

Complaint.

IN THE MATTER OF

JOHN P. OLSEN, E. W. MALANG AND H. H. HENTSCHELL,
COPARTNERS, TRADING UNDER THE STYLE AND
FIRM NAME OF OZARK CREAMERY COMPANY.

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

Docket 1221—February 3, 1925.

SYLLABUS.

Where butter manufacturers in order to meet the public demand for small quantities had long advertised, offered and sold butter in standard, recognized unit quantities of one-fourth pound, one-half pound and one pound, of definite shape and size, in unmarked wrappers, and so packed or assembled in cartons as to make up a full pound; and thereafter a competitor, in disregard of collective action theretofore taken by members of the industry denouncing the practice and providing for its discontinuance, packed, sold and offered for sale butter in units which imitated the aforesaid standard and customary units of weight, but contained less, and were packed in cartons equal in size and similar in dress and design to the aforesaid cartons, thereby advisedly enabling and encouraging its retailer customers 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 purchased by it in the aforesaid units and cartons:

Held, That such misrepresentations of quantity, 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 John P. Olsen, E. W. Malang and H. H. Hentschell, copartners, trading under the style and firm name of Ozark Creamery Company 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, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents with their principal office and place of business in the town of Neosho in the State of Missouri are en-

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gaged in the manufacture of butter and the sale thereof to wholesale and retail dealers located at points in the various States of the United States. They cause said product when so sold to be transported from their aforesaid principal place of business in the town of Neosho, Mo., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships and corporations also engaged in the manufacture and/or sale of butter in interstate commerce.

PAR. 2. To meet the demand of the consuming public for small quantities of butter a custom has long prevailed whereby creameries pack butter in units 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 1 full pound. In each such carton are 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 wrapped in an unmarked wrapper. When said butter comes into the hands of the retail dealer for sale to the consuming public the retailer either sells said package in its original form, or breaks said cartons and separately sells said units of various weights to the consumer upon his demand for butter in quantities of one-quarter pound, one-half pound, or one pound, as the case may be. The purchasing public has long been accustomed to purchasing butter in said units and when so purchasing to ask for one-quarter pound, one-half pound, or 1 pound of butter, as the case may be.

PAR. 3. Respondents, within three years last past, have packed their said butter in units weighing respectively three and one-half ounces, seven ounces, and fourteen ounces, said units being separately wrapped in unmarked paper and simulating in shape and appearance the four-ounce, eight-ounce and one-pound units of butter customarily sold to the public, all as described in paragraph 2 hereof. Respondents pack their said units in cartons resembling in shape and appearance the cartons in which said four-ounce, eight-ounce and one-pound units are packed as set out in paragraph 2 hereof, and in their said cartons respondents place either four of their said three and one-half ounce units, two of their seven-ounce units, or one of their fourteen-ounce units. Respondents cause to be marked upon said cartons the correct weight of the butter therein packed; to wit: 14 ounces. Respondents have sold and distributed among the trade in the course of their business described in paragraph 1 hereof, their said butter packed in units and cartons as in this paragraph above set out, and said butter has been offered for sale and sold by retailers to the consuming

public in competition with the four-ounce, eight-ounce and one-pound units of butter packed as described in paragraph 2 hereof, respondents' said units being by said dealers taken from the cartons in which they are packed and being separately sold to consumers upon their demand for, and as and for, quantities of one-quarter pound, one-half pound and one pound of butter respectively. The carrying out of this deception and the above alleged circumstances which make it possible are well known to respondents, and although respondents are ostensibly complying with the law by marking the exact weight of the total contents on the carton in which their said units are packed, respondents know or should know that customarily said carton is not seen by the ultimate purchaser of the separate units, and respondents by shaping, dressing and packing butter in such undersized and short-weight units have knowingly placed in the hands of retailers an instrument which enables and encourages retailers to commit a fraud upon the consuming public, respondents thereby increasing their own sales to the disadvantage of manufacturers who refuse to pack butter in similar short-weight units and thereby aid such retailers in the practice of said fraud.

