

IN THE MATTER OF
GOLD MEDAL FARMS, INC., JOSEPH FROMM AND
PAUL STEFFIN

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

Docket 3380. Complaint, Apr. 13, 1938—Decision, July 21, 1939

Where a New York corporation engaged in operating receiving stations and cooling plants in the New York milk shed, and in purchasing milk and cream at such stations and plants for transmission to the New York metropolitan milk market for pasteurization and bottling and delivery at wholesale and retail in New York City, and in operating, as thus engaged, among others owned and operated by it, one of the largest receiving stations in the State at Buskirk, where it bought milk and cream from some 650 farmers, as compared with average State station of about 100 patrons, for shipment as aforesaid to the city, and where, licensed by the State to import milk and cream therein from other States, it secured about two-thirds of its milk from farmers in Washington and Rensselaer Counties and one-third from Vermont dairy farmers, and, as thus engaged in the New York metropolitan milk market as above described, in competition with similarly situated milk dealers and distributors engaged in interstate commerce in sale and distribution of milk in area in question, and in direct and substantial competition in said trade and commerce with others engaged in purchase of fluid milk and cream in the 7-State area making up New York milk shed aforesaid and in sale and distribution, as above described, of said products in said metropolitan market; and the general manager of said corporation, and the superintendent of its large receiving station above referred to, and who controlled and directed its policies and practices in relation to the milk and cream producing patrons in the area which supplied milk and cream to said States;

In opposing efforts to get farmers throughout the New York milk shed to form and maintain local cooperatives to join a producers' bargaining agency which was created to carry out provisions, policy, and purpose of State law with respect to sale of milk in New York milk shed, and was followed by organization of bargaining agency by dealers and distributors in the New York metropolitan milk market to carry out said law's provisions and bargain collectively with said producer agency as to price to be paid producers by dealers or distributors, and creation, organization, and functioning of which two agencies, more particularly, respectively included—

I. Creation of a corporation which (1) was organized under the State's Cooperative Corporations law as the Metropolitan Cooperative Milk Producers' Bargaining Agency, Inc., (2) had as one of its primary objectives action as a milk producers' bargaining agency with all the functions, powers, and duties expressed or implied in or under the provisions of said Rogers-Allen law, passed to encourage federation of cooperative associations of milk producers for united action in collective bargaining for the sale of their milk, in harmony with the considered conclusion of State and Federal agencies that through producer cooperative associations, controlled

exclusively by dairy-farmer members thereof, was to be found the most effective means of stabilizing dairy industry in said New York milk shed so as to secure adequate and proper supply of milk for people in said metropolitan milk market and assure fair return to producers of milk in said shed, and in harmony with the policy of the Federal and State Governments of fostering and encouraging formation of producer-controlled cooperatives, and which law necessitated formation of producer cooperatives in State in which producers of milk and cream lived in order for them to take advantage of said law, (3) bargained as to price of milk and cream on behalf of its member cooperative associations of local producers in said milk shed, (4) was the only dairy farmers' bargaining agency created under laws of said State whereby more than 1 producers' cooperative might join with other such cooperatives in bargaining jointly for price to be paid to producer by dealer for milk for said New York metropolitan milk market, and with which cooperative producers' agency (5) there were affiliated about 48,000 of the approximately 62,500 producers in said New York milk shed, through 90 cooperative associations operated locally in New York and other States comprising said shed, and which, (6) following its creation, sent representatives throughout said shed to acquaint producers with said State's Rogers-Allen law, and to aid them in forming local producers' cooperatives to take advantage thereof, and did so aid, when desired, and usually with assistance of State representative; and

II. Creation of a corporation organized by the milk dealers and distributors in the New York metropolitan milk market as the Metropolitan Milk Distributors' Bargaining Agency, to carry out provisions of said State Rogers-Allen law and to bargain collectively with said Producers' Agency through meeting and agreeing upon prices to be paid by dealers or distributors to the producers, and membership of which, numbering, at one time, from 42 to 46 dealers or distributors who purchased from 65 to 70 percent of all milk bought in said shed, had dropped to 4, due to failure of milk producers to organize into cooperative which would join the Producers' Agency, and opportunity to buy milk from nonmember and unorganized milk producers, as opposed to situation prevailing in event of all producers in said milk shed becoming affiliated with such Producers' Agency—

- (a) Made false and disparaging statements concerning said Producers' Agency, its members, its objectives, and the character of its representatives, at meetings of representatives of said Producers' Agency and State Department of Agriculture, in furtherance of their joint efforts and to form first cooperative ever proposed among producers selling their milk to said corporation at its aforesaid receiving station, and put producers involved, who supplied said corporation, in fear of losing it as a market for their milk if they formed such cooperative, and represented, at said meetings, at which they did their utmost to prevent such producers from forming producer-controlled cooperative association, that said Producers' Agency was an instrument of and dominated by the dairymen's league, cooperative member thereof, and that said league's certificates of indebtedness were worthless, facts being said Producers' Agency's bylaws were designed to and did prevent control by the League or any other large cooperative, provisions of such bylaws were enforced, and certificates referred to were not worthless, but, on the other hand, of substantial value and readily marketable; and

