	
	C-20:0 (Aráquico)	0.4 %	
	C-20:1 (Eicosenoico)	0.3 %	
	C-22:0 (behénico)	0.2 %	
	C-24:0 (lignocérico)	0.1 %	
	trans Oleico (t-C18:1)	0.29 %	
	trans Linoleico + trans Linolénico (t-C18:2+t-C18:3)	0.10 %	
*	Alcoholes alifáticos		CE 2568/91 anexo XIX
*	Esteres Alquilicos de Acidos Grasos		CE 2568/91 Anexo XX
*	Ésteres metílicos y etílicos	1797 ppm (mg/kg)	
*	Triglicéridos por HPLC		CE 2568/91 anexo XVIII
*	ECN 42 experimental.	1.63 %	
*	ECN 42 teórico.	0.42 %	
*	Diferencia de ECN42 experimental - teórico	1.1 %	

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Núm. Boletín : 3914 **Re. Salida :** 2953

Nº Muestra : 1200708

Registro muestra : 09/10/2012
Inicio análisis : 15/10/2012
Finalización análisis : 29/10/2012

Nº Muestras : 1

T.Análisis : Información Privada

Muestra de : Aceite de Oliva contenido en una botella de vidrio, de 500 ml.,cerrada con un tapón precinto de plástico negro. Lleva una etiqueta pegada con cinta adhesiva, que dice: " Lanfranco Conte; GFO 61812 ". Sobre la etiqueta, aparece escrito con rotulador el número 2.

T. Medida : Individual

Código Web : -

Ac	Nombre Determinación	Resultado	Método
	Análisis Organoléptico		CE 2568/91 an. XII (CE 640/08)
	Mediana Atributo Frutado	0.0	
	Mediana Defecto Mayoritario	4.3	
	Clasificación UE	LAMPANTE	
	Ácidos Grasos Libres	0.11 % expresado en ácido oleico	CE2568/91(II) (mod.702/07)
	Índice de Peróxidos	4 mEq. O2/Kg	CE 2568/91 anexo III
	Espectrometría UV		CE2568/91(IX) mod.183/93
	K270	1.24	
	K232	3.94	
	Delta K	0.07	
*	Determinación Esteroles por Cromatografía Gaseosa		CE 2568/91 anexo V
*	Colesterol	0.1 %	
*	Brasicasterol	<0.1 %	
*	Campesterol	3.2 %	
*	Estigmasterol	1.5 %	
*	Beta- Sitosterol Aparente	93.4 %	
*	Delta - 7- Estigmastenol	0.3 %	
*	Eritrodiol+Uvaol	20.7 %	
*	Esteroles Totales	3287 ppm (mg/kg)	
*	Determinación de Ceras por C.G.		CE 2568/91 anexo IV
*	Alifáticas C40+C42+C44+C46	2238 ppm (mg/kg)	
*	Estigmastadienos en Aceite de Oliva Virgen	<0.01 ppm (mg/kg)	CE 2568/91 anexo XII
*	Monopalmitato de glicerilo	1.1 %	Reglamento 702/2007
	Composición de Ácidos Grasos por GC Capilar		R. CE 2568/91 Anexo X
	C-14:0 (Mirístico)	<0.01 %	
	C-16:0 (Palmítico)	11.8 %	
	C-16:1 (Palmitoleico)	1.0 %	

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Núm. Boletín : 3914 **Re. Salida :** 2953

Nº Muestra : 1200708

Muestra de : Aceite de Oliva contenido en una botella de vidrio, de 500 ml.,cerrada con un tapón precinto de plástico negro. Lleva una etiqueta pegada con cinta adhesiva, que dice: " Lanfranco Conte; GFO 61812 ". Sobre la etiqueta, aparece escrito con rotulador el número 2.

T. Medida : Individual

Ac	Nombre Determinación	Resultado	Método
	C-17:0 (Margárico)	0.1 %	
	C-17:1 (Margaroleico)	0.1 %	
	C-18:0 (Esteárico)	2.9 %	
	C-18:1 (Oleico)	72.5 %	
	C-18:2 (Linoleico)	9.9 %	
	C-20:1 (Eicosenoico)	0.4 %	
	C-18:3 (Linolénico)	0.7 %	
	C-20:0 (Aráquico)	0.3 %	
	C-22:0 (behénico)	0.2 %	
	C-24:0 (lignocérico)	0.1 %	
	trans Oleico (t-C18:1)	0.21 %	
	trans Linoleico + trans Linolénico (t-C18:2+t-C18:3)	0.14 %	
*	Esteres Alquílicos de Acidos Grasos		CE 2568/91 Anexo XX
*	Ésteres metílicos y etílicos	1613 ppm (mg/kg)	
*	Triglicéridos por HPLC		CE 2568/91 anexo XVIII
*	ECN 42 experimental.	0.96 %	
*	ECN 42 teórico.	0.40 %	
*	Diferencia de ECN42 experimental - teórico	0.6 %	

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Nº Muestra : 1200709

Registro muestra : 09/10/2012
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Finalización análisis : 29/10/2012

Nº Muestras : 1

T.Análisis : Información Privada

Muestra de : Aceite de Oliva contenido en una botella de vidrio, de 500 ml.,cerrada con un tapón precinto de plástico negro. Lleva una etiqueta pegada con cinta adhesiva, que dice: " Lanfranco Conte; GFO 71612 ". Sobre la etiqueta, aparece escrito con rotulador el número 3.

T. Medida : Individual

Código Web : -

Ac	Nombre Determinación	Resultado	Método
	Análisis Organoléptico		CE 2568/91 an. XII (CE 640/08)
	Mediana Atributo Frutado	0.0	
	Mediana Defecto Mayoritario	4.3	
	Clasificación UE	LAMPANTE	
	Ácidos Grasos Libres	0.18 % expresado en ácido oleico	CE2568/91(II) (mod.702/07)
	Índice de Peróxidos	4 mEq. O2/Kg	CE 2568/91 anexo III
	Espectrometría UV		CE2568/91(IX) mod.183/93
	K270	1.16	
	K232	3.91	
	Delta K	0.06	
*	Determinación Esteroles por Cromatografía Gaseosa		CE 2568/91 anexo V
*	Colesterol	<0.1 %	
*	Brasicasterol	<0.1 %	
*	Campesterol	3.1 %	
*	Estigmasterol	1.3 %	
*	Beta- Sitosterol Aparente	93.6 %	
*	Delta - 7- Estigmastenol	0.4 %	
*	Eritrodiol+Uvaol	22.3 %	
*	Esteroles Totales	3044 ppm (mg/kg)	
*	Determinación de Ceras por C.G.		CE 2568/91 anexo IV
*	Alifáticas C40+C42+C44+C46	2181 ppm (mg/kg)	
*	Estigmastadienos en Aceite de Oliva Virgen	<0.01 ppm (mg/kg)	CE 2568/91 anexo XII
*	Monopalmitato de glicerilo	1.3 %	Reglamento 702/2007
	Composición de Ácidos Grasos por GC Capilar		R. CE 2568/91 Anexo X
	C-14:0 (Mirístico)	<0.01 %	
	C-16:0 (Palmítico)	11.5 %	
	C-16:1 (Palmitoleico)	1.0 %	

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Núm. Boletín : 3912 **Re. Salida :** 2953

Nº Muestra : 1200709

Muestra de : Aceite de Oliva contenido en una botella de vidrio, de 500 ml.,cerrada con un tapón precinto de plástico negro. Lleva una etiqueta pegada con cinta adhesiva, que dice: " Lanfranco Conte; GFO 71612 ". Sobre la etiqueta, aparece escrito con rotulador el número 3.

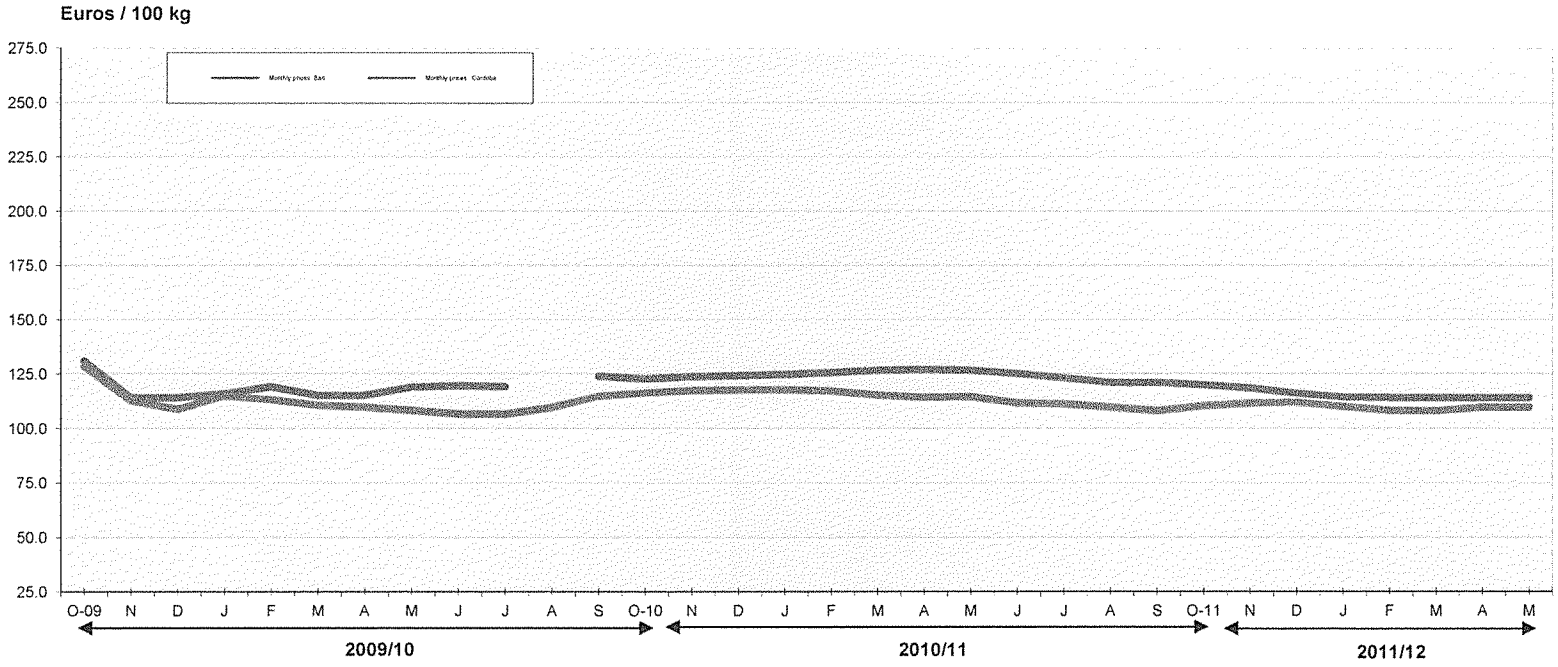
T. Medida : Individual

Ac	Nombre Determinación	Resultado	Método
	C-17:0 (Margárico)	0.1 %	
	C-17:1 (Margaroleico)	0.1 %	
	C-18:0 (Esteárico)	2.9 %	
	C-18:1 (Oleico)	72.9 %	
	C-18:2 (Linoleico)	9.8 %	
	C-18:3 (Linolénico)	0.7 %	
	C-20:0 (Aráquico)	0.4 %	
	C-20:1 (Eicosenoico)	0.3 %	
	C-22:0 (behénico)	0.2 %	
	C-24:0 (lignocérico)	0.1 %	
	trans Oleico (t-C18:1)	0.19 %	
	trans Linoleico + trans Linolénico (t-C18:2+t-C18:3)	0.04 %	
*	Esteres Alquilicos de Acidos Grasos		CE 2568/91 Anexo XX
*	Ésteres metílicos y etílicos	3506 ppm (mg/kg)	
*	Triglicéridos por HPLC		CE 2568/91 anexo XVIII
*	ECN 42 experimental.	0.85 %	
*	ECN 42 teórico.	0.44 %	
*	Diferencia de ECN42 experimental - teórico	0.4 %	

