

Complaint.

FEDERAL TRADE COMMISSION

v.

B. S. PEARSALL BUTTER COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 3
OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 550—July 8, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of oleomargarine, butterine, butter, nut butter, and similar products, made sales and contracts for sales of its products upon the condition, agreement or understanding that the purchasers thereof should not deal in the products of its competitors; with the effect of substantially lessening competition and of tending to create a monopoly in the lines of commerce involved:

Held, That such sales and contracts of sales, under the circumstances set forth, constituted a violation of Sec. 3 of the Act of October 15, 1914.

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the B. S. Pearsall Butter Company, hereinafter referred to as respondent, has been and is violating the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the B. S. Pearsall Butter Company, is a corporation existing under the laws of the State of Illinois, with its principal office and place of business in the City of Elgin, Illinois, and is and for more than five years last past has been engaged in manufacturing, selling, distributing and dealing in oleomargarine and nut margarine in interstate commerce among the several states of the United States, the territories thereof, and the District of Columbia, within the purview of Sections 1 and 3 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 14, 1914, in direct and active competition with other persons, firms and corporations similarly engaged.

Findings.

5 F. T. C.

PAR. 2. That during the five years last past, in the course of and while engaged in such commerce as aforesaid, the respondent made, and continues to make, numerous sales and numerous contracts for sale of its oleomargarine and nut margarine to many and various persons, firms and corporations among the several states of the United States, the territories thereof, and the District of Columbia, for resale within the United States, the territories thereof, and the District of Columbia, on the condition, agreement or understanding, that the respective purchaser thereof deal in the respondent's brands of oleomargarine and nut margarine exclusively, and shall not deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of the respondent, and the effect of such sales and contracts for sale, and such conditions, agreements or understandings, may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which the respondent is engaged, within the contemplation of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

PAR. 3. That during the five years last past, in the course of and while engaged in such commerce as aforesaid, the respondent made, and continues to make, numerous sales and numerous contracts for sale of its oleomargarine and nut margarine to many and various persons, firms and corporations among the several states of the United States, the territories thereof, and the District of Columbia, for resale within the United States, the territories thereof, and the District of Columbia, and fixed and fixes a rebate upon the price charged therefor, on the condition, agreement or understanding, that the respective purchaser thereof deal in the respondent's brands of oleomargarine and nut margarine exclusively, and shall not deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of the respondent, and the effect of such conditions, agreements or understandings, may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which the respondent is engaged, within the contemplation of Section 3 of the Act of Congress herein above mentioned.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved October 15, 1914, the Federal Trade Commission issued and served its amended complaint upon the respondent, the B. S. Pearsall Butter Company, a corporation, charging it with unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent having entered its appearance in person and having filed its answer to the amended complaint of the Commission, and formal hearings having been had before various examiners of the Commission, and testimony having been introduced on behalf of the Commission and on behalf of the respondent, and various stipulations having been entered into between the parties hereto and approved by the Commission; and the whole matter having come regularly on to be heard before the Commission upon the testimony and stipulations hereinbefore referred to and upon the briefs filed herein on behalf of the Commission and in behalf of respondent, and the matter having been fully considered and the Commission being fully advised in the premises makes the following its findings of facts.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the state of Illinois with its principal place of business in the town of Elgin in said state and for several years last past has been engaged in the manufacture of oleomargarine, butterine, butter, nut butter and similar products and in selling and distributing the various products immediately hereinbefore mentioned in interstate commerce, by, through and into the several other states and the territories of the United States in direct and active competition with some sixty-five other persons, firms or corporations similarly engaged.

PAR. 2. For several years last past and in the course of and while engaged in interstate commerce as aforesaid, the respondent made and continues to make numerous sales and numerous contracts for sale of its oleomargarine, nut margarine, and other products to many and various persons, firms and corporations among the several states and territories of the United States for resale within the United States and territories thereof and the District of Columbia on the condition, agreement or understanding that the respective purchasers thereof deal in the respondent's brands of oleomargarine, nut margarine, etc., exclusively, and shall not deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of the respondent.

PAR. 3. During all the times herein mentioned at least twenty competitors of respondent have used contracts containing the exclusive dealing feature similar in effect to the one referred to as being used by respondent in the paragraph next immediately preceding, and in the same territory covered by respondent, while practically all of respondent's sixty-five competitors other than those

Order.

5 F. T. C.

using formal exclusive dealing contracts, used and entered into informal understandings and agreements to the same effect.

PAR. 4. The effect of the exclusive dealing feature of the contracts entered into by respondent, and more particularly referred to in paragraph two hereof, is to substantially lessen competition and to tend to create a monopoly in the lines of commerce in which respondent is engaged in various sections of the United States.

CONCLUSION.

The practice engaged in by respondent as set forth in the above findings of facts is in violation of Section 3 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having come regularly on to be heard by the Federal Trade Commission upon the pleadings, the testimony and the evidence received by the examiners of the Commission, the stipulations entered into between parties hereto and approved by the Commission, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of Section 3 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," which said findings and conclusion is hereby referred to and made a part hereof,

Now, therefore, it is ordered, That the respondent, B. S. Pearsall Butter Company, a corporation, its officers, directors, agents and employees, cease and desist from:

Directly or indirectly using formal or informal contracts or understandings to the effect that purchasers or dealers in respondent's products shall not deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of respondent, or in competing commodities.

It is further ordered, That respondent within sixty (60) days from the receipt of this order report in writing to the Commission the manner and extent to which compliance with this order has been made by respondent.

BELLAS-HESS & CO.

131

Complaint.

FEDERAL TRADE COMMISSION

v.

BELLAS-HESS & COMPANY.