

Syllabus

IN THE MATTER OF
MENASHA WOODEN WARE CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 2650. Complaint, Dec. 10, 1935—Decision, June 8, 1937

Where five corporations and an individual engaged in the manufacture and sale of more than ninety percent of the total volume of new butter tubs sold in interstate commerce in the United States, and, prior to acts and practices hereinafter set forth, in active competition with one another in sale of said products in commerce among the several States—

- (a) Entered into a combination and conspiracy to restrict, restrain and suppress competition in interstate sale of said products by fixing and maintaining, pursuant to agreements and understandings, expressed or implied, uniform prices, terms, and discounts at which said tubs were to be sold to creameries and other customers located throughout the several States, and to enforce and maintain said fixed prices, terms, and discounts by exchanging, through their council, information as to prices, etc., at which they were selling and offering their said products; and in pursuance of said combination, etc., and incident thereto, and as a means of carrying out the same
- (1) Jointly or cooperatively fixed, adopted, and quoted uniform prices, terms, and discounts at which such tubs were to be sold, as above set forth, throughout the States, and thus enforced and maintained said fixed prices, etc., by exchanging information through said council as to prices, etc., at which they were selling and offering to sell butter tubs, as hereinabove stated;
- (2) Jointly or cooperatively exchanged with each other, directly or through the medium of their said council, future sales price information, including future prices in advance of the actual adoption, quotation or effective date thereof, and reports as to sales of butter tubs, together with prices, discounts, and terms at which sold or offered in interstate commerce;
- (3) Jointly or cooperatively adopted special lists of preferred customers to whom extra discounts on butter tubs were to be allowed, and thus exchanged with one another, directly or through their said council, future sales price information as aforesaid, including lists of preferred customers, jobbers or brokers; and
- (4) Jointly or cooperatively discriminated against a cooperative association which served some 400 to 450 customer creamery members and some 800 to 1,000 non members by purchase and sale in large quantities of various items of equipment and supplies used by creameries, did an annual business of about \$1,500,000, published a catalog listing 1,200 items, including butter tubs, and performed the usual services rendered by jobbers and which, except as below noted, received usual jobber's commissions on all items handled by it, by withholding therefrom the usual and customary jobber's discount on sales of butter tubs made by it; and

Complaint

25 F. T. C.

Where said council, organized as hereinabove set forth—

(b) Cooperated with said corporate manufacturers and said individual manufacturer in enforcement and maintenance of aforesaid agreements, through acting as clearing house for exchange of information submitted by them, including reports as to prices, discounts and terms at which butter tubs were being sold or offered in interstate commerce;

With result of substantially lessening, restricting, restraining, and suppressing competition in sale of butter tubs throughout the several states and, more particularly, in prices quoted and discounts allowed, and with tendency to enhance prices of such tubs above those heretofore prevailing and which would prevail under normal and open competition:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Everett F. Haycraft and *Mr. Reuben J. Martin* for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., for respondents; together with—

Bouck, Hilton, Klurwin & Dempsey, of Oshkosh, Wis., for Menasha Wooden Ware Corp.;

Mr. Alfred W. Craven, of Chicago, Ill., for Creamery Package Manufacturing Co., Wisconsin Butter Tub Co., and, along with *Mr. R. H. Fryberger*, of Minneapolis, Minn. for trustee for Bousfield Wooden Ware Co.; and

Healy & Beverly, of Elgin, Ill. for Elgin Butter Tub Co.

COMPLAINT

I

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 having reason to believe that Menasha Wooden Ware Corporation, Creamery Package Manufacturing Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company and Storey City Butter Tub Company, hereinafter referred to as corporate respondents, and the Butter Tub Manufacturers Council, hereinafter referred to as the respondent association, and D. S. Hunter, individually, hereinafter referred to as individual respondent, have been, and are, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said corporate respondent, Menasha Wooden Ware Corporation, is a corporation organized under the laws of the State of Wisconsin in 1926, with its principal office located in the city of Menasha within said State. Said corporate respondent since the date of its organization has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and also creameries located in States other than the State of Wisconsin, causing said tubs, when sold, to be transported from the place of manufacture within said State of Wisconsin to the purchasers thereof located in States other than the State of Wisconsin. Said corporate respondent is the largest manufacturer and distributor of butter tubs in the United States and as such occupies a dominant position in the butter tub industry.

Said corporate respondent is now, and has been since September 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 2. Said corporate respondent, Creamery Package Manufacturing Company, is a corporation organized under the laws of the State of Illinois in 1887, with its principal office and place of business located at 1243 West Washington Boulevard, in the city of Chicago within said State. Said corporate respondent has been for more than ten years last past, and is now, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Illinois, causing said tubs, when sold, to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

Said corporate respondent is now, and has been since September 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 3. Said corporate respondent, Elgin Butter Tub Company, is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in the city of Elgin within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Illinois, causing said tubs, when sold, to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

Complaint

25 F. T. C.

Said corporate respondent is now, and has been since September, 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 4. Said corporate respondent, Wisconsin Butter Tub Company, is a corporation organized under the laws of the State of Wisconsin, with its principal office and place of business located in the city of Marshfield within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Wisconsin, causing said tubs, when sold, to be transported from the place of manufacture within said State of Wisconsin to the purchasers thereof located in States other than the State of Wisconsin.