AVDA. PADRE GARCÍA TEJERO, 4 41012 SEVILLA (ESPAÑA) TEL 954 61 15 50 FAX 954 61 67 90

EXHIBIT 6

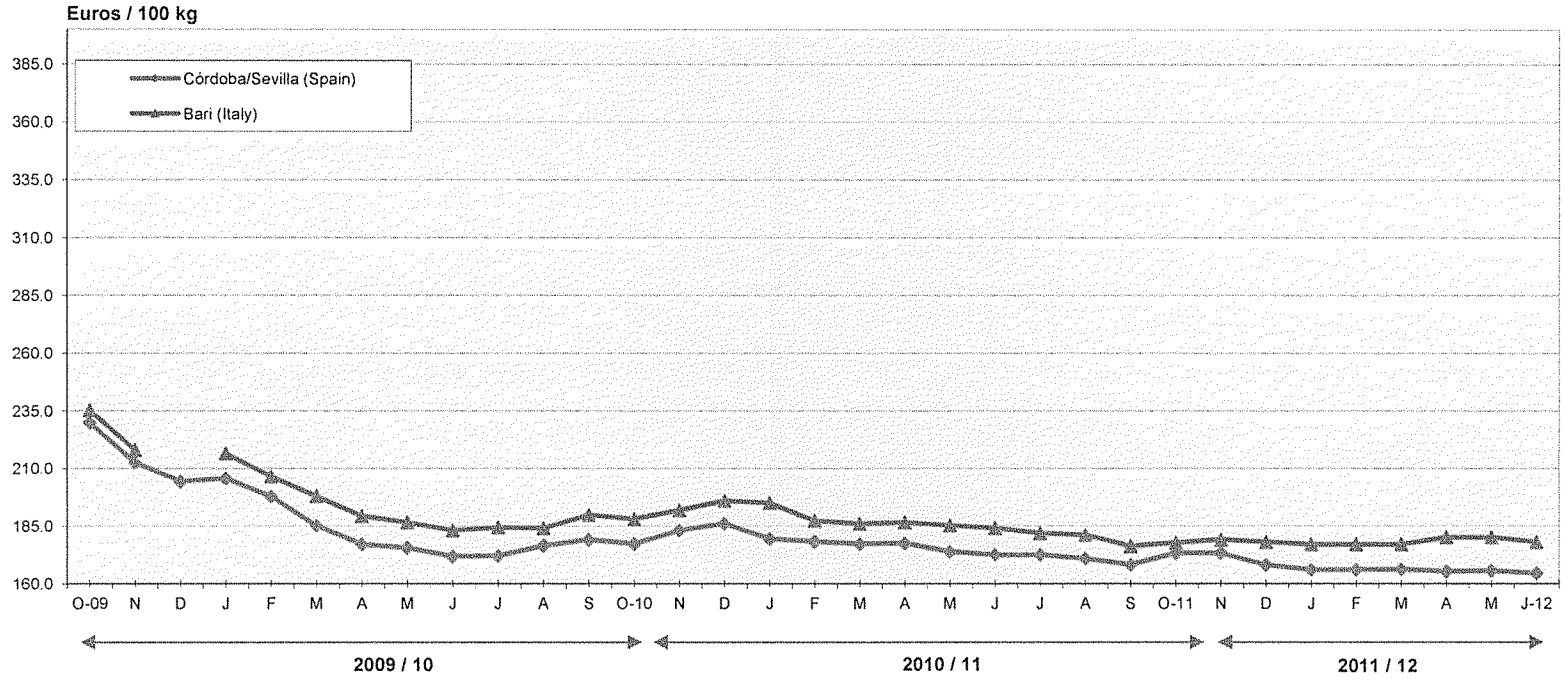
MOVEMENTS IN REFINERY PRICES
REFINED OLIVE-POMACE OIL
Average monthly prices



Source: International Olive Council - *July 2012*

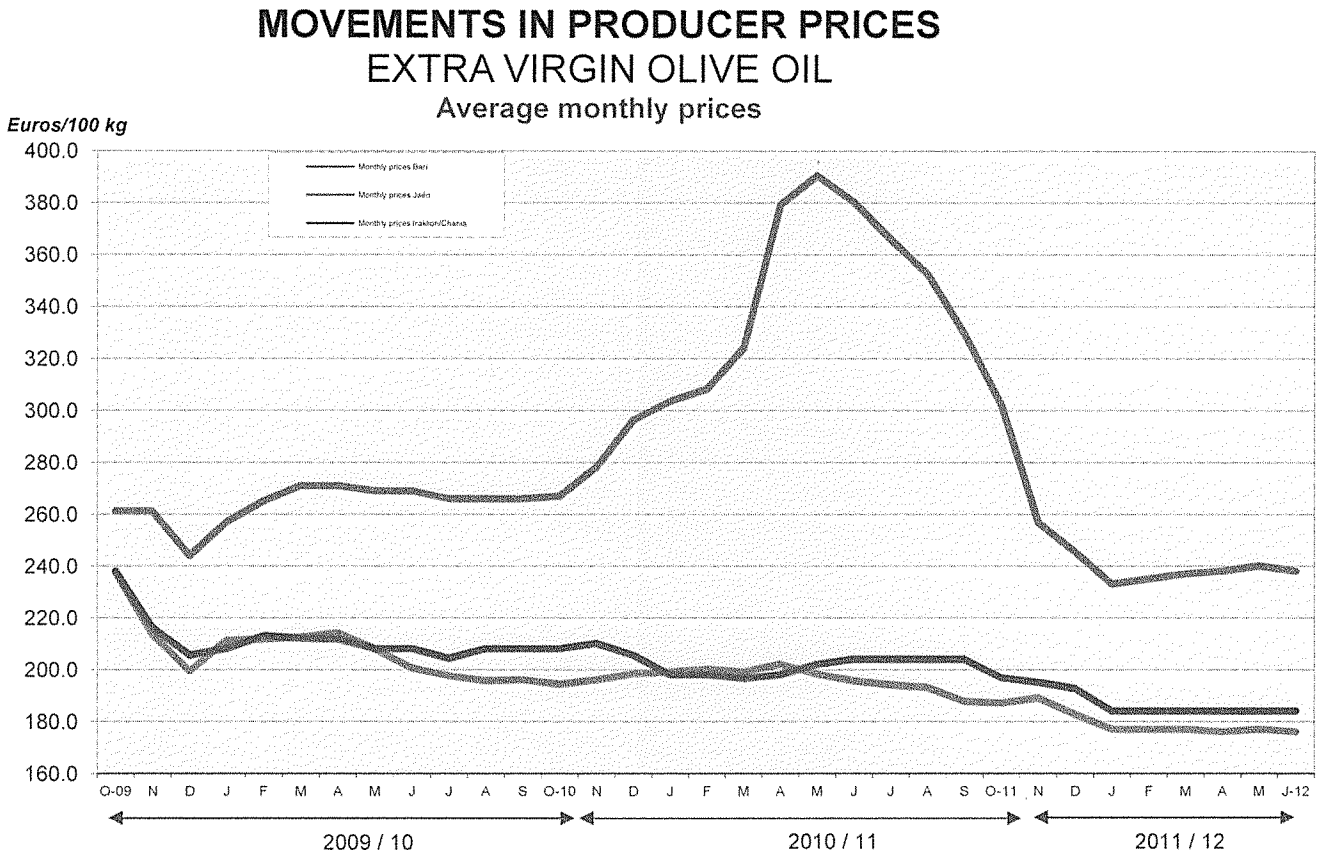
EXHIBIT 7

MOVEMENTS IN PRODUCER PRICES
REFINED OLIVE OIL
Average monthly prices



Source: International Olive Council - July *2012*

EXHIBIT 8



Source: International Olive Council - July 2012

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTH AMERICAN OLIVE OIL ASSOCIATION,	Civil Action No. 13-cv-0868 (JSR)
Plaintiff,	ECF Case
v.	
KANGADIS FOOD INC., d/b/a THE GOURMET FACTORY	
Defendant.	

DECLARATION OF BRIAN DOUGHERTY
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION

EXHIBIT 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTH AMERICAN OLIVE OIL ASSOCIATION,	Civil Action No. 13-cv-0868 (JSR)
Plaintiff,	ECF Case
v.	
KANGADIS FOOD INC., d/b/a THE GOURMET FACTORY	
Defendant.	

DECLARATION OF BRIAN DOUGHERTY
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF BRIAN DOUGHERTY

I, Brian Dougherty declare as follows:

1. I am an employee of the company Foreign Trade Services Corp. and am over the age of eighteen. I am personally familiar with the facts stated herein and, if called as a witness, could and would testify competently thereto.

2. On August 15, 2012, I purchased 5 tins of Capatriti branded "100% pure olive oil" from Shoprite, located on 370 Route 22 West, Hillside, NJ. The tins were all from lot code GFO 52912. I paid $10.99 for each tin.

3. On August 15, 2012, I purchased 5 tins of Capatriti branded "100% pure olive oil" from Shoprite, located on 985 Richmond Avenue, Staten Island, NY. The tins were all from lot code GFO 61812. I paid $12.99 for each tin.

4. After acquiring the samples described in paragraphs 2-3 above, I stored them in a cardboard box in a temperature-controlled facility.

5. On September 5, 2012, at the direction of counsel, three tins from each of the lots described in paragraphs 2-3 above were shipped by DHL to Professor Lanfranco Conte at the University of Udine in Italy.

6. I have kept the remaining samples (two from each lot described in paragraphs 2-3 above) in a cardboard box in a temperature-controlled facility.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on January 11, 2013, at Newark, New Jersey.

Brian Dougherty

EXHIBIT 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTH AMERICAN OLIVE OIL ASSOCIATION, Plaintiff, v. KANGADIS FOOD INC., d/b/a THE GOURMET FACTORY Defendant.	Civil Action No. 13-cv-0868 (JSR) ECF Case

DECLARATION OF ULYSSES QUIAMBAO IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

DECLARATION OF ULYSSES QUIAMBAO

I, Ulysses Quiambao, declare as follows:

1. I am an employee of the company Foreign Trade Services Corp. and am over the age of eighteen. I am personally familiar with the facts stated herein and, if called as a witness, could and would testify competently thereto.

