

IN THE MATTER OF

FRESH GROWN PRESERVE CORPORATION, SUN DISTRIBUTING COMPANY, INC., RITE PACKING CORPORATION, MURRAY GREENBERG, AND LEO GREENBERG

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

Docket 3682. Complaint, Dec. 30, 1938—Decision, Sept. 20, 1940

Where corporation engaged in manufacture, sale, and distribution of various kinds of preserved products, two companies engaged in sale and distribution of such products made by said corporation, and two individuals who, as officers, directors and principal stockholders, controlled and directed the business activities, sales policies and practices of the three companies aforesaid, and in active and substantial competition in sale of their said products in commerce among the various States and in the District of Columbia with others engaged in the sale and distribution of fruit preserves in commerce, as above set forth—

- (a) Represented their said products as preserves or pure fruit preserves through labels and in price lists and invoices, and in salesmen's representations also thus designated and described their said products;

Facts being products in question were not preserves or pure preserves within the meaning and popular acceptance of such words as understood by trade and purchasing public as product prepared from a mixture of clean, sound fruit with sugar in proportion of at least 45 pounds of fruit to 55 pounds of sugar cooked to appropriate consistency, but contained, as analyzed over extended periods, substantially small proportions of fruit, and were imitation or substandard products so made that in appearance they simulated unadulterated preserves made as above set forth to the extent that difference in fruit content between imitation and genuine products could not be discerned by visual inspection;

- (b) Represented in their said labels that certain fruits had been used in the manufacture of the contents of the jars and containers;

Facts being sample of product labeled "Pure Grape Preserves" disclosed approximately 25 percent apple tissue as component part of fruit content thereof, blackberry and raspberry preserves were disclosed, as sampled, to consist of fruit content of fruit punice, and fruit portions of their said products were not composed entirely of specified fruit represented, but contained instead, in part, mixture of fruits or products other than that specified by them as being in or comprising their products in question;

With result that they obtained, through use of lesser amount of fruit resulting in saving in cost thereof and greater percentage of yield, advantage over competitors who did not resort to such practice sufficient to force those using standard formula to sell below actual cost in order to meet aforesaid saving, and with effect of misleading and deceiving trade and wholesale and retail dealers and consuming public into mistaken and erroneous belief that said products had fruit content of at least 45 pounds of fruit to each 55 pounds of sugar, and that fruit portion of completed product was

composed entirely of specific fruit represented, and with result, as direct consequence of such belief, that number of such dealers and members of the purchasing public bought their products and trade was diverted unfairly to them, and their competitors, engaged in selling fruit preserves in commerce as aforesaid, and who truthfully advertised their respective products, and means and instrumentality were placed, directly through such acts and practices, in hands of unscrupulous or uninformed dealers at wholesale and retail whereby they had been and were enabled to deceive and mislead members of purchasing public:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Earl J. Kolb for the Commission.

Mr. Louis Halle, 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 Fresh Grown Preserve Corporation, a corporation, Sun Distributing Co., Inc., a corporation, Rite Packing Corporation, a corporation, and the following-named persons: Murray Greenberg and Leo Greenberg, individually and as officers and directors of said Fresh Grown Preserve Corporation, Sun Distributing Co., Inc., and Rite Packing Corporation, 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, Fresh Grown Preserve Corporation 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 32 Thirty-third Street, Brooklyn, N. Y., and is engaged in the manufacture, sale, and distribution of various kinds of fruit preserves.

Respondent, Sun Distributing Co., 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 32 Thirty-third Street, Brooklyn, N. Y., and is engaged in the sale and distribution of various kinds of fruit preserves which are manufactured by Fresh Grown Preserve Corporation.

Respondent, Rite Packing Corporation 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

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at 32 Thirty-third Street, Brooklyn, N. Y., and is engaged in the sale and distribution of various kinds of fruit preserves which are manufactured by Fresh Grown Preserve Corporation.

Respondent, Murray Greenberg, an individual residing at 4901-14th Avenue, Brooklyn, N. Y., is, and during all the times hereinafter mentioned has been, president of Fresh Grown Preserve Corporation and an officer, director, and part owner of the Fresh Grown Preserve Corporation, Sun Distributing Co., Inc., and Rite Packing Corporation, and, together with the respondent, Leo Greenberg, controls and directs the business activities, sales policies and practices of said respondent corporations.

Respondent, Leo Greenberg, an individual residing at 1947 Ocean Avenue, Brooklyn, N. Y., is, and during all the times hereinafter mentioned has been, vice president of Fresh Grown Preserve Corporation and an officer, director, and part owner of Fresh Grown Preserve Corporation, Sun Distributing Co., Inc., and Rite Packing Corporation, and, together with the respondent, Murray Greenberg, controls and directs the business activities, sales policies, and practices of said respondent corporations.

Said respondents have all acted in concert and in cooperation with each other in performing the acts and practices hereinafter alleged.

PAR. 2. Said respondents are now and have been, for more than 4 years last past, engaged in the business of selling and distributing various kinds of fruit preserves to wholesale grocers, retail grocers, and bakeries located in various States of the United States and cause their said products, when sold by them, to be transported from their factory in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are in active and substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of fruit preserves in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business the respondents have represented and are now representing their products as being "pure" fruit preserves by means of labels, tags, and markers attached to the jars and containers in which their products are packed and distributed, which designate and describe said products as "pure preserves." Such labels also name the fruits which the

respondents represent have been used in the manufacture of the contents of such jars and containers.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of their products the respondents have, and do now, distribute to wholesale and retail grocers located in various States of the United States advertising material and sales literature by means of which the respondents represent that their products are composed of certain specified fruits and are "Pure Preserves."