Said corporate respondent is now, and has been since September, 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 5. Said corporate respondent, Bousfield Wooden Ware Company, is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business located at 2524 Marshall Avenue, Northeast in the city of Minneapolis, within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Minnesota, causing said tubs, when sold, to be transported from the place of manufacture within said State of Minnesota to the purchasers thereof located in States other than the State of Minnesota.

Said corporate respondent is now, and has been since September, 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 6. Said corporate respondent, Storey City Butter Tub Company, is a corporation organized under the laws of the State of Iowa, with its principal office and place of business located at Storey City within said State. Said corporate respondent, since the time of its organization, has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Iowa, causing said tubs, when sold, to be transported from the place of manufacture

within said State of Iowa to the purchasers thereof located in States other than the State of Iowa.

Said corporate respondent is now, and has been since September, 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 7. Said corporate respondents, acting in cooperation with each other and through and in cooperation with said respondent association and said individual respondent, for more than one year last past, and particularly since September 1932, have entered into an understanding, agreement, combination or conspiracy among themselves and with and through said respondent association and said individual respondent to restrict, restrain and suppress competition in the sale and distribution of butter tubs to jobber customers and to creamery customers located throughout the several States of the United States, as aforesaid, by agreeing to fix uniform prices, terms, and discounts at which said butter tubs are to be sold and by cooperating with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said respondent association as to prices, terms, and discount at which said corporate respondents have sold, and are offering to sell, said butter tubs to said jobber customers and to said creamery customers.

PAR. 8. Said corporate respondents, in furtherance of their aforesaid understanding, agreement, combination, or conspiracy, in September, 1932, organized said respondent association, Butter Tub Manufacturers Council. Said respondent association, the aforesaid Butter Tub Manufacturers Council, is a voluntary, unincorporated association composed of butter tub manufacturers located throughout the several States of the United States and has as its principal members said corporate respondents named herein, which said corporate respondents manufacture and sell more than 90 percent of the total volume of butter tubs sold in interstate commerce in the United States. Said respondent association was organized in the city of Milwaukee within the State of Wisconsin and, since its organization, has acted as a clearing house for statistical information submitted by said corporate respondents, including daily reports as to the quantity of butter tubs sold, prices, discounts, and terms at which said butter tubs are sold. Since the organization of said respondent association, offices have been maintained at Cleveland, within the State of Ohio, and regular monthly meetings of the members of said respondent association have been, and now are, held in the city of Milwaukee within the State of Wisconsin, and in other convenient places, at which said meetings said corporate respondents discuss trade and com-

Complaint

25 F. T. C.

petitive conditions in the Butter Tub Industry and agree upon and establish trade policies to be followed by said corporate respondents in the interstate sale and distribution of their butter tubs, and carry out and perform the acts and things hereinbefore alleged in paragraph 7.

PAR. 9. Said individual respondent, D. S. Hunter, is now, and since September 1932, has been, the commissioner of said respondent association and as such commissioner has had, and now has, full and complete charge of the activities of said respondent association, conducting said monthly meetings of said members of said respondent association and collecting said statistical information from the members of said respondent association and compiling and disseminating the same to the said members aforesaid, all in pursuance and furtherance of the object and aims of said respondent association, as hereinbefore set forth in paragraph 8.

PAR. 10. The result of the acts and conduct of the said corporate respondents and the said respondent association and said individual respondent, as set out in paragraphs 7, 8, and 9 herein, has been, and now is, to unduly tend to substantially lessen, restrict and suppress competition in the interstate sale of butter tubs throughout the several States, particularly in the prices quoted and discounts allowed by said corporate respondents, and to enhance the prices of said butter tubs above the prices which had theretofore prevailed and which would prevail under normal, natural and open competition between said corporate respondents; and also to tend to create a monopoly in the said corporate respondents in the manufacture and sale of butter tubs in interstate commerce.

PAR. 11. The foregoing alleged acts and practices of the said corporate, association and individual respondents have been, and still are, to the prejudice of the buying public generally, and customers of said corporate respondents in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

II

Pursuant to the provisions of an Act of Congress approved October 15, 1914 (The Clayton Act—C. 323, 38 Stat. 730, 731) entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" the Federal Trade Commission having reason to believe that the Menasha Wooden Ware Corporation, Creamery Package Manufacturing Company, Elgin Butter Tub

Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company and Storey City Butter Tub Company, herein referred to as corporate respondents, and the Butter Tub Manufacturers Council, herein referred to as the respondent association, and D. S. Hunter, individually and as Commissioner of the Butter Tub Manufacturers Council, herein referred to as individual respondent, have been, and are, violating the provisions of Section 2 of said Act, issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. That the several recitals in paragraphs 1 to 6 inclusive and 8 and 9 of count I hereof are hereby charged as fully and completely as though the several paragraphs were repeated verbatim.