2. On August 16, 2012, I purchased 5 tins of Capatriti branded "100% pure olive oil" from Shoprite, located on 400 Evesham Road, Cherry Hill, NJ. The tins were all from lot code GFO 71612. I paid $10.99 for each tin.

3. On September 5, 2012, at the direction of counsel, three tins from this lot were shipped by DHL to Professor Lanfranco Conte at the University of Udine in Italy.

4. I have kept the remaining samples in a cardboard box in a temperature-controlled facility.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on January 11, 2013, at Newark, New Jersey.

Ulysses Quiambao

EXHIBIT 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTH AMERICAN OLIVE OIL ASSOCIATION, Plaintiff, -against- KANGADIS FOOD, INC. d/b/a/ THE GOURMET FACTORY, Defendant.	Docket No. 13-cv-0868 (JSR)(GWG) **AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION**

STATE OF NEW YORK)
)ss.:
COUNTY OF SUFFOLK)

THEMIS KANGADIS, being duly sworn, deposes and says:

1. I am the President of, and a shareholder in, defendant Kangadis Foods, Inc. ("Kangadis"). In my capacity as President of Kangadis, I oversee the purchase of products and materials that are ultimately packaged and branded for sale under the Kangadis name.

2. I make this affidavit in opposition to the motion of plaintiff North American Olive Oil Association ("NAOOA") for a preliminary injunction against Kangadis in connection with its labeling, marketing, and selling of its Capatriti brand "100% Pure Olive Oil" ("Capatriti").

3. I am fully familiar with all the facts and circumstances set forth herein based upon my review of Kangadis's business records and my own personal knowledge.

A. Kangadis Food's History

4. Kangadis was formed in 2003 as a family owned business engaged in importing and distributing fine ethnic foods.

5. Over time, Kangadis has developed several brands under which it sells various products, including the Capatriti brand. Under the Capatriti brand, Kangadis markets and sells four distinct types of olive oils: (i) extra virgin olive oil, (ii) 100% pure olive oil, (iii) extra light olive oil, and (iv) blended olive oil.

6. This action concerns only Kangadis's marketing and distribution of its Capatriti "100% Pure Olive Oil" (referred to herein exclusively as Capatriti).

7. Kangadis has been selling Capatriti as one of its brands of olive oil for the past six years. During that time, Capatriti has grown exponentially in popularity due to its consistency and flavor profile as compared to other olive oils sold in the United States. Today, Capatriti enjoys an estimated 15 percent share of the olive oil market, with new orders from Kangadis's customers (*i.e,* large retail supermarkets and big box chains) being made weekly.

8. In fact, as of March 7, 2013, Wal-Mart, one of the nation's largest retailers, began carrying the Capatriti brand in its stores regionally. Negotiations with Wal-Mart to sell Capatriti began months earlier, though.

9. Based on Wal-Mart's decision to carry Capatriti, upon information and belief, Wal-Mart stopped selling (or has placed fewer orders for) other brands of olive oil, including brands distributed by several of NAOOA's largest members such as, for example, Pompeian, Inc.

10. Not coincidently, this lawsuit followed shortly after Wal-Mart started decreasing its inventory for NAOOA member's brands to make space for Capatriti as an attempt to stifle Capatriti's lawful and robust competition with NAOOA's members.

B. Olive-Pomace Oil is Olive Oil

11. NAOOA repeatedly claims in its motion that Olive-Pomace Oil is not olive oil. That simply is not true. Olive-Pomace Oil is made from olives.

12. Indeed, the United States Department of Agriculture defines "Olive-Pomace Oil" as "the oil obtained by treating olive pomace (the product remaining after the mechanical extraction of olive oil) . . . ." 7 C.F.R. § 52.1531(c) (defined below as the 2010 Voluntary Standards); *see also* NY Agr. & Mrkts L., § 204-a.

13. NAOOA is acutely aware of this fact. In fact, NAOOA's Executive Vice-President, Eryn Balch ("Balch"), recently testified before the U.S. International Trade Commission ("ITC") that

> NAOOA's member companies import all ***types of olive oil*** consumed in the United States. These imports fall into three types [of olive oil] recognized by the International Olive Council, or "IOC" – extra virgin, olive oil, and ***olive-pomace oil***. While characterized by different chemical criteria and production methods, ***all three of these types are made only from olives*** and contain the same proportion of healthy monosaturated fats . . . . all grades of olive oil are a healthful choice.

A copy of Mrs. Balch's testimony before the ITC on December 5, 2012 during a hearing entitled "Olive Oil: Conditions of Competition between U.S. and Major Foreign Supplier Industries", available at http://www.usitc.gov/press_room/documents/testimony/332_537_022.pdf, is attached hereto as Exhibit "A" (referred to as the "Balch Testimony"). Emphasis added.

14. Olive-Pomace Oil does not come from the "first press" of raw olives, as that produces what is commonly referred to as Extra-Virgin Olive Oil. Instead, Olive-Pomace Oil is produced from further refining the mash of olive seed, skins and pulp left after the "first press."

15. Despite the refining process, Olive-Pomace Oil remains a "healthful choice" for consumers as it contains "the same proportion of healthy monosaturated fats" as other grades of olive oil." *See* Balch Testimony, at p. 2.

C. Capatriti Was Labeled Properly and Within Industry Standards

16. Almost immediately after Capatriti started competing with the olive oil brands distributed by NAOOA's members, NAOOA began harassing Kangadis in an attempt to get us to remove Capatriti from its customers' shelves. For example, in a letter dated March 22, 2007, NAOOA's President, Bob Bauer, sent to me a report of a test NAOOA conducted of Capatriti claiming that the product "contains a large proportion of olive pomace oil." Mr. Bauer's letter then (i) invites Kangadis to pay a fee *to the NAOOA* to appeal the purported test results, and (ii) threatens to make NAOOA's test results available to the U.S. Food and Drug Administration unless Capatriti is re-labeled. A copy of the NAOOA's March 22nd Letter to Kangadis is attached hereto as Exhibit "B."

17. NAOOA, however, is not a regulatory body. Instead, is merely a trade association of marketers, packagers, and importers of olive oil for sale in the United States and Canada. It is a membership-based organization, for which its members pay an annual membership due based, in large part, on its member's sales. A copy of NAOOA's Membership Application, available at which shows the annual fee scale for membership, is attached hereto as Exhibit "C."

18. Kangadis is not a member of the NAOOA and competes directly with many of the commonly recognizable brands produced by NAOOA's largest members, including Pompeian, Filippo Berio, Carapelli, Palermo, and Bertolli.

19. Notwithstanding, because I manage Kangadis's purchasing, bottling, marketing, and distribution of olive oil under the Capatriti brand, I have kept abreast of the industry standards, various guidelines, authoritative commentary, and press releases concerning any olive oil labeling requirements to ensure that Capatriti' s labels remained in compliance with applicable law (despite NAOOA's self-serving assertions).

20. Based upon my review of these documents, I had, and continue to have, a good-faith belief that Capatriti was labeled properly. I, therefore, declined to engage NAOOA and Mr. Bauer about their allegations against Capatriti.

i. *There Are No Federal Regulations Concerning the Labeling of Olive Oils*

21. Despite NAOOA's protestations to the contrary, there are no federal regulations concerning the labeling of olive oils to differentiate between different grades of oil. Indeed, in their moving papers, the NAOOA does not reference a single federal regulation to the contrary.

22. NAOOA, however, relies heavily upon a 1982 U.S. Food and Drug Administration ("FDA") No Action Report (21 C.F.R. 42,123) for the erroneous conclusion that such a federal regulation concerning olive oil/olive-Pomace oil exists. In the No Action Report, the FDA considered establishing such standards *but* found that

> in view of the fact that no data were submitted to support the need for this standard, FDA has concluded that there is not sufficient need to warrant proposing U.S. standards [for olive oils].

A copy of the FDA's findings (47 Fed. Reg. 42,123, Sept. 24, 1982) is attached hereto as Exhibit "D."

23. It was not until nearly three decades later, in 2010, that the United States Department of Agriculture's ("USDA") (and not the FDA, as the overseeing regulatory body) issued its United States Standards for Grades of Olive Oil and Olive-Pomace Oil, effective

October 24, 2010 (the "2010 Voluntary Standards"). The 2010 Voluntary Standards, however, are *not* requirements for the labeling of olive oil in the United States. Indeed, the USDA specifically states on the first page of the 2010 Voluntary Standards that they are "voluntary" and available for use by those who wish to do so. A copy of the 2010 Voluntary Standards is attached hereto as Exhibit "E."

24. The FDA has not issued any regulations making the 2010 Voluntary Standards enforceable or mandatory.

25. Indeed, in December 2011, Sebastián Cianci, an FDA spokesperson, was interviewed on the FDA's position on the enforcement of the 2010 Voluntary Standards. In that interview, Mr. Cianci reaffirmed that "the USDA standards are voluntary grade standards" and that the United States "*has not adopted [the terms used in the 2010 Voluntary Standards] as mandatory labeling requirements. . . .*" A copy of Mr. Cianci's interview, as reported by the Olive Oil Source on December 1, 2011, is attached hereto as Exhibit "F."

26. NAOOA is acutely aware of this fact. In July 2012, Balch submitted a written petition to the FDA requesting the FDA reconsider its "prior comments on the standard of identify for olive oil and olive-pomace oil." A copy of the NAOOA's July 9, 2012 Petition to the FDA is attached hereto as Exhibit "G."

27. To date, the FDA has not accepted NAOOA's invitation.

28. In fact, NAOOA's website currently states that,

> The USDA defines a **voluntary standard** for companies that want USDA grading certification . . . . [c]urrently, a mandatory standard of identity that defines what constitutes Extra Virgin Olive Oil, Olive Oil and Olive-Pomace Oil, does not exist in the United States.

A copy of the NAOOA's webpage, About Olive Oil, Olive Oil Regulations & Standards Background in North America, located at http://www.aboutoliveoil.org/regulations.html, is attached hereto as Exhibit "H." Emphasis in original.

ii. *The New York State Agriculture and Markets Law Does Not Prohibit Labeling Olive-Pomace Oil as Olive Oil*

29. In 2010, a few months before the USDA issued the 2010 Voluntary Standards, I learned that New York State enacted, for the first time, a law concerning the labeling of "Olive-oil mixtures" sold in New York. *See* NY Ag. & Mrkts L., § 204-a, attached hereto as Exhibit "I."

30. That law, just like the 2010 Voluntary Standards, defines the various grades of olive oil but then provides that "[i]t shall be unlawful for any person to . . . sell, offer for sale and/or expose for sale any compound or blended oil of any kind which purports to be an *olive oil mixture*, unless the container thereof be permanently and conspicuously labeled 'compound oil' or 'blended oil' with a statement of *the different ingredients thereof* . . . ." Emphasis added.

