

IN THE MATTER OF
MILLER GROWERS ASSOCIATION ET AL.

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

Docket 3573. Complaint, Aug. 31, 1938—Decision, Feb. 9, 1939

Where a corporation and three individuals, associated with it as officers or otherwise, engaged, jointly and severally, in retail sale and distribution of citrus fruits to purchasers in various States and in the District of Columbia—

- (a) Represented and implied, through inclusion of words "Growers" and "Association" in corporate name of aforesaid concern, that they were the producers of citrus fruits offered and sold by them, and that said concern was an association of fruit growers;

Facts being they did not own or operate, either individually or jointly, any citrus grove in Florida or in any other State where such fruits were produced, and neither said concern nor said individuals, engaged under same name as trade name, were association of citrus fruit growers, but fruits offered and sold by them were purchased from local markets in the territories in which they operated; and

- (b) Represented to prospective purchasers that they were the owners of citrus fruit groves in Florida and prepared to deliver high-grade and fancy fruits to such purchasers through their own organization;
- (c) Represented, through one of their number, to stewards, dieticians or other purchasing agents of hospitals, or other institutions that such person was a grower in Florida and that the president or chairman of the board of trustees of the particular institution with which said person was negotiating had expressed the wish that such person receive an order for fruit; and
- (d) Represented, through one of their number, as aforesaid, to selected and prominent prospective customers whose credit was good and whose business relations were well known, that he was a friend of a friend of such particular prospective customer, mentioning some business associate or personal friend of latter in a distant city, and that such friend told person thus representing that friend felt sure prospective customer thus contacted and addressed would be interested in obtaining some of said person's de luxe fruits straight from the Florida grove.

Facts being, while on orders received from hospitals or other institutions they usually supplied fair-grade fruit priced near current market price, though ordinarily in several times amount ordered, in case of sales to individuals, medium- to poor-grade fruit, and, frequently, partly rotted, was, as a rule, delivered, and purchaser was billed for amount greatly exceeding market price for highest-grade fruit, and representations as aforesaid as to expressions by president or chairman of board desiring the giving of such an order, or as to wishes of supposed friend of prospective purchaser, were false and misleading, and officials or persons whose names were thus used had no knowledge whatever of such proposed transactions and had made no suggestions in regard thereto;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations, as variously set-out, were true, and into purchase, as a result of such erroneous and mistaken belief, induced as aforesaid, of their said merchandise:

Held, That such acts and practices on the part of said concern and individuals acting as above set forth and in concert with one another, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. James L. Fort for the Commission.

Mr. Emil Leepson, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Miller Growers Association, a corporation, Benjamin Miller, and Leah Miller, individuals trading as Miller Growers Association, and Minerva Miller, an individual, all hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the 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. Respondent Miller Growers Association is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Room 1014, 53 Park Place, in the city of New York, State of New York. Benjamin Miller and Leah Miller are individuals trading under the name "Miller Growers Association," a partnership with exactly the same name as the corporation. Benjamin Miller and Leah Miller also act as officers of the corporate respondent. Minerva Miller is an individual. All respondents were and are trading at the address herein given as that of the corporate respondent, Miller Growers Association. Respondents now are, and have been, engaged both jointly and severally in the retail sale and distribution of citrus fruits. Respondents cause, and at all times herein mentioned have caused, their said goods when sold to be shipped from their place of business in New York to the purchasers thereof located in various States of the United States other than the State of New York, and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in such merchandise in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of their business, as mentioned in paragraph 1 hereof, and for the purpose of inducing the purchase of their merchandise, the respondents have represented to prospective purchasers that they are the owners of citrus fruit groves in Florida and are prepared to deliver high-grade and fancy citrus fruit to said purchasers through their own organization. Respondents, usually acting through Benjamin Miller, will telephone the steward, dietitian, or other purchasing agent of a hospital or other institution and explain that the said Miller, or another of the respondents, is a grower in Florida and that the president or chairman of the board of trustees of the particular institution with whose agent he is negotiating has expressed the wish that respondent receive an order for fruit, such tactics frequently resulting in sales.

Another method employed by respondents, again usually acting through Benjamin Miller, is to select a prospective customer who is quite prominent, whose credit is good, and whose business relations are well known. Miller then phones such prospective customer, introducing himself as a friend of a friend of the proposed customer, mentioning some business associate or personal friend of the proposed customer located in a distant city. Miller states the friend told Miller that he felt sure the prospective customer would be interested in obtaining some of Miller's de luxe fruits straight from the Florida grove.

On the orders received from hospitals or other institutions respondents usually supply fair-grade fruit priced near the current market price, but respondents usually deliver several times the amount ordered. In case of the sales to individuals, usually medium to poor-grade fruit, frequently partly rotted, is delivered, and the purchaser is billed for an amount greatly exceeding the market prices for the highest-grade fruit.