PAR. 2. Said corporate respondents, acting in cooperation with each other and in cooperation with and through said respondent association, with the knowledge and consent of said individual respondent, for more than one year last past, and particularly since September 1932, have agreed, combined or conspired among themselves to restrict, restrain and suppress competition in the interstate sale and distribution of butter tubs at wholesale to jobber customers and to creamery customers located throughout the several States of the United States, as aforesaid, by discriminating in price and are now discriminating in price between the different purchasers of their said products by giving and allowing certain favored jobber customers and certain favored creamery customers lower prices than given or allowed other jobber customers and other creamery customers of said products competitively engaged in their respective lines of commerce, and said discriminations in price have not been made, and are not now made, on account of differences in the grade, quantity, or quality of the commodity sold, nor have said discriminations made only due allowance, and they do not now make only due allowance, for a difference in the cost of selling or transportation, nor have said discriminations in price been made in the same or different communities in good faith to meet competition.

PAR. 3. The effect of said discrimination in price made by said corporate respondents, as set forth in paragraph 2 herein, may be to substantially lessen competition in the interstate sale and distribution of butter tubs for use by butter manufacturers; and the effect of said discriminations also may be to tend to create a monopoly in a line of commerce, namely, the interstate sale and distribution of butter tubs, and said discriminations are in violation of Section 2 of an Act of Congress approved October 15, 1914 (The Clayton Act, C. 323, 38 Stat. 730, 731) entitled, "An Act to supplement existing laws against unlawful restraint and monopolies, 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, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on December 10 and 12, 1935, issued and served its complaint in this proceeding upon the respondents, charging said respondents with the use of unfair methods of competition in commerce, in violation of the provisions of said act, and with violation of the provisions of Section 2 of an Act of Congress approved October 15, 1914 (the Clayton Act, C. 323, 38 Stat. 730-31), entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." Thereafter answers were duly filed by said respondents in the office of the Commission on January 31, 1936. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and evidence in support of the allegations of said complaint were introduced by Everett F. Haycraft and Reuben J. Martin, attorneys for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Spencer Gordon and Alan C. Maxwell, attorneys for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, the testimony and evidence, exceptions to the examiner's findings filed on behalf of the Commission and on behalf of the respondents, and briefs in support of the said exceptions and briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent Menasha Wooden Ware Corporation is a corporation organized under the laws of the State of Wisconsin in 1926, with its principal office located in the city of Menasha, within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture from spruce lumber of butter tubs which it sells to jobbers and also to creameries located in States other than the State of Wisconsin, causing said tubs, when sold, to be transported from the

place of manufacture within said State of Wisconsin to purchasers thereof located in States other than the State of Wisconsin. Said respondent Menasha Wooden Ware Corporation is the largest manufacturer and distributor of butter tubs in the United States. Said respondent Menasha Wooden Ware Corporation is now, and has been since October 27, 1932, a member of Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 2. Respondent The Creamery Package Mfg. Company is a corporation organized under the laws of the State of Illinois in 1887, with its principal office and place of business located at 1243 West Washington Boulevard, in the city of Chicago, within said State. Said corporate respondent has been for more than ten years last past, and now is, engaged in the manufacture, from ash and spruce lumber, of butter tubs, which it sells to jobbers and creameries located in States other than the State of Illinois. Said corporate respondent causes said tubs, when sold, to be transported from the place of manufacture to purchasers thereof located in States other than the State of manufacture. Said respondent The Creamery Package Mfg. Company is now, and has been since October 27, 1932 a member of the respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 3. Respondent Elgin Butter Tub Company is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in the city of Elgin, within said State, and since the date of its organization has been, and now is, engaged in the manufacture, from ash and spruce lumber, of butter tubs, which it sells to jobbers and creameries located in States other than the State of Illinois, causing said butter tubs, when sold, to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois. Said corporate respondent Elgin Butter Tub Company is now, and has been since October 27, 1932, a member of said respondent association Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 4. Respondent Wisconsin Butter Tub Company is a corporation organized under the laws of the State of Wisconsin, with its principal office and place of business located in the city of Marshfield, within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture of wooden butter tubs, which it sells to jobbers and creameries located in States other than the State of Wisconsin, causing said tubs, when sold, to be transported from the place of manufacture within said State to purchasers thereof located in States other than the State of

Wisconsin. Said corporate respondent is now, and has been since October 27, 1932, a member of said respondent association Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 5. Respondent Bousfield Wooden Ware Company is a corporation organized under the laws of the State of Minnesota, with its principal place of business formerly at 2524 Marshall Avenue, N. E., in the city of Minneapolis, within said State. Said corporate respondent, from the date of its organization up to July 1935, was engaged in the manufacture, from spruce lumber, of butter tubs, which it sold to jobbers and creameries located in States other than the State of Minnesota, causing said butter tubs, when sold, to be transported from the place of manufacture within the State of Minnesota to purchasers thereof located in States other than the State of Minnesota. Said corporate respondent was from October 27, 1932 to July 29, 1935 a member of the respondent association Butter Tub Manufacturers Council, and during that period was represented at meetings of said council. Said corporate respondent Bousfield Wooden Ware Company, in the month of July 1935, ceased doing business and resigned from the respondent association Butter Tub Manufacturers Council, and since that date has not engaged in the manufacture or sale of butter tubs; it has sold its plant, raw materials, and finished goods, and its only assets are accounts which are now in the process of liquidation.

