

Complaint.

IN THE MATTER OF
BLUE VALLEY CREAMERY COMPANY.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1064—September 16, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of butter and which purchased its cream under the so-called "Direct Shipment Plan," whereby producers shipped their cream or butter fat in their own containers directly to the creameries, using detachable shipping tags; permanently attached to all containers which came into its possession, a tag which, over the name of the owners but without their knowledge or consent, directed all transportation companies to ship the containers to said corporation, and removed from such cans all previous tags or shipping directions; with the result that many shipments were delivered to it contrary to the intent of the shippers, producers were put under a burden when they desired to make shipments to its competitors, and at times were defeated in such intent and deprived of more advantageous prices elsewhere, and it appropriated to its own advantage shipments intended for its competitors, to their disadvantage and loss:

Held, That such interference with competitors' sources of supply, under the circumstances set forth, constituted an unfair method of competition.

Mr. M. Markham Flannery for the Commission.

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 Blue Valley Creamery Company, 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, and states its charges in that regard as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of Delaware, with its principal place of business in the city of Chicago, Ill., and with manufacturing plants, hereinafter referred to as "Creameries" located in the States of Nebraska, Iowa, Illinois, Indiana, Ohio, Wisconsin, Michigan, Kansas, Missouri, and Kentucky. The respondent at all times herein mentioned was and now is engaged in the business of manufacturing butter; and selling and shipping such butter in commerce among the several States of the United States in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. The respondent and its said competitors, in the conduct of their business, severally purchase in competition with each other, in

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the State of Nebraska, Iowa, Illinois, Indiana, Ohio, Wisconsin, Michigan, Kansas, and in other States of the United States, the principal component materials, cream or butterfat, necessary for said manufacturing, and cause the cream or butterfat so purchased to be shipped to their respective manufacturing plants where it is converted into butter and thence sold and shipped to the purchasers thereof as aforesaid; such cream or butterfat and butter purchased, manufactured and sold by respondent is continuously moved into, from, and among numerous 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 butterfat and butter between and among the various States of the United States.

PAR. 3. The respondent and many of its competitors secure supplies of cream or butterfat for their various creameries by a method known in the industry as "The Direct Shipment Plan." In accordance with this plan the farmer ships his cream or butterfat direct to a creamery without the intervention of a local agent, or dealer. At the point of production the farmer places the cream or butterfat in tin cans or containers of 5 and 10 gallons capacity. These cans are the sole property of the farmer. The cream thus canned is delivered by the farmer to the railroad or express agent at the railroad station. Shipping instructions to the transportation company direct it to deliver the can filled with cream to a creamery company specifically named. Unlike the acceptance for shipment of other commodities, cream or butterfat is accepted for shipment by many transportation companies without following the almost universal practice of recording certain details such as are usually set out in a waybill or bill of lading. The absence of this shipping record necessitates that the only shipping instructions that exist be attached to each can. The usual and customary method of giving such shipping instructions to the transportation company is by use of detachable tags designed and manufactured for the purpose. Frequently each such farmer-shipper is supplied with detachable tags by different competing creameries, each tag bearing printed shipping instructions which will insure the delivery of the particular shipment to the company whose detachable tag the farmer desires to use. Either one of these or a tag bearing written instructions is secured to each can by means of twine or wire. This provides a simple and convenient method of both attaching and removing such shipping instructions. Under established custom and trade usage also, such cans when received and emptied by any creamery are returned by it to the farmer in the condition in which they were received. The use of these detachable tags enables the farmer to change his shipping instructions

at will and with ease and to thus conveniently follow another and established custom and usage of employing the same can or cans in shipping cream or butterfat first to one and then to another of any one or more of numerous competing creameries and thereby keeping his equipment ready and in suitable condition to gain advantage of any offer of better price or more efficient service which may be made by any one of said competing creameries.

PAR. 4. Contrary to the usual and customary method by which the farmer gives shipping instructions to the transportation company with reference to his own cream by means of detachable tags described in paragraph 3 hereof, respondent in the regular course of its business has adopted and now is using a plan whereby it arbitrarily and without the consent of the owners permanently attaches to each cream can which enters its creameries a metal undetachable tag or plate containing shipping instructions to all transportation companies which instructions insure, or are intended to insure to respondent continuous deliveries of each and every such can whenever filled with cream and offered for shipment. This is true, whether the farmer-shipper desires to again ship his cream to respondent or to one of respondent's competitors. Such permanent shipping instructions so arbitrarily used by respondent are stamped on, or embossed on a brass or metal tag or plate and over the name of the owner of the can and without his consent, specifically direct all transportation companies to ship the cream to respondent, making use of the following words: "When full ship to Blue Valley Creamery Company." The tag or plate bearing these instructions is securely fastened to the can by means of welding or soldering, and can not be readily detached or obliterated. As part of respondent's plan it removes all tags or shipping directions from cans including those permanently attached by competitors which bear only the name and address of owners and which are intended to and do insure the safe return of the can irrespective of the creamery company to which the filled can was shipped. Many transportation companies refuse to accept for shipment a can or other commodity bearing more than one shipping instruction. If cans bear two conflicting shipping instructions, one on a detachable, and one on an undetachable tag, the transportation company may exercise its pleasure or convenience as to which delivery it will make.