A substantial portion of the purchasing public prefers to purchase citrus fruits from the growers thereof or from associations of such growers, because it believes that certain economies are involved in buying direct from the producer, and that citrus fruits purchased direct from the producer are fresher than those which have passed through intervening hands. Through the use of the words "Growers Association" in the name of the corporate respondent and in the trade name used by the individual respondents, respondents represent and imply that said respondents are the producers of the citrus fruits offered for sale and sold and that the Miller Growers Association is an association of fruit growers.

Through the use of the foregoing practices respondents represent to members of the purchasing public that such products, so designated and described, were and are high-grade or fancy citrus fruits, coming directly from the groves of respondents.

PAR. 3. The aforesaid representations are false and misleading in that said fruits, so designated and described, were not and are not high-grade or fancy fruits, but were medium or low grade, and in some instances decayed to the point where they were not usable. The aforesaid representations and implications are false and misleading in that respondents do not own or operate, either individually or jointly, any citrus grove in Florida or in any other State where said citrus fruits offered for sale and sold by them are produced, and neither said Miller Growers Association, the corporate respondents, nor Miller Growers Association, the trade name used by the individual respondents, is an association of citrus fruit growers. In truth and in fact, the citrus fruits offered for sale and sold by the respondents are purchased from local markets in the territories where they operate. The aforesaid representations that the contacts with purchasers were made upon the suggestion or recommendation of an institution official or of some person well known to said prospective purchaser are false and misleading in that the officials or persons whose names were used had no knowledge whatever of such proposed transactions and made no suggestion in regard thereto.

The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the quality of the citrus fruit; the representations as to the ownership by respondents of citrus groves, which are made both by specific statements and the use of the misleading and deceptive name, "Miller Growers Association"; the statements that respondents have been requested to contact the proposed purchasers, have had and now have a capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of respondents' said merchandise as a result of such erroneous and mistaken belief induced by the aforesaid misrepresentations, acts, and practices of the respondents.

PAR. 4. The aforesaid acts and practices of the respondents, acting individually, as officers of the corporate respondent, and in concert one with the other, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 31st day of August 1938, issued its complaint in this proceeding and caused the complaint to be served upon the respondents, Miller Growers Association, Benjamin Miller and Leah Miller, individuals trading as Miller Growers Association, and Minerva Miller, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of the complaint and the filing of respondents' answer, the Commission, by an order entered herein, granted respondents' motion for permission to withdraw their answer and to substitute therefor an answer admitting all the material allegations of fact set forth in the complaint, and waiving all intervening procedure and further hearing as to the facts. The substitute answer was duly filed in the office of the Commission November 7, 1938.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer, and the Commission having duly considered the matter and being now 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. Respondent, Miller Growers Association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Room 1014, 53 Park Place, in the city of New York, State of New York. Benjamin Miller and Leah Miller are individuals trading under the name "Miller Growers Association," a partnership with exactly the same name as the corporation. Benjamin Miller and Leah Miller also act as officers of the corporate respondent. Minerva Miller is an individual. All respondents were and are trading at the address herein given as that of the corporate respondent, Miller Growers Association. Respondents now are, and have been, engaged both jointly and severally in the retail sale and distribution of citrus fruits. Respondents cause, and at all times herein mentioned have caused, their said goods when sold to be shipped from their place of business in New York to the purchasers thereof located in various States of the United States other than the State of New York, and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in such merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as mentioned in paragraph 1 hereof, and for the purpose of inducing the purchase of their merchandise, the respondents have represented to prospective purchasers that they are the owners of citrus fruit groves in Florida and are prepared to deliver high-grade and fancy citrus fruit to said purchasers through their own organization. Respondents, usually acting through Benjamin Miller, will telephone the steward, dietitian, or other purchasing agent of a hospital or other institution and explain that the said Miller, or another of the respondents, is a grower in Florida and that the president or chairman of the board of trustees of the particular institution with whose agent he is negotiating has expressed the wish that respondent receive an order for fruit, such tactics frequently resulting in sales.

Another method employed by respondents, again usually acting through Benjamin Miller, is to select a prospective customer who is quite prominent, whose credit is good, and whose business relations are well known. Miller then phones such prospective customer, introducing himself as a friend of a friend of the proposed customer, mentioning some business associate or personal friend of the proposed customer located in a distant city. Miller states the friend told Miller that he felt sure that prospective customer would be interested in obtaining some of Miller's de luxe fruits straight from the Florida grove.

On the orders received from hospitals or other institutions respondents usually supply fair-grade fruit priced near the current market price, but respondents usually deliver several times the amount ordered. In case of the sales to individuals, usually medium- to poor-grade fruit, frequently partly rotted, is delivered; and the purchaser is billed for an amount greatly exceeding the market prices for the highest-grade fruit.