PAR. 6. Respondent Storey City Butter Tub Company, is the trade name for a business conducted by Bert S. Hill, who maintains his office and place of business at Storey City, Iowa. Said respondent Bert S. Hill, trading as Storey City Butter Tub Company, has been, and now is, engaged in the manufacture, from ash and spruce lumber, of butter tubs, which he sells to jobbers and creameries located in the State of Iowa and States other than the State of Iowa. Said respondent Bert S. Hill, trading as Storey City Butter Tub Company, is now, and has been since January 25, 1934, a member of the respondent association, Butter Tub Manufacturers Council, and has attended most of the meetings of said council since that date.

PAR. 7. In the course and conduct of their respective businesses, the said respondents Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading as Storey City Butter Tub Company, were, prior to November 1932, in active competition with each other in the sale of butter tubs in commerce among the several States of the United States. Said respondents manufacture and sell more than 90 percent

of the total volume of new butter tubs in interstate commerce in the United States. Butter tubs are made in various styles and sizes of spruce and ash lumber, and are used for containing butter. There are other butter containers, besides tubs of the type manufactured by the respondents, which are used by creameries, among which are fibre boxes, wooden boxes, corrugated fibre boxes, and wire baskets. About 75 percent of the butter tubs produced are sold in the States of Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin.

For some time prior to September 1932, competitive conditions in the butter tub industry had been very severe. No standards of quality were maintained in the industry. Some of the manufacturers, in order to meet price competition, were selling seconds. Some of the manufacturers had established branch factories, or plants, in the various dairying centers and quoted delivered prices, whereas previously delivered prices had not been quoted. There was no statistical information as to the total number of tubs sold by the industry available to manufacturers of butter tubs.

PAR. 8. The said respondents Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading as Storey City Butter Tub Company, at meetings held in the City of Milwaukee, in the State of Wisconsin, in the month of September 1932, and periodically thereafter, as more particularly hereinafter set forth, entered into a combination and conspiracy to restrict, restrain, and suppress competition in the interstate sale of butter tubs by fixing and maintaining, pursuant to agreements and understandings, expressed or implied, uniform prices, terms, and discounts at which said butter tubs were sold, and are to be sold, to creameries and other customers located throughout the several States of the United States; and to enforce and maintain said fixed prices, terms, and discounts by the exchange of information with each other, through said respondent Butter Tub Manufacturers Council, as to the prices, terms, and discounts at which said respondents have sold, and are offering to sell, said butter tubs in interstate commerce to said creameries and other customers, located as aforesaid. Pursuant to, and in carrying out, said combination or conspiracy, each and all of the said respondent corporations, cooperating together and with and through said respondent Butter Tub Manufacturers Council, have performed the following acts:

(a) At a meeting of representatives of the respondent manufacturers held in Milwaukee in the month of September 1932, a discussion was had with respect to the establishment of zones whereby

the respective butter tub manufacturers would quote uniform delivered prices to customers located in the same territory. Representatives of respondents The Creamery Package Mfg. Company and Menasha Wooden Ware Corporation, the two largest manufacturers of butter tubs in the industry, compared and exchanged ideas as to what territory should be included in the respective zones, and in the latter part of the month of September 1932, respondent The Creamery Package Mfg. Company furnished to the other members of the respondent Butter Tub Manufacturers Council, pursuant to their request, a zoning system which was thereupon adopted by each of the other members of said respondent council. On or about October 15, 1932, each of the respondent members, except respondent Elgin Butter Tub Company, which adopted the system in December 1932, issued price lists to the trade embodying said zoning system, said price lists being uniform as to delivered prices in each respective zone.

(b) On October 27, 1932, the said respondent butter tub manufacturers organized the said respondent Butter Tub Manufacturers Council, in the city of Milwaukee, in the State of Wisconsin, which now maintains offices in the city of Cleveland, State of Ohio. Said respondent Butter Tub Manufacturers Council was organized as an unincorporated association, and now has as its member the corporate respondents named herein, with the exception of the Bousfield Wooden Ware Company, which has now retired from business, and Bert S. Hill, trading and doing business as Storey City Butter Tub Company. Since its organization, said respondent Butter Tub Manufacturers Council has received information submitted by its members, and has sent out information and statistics to its members, including daily reports as to the quantity of butter tubs sold, prices, discounts, and terms at which said butter tubs are sold. Since its organization, said respondent Butter Tub Manufacturers Council has held regular monthly meetings of the members, which said meetings are held in the city of Milwaukee, Wis., and in other convenient places, and on the occasion of said meetings, representatives of said corporate respondents discuss trade conditions in the butter tub industry and enter into agreements and understandings as to future prices, terms, and discounts of butter tubs, as aforesaid.