PAR. 5. The respondent's acts as hereinbefore described place an arbitrary burden on farmers when they desire to ship cream to competitors of respondent and at times wholly defeat the intention of the farmer to so ship cream to said competitors, and this in some cases results in the farmer receiving less money for his cream than he would receive if respondent had not thus compelled delivery of

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cream to it, which the farmer intended for shipment to respondent's competitors. Respondent's acts also result in respondent's receiving and appropriating to its own advantage and profit, and to the disadvantage and loss of its competitors, cream which was intended for, and which otherwise would have been delivered to respondent's said competitors.

PAR. 6. For more than one year last past respondent has engaged in the above alleged practices, under the circumstances and conditions and with the results all hereinbefore set out.

PAR. 7. 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 its complaint upon the respondent, Blue Valley Creamery Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance herein and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and conclusion and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same or in opposition thereof, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of Delaware, with its principal place of business in the city of Chicago, Ill., and with manufacturing plants, hereinafter referred to as "creameries," located in the States of Nebraska, Iowa, Illinois, Indiana, Ohio, Wisconsin, Michigan, Kansas, Missouri, and Kentucky. The respondent at all times herein mentioned was and now is engaged in the business of manufacturing butter at its several creameries aforesaid, and in selling such butter

and shipping it or causing it to be shipped from said creameries located in States of the United States other than those in which the respective creameries from which the shipments were made were situated. Such business has at all times herein referred to been conducted in direct competition with other persons, firms, copartnerships, and corporations also engaged in selling and transporting butter from their manufacturing establishments in one or more States of the United States in interstate commerce.

PAR. 2. The respondent and its said competitors, in the conduct of their business, severally purchase in competition with each other, in the States of Nebraska, Iowa, Illinois, Indiana, Ohio, Wisconsin, Michigan, Kansas, and in other States of the United States, the principal component material, cream or butterfat, necessary for said manufacturing and cause the cream or butterfat so purchased to be shipped to their respective manufacturing plants which are in many instances located in States of the United States other than those from which the respective shipments originate. At said plants, such cream or butterfat is converted into butter and thence sold and shipped to the purchasers thereof as aforesaid; the shipments of cream or butterfat originating from other States than those in which the plants receiving said shipments are located, constitute a substantial portion of the total shipments of the cream or butterfat received at the several plants.

PAR. 3. The respondent and many of its competitors secure supplies of cream or butterfat for their various creameries by a method known in the industry as "The direct-shipment plan." In accordance with this plan, the farmer ships his cream or butterfat direct to a creamery without the intervention of a local agent or dealer. At the point of production the farmer places the cream or butterfat in tin cans or containers of 5 or 10 gallon capacity. These cans are the sole property of the farmer. The cream thus canned is delivered by the farmer to the railroad or express agent at the railroad station. Shipping instructions to the transportation company direct it to deliver the can filled with cream to a creamery company specifically named. Unlike the acceptance for shipment of other commodities, cream or butterfat is accepted for shipment by many transportation companies without following the almost universal practice of recording certain details such as are usually set out in a waybill or bill of lading. The absence of this shipping record necessitates that the only shipping instructions that exist be attached to each can. The usual and customary method of giving such shipping instructions to the transportation company is by use of detachable tags designed and manufactured for the purpose. Frequently

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each such farmer-shipper is supplied with detachable tags by different competing creameries, each tag bearing printed shipping instructions which will insure the delivery of the particular shipment to the company whose detachable tag the farmer desires to use. Either one of these, or a tag bearing written instructions is secured to each can by means of twine or wire. This provides a simple and convenient method of both attaching and removing such shipping instructions. Under established custom and trade usage also, such cans when received and emptied by any creamery are returned by it to the farmer in the condition in which they were received. The use of these detachable tags enables the farmer to change his shipping instructions at will and with ease and thus to conveniently follow another and established custom and usage of employing the same can or cans in shipping cream or butterfat first to one and then to another of any one or more of numerous competing creameries and thereby keeping his equipment ready and in suitable condition to gain advantage of any offer of better price or more efficient service which may be made by any one of said competing creameries.