A substantial portion of the purchasing public prefers to purchase citrus fruits from the growers thereof or from associations of such growers because it believes that certain economies are involved in buying direct from the producer, and that citrus fruits purchased direct from the producer are fresher than those which have passed through intervening hands. Through the use of the words "Growers Association" in the name of the corporate respondent and in the trade name used by the individual respondents, respondents repre-

sent and imply that said respondents are the producers of the citrus fruits offered for sale and sold and that the Miller Growers Association is an association of fruit growers.

Through the use of the foregoing practices respondents represent to members of the purchasing public that such products, so designated and described, were and are high-grade or fancy citrus fruits, coming directly from the groves of respondents.

PAR. 3. The aforesaid representations are false and misleading in that said fruits, so designated and described, were not and are not high-grade or fancy fruits, but were medium or low grade, and in some instances decayed to the point where they were not usable. The aforesaid representations and implications are false and misleading in that respondents do not own or operate, either individually or jointly, any citrus grove in Florida or in any other State where said citrus fruits offered for sale and sold by them are produced, and neither said Miller Growers Association, the corporate respondent, nor Miller Growers Association, the trade name used by the individual respondents, is an association of citrus fruit growers. In truth and in fact, the citrus fruits offered for sale and sold by the respondents are purchased from local markets in the territories where they operate. The aforesaid representations that the contacts with purchasers were made upon the suggestion or recommendation of an institution official or of some person well known to said prospective purchaser are false and misleading in that the officials or persons whose names were used had no knowledge whatever of such proposed transactions and made no suggestion in regard thereto.

The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the quality of the citrus fruit; the representations as to the ownership by respondents of citrus groves, which are made both by specific statements and the use of the misleading and deceptive name, "Miller Growers Association"; the statements that respondents have been requested to contact the proposed purchasers have had and now have a capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of respondents' said merchandise as a result of such erroneous and mistaken belief induced by the aforesaid misrepresentations, acts, and practices of the respondents.

CONCLUSION

The aforesaid acts and practices of the corporate respondent, and of the individual respondents, acting individually, and as officers of

the corporate respondent, and in concert with each other as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the several respondents, in which answers the respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that all of said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Benjamin Miller and Leah Miller, individually, and trading as Miller Growers Association, or under any other trade name, and Minerva Miller, an individual, and Miller Growers Association, a corporation, and its officers and their respective representatives, salesmen, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, with the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of citrus fruit, or disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said citrus fruit, which advertisements, directly or through implication.

1. Represent, through the use of the words "Growers" or "Association" or any other words of similar import or meaning, in any corporate or trade name or in any other manner, that respondents or any of them are growers of citrus fruit or are owners of citrus fruit groves in Florida or elsewhere, or are an association of fruit growers;

2. Represent to prospective purchasers that friends of said prospective purchasers have suggested to respondents, or any of them, that said friends were interested in respondents' making sales to said prospective purchasers;

3. Represent to buyers or other officials of hospitals or other institutions that the president or chairman of the board of trustees or

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other official of the particular institution with whose agent respondents are negotiating, has expressed the wish or desire that respondents receive an order for fruit from such institution; or

4. Represent that the citrus fruit offered for sale by them is of a grade, character, or quality superior to, or different from, its true grade, character, or quality.

It is further ordered, That each of the respondents shall, within 60 days after 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 this order.

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IN THE MATTER OF

R. P. REID, INDIVIDUALLY, AND TRADING AS REID
PACKING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3677. Complaint, Dec. 23, 1938—Decision, Feb. 9, 1939

Where an individual engaged in the processing and sale and distribution of salted peanuts which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof and which were composed of a number of individual, small, sealed 5-cent packages of such product enclosed in larger pasteboard cartons and containing concealed therein, in the case of a few, 5 cents, 10 cents, 25 cents, or \$1 as the case might be, for distribution to prospective purchasers by lot or chance—

Sold to wholesalers, retailers, and jobbers, together with explanatory display cards for retailers' use, said assortments for display and resale to purchasing public in accordance with sales plan aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its product in accordance with sales plan hereinabove set forth, involving game of chance or sale of a chance to procure sum of money, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to offer or sell their said product so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method of sale contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate purchasers of such product were attracted by his said method and manner of packing said salted peanuts and by element of chance involved in sale thereof as above described and were thereby induced to purchase such salted peanuts, thus packed and sold by him, in preference to those offered and sold by said competitors who do not use such or equivalent method, and of unfairly diverting trade to him from his competitors aforesaid; to the substantial injury of competition in commerce:

Held, That such acts or practices were all to the injury and prejudice of the public and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that R. P. Reid, individually and trading as Reid Packing Co., hereinafter referred to as re-