(c) Since its said organization, as hereinbefore set out in paragraph (b), the respondent Butter Tub Manufacturers Council has been in charge of a paid employee known as the "Commissioner," who collects statistical information from the members of said respondent council and compiles and disseminates the same to the members of the said council as hereinafter set forth.

(d) On or about December 15, 1932, said members of respondent council, except respondent Elgin Butter Tub Company, began to submit daily reports to the commissioner of respondent council, in which said reports the said members were required to indicate the zone of origin and zone of destination of all sales and shipments of butter tubs, together with prices at which said tubs were sold; and said commissioner distributed to the members of said council, beginning December 15, 1932, and continuing thereafter, a consolidated daily report of all orders received and releases of contracts showing the net unit prices at which orders were received and the zones of origin and destination of each shipment. These said daily reports of members and of the said commissioner contained, in addition to the information just described, the dates of the orders, the business of the customer, the quantity shipped, the size of tubs, the kind of wood, the kind of hoop, the terms of payment, the conditions of delivery, and the date of contract under which shipments were made. The respondent Elgin Butter Tub Company began to submit said reports to the commissioner on or about June 10, 1933, and has continued to do so since said date.

(e) Effective January 1, 1933, each and every member of respondent council issued price lists to the trade containing uniform delivered prices in the respective zones theretofore adopted by them, which said prices were 2 cents higher than prices previously quoted by them during the year 1932; during the month of December 1932, and particularly on the occasion of meetings of the members of said council, representatives of members of said respondent council had discussed the prices of butter tubs and had agreed that they were being sold too low, and that the prices should be advanced; that subsequent to January 1, 1933, until the next price change, the uniform prices quoted by said members of said respondent council were maintained by them, being reported daily to the said commissioner of said respondent council and reported by him in consolidated form to said members.

(f) Effective April 28, 1933, each and every member of said respondent council issued a price list to the trade containing uniform delivered prices in the respective zones theretofore adopted by them, which prices were 2 cents higher on practically all sizes than the prices quoted by said members of respondent council effective January 1, 1933; that representatives of said members of respondent council, on the occasion of the meeting of said council on April 27, 1933, discussed the matter of increasing prices, expressing the opinion that the prices on tubs were too low, and the respondent Menasha

Findings

25 F. T. C.

Wooden Ware Corporation, the largest manufacturer of butter tubs, was looked to as the leader by the other members of said respondent council; that upon the expression by officials of said respondent Menasha Wooden Ware Corporation that they would advance prices, the other members of said respondent council issued on the following day, concurrent with the respondent Menasha Wooden Ware Corporation, new price lists carrying the advance in prices as aforesaid; that subsequent to April 28, 1933, and until the next price change took place, the prices quoted by said members of said respondent council were uniformly maintained, being reported daily to the said commissioner of said council and reported daily by him to the said members in consolidated form as aforesaid.

(g) Effective August 25, 1933, each and every member of said respondent council issued price lists to the trade containing uniform delivered prices in the respective zones theretofore adopted by them, which prices were 2 cents higher than the prices quoted by them on April 27, 1933, as aforesaid; that on the occasion of a meeting of the said respondent council held on August 24, 1933, representatives of members of said respondent council discussed prices of butter tubs; that representatives of the respondent Menasha Wooden Ware Corporation advised the other representatives that it, the Menasha Wooden Ware Corporation, was going to advance its prices, and offered to, and did, furnish a list containing such advances to the other representatives present; that thereafter on the following day uniform prices were issued by said members of respondent council as aforesaid. Subsequent to August 25, 1933, and subsequent to said price change, the prices quoted by said members of respondent council were uniformly maintained by them in the sale of butter tubs, said prices being reported daily to the said commissioner of said respondent council, and reported daily by him to the members of the said respondent council in the consolidated daily form as aforesaid.

(h) Effective February 23, 1934, each and every member of said respondent council issued price lists containing uniform delivered prices in the respective zones theretofore adopted by them, which said prices were 2 cents higher than the prices theretofore quoted by them on August 25, 1933, as aforesaid; that on the occasion of a meeting of the said respondent council on February 22, 1934, butter tub prices were discussed with each other by representatives of the members of said respondent council, on which occasion the representative of the respondent Menasha Wooden Ware Corporation notified the other representatives present that the said Menasha Wooden Ware Corporation would advance its prices on butter tubs,

and furnished the representatives of the other members of said respondent council with a copy of the proposed price list; that thereupon the other members of the respondent council issued their uniform delivered price lists effective February 23, 1934. Subsequent to February 23, 1934, and until the next price change took place, the prices of the members of said respondent council were uniformly maintained, were reported daily by them to the said commissioner, and were reported daily by him to the said members in a consolidated report.