PAR. 4. Contrary to the usual and customary method by which the farmer gives shipping instructions to the transportation company, with reference to his own cream, by means of detachable tags, as described in paragraph 3 hereof, respondent in the regular course of its business adopted and used a plan whereby, without the consent of the owners, it permanently attached to each cream can which entered its creameries a metal undetachable tag or plate containing shipping instructions to all transportation companies the effect of which instructions at times caused shipments to be delivered to respondent which were intended for other concerns. This is true whether the farmer-shipper desired to again ship his cream to respondent or to one of respondent's competitors. Such permanent shipping instructions so used by respondent were stamped on or embossed on a brass or metal tag or plate and, over the name of the owner of the can and without his consent, specifically directed all transportation companies to ship the cream to respondent, making use of the following words: "When full ship to Blue Valley Creamery Company." The tag or plate bearing these instructions was securely fastened to the can by means of welding or soldering, and could not be readily detached or obliterated. As part of respondent's plan, it removed all tags or shipping directions from cans, including those permanently attached by competitors which bore only the name and address of owners and which are intended to and do insure the safe return of the can irrespective of the creamery company to which the filled can was shipped. Many transportation companies refuse to accept for shipment a can or other commodity bearing more than

one shipping instruction. If cans bear two conflicting shipping instructions, one on a detachable and one on an undetachable tag, the transportation company may exercise its pleasure or convenience as to which delivery it will make.

PAR. 5. Detachable tags such as described in paragraph 3 hereof are worded and arranged as follows:

When full ship to the
Sugar Creek Creamery Company,
Incorporated
Danville, Illinois.

Return
Empty
Can to

(Commission's Exhibit No. 1.)¹

Undetachable metal tags, such as respondent soldered to cans owned by others and as described in paragraph 4 hereof, are worded and arranged as follows:

Return to

When Full Ship To
Blue Valley Creamery Co.
Chicago, Ill.

(Respondent's answer, Exhibit A,¹ thereto.)

PAR. 6. Since respondent put its above-described plan into effect, many shipments of cream or butterfat intended for competitors of respondent were, by reason of respondent's said plan, diverted and delivered to respondent contrary to the desire and intention of the shippers and producers thereof. (Commission's Exhibit No. 2.)¹

PAR. 7. Some transportation companies directed their agents to disregard shipping directions on detachable tags. This resulted either in the rejection of the shipment or the tearing off of the detachable tag and the delivery of the cream to concerns whose shipping directions were permanently attached to the can. To some extent this was later corrected. (Commissioner's Exhibit No. 3.)¹

PAR. 8. The respondent's acts, as hereinbefore described, have placed a burden on farmers and producers when they desired to ship cream to competitors of respondent, and at times wholly defeats the intention of the farmers to ship cream to said competitors and

¹ Not published.

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this, in some instances, results in the farmers receiving less money for their cream than they would receive if respondent had not thus compelled delivery of cream to it which the farmers intended for shipment to respondent's competitors. The respondent's acts also result in respondent receiving and appropriating to its own advantage and profit, and to the disadvantage and loss of its competitors, cream which was intended for and which otherwise would have been delivered to respondent's said competitors.

PAR. 9. For more than one year, respondent has engaged in the above alleged practices under the circumstances and conditions and with the results hereinbefore set out.

CONCLUSION.

The 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 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 the respondent, the statement of facts agreed upon by the counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that 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 respondent, Blue Valley Creamery Company, its officers, directors, agents, representatives and employees, cease and desist from attaching to shipping cans or containers not belonging to respondent any plates or tags bearing shipping instructions such as, "When full, ship to the Blue Valley Creamery Company," or their equivalent, without the consent of the owner of such cans.

It is further ordered, That the respondent, Blue Valley Creamery Company, shall within sixty days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist, hereinbefore set out.

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IN THE MATTER OF

W. C. MAHAFFEY, W. S. MAHAFFEY AND K. HENDRICKS,
CO-PARTNERS TRADING AS MAHAFFEY BROTHERS
& HENDRICKS.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1205—September 22, 1924.

SYLLABUS.

Where a firm engaged in printing stationery by a process which involved the application to type printing, while still wet, of a chemical followed by baking, and which resulted in a raised-letter effect resembling in appearance the impression made by the use of engraved plates, commonly known as engraving; in the sale thereof described said stationery as "Process Engraving" and "Engraving" in their advertising pamphlets, and referred to themselves or their business as "Process Engravers" and "Engravers" on letterheads, bill heads and covers of specimen books; with the capacity and tendency thereby to mislead and deceive the public into believing said stationery to be genuine engraved stationery and with the effect of causing a part of the public to purchase the same in that belief:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Robert O. Brownell for the Commission.

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 W. C. Mahaffey, W. S. Mahaffey, and K. Hendricks, copartners trading as Mahaffey Brothers & Hendricks, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate 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. Respondents, W. C. Mahaffey, W. S. Mahaffey and K. Hendricks, are copartners trading as Mahaffey Brothers & Hendricks, with their principal office and place of business located in the city of Linesville, State of Pennsylvania. Respondents are engaged in the business of printing by a special process stationery for social and business purposes, including invitations, announce-