- (b) Repeated, at meetings called by them and at other times and places, to producers who sold to said corporation, the same arguments and misrepresentations employed by them to prevent formation of producer cooperative as hereinabove described, and made use of their barn inspector employee, who passed upon fitness of producers' barns and equipment to determine whether or not they were in proper condition to supply milk for said metropolitan market, to solicit producers whose barns he inspected to join a cooperative which they had induced and caused their said New York and Vermont producers to form shortly after first of said Producers' Agency's meetings above referred to, to sell milk directly to said corporation, and thereby, and through exaggerated promises to pay producers involved higher prices for their milk than prices secured by producers belonging to cooperative membership of said producer agency, and through misrepresenting methods to be used by the cooperative sponsored and promoted by them, as immediately above set forth, and through putting their producers in fear of losing their market through said corporation if they did not join said cooperative, induced and caused more than 400 of their patrons so to join;

With result that—

(1) Producer-controlled cooperative which was voted for by a large majority of the producers attending first Producers' Agency sponsored meeting for purpose of joining said Producers' Agency and bargaining through it for prices to be paid for the milk of its members, and in the adoption of which producer-controlled cooperative's bylaws about 100 of the patrons in question participated at second Producers' Agency sponsored meeting, failed, nevertheless, to function because of formation of said former local cooperative, formed at instance of said corporation and its said officers, and in organization, management, control, and operation of which milk producer members thereof apparently had little, if any, voice;

(2) Vermont and New York producers selling to said corporation were prevented from exercising their free and unimpeded choice in deciding whether or not to form producer cooperative association and sell through said Producers' Agency, and such producers were thereby deprived of the higher prices which would normally result from a single selling agency in control of all milk produced in the New York milk shed, and entering the New York metropolitan milk market, and of giving said corporation a competitive advantage over competitive dealers who do not unfairly interfere with their producers and prevent them from joining producer-controlled cooperative associations and becoming affiliated with and selling their products through said Producers' Agency; and

(3) Opposition arose from other dealers similar to that involved in practices above set forth, and following initiation of such opposition by said corporation and its said officers, and including threats to discontinue purchasing milk from farmers taking part in meetings to form local cooperatives to join said Producers' Agency, 15 contemplated cooperatives failed to perfect their organization, 10 that were formed and joined said Producers' Agency later withdrew their membership, and 10 local cooperatives were formed to sell their milk direct to dealers instead of through said Agency, and said Producers' Agency's attempts to get all dealers to pay prices bargained for by it were frustrated; and

With capacity and tendency, through said acts and practices of said corporation and its said officers, and through similar acts and practices on the part of other dealers in said New York milk shed, to encourage unfair competition among such dealers and to reduce prices paid by them to their producers for milk below cost of production, and thus to threaten quality and quantity of milk deemed suitable for consumption in said New York metropolitan milk market; to the injury of said market's consuming public:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Fletcher G. Cohn for the Commission.

Mr. Willard R. Pratt, of Utica, N. Y., and *Mr. Harold S. Fleischer*, 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 Gold Medal Farms, Inc., a corporation, and Joseph Fromm and Paul Steffin, individuals, herein after 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 Gold Medal Farms, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1157 East One Hundred fifty-sixth Street, in the city of New York, N. Y.

Respondent Joseph Fromm is general manager of the respondent Gold Medal Farms, Inc., and he controls and directs its practices and policies.

Respondent Paul Steffin is manager of the country receiving plant operated by the respondent Gold Medal Farms, Inc., at Buskirk, N. Y., and, under the supervision of respondent Joseph Fromm, he controls and directs the operation of said plant and the practices and policies of the respondent Gold Medal Farms, Inc., in its relations with farmer producers of dairy products located in the vicinity of Buskirk, N. Y.

PAR. 2. Respondent Gold Medal Farms, Inc. is now and for several years has engaged in purchasing milk from dairy farmers in the States of New York and Vermont, transporting it to New York City, where it is pasteurized, bottled, and sold to both the wholesale and

retail trade. It operates the aforementioned country receiving plant at Buskirk, N. Y., where the milk is assembled, cooled and loaded into trucks for transportation to the pasteurizing plant of the respondent Gold Medal Farms, Inc., in New York City.

At the aforementioned plant of respondent, Gold Medal Farms, Inc., located at Buskirk, N. Y., the said respondent is supplied with milk by approximately 650 farmer producers, including approximately 85 such farmer producers located in the State of Vermont.

PAR. 3. Respondent, Gold Medal Farms, Inc., sells and distributes milk to wholesalers and retailers located in the area commonly referred to as the New York metropolitan milk market, which is situated partly in the State of New York and partly in the State of New Jersey, including New York City, the counties of Nassau, Suffolk, Rockland, and parts of Westchester County in New York State, Hudson County and parts of Bergen, Essex, Middlesex, Monmouth, Passaic, Somerset, and Union Counties in New Jersey. The area occupied by said New York metropolitan milk market is the most densely populated urban area in the United States. The daily fluid milk requirement for the inhabitants of said area is in excess of 4,000,000 quarts of whole milk, plus approximately 2,000,000 quarts in the form of cream. Said New York metropolitan milk market, since no substantial amount of milk is produced within the confines of said market, is dependent upon milk producers located in what is commonly referred to as the New York milk shed for a supply of fresh, fluid milk; said New York milk shed extends roughly 500 miles to the west and north and includes the whole of the State of New York and parts of the States of Vermont, Massachusetts, Connecticut, Pennsylvania, New Jersey, and Maryland. Anything which hampers the continuous movement of milk from the New York milk shed to the metropolitan market affects the well being of the inhabitants of said market.