(i) Effective September 1, 1935, each and every member of said respondent council issued a price list containing uniform delivered prices in the respective zones theretofore adopted by them, which prices were 2 cents higher than prices theretofore quoted by them in the price lists of February 23, 1934; that on the occasion of a meeting of the respondent council on July 30, 1935, representatives of the members of said respondent council discussed butter tub prices; that on that occasion the representatives of the respondent Menasha Wooden Ware Corporation informed the representatives of the other members of said respondent council that the said respondent Menasha Wooden Ware Corporation would advance its prices on butter tubs 2 cents each on September 1, 1935; that thereafter on August 8, 1935, the respondent The Creamery Package Mfg. Company issued a new price list, replacing its price list of February 23, 1934, and becoming effective September 1, 1935, containing an advance of 2 cents per tub, and that respondent Elgin Butter Tub Company, on August 12, 1935, issued its said price list to the trade, notifying of a similar change of price effective September 1, 1935, and all of the other members of respondent council issued price lists carrying similar changes in price and becoming effective on September 1, 1935.

PAR. 9. Subsequent to September 1, 1935, to the date of taking of testimony in this proceeding, the said delivered prices quoted by members of said respondent council have been uniformly maintained. The said prices have been reported daily by said members to the said commissioner, and reported by him to the said members daily in consolidated form. Since December 1932 with very few minor exceptions, the delivered prices charged by the said members of respondent council for butter tubs of equal quality and size have been uniform when sold to the same class of trade.

PAR. 10. Further pursuant to said combination and conspiracy set forth in paragraph 8 hereof, each and all of the said corporate respondents and Bert S. Hill, trading and doing business as Storey City Butter Tub Company, cooperating together and with and

through said respondent Butter Tub Manufacturers Council, have entered into agreements and understandings, expressed or implied, to restrict, restrain, and suppress competition in the interstate sale of butter tubs by adopting preferred lists of customers and by discriminating in price between purchasers of butter tubs and by discriminating in the amount of discount to be allowed jobber customers in the sale of butter tubs in interstate commerce, and pursuant to said agreement and understanding, have performed the following acts:

(a) At the time of the adoption of the said zoning system by the said members of respondent council on or about October 15, 1932, certain large users of butter tubs, consisting principally of packers and centralizers of butter tubs, were granted by the members of said respondent council a discount of 1 cent from the quoted list prices. A confidential list of said preferred buyers was adopted by the members of the said respondent council at the time said zoning system was adopted; said preferred buyers had been, prior to December 1932, accustomed to receive from said manufacturers discounts as great as 3 cents from the recognized retail list prices of the members of said respondent council.

(b) Land O'Lakes Creameries, Inc., is a cooperative association organized under the laws of the State of Minnesota, with its principal place of business at Minneapolis within said State of Minnesota. There is included in the activities of the Land O'Lakes Creameries, Inc., the purchase and sale in large quantities of various items of equipment and supplies used by creameries. These supplies are sold by the Land O'Lakes Creameries, Inc., to member creameries, and also to nonmember creameries. For this purpose it employs two salesmen who devote their entire time to this work, and about twenty other employees of the association devote part of their time to the work. Land O'Lakes Creameries, Inc., has between 1,200 and 1,500 customers, 400 to 450 of which are members, and the rest nonmembers, and it does an annual business of about \$1,500,000, with approximately \$800,000 to \$900,000 of its sales to members. It publishes a catalog which lists approximately 1,200 items handled by it, and included in these articles sold by it are butter tubs. Land O'Lakes Creameries, Inc., performs the usual services rendered by jobbers, and receives the usual jobber's commissions on all items handled by it, with the exception of butter tubs. Land O'Lakes Creameries, Inc., has been supplied with butter tubs by the respondents Menasha Wooden Ware Corporation and Elgin Butter Tub Company, and was supplied with butter tubs by the Bousfield Wooden Ware Com-

pany until its liquidation. The Creamery Package Mfg. Company and Wisconsin Butter Tub Company have never sold butter tubs to Land O'Lakes Creameries, Inc. The majority of sales made to Land O'Lakes Creameries, Inc., by Menasha Wooden Ware Corporation and Elgin Butter Tub Company were as a result of the activities of the salesmen of said Menasha Wooden Ware Corporation and said Elgin Butter Tub Company, which salesmen secured the orders direct from the creameries, and then shipped the tubs direct to the creameries and billed Land O'Lakes Creameries, Inc., for the shipment.

(c) Prior to January 1, 1928, Land O'Lakes Creameries, Inc., was allowed the usual jobber's discount on butter tubs, amounting to $1\frac{1}{2}$ cents per tub, by the Menasha Wooden Ware Corporation. Beginning with January 1, 1928, this discount was increased by $\frac{4}{10}$ cent per tub, making a total allowance of $1\frac{9}{10}$ cents per tub, which was received by the Land O'Lakes Creameries, Inc., from Menasha Wooden Ware Corporation. Due to competitive conditions, it was necessary for Land O'Lakes Creameries, Inc., to pass on to its customers out of this discount of $1\frac{9}{10}$ cents per tub the sum of 1 cent per tub, leaving a net discount to Land O'Lakes Creameries, Inc., of $\frac{9}{10}$ cent per tub. On July 1, 1931, Land O'Lakes Creameries, Inc., was requested by Menasha Wooden Ware Corporation, as a temporary arrangement necessitated by competitive conditions existing at that time to reduce its discount to $\frac{9}{10}$ cent per tub, which said request Land O'Lakes Creameries, Inc., granted, and thereupon Land O'Lakes Creameries, Inc., discontinued allowing the discount of 1 cent per tub to its customers. Thereafter repeated efforts on the part of Land O'Lakes Creameries, Inc., to regain the customary and usual jobber's discount of $1\frac{1}{2}$ cents per tub from Menasha Wooden Ware Corporation have met with no success. Land O'Lakes Creameries, Inc., has made request to be allowed the usual jobber's discount of $1\frac{1}{2}$ cents per tub on all sales of butter tubs made by or through it from the Menasha Wooden Ware Corporation, the Wisconsin Butter Tub Company, and the Elgin Butter Tub Company, but the request for the allowance was refused by said respondents, who advised the Land O'Lakes Creameries, Inc., that they could allow a commission of only $\frac{9}{10}$ cent per tub.