PAR. 4. The shaping, dressing and packing of butter in short-weight units by respondents as set out in paragraph 3 hereof, is calculated and designed to, and has the tendency and capacity to, and does, deceive the consuming public into the belief that respondents' said units contain more butter than said units do in fact contain, and causes the consuming public to purchase respondents' said units in that belief.

PAR. 5. Above alleged acts and things done by respondents are all to the prejudice of the public, and of respondents' 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 John P. Olsen, E. W. Malang and H. H. Hentschell, respondents, copartners trading under the style and firm name of Ozark Creamery Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearance herein and having made, executed and filed an agreed statement of facts in which it is

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stipulated and agreed by respondents 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 thereto, 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. Respondents, John P. Olsen, E. W. Malang and H. H. Hentschell, copartners trading under the style and firm name of Ozark Creamery Company with their principal office and place of business in the city of Neosho, in the State of Missouri, are engaged in the manufacture of butter and the sale thereof to wholesale and retail dealers located in various States of the United States. They cause said product when so sold to be transported from their aforesaid principal place of business in the town of Neosho, Mo., into and through the several States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business respondents are in competition with other individuals, partnerships and corporations also engaged in the manufacture, and in the sale of butter in interstate commerce.

PAR. 2. To meet the demand of the consuming public for small quantities of butter, a custom has long prevailed whereby creamery companies shape butter in sizes weighing respectively 4 ounces, 8 ounces and 1 pound. The standard and customary carton in which such units are placed by said creamery companies is such as to contain one full pound. In each such carton is placed either four 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 companies is separately dressed in an unmarked wrapper. The butter so shaped, wrapped and packed in said carton is distributed by and through wholesale dealers or jobbers and also sold by creamery companies direct to retailers. Retail dealers located in the States of Oklahoma, Texas, and Arkansas sell to consumers or purchasers said separate, unmarked units of butter which bear no designation by which the purchasers may ascertain their weights. Prior to the institution or use of the method or practice hereinafter more particularly described purchasers were accustomed to and did receive full-weight units, whether they purchased 4 ounces, 8 ounces or 1 pound of butter so packed.

PAR. 3. For more than one year prior to the issuance of the complaint herein, and in the course of their business as described in paragraph 1 hereof, and in imitation of units of standard and customary size as described in paragraph 2 hereof, respondents packed, shipped and sold butter in units weighing $8\frac{1}{2}$ ounces instead of said customary and standard units weighing 4 ounces, and in units weighing 7 ounces instead of said customary and standard units weighing 8 ounces, and in units weighing 14 ounces instead of said customary and standard units weighing 16 ounces. To further carry out such deceptive practice, respondents used cartons which equalized in size and which, by similarity of dress and design, otherwise simulated cartons in which the full-weight units were sold. In each such carton respondent placed either four of the $3\frac{1}{2}$ -ounce or two of the 7-ounce, or one of the 14-ounce units. These they sold and shipped as described in paragraph 1 hereof to retail dealers who supplied and sold to customers or purchasers the small unmarked units for and as 4-ounce, 8-ounce and 1-pound units, respectively, when, in fact, such units contained less than such respective weights. The carrying out of the deception and the circumstances which made it possible were well known to respondents, and although respondents were ostensibly complying with the law by marking the exact weights of the total contents on the outer wrapper or carton, respondents knew that customarily the outer wrapper or carton is not seen by the ultimate purchaser of the separate small units, and respondents, by shaping, dressing and packing butter in such undersized and odd-weight units, knowingly placed in the hands of retail dealers an instrument which enabled and encouraged retail dealers to sell butter in such small, odd and deceptive weight units as and for $\frac{1}{4}$ -pound, $\frac{1}{2}$ -pound and 1-pound units.

