

Complaint.

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## FEDERAL TRADE COMMISSION

v.

M. KAPLAN, TRADING AS THE BUTTERFLY SHOP.

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

Docket 1026—October 3, 1923.

## SYLLABUS.

Where an individual engaged in the sale at retail of hosiery composed of materials other than silk produced from the cocoon of the silk worm, but resembling silk in appearance and texture, in competition with concerns who dealt in hosiery composed of genuine silk and who so represented the same, displayed said hosiery in his store and in the window thereof as "Silk Hose 25¢ and 35¢ a Pair"; with a tendency and capacity to mislead and deceive the purchasing public, and to induce the purchase of said hosiery in the belief that it was fabricated from the silk of the cocoon of the silk worm:

*Held*, That such misrepresentation of product, under the circumstances set forth, constituted an unfair method of competition.

## COMPLAINT.

Acting in the public interest pursuant to the provisions 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," the Federal Trade Commission charges that M. Kaplin, trading as Butterfly Shop, and more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, M. Kaplin, is an individual doing business under the trade name and style of Butterfly Shop, with his place of business in the City of Washington, District of Columbia.

PAR. 2. Respondent is engaged in the business of selling to the retail trade in the District of Columbia wearing apparel for men and women consisting of hose, cravats and similar articles, and has carried on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. Respondent in the course and conduct of said business now offers for sale, and sells hosiery and other articles manufactured from materials or fabrics other than silk, but resembling silk in appearance and texture, and has displayed same in his place of business, and represented by signs and other means that said hosiery and

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other articles were, in fact, manufactured of silk. The aforesaid signs and representations so made and used by respondent in connection with the sale of the said hosiery and other articles were and are false and misleading, and had and have the tendency and capacity to induce the purchasing public to purchase the said hosiery and other articles so advertised by respondent, as and for silk. The said hosiery and other articles being in truth and in fact composed, fabricated and manufactured entirely from materials containing no true silk whatever but only imitations thereof.

PAR. 4. There are a considerable number of competitors of respondent who display for sale and sell hose, the material or fabric of which is composed of silk, and who display for sale and by means of signs or other advertising matter, truthfully represent and describe said product as silk, which said product is sold in competition with the product of respondent.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public, and of respondent's competitors, and constitute 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 a complaint upon the respondent, M. Kaplan, trading as the Butterfly Shop, charging him with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer herein and testimony having been taken thereupon this proceeding came on for final hearing and the Commission being fully advised in the premises and upon consideration thereof makes this its report stating its findings as to the facts and conclusion.

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, M. Kaplan, an individual, has conducted a business since September 22, 1922, under the trade name and style of Butterfly Shop which said business is located at the premises of 1201½ Pennsylvania Avenue NW., in the City of Washington, District of Columbia, where he is engaged in selling to the retail trade in the District of Columbia wearing apparel for men and women consisting of hosiery, cravats and other articles. In the course and

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conduct of his said business respondent is in direct and active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. Respondent, during the month of January, 1923, and subsequent to said date sold and offered for sale hosiery manufactured from materials or fabrics other than silk produced from the cocoon of the silk worm, but resembling silk in appearance and texture and displayed said hosiery in his store and in the window of said store and represented by signs that said hosiery was made of silk, upon said signs appearing the legend "Silk Hose—25¢ and 35¢ a pair." The signs and representations so used by respondent were false and misleading and had the tendency and capacity to mislead and deceive the purchasing public and to induce the said purchasing public to buy said hosiery believing that they were obtaining hosiery fabricated from the silk of the cocoon of the silk worm, when in truth and in fact said hosiery was manufactured entirely from materials containing no true silk whatsoever, but from a material obtained from wood pulp and cotton and known generally as artificial silk.

PAR. 3. There are a considerable number of competitors of respondent who display for sale and sell hosiery, the material or fabric of which is composed of silk manufactured from the cocoon of the silk worm, and who display for sale and by means of signs and other advertising matter truthfully represent and describe said products as silk which said products are sold in competition with hosiery sold and offered for sale by the respondent.

## CONCLUSION.

The above practice of the said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce and constitute a violation of Section 5 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."