(d) In June, 1933, the matter of selling butter tubs to Land O'Lakes Creameries, Inc., as a jobber, and allowing $1\frac{1}{2}$ cents discount, was discussed at a regular meeting of the respondent council, at which time the commissioner of said council, acting as chairman, pointed out that the Land O'Lakes Creameries, Inc., was a collective buying outfit which had to return to its members or stockholders whatever

revenue it derived from such method of purchasing, and that this developed an unfair discrepancy as between members and stockholders of Land O'Lakes Creameries, Inc., and independent operators who might be located in the same territory, and that if any such special concession were given to Land O'Lakes Creameries, Inc., in his opinion, the same concession would have to be given to other users.

(e) On August 3, 1934, the attention of said commissioner was called by the attorney for the National Cooperative Milk Producers Federation to the inability of the Land O'Lakes Creameries, Inc., to obtain a jobber's discount from the manufacturers of butter tubs, and a statement was requested as to the position of the respondent council relative to this matter; that on August 7, 1934, the executive secretary of respondent council advised the attorney for the National Cooperative Milk Producers Federation that the matters referred to in his letter of August 3 would be taken up with the manufacturers at the next meeting; that on September 4, 1934, the said commissioner of respondent council notified the attorney for the National Cooperative Milk Producers Federation that the manufacturers who were selling Land O'Lakes Creameries, Inc., stated that for a number of years the competitive situation had been such that it had been necessary for them to solicit the business direct through their own salesmen from the creameries and bill the goods through Land O'Lakes Creameries, Inc., making allowance for credit service, and that, in his opinion, there had not been any discrimination; that the situation seemed to be entirely between Land O'Lakes Creameries, Inc., and the manufacturers, individually, who were soliciting the business; that on September 18, 1934, the said commissioner of said respondent council submitted a copy of the letter of September 4, 1934, just described, to the president of respondent Menasha Wooden Ware Corporation with the statement, "We are attaching hereto copy of a letter sent to Mr. Donald Keene. This is in accord with the minutes of the last butter tub meeting." That representatives of members of the respondent council, upon being solicited by Land O'Lakes Creameries, Inc., to be given a jobber's discount of 1½ cents, declined to do so, although some of them stated that they would be willing to do so provided the respondent Menasha Wooden Ware Corporation would do likewise; that on March 28, 1933, respondent Wisconsin Butter Tub Company advised the Land O'Lakes Creameries, Inc., that it seemed only fair that it should allow the creamery company the same commission as the creameries enjoyed from other butter tub manufacturers, and asked to be advised as to what discount Land O'Lakes Creameries, Inc., was receiving from the butter tub manufacturers

from whom it purchased; that on June 29, 1934, the Elgin Butter Tub Company, in a letter to Land O'Lakes Creameries, Inc., stated that it could not see how it would be justified in securing all of the creamery company's business by allowing a larger discount than that which the creameries received from other concerns.

(f) Since July 1, 1931, none of the said respondents Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading as Storey City Butter Tub Company, has allowed the usual and customary jobber's discount to Land O'Lakes Creameries, Inc., on sales of butter tubs made by said Land O'Lakes Creameries, Inc., and said respondents Menasha Wooden Ware Corporation, Elgin Butter Tub Company, and Wisconsin Butter Tub Company have refused, and still do refuse to allow said usual jobber's discount to said Land O'Lakes Creameries, Inc.

PAR. 11. The result of the acts and conduct of the said respondent corporations and the said Bert S. Hill, trading as Storey City Butter Tub Company, and the said respondent council, as hereinbefore set out, has been substantially to lessen, restrict, restrain, and suppress competition in the sale of butter tubs throughout the several States, particularly in the prices quoted and the discounts allowed by said respondent corporations and by said respondent Bert S. Hill, trading as Storey City Butter Tub Company; and tends to enhance the prices of said butter tubs above the prices which have heretofore prevailed and which would prevail under normal and open competition.