31. Capatriti, though, is not an "olive oil mixture" with "different ingredients," as it contains only Olive-Pomace Oil.

32. Further, the New York "Olive oil mixture" law does not prohibit Olive-Pomace Oil from being labeled as "olive oil."

33. Consequently, I believed that New York's "Olive oil mixture" law did not apply to Capatriti.

iii. *The International Olive Council is Not a Regulatory Body*

34. Lastly, NAOOA lends great credence to the International Olive Council ("IOC") in support of their claim that international regulations also prohibit the labeling of Olive-Pomace Oil as Olive Oil.

35. The IOC, however, is not a regulatory or enforcement agency.

36. Rather, the IOC is an "organisation [sic] . . . bring[ing] together olive oil and table olive producing and consuming stakeholders" to provide a "forum for authoritative discussion on issues of interest to the olive industry." *See* IOC, "The Institution," located at http://www.internationaloliveoil.org/estaticos/view/99-welcome-message (last visited March 18, 2013).

37. The United States is not a member of the IOC. *See* IOC, "List of IOC Members," located at http://www.internationaloliveoil.org/estaticos/view/103-list-of-ioc-members (last visited March 18, 2013).

38. Kangadis is under no obligation to conform its business practices to the suggestions of the IOC.

D. It is Industry Practice to Label Olive-Pomace Oil as Olive Oil

39. Given the absence of regulations, olive oil labeling in the United States is based, in large part, on marketing strategies. Consequently, Capatriti was labeled the same way many of its competitors labeled their similar products.

40. For example, Botticelli Foods, LLC, the manufacturer and distributor of many Botticelli brands of olive oil in the United States, distributes a product labeled as "100% Pure Olive Oil." A picture of the Botticelli "100% Pure Olive Oil" tin, found on Botticelli's website, is attached hereto as Exhibit "J."

41. Upon information and belief, the Botticelli brand "100% Pure Olive Oil" has a much larger share of the olive oil marketplace (approximately 25 percent in the Northeast) than does Capatriti (approximately 15 percent).

42. A recent chemical analysis of a sample of Botticelli's "100% Pure Olive Oil" conducted by Multichrom Laboratory, which is an internationally and IOC recognized olive oil testing laboratory located in Athens, Greece, reveals that it contains Olive-Pomace Oil, just like Capatriti did. A copy of Multichrom Laboratory's Test Results, February 21, 2012, is attached hereto as Exhibit "K."

43. Upon information and belief, Kalamata "100% Pure Olive Oil," which is also a competitor of Kangadis with a large market share (approximately 5 percent regionally), also contains Olive-Pomace Oil.

44. Botticelli's and Kalamata's "100% Pure Olive Oil," however, is not sold in Wal-Mart and, upon information and belief, does not compete directly with NAOOA's largest members on supermarket shelves. NAOOA, consequently, has not sued Botticelli and Kalamata. Rather, NAOOA has focuses its ire on Kangadis, which does compete with NAOOA's largest members, such as Pompeian.

E. **NAOOA's Own Members Mislabel Their Products**

45. NAOOA also has not sued its own members for their mislabeling of olive oils sold in the United States.

46. In July 2010, the University of California, Davis Olive Center published a report (the "UC-Davis Report") concluding that imported "extra virgin" olive oil often fails international IOC and USDA standards, including those so heavily relied upon by NAOOA in this action. A copy of the UC-Davis Report, entitled "Tests indicate that imported 'extra virgin' olive oil often fails international and USDA standards," is attached hereto as Exhibit "L."

47. The UC-Davis Report reveals that several of NAOOA's members – including Filippo Berio, Bertolli, Carapelli, and Pompeian – labeled their "extra virgin olive oils" sold in

the United States when they actually contained "virgin olive oil" or, in some cases, they were adulterated with canola oil. *See id.*, p. 8.

48. The UC-Davis Report was not the first time that NAOOA's members were accused of selling misbranded olive oils. In 2009, Pompeian touted the fact that it was the first olive oil to carry the NAOOA's "Seal of Quality." A copy of Pompeian's Press Release, dated January 2009, entitled "Pompeian is First Olive Oil to Carry the NAOOA Seal of Quality," is attached hereto as Exhibit "M."

49. NAOOA's "Seal of Quality," however, is meaningless, as on February 22, 2010, the FDA sent Pompeian a Warning Letter advising that its "'Pompeian Imported Extra Light Olive Oil' product is misbranded" under federal regulations. A copy of the FDA's Warning Letter is attached hereto as Exhibit "N."

50. Upon information and belief, NAOOA continues to endorse its member, Pompeian's olive oil and, further, has not commenced a litigation against any of its members mentioned in the UC-Davis Report.

F. Capatriti Contains "Olive Oil"

51. Kangadis no longer uses any Olive-Pomace Oil in Capatriti and, instead, is now filling its Capatriti tins with only "Olive Oil," as that term is defined in the 2010 Voluntary Standards. In fact, as of March, 1, 2013, all of the Capatriti tins filled by Kangadis and distributed in the United States contain only "Olive Oil."

52. Specifically, on or about February 25, 2013, Kangadis purchased a bulk supply (12,000 gallons) of "Olive Oil" (as defined by the 2010 Voluntary Standards) from AMD Oil Sales. Notably, AMD Sales is a member of the NAOOA. A copy of AMD Sales' Invoices, dated February 28, 2013, is attached hereto as Exhibit "O."

53. On March 4, Kangadis began filling the Capatriti containers in Lot Number GF30513 with the "Olive Oil" purchased from AMD Sales. A copy of Kangadis's "Assembly Edit List" is attached hereto as Exhibit "P."

54. Lot Number GF30513 contains to two distinct Item Numbers used for Capatriti: Item No. 01024, which are 101 fl. oz. tins of Capatriti, and Item No. 01025, which are 34 fl. oz. bottles of Capatriti.

55. On March 8, 2013, Kangadis packaged and shipped 812 cases (*i.e.*, tins and bottles) of Item Nos. 01024 and 01025 to various Wal-Mart stores across the country. A copy of the Invoices to Wal-Mart for those shipments, with pricing and other sales dates redacted, is attached hereto as Exhibit "Q."

56. On March 8, 2013, I selected three random samples from Lot Number GF30513 and shipped them, by overnight delivery, to Multichrom Laboratory, which is an internationally and IOC recognized olive oil testing laboratory located in Athens, Greece.

57. Multichrom's analysis report for each of the three samples from Lot Number GF30513, dated March 13, 2013, confirms that the olive oil in Lot Number GF30513 is, in fact, "Olive Oil" as defined by the IOC and the 2010 Voluntary Standards. A copy of Multichrom's Analysis Reports is attached hereto as Exhibit "R."

58. On March 8, 2013 (P.O. 10605), and again on March 13, 2013 (P.O. 10625), Kangadis submitted additional purchase orders to an olive oil vender located in the Middle East, for another 120,000 kilograms (or 264,554 pounds) of "Pure Olive Oil." This shipment will enable Kangadis to continue filling orders for Capatriti, similar to those filled for Wal-Mart, with "Olive Oil." A copy of Kangadis's March 8th and March 13th Purchase Orders are attached hereto as Exhibit "S."

59. From now on, Capatriti will be filled with only "Olive Oil," and will not contain any Olive-Pomace Oil.

WHEREFORE, it is respectfully requested that NAOOA's application for a preliminary injunction be denied in its entirety.

THEMIS KANGADIS

Sworn to before me this
19th day of March 2013.

MARILYN RODRIGUEZ
Notary Public, State of New York
No. 01RO6230825
Qualified in Queens County
Commission Expires Nov. 6, 2014

Notary Public 3/19/13

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EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTH AMERICAN OLIVE OIL ASSOCATION,

Plaintiff,

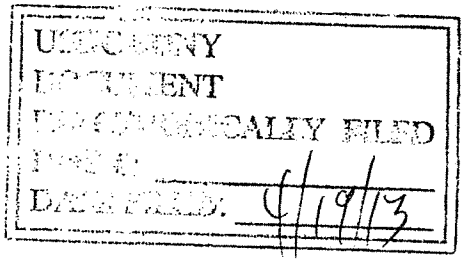
-v-

KANGADIS FOOD INC. d/b/a THE GOURMET FACTORY,

Defendant.

13 Civ. 868 (JSR)

PRELIMINARY INJUNCTION



JED S. RAKOFF, U.S.D.J.

Plaintiff North American Olive Oil Association ("NAOOA") brings this action against defendant Kangadis Food Inc., doing business as The Gourmet Factory ("Kangadis"), asserting claims for false advertising under the Lanham Act and for deceptive acts and practices and false advertising under New York General Business Law §§ 349 and 350. Plaintiff now moves for a preliminary injunction. After oral argument and on consent of the parties, the Court on April 12, 2013 preliminarily enjoined Kangadis (1) from selling as "100% Pure Olive Oil" any product containing Pomace, and (2) from selling any product containing Pomace without expressly labeling it as such. The Court reserved decision and invited supplemental briefing on three remaining disputed issues: (1) whether to extend the injunction to enjoin Kangadis from selling as "100% Pure Olive Oil" products containing 100% refined olive oil, (2) whether to extend the injunction to order Kangadis to provide some kind of

notice of its past mislabeling, and (3) whether to require NAOOA to post a bond.

Having considered the parties' written submissions and oral arguments, the Court resolves those remaining issues as follows. First, the Court declines to extend the injunction to enjoin Kangadis from selling 100% refined olive oil as "100% Pure Olive Oil," finding that NAOOA has not shown a clear "likelihood of success on the merits" on this claim or a "a balance of hardships tipping decidedly toward the party requesting the preliminary relief." Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd., 598 F.3d 30, 35 (2d Cir. 2010).

Second, the Court hereby orders Kangadis to take reasonable steps to provide notice of its past mislabeling as to tins of "100% Pure Olive Oil" containing Pomace that have not yet been sold to end consumers. Specifically, the Court orders Kangadis, as soon as practicable, to send to each and every party to whom it sold or distributed "100% Pure Olive Oil" containing Pomace within the last six months stickers or other labels that may be affixed to its products expressly informing potential consumers that the product contains Pomace or, as Kangadis prefers to call it, olive-Pomace oil (the "stickers"). Kangadis is further ordered to send with the stickers a notice (1) informing the addressee that tins of "100% Pure Olive Oil" packed before March 1, 2013 contain Pomace, and (2) requesting that the addressee (a) immediately affix the stickers to any tins packed before March 1, 2013 still in the addressee's

possession, and (b) immediately forward a copy of the notice and any remaining stickers to any and all downstream parties to whom the addressee sold or distributed any tins packed before March 1, 2013, unless those downstream parties are end consumers. Kangadis is further ordered to inform NAOOA of the proposed contents of the stickers and the notice before they are sent out, such that any disputes about whether those contents comply with this preliminary injunction may be resolved before the stickers and notice are distributed.

NAOOA has also requested the Court to order Kangadis to provide notice of its past mislabeling through its website. The Court declines to do so, finding that NAOOA has not made a "clear showing that [it] is entitled to" such relief. Tom Doherty Associates, Inc. v. Saban Entm't, Inc., 60 F.3d 27, 34 (2d Cir. 1995).