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and evidence received by the examiner of the Commission and the Commission having made its findings as to the facts and its conclusion that the respondent, M. Kaplan, has violated the provisions of an Act of Congress approved September

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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 respondent, M. Kaplan, his servants, agents, representatives and employees cease and desist from directly or indirectly;

Using in advertisements, placards or signs in connection with hosiery sold by him the word "silk" or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silk worm, or (2) unless where the hosiery is made partly of silk it is accompanied by a word or words aptly and truthfully describing the material or materials of which said hosiery is in part composed.

*Respondent is further ordered*, To file a report in writing with the Commission sixty (60) days from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

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## FEDERAL TRADE COMMISSION

v.

MOUNTAIN GROVE CREAMERY, ICE AND ELECTRIC  
COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1041—October 3, 1923.

## SYLLABUS.

Where butter manufacturers had long packed and sold butter in cartons of a size, shape and appearance generally known to the purchasing public to contain a full pound, made up either of four units of four ounces each, two units of eight ounces each, or one unit weighing a full pound, in unmarked wrappers; and thereafter a competitor, in disregard of the collective action of members of the industry denouncing the practice and providing for its discontinuance,

Packed, sold and offered for sale butter in cartons similar in dress, shape, size and appearance to the aforesaid cartons and also to those likewise containing a full pound in which said competitor had theretofore sold its butter, but which actually contained units weighing less than the aforementioned weights and aggregating less than a full pound; thereby advisedly placing in the hands of its retailer customers means which enabled and encouraged them to sell such underweight units in their unmarked wrappers as and for units of one-fourth pound, one-half pound and one pound, respectively;

With the result that the purchasing public was deceived in reference to the quantity of butter contained in said cartons, notwithstanding the marking of the weight thereon, and also in respect of that contained in the aforesaid units, and the concern's sales were increased at the expense of its competitors who refused so to aid retailers in such practices:

*Held*, That such misrepresentation of product, under the circumstances set forth, constituted an unfair method of competition.

## COMPLAINT.

Acting in the public interest pursuant to the provisions 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," the Federal Trade Commission charges that the Mountain Grove Creamery, Ice and Electric Company, a corporation, more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mountain Grove Creamery, Ice and Electric Company, is a corporation organized, existing and doing

business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the City of Mountain Grove, in said State, and with creameries located at Mountain Grove and Carthage, Missouri. Respondent was at all times hereinafter mentioned and still is, engaged in the business of manufacturing butter, ice, ice cream and electric current with which said current said respondent supplies the City of Mountain Grove, Missouri, with electric power. Respondent markets or sells its said butter to or through jobbers and retail dealers located in various States of the United States, causing its said product, when so sold, to be transported in commerce from its principal creameries in the Cities of Mountain Grove and Carthage, Missouri, to purchasers located in other States of the United States, and there is now and was at all times hereinafter mentioned a constant current of trade and commerce in said butter manufactured by said respondent between and among the various States of the United States. In the course and conduct of its said butter business, respondent continuously has been and is now in competition with other individuals, partnerships and corporations manufacturing and selling butter in commerce among the States of the United States.

PAR. 2. That the respondent, Mountain Grove Creamery, Ice and Electric Company, in the course and conduct of its said butter business as described in Paragraph One hereof, had for more than one year prior to the year 1918, marketed, sold and transported in commerce its butter to purchasers in various States of the United States in packages or cartons of the recognized standard weight of sixteen ounces or one pound; that said respondent for more than one year subsequent to the year 1918, caused its said butter to be put up in packages or cartons containing from one to two ounces less than the recognized standard weight of sixteen ounces or one pound, and marketed, sold and transported the same in commerce to purchasers in various States of the United States; that notwithstanding said packages or cartons were marked showing the weight of the product contained, the same were similar in dress, shape, size and appearance and simulated the packages or cartons of its said product previously sold in commerce by said respondent containing the recognized standard weight of sixteen ounces or one pound; that the sale by respondent of said product in commerce in an odd-weight package or carton less than the recognized standard weight of sixteen ounces or one pound has the capacity and tendency to deceive or mislead the purchaser and/or does deceive or mislead the purchaser into the erroneous belief that the said package or carton contained the recognized standard weight of sixteen ounces or one

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pound of said product, when in truth and in fact said package or carton contained from one to two ounces less butter than the recognized standard weight of sixteen ounces or one pound.