More than 40 percent of the total fluid milk consumed in the New York metropolitan milk market is produced in States other than the States of New York and New Jersey, and approximately 70 percent of all of the milk consumed in the New York metropolitan milk market moves in interstate commerce.

PAR. 4. Fluid milk sold and consumed in the New York metropolitan milk market originates on dairy farms located in rural sections of the States comprising the New York milk shed. The milk is purchased from operators of these dairy farms, or their representatives, by so-called dealers who operate receiving stations and cooling plants at various points in the New York milk shed, where the milk is gathered, cooled, or processed, and prepared for ship-

ment to plants operated by said dealers located in the area covered by the New York metropolitan milk market, where said milk is processed or treated and placed in containers for delivery to wholesale, retail and ultimate consumer purchasers.

PAR. 5. Respondent Gold Medal Farms, Inc., in the course and conduct of its said business, as aforesaid, is in direct and substantial competition in said trade and commerce between, among, in and with the several States of the United States, with other corporations, and with firms, partnerships and individuals engaged in the purchase of fluid milk in the New York milk shed and in the sale and distribution thereof in the New York metropolitan milk market, as hereinabove described.

PAR. 6. The Metropolitan Cooperative Milk Producers Bargaining Agency, Inc., hereinafter referred to as the "Agency" was incorporated on June 15, 1937, under the provisions of article 4 of the Cooperative Corporations Law of the State of New York, with its principal office in the city of Syracuse, N. Y. One of its primary objects is to act as a milk producers bargaining agency, with all of the functions, powers, and duties, expressed or implied in or under the provisions of chapter 383 of the New York Laws of 1937. (The Rogers-Allen Act). This bargaining agency has approximately 95 constituent cooperative association members in the various states comprising the New York milk shed, representing some 52,000 milk producers, out of a total of approximately 69,000 farmer producers in said shed qualified to supply milk to the New York metropolitan milk market. Since its organization, the agency, in the exercise of the functions vested in it by law, has acted as a bargaining agency for the dairy farmer producers, who, through membership in one of the dairy farmers' cooperative associations which are members of the Agency, are served by it. The said Metropolitan Cooperative Milk Producers Bargaining Agency, Inc., is the only dairy farmers' bargaining agency created under the provisions of the said New York State Law, which serves the dairy farmers who produce the milk supplying said New York metropolitan milk market.

A large percentage of the milk dealers and distributors supplying the New York metropolitan milk market are cooperating with the Agency, having under the provisions of the existing law organized themselves into a dealers' bargaining agency known as the New York Metropolitan Milk Distributors' Bargaining Agency, hereinafter referred to as the "Dealers' Agency."

PAR. 7. Various milk distributors or dealers in the New York milk shed, among whom is respondent Gold Medal Farms, Inc., have committed or caused to be committed acts which seriously impair the

Complaint

29 F. T. C.

effective operation of the Agency and which threaten its very existence. These acts were done at various times and places, in many instances simultaneously, and included different forms of activities directed against the Agency in an effort to destroy same; among which, were efforts by corporations, partnerships, and individuals to coerce, intimidate and threaten, in devious and sundry ways, dairy farmers throughout the New York milk shed in order to cause such dairy farmers to refrain from exercising their legal rights to form producer controlled cooperative associations, with the view to having such cooperative associations affiliate with the Agency.

In many instances, such activities resulted in the formation of dealer controlled producers associations, which the farmer producers, from whom said dealers purchased their supply of milk, were compelled to join through misstatements and coercive methods employed by the dealers.

PAR. 8. Among other things, respondent Gold Medal Farms, Inc., acting through respondents Joseph Fromm, Paul Steffin, and others, has engaged in the practices and acts hereinafter set out in an attempt to prevent the affiliation of the dairy farmers, from whom it purchases milk, with the Agency:

On or about July 9, 1937, at Buskirk, New York, representatives of the Agency met with certain of the dairy farmers in that vicinity who were selling and delivering milk to the respondent Gold Medal Farms, Inc. at its country receiving plant at Buskirk, N. Y., for the purpose of effecting the organization of said producers as a producer controlled cooperative and having the same become affiliated with the Agency.

Prior to July 9, 1937, the farmer producers located in the vicinity of Buskirk, N. Y., and selling and delivering milk to the respondent Gold Medal Farms, Inc. at that point had never organized a cooperative nor had any attempt ever been made by respondents Gold Medal Farms, Inc., Joseph Fromm, and Paul Steffin to form any type of cooperative.

At the organization meeting on or about July 9, 1937, respondent Gold Medal Farms, Inc., through its representatives and respondent Paul Steffin, made many false, disparaging, and scurrilous statements concerning the Agency, its members, its objectives, and the character of its representatives, in an attempt to prevent said farmer producers from forming a producer-controlled cooperative and becoming affiliated with the Agency. In spite of the acts of the respondents, as aforesaid, the farmer producers at said meeting voted to form a producers' cooperative to become affiliated with the Agency and effected a temporary organization, including

the election of temporary officers. Announcement was made at this meeting of plans for a meeting to be held at a later date to perfect a permanent organization, and become affiliated with the Agency.