Finally, as security for any unwarranted harm that Kangadis may incur as a result of the notice discussed above, the Court hereby orders NAOOA to post a bond in the amount of $10,000 not later than Wednesday, April 24, 2013.

A written opinion explaining the reasons for these rulings will issue next week.

SO ORDERED.

Dated: New York, NY
April 19, 2013

JED S. RAKOFF, U.S.D.J.

EXHIBIT 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTH AMERICAN OLIVE OIL ASSOCATION,

Plaintiff,

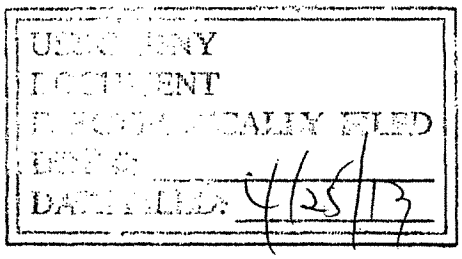
-v-

KANGADIS FOOD INC. d/b/a THE GOURMET FACTORY,

Defendant.

13 Civ. 868 (JSR)

OPINION AND ORDER



JED S. RAKOFF, U.S.D.J.

Plaintiff North American Olive Oil Association ("NAOOA") brings this action against defendant Kangadis Food Inc., doing business as The Gourmet Factory ("Kangadis"), asserting claims for false advertising under the Lanham Act and for deceptive acts and practices and false advertising under New York General Business Law §§ 349 and 350. Plaintiff alleges that Kangadis has falsely and deceptively marketed a product as "100% Pure Olive Oil" when in fact it contains Pomace, an industrially processed oil produced from olive pits, skins, and pulp. Plaintiff has moved for a preliminary injunction. In response to that motion, Kangadis represents that all tins of its "100% Pure Olive Oil" product packed after March 1, 2013 contain no Pomace and instead are 100% refined olive oil.

After oral argument and on consent of the parties, the Court on April 12, 2013 preliminarily enjoined Kangadis (1) from selling as "100% Pure Olive Oil" any product containing Pomace, and (2) from selling any product containing Pomace without expressly labeling it

as such. The Court reserved decision and invited supplemental briefing, however, on several remaining disputed issues relating to plaintiff's motion. On April 19, 2013, the Court resolved those remaining issues as follows: the Court (1) declined to extend the injunction to enjoin Kangadis from selling 100% refined olive oil as "100% Pure Olive Oil," (2) ordered Kangadis to take certain steps to inform potential consumers that tins of "100% Pure Olive Oil" packed before March 1, 2013 contain Pomace, (3) declined to order Kangadis to provide notice of its past mislabeling through its website, and (4) ordered NAOOA to post a $10,000 bond not later than April 24, 2013. This Opinion explains the reasons for those rulings.

The basic facts are not in dispute, at least not for purposes of the preliminary injunction motion. Kangadis is a food import and distribution company formed in 2003. Affidavit of Themis Kangadis in Opp'n to Pl.'s Mot. for Prelim. Inj. ("Kangadis Aff.") ¶ 4. For the past six years, Kangadis has sold, under the brand name Capatriti, a product labeled as "100% Pure Olive Oil." Id. ¶¶ 5-7. The popularity of this product has grown over time, and it now occupies about fifteen percent of the market. Id. ¶ 7.

NAOOA, a trade association representing the interests of the olive oil industry, has produced an expert report from Professor Lanfranco Conte concluding that three samples of Kangadis's product procured in August 2012 in fact contain significant quantities of Pomace. See Expert Report of Prof. Lanfranco Conte ("Conte Report"), ex. A to Decl. of Timothy J. Treanor in Supp. of Pl.'s

Mot. for Prelim. Inj. ("Treanor Decl.") ¶¶ 67-70; Decl. of Ulysees Quiambao in Supp. of Pl.'s Mot. for Prelim. Inj.; Decl. of Brian Dougherty in Supp. of Pl.'s Mot. for Prelim. Inj.

Prof. Conte explains that the substance commonly known as "olive oil" comes from olives that are harvested, quickly carried to a mill, washed, crushed, and spun to separate out extraneous solids and excess water. Conte Report ¶¶ 9-14. This process is entirely mechanical and involves no heat or chemicals. Id. ¶ 12. The product directly resulting from this process is generally known as "virgin olive oil." Id. ¶¶ 15-17. If virgin olive oil undergoes refining to remove impurities, then it is no longer called "virgin," but remains "olive oil." Id. ¶ 18-19. By contrast, Pomace, also known as olive-Pomace oil, is made from the residue materials left over after olive oil has been mechanically extracted from the flesh of the olives. The residual skins, pits, and pulp are sent to specialized facilities, where they are dried, heated, and treated with industrial solvents to produce Pomace. Id. ¶¶ 20-23.

Kangadis does not dispute these significant differences in the production of olive oil and Pomace. See Kangadis Aff. ¶ 14. Kangadis also admits that "at all relevant times prior to this action," its "100% Pure Olive Oil" product "contained only Olive-Pomace Oil." Def.'s Br. at 7 (citing Kangadis Aff. ¶ 31). Kangadis represents, however, that it "no longer uses any Olive-Pomace Oil in [its "100% Pure Olive Oil" product] and instead, is now filling its Capatriti tins with only 'Olive Oil.'" Kangadis Aff. ¶ 51.

Kangadis further represents that "as of March 1, 2013, all of the Capatriti tins filled by Kangadis and distributed in the United States contain only 'Olive Oil.'" Id. However, the "olive oil" Kangadis is now using to fill tins of "100% Pure Olive Oil" is 100% refined olive oil, and contains no virgin olive oil. See id. ¶ 52, ex. O.

As explained above, the Court, on consent of the parties, has preliminarily enjoined Kangadis from selling as "100% Pure Olive Oil" any product containing Pomace, and from selling any product containing Pomace without expressly labeling it as such. In the first of the addition injunctive requests that NAOOA makes, NAOOA asks that this Court preliminarily enjoin Kangadis from selling 100% refined olive oil as "100% Pure Olive Oil," as Kangadis represents it is now doing. In support of this request, NAOOA points to a number of state, federal, and industry labeling standards that distinguish between "olive oil" or "pure olive oil," which must contain at least some virgin olive oil, and "refined olive oil," which need not contain any virgin olive oil.

The Court must first address the applicable legal standard. The Supreme Court has held that "[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

Nevertheless, the Second Circuit continues to hold, even after Winter, that "a party seeking a preliminary injunction [must] show (a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd., 598 F.3d 30, 35 (2d Cir. 2010) (internal quotation marks omitted). While this suggests a more liberal standard than that set forth in Winter, here the result is the same under either approach.

With respect to the first of the addition injunctive orders that NAOOA seeks, NAOOA has shown irreparable harm. "To demonstrate irreparable harm in a Lanham Act case, a party 'must show two things: (i) that the parties are competitors in the relevant market, and (ii) that there is a logical causal connection between the alleged false advertising and its own sales position.'" CJ Products LLC v. Snuggly Plushez LLC, 809 F. Supp. 2d 127, 149 (E.D.N.Y. 2011) (quoting Zeneca Inc. v. Eli Lilly & Co., No. 99 Civ. 1452 (JGK), 1999 WL 509471 (S.D.N.Y. July 19, 1999)). Here, it is undisputed that NAOOA's member companies compete with Kangadis, and thus any additional sales Kangadis enjoys will likely come at the expense of NAOOA members.[1] Moreover, refined olive oil is generally cheaper

[1] NAOOA has standing to seek injunctive relief on behalf of its members because (1) its members would have standing to sue in their

than virgin olive oil, see Conte Report ¶ 24, and thus, to the extent Kangadis's labels are false or misleading, they provide an unfair competitive advantage. In addition, Kangadis's labeling allegedly induces consumers to purchase a product that is not what it seems, and thus may cause consumers to lose faith in olive oil products in general. These types of harms are quintessentially irreparable, as "[i]t is virtually impossible to prove that so much of one's sales will be lost or that one's goodwill will be damaged as a direct result of a competitor's advertisement." Coca-Cola Co. v. Tropicana Products, Inc., 690 F.2d 312, 316 (2d Cir. 1982).

Whether NAOOA has made the required showing as to its likelihood of success on the merits is a closer question. As stated, NAOOA relies on a series of labeling standards that distinguish between "olive oil" or "pure olive oil" and "refined olive oil." Under New York labeling standards, for example, "olive oil" is defined as "a blend of refined olive oil[] and virgin olive oils," while "refined olive oil" is defined as "the olive oil obtained from virgin olive oils by [certain] refining methods." N.Y. Agric. & Mkts. Law § 204-a; see also N.Y. Comp. Codes R. & Regs. tit. 1, § 269(a)(1), (c) (establishing "[s]tandards of identity" for "olive oil" and "refined olive oil" using similar

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own right, (2) the interests NAOOA seeks to protect are germane to its purpose, and (3) neither the claims asserted nor the relief requested requires the participation of individual members. See Nat'l Ass'n of Pharm. Mfrs., Inc. v. Ayerst Laboratories, Div. of/& Am. Home Products Corp., 850 F.2d 904, 914 (2d Cir. 1988) (per curiam).

definitions). New York law deems any product or label that fails to conform to these definitions "adulterated" or "misbranded," and thus unlawful. See N.Y. Agric. & Mkts. Law §§ 199-a(1), 200, 201.

Federal and industry standards similarly distinguish "olive oil" from "refined olive oil." Voluntary labeling standards promulgated by the USDA separately define "U.S. Olive Oil" and "U.S. Refined Olive Oil," requiring the former to contain some virgin olive oil. See 7 C.F.R. § 240.1534(d), (e); see also Termination of Consideration of Codex Standard, 47 Fed. Reg. 42,123 (Sept. 24, 1982) (FDA notice explaining that under certain unspecified labeling standards, only "[b]lends of virgin olive oil and refined olive oil may be labeled as 'olive oil.'"). The Conte Report likewise explains that the industry convention is that "[o]live oil is the oil consisting of a blend of refined olive oil and virgin olive oils fit for consumption as they are." Conte Report ¶ 19(b).

NAOOA also notes that Kangadis's own website has in the past touted its "100% Pure Olive Oil" product as a "wonderful blend of virgin and refined oil made from hand picked olives." Suppl. Decl. of Eryn A. Balch in Supp. of Pl.'s Reply in Supp. of Pl.'s Mot. for Prelim. Inj. ("Balch Decl.") ¶ 4. In addition, two of Kangadis's suppliers have defined "pure olive oil" as a blend of virgin and refined olive oil on their websites. Id. ¶¶ 5, 7, 9.

It is beyond reasonable dispute that by labeling 100% refined olive oil as "100% Pure Olive Oil," Kangadis is violating these various standards. NAOOA's complaint, however, does not seek direct

enforcement of these standards, which are either legally nonbinding or unenforceable through a private right of action. Rather, NAOOA alleges that Kangadis's labeling constitutes false advertising or a deceptive business practice because it is impermissibly misleading to consumers. But critically, NAOOA presents no extrinsic evidence that the perceptions of ordinary consumers align with these various labeling standards such that they would understand a product labeled "100% Pure Olive Oil" to contain a blend of refined and virgin olive oil. For that reason, the Court is compelled to conclude that NAOOA has failed to show a likelihood of success on the merits.