PAR. 3. It is now, and has been the custom of the trade and consuming public for a long period of years, to advertise, purchase, sell and offer for sale, butter in the standard recognized quantity of sixteen ounces or one pound; that there are a considerable number of competitors of respondent who manufacture and market their products in commerce in sixteen-ounce or one-pound packages or cartons of similar size, shape and appearance as that used by respondent, which said product is sold in competition with the product of respondent.

PAR. 4. To meet the demand of the consuming public for small quantities of butter a custom has long prevailed whereby creameries shape butter in sizes weighing respectively four ounces, eight ounces and one pound. The standard and customary carton in which such units are placed by creameries is such as to contain one full pound. In each such carton is placed either four of the four ounce, two of the eight ounce or one of the full pound units. Each such unit before being placed in the carton by the creamery is separately dressed in an unmarked wrapper. The butter so shaped, wrapped and packed in such cartons is distributed by and through wholesale dealers or jobbers and is also sold by creameries direct to retail dealers. Retail dealers located in the States of Arkansas, Texas and Oklahoma sell to customer or ultimate purchaser said separate unmarked units of butter which bear no designation by which the purchaser may ascertain its weight. Prior to the institution or use of the method or practice hereinafter more particularly described purchasers were accustomed to and did receive the full weight units of four ounces, eight ounces and one pound respectively. In imitation of the form of such units of standard and customary size and weight, and likewise dressed in unmarked wrappers but containing less weight, respondent shapes butter in sizes weighing respectively and approximately three and one-half ounces and three and three-quarter ounces, seven and seven and one-half ounces, and fourteen and fifteen ounces. Respondent likewise places four, two, or one such odd weight units respectively in cartons of the size, character and description set out in paragraph 2 hereof. These it sells and ships as described in paragraph 1 hereof to retail dealers who supply and sell to customers or purchasers the smaller unmarked units for, and as, four ounce, eight ounce and one pound units respectively, while in truth and in fact such units contain less than such respective weights. The carrying out of this deception and the circum-

stance which makes it possible is well known to respondent, and although respondent is ostensibly complying with the law in marking the exact weight of the total contents on the outer wrapper or carton, respondent knows or should know that customarily the outer wrapper or carton is not seen by the ultimate purchaser of the separate smaller units, and respondent by shaping, dressing and packing butter in such undersized and odd weight units is knowingly placing in the hands of retailers an instrument which enables and encourages retailers to commit a fraud on the consumer or purchaser, respondent thereby increasing its own sales to the disadvantage of manufacturers who refuse to so aid such retailers in the practice of said fraud.

PAR. 5. Investigation by the Commission, based on numerous complaints, revealed that the practice herein complained of was confined almost wholly to the states of Arkansas and Texas. To eliminate this practice or method more speedily than could be accomplished by formal proceedings instituted against individual concerns and for the enlightenment of the Commission butter manufacturers competing in said territory assembled, at the invitation of the Commission, at Dallas, Texas, on April 2, 1920, and there in open meeting presided over by a duly authorized representative of the Commission, did, by means of resolution define and denounce said method of competition which in the experience of the industry had proven to result in fraud on the public. At the time of its adoption by representatives of the industry, and in the announcement thereof by the Commission, such resolution was designated as, and known as "Trade Practice Submittal--Butter Manufacturers," August 1, 1920, was named in the same resolution as the day upon which the practice of the method so denounced was to entirely cease and which on said day did practically cease; among other purposes intended to be accomplished by the institution and adoption of such "Trade Practice Submittal" was the obviation of a multiplicity of formal proceeding due to the voluntary and simultaneous action of the industry in eliminating the method or practice so defined and denounced.

PAR. 6. Respondent was and is well acquainted with the purpose, intent and spirit of the said "Trade Practice Submittal." Respondent was not represented at said meeting of April 2, 1920, but it expressed its approval thereof and announced to the Commission that it would discontinue the practice herein complained of on August 1, 1920; such expression and announcement was communicated to competitors in attendance at said meeting on April 2, 1920; many competitors each acting on such mutual understanding did on August

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1, 1920, abandon said method while respondent has continuously and is now indulging in the same, by so continuing such practice respondent sought to and did gain an unfair competitive advantage over such competitors as did carry out and abide by said under-standing.

