

Syllabus.

IN THE MATTER OF

**WISCONSIN COOPERATIVE CREAMERY ASSOCIATION,
ITS OFFICERS, DIRECTORS AND MEMBERS, ET AL.**

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

Docket 1080—April 25, 1925.

SYLLABUS.

Where a membership corporation which had for its purpose the fostering and promoting of cooperative dairying; members thereof consisting of cooperative creameries engaged in the sale of butter to retail dealers, meat markets, and individual consumers in a certain county in competition with manufacturers of a competitive product recognized as a legitimate article of commerce as a food product for human consumption; and officials of said creameries; in pursuance of a conspiracy and combination between and among themselves and with others to obstruct and prevent the sale of such product in said county,

- (a) Passed a resolution at a meeting of said corporation, calling upon the merchants and meat markets of said county to discontinue the sale of such competitive product as detrimental to the prosperity of the farmers and hence to their own, and calling upon the citizens thereof to eliminate such product for the same reason and for its alleged injurious effect upon the public health, which resolution was published in all the newspapers of the county; and

Where one of said creameries,

- (b) Entered into an agreement with the dealers and meat markets in one of the towns of such county whereby it undertook to cease selling butter to consumers at dealer prices in consideration of the former undertaking to discontinue handling said competitive product and maintain the price of butter;

With the result that the sale of such product through dealers and meat markets in said town was completely eliminated and sales thereof throughout the county greatly decreased:

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

Mr. M. Markham Flannery for the Commission.

Mr. Philip F. La Follette of Madison, Wis., for Wisconsin Cooperative Creamery Association.

Mitchell, Doherty, Rumble, Bunn & Butler of St. Paul, Minn., for other respondents.

Complaint.

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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 respondent, Wisconsin Cooperative Creamery Association, its officers, directors and members, and each and every one of the respondent cooperative creameries named in the caption hereof, and said cooperative creamery companies or corporations' officers, directors, and members, and each and every one of the individual respondents named in the caption hereof,¹ have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Wisconsin Cooperative Creamery Association, is and for more than three years last past has been, a membership corporation organized under the laws of the State of Wisconsin with its principal place of business in said State. Its membership, or stockholders, is composed of the respondent cooperative creameries named in the caption hereof, all located in Polk County, Wis., and other cooperative creameries located principally in Polk, Barren, Burnet and Monroe Counties, Wis.

PAR. 2. Respondent cooperative creameries named in the caption hereof are all companies or corporations which own and operate on the cooperative plan creameries for the manufacture and sale of butter. The membership or stockholders of each respondent cooperative creamery comprise a very large number of farmer dairymen, and supply said cooperative creameries with milk and cream to be manufactured into butter.

PAR. 3. Respondent Wisconsin Cooperative Creamery Association and each respondent cooperative creamery named in the caption hereof, for more than three years last past have been engaged in selling the butter manufactured by said cooperative creameries and have caused said butter when sold to be transported or delivered to merchants, meat dealers and other retailers located in the State of Wisconsin, particularly Polk County, and other purchasers of butter located in the different States of the United States other than the State of Wisconsin.

¹ Respondents named in the caption included, in addition to twenty individuals who acted as officers, directors, or representatives of respondent cooperative creamery associations and respondent Wisconsin Cooperative Creamery Association, the following cooperative creameries and the officers, directors, and members thereof: West Sweden, Eurcka, Amery, Clam Falls, Luck, Georgetown, Clayton, Lykens, Dresser Junction, Volga, Atlas, Clear Lake, Frederic, Milltown, Cushing, Apple River, Bone Lake, Centuria, Four Corner, and Grantsburg.

PAR. 4. The business of respondent, Wisconsin Cooperative Creamery Association, and respondent cooperative creameries named in the caption hereof, in the manufacture and sale of butter as aforesaid has been for more than three years last past and is now carried on in active competition with certain manufacturers of oleomargarine situated in States other than Wisconsin and who have during the times mentioned in the complaint sold and shipped from States other than Wisconsin to merchants, meat dealers and other retailers, in the State of Wisconsin, particularly Polk County, oleomargarine, which is in turn sold by said dealers to consumers in competition with the products of the respondent Wisconsin Cooperative Creamery Association and its cooperative creamery members named in the caption hereof.