It is well established that "[a] claim of false advertising [under the Lanham Act] may be based on at least one of two theories: that the challenged advertisement is literally false, i.e., false on its face, or that the advertisement, while not literally false, is nevertheless likely to mislead or confuse consumers." Tiffany (NJ) Inc. v. eBay Inc., 600 F.3d 93, 112 (2d Cir. 2010). "Where an advertising claim is literally false, the court may enjoin the use of the claim without reference to the advertisement's impact on the buying public." Id. (internal quotation marks omitted). But where a plaintiff proceeds on a theory of implied falsity, "a plaintiff must demonstrate, by extrinsic evidence, that the challenged commercials tend to mislead or confuse consumers, and must demonstrate that a statistically significant part of the commercial audience holds the false belief allegedly communicated by the

challenged advertisement." Id. at 112-13 (internal quotation marks omitted).

Because it offers no extrinsic evidence of consumer confusion, NAOOA's Lanham Act claim may proceed only on theory of literal falsity. But the Second Circuit has made clear that "only an unambiguous message can be literally false." Time Warner Cable, Inc. v. DIRECTV, Inc., 497 F.3d 144, 158 (2d Cir. 2007) (quoting Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co., 290 F.3d 578, 587 (3d Cir. 2002)). Accordingly, "if the language or graphic is susceptible to more than one reasonable interpretation, the advertisement cannot be literally false." Id. at 158. Here, the Court cannot conclude that Kangadis's label is susceptible only to the impermissibly misleading interpretation advocated by NAOOA.

Indeed, the Court finds it entirely plausible that a reasonable ordinary consumer would interpret the phrase "100% Pure Olive Oil" to refer simply to a product that contains olive oil -- that is, oil derived from the flesh of the fruit of the olive tree -- and nothing but olive oil. The consumer could very well view the phrase as simply remaining silent as to whether that olive oil is virgin or refined. Of course, based on the standards NAOOA cites, olive oil industry insiders and certain regulators likely would understand Kangadis's label to describe a blend containing at least some virgin olive oil. But in the absence of any evidence to the contrary, it

is far from clear that an ordinary consumer, unfamiliar with industry lingo, would perceive those terms the same way.

The First Circuit's decision in Cashmere & Camel Hair Mfrs. Inst. v. Saks Fifth Ave., 284 F.3d 302 (1st Cir. 2002), on which NAOOA relies, is not to the contrary. In that case, a purveyor of men's clothing marketed as "cashmere" suits that in fact contained recycled fibers, when a federal statute required recycled cashmere to be labeled as such. Id. at 307. The First Circuit held that a reasonable trier of fact could find the defendant's advertising to be literally false, because the federal statute "essentially tell[s] consumers that garments labeled 'cashmere' can be presumed to be virgin cashmere as if it had been explicitly stated." Id. at 316.

But Cashmere came to the First Circuit on an appeal from the district court's grant of partial summary judgment to the defendant, requiring the court to "construe the record evidence in the light most favorable to" the plaintiff. Id. at 308 (internal quotation marks). Based on that standard of review, the First Circuit indulged the inference that the defendant's advertising necessarily conveyed the literally false implicit message that its suits were made with virgin cashmere. The question here, however, is not whether a reasonable trier of fact could find Kangadis's label literally false, but whether it is likely to do so. As explained above, the Court cannot on the present record make a finding,

sufficient to support a preliminary injunction, that a reasonable factfinder is likely to resolve this question in NAOOA's favor.[2]

The analysis of the merits of plaintiff's state law claims is not materially different. "[T]o state a claim under [New York General Business Law] sections 349 and 350, a plaintiff must allege that (1) the defendant's act, practice or advertisement was consumer-oriented; (2) it was materially deceptive and misleading; and (3) that plaintiff was injured as a result." Verizon Directories Corp. v. Yellow Book USA, Inc., 309 F. Supp. 2d 401, 405 (E.D.N.Y. 2004). As explained with respect to plaintiff's Lanham Act claim, in the absence of any extrinsic evidence of consumer confusion, the Court is not persuaded that a reasonable trier of fact would likely find it materially deceptive and misleading to market 100% refined olive oil as "100% Pure Olive Oil."

The Court thus concludes that NAOOA has not shown, at this stage, a likelihood of success on the merits of its claim that it is unlawful to sell 100% refined olive oil as "100% Olive Oil." To be sure, in light of the host of state, federal, and industry labeling standards that distinguish between "olive oil" or "pure olive oil"

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[2] In addition, the Court notes that the First Circuit's heavy reliance in Cashmere on its obligation on summary judgment to draw all inferences in the plaintiff's favor is in considerable tension with the Second Circuit's binding teaching that an advertisement amenable to more than one reading cannot be literally false. Compare Cashmere, 284 F.3d at 315 ("After drawing all reasonable inferences in favor of the nonmoving party, a rational factfinder could conclude that plaintiffs' recycled cashmere claim is one of literal falsity."), with Time Warner Cable, 497 F.3d at 158 ("[I]f the language or graphic is susceptible to more than one reasonable interpretation, the advertisement cannot be literally false.").

and "refined olive oil," NAOOA may have raised "sufficiently serious questions going to the merits to make them a fair ground for litigation." Citigroup Global Markets, 598 F.3d at 35. However, even under that prong of the Second Circuit's flexible preliminary injunction standard, that is not enough to for NAOOA to prevail on this motion, since NAOOA has not shown the other part of that prong, i.e., "a balance of hardships tipping decidedly" in its favor. Id.

Indeed, in all of their briefing before and after oral argument, neither party squarely addresses the balance of hardships that would result from barring Kangadis from selling 100% refined olive oil as "100% Pure Olive Oil." To be sure, declining to enjoin advertising that turns out on the merits to be false and misleading would likely cause some competitive harm to NAOOA's member companies, but at present it is entirely unclear how severe that harm would be. Moreover, NAOOA's primary concern in filing this action was not the mislabeling of refined olive oil but the mislabeling of Pomace, which has now ceased and is enjoined by the Court's existing injunction. As for the burden on Kangadis, extending the preliminary injunction as NAOOA requests would require Kangadis to immediately change either its label or its product, which no doubt would involve considerable burdens, expenses, and risks to Kangadis's consumer relationships and goodwill. Accordingly, on the present record, the Court cannot conclude that the balance of hardship tips decisively in NAOOA's favor.

Turning to the second and third of the additional injunctive measures that NAOOA seeks, NAOOA also asks this Court to order Kangadis to provide notice to consumers regarding its past mislabeling of tins packed containing Pomace in two ways: through Kangadis's website, and through stickers or other labels, which would be sent through Kangadis's distribution chain and affixed to Kangadis's tins packed before March 1, 2013, and which would inform potential consumers that the tins in fact contain Pomace.

Turning first to the question of irreparable harm, the Court finds that NAOOA likely will be irreparably harmed if such notice is not provided. As the Court explained at oral argument, this legal question hinges on a factual determination as to whether a significant number of tins of "100% Pure Olive Oil" containing Pomace remain available for sale in the marketplace. NAOOA points out that Kangadis sells approximately a million tins of "100% Pure Olive Oil" per year, see Declaration of Eryn A. Balch in Supp. of Pl.'s Suppl. Mem. ¶ 2, and the packaging states that the product remains edible for a full two years, see Balch Decl. ¶ 6(a). NAOOA also notes that the average U.S. consumer consumes approximately one liter of olive oil per year, and thus a large quantity of 3-liter tins of "100% Pure Olive Oil" containing Pomace likely remain on consumers' kitchen shelves. See NAOOA Suppl. Br. at 7.

For its part, Kangadis represents that on March 1, 2013, it began "fill[ing]" its Capatriti tins with refined olive oil, Kangadis Aff. ¶ 51, and thus by now much of the "100% Pure Olive

Oil" being offered for sale in the market is refined olive oil and not Pomace. Kangadis further notes that as a result of the publicity surrounding the filing of this lawsuit on February 6, 2013, a number of orders of "100% Pure Olive Oil" were cancelled, decreasing the supply of Capatriti tins available in the marketplace in the interim below their usual levels. Aff. of Themis Kangadis in Further Opp'n to Pl.'s Mot. for Prelim. Inj. ¶¶ 9-10.

On balance, the Court concludes that NAOOA has shown that it is likely that a not insignificant number of tins of "100% Pure Olive Oil" containing Pomace remain available for sale in the marketplace. NAOOA's sales figures show that on average Kangadis sells tens of thousands of Capatriti tins per week, and the evidence of cancelled orders shows only that Kangadis's recent distribution volume is somewhat diminished, not that it is insignificant. Moreover, while Kangadis represents that Capatriti tins "filled" after March 1, 2013 contain only refined olive oil, it makes no representation as to when it put its last tins containing Pomace into its distribution chain, nor how long it takes the average tin to filter through the distribution chain to the end consumer. Given the product's long shelf life, the Court concludes that it is likely that a considerable number of tins containing Pomace remain at some point in the distribution chain and have not yet been sold to end consumers.

Accordingly, the Court finds that NAOOA is likely to be irreparably harmed if potential consumers are not notified that

Capatriti tins packed before March 1, 2013 contain Pomace. This irreparable harm, however, can be fully addressed by requiring Kangadis to send appropriate stickers through its distribution chain to affix to unsold Capatriti tins that contain Pomace. Notice in this form will be targeted narrowly at potential consumers who might otherwise purchase Pomace labeled as "100% Pure Olive Oil," and will render unnecessary any broader notice to consumers through Kangadis's website. To be sure, website notice would go beyond the stickers in informing past purchasers as to the contents of Capatriti tins that are still sitting on their kitchen shelves, but NAOOA fails to explain how notice to past purchasers would avert any irreparable harm to its members. Once the consumer has decided to purchase Capatriti rather than another brand, the harm to Kangadis's competitors has been done, and cannot be undone by the provision of website notice.[3]

[3] In its pre-argument briefing, Kangadis argues that NAOOA's argument as to irreparable harm is fatally undermined by its unreasonable delay in seeking a preliminary injunction. See Tough Traveler, Ltd. v. Outbound Products, 60 F.3d 964, 968 (2d Cir. 1995) (noting that unreasonable delay "undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury"). Specifically, Kangadis points out that that in 2007, NAOOA sent a letter to Kangadis stating that NAOOA's quality control program had tested a sample of "Capatriti extra virgin olive oil," which was determined to "contain[] a large proportion of olive pomace oil." Letter from Bob Bauer, President of NAOOA, to Aristidis Kangadis, CEO of Kangadis (Mar. 22, 2007), ex. B to Kangadis Aff. Kangadis also notes that NAOOA obtained the samples underlying the Conte Report in August 2012, but did not file this action until February 2013. The Court, however, does not find NAOOA's delays unreasonable under the circumstances. To begin with, the adulterated sample NAOOA discovered in 2007 pertained to extra virgin olive oil, while this suit concerns "100% Pure Olive Oil."

