

Complaint.

IN THE MATTER OF

E. O. OLSON, TRADING AS WORTHINGTON CREAMERY &  
PRODUCE COMPANY.

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

*Docket 1087—March 17, 1925.*

SYLLABUS.

Where an individual engaged in the manufacture and sale of butter and using the station plan, under which cream is assembled at numerous, scattered, and sometimes distant stations in charge of trained and licensed agents, whose duty it is to test and purchase the same from the farmers, concentrate and ship it to the operating creamery, and procure and hold large groups of patrons for the benefit of their employer; in disregard of the collective action of members of the industry denouncing and discontinuing such practices,

- (a) Induced owners of buildings used as stations by his competitors and at which they had built up a large business, to terminate such tenancies and rent the same to him; and
- (b) Induced his competitors' agent to breach their contracts, enter his service, and deliver to him the good will and patronage enjoyed by and belonging to said competitors;

With the result that he surreptitiously acquired thereby a substantial proportion of all his stations, to the prejudice of his competitors who built up their businesses by establishing stations at their own expense or by purchasing the same, and appropriated to his own use and benefit values created by and belonging to such competitors:

*Held*, That such inducement of breach of contract and appropriation of values, under the circumstances set forth, constituted unfair methods of competition.

*Mr. M. Markham Flannery* for the Commission.

*Mr. J. A. Cashel* of Worthington, Minn., for respondent.

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 E. O. Olson, trading as Worthington Creamery & Produce Company, 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 said act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, E. O. Olson, trading as Worthington Creamery & Produce Company, with his principal office and place of

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business in the city of Worthington, State of Minnesota, and with cream stations located in several States of the United States, including the States of Iowa, North Dakota, and South Dakota, through which said respective cream stations respondent was at all times hereinafter mentioned, and still is, engaged in the purchase, in interstate commerce, of cream and other dairy products, together with eggs, poultry and similar products, also in the manufacture, sale and transportation, in interstate commerce, of butter and ice cream in wholesale and retail quantities; which said dairy and other products so purchased are transported by respondent, in interstate commerce, to his principal place of business in the city of Worthington, State of Minnesota, and there manufactured or converted into butter, and thence sold and transported, in interstate commerce, in wholesale and retail quantities, to purchasers in various States of the United States. In the course of his said business, respondent was at all times hereinafter mentioned, and still is, in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate commerce.

PAR. 2. Respondent, E. O. Olson, trading as aforesaid, in the course and conduct of his business, for more than one year last past, and with the purpose or with the effect of dissipating, destroying or appropriating in whole or in part, the patronage, property or business of his competitors, and rendering his said competitors less able to compete in the purchase, manufacture and sale of dairy products, has attempted to induce, and has solicited and induced, employees of said competitors to violate and terminate their contracts and leave the employment of such competitors and accept employment with said respondent, and has induced said employees to appropriate to said respondent the business and patronage belonging to, and enjoyed by, said competitors, such employees being stationed at cities or places located at distances from said competitors' main place of business and entrusted and charged with the duties of procuring, serving, dealing with, and holding for the benefit of said competitors large groups of its patrons, thereby causing said competitors the loss of great values created by and belonging to such competitors, which values respondent has appropriated, and now is appropriating, to his own use and benefit; that said solicitation and inducement was accomplished by offering to give, and giving, to said employees increased salaries, commissions, compensations, or other valuable considerations.

PAR. 3. Respondent E. O. Olson, trading as aforesaid, in the course and conduct of his business, for more than one year last past, and with the purpose or with the effect of dissipating, destroying or appropriating in whole or in part, the patronage, property or busi-

ness of his competitors, and rendering his said competitors less able to compete in the purchase, manufacture and sale of dairy products, has attempted to induce, and has solicited and induced, lessors to violate and terminate their contracts of lease for buildings to competitors, said buildings being used by competitors as cream stations and located in cities or places at distances from said competitors' main place of business, thereby causing said competitors inconvenience and financial loss; that said solicitation and inducement was accomplished by offering to give, and giving, to said lessors increased rentals or other valuable considerations.