PAR. 4. For a long period of years it has been the custom of the trade to advertise, sell and offer for sale, butter in standard, recognized quantities of 1 pound, $\frac{1}{2}$ pound and $\frac{1}{4}$ pound, and there is a very large number of competitors of respondent who manufacture and market their product in commerce in quantities of 1 pound, $\frac{1}{2}$ pound and $\frac{1}{4}$ pound, of similar shape and appearance to that used by respondents, which said product is sold in competition with the underweight units sold by respondents.

PAR. 5. Butter manufacturers competing in the States of Arkansas, Oklahoma, and Texas assembled at the invitation of the Federal Trade Commission at Dallas, Tex., on April 2, 1920, in open meeting presided over by a duly authorized representative of the Commission did, by means of a 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 rep-

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representatives of the industry, and in announcements thereof by the Commission, such resolution was designated and known as "Trade Practice Submittal—Butter Manufacturers." August 1, 1920, was named in the said resolution as the date upon which the practice or method so denounced was to entirely cease, and which on said date did practically cease.

PAR. 6. Respondents were and are well acquainted with the purpose, intent, and spirit of said action taken by representatives of the industry at Dallas, Tex., on April 2, 1920, in the form of said Trade Practice Submittal.

PAR. 7. Such shaping, dressing and packing of butter in said odd-weight units hereinbefore described, is calculated to, designed to, and has the 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.

CONCLUSION.

The above practices of said respondents, 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 power 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 respondents and a stipulation as to the facts, and the Commission having made its findings as to the facts and its conclusion that the respondents have 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 respondents, John F. Olsen, E. W. Malang, and H. H. Hentschell, copartners, trading under the style and firm name of Ozark Creamery Company, and each of them, and their agents, employees and servants, do cease and desist from selling or offering for sale, to distributors, dealers or others, butter in shapes, sizes and/or dress in imitation of or resembling the standard or recognized shapes, sizes or dress 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.

Syllabus.

IN THE MATTER OF

F. W. DOBE.

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.*Docket 1230—February 6, 1925.*

SYLLABUS.

Where an individual engaged in teaching mechanical drafting by mail; in advertising his aforesaid business in newspapers, magazines, etc. and upon his letterheads and other stationery,

- (a) Represented that he was chief draftsman of a company which acted as consulting engineer and furnished designs for large plants and buildings and the machinery therefor, and employed mechanical draftsmen in such business under his supervision, the fact being that for a number of years the company referred to, originally organized by him, had been inactive and he had devoted all his time to the business of teaching;
- (b) Represented that a great demand existed in the United States for the services of draftsmen at a salary of \$250 a month or more, that he would furnish to pupils a valuable course of instruction which would qualify them as proficient mechanical draftsmen capable of earning that amount or more, and would continue instructions after the completion of the prescribed course, without charge, until his pupils attained such proficiency as to procure such a salary, and that they would have no difficulty in obtaining employment through his efforts or otherwise at that or a higher figure, the fact being that in only a few cases were his pupils able to secure approximately such a salary, that in the majority of cases in which his pupils obtained employment, their salaries were at a much lower figure, and that while there is a general and constant demand for draftsmen with both technical and practical experience at salaries ranging from \$150 to \$250 a month and at higher salaries in the case of those with extraordinary training and ability, there is no general demand for inexperienced draftsmen, and their salaries range from \$75 to \$100 per month;
- (c) Represented that he would give valuable and complete instruction free of charge to such pupils as assisted in securing others, the fact being that he merely allowed a commission to pupils rendering such service and thereby reduced the cost of the course to them; and
- (d) Represented that the necessary tools, supplies and appliances required for the prosecution of the course would be furnished by him free of charge, the fact being that they were actually furnished as part of the lump sum charged for the course;

With the result that laborers and high-school students included in the class of persons reached by his advertisements were deceived and caused to take and pay for his course in preference to those of competitors who did not make such misrepresentations:

Held, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. Robert O. Brownell for the Commission.

McKercher & Link of New York City, for respondent.