Turning to the merits of NAOOA's claim that it is unlawful to sell Pomace as "100% Pure Olive Oil," the Court finds that NAOOA is likely to prevail on this claim. Like its claim with respect to refined olive oil, NAOOA points to a number of state, federal, and industry labeling standards, all of which distinguish between olive oil and Pomace, and require the latter to be labeled as such. See 7 C.F.R. § 240.1535 (voluntary USDA standard providing that "[o]live-pomace oils shall not be labeled as 'olive oil'"); 47 Fed. Reg. at 42,123 (FDA notice explaining that, under certain unnamed labeling standards, "oil extracted from olive pomace and pits by chemical means and refined to make it edible must be labeled either 'refined olive-residue oil' or 'refined extracted olive-residue oil'"); N.Y. Agric. & Mkts. Law § 204-a(a), (b) (separately defining "olive oil" and "olive pomace oil"); N.Y. Comp. Codes R. & Regs. tit. 1, § 269(a)(1), (c) (establishing separate "standards of identity" for

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See Kangadis Aff. ¶¶ 5-6 (distinguishing between these products). Moreover, before investigating further, NAOOA could reasonably assume that the adulterated sample was the result of a discrete quality control error rather than an ongoing effort to pass off Pomace as olive oil. See Tom Doherty Assocs., Inc. v. Saban Entm't, Inc., 60 F.3d 27, 39 (2d Cir. 1995) ("[A] delay in filing suit will not rebut the presumption of irreparable harm if the plaintiff does not know how severe the [misconduct] is."). Delays resulting from the careful preparation of the Conte Report, which has been critical to the Court's resolution of this motion, likewise were not unreasonable. See id. ("[A] delay caused by a plaintiff's good faith efforts to investigate . . . does not rebut the presumption of irreparable harm."). The Court finally notes that Kangadis has not identified any material prejudice it has suffered as a result of NAOOA's delay. See Conopco, Inc. v. Campbell Soup Co., 95 F.3d 187, 192 (2d Cir. 1996) ("In order to prevail on the affirmative defense of laches, a defendant must prove that it has been prejudiced by the plaintiff's unreasonable delay in bringing the action.").

"olive oil" and "olive pomace oil"); International Olive Council, IOC Trade Standard, COI/T.15/NC No 3/Rev.6 § 2.2 (Nov. 2011) (trade standard of U.N.-based intergovernmental body providing that "[o]live oil is the oil obtained solely from the fruit of the olive tree . . ., to the exclusion of oils obtained using solvents or re-esterification processes").

Unlike NAOOA's claim with respect to refined olive oil, however, the Court finds that NAOOA has adequately shown that it is literally false, and not simply potentially misleading, to advertise Pomace as "100% Pure Olive Oil." While Pomace may in some sense be "olive oil" in that it is an oil derived from olives, it is not remotely what the ordinary consumer understands "olive oil" to be. Indeed, in arguing that NAOOA should be required to post a bond, Kangadis affirmatively asserts that if consumers are notified "about the presence of Olive-Pomace Oil in Capatriti, its sales of Capatriti certainly will plummet." Def. Br. at 23. That assertion is telling, since it would be unfounded if consumers already understood the term "olive oil" to encompass an industrially processed substance like Pomace.[4]

As to the balance of hardships and the public interest, the Court finds that these factors also favor an injunction. The only hardships the injunction will cause to Kangadis are the modest

[4] Olive oil and refined olive oil, by contrast, are not so fundamentally different. Both substances come from mechanically pressed olive flesh, and indeed, under the labeling standards NAOOA relies on, "olive oil" actually contains refined olive oil.

direct costs of creating and distributing the stickers, as well as some diminished goodwill from any resulting negative publicity. But NAOOA assured the Court at oral argument that, in contrast to its role in inviting an article in the New York Times the same day this action was filed, it had no intention of trumpeting this Court's preliminary relief to the press. Based on that representation, any diminished goodwill Kangadis suffers from this injunction will largely be of its own doing, as it "can assert no equitable interest in the perpetuation of an advertising campaign that is literally false." Castrol Inc. v. Pennzoil Co., 799 F. Supp. 424, 440 (D.N.J. 1992), aff'd, 987 F.2d 939 (3d Cir. 1993). In the absence of an injunction, however, NAOOA will continue to suffer irreparable lost sales and diminished goodwill. And as for the public interest, that interest will not be harmed by this injunction, and will indeed be well served by ensuring that consumers do not purchase a product based on false advertising. See Snuggly Plushez, 809 F. Supp. 2d at 149 ("[T]he public interest is served by preventing customer confusion or deception." (internal quotation marks omitted)).

The final, remaining issue related to plaintiff's motion is the amount of any bond NAOOA should be required to post. Federal Rule of Civil Procedure 65(c) provides that a court "may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined." NAOOA contends that no bond is necessary; Kangadis initially sought

a $1 million bond, but in its post-argument submission now seeks a $10 million bond, which would approximate the gross profits Kangadis expects to earn from its Capatriti product over the next three years. Because the Court cannot conclude that Kangadis would be totally unharmed by this injunction, some security is appropriate. See Doctor's Associates, Inc. v. Stuart, 85 F.3d 975, 985 (2d Cir. 1996) ("[I]t has been held proper for the court to require no bond where there has been no proof of likelihood of harm."). Kangadis's suggested amounts for the bond, however, are wildly unreasonable. This case will be finally adjudicated in far less than three years, and there is no reason to believe that the narrow notice provided by the stickers would totally eviscerate the product's profits. In the event the injunction has issued in error, a $10,000 bond likely will adequately compensate Kangadis for the costs of the ordered notice and any damages they may cause.

Accordingly, for the foregoing reasons, the Court hereby confirms its additional preliminary injunction ruling issued on April 19, 2013. The Court thus declines to enjoin Kangadis from selling refined olive oil as "100% Pure Olive Oil," orders Kangadis to provide reasonable notice to potential consumers of its past mislabeling of Pomace as set forth in the April 19 injunction, and orders NAOOA to post a $10,000 bond not later than April 24, 2013.

SO ORDERED.

Dated: New York, NY
April 24, 2013

JED S. RAKOFF, U.S.D.J.

EXHIBIT 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORTH AMERICAN OLIVE OIL ASSOCATION, Plaintiff, -v- KANGADIS FOOD INC. d/b/a THE GOURMET FACTORY, Defendant.	13 Civ. 868 (JSR) AMENDED PRELIMINARY INJUNCTION

JED S. RAKOFF, U.S.D.J.

Plaintiff North American Olive Oil Association ("NAOOA") brings this action against defendant Kangadis Food Inc., doing business as The Gourmet Factory ("Kangadis"), asserting claims for false advertising under the Lanham Act and for deceptive acts and practices and false advertising under New York General Business Law sections 349 and 350. NAOOA alleges that Kangadis has falsely and deceptively marketed a product under the Capatriti brand as "100% Pure Olive Oil" when in fact it contains an industrially processed oil produced from olive pits, skins, and pulp, known as "Olive-Pomace Oil" or "Pomace." Kangadis represents that while Capatriti tins and bottles packed before March 1, 2013 consisted of 100% Pomace, tins and bottles packed after that date now contain 100% refined olive oil.

NAOOA moved for a preliminary injunction. On April 12, 2013, this Court, on consent of the parties, issued a preliminary injunction enjoining Kangadis "(1) from selling as '100% Pure Olive

Oil' any product containing Pomace, and (2) from selling any product containing Pomace without expressly labeling it as such." On April 19, 2013, the Court issued a second preliminary injunction, which (1) declined to extend the injunction to prohibit Kangadis from selling as "100% Pure Olive Oil" any product containing 100% refined olive oil; (2) ordered Kangadis to provide appropriate notice to potential consumers that "100% Pure Olive Oil" tins packed before March 1, 2013, contain Pomace; and (3) ordered NAOOA to post a $10,000 bond. The Court explained the reasons for these rulings in an Opinion and Order issued on April 24, 2013. Kangadis now moves for reconsideration, to which NAOOA consents in part and objects in part.

Kangadis's motion concerns the notice ordered in the Court's April 19 injunction. That portion of the injunction provides:

> [T]he Court hereby orders Kangadis to take reasonable steps to provide notice of its past mislabeling as to tins of "100% Pure Olive Oil" containing Pomace that have not yet been sold to end consumers. Specifically, the Court orders Kangadis, as soon as practicable, to send to each and every party to whom it has sold or distributed "100% Pure Olive Oil" containing Pomace within the last six months stickers or other labels that may be affixed to its products expressly informing consumers that the product contains Pomace . . . (the "stickers"). Kangadis is further ordered to send with the stickers a notice (1) informing the addressee that tins of "100% Pure Olive Oil" packed before March 1, 2013 contain Pomace, and (2) requesting that the addressee (a) immediately affix the stickers to any tins packed before March 1, 2013 still in the addressee's possession, and (b) immediately forward a copy of the notice and any remaining stickers to any and all downstream parties to whom the addressee sold or distributed any tins packed before March 1, 2013, unless those downstream parties are end consumers.

Kangadis requests that this portion of the injunction be replaced by a "voluntary" recall of all Capatriti tins and bottles from Kangadis's wholesalers, which Kangadis would then replace with Capatriti tins and bottles that do not contain Pomace. NAOOA consents to allowing Kangadis to recall mislabeled products instead of causing them to be marked with stickers, but argues that any sticker or recall program must extend to retailers and not just wholesalers. NAOOA also argues that stickers or recall must be accompanied by an appropriate notice clearly informing wholesalers and retailers that tins and bottles of labeled as "100% Pure Olive Oil" packed before March 1, 2013 actually consist of only Pomace and are being recalled or marked with stickers pursuant to a court order. To prevent any further delays, NAOOA also asks the Court specify the form this notice should take.

On reconsideration, the Court grants Kangadis's request that it be permitted to recall any tins or bottles of "100% Pure Olive Oil" containing Pomace rather than causing them to be marked with stickers. As the Court has previously explained, the purpose of the notice and sticker program ordered in the April 19 injunction was to ensure that potential consumers do not purchase Pomace that is falsely and misleadingly advertised as "100% Pure Olive Oil." That purpose is equally well-served by a recall; indeed, by removing mislabeled tins and bottles from the marketplace altogether, a recall may actually achieve the Court's goal even more completely than the sticker program, which the Court previously ordered on the

assumption that it would be less harmful to Kangadis than other alternatives. Given that NAOOA does not object to this portion of Kangadis's application, the Court sees no reason not to allow Kangadis to fully meet the Court's objective of protecting consumers and competitors from false advertising through alternative means that Kangadis believes will be more efficient and less disruptive.

However, the Court cannot accept Kangadis's suggestion that the recall extend only to wholesalers and not to retailers. Kangadis avers that it is "confident" that retailers have only a few days' supply of mislabeled product, given that supermarkets generally have limited shelf and storage space. Aff. of Themis Kangadis, ¶ 21. However, Kangadis previously represented that "very little" mislabeled product remained in its distribution chain, but now acknowledges that whole pallets of mislabeled product may still remain in its distributors' warehouses. Moreover, whether mislabeled tins are in the possession of wholesalers or retailers, they are no less mislabeled, and will, when sold, cause no less irreparable harm to unwitting consumers and to NAOOA.