Immediately following the adjournment of said meeting on or about July 9, 1937, the respondents, Gold Medal Farms, Inc., Joseph Fromm, Paul Steffin, and other representatives of the respondent Gold Medal Farms, Inc., initiated a campaign among the farmers from whom the respondent Gold Medal Farms, Inc., purchased milk at its Buskirk, N. Y. plant, including not only those farmers who produced milk in New York, but also some who produced milk in the State of Vermont and shipped said milk from the State of Vermont to the plant of respondent Gold Medal Farms, Inc. at Buskirk, N. Y., to dissuade them from perfecting the organization of a cooperative to become affiliated with the Agency and to persuade them to form a cooperative controlled and dominated by respondent Gold Medal Farms, Inc. As a result of this campaign, a meeting was held on or about July 12, 1937, at or near Buskirk, N. Y., which meeting was called by one John P. Weatherwax, a lawyer, acting in behalf of respondent Gold Medal Farms, Inc. During the campaign preliminary to said meeting and at the meeting itself, false, disparaging, and scurrilous statements were made concerning the Agency, its members, its objectives, and the character of its representatives, by respondents Joseph Fromm, Paul Steffin, and said John P. Weatherwax. The meeting was dominated and controlled by respondents Joseph Fromm, Paul Steffin, and others acting at the instance and behest of the respondent Gold Medal Farms, Inc., with the farmer producers having no voice whatsoever in the conduct of same. As a result of the false, disparaging, and scurrilous statements so made and used by the respondents and the manner in which said meeting was conducted by the representatives of the respondent Gold Medal Farms, Inc., certain farmer producers, in both New York and Vermont, selling and delivering milk to respondent Gold Medal Farms, Inc., at its Buskirk, N. Y. plant were induced to and did form a cooperative organization known as the Washington and Rensselaer Counties Producers Cooperative Association, Inc., and since its formation, this organization has been under the complete control of respondent Gold Medal Farms, Inc., acting through its representatives.

As a result of the above mentioned activities of the respondents, more than two thirds of the farmer producers in both New York and Vermont selling and delivering milk to the aforementioned Buskirk, N. Y. plant of respondent Gold Medal Farms, Inc., have now signed up to become members of said company controlled

Complaint

29 F. T. C.

cooperative association, and have designated that association as their sole agent for the sale of their collective milk production, and said cooperative has entered into a contract with respondent Gold Medal Farms, Inc., whereby said respondent purchases all the milk produced by the members of the cooperative. A majority of the farmer milk producers who join this company controlled cooperative did not do so voluntarily and of their own accord but because of coercion, intimidation, threats, and misrepresentations by respondents, their agents, and representatives, as aforesaid.

The aforementioned activities on the part of the respondents, their agents and representatives, have effectively prevented the formation of a producer controlled cooperative and the affiliation of said producers, through such cooperative, with the Agency.

PAR. 9. Dealers purchasing milk from producers affiliated with the Agency are compelled to and do bargain with the Agency, either directly or through the Dealers' Agency, as to the price to be paid producers for their milk and cannot bargain directly with the farmer producer or with the cooperative to which the producer belongs. The affiliation of the farmer producers in a given area with the Agency places them in a more advantageous position to bargain for the price of their milk, because of the collective bargaining power of the Agency. Milk dealers who are not members of the Dealers' Agency or who do not bargain with the Agency, but bargain directly with the farmer producer from whom they purchase milk, or with local producers' cooperatives, have a competitive advantage over dealers who have become members of the Dealers' Agency or who bargain directly with the Agency.

PAR. 10. The aforesaid acts, practices, and methods used by respondents in the course and conduct of the business of respondent Gold Medal Farms, Inc., in said commerce between, among, in and with the several States of the United States, have the tendency and capacity to and do mislead, intimidate, and coerce the farmer producers from whom the respondent Gold Medal Farms, Inc. purchases milk, and cause such farmer producers, because of such deception, coercion, and intimidation, to refrain from becoming affiliated with the Agency, and to continue to bargain directly with respondent Gold Medal Farms, Inc. As a result thereof, respondent Gold Medal Farms, Inc. has a competitive advantage over competitors in said commerce who do not use such acts, practices, and methods in the conduct of their said business, but who deal with the Agency rather than with farmer producers individually or company controlled cooperatives, which unfairly diverts substantial trade in said commerce to the respondent Gold Medal Farms, Inc. from