PAR. 4. That investigation by the Federal Trade Commission, based on numerous complaints, revealed the almost universal practice in the creamery industry of methods of competition of the nature herein charged, and others; that to eliminate such methods more speedily than could be accomplished by formal proceedings instituted against individual concerns, a large number of creamery owners from various States, at the invitation of the Commission, assembled at the city of Omaha, in the State of Nebraska, on November 3, 1919, and then and there in open meeting, presided over by a Commissioner of the Federal Trade Commission, did, by means of resolutions individually discussed and separately voted on, define and denounce those methods of competition which in the experience of the industry had proven to be unfair; that later the State associations of creamery men in the States of Ohio, Indiana, Illinois, Iowa, Kansas, Michigan, Minnesota, Wisconsin, Nebraska, and Colorado, at their respective official meetings, ratified and adopted the resolutions so passed at said city; that practically the entire industry in so far as represented by such associations in the States named, have officially acted on and approved said resolutions; that at the time of their original adoption by the industry and in the announcement thereof by the Commission, such resolutions were designated as, and are known as, "Trade Practice Submittal—Creamery Industry"; that December 1, 1919, was adopted, by resolutions of the said Nebraska and Michigan associations and generally understood by all others in the industry, as the day upon which the practice of methods so denounced was to entirely cease, and which on said day did cease; that among other purposes intended and 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 practically all of the methods and practices so defined and denounced.

PAR. 5. That respondent was, and is, well acquainted with the purpose, intent and spirit of the action taken by the creamery industry

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for the enlightenment of the Federal Trade Commission in the form of such "Trade Practice Submittal"; that respondent's attention, from time to time, has been directed particularly to resolution No. 1 of said "Trade Practice Submittal," which said resolution is in the following language:

1. *Resolved*, that the willful interference by any person, association, or corporation, by any means or devices whatever with any existing contract between an employer and employee or agent, of such employer, in or about the production, manufacture, transportation, purchase or sale of any dairy product or the performance of any contractual duty or service connected therewith, such interference being for the purpose or with the effect of dissipating, destroying or appropriating in whole or in part, the patronage, property or business of another engaged in such industry, is hereby declared unfair.

PAR. 6. That by reason of the foregoing facts, 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 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."

## 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, E. O. Olsen, doing business as an individual under the trade name of Worthington Creamery and Produce Company, charging him with unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered his appearance by his attorney and having filed his answer herein, hearings were held before an examiner of the Federal Trade Commission heretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint and in support of the allegations of said answer of respondent, and thereupon this proceeding came on for final hearing and the Commission being now fully advised in the premises, makes this its findings as to the facts and conclusions:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, E. O. Olsen, is an individual trading as Worthington Creamery and Produce Company, with its principal place of business and manufacturing plant in the city of Worthington, State of Minnesota. Respondent at all times herein

mentioned was and now is engaged in purchasing cream or butterfat at points in Minnesota, Iowa, North Dakota, and South Dakota. This he ships, or causes to be shipped, from said points to his creamery at Worthington, Minn., where such cream or butterfat is converted into butter which butter respondent sells and ships to purchasers thereof located in States other than Minnesota. Respondent's said business, both as to the purchasing of cream or butterfat at the points in the States named and as to the selling and shipping of butter as hereinbefore described has been and now is conducted in direct competition with other persons, firms, copartnerships and corporations also engaged in purchasing, converting, selling and shipping of cream or butterfat and butter in interstate commerce.

PAR. 2. Respondent and his said competitors secure their raw material, cream or butterfat, by a method known in the creamery trade as the "station plan." This plan consists in maintaining stations at various points at each of which cream or butterfat from farms in the immediate vicinity is purchased, concentrated and shipped to the creamery operating them. Such stations are located at points convenient for the local concentration of the cream that is delivered and sold there by the farmers and the producers. They are numerous and scattered, being in some instances at a distance of five hundred miles from the principal place of business, or creamery, of the company operating them. These will hereinafter be referred to as stations.

PAR. 3. Creamery companies employ field superintendents, whose duty it is to establish and look after their respective stations. Stations, for the most part, are placed in country towns. When the field superintendent locates a site for the establishment of the station, he must find an agent or an operator. Such an operator is required by the laws of Minnesota (laws of Minn. 1921, Chap. 495, Sec. 40 and 41) to pass an examination in person and prove to the satisfaction of the dairy and food commissioner, by actual demonstration, that he is competent to properly operate a milk or cream testing apparatus to determine the percentage of butterfat in milk or cream, for the purpose of purchasing the same either for himself or another, and after thus qualifying, but before operating such an apparatus, he must secure a license from the State showing that he is authorized to so test milk or cream for said purpose. Other States have similar requirements. It is their duty to receive and test the cream to determine the amount of butterfat it contains and to make the purchases for the creamery company with funds supplied by the company for that purpose. Frequently it is not pos-

sible to secure an experienced or licensed operator, and the field superintendent then must work with and instruct a prospective operator until he has learned the business which he is to transact for the company and is qualified to receive a license. Newly established stations are usually operated at a considerable loss for about one year before they reach the status of "going" paying stations. At times they are abandoned and result in total loss.

PAR. 4. A common method among competing creamery companies in acquiring stations which they themselves have not established, is by purchase. Of seven hundred such stations operated by the Hanford Produce Company, a competitor of respondent, considerably more than one hundred were acquired by purchase. In purchasing such stations, the equipment, supplies and personal property are of little consequence. It is the good will, the business and the customers that constitute the chief value and the paramount consideration in determining the purchase price.

PAR. 5. A rare method of acquiring stations is by approaching or hiring the agent or operator employed at a "going" paying station that has been established or otherwise rightfully acquired by a competing creamery company, or by offering higher rent to the owner of the station building than the then occupant is paying, or by other similar means. This method of acquiring a great volume of immediate business without the expenditure of time or the investment of money was more frequently resorted to formerly than at present.

PAR. 6. Investigation made by the Commission and concluded May 13, 1919, based on numerous complaints from those engaged in the industry, revealed the almost universal practice in the creamery industry of methods of competition of the nature charged in the complaint herein, and others. To eliminate such methods more speedily than could be accomplished by formal proceedings instituted against individual concerns, a large number of creamery owners from various States, at the invitation of the Commission, assembled at the city of Omaha, in the State of Nebraska, on November 3, 1919, and then and there, in open meeting, presided over by a commissioner of the Federal Trade Commission, did, by means of resolutions individually discussed and separately voted on, define and denounce those methods of competition which in the experience of the industry had proven to be unfair. At the time of their adoption by the industry, and in the announcement thereof by the Commission, such resolutions were designated as, and known as "Trade Practice Submittal—Creamery Industry." December 1, 1919, was generally understood by those in the industry, as the day upon which the practice of methods so denounced was to entirely cease, and

which on said day did practically cease. Among other purposes intended and 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 practically the entire industry in eliminating substantially all of the methods and practices so defined and denounced.

PAR. 7. Respondent was, and is, well acquainted with the purpose, intent and spirit of the action taken by the creamery industry in the form of such "trade practice submittal," and while he was not present at any meeting at which said "trade practice submittal" was adopted, his attention, from time to time has been directed particularly to Resolution No. 1 of said "trade practice submittal," which resolution is as follows:

1. *Resolved*, That the willful interference by any person, association, or corporation, by any means or devices whatever with any existing contract between an employer and employee or agent, of such employer, in or about the production, manufacture, transportation, purchase or sale of any dairy product or the performance of any contractual duty or service connected therewith, such interference being for the purpose or with the effect of dissipating, destroying or appropriating in whole or in part, the patronage, property or business of another engaged in such industry, is hereby declared unfair.

PAR. 8. Notwithstanding respondent's full knowledge of the movement to purge the industry of unfair methods of competition, he in the regular course and conduct of his business has solicited and induced employees of said competitors to violate and terminate their contracts and leave the employment of such competitors and accept employment with him, and has induced said employees to deliver to him the business and patronage belonging to, and enjoyed by, said competitors, such employees being stationed at cities or places located at distances from said competitors' main place of business and entrusted and charged with the duties of procuring, serving, dealing with and holding for the benefit of said competitors large groups of their patrons; and has solicited and induced owners of buildings to terminate tenancies held by competitors where such buildings were rented and used by competitors as stations whereat a large custom, patronage, business and good will had been built up by such competitors; thereby causing said competitors the loss of great values created by and belonging to such competitors, which values respondent has appropriated, and now is appropriating, to his own use and benefit.

PAR. 9. At one such station located about fourteen miles from Worthington, Minn., 10,000 pounds of butterfat is purchased annually. A competitor of respondent, the Harding Cream Company, was operating this station. Its two agents operated as copartners doing

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business under a trade name. The terms of a contract which had been entered into between such competitor and said copartnership provided, among other things, that said copartnerships was the employee and agent of said competitor and "said business at said station and the good will thereof are the sole property of the company and said employee has no property right therein." It was also provided that the contract could be terminated upon thirty days' written notice and that upon such termination said employee should formally deliver possession of said business to the Harding Cream Company. By persuasion and coercion, respondent induced a breach of this contract. Respondent hired one of the copartners as a butter maker at his plant in Worthington and paid the other a salary to remain in the same building and to turn over to respondent the custom and valuable business legally acquired and belonging to said competitor. The persuasion consisted in offering the agent a monthly salary plus a commission and in buying for a time from such agent poultry and eggs. The compulsion consisted in later refusing to take such poultry and eggs unless said agent delivered to respondent the cream purchased at said station which cream the agent was under contract to deliver to respondent's said competitor, the Harding Cream Company.

PAR. 10. A competitor of respondent, the Spirit Lake Produce Company, operated a station at a point in Iowa, which station it had acquired by purchase. The building occupied was rented directly from the owner by said competitor and had been used continuously as a station for about ten years. Respondent communicated with the owner surreptitiously through the agent at the station. The owner by telephone asked this competitor for increased rent, but when a representative of said competitor visited the owner a day or two later, he was informed that respondent had rented the building and had paid a year's rent in advance at a materially increased rate. Respondent then employed said competitor's agents to operate this station. Thus, without investing any money, respondent wrongfully appropriated valuable business and patronage which had been acquired through purchase by such competitor.

At another point in Iowa, respondent offered the landlord of the building in which Spirit Lake Produce Company's station is located more rent than was then being paid by said competitor. To meet this situation said competitor paid the increased rent demanded and thus prevented the obvious design of respondent.

PAR. 11. During the latter part of June, 1923, another competitor, the Kirschbraun Creamery Company, lost its station at an Iowa point to respondent. This station was established by said competitor and operated by its agent. Under the terms of a contract entered into be-

tween said agent and said competitor, the agent agreed to represent said competitor exclusively at such point. It was also agreed that the cream business at this station and the good will thereof was the sole property of said competitor and that said agent had no right therein or title thereto and on the termination of this contract said agent was to deliver possession of the business and the property to said competitor. This contract was terminable at any time after thirty days' written notice by either party.

Prior to the establishment of this station by said competitor, its superintendent or road man visited this Iowa point in response to an application from an agent. At that time said competitor had no station at this point, and after some difficulty in securing a suitable location an eight room building was rented by said competitor, the usual contract entered into, equipment installed, and said agent who had never before bought cream was coached by said competitor's superintendent and business at that station was started. During the time which said competitor held this station a fair business was being built up and the volume of cream obtained thereat was increasing daily. Only one room of the house was required for station purposes and said agent occupied the remaining seven rooms rent free.

About fifteen days after the station was established respondent started a competing station in an immediately adjoining building. Two men were sent by respondent to operate it. Said agent rented part of this rent-free quarters to one of these men. Said agent finally spoke to said competitor's superintendent of leaving the employment of said competitor, but kept secret the fact that he was going to work in the adjoining building for respondent. It developed, however, that respondent's superintendent had visited this competitor's station and there made a contract with said agent to work for respondent.

While the contract between said competitor and its agent was still in effect, respondent through such agent was receiving business intended for and belonging to said competitor. In other words, said agent was sending the customers of said competitor into respondent's station which, as previously stated, was located in the adjoining building. No written notice of said agent's intention to terminate the contract was received by said competitor.

PAR. 12. At a point in South Dakota, the Pipestone Produce Company, a creamery company competing with respondent, had secured a large business at its station, which business was appropriated by respondent who had induced the agent to violate his contractual relation with this competing creamery company. In addition to losing the business, it also lost the building wherein the station was located.

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At another point in Minnesota this competing creamery maintained a station which it has operated for a considerable length of time. Respondent made several attempts to persuade its agent to deliver the business of such competitor to respondent, but the agent instead of being so persuaded reported the matter to such competitor, who protested by letter to respondent as follows:

APRIL 18, 1919.

WORTHINGTON CREAMERY CO.,

*Worthington, Minnesota.*

Att'n Mr. Olson, Mgr.

DEAR SIR: Our road men report that you have been calling in Alpha, Minnesota, and attempting to arrange some deal by which you could relieve us of our cream station there. While we know of course that any such scheme on your part will never work out, we do not appreciate any interference with our business. We have left your station strictly alone up to date and expect the same courtesy on your part.

Very truly yours,

PIPESTONE PRODUCE COMPANY.

Other stations, agents, business and the good will thereof, were likewise wrongfully taken by respondent from the same competing creamery company and from the Hanford Produce Company through the means and methods described in paragraph 6.

PAR. 13. By methods herein described respondent has surreptitiously acquired from five competitors named herein, approximately 30 per cent of the total number of stations operated by him. While each of said five competitors, in strict observance of the resolutions of said "trade practice submittal" has refrained from retaliating by acquiring or attempting to acquire a single station from respondent.

PAR. 14. Prior to the issuance of the complaint herein, there were, and now are, manufacturers of butter who purchased cream or butter fat in commerce among the several States of the United States and who do not acquire stations and business thereat by inducing breaches of contract, but who have built, and who do build, their business, either by establishing such stations at their own expense, or by acquiring them through purchase from competitors who have established them.

PAR. 15. For more than three years last past, respondent E. O. Olsen, trading as Worthington Creamery and Produce Company, has indulged in the practices and acts herein set forth and charged in the complaint herein. Such acts and practices were and are prejudicial to the public and to competitors.

## CONCLUSION.

The practices of respondent, E. O. Olsen, trading as Worthington Creamery & Produce Company, under the conditions 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, testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions 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,"

*It is now ordered,* That the respondent E. O. Olsen, trading as Worthington Creamery and Produce Company, his agents, servants, employees and representatives, do cease and desist from—

1. Inducing or attempting to induce employees of competitors to breach their contracts with such competitors and enter the employment of respondent;

2. Inducing or attempting to induce employees of competitors, who are entrusted and charged with the duty of procuring, serving, dealing with, and holding for the benefit of said competitors large groups of their patrons, at various stations operated by said competitors, to breach their contracts with said competitors and deliver to respondent the good will and patronage so enjoyed by and belonging to said competitors;

3. Inducing or attempting to induce the owners of buildings rented and used as stations by competitors, to terminate such tenancies by said competitors and rent the said buildings to respondent; and

4. Interfering or attempting to interfere in any other manner with the contractual relations existing between competitors and their respective agents and employees who are engaged in the production, manufacture, transportation, purchase, or sale of any dairy product.

*And it is further ordered,* That respondent, E. O. Olsen, shall, within sixty days after the service upon him of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF  
MARINELLO COMPANY.

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

*Docket 1149—March 17, 1925.*

SYLLABUS.

Where a corporation engaged in the manufacture of toilet preparations and in the sale thereof to jobbers and retail dealers; in pursuance of a policy directed to the observance of the prices fixed by it for the sale of its products at retail, which prices it incorporated in price lists issued by it to its customers and to the trade generally,

- (a) Entered into, and procured, contracts or agreements with dealers binding them to observe such prices;
  - (b) Requested its dealer customers to report the names of price cutters or suspected price cutters;
  - (c) Sought the cooperation of such dealers in making effective its aforesaid policy by investigating cases of price cutting reported to it and advising reporting dealers thereof and of its appreciation of their action in furnishing it such information, by informing them that it had refused or would refuse further sales to price cutters who would not give assurances of adherence to the desired prices, and by so doing; and
  - (d) Investigated price cutting on the part of dealers securing their goods from vendors other than itself, with a view to cutting off their source of supply;
- With the result that it secured the cooperation of customer dealers generally and of all interested parties, its prices were generally observed, dealers were prevented from selling its products at such lower prices as they might deem warranted by their respective selling costs and trade conditions generally, and competition in the sale thereof was hindered:

*Held*, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

*Mr. Alfred M. Craven* for the Commission.

*Mr. Max W. Zabel* of Chicago, Ill., for respondent.

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 Marinello Company hereinafter referred to as respondent, has been and is 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. Respondent is a corporation organized under the laws of the State of Wisconsin, with its principal office and place of business in the city of La Crosse, in said State. It is engaged