PAR. 5. Respondent, Wisconsin Cooperative Creamery Association, and respondent cooperative creameries named in the caption hereof, and the respondent individuals named in the caption hereof, who acted as officers, directors or representatives of said cooperative creameries, during the time mentioned in the complaint, combined and conspired among themselves and with others to hinder, obstruct, and prevent the sale and distribution of oleomargarine shipped and transported from other States of the United States into the State of Wisconsin, particularly Polk County, Wis., for the purpose of sale, distribution and consumption therein, and in pursuance of said conspiracy and to effect its purposes, said respondents have done the following acts and employed the following means:

(a) The respondent, Wisconsin Cooperative Creamery Association, at a special meeting held on the 31st day of May, 1921, at Balsam Lake, Polk County, Wis., represented by respondent cooperative creameries and respondent individuals named in the caption hereof, unanimously passed a resolution which reads as follows:

To the Merchants and Meat Markets of Polk County:

Whereas, Oleomargarine is sold in direct competition to butter, and,

Whereas, The Prosperity of the farmer depends upon the price he gets for his product; and,

Whereas, The Prosperity of the merchants and meat markets depend on the prosperity of the farmer, therefore be it,

Resolved, That we, the undersigned farmers and dairymen respectfully petition the merchants and meat markets of Polk County, Wis., to discontinue the sale of butter substitutes.

Be it further resolved, that we urge all our citizens, to use their best influence, to eliminate butter substitutes from Polk County, inasmuch as they are only a food substitute and are injurious to public health, and our Polk County citizens' prosperity depends upon the dairy industry.

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(b) Respondent, Wisconsin Cooperative Creamery Association and respondent cooperative creameries and respondent individuals named in the caption hereof, caused said resolution to be widely circulated by publication in newspapers, and by personal delivery to merchants and dealers in oleomargarine in the various cities, towns and communities in Polk Count, Wis.

(c) Respondent, Wisconsin Cooperative Creamery Association, and respondent cooperative creameries appointed a committee comprised of one member for each city, town, and community in Polk County, wherein dealers were located, to interview said dealers and to persuade and coerce them to cease handling oleomargarine. The members of said committee and other agents of the respondent, Wisconsin Cooperative Creamery Association, and its respondent members, and respondent individuals named in the caption hereof, shortly after the passage of said resolution called upon retail dealers in Polk County and by persuasion and threats of loss of patronage induced said dealers with but few exceptions to agree to quit handling oleomargarine. As a result of respondents' activities, sales of oleomargarine in Polk County has been eliminated to a large extent.

PAR. 6. The above alleged acts and things done by respondents are all to the prejudice of the public and to the prejudice of competitors of respondents 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 an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents named in the caption hereof charging them with unfair methods of competition, in violation of the said act.

Said respondents entered their appearance by their respective attorneys and having filed their answer herein, hearings were held before an examiner of the Federal Trade Commission heretofore duly appointed and testimony and documentary evidence were thereupon offered in support of the allegations of the said complaint and in support of the allegations of said answers of respondents, 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. Respondent, Wisconsin Cooperative Creamery Association, is and for more than three years last past has been, a membership corporation organized under the laws of the State of Wisconsin with its principal place of business in said State. It neither buys, sells nor ships any article of commerce, but its members are engaged in commerce as more fully appears in paragraph 2 hereof. Its purpose is to foster and promote cooperative dairying. Its membership consists exclusively of cooperative creameries located in the State of Wisconsin. These it groups or divides into branches which it designates by number. The 20 cooperative creameries named as respondents in the complaint herein constitute the membership of Branch No. 1 of the Wisconsin Cooperative Creamery Association. These will be referred to hereinafter as "respondent creameries." The 20 individuals so named in the complaint are officials, respectively, of the 20 respondent creameries. The Wisconsin Cooperative Creamery Association is organized and conducted for the profit of its members. It was used by its members as a means or a medium through which they carried out or put into effect the conspiracy charged in the complaint herein.

PAR. 2. Each said respondent creamery is a company or corporation organized under the laws of Wisconsin which provide specifically for the organization of creameries intended to be operated on the cooperative plan. The principal places of business and the churning plants of 18 of the respondent creameries are located in Polk County, Wis. The principal places of business and the churning plants of the remaining two respondent creameries are located in counties immediately adjoining Polk County. Each is engaged in the manufacture of butter. Some of this butter they sell in Polk County and other counties of Wisconsin, but most of it, respondent creameries sell and ship from their respective churning plants to purchasers located at Philadelphia, Pa., New York City, N. Y., and points in other States of the United States. In the course and conduct of their aforesaid business respondent creameries are in competition with other individuals, firms, copartnerships, and corporations who are engaged in the manufacture and sale of oleomargarine and who ship such products from their respective places of manufacture in Illinois, Minnesota, and other States of the United States to purchasers located in Polk County, Wis., and in other parts of Wisconsin, and in other States of the United States besides those in which said respective places of manufacture are located.

PAR. 3. Sales of butter in Polk County by respondent creameries are now and for more than three years last past, have been made

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to retail dealers, meat markets and individual consumers. Sales of oleomargarine in Polk County made by manufacturers located in Illinois, Minnesota and other States of the United States, who ship such oleomargarine into said county from said other States, are now, and for more than three years last past have been likewise made to such dealers, meat markets and individuals in direct competition with such butter.

PAR. 4. The respondents have conspired and combined between and among themselves and with others to hinder, obstruct and prevent the sale and use of oleomargarine in Polk County, Wis., and through concerted action, through agreement and through the use of respondent Wisconsin Cooperative Creamery Association, its officers and directors, said respondent creameries, their officers and directors, and said individuals named in the complaint herein as respondents between and among themselves and with others have carried into effect such conspiracy in the manner hereinafter set out.

PAR. 5. On May 31, 1921, respondent members assembled at an officially called meeting of the respondent Wisconsin Cooperative Creamery Association. At this meeting a resolution was voted on and unanimously adopted calling on the dealers and meat markets of Polk County to discontinue the sale of oleomargarine, and calling on the citizens thereof "to eliminate butter substitutes from Polk County inasmuch as they * * * are injurious to public health." Said resolution reads as follows:

To the merchants and meat markets of Polk County:

Whereas, oleomargarine is sold in direct competition to butter, and,

Whereas, the prosperity of the farmers depends upon the price he gets for his product; and,

Whereas, the prosperity of the merchants and meat markets depend on the prosperity of the farmer, therefore be it,

Resolved, that we the undersigned farmers and dairymen respectfully petition the merchants and meat markets of Polk County, Wis., to discontinue the sale of butter substitutes.

Be it further resolved, that we urge all our citizens to use their best influence, to eliminate butter substitutes from Polk County, inasmuch as they are only food substitutes, and are injurious to public health, and our Polk County citizens' prosperity depend upon the dairy industry.

WISCONSIN COOPERATIVE CREAMERY ASSOCIATION.

PAR. 6. The resolution quoted in paragraph 5 hereof was published in all the newspapers in Polk County and was widely circulated in said county. An individual not a member of said association, not a creamery operator, but a person who occupied a position known as "county agent," for Polk County was present at said meeting of May 31, 1921, and through him said resolution was

published in all of the newspapers of Polk County. "County agents" are paid partly by the United States Department of Agriculture, partly by the State of Wisconsin and partly by the counties of said State. The duties of said office are to assist in developing the agricultural resources of the particular county wherein an agent is located. The means used in such development is largely publicity.

PAR. 7. Oleomargarine originated in France, and was introduced into the United States about 40 years ago. It is manufactured from cocoanut oil and animal fats and some coloring matter is at times added. It is a legitimate article of commerce recognized by the Federal government as a food product for human consumption. The price at which oleomargarine is sold is usually from 15 to 25 cents per pound less than the price of butter.

PAR. 8. Subsequent to and as the result of the passage of said resolution quoted in paragraph 5 hereof, and the publicity relating thereto which followed, the sale of oleomargarine has steadily decreased in Polk County. During the six-month period, January 1 to July 1, 1921, on one route which lies almost wholly in Polk County, a single manufacturer sold more than 6,100 pounds of oleomargarine to approximately 30 dealers. For the corresponding six-month period of the following year sales on this route dropped to less than 2,000 pounds, a falling off of about 75 per cent, and not more than 5 of the 30 dealers continued to handle oleomargarine. The business in Polk County of other manufacturers of oleomargarine fell off to an equal or greater extent, which decrease in sales the Commission finds is the direct result of said unlawful acts and conspiracy on the part of respondents. Sales outside of Polk County have increased generally, during all of the time herein mentioned.

PAR. 9. Amery, Polk County, Wis., at the time was the home of the Wisconsin Cooperative Creamery Association, and was and is now the home of respondent, Amery Cooperative Creamery, member of Branch No. 1 of the respondent, Wisconsin Cooperative Creamery Association. At this point an agreement or understanding was entered into whereby said respondent member was to cease selling butter to consumers at dealers' prices, provided the dealers and meat markets at Amery would cease handling oleomargarine and maintain the price of butter. This understanding completely wiped out the sale of oleomargarine through dealers and meat markets at Amery. Prior to said agreement or understanding, respondent, Amery Cooperative Creamery, did not allow dealers or merchants any margin of profit on the sale of butter, because the merchants were handling oleomargarine. The result of this agree-

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ment or understanding was announced by letter addressed to all dealers at Amery of which the following is a copy:

AMERY COMMERCIAL ASSOCIATION,
Amery, Wis., September 8, 1921.

AMERY MERCANTILE CO., *City*.

GENTLEMEN: I have to-day been notified by Mr. Sam B. Yasscan that the Amery Creamery Association will to-day discontinue selling butter at wholesale prices to the consumer.

The new schedule of prices adopted by the Amery Creamery Association is as follows: When the wholesale price of butter is less than 40 cents, they will charge 4 cents per pound more than the market. When the wholesale price is more than 40 cents, they will charge 5 cents per pound more than the market to the retail trade. This action on the part of the Amery Creamery Association has been taken in appreciation of the cooperation given by the dealers in discontinuing the sale of "Oleomargarine."

It is the desire of the Amery Creamery Association that you cooperate with them in maintaining this price on their product.

After the stand the Amery Creamery Association has taken, the sale of their butter will no doubt jump in this vicinity.

If the above understanding is not entirely satisfactory to you, please take the matter up with me at once.

A suggestion that a sign be put up, that you believe in the Amery Creamery Association, and are pushing the sale of their butter, might please the farmer to a great extent.

Yours very truly,

AMERY COMMERCIAL ASSOCIATION,
A. O. DALBERT, *President*.

By: (Signed)

The signer of the above-quoted letter is not a respondent, but as president of a local commercial club, who had taken an active interest in the consummation of the above-mentioned understanding he wrote said letter in response to the request of respondent Vassean, secretary of respondent Amery Cooperative Creamery, that he notify the dealers of Amery of his agreement to the proposed plan.

PAR. 10. Pursuant to the arrangement described in paragraph 9 hereof, all dealers in Amery promptly discontinued handling oleomargarine. After an interval of about a year, one dealer resumed handling oleomargarine, but none of the other dealers in Amery have resumed handling it, and the sales of oleomargarine at Amery are still very small compared to what they were prior to said arrangement, this decrease in sales being the direct result of said acts of respondents.

CONCLUSION.

The acts and practices of the said respondent herein named, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and

constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have 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 ordered, That the above-named respondents, and each of them, and their agents, representatives, servants, employees and all other persons acting for or under them, do cease and desist—

From combining among themselves or with others to hinder, obstruct or prevent the sale of oleomargarine which has been or may be brought into Wisconsin in interstate commerce, and particularly from combining to obstruct, hinder or prevent the purchase in interstate commerce of oleomargarine by the retail dealers and meat markets of Polk County, Wis., or the sale by said dealers and meat markets of oleomargarine so purchased; and from entering into any agreement or understanding with retail dealers or meat markets or others with a view to preventing said retail dealers, meat markets or others from purchasing oleomargarine in interstate commerce or from selling oleomargarine so purchased.

It is now further ordered, That the above-named respondents and each of them shall, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint.

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IN THE MATTER OF
JOSEPH S. WEINSTOCK.

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

Docket 1094—May 5, 1925.

SYLLABUS.

Where it had been long known that the City of Sheffield, England, and its vicinity constituted that country's largest producing area of silverware and silverplated ware, and the center of its silver industry, and such products there made had come to be highly regarded by the trade and public, and the words "Sheffield Silver", "Sheffield Plate", and "Sheffield Silverplated Ware", when applied to such products had come to denote to a substantial portion of the public that the products so designated had been manufactured in Sheffield, England, and were of the quality which had become associated with that name and industry; and thereafter an American dealer in silverplated ware made by the electroplating process sold the same with the words "Sheffield", "Sheffield Plate", and other combinations of words including the word "Sheffield" impressed thereon, and in his catalogues and other trade literature dominated and listed the same as Sheffield Plate, notwithstanding the fact that the same were of domestic origin and not of that quality associated with the term Sheffield as above set forth; with the effect of inducing the purchase of the afore-said products thus misrepresented as to origin and quality, by a substantial portion of the trade and public in preference to the products of competitors dealing in silverplated ware manufactured in Sheffield, England and of those dealing in products not there manufactured and not so designated: *Held*, That the sale of products misbranded as above set forth, constituted an unfair method of competition.

Mr. John R. Dowlan for the Commission.

COMPLAINT.¹

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 Joseph S. Weinstock, 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 respect as follows:

COUNT I.

PARAGRAPH 1. Respondent is an individual transacting business under the name of Joseph S. Weinstock, with his principal office

¹ As amended.