its said competitors to their injury and to the injury of the public.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of competitors of respondent, Gold Medal Farms, Inc., and constitute unfair methods of competition 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 April 13, 1938, issued and subsequently served its complaint in this proceeding upon respondents, Gold Medal Farms, Inc., a corporation, and Joseph Fromm and Paul Steffin, individuals charging them with the use of unfair methods of competition in commerce in violation of said act. After the issuance of said complaint, and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Fletcher G. Cohn, attorney for the Commission, and in opposition to the allegations of the complaint by Willard R. Pratt, and Harold S. Fleischer, attorneys for the respondents, before John W. Addison, an examiner for the Commission theretofore duly designated by it; and said testimony and other 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 answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of counsel, and the Commission having duly considered the same 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, Gold Medal Farms, Inc., is a corporation organized under the laws of the State of New York in 1932 and is now existing and doing business under and by virtue of the laws of said State, with its principal office and place of business located at 1157 East One Hundred and Fifty-sixth Street, New York, N. Y. It is engaged in the business of buying milk and cream at a receiving station (creamery) at Buskirk, N. Y., and of pasteurizing, bottling, selling, and delivering the same at wholesale and retail in the city of New York, N. Y. Its paid-in capital is about \$230,000, and its officers and directors are Hyman and Solomon Bagdanowsky and Abraham and Philip Bagdan. Its New York plant has a capacity for pasteurizing

220,000 pounds of milk a day. Its receiving station at Buskirk, N. Y., is one of the largest in the State of New York. At this plant, it buys milk and cream from about 650 farmers. The average station in the State of New York has about 100 patrons. It receives at this plant, at the season's height, in excess of 5,000,000 pounds of milk a month, and from here daily ships to its pasteurizing plant in New York City about 970 cans of milk and 75 cans of cream. Respondent, Gold Medal Farms, Inc., also buys milk from other distributors of milk.

PAR. 2. Respondent, Gold Medal Farms, Inc., secures about two-thirds of all the milk received at its Buskirk station from farmers in Washington and Rensselaer Counties, N. Y., with the other one-third coming from 138 farmers with dairy farms in the State of Vermont.

PAR. 3. Respondent, Gold Medal Farms, Inc., sends its representatives into the State of Vermont to negotiate with Vermont milk producers for the delivery of their milk to its Buskirk station and also as to the prices to be paid for the milk of these Vermont producers. The milk and cream from Vermont are delivered in trucks to the Buskirk, N. Y., station; the truckmen are hired by and the handling charges borne by the Vermont farmers. These Vermont producers deal continuously with respondent, Gold Medal Farms, Inc., in the manner aforesaid, thus causing their milk to be delivered every day from their farms in Vermont to the purchaser thereof, respondent, Gold Medal Farms, Inc., at its Buskirk, N. Y., station.

PAR. 4. Respondent, Joseph Fromm, is General Manager of respondent Gold Medal Farms, Inc., and respondent, Paul Steffin, is Superintendent of the Buskirk station. They control and direct respondent, Gold Medal Farms, Inc.'s policies and practices in its relation with the milk and cream producing patrons in the area which supplies milk and cream to the Buskirk station of respondent, Gold Medal Farms, Inc.

PAR. 5. The City of New York, Long Island, and several counties in the State of New Jersey, comprise the area usually referred to as the New York metropolitan milk market. This area is the most densely populated region in the United States, and its daily milk consumption is approximately 4,000,000 quarts of milk and 2,000,000 quarts of cream. The New York milk shed is the area which extends throughout the State of New York and takes in parts of the States of Pennsylvania, New Jersey, Vermont, Massachusetts, Connecticut, and Maryland, throughout the rural sections of which the milk and cream produced on the dairy farms is approved by the proper authorities for sale and distribution in the New York metropolitan milk market. The milk is purchased from operators of these dairy farms or their

representatives by so-called dealers or distributors, among whom is respondent, Gold Medal Farms, Inc., who operate receiving stations and cooling plants at various points through the New York milk shed. Here the milk is gathered, cooled and processed and prepared for shipment to plants operated by said dealers located in the New York metropolitan milk market, where said milk and cream are processed or treated and placed in containers for delivery to wholesale, retail and ultimate consumer purchasers. About 34 percent of the milk consumed in the New York metropolitan milk market comes from States other than New York, and about 47 percent of same crosses state lines in reaching the market.

PAR. 6. Respondent, Gold Medal Farms, Inc., applied for and received from the New York State Department of Health a permit to ship, transport or import milk and cream into the State of New York from other States of the United States. In the New York metropolitan milk market, which is supplied with milk from the New York milk shed, respondent, Gold Medal Farms, Inc., sells and distributes milk and cream in competition with similarly situated milk dealers and distributors, engaged in interstate commerce in the sale and distribution of milk in this area. Respondent, Gold Medal Farms, Inc., in the course and conduct of its said business, as aforesaid, is in direct and substantial competition in said trade in commerce between and among the several States of the United States, with other corporations, and with firms, partnerships, and individuals engaged in the purchase of fluid milk and cream in the New York milk shed and in the sale and distribution thereof in the New York metropolitan milk market, as hereinabove described.

PAR. 7. The production and distribution of milk in the State of New York is a paramount industry affecting in a large measure the health and welfare of the people of that State. Both the Government of the United States and of the State of New York, through various agencies, have made investigations and reports as to the best method of stabilizing the dairy industry in the New York milk shed, so as to secure an adequate and proper supply of milk for the people in the New York metropolitan milk market and to assure a fair return to the producers of said milk in the New York milk shed. Through these investigations and reports, it has been determined that this could be accomplished most effectively through producer cooperative associations, controlled exclusively by the dairy farmer members thereof. It is the policy of the Government of the United States and of the State of New York to foster and encourage the formation of producer-controlled cooperatives.

