

Complaint.

FEDERAL TRADE COMMISSION

v.

SUNLIGHT CREAMERIES.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 623—July 26, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of butter, using the so-called station plan, under which the cream is assembled at various stations in charge of agents, whose duty it is to purchase from farmers and to foster and protect their patronage, and to ship the cream to the plant when assembled in sufficient quantities, by false and by derogatory statements concerning its competitors and their contracts, and by threats, indemnification and increased compensation, and offers thereof, attempted to and did induce competitors' agents to break their contracts and abandon their stations for its own, with resulting loss to competitors and gain to it of patronage built up by them in the course of many years at heavy expense; in so doing also taking advantage of its competitors' observance and its breach of an agreement to discontinue such practices:

Held, That such inducement of breach of contract and appropriation of values, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sunlight Creameries, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent is a corporation, organized and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business in the city of Washington Court House, in the State of Ohio.

PAR. 2. That respondent for more than a year last past has been, and now is, engaged in the business of selling and distributing butter, and that such sales are made throughout the States and Territories of the United States in competition with others so engaged in selling butter.

PAR. 3. That the respondent and its said competitors, in the conduct of their business, severally purchase in competition with each

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other, in the States of Ohio, Indiana, and Kentucky, and in other States of the United States, the principal component material, cream or butter fat, necessary for the manufacture of said butter so shipped and sold, and cause the cream or butter fat so purchased to be shipped to their respective plants where it is converted into butter and thence sold and shipped to the purchasers thereof as aforesaid; that such cream or butter fat and butter is continuously moved to, from, and among the aforesaid and other States of the United States, and there now is, and at all times herein mentioned has been, a continuous current of trade and commerce in such butter fat and between and among the various States of the United States.

PAR. 4. That in the course of its said business respondent, through its officers, employees, and agents, for more than six months last past has conducted, and now is conducting, a campaign of defamation against a competitor, by circulating and causing to be circulated, among said competitor's employees, patrons, and others, newspapers, reprints from newspapers, and other printed matter containing false and unfair statements with reference to said competitor's business, which statements have a tendency and capacity to cause, and do cause, employees to sever their connection with, and patrons to withdraw their patronage from such competitor, thereby causing it the loss of great values created by, and belonging to, such competitor, which values respondent has appropriated, and now is appropriating, to its own use and benefit.

PAR. 5. That in pursuance of its said campaign, and as a part thereof, respondent, through its officers, employees, and agents, has, and now is, attempting to weaken said competitor's business organization, depreciate it as a competitor, and appropriate values created by it, by approaching said competitor's employees, and others, and by making to them false and unfair statements having a tendency and capacity to destroy the confidence of such employees, patrons, and others in said competitor's financial stability, and in said competitor's ability to continue to remain in business; and having a tendency and capacity to create among other false impressions in the minds of such employees that their reputation and future business usefulness in the creamery industry would be ruined by longer remaining in the employ of said competitor.

PAR. 6. That in furtherance of said campaign, by the use of methods as above described, and by means of threats, intimidation, and persuasion, respondent attempted to induce, and did induce, employees to violate and terminate their contracts with said competitor,

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by leaving its employ to take employment with respondent and to carry with them the business and patronage belonging to and enjoyed by said competitor, such employees being stationed at cities and places located at distances from said competitor's main place of business and intrusted and charged with the duties of procuring, serving, dealing with, and holding for the benefit of said competitor large groups of its patrons.

PAR. 7. That investigation by the Commission, based on numerous complaints, revealed the almost universal practice in the creamery industry of methods of competition of the nature herein charged, and others; that to eliminate such methods more speedily than could be accomplished by formal proceedings instituted against individual concerns, a large number of creamery owners from various States, at the invitation of the Commission, assembled at the city of Omaha, in the State of Nebraska, on November 3, 1919, and then and there in open meeting, presided over by a Commissioner of the Federal Trade Commission, did, by means of resolutions individually discussed and separately voted on, define and denounce those methods of competition which in the experience of the industry had proven to be unfair; that later the State associations of creamery men in the States of Ohio, Indiana, Illinois, Iowa, Kansas, Michigan, Minnesota, Wisconsin, Nebraska, and Colorado, at their respective official meetings, ratified and adopted the resolutions so passed at said city; that practically the entire industry in so far as represented by such associations in the States named have officially acted on and approved said resolutions; that at the time of their original adoption by the industry and in the announcement thereof by the Commission, such resolutions were designated as, and are known as, "Trade Practice Submittal—Creamery Industry"; that December 1, 1919, was adopted, by resolutions of the said Nebraska and Michigan associations and generally understood by all others in the industry, as the day upon which the practice of methods so denounced was to entirely cease, and which on said day did cease; that among other purposes intended and accomplished by the institution and adoption of such "Trade Practice Submittal" was the obviation of a multiplicity of formal proceedings due to the voluntary and simultaneous action of the industry in eliminating practically all of the methods and practices so defined and denounced.

