

Complaint

IN THE MATTER OF
NATIONAL DAIRY UNIONCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1988. Complaint, Nov. 18, 1931—Decision, Mar. 28, 1932*

Consent order requiring respondent corporation, its agents, etc., to cease and desist from representing, publishing, etc., in aid or furtherance of production, sale, and distribution of butter in interstate commerce, (a) any false and defamatory statements purporting to describe manufacture, sale, or composition of oleomargarine; (b) matter or information stating said product, or coconut oil contained therein, is foul, insanitary, etc., or unfit for human consumption; or (c) that sale of said product is a rich man's graft or false information concerning cost of materials used in manufacture thereof; all as in said order more specifically set forth.

Mr. PGad B. Morehouse 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 National Dairy Union, a corporation hereinafter referred to as respondent, has been and is now using unfair methods of competition in interstate commerce in violation of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, National Dairy Union, exists as a corporation organized in 1903 under the laws of the State of Illinois and has its office and principal place of business at No. 630 Louisiana Avenue NW., Washington, D. C. Said corporation is now and for more than two years last past has been engaged in the dissemination of information of interest to a large mailing list of dairy and creamery companies, its members, as well as nonmembers; the annual solicitation of funds from members and the continual solicitation of new memberships.

Respondent's officers, members, and prospective members are persons and companies engaged in the production, sale, and distribution, among other dairy products, of butter, which, when manufactured or produced, is shipped and transported from their respective places of business in the State thereof in, into, and through various other States of the United States to retailers, produce dealers, and other customers located therein for delivery and retail to the ultimate con-

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sumer. Respondent has in all from 250 to 300 of such members throughout the United States, particularly in the States of Minnesota, Wisconsin, Iowa, and Michigan. This contributing membership is subject to continual change.

PAR. 2. In the course and conduct of its business respondent acts on behalf of its members who are engaged in interstate commerce in dairy and creamery products, including butter, and its acts are approved and financially supported by the dairy and creamery company members aforesaid. Said members are and have been in competition over a coextensive area with other individuals, firms, and corporations engaged in the sale and distribution in interstate commerce of oleomargarine, a product widely used by the consuming public as a substitute for and in lieu of butter.

PAR. 3. In the course and conduct of this business aforesaid respondent, in manner and form designed and well calculated to injure and bring into disrepute generally its members' competitors who deal in and distribute oleomargarine in interstate commerce, widely publishes, republishes, and distributes, and furnishes its members with the means of publishing, republishing and distributing to retailers, produce dealers, and the consuming public, misleading, false, and defamatory statements purporting to be descriptive of the ordinary and usual process of manufacture and sale of oleomargarine, to wit:

That the manufacture and sale of oleomargarine "is a rich man's graft"; and that oleomargarines are made from cocoanut oil and certain other ingredients; that the cocoanut oil such as is used in American oleomargarine is made from copra. Respondent further disparages and maligns the competitive product oleomargarine conveying, by means of implication as well as direct statements, the misinformation to its members, retailers, produce dealers, and other consumers that in the ordinary and usual process of manufacture of oleomargarine the cocoanut oil contained therein is foul, filthy, and insanitary, or otherwise unfit and unhealthy for human consumption; that it is comparable to stable manure; that swarms of half naked Malays, perspiring under tropical heat, trample under bare feet the copra which is going to be made into the "poor man's butter," by "poor man's butter" meaning and intending oleomargarine; whereas in truth and in fact such statements are not descriptive of the ordinary and usual process of manufacture and composition of oleomargarine, and many brands and grades of oleomargarine do not contain cocoanut oil at all, but are made from beef fats, vegetable oils, nut margarine and other products ordinarily and usually manufactured and produced under sanitary and healthful conditions, in no way comparable to stable manure, or other compost or

filth, and are not derived from cocoanut oil obtained by stamping copra with the bare feet of sweating Malays under tropical heat, and which are not in any other way unfit or unhealthful for human consumption.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has published, republished, and distributed to its members, retailers, produce dealers, and other consumers, false, misleading, and disparaging statements designed and well calculated to cause the reader thereof to believe that 1,000 pounds of oleomargarine are made at a cost of \$107.50, and giving a certain recipe containing only four ingredients, thereby inducing the reader to the conclusion that such recipe, with the prices given, applies to all oleomargarine products, and that the sale and distribution thereof by respondent's members' competitors constitutes a "graft," thereby meaning and intending to imply that the public is swindled as well as injured in health in the purchase and consumption of said competitive product, when in truth and in fact such recipe and such cost neither fairly nor accurately represent either the usual ingredients, or the usual cost in connection with the ordinary and usual production of oleomargarine being distributed and sold in interstate commerce.