PAR. 8. In order to encourage a federation of cooperative associations of milk producers for united action in collective bargaining for the sale of their milk, the State of New York, in accordance with the reports of agencies of the Government of the United States and of the State of New York, in May 1937, passed the Rogers-Allen Law, which law in its original form was prepared by a conference of New York State farm organizations, which sponsored it in the Legislature of the State of New York. The Rogers-Allen Law declares its purpose, among others, to be to promote, foster, and encourage intelligent and orderly marketing of milk through producer-owned and controlled cooperative associations; it provides for separate bargaining agencies to be established by incorporated producers' associations, formed under the cooperative corporation laws of New York and other States in various production areas throughout the milk shed, and by distributors in various marketing areas.

PAR. 9. The Metropolitan Cooperative Milk Producers' Bargaining Agency, Inc., hereinafter referred to as the "Agency," was organized in June, 1937, under the New York Cooperative Corporations Law, with its principal office in the city of Syracuse, N. Y., with one of its primary objectives being to act as a milk producers' bargaining agency, with all of the functions, powers and duties expressed or implied in or under the provisions of the Rogers-Allen law, so as to enable the milk producers to take advantage of the opportunity that was given them under said law. It bargains as to the price of milk and cream on behalf of its member cooperative associations of local producers in the New York milk shed. In order for producers of milk and cream to take advantage of the Rogers-Allen law, they must form producer cooperative associations under the laws of the State in which they live, and there are such local cooperatives organized under the laws of the States of New York, Vermont, and Pennsylvania. The said Agency is the only dairy farmers' bargaining agency created under the laws of the State of New York, whereby more than one producers' cooperative may join with other such cooperatives in bargaining jointly for the price to be paid to the producer by the dealer for milk for the New York metropolitan milk market.

PAR. 10. In carrying out the provisions of the Rogers-Allen law, the milk dealers and distributors in the New York metropolitan milk market organized the Metropolitan Milk Distributors' Bargaining Agency, hereinafter referred to as the "Dealers' Agency," to bargain collectively with the Agency. Representatives of the two Agencies meet and agree upon the prices to be paid by the dealers or distributors to the producers.

PAR. 11. About 48,000 of the approximately 62,500 producers in the New York milk shed are affiliated with the Agency through 90 cooperative associations operated locally in New York and other states which comprise the New York milk shed. The number of affiliates has been as high as 50,000. From 42 to 46 dealers or distributors, who purchased from 65 to 70 percent of all milk bought in the New York milk shed, were members of the Dealers' Agency, but in June, 1938, this number had dropped to 4. This decrease in membership in the Dealers' Agency was due to the fact that it was possible for the dealers to buy milk from producers who were not members of the Agency; that is, from unorganized milk producers. This is related to the failure of milk producers to organize themselves into cooperatives, which in turn would join the Agency. If all the producers in the New York milk shed became affiliated with the Agency, distributors would be forced to deal with them by means of bargaining between the Agency and the Dealers' Agency.

PAR. 12. Immediately after the creation of the Agency, it sent representatives throughout the New York milk shed to acquaint the producers with the Rogers-Allen law and to aid them in forming local producers' cooperatives to take advantage of the provisions of this law. If, and when, a group of milk producers in a given area signified a desire to form such a cooperative, the Department of Agriculture and Markets of the State of New York, through its representative, who usually accompanied a representative of the Agency, then assisted the milk producers in perfecting their organization of a local producers' cooperative.

PAR. 13. The Agency, throughout the year following its formation, in its efforts to get farmers throughout the milk shed to form and maintain local cooperatives which could join the Agency, met with much opposition from dealers and their representatives. This opposition from dealers, other than respondent, Gold Medal Farms, Inc., arose after the initiation of the opposition by respondents described in paragraphs 14 and 15 below, but was similar to that of the respondents and included threats to discontinue purchasing milk from farmers taking part in meetings to form such local cooperatives. Fifteen contemplated cooperatives failed to perfect their organization, 10 that were formed and joined the Agency later withdrew their membership, 10 local cooperatives were formed to sell their milk direct to dealers instead of through the Agency. The Agency's attempts to get all dealers to pay the prices bargained for by it were frustrated.

PAR. 14. In furtherance of the joint efforts of the Agency and the Department of Agriculture and Markets of the State of New York,

representatives of both met with certain of the milk producers who delivered their milk to the Buskirk station of respondent, Gold Medal Farms, Inc., at Johnsonville and Eagle Bridge, N. Y., on July 9 and August 10, 1937, respectively, in an effort to form the first cooperative ever formed or proposed among the producers selling their milk to respondent, Gold Medal Farms, Inc., at its Buskirk, N. Y., station. Respondents did their utmost to prevent such producers from forming a producer-controlled cooperative association to affiliate with or join the Agency at these two Agency sponsored meetings, which were held for the purpose of forming and perfecting such a cooperative. Respondents and their representatives consumed a greater part of the time of the meetings, harangued the producers with arguments against forming the cooperative, making false and disparaging statements concerning the Agency, its members, its objectives and the character of its representatives, and putting the producers of Gold Medal in fear of losing respondent, Gold Medal Farms, Inc., as a market for their milk if they formed such a cooperative. Among the representations which were made by the respondents and their representatives at these meetings, were statements that the Agency was an instrument of, and was dominated by, the dairymen's league, a cooperative which is a member of the Agency, and that said league's certificates of indebtedness were worthless; whereas, in truth and in fact, the Agency's bylaws are designed to, and do, prevent control by the league or any other large cooperative, and these provisions of the bylaws have been enforced. In truth and in fact, the league's certificates of indebtedness are not worthless but, on the other hand, are of substantial value and are readily marketable.