PAR. 7. The said "Trade Practice Submittal" after stating among other things that the practice complained of was so widespread in the southwestern states that any manufacturer desiring to compete in the markets thereof "is compelled as a matter of self-protection to adopt the practice above described," reads in part as follows:

*Now, therefore,* We, butter manufacturers assembled in open meeting, condemn the practice above described as a method of unfair competition and as against the public interest, and we hereby petition the Federal Trade Commission to bring its action against any and all manufacturers, makers, or shippers of butter who, after August 1, 1920, sell or offer for sale, in cartons, rolls, or prints, butter in quantities or weights other than the standard weights of 16 ounces, or of 8 ounces, or of 4 ounces; or who ship or sell or offer for sale, butter in such standard weight packages, prints, rolls, or cartons, upon any of which is not marked the net weight of the butter contained therein, in accordance with subdivision (c) of Regulation 29, of the "Rules and Regulations for the enforcement of the Food and Drug Act" as amended (34 Stats. 768), and which as published by the Department of Agriculture reads as follows:

"(c) The statement of the quantity of the contents shall be plain and conspicuous, shall not be a part of or obscured by any legend or design, and shall be so placed and in such characters as to be readily seen and clearly legible when the size of the package and the circumstances under which it is ordinarily examined by purchasers or consumers are taken into consideration."

PAR. 8. That such shaping, dressing, and packing of butter is calculated and designed to, and has a tendency and capacity to, and does, deceive the public into the belief that it is purchasing butter in units, cartons, or packages containing more butter than said units, cartons or packages do in fact contain and that the above alleged acts and things done by respondent are all to the prejudice of the public, and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and making 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 a complaint upon the respondent, Mountain Grove Creamery, Ice, and Electric Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, having filed its answer herein, and having entered into a stipulation in writing as to the facts, thereupon this matter came on for final hearing, and the Commission being fully advised in the premises, and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion.

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Mountain Grove Creamery, Ice and Electric Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its principal office and place of business in the City of Mountain Grove in said State and with creameries located at Mountain Grove and Carthage, Missouri. Respondent was at all times hereinafter mentioned, and is still engaged in the business of manufacturing butter, ice, ice cream, and electric current, with which said current said respondent supplies the City of Mountain Grove with electric power. Respondent markets and sells its said butter to or through jobbers and retail dealers located in the various states of the United States, causing its said products when so sold to be transported in commerce from its principal creameries in the cities of Mountain Grove and Carthage, Missouri, to purchasers located in other states of the United States, and there is now and at all times hereinafter mentioned [has been] a constant current of trade and commerce in said butter manufactured by said respondent between and among the various states of the United States. In the course and conduct of its said butter business respondent continuously has been and is now in competition with other individuals, partnerships and corporations manufacturing and selling butter in commerce among the states of the United States.

PAR. 2. That the respondent, Mountain Grove Creamery, Ice and Electric Company, in the course and conduct of its said butter business as described in paragraph 1 hereof had for more than one year prior to the year 1918, marketed, sold and transported in commerce its butter to purchasers in the various states of the United States in packages or cartons of the recognized standard weight of

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16 ounces or one pound; that said respondent for more than one year subsequent to the year 1918 caused its said butter to be put up in packages or cartons containing from one to two ounces less than the recognized standard weight of 16 ounces or one pound, and marketed, sold and transported the same in commerce to purchasers in various states of the United States; that notwithstanding said packages or cartons were marked showing the weight of the product contained, the same were similar in dress, shape and size and appearance and simulated the packages or cartons of its said products previously sold in commerce by said respondent containing the recognized standard weight of 16 ounces or one pound; that the sale by respondent of said product in commerce in an odd weight package or carton less than the recognized standard weight of 16 ounces or one pound has the capacity and tendency to deceive and mislead the purchasers and has deceived and mislead purchasers into the erroneous belief that the said package or carton contained the recognized standard weight of 16 ounces or one pound of the said product, when in truth and in fact said package or carton contained from one to two ounces less butter than the recognized standard weight of 16 ounces or one pound.

PAR. 3. It is now and has been the custom of the trade and consuming public for a long period of years to advertise, purchase, sell and offer for sale butter in the standard recognized quantity of 16 ounces or one pound; that there are a considerable number of competitors of respondent who manufacture and market their products in commerce in 16 ounce or one pound packages or cartons of similar size, shape and appearance as that used by respondent which said product is sold in competition with the product of respondent.

