

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

GRUPPO ESSENZIERO ITALIANO, S.p.A., \*  
Strada Cebrosa, 23/25  
10036 Settimo Torinese \*  
Torino, Italy \*

Plaintiff,

Civil Action No.:

vs.

AROMI D'ITALIA INC. \*  
7038 Aviation Blvd. \*  
Glen Burnie, Maryland 21061 \*

Defendant.

SERVE ON: \*  
Boris Ghazarian, Resident Agent \*  
1563 Old Annapolis Road \*  
Woodbine, Maryland 21797 \*

\* \* \* \* \*

**COMPLAINT FOR PRELIMINARY AND  
PERMANENT INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff Gruppo Essenziero Italiano, S.p.A. sues defendant Aromi d'Italia Inc.:

1. This is an action to halt confusion between plaintiff's trademark **AROMITALIA** and defendant's use of the name "Aromi d'Italia" in connection with the sale of gelato and gelato products and equipment, and to recover amounts owed to plaintiff on account of plaintiff's sales of gelato products to defendant prior to the termination of the defendant as plaintiff's exclusive United States distributor.

2. Plaintiff Gruppo Essenziero Italiano, S.p.A. ("GEI") is an Italian Corporation with its principal place of business in Turin, Italy.

3. Defendant Aromi d'Italia, Inc. is a Maryland Corporation with its principal place of business in Maryland.

4. Boris T. Ghazarian ("Ghazarian"), a Maryland resident, was at all relevant times an owner of Aromi d'Italia, Inc., and at the time of the events forming the basis of the claims, has been its sole owner.

5. Jurisdiction is based on 28 U.S.C. § 1332 as there is diversity of citizenship. The amount in controversy, exclusive of interest and costs, exceeds \$ 75,000.

6. Jurisdiction is also based on 28 U.S.C. § 1338 as this is a civil action arising under an Act of Congress pertaining to trademarks and asserts a substantially related claim of unfair competition.

7. Jurisdiction over the non-federal causes of action is alternatively based on supplemental jurisdiction, 28 U.S.C. § 1367.

8. GEI is engaged in the manufacture, packaging and sale of ingredients for its own brand of gelato, an Italian ice cream, under the trademark **AROMITALIA**.

9. GEI has been selling gelato products under the trademark **AROMITALIA** since 1957, and has been importing and selling gelato ingredients in the United States under the trademark **AROMITALIA** since 1997.

10. GEI's **AROMITALIA** gelato products are sold primarily to retailers throughout the United States who use the products (base mix and flavorings) to make gelato for sale to consumers. The sale of gelato products to retailers is referred to as wholesale distribution.

11. GEI's gelato products have been and are prominently labeled with the trademark **AROMITALIA**.

12. GEI has trademark rights in the trademark **AROMITALIA** as used for gelato ingredients throughout the United States.

13. By written agreement effective April 22, 2000, GEI appointed Aromi d'Italia, Inc. as the exclusive distributor of **AROMITALIA** gelato products in the United States (the "Distributor Agreement").

14. The Distributor Agreement: (1) expressly recognized that GEI has intellectual property rights in the trademark **AROMITALIA**; (2) licensed Aromi d'Italia, Inc. to use the **AROMITALIA** trademark only in connection with the sale of GEI's goods; and (3) permitted Aromi d'Italia, Inc. to use the name "Aromi d'Italia" in connection with the sale of GEI's **AROMITALIA** gelato products.

15. On or about July 2, 2007, GEI terminated the Distributor Agreement based on Aromi d'Italia, Inc.'s nonpayment of substantial sums due.

16. Aromi d'Italia, Inc. no longer has any right to use the trademark **AROMITALIA**, or any confusingly similar mark, including "Aromi d'Italia", in connection with gelato products.

17. Aromi d'Italia, Inc. has used and continues to use the confusingly similar name Aromi d'Italia on wholesale gelato products, and in services in connection with the sale of gelato products at wholesale, including without limitation, a display at a major industry trade show in Las Vegas in September, 2008, causing a likelihood of confusion in the marketplace.

18. Preliminary injunctive relief is required to avoid additional harm given: (a) the impending spring and summer high season for the sale of gelato; and (b) a major industry trade show scheduled in Chicago on April 27 – 29, 2008.

**COUNT I**

**(Trademark – Wholesale Distribution)**

19. GEI incorporates the allegations in paragraphs 1-18 as though fully set forth herein.

20. Following the termination of the distributor Agreement, Aromi d'Italia, Inc. and/or another entity created by or with the assistance of Ghazarian, has engaged in the wholesale distribution of gelato products labeled with the name "Aromi D'Italia".