PAR. 8. That respondent was, and is, well acquainted with the purpose, intent, and spirit of the action taken by the industry for the enlightenment of the Commission in the form of such "Trade Practice Submittal," respondent having expressed its approval

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thereof, among other ways, by participation in the unanimous ratification of said "Trade Practice Submittal" given at a meeting, held on November 20, 1919, called for such purpose by the Ohio Association of Creamery Owners and Butter Manufacturers, the same being one of the State associations referred to in paragraph 7 hereof.

PAR. 9. That resolutions I and V of said "Trade Practice Submittal" read respectively as follows:

I. *Resolved*, That the willful interference by any person, association, or corporation, by any means or devices whatever, with any existing contract between an employer and employee or agent of such employer in or about the production, manufacture, transportation, purchase, or sale of any dairy product or the performance of any contractual duty or service connected therewith, such interference being for the purpose or with the effect of dissipating, destroying, or appropriating, in whole or in part, the patronage, property, or business of another engaged in such industry, is hereby declared unfair.

* * * * *

V. *Resolved*, That the making, causing, or permitting to be made or published any false or untrue statement of or concerning the business policies or methods of a competitor is hereby declared unfair.

PAR. 10. That by reason of the foregoing facts respondent has been, and is, using unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, Sunlight Creameries, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered its appearance by its attorney and having filed its answer admitting certain of the allegations of said complaint, and denying certain others thereof; and the Commission, having introduced testimony and evidence in support of the charges of said complaint, and the respondent having rested its case without the introduction of evidence and having waived the filing of briefs and the hearing of argument herein, and

Thereupon this proceeding having come on for final hearing without oral argument, and the Commission having duly considered the record, and it being fully advised in the premises, makes this its findings as to the facts, and conclusion:

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FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent is a corporation, organized and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business in the city of Washington Court House, in the State of Ohio.

PAR. 2. That respondent for more than a year last past has been, and now is, engaged in the business of selling and distributing butter, and that such sales are made throughout the States and Territories of the United States in competition with others so engaged in selling butter.

PAR. 3. That the respondent and its said competitors, in the conduct of their business, severally purchase in competition with each other, in the States of Ohio, Indiana, and Kentucky, and in other States of the United States, the principal component material, cream or butter fat, necessary for the manufacture of said butter so shipped and sold, and cause the cream or butter fat so purchased to be shipped to their respective plants where it is converted into butter and thence sold and shipped to the purchasers thereof as aforesaid; and that such cream or butter fat and butter is continuously moved to, from and among the aforesaid and other States of the United States, and there now is, and at all times herein mentioned has been, a continuous current of trade and commerce in such butter fat and butter between and among the various States of the United States.

PAR. 4. That respondent and its said competitors secure their raw material, cream or butter fat, by a method known to the creamery trade as the "station plan"; and that by such plan a flow of small quantities of cream from numerous farms in the immediate vicinity is directed to the station, from whence it passes in larger volume to the churning plant.

PAR. 5. That respondent in competition with its said competitors and numerous other creameries similarly engaged, operates such station plan and causes cream gathered at its stations in the States of Ohio, Indiana, and Kentucky to be shipped to its creamery plant in Ohio.

PAR. 6. That one such competing creamery company operates such station plan and ships the cream gathered at its stations in the State of Kentucky, the southern parts of the States of Indiana, and Illinois, and the northern part of the State of Tennessee, to its creamery plant in Kentucky.

PAR. 7. That another such competing creamery company operates such station plan and ships the cream gathered at its stations in the States of Indiana and Ohio to its creamery plant in Indiana.