Furthermore, Kangadis has not shown that it will be significantly more burdensome to extend a recall to retailers. In fact, Kangadis has a written recall policy, and just a few weeks ago told the USDA that a recent mock recall required only "3.5 hours to account for all product." Decl. of Nitin Reddy, ex. E, at 13. Under these circumstances, Kangadis's speculation about the quantity of mislabeled product held by retailers cannot justify curtailing

the scope of the Court's prior injunction. See Parrish v. Sollecito, 253 F. Supp. 2d 713, 715 (S.D.N.Y. 2003) ("Reconsideration of a court's previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." (internal quotation marks omitted)).

The Court also cannot accept Kangadis's suggestion that it be permitted to perform a recall without providing notice to wholesalers or retailers about this Court's orders and the fact that the "100% Pure Olive Oil" packed before March 1, 2013 consists of 100% Pomace. Wholesalers and retailers have a right to know the basis for the actions they will be asked to undertake pursuant to this Court's orders, not least to ensure that they fully understand the importance of compliance. See Perfect Fit Indus., Inc. v. Acme Quilting Co., Inc., 646 F.2d 800, 803-04 (2d Cir. 1981) (approving notice to downstream distributors). In addition, to prevent any further delays, the Court will specify the form of the notice to be distributed, as set forth below.

Accordingly, for the foregoing reasons, as well as those set forth in the Court's Opinion and Order of April 24, 2013, the Court hereby amends its previously issued preliminary injunctions to read as follows:

1. Kangadis is enjoined from selling as "100% Pure Olive Oil" any product containing Pomace, and from selling any product containing Pomace without expressly labeling it as such.

2. The Court declines to enjoin Kangadis from selling as "100% Pure Olive Oil" any product containing 100% refined olive oil. The Court also declines to order Kangadis to provide notice of its past mislabeling on its website.

3. NAOOA is ordered to post a $10,000 bond.[1]

4. Kangadis is ordered to determine, as reasonably accurately as possible, the number of tins and bottles of Capatriti "100% Pure Olive Oil" packed before March 1, 2013 present in its distribution chain, including in the possession of wholesalers and retailers.

5. Kangadis is ordered to require all relevant wholesalers and retailers, by no later than May 20, 2013, either

   a. To return to Kangadis all stock of Capatriti "100% Pure Olive Oil" packed before March 1, 2013, or

   b. To affix to the front of each and every tin or bottle of Capatriti "100% Pure Olive Oil" packed before March 1, 2013 within their possession a sticker, to be provided in appropriate numbers by Kangadis, bearing the words "contains 100% Olive-Pomace Oil" in 36-point font.

6. Kangadis is ordered to provide to all wholesalers and retailers who have, in the past six months, purchased Capatriti "100% Pure Olive Oil" containing Pomace, a notice containing the following language:

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[1] The Court notes that NAOOA posted a $10,000 bond on April 24, 2013, satisfying this requirement.

NOTICE OF COURT ORDERS RE: SALE OF OLIVE-POMACE OIL

You are receiving this notice because you purchased tins or bottles of the Capatriti brand of "100% Pure Olive Oil" that were packed before March 1, 2013. Those tins or bottles contain only Olive-Pomace Oil. Pursuant to the attached Court Order, if applicable, you are requested to (a) provide a copy of this letter to any retailers to whom you sold such tins or bottles and (b) either (i) apply the enclosed stickers to the front of tins or bottles currently in your possession with a "best by" date before March 1, 2015, or (ii) return such tins or bottles to us [Kangadis]. You can contact us at the phone number or address supplied below for returns or to request additional stickers.

To the extent Kangadis sends this notice to retailers directly, it is permitted to omit the language in clause (a) of the notice. Similarly, to the extent Kangadis elects to perform a recall rather than to cause stickers to be applied to its mislabeled tins and bottles, or vice versa, Kangadis is permitted to omit the language in clause (b)(i) or clause (b)(ii) of the notice. Finally, to the extent Kangadis elects to recall all of its Capatriti "100% Pure Olive Oil" tins and bottles, rather than merely those packed after March 1, 2013, it is permitted to amend the language of the penultimate sentence of the notice accordingly.

7. Kangadis is ordered to send the notice described in paragraph 6 above to all aforesaid wholesalers and retailers no later than close of business on May 10, 2013, by means of personal delivery, email, facsimile, next-day delivery, or other method of delivery reasonably intended to result in actual receipt within no more than 2 business days. The notice must

include as a physical or electronic attachment or enclosure a copy of this Amended Preliminary Injunction. To the extent Kangadis elects to cause stickers to be affixed to its mislabeled tins and bottles rather than to recall them, an appropriate number of the required stickers must be included with each notice. A copy of the notice and any required stickers must be served simultaneously on counsel for NAOOA.

8. Kangadis is ordered to retain copies of the notices and any stickers actually sent pursuant to this Amended Preliminary Injunction, as well as a complete list of recipients, throughout the pendency of this litigation.

9. Kangadis is ordered, through counsel, to call Chambers jointly with opposing counsel not later than May 23, 2013, to report to the Court on its compliance with this Amended Preliminary Injunction.

SO ORDERED.

Dated: New York, NY
May 6, 2013

JED S. RAKOFF, U.S.D.J.

EXHIBIT 14


Capatriti®
Capatriti Estates
100% Pure
100% Pure
Olive Oil
The Essence of Old World Italy
Net Contents 101 FL. OZ. (3 QT. 5 FL. OZ.) 3 Liters

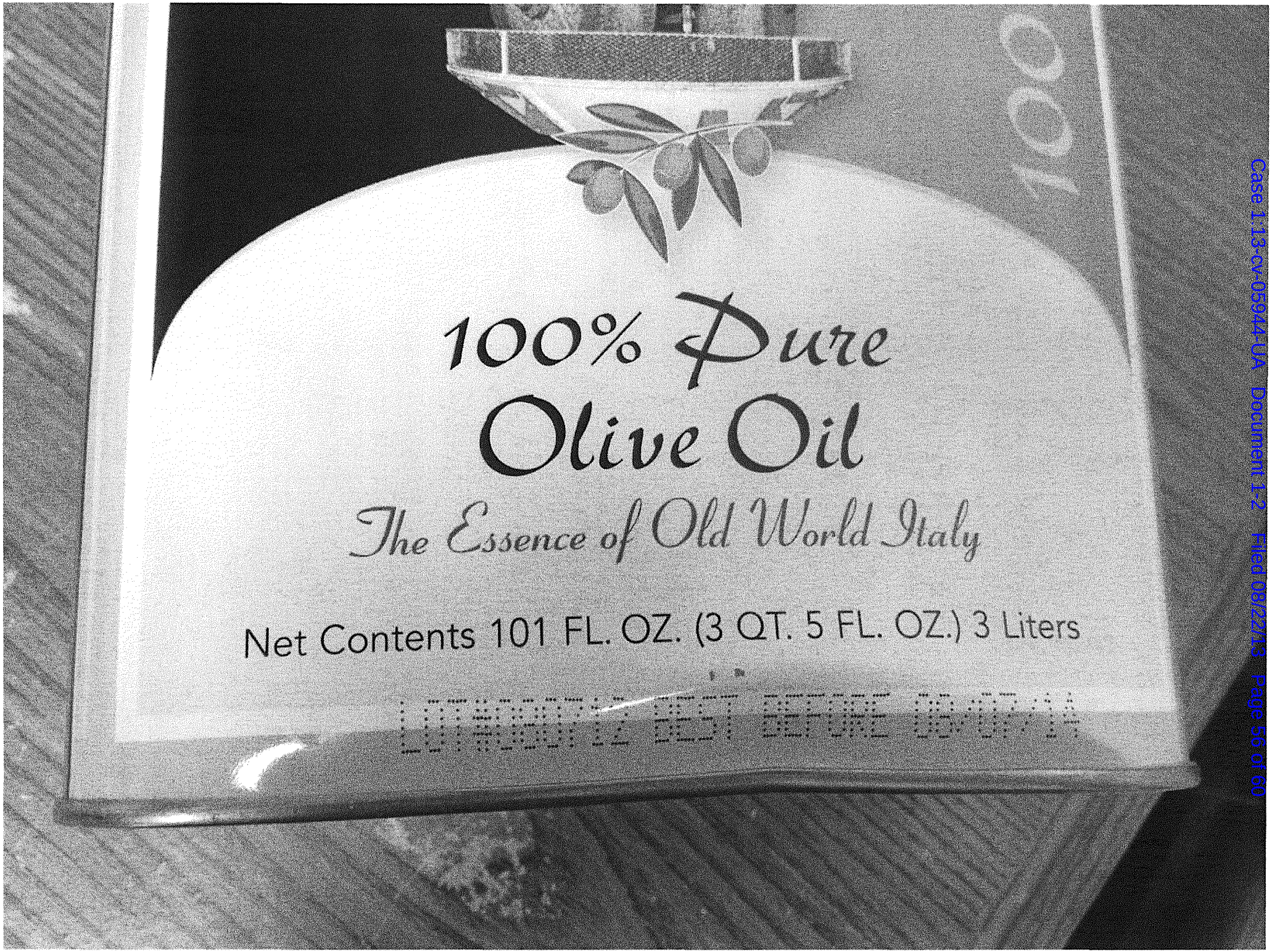

EXHIBIT 15

Denele Analytical, Inc.

1232 South Ave. Turlock, CA 95380
Phone (209) 634-9055 - Fax (209) 634-9057

www.denelelab.com

Sample Analysis Report

Customer
Finkelstein & Thompson
1077 30th NW Suite 150
Washington, DC 20007

Grower
Finkelstein & Thompson
1077 30th NW Suite 150
Washington, DC 20007

PURCHASE ORDER: pd ck#259
RECEIVED DATE: 04/29/2013 11:22 am
SUBMITTED BY: Frank Toscano
APPROVED DATE: 04/30/2013 9:29 am

Olive Oil Panel-A (EVOOA)
SOURCE: Olive Oil

Sample ID	Lab ID	Analyte	Method Ref	Result	Units
Capatriti	762510A	Free Fatty Acid (FFA)		0.20	% as oleic
		Peroxide Value (PER)	AATM 516-01	8.33	meq/Kg
		K 270nm (K270)	COI T20 Doc No. 19	1.314	abs
		K 232nm (K232)	COI T20 Doc No. 19	> MAX	abs
		Delta K (DELK)	COI T20 Doc No. 19	0.048	.

EXHIBIT 16

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		Peroxide Value (PER)	AATM 516-01	8.33	meq/Kg
		K 270nm (K270)	COI T20 Doc No. 19	1.228	abs
		K 232nm (K232)	COI T20 Doc No. 19	3.968	abs
		Delta K (DELK)	COI T20 Doc No. 19	0.046	

UV Extinction was re-analyzed