PAR. 15. Respondents further induced and caused the producers, located both in the States of Vermont and New York, all of whom sold their milk to respondent, Gold Medal Farms, Inc., at its Buskirk, N. Y., station, to form, on July 12, 1937, at a meeting called by the representatives of respondent, Gold Medal Farms, Inc., the Washington and Rensselaer Counties' Producers' Cooperative Association, Inc., hereinafter referred to as the "Washington and Rensselaer Cooperative," through which they were to sell this milk directly to Gold Medal Farms, Inc. At meetings, called and dominated by the respondents, and at other times and places, respondents and their agents or representatives repeated to the producers selling to respondent, Gold Medal Farms, Inc., the same arguments and misrepresentations employed by them to prevent the formation of a cooperative heretofore mentioned in the preceding paragraph. The respondents, also, used the barn inspector of respondent, Gold Medal Farms, Inc., who passed upon the fitness of the producers' barns and

equipment to determine whether or not they were in proper condition to enable them to supply milk for the New York metropolitan milk market, to solicit the producers whose barns he inspected, to join this cooperative. The respondents further held out to such producers exaggerated promises to the effect that respondent, Gold Medal Farms, Inc., would pay them higher prices for their milk than the prices secured by producers who belonged to cooperatives which were members of the Agency. The respondents likewise misrepresented the methods to be used by the Washington and Rensselaer Cooperative in arriving at the prices to be paid by respondent, Gold Medal Farms, Inc., and as to the methods to be used in giving advance notices of these prices to members. Furthermore, respondents put the producers selling to respondent, Gold Medal Farms, Inc., at his Buskirk, N. Y., station, in fear of losing this market if they did not join this cooperative. Respondents, through these acts and practices, induced and caused more than 400 of their patrons to join the Washington and Rensselaer Cooperative. The result has been that, although the producers attending the first Agency sponsored meeting voted 34 to 4 to form a producer-controlled cooperative to join the Agency and bargain through it for prices to be paid for the milk of its members, and although about 100 of the patrons at the second Agency sponsored meeting participated in adopting by-laws for such a cooperative, and although this cooperative did join the Agency, nevertheless it has failed to function because of the formation, as aforesaid, of the Washington and Rensselaer Cooperative, which cooperative was formed at the instance of the respondents and in the organization, management, control and operation of which the milk producers who are members thereof apparently have had little, if any, voice.

PAR. 16. The acts and practices of respondents, as above found, have had, and do have, the tendency and capacity to, and did, and do, coerce, intimidate and deceive the Vermont and New York producers selling to respondent, Gold Medal Farms, Inc., and have prevented, and do prevent, them from exercising their free and unimpeded choice in deciding whether or not to form a producer-controlled cooperative association and sell through the Agency, thereby depriving such producers of the higher prices which would normally result from a single selling agency in control of all milk produced in the New York milk shed and entering the New York metropolitan milk market, and giving the respondent, Gold Medal Farms, Inc., a competitive advantage over competitive dealers who do not unfairly interfere with their producers and prevent them from joining pro-

Order

29 F. T. C.

ducer-controlled cooperative associations and becoming affiliated with and selling their products through the Agency.

These acts and practices of the respondent, Gold Medal Farms, Inc., and the other respondents, as hereinabove set out, and similar acts and practices on the part of other dealers in the New York milk shed subsequently thereto, had, and do have, the tendency and capacity to encourage unfair competition among such dealers and to reduce the prices paid by them to their producers for milk below the cost of production, and thus to threaten the quality and quantity of milk deemed suitable for consumption in the New York metropolitan milk market, with a resulting injury to the consuming public in said market.

CONCLUSION

The acts and practices of respondents, Gold Medal Farms, Inc., Joseph Fromm and Paul Steffin, as described above, are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition 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, the answers of respondents, testimony and other evidence taken before John W. Addison, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed therein, and oral arguments by Fletcher G. Cohn, counsel for the Commission, and by Harold S. Fleischer, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Gold Medal Farms, Inc., its successors or assigns, officers, representatives, agents, and employees, and respondents Joseph Fromm and Paul Steffin, acting individually or through or by means of respondent Gold Medal Farms, Inc., or through or by means of any other dealer or distributor of milk or milk products, or through or by means of any group, association or combination of dealers or distributors, or any other agency, in connection with the purchase, receipt, sale or distribution of milk in any form in interstate commerce or in the District of Columbia, do forthwith cease and desist from doing directly or indirectly the following acts and things:

1. Deceiving, coercing or intimidating in any manner or by any means or method, any milk producer or producers from whom any of the respondents purchase or receive, or may hereafter purchase or receive, milk in any form whatsoever, for the purpose, or with the intent, or with the result, of preventing said producer or producers from assisting in organizing, or from forming, joining, or becoming a member of, or affiliated with, any milk producers' cooperative association.