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PAR. 8. That cream so gathered at the stations of said competing creamery companies is shipped to their respective creamery plants as soon as a sufficient quantity of cream is secured to constitute a shipment; that immediately upon its arrival at the churning plants such cream is poured into vats and churned into butter, and after being so churned is shipped to other States for sale in competition with respondent and others; that frequently such cream is purchased at stations for the purpose of filling contracts for the future delivery of butter, which contracts are made prior to and in anticipation of such purchases of cream at said stations; and that said butter remains at said respective churning plants no longer than from one day to one week before being shipped, as above described, to other States.

PAR. 9. That said stations of respondent and said stations of its competitors are in competition, each with the other at certain points and in competition with other methods of purchasing cream at all points; that one such competing method is known to the creamery trade as the "direct shipping plan" which consists in the soliciting and purchasing of cream to be shipped by rail directly from the farm to the creamery; and another such method so known is the "route plan," namely, the purchasing of cream at the producer's farm and the transporting of it therefrom by means of trucks or wagon teams.

PAR. 10. That the method used in establishing such stations has been and is to select a suitable location, equip a building or rooms with necessary paraphernalia, advertise, and through representatives personally solicit the patronage of purchasers of cream, situated at such selected location and in the immediate vicinity thereof; that a capable person, known to the creamery trade as a "station agent" or "operator," is there employed to test and care for the cream received and to issue to patrons the creamery company's check, drawn on the creamery company's bank account, in payment for cream purchased, and to ship such cream to the churning plant immediately upon its assemblage in sufficiently large quantities to justify a rail shipment, usually 10 gallons; that said competing creamery companies exercise full dominion over their said stations and over their said agents or operators by requiring such agents, operators, or employees to perform all the duties ordinarily performed in a cream station; by deciding and dictating the price such agents shall pay for cream purchased; by requiring detailed reports of all purchases and of other matters; by accepting and acquiring title to the cream directly from the purchaser; and by paying the agent, operator, or employee for his services either on a commission or salary basis.

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PAR. 11. That the cost of establishing such stations and thereby creating values consisting of good will in the form of groups of customers, providing a somewhat constant supply of cream, is from \$200 to \$1,000 per station; that one of said competing companies created approximately 250 such stations in 18 years; that respondent announced by advertisement that it would have 1,000 stations in one year; that approximately 99 per cent of existing cream stations have been established by the creameries operating them; and that such stations are usually located at distances from the main place of business or the churning plant which they are established to supply.

PAR. 12. That for the purpose of preventing an unfair appropriation of such values so created, leaving at the same time perfect freedom of access by competitors to such customers or producers of cream, and also leaving such agents or operators absolute freedom in the matter of voluntarily terminating any contract of agency or employment according to the terms thereof and voluntarily seeking employment of such competitors or others, members of the creamery industry adopted in open meeting resolutions I and V of a set of resolutions known as the "Trade Practice Submittal—Creamery Industry," which resolutions I and V condemn the use of such methods as are charged in this complaint; that such methods, although generally practiced by those engaged in the industry prior to December 1, 1919, were thereafter almost entirely abandoned by them, except that respondent continued until April 15, 1920, to entice and to attempt to entice the agents and operators in the employ of its competitors to violate the contractual relations with their respective employers as herein specifically set forth.

PAR. 13. That respondent after September 1, 1919, and prior to April 15, 1920, through F. W. Abke and M. P. Knudsen, managers, respectively, during such period, and a force of field men working under their direction, made frequent and systematic visits to station agents or operators employed by its said competitors at stations established by such competitors in the States of Ohio, Indiana, and Kentucky, and attempted to entice and did entice such agents or operators to violate their contractual relations with their employers.

PAR. 14. That during this period respondent, through its representatives, participated in the adoption of and ratification of said "Trade Practice Submittal—Creamery Industry" and thereby encouraged its said competitors to abandon said certain practices, which it agreed also to abandon on December 1, 1919, but which in fact respondent did not abandon, but took advantage of its said competitors by continuing and renewing the practices set forth in said resolutions I and V which had been abandoned by its said competitors.