21. Following the termination of the distributor Agreement, Aromi d'Italia, Inc. and/or another entity created by or with the assistance of Ghazarian, has used the name "Aromi D'Italia" in connection with the wholesale sale of gelato products.

22. Aromi d'Italia, Inc.'s use of the name "Aromi d'Italia" to label gelato products for wholesale distribution is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection, or association with GEI and its **AROMITALIA** gelato products, or as to the origin, sponsorship, or approval of Aromi d'Italia, Inc.'s goods or commercial activities by GEI, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

23. Aromi d'Italia, Inc.'s use of the name "Aromi d'Italia" in any way in connection with the wholesale sale of gelato products is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection, or association with GEI and its **AROMITALIA** gelato products, or as to the origin, sponsorship, or approval of d'Italia's goods or commercial activities by GEI, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

24. Aromi d'Italia, Inc. is deliberately trying to confuse, cause mistake and deceive the wholesale purchasers of gelato products into believing there is some affiliation, connection, or association between GEI and its **AROMITALIA** gelato products and Aromi

d'Italia, Inc. as to the origin, sponsorship or approval of Aromi d'Italia, Inc.'s products bearing the "Aromi d'Italia" name.

25. Aromi d'Italia, Inc. has infringed and continues to infringe the rights of GEI.

26. Aromi d'Italia, Inc.'s infringement has been willful.

27. No adequate remedy exists at law, and GEI will suffer irreparable injury and damage if Aromi d'Italia, Inc. is allowed to continue its infringement.

WHEREFORE, GEI requests that this Court:

A. Enter judgment that GEI's trademark rights are infringed by Aromi d'Italia, Inc.;

B. Direct that Aromi d'Italia, Inc., and all persons acting by, through or under authority of Aromi d'Italia, Inc., be preliminarily and permanently enjoined from labeling, advertising, selling or distributing gelato products in the wholesale market using the name "Aromi d'Italia";

C. Order an accounting and an award of damages adequate to compensate GEI for Aromi d'Italia, Inc.'s infringement;

D. Order an increase in damages for Aromi d'Italia, Inc.'s willful infringement;

E. Enter a judgment for GEI's costs of this suit and reasonable attorneys fees;  
and

F. Enter such other and further relief as the Court may deem just and proper.

## COUNT II

### (Trademark - Product Codes)

28. GEI incorporates the allegations in paragraphs 1 – 11 and 18-21 as though fully set forth herein.

29. GEI has used and continues to use unique product codes, including “DPO” (milk based) and “DBF” (water based), followed by a sequence of numbers to identify its **AROMITALIA** gelato mixes and products, both in the United States and throughout the world.

30. GEI has trademark rights in its distinctive product codes, including “DPO” and “DBF”, followed by a sequence of numbers, and/or in the sequence of numbers themselves, to identify its **AROMITALIA** brand gelato mixes and products throughout the United States.

31. The wholesale purchasers of GEI’s **AROMITALIA** gelato products recognize GEI’s distinctive product codes, including “DPO” and “DBF”, followed by a sequence of numbers, and/or the sequence of numbers themselves, to identify GEI’s **AROMITALIA** brand gelato mixes and products throughout the United States.

32. Following the termination of the Distributor Agreement, Aromi d’Italia, Inc. and/or another entity created by or with the assistance of Ghazarian, has engaged in the wholesale distribution of gelato products using GEI’s unique product codes “DPO” and “DBF”, followed by the numbering sequence, and/or the number sequences themselves and/or confusingly similar designations.

33. Aromi d’Italia, Inc.’s use of GEI’s unique product codes, followed by a sequence of numbers, and/or the sequence of numbers themselves, or confusingly similar designations in connection with Aromi d’Italia, Inc.’s wholesale distribution of gelato products is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection, or association with GEI and its **AROMITALIA** gelato products, or as to the origin, sponsorship,

or approval of Aromi d'Italia, Inc.'s goods or commercial activities by GEI, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

34. Aromi d'Italia, Inc. is deliberately trying to confuse, cause mistake and deceive the wholesale purchasers of gelato products into believing there is some affiliation, connection, or association between GEI and Aromi d'Italia, Inc. as to the origin, sponsorship or approval of Aromi d'Italia, Inc.'s products.

35. Aromi d'Italia, Inc. has infringed and continues to infringe the rights of GEI.

36. Aromi d'Italia, Inc.'s infringement has been willful.

37. No adequate remedy exists at law, and GEI will suffer irreparable injury and damage if Aromi d'Italia, Inc. is allowed to continue its infringement.