2. Deceiving, coercing, or intimidating, in any manner or by any means or method, any milk producer or producers from whom any of the respondents purchase or receive, or may hereafter purchase or receive, milk in any form whatsoever for the purpose, or with the intent, or with the result, of causing said producer or producers to assist in organizing, or in forming, joining, or becoming a member of or affiliated with, any milk producers' cooperative association.

3. Threatening reprisals in any manner or form against any milk producer or producers from whom any of the respondents purchase or receive, or may hereafter purchase or receive, milk in any form whatsoever, as a penalty for, or as a result of, any attempt by said producer or producers to assist in organizing or forming any milk producers' cooperative association, or, as a penalty for, or as a result of, any such producer or producers joining or becoming a member of, or affiliated with, any such association, or as a penalty for, or as a result of, the failure of any such producer or producers to assist in organizing, or forming any such association, or as a penalty for, or as a result of, his or their failing to join or failing to become a member of, or failing to become affiliated with, any such association.

4. Interfering by means of deception, coercion, or intimidation, in any manner or form, with the free and unimpeded exercise of choice by any milk producer or producers from whom any of the respondents purchase or receive, or may hereafter purchase or receive, milk in any form whatsoever, in the determination by said producer or producers as to whether said producer or producers shall or should form, organize, join, or become affiliated with any producers' cooperative association.

5. Interfering by means of deception, coercion, or intimidation, in any form or manner, with the free and unimpeded exercise of choice by any milk producers' cooperative association in its determination of whether or not such milk producers' cooperative association shall or should join or become affiliated, in any manner or form, with the Metropolitan Cooperative Producers' Bargaining Agency, Inc., or any milk producers' cooperative bargaining organization or agency, authorized by law.

Order

29 F. T. C.

6. Making, or causing to be made, in any form or manner, any falsely disparaging words or statements concerning or referring to the Metropolitan Cooperative Milk Producers' Bargaining Agency, Inc., or any milk producers' cooperative bargaining organization or agency, authorized by law, its purposes, objectives, its members, or the character of its representatives or membership.

7. Controlling, dominating, interfering, or attempting to control, dominate, or interfere with, in any form, manner, or method whatsoever, the organization, management, control, or operation of the Washington and Rensselaer Counties Producers' Cooperative Association, Inc., or any other milk producers' cooperative association or agency, authorized by law, with the purpose, intent, or result of preventing the producer members, officers, or directors of such a cooperative, from exercising their free and unimpeded judgment as to its organization, management, control, or operation.

It is further ordered, That 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 form and manner in which they have complied with this order.

Commissioner Davis dissenting.

Syllabus

IN THE MATTER OF
PHILADELPHIA RUBBER WASTE COMPANY 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 3010. Complaint, Dec. 5, 1936—Decision, July 26, 1939

Where a corporation had long engaged in manufacture and sale of storage batteries, dry batteries, radios, radio tubes, motor generator sets, distributors, spark-plug suppressors, intercommunicating devices, and electric clocks, for use, chiefly, in automobiles, under its registered trade name Philco, and had registered said name as trade-mark in various States and in foreign countries and spent many millions of dollars in advertising its said products under said name and mark, and said products, as thus advertised by it and by advertisements placed by its dealers, had come to be well and favorably known to purchasing public, and said name Philco was understood by many buyers as meaning that any product offered for sale thereunder for use in or on automobile was product of said corporation, and it featured colors blue and yellow in its advertising and packed and marketed its radio tubes in blue and yellow cartons, and constantly litigated to prevent use of name Philco by others; and thereafter a corporation and individual, owner of 94 percent of stock thereof prior to its dissolution, engaged in manufacture, sale and distribution of repair parts and automobile tires and tubes including tube repair kits, tire patches and reliner, patch cement and gasket cement, and three individuals, engaged as partners in sale and distribution of such products which they purchased from said corporation and, thereafter, from said individual—

Made use of such trade names as Philco Rubber Co., Philco Rubber Sales Co., Philco Auto Supply and others including term Philco and sold their said products, purchased as aforesaid from said individual, with brand or label Philco thereon and thus sold inner tubes and spark plugs also dealt in and made use of labels on tube repair kits which were yellow with printed matter on blue background, and, described as "True Blue" said kits and made use of said colors for spark plug containers, displaying, as aforesaid word Philco, and featured in their catalogues, at top and bottom of pages, in conspicuous type such slogans as "Philco Guarantees You Satisfaction," "Philco Gives You Highest Quality at Lowest Prices," "Philco Products Mean Repeat Business and Greater Profits" and others of similar tenor, and represented thereby that said various products were made by said corporation or licensees, successors, or assignees thereof,

Notwithstanding fact that said automobile tube repair kits, reliners, patches and other products thus designated, etc., were not made by said corporation first referred to or concern through which said corporation sold, under trade name Philco, its said products for resale to general public, and said individuals and partners formed no part of and had no connection with said corporation or concern, which did not manufacture, sell or distribute said repair kits, patches and other products sold and distributed by said individuals and partners;