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PAR. 15. That more than 20 such agents or operators employed by one said competing creamery were thus visited and some such agents or operators were visited as many as four times by as many different employees of respondent; that on the occasions of such visits said representatives and employees of respondent told some of such agents or operators that their contracts with said competing creamery company were not binding, and in some instances offered to make good any loss occasioned by a breach thereof; that one such station agent or operator under contract for two years was likewise told that his contract was not binding and said agent or operator was advanced more than \$700 by respondent for the purpose of placing said agent or operator in a position to violate his contract and accept employment with respondent; that said agent did violate said contract by leaving the employ of said competing creamery company and accepted employment with respondent; that all such agents or operators were offered more remuneration than they were then receiving, if they would leave their then employment and accept employment with respondent; that among other statements made by such employees and representatives of respondent to the agents or operators or employees of said competitor were statements to the effect that said competitor was insolvent and the appointment of a receiver had been asked for, that a receiver would be appointed for such competitor within three months or sooner, that the farmers were afraid to accept said competitor's check in payment for cream, that the reputation of such agents or operators would be injured by being connected with an insolvent concern at the time it went to the wall, and that it would be difficult for such agents or operators to redeem the confidence of the public if they longer remained with said competitor, that if such agent or operator did not accept employment with respondent within a given time, respondent would open a competing station in the same town, or that respondent had opened a station in such town but would hold the agency open for a time to give such agent or operator an opportunity to accept a position with respondent.

PAR. 16. That newspapers and reprints from newspapers containing accounts of said application for appointment of a receiver for said competitor were shown to said competitor's agent or operators by respondent's representatives and employees and such agents or operators and others received through the mail, inclosed at times in envelopes bearing the business card of respondent and at other times inclosed in plain wrappers, newspapers, and reprints from newspapers containing similar articles with reference to the said application for receivership; and that such receiver has never been appointed.

PAR. 17. That as a result of this campaign, at least five of the twenty and odd agents or operators so approached left the said com-

peting creamery company and accepted employment with respondent and took with them portions of the patronage and business established and built up by said competing creamery company after years of labor and the expenditure of a great deal of money; that one such agent took to respondent approximately 90 per cent of said competing creamery company's business at the particular station which such agent or operator was employed to foster and protect; that one such agent, after being visited several times by the representatives and employees of respondent, left the employ of said competing creamery, accepted employment with respondent, and made two spurious contracts, signed by the said F. W. Abke for respondent, neither of which was intended to bind said agent or operator, but both of which were made in an effort to show that said Abke did not entice said agent by offers of higher remuneration; and that other agents when so approached were cautioned not to speak to their employers of the visit of respondent's representatives or employees.

PAR. 18. That the agents or operators of other such competing creamery companies were approached by employees of respondent, who in some instances succeeded in appropriating values of like character created by and belonging to such competitors.

PAR. 19. That each of the agents or operators so approached by representatives of respondent was at the time employed at stations established by such competitors and such agents were paid for and charged with the duty of serving and dealing with large groups of patrons of such competitors.

PAR. 20. That respondent's representatives and employees did succeed in some cases in inducing said employees to violate their contracts with their said employers; that such employees did take with them to respondent and for its benefit large groups of its said competitor's patrons and business; and that respondent still enjoys the patronage and business of such competitors so received by it by reason of such inducements and breaches of contracts.

PAR. 21. That one such competing creamery company complained to the accredited representative of the major stockholder of respondent corporation concerning the conduct of said manager Knudson in permitting employees of respondent to approach and disturb the agents or operators of said competitors.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 13 to 21, inclusive, and each and all of them are, under the circumstances set forth in said findings, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26,

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1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto of the respondent and the testimony and evidence introduced thereunder, and the Commission having considered the record and made its findings as to the facts with its conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondent, the Sunlight Creameries, its officers, agents, employees, and servants, forever cease and desist from practicing, renewing, or reviving the following methods of competition used by it prior to April 15, 1920, to wit:

(1) From appropriating, or attempting to appropriate, values created by competitors by approaching and enticing, or attempting to entice, station agents or operators or other employees of competitors to violate their contractual relations and take with them the business and patronage of said competitors;

(2) From making or circulating, or causing to be made or circulated, to or among station agents or operators or other employees of competitors, or the public generally, either oral, written, or printed statements containing false and unfair matter concerning the business or standing of competitors.

SEALWOOD CO.

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