CONCLUSION

The aforesaid acts and practices of the respondents, Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, Bert S. Hill, trading as Storey City Butter Tub Company, and Butter Tub Manufacturers Council, are to the prejudice of the public and competitors of the respondents, and constitute unfair methods of competition in commerce within the intent and meaning of 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." There is not sufficient proof submitted in the hearings to sustain the allegations in the complaint charging a violation of Section 2 of an Act of Congress known as the Clayton Act (Act, Oct. 15, 1914, C. 323, 38 St. 731 (Comp. St. sec. 8835 C.)).

Order

25 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Everett F. Haycraft, counsel for the Commission and by Spencer Gordon, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents, Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading and doing business as Storey City Butter Tub Company, and Butter Tub Manufacturers Council, 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 ordered, That the respondents Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading and doing business as Storey City Butter Tub Company, their respective officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of butter tubs in interstate commerce or in the District of Columbia, do forthwith cease and desist from entering into combinations, conspiracies, or agreements, express or implied, with each other and by and through said respondent association, Butter Tub Manufacturers Council, to restrict, restrain, and suppress competition in the interstate sale of butter tubs by

(a) Jointly or cooperatively fixing, adopting, and quoting uniform prices, terms, and discounts at which butter tubs are to be sold to creameries and to other customers located throughout the several States of the United States in interstate commerce;

(b) Jointly or cooperatively enforcing and maintaining said fixed prices, terms, and discounts by exchanging information through said Butter Tub Manufacturers Council as to the prices, terms, and discounts at which said respondents have sold, and are offering to sell, butter tubs in interstate commerce to creameries and other customers located throughout the several States of the United States;

(c) Jointly or cooperatively exchanging with each other, directly, or through the medium of said Butter Tub Manufacturers Council,

or any other medium, information as to future prices in advance of the actual adoption, quotation, or effective date of said prices;

(d) Jointly or cooperatively adopting special lists of preferred customers to whom extra discounts on butter tubs are to be allowed;

(e) Jointly or cooperatively discriminating against Land O'Lakes Creameries, Inc., or any other purchaser of butter tubs in interstate commerce;

(f) Jointly or cooperatively exchanging with each other, directly or through Butter Tub Manufacturers Council, or any other medium, future sales price information, including lists of preferred customers, jobbers, or brokers, and reports as to the sales of butter tubs, together with prices, discounts, and terms at which said butter tubs are sold, or offered to be sold, in interstate commerce.

It is further ordered, That said Butter Tub Manufacturers Council, its officers, agents, and employees cease and desist from cooperating with said corporate respondents and with Bert S. Hill, trading and doing business as Storey City Butter Tub Company, by acting as a clearing house for the exchange of information submitted by said corporate respondents and by said Bert S. Hill, trading and doing business as Storey City Butter Tub Company, including reports as to prices, discounts, and terms at which said butter tubs are sold, or offered to be sold, in interstate commerce, in the enforcement and maintenance of said agreements aforesaid.

It is further ordered, That the respondents, Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bert S. Hill, trading and doing business as Storey City Butter Tub Company, and Butter Tub Manufacturers Council, shall within 30 days after the service upon them 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 hereinabove set forth.

IN THE MATTER OF

ALLURA, INC.

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

Docket 2854. Complaint, June 26, 1936—Decision, June 8, 1937

Where a corporation engaged in sale and distribution of eye lotion, sold under trade name "Allura", and consisting essentially of honey and water with extracts of plant drugs and small amounts of ammonium and potassium salts, and, as thus engaged, in substantial competition with those engaged in sale and distribution of eye glasses and other products for relief of diseases or ailments of the eye, and in competition with many who sell and distribute eye lotions and eye glasses without falsely representing the properties, capacities, or effects of their products—

- (a) Represented, in radio broadcasts and in pamphlets and other advertising matter distributed among prospective purchasers, that said preparation would relieve poor or cloudy vision or headache resulting from eye strain, and that use thereof would take the place of wearing glasses and relieve astigmatism and general weakness of the eyes and overcome irritating and painful conditions thereof;
- (b) Represented, as aforesaid, that it was nature's aid to the eyes and had no equal in keeping them clear, bright, and full of life, and was not injurious; and
- (c) Represented, as aforesaid, that it was a cure for cataract and was a remedy for eye troubles, and would cure or be beneficial in treatment of all cases of granulated lids, bloodshot eyes, focal disorders, weeping lids, weak lachrymal glands, and muscular atrophies, or contractions;

Notwithstanding fact preparation contained nothing of medical value in treatment of any eye disease, only possible value thereof would be equivalent to that of ordinary normal salt solution, it was not harmless, might be injurious, would not take place of glasses, relieve astigmatism or general weakness of the eyes, and other representations as hereinabove set forth were false;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that its said preparation had properties, capacities or effects set forth as hereinabove indicated, and that buying public, as a result of erroneous belief induced by such false and misleading representations, bought substantial volume of its said product, and trade was unfairly diverted to it from its competitors who truthfully represent nature and character of their respective products; to the substantial injury of competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles P. Vicini*, *Mr. John W. Norwood* and *Mr. Robert S. Hall*, trial examiners.

Mr. T. H. Kennedy, *Mr. P. C. Kolinski* and *Mr. J. T. Welch* for the Commission.