

IN THE MATTER OF
CRESCENT CREAMERY COMPANY

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1984. Complaint, Oct. 29, 1931—Order, Apr. 25, 1932

Consent order requiring respondent corporation, its agents, etc., to cease and desist, in aid or furtherance of production, sale, and distribution of butter in interstate commerce, from representing, publishing, etc. (a) any false and defamatory statements purporting to describe manufacture, sale, or composition of oleomargarine; (b) matter or information stating said product, or cocoanut 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 Crescent Creamery Co., a corporation, hereinafter referred to as respondent, has been and is now 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. The respondent, Crescent Creamery Co., is a corporation organized and existing under the laws of the State of South Dakota and has its office and principal place of business at 801 North Main Street, in the city of Sioux Falls, State of South Dakota. Said corporation is now, and for more than two years last past, has been engaged in the manufacture, sale, and distribution of butter, which when manufactured or produced is shipped and transported from its principal place of business in the State of South Dakota in, into, and through the States of Iowa, Minnesota, and various other States of the United States to retailers, produce dealers and other customers located therein for delivery and resale to the ultimate consumer. In the course and conduct of the corporate business as aforesaid respondent is and has been in competition over a coextensive area with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of oleomar-

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garine, a product widely used by the consuming public as a substitute for, and in lieu of, butter.

PAR. 2. In the course and conduct of its business, as aforesaid, respondent, by its officers, agents, and employees, in a manner and form designed and well calculated to injure and bring into disrepute generally, all of its competitors dealing in and distributing oleomargarine in interstate commerce, has been widely 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 composition 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 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 of the same stock as is used for soap grease; that it is comparable with stable manure; and 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 certain grades of oleomargarine do not contain cocoanut oil, but are made from beef fats, vegetable oils, nut margarine and other products which ordinarily and usually are manufactured and produced under sanitary and healthful conditions and are in no way comparable with 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. 3. In the course and conduct of its business, as aforesaid, respondent has published, republished, and distributed to retailers, produce dealers, and other consumers false, misleading, and disparaging statements designed and well calculated to cause the reader thereof to believe that a thousand pounds of oleomargarine is 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 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. 4. 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 respondent's product, thereby threatening with injury or actually injuring to a substantial extent respondent's competitors in interstate commerce and diverting trade from respondent's competitors to respondent.

PAR. 5. 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 competitors of respondents and constitute 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 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, Crescent Creamery Co., 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 coconut 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.

IN THE MATTER OF
JOSEPH COOPER, DOING BUSINESS AS SILKTEX
HOSIERY & LINGERIE CO., ETC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1997. Complaint, Jan. 20, 1932—Decision, Apr. 25, 1932

Where an individual engaged in purchase of hosiery, and of underwear or lingerie not composed of silk, and in resale thereof through house to house canvassers, in competition with manufacturers selling hosiery, silk and other lingerie direct to consuming public, and in competition with others purchasing such articles from manufacturers thereof and reselling same to retail and other dealers in the ordinary course of trade,

- (a) Set forth trade names employed by him including word "Mills," in advertisements for canvassers in newspapers and periodicals published in various States, and made such statements as "From mill to you", "Silk-tex Mills' factory prices", and "Manufacturing wearing apparel for the entire family", in descriptive leaflets, circulars, form letters, color cards, catalogues, etc., furnished by it to his canvassers or agents and by them displayed to customers and prospective customers, and set forth upon his letterheads two pictures representing mills or factories, together with word "lingerie" under one and word "hosiery" under the other, notwithstanding fact said individual neither owned, operated, nor controlled any mill or mills and was not a manufacturer; with capacity and tendency to mislead and deceive canvassers or prospective canvassers and purchasing public into believing him to be a manufacturer selling and distributing articles dealt in at a saving in price, and induce latter's purchases in reliance on such belief, and with effect of so misleading, etc.; and
- (b) Set forth in aforesaid advertisements for canvassers, words "complete line of silk underwear", and in descriptive leaflets, etc., supplied to such canvassers, as aforesaid, words "Silktex", "silk", "silk rayon", and "rayon silk" in connection with sale of its said lingerie; with capacity and tendency to mislead and deceive canvassers or prospective canvassers into believing said individual to be a dealer in silk underwear and induce many of the consuming public to purchase his said lingerie as and for articles composed in whole or in part of silk, i. e., material derived from the product of the silk worm, and with effect of so misleading, etc.:

Held, That such practices, under the circumstances set forth, unfairly diverted trade from and otherwise prejudiced and injured competitors, operated as a restraint upon and detriment to the freedom of fair and legitimate competition in the industry concerned, prejudiced and injured the public, and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Mr. Lewis Liberman, of Camden, N. J., for respondent.