PAR. 5. That such false, misleading, and disparaging statements, publications, and republications have the tendency to, and substantially do, injure the sale and distribution in interstate commerce of the product known as oleomargarine, and tend to, and do, actually hinder and prevent and decrease its use by the consuming public as a substitute for the product dealt in by respondent's members, thereby threatening with injury or actually injuring to a substantial extent respondent's members' competitors in interstate commerce and diverting trade from said competitors to the members of the respondent corporation.

PAR. 6. The acts and things above alleged to have been done, and the false and misleading representations alleged to have been made, published, and distributed by respondents, are to the prejudice of the public and to the competitors of respondent's members, and constitutes unfair methods of competition 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.

ORDER TO CEASE AND DESIST

This proceeding having come on to be heard by the Federal Trade Commission upon complaint and the answer of respondent in which respondent refrains from contesting the proceeding and consents

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that the Commission may make, enter, and serve upon it an order to cease and desist, from the methods of competition charged in the complaint, and the Commission being fully advised in the premises having thereupon concluded that the respondent has violated section 5 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 the respondent, National Dairy Union, a corporation, and its agents, representatives, servants, and employees, in the aid or furtherance of the production, sale, and distribution of butter in interstate commerce cease and desist from:

Representing, publishing, republishing, or distributing to its members, or directly or indirectly to retail dealers, produce dealers, or the consuming public (a) any false and defamatory statements, directly or indirectly purporting to be descriptive of the manufacture, or sale, or composition of oleomargarine; (b) any matter or information stating directly or by implication that oleomargarine in the ordinary and usual process of being manufactured, or cocoanut oil contained in such oleomargarine, is foul, filthy, or insanitary, or otherwise unfit for human consumption; (c) any direct statement or matter containing the implication that the sale of oleomargarine is a rich man's graft, or any false information concerning the cost of the materials used in the manufacture of oleomargarine.

It is further ordered, That the said respondent within 60 days from and after the date of the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
MACFADDEN PUBLICATIONS, INC.COMPLAINT (SYNOPSIS), FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1549. Complaint, Nov. 24, 1928—Decision, Apr. 11, 1932*

Where a corporation engaged in operating, conducting, managing, controlling and directing various subsidiaries, publishers or printers of certain magazines, periodicals and tabloid dailies, and in acting as distributing agent for publications concerned, subscription, circulation and advertising activities of which it managed, controlled and directed; in soliciting subscriptions to said magazines through circulars and literature sent to from 50,000 to over a million and a half names, according to the particular magazine,

- (a) Represented subscription price of a periodical as \$2.50 for one year so that "at this rate it would ordinarily cost you \$5 for two years," but informed prospect that "by using the attached credit memorandum worth \$1 you pay only \$4 and you get two whole years," and offered special health or other advisory services and/or books without cost to prospect, attributing ability to offer such purported saving to economies effected through 2-year subscriptions and large subscription lists, and made representations of similar tenor in connection with solicitation of other subscriptions, facts being pretended reduced prices constituted its regular prices for various magazines and subscription periods concerned through agents and news dealers, books and services were regularly included with subscriptions, at no additional cost, and subscriber at pretended reduced prices made no savings;
- (b) Made such statements in aforesaid offers and solicitations as "the very nature of this big offer forces us to hold it open for the next thirty days only," facts being prices and terms held out were generally available as aforesaid, and without any such limitation of time; and
- (c) Falsely represented to prospect that he was being offered opportunity of said supposed special concessions in price and otherwise by reason of his membership in that class of the general public whose greater purchases and purchasing power make its members particularly desirable subscribers through enhancing the financial value of advertising in the particular periodical, advising prospect offer was "not to be broadcast," and "we do not want orders from anyone but you or members of your immediate family at this reduced rate";

With effect of deceiving and misleading purchasers and prospective purchasers into believing that prices offered as aforesaid constituted prices reduced from the regular and usual rate, and into subscribing in such belief, and of diverting trade from competitors to it, and with capacity and tendency so to mislead, deceive and divert, and otherwise injure competitors in their businesses: