FEDERAL TRADE COMMISSION

v.

THE MERIDEN CREAMERY COMPANY.

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

Docket 1043—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, to whom it had communicated its acquiescence therein, 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 under-weight 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 Meriden Creamery 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, The Meriden Creamery Company, is a corporation organized 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 Kansas City, in said state. Respondent was at all times hereinafter mentioned and still is, engaged in the business of manufacturing butter and in marketing or selling the same to jobbers and retail dealers located in various states of the United States, causing said product, when so sold, to be transported in commerce from its principal place of business in the State of 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 business respondent continuously has been and is now in competition with other individuals, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. That the respondent, The Meriden Creamery Company, in the course of its business as described in paragraph 1 hereof, had for more than ten years prior to the year 1918 marketed, sold and transported in commerce its product to purchasers in various States of the United States in packages or cartons of the recognized standard weights of one pound, one-half pound and one-quarter pound quantities; that said respondent had for more than one year prior to the year 1918 marketed, sold and transported in commerce its product known as "Gold Bar Brand" to purchasers in various States of the United States in packages or cartons of the recognized standard weight of sixteen ounces or one pound quantity; that said respondent during and subsequent to the year 1918, caused its said product known as "Gold Bar Brand" to be put up in packages or cartons of fifteen ounces, one ounce less than the recognized standard weight of the package or carton previously sold under said trade brand; that said packages or cartons marked fifteen ounces, were similar in dress, shape, size and appearance and simulated the packages or cartons of said product previously sold 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 fifteen ounce packages or cartons has the capacity and tendency to mislead and deceive the purchaser and/or does mislead and deceive the purchaser into the erroneous belief that said packages or cartons contained sixteen ounces or one pound of said product, when in truth and in fact said packages or cartons contain one ounce less than the said recognized standard weight.

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 quantities of one pound, one-half pound and one-quarter 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 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 circumstance which makes it possible is 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 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. 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 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, The Meriden Creamery Company, 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, in which stipulation it is admitted that the methods and things alleged in said complaint are true in the manner and form as therein stated, 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, The Meriden Creamery Company, is a corporation organized 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 Kansas City, in said State. Respondent was at all times hereinafter mentioned and still is, engaged in the business of manufacturing butter and in marketing or selling the same to jobbers and retail dealers located in various States of the United States, causing said product, when so sold, to be transported in commerce from its principal place of business in the State

of Missouri to purchasers located in other States of the United States, and there is now, and within 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 business respondent continuously has been and is now in competition with other individuals, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. That the respondent, The Meriden Creamery Company, in the course of said business as described in paragraph 1 hereof, and for more than ten years prior to the year 1918, marketed, sold and transported in commerce its products to purchasers in various States of the United States in packages or cartons of the recognized standard weights of one pound, one-half pound and one-quarter pound quantities; that said respondent had for more than one year prior to the year 1918 marketed, sold and transported in commerce its product known as "Gold Bar Brand" to purchasers in various States of the United States in packages or cartons of the recognized standard weight of sixteen-ounce or one-pound quantity; that said respondent during and subsequent to the year 1918, caused its said product known as "Gold Bar Brand" to be put up in packages or cartons of fifteen ounces, one ounce less than the recognized standard weight of the package or carton previously sold under said trade brand; that said packages or cartons marked fifteen ounces, were similar in dress, shape, size and appearance and simulated the packages or cartons of said product previously sold 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 fifteen-ounce packages or cartons has the capacity and tendency to mislead and deceive the purchasers and/or does mislead and deceive the purchasers into the erroneous belief that said packages or cartons contain sixteen ounces or one pound of said product, when in truth and in fact said packages or cartons contain one ounce less than the said recognized standard weight.

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 quantities of one pound, one-half pound and one-quarter 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 said 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 customers or ultimate purchasers 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-ounce, eight-ounce and one pound respectively. In imitation of the form of said 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, three and three-quarter ounces, seven and one-half ounces 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 ounces, eight 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 is 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 or 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 four-ounce, eight-ounce and sixteen-ounce 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; 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 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 said "Trade Practice Submittal" which was made part of the facts stipulated herein. Respondent was not represented at said meeting of April 2, 1920, but subsequent thereto, between April 2, 1920, and August 1, 1920, it expressed its approval thereof and announced to the Commission and to competitors engaged in the manufacture of butter that it would discontinue the practice herein complained of on August 1, 1920; such expression and announcement were communicated to competitors in attendance at said meeting on April 2, 1920, and to other competitors not so in attendance. Many competitors, together with respondent, each acting on such mutual understanding, did on August 1, 1920, abandon said method, while respondent later revived and again indulged in said practice complained of, until July, 1921.

PAR. 7. 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 practice 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 the Act 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 the 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, The Meriden Creamery 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.

FEDERAL TRADE COMMISSION

v.

LAWRENCE S. MAYERS AND CHAUNCEY M. MAYERS