PAR. 4. To meet the demand of the consuming public for small quantities of butter a custom has long prevailed whereby creameries shape butter in sizes weighing, respectively, 4 ounces, 8 ounces and one pound. The standard and customary carton in which such units are placed by creameries is such as to contain one full pound. In each such carton is placed either 4 of the 4 ounce, two of the 8 ounce, or one of the full pound units. Each such unit before being placed in the carton by the creamery is separately dressed in an unmarked wrapper. The butter so shaped, wrapped and packed in such cartons is distributed by and through wholesale dealers or jobbers and is also sold by creameries direct to retail dealers. Retail dealers located in the states of Arkansas, Texas, and Oklahoma sell to customer or ultimate purchaser said separately unmarked units of butter which bear no designation by which the purchaser may ascertain its weight. Prior to the institution or use of the method or practice hereinafter

more particularly described purchasers were accustomed to and did receive the full weight unit of 4 ounces, 8 ounces and one pound, respectively. In imitation of the form of such standard and customary size and weight, and likewise dressed in unmarked wrappers but containing less weight, respondent shapes butter in sizes weighing, respectively, and approximately,  $3\frac{1}{2}$  ounces and  $3\frac{3}{4}$  ounces, 7 and  $7\frac{1}{2}$  ounces, and 14 and 15 ounces. Respondent likewise places four, two or one such odd weight units respectively in cartons of the size, character and description set out in paragraph 2 hereof. These it sells and ships as described in paragraph 1 hereof to retail dealers who supply and sell to customers or purchasers the smaller unmarked units for and as 4 ounces, 8 ounces and one pound units respectively while in truth and in fact such units contain less than such respective weights. The carrying out of this deception and the circumstances which make it possible are well known to respondent and although respondent is ostensibly complying with the law by marking the exact weight of the total contents on the outer wrapper or carton, respondent knows that customarily the outer wrapper or carton is not seen by the ultimate purchaser of the separate smaller units and respondent by shaping, dressing and packing butter in such undersized and odd weight units is knowingly placing in the hands of retailers an instrument which enables and encourages retailers to sell such smaller odd weight units as and for units of  $\frac{1}{4}$  pound,  $\frac{1}{2}$  pound and 1 pound units or packages, respondent thereby increasing its own sales to the disadvantage of manufacturers who refuse to so aid retailers in the practice so described.

PAR. 5. Butter manufacturers competing in the states of Arkansas, Oklahoma and Texas assembled at the invitation of the Federal Trade Commission at Dallas, Texas, on April 2, 1920, and there, in open meeting, presided over by a duly authorized representative of the Commission, did by means of resolution define and denounce said method of competition which in the experience of the industry had proven to result in fraud on the public. At the time of its adoption by representatives of the industry and in the announcement thereof by the Commission such resolution was designated as and known as "Trade Practice Submittal—Butter Manufacturers." August 1, 1920, was named in the same resolution as the day upon which the practice or method so denounced was to entirely cease and which on said day did practically cease; among the purposes understood by respondent to be intended to be 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 the method or practice so defined and

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denounced. Said Trade Practice Submittal is stipulated to be and is part of the facts herein. Respondent continued the practice charged in the complaint and described herein, after said August 1st, 1920, and until January, 1922.

PAR. 6. That such shaping, dressing and packing of butter in said odd weight units hereinbefore described is calculated and designed to, and has a tendency and capacity to, and does deceive the public into the belief that it is purchasing butter in units, cartons and packages containing more butter than said units, cartons and packages do in fact contain.

## CONCLUSION.

The above practices of said respondent, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation 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."

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions 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,"

*It is now ordered*, That respondent Mountain Grove Creamery, Ice and Electric Company, its officers, agents and employees do cease and desist from selling or offering for sale to distributors, dealers, or others, butter in shapes, sizes and dress in imitation of, or resembling the standard or recognized shapes and sizes generally known to the purchasing public to contain four ounces, eight ounces and one pound of butter, respectively, when such shapes and sizes contain less than said standard respective weights.

THE WICHITA CREAMERY CO.

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Complaint.

FEDERAL TRADE COMMISSION

*v.*

THE WICHITA CREAMERY COMPANY.