WHEREFORE, GEI requests that this Court:

A. Enter judgment that GEI's trademark rights are infringed by Aromi d'Italia, Inc.

B. Direct that Aromi d'Italia, Inc., and all persons acting by, through or under authority of Aromi d'Italia, Inc., be preliminarily and permanently enjoined from labeling, advertising, selling or distributing gelato products in the wholesale market using GEI's product codes product codes, including "DPO" and "DBF", followed by a sequence of numbers, and/or the sequence of numbers themselves or any confusingly similar marks;

C. Order an accounting and an award of damages adequate to compensate GEI for Aromi d'Italia, Inc.'s infringement;

D. Order an increase in damages for Aromi d'Italia, Inc.'s willful infringement;

E. Enter a judgment for GEI's costs of this suit and reasonable attorneys fees;  
and

F. Enter such other and further relief as the Court may deem just and proper.

### COUNT III

#### (Trademark and Unfair Competition)

38. GEI incorporates the allegations in paragraph 1-11, 18 - 21, and 29-32 as though fully set forth herein.

39. Aromi d'Italia, Inc. has continued to associate itself on its website with GEI, thereby trading on GEI's goodwill.

40. Aromi d'Italia, Inc.'s use of the web address [www.aromiditalia.com](http://www.aromiditalia.com) in connection with the sale of gelato products trades on GEI's goodwill.

41. Following termination of the Distributor Agreement, Aromi d'Italia, Inc. continued to sell **AROMITALIA** products, at times altering the expiration date to sell products that should no longer have been placed for sale.

42. Aromi d'Italia, Inc.'s actions constitute a breach of GEI's trademark rights and or unfair competition.

WHEREFORE, GEI requests that this Court:

A. Enter judgment that Aromi d'Italia, Inc. has unfairly competed with GEI and/or infringed GEI's trademark rights;

B. Direct that Aromi d'Italia, Inc., and all persons acting by, through or under authority of Aromi d'Italia, Inc., be preliminarily and permanently enjoined from taking any action that affiliates itself with GEI or **AROMITALIA** gelato products;

C. Order an accounting and an award of damages adequate to compensate GEI for Aromi d'Italia, Inc.'s unfair competition;

D. Enter a judgment for GEI's costs of this suit and reasonable attorneys fees;  
and

E. Enter such other and further relief as the Court may deem just and proper.

#### COUNT IV

##### (Trademark – Retail)

43. GEI incorporates the allegations in paragraphs 1-18 as though fully set forth herein.

44. Aromi d'Italia, Inc. and/or other related entities engage in the retail sale of gelato products in stores bearing the name "Aromi d'Italia" and using products such as cups or containers bearing the name "Aromi d'Italia".

45. Aromi d'Italia, Inc.'s use of the name "Aromi d'Italia" in connection with Aromi d'Italia, Inc.'s retail sale of gelato products is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection, or association with GEI and its **AROMITALIA** gelato products, or as to the origin, sponsorship, or approval of Aromi d'Italia, Inc.'s goods or commercial activities by GEI, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

WHEREFORE, GEI requests that this Court:

A. Enter judgment that GEI's **AROMITALIA** trademark is infringed by Aromi d'Italia, Inc.'s use of the name "Aromi d'Italia" in the retail sale of gelato.

B. Direct that Aromi d'Italia, Inc., and all persons acting by, through or under authority of Aromi d'Italia, Inc., be preliminarily and permanently enjoined from the advertising, selling or distributing of gelato products at retail using the name "Aromi d'Italia" in any fashion;

C. Enter a judgment for GEI's costs of this suit and reasonable attorneys fees;  
and

D. Enter such other and further relief as the Court may deem just and proper.

**COUNT V**

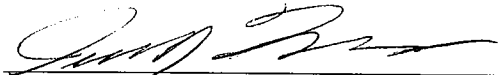
**(Breach of Contract – Damages)**


46. GEI incorporates the allegations of paragraphs 1-9, 13 and 15 as though fully set forth herein.

47. GEI sold **AROMITALIA** gelato products to Aromi d' Italia for which it was not paid.

48. Aromi d'Italia, Inc. owes GEI approximately 812,000 Euros (approximately \$1,400,000) plus prejudgment interest from the date each invoice was due for amounts unpaid for the purchase of **AROMITALIA** products.

WHEREFORE, GEI requests that judgment be entered in its favor against Aromi d'Italia, Inc. for \$1,400,000 or such other amount as is found to be due and owing, plus prejudgment interest, and costs.

  
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Jerrold A. Thrope  
(Federal Bar No. 01376)

  
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