PAR. 6. In truth and in fact the products of respondents so denominated, described, and represented have not been, and are not, "Preserves" or "Pure Preserves" within the meaning and popular acceptance of such words.

The expressions "Preserves" and "Fruit Preserves" signify, mean, and are known and understood by the trade and purchasing public, to be a product prepared from the mixture of clean sound fruit with sugar, in the proportion of at least 45 pounds of fruit to each 55 pounds of sugar and cooked to an appropriate consistency.

The products of the respondents do not in fact contain a fruit content in proportion of at least 45 pounds of fruit to each 55 pounds of sugar, but instead said products have an average fruit content deficiency of 48 percent, in that the fruit content in respondents' products averages approximately 22 pounds of fruit to each 55 pounds of sugar.

In addition, the fruit portion of respondents' completed products are not composed entirely of the specific fruit represented, but instead said products contain in part a mixture of other fruits or products less expensive than that specified by respondents as being in and comprising their products, and which the respondents do not disclose in designating and advertising their products.

PAR. 7. The use by respondents of the false and misleading representations to the effect that their aforesaid products are "Pure Preserves" had, and has, a tendency and capacity to, and does, mislead and deceive the trade, including wholesale and retail dealers, and the consuming public into the mistaken and erroneous belief that said products have been made from at least 45 pounds of fruit to each 55 pounds of sugar and that the fruit portion of the completed product is composed entirely of the specific fruit represented. As a direct result of this belief, a number of wholesale and retail dealers and members of the consuming public have purchased respondents' products with the effect that trade has been diverted unfairly to respondents from their competitors, likewise engaged in the business of distributing and selling fruit preserves in commerce between and among the

various States of the United States and in the District of Columbia, who truthfully advertise their respective products.

By such acts and practices, respondents have placed directly into the hands of unscrupulous or uninformed dealers, wholesale and retail, a means and instrumentality whereby said dealers have been and are enabled to deceive and mislead members of the purchasing public.

As a consequence thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged all are to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 December 30, 1938, issued and served its complaint in this proceeding upon the respondents, Fresh Grown Preserve Corporation, a corporation; Sun Distributing Co., Inc., a corporation; Rite Packing Corporation, a corporation; and Murray Greenberg and Leo Greenberg, individuals, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After 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 Earl J. Kolb, attorney for the Commission, and in opposition to the allegations of the complaint by Louis Halle, attorney for the respondent, before Robert S. Hall, an examiner of 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 arguments of counsel aforesaid; 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. The respondent, Fresh Grown Preserve Corporation, is a New York corporation engaged in the manufacture and in the sale and distribution of various kinds of preserve products.

The Sun Distributing Co., Inc., and Rite Packing Corporation are New York corporations engaged in the sale and distribution of preserve products manufactured by the respondent Fresh Grown Preserve Corporation.

The respondent Murray Greenberg is president of the Fresh Grown Preserve Corporation and is an officer and director of Sun Distributing Co., Inc., and Rite Packing Corporation.

The respondent Leo Greenberg is vice president of Fresh Grown Preserve Corporation and is an officer, director and stockholder of Sun Distributing Co., Inc., and Rite Packing Corporation.

The individual respondents, Murray Greenberg and Leo Greenberg, as officers, directors, and principal stockholders, control and direct the business activities, sales policies and practices of the Fresh Grown Preserve Corporation, Sun Distributing Co., Inc., and Rite Packing Corporation.

PAR. 2. The respondents, for more than 4 years last past, have been engaged in the sale and distribution of various kinds of preserve products in commerce among and between the various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are in active and substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of fruit preserves in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The respondent Fresh Grown Preserve Corporation uses the brand "Nature's Own." The Sun Distributing Co., Inc., uses the brand "Top Notch"; and the Rite Packing Corporation the brand "Mardi Gras" in designating their respective products.

PAR. 5. In the course and conduct of their business the respondents represent their products as being fruit preserves or "pure" fruit preserves by means of labels, tags, and markers attached to the jars and containers in which their products are packed and distributed, which designate and describe said products as "Pure Preserves." Such labels also name the fruits which the respondents represent have

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been used in the manufacture of the contents of such jars and containers. Typical examples of such labels, are the following:

NATURE'S OWN
Brand
PURE STRAWBERRY PRESERVES
Contents 24 oz. Net
Fresh Grown Preserve Corporation
Brooklyn, N. Y.

TOP NOTCH
Brand
PURE STRAWBERRY PRESERVES
Contents 4 lbs. Net
Sun Distributing Co., Inc.,
Distributors,
Brooklyn, N. Y.

MARDI GRAS
Brand
PURE STRAWBERRY PRESERVES
Contents 2 lbs. Net
Rite Packing Corporation
Distributors,
Brooklyn, N. Y.

PAR. 6. For the purpose of inducing the purchase of their various products, the respondents have from time to time issued price lists, which are distributed to their various customers, by means of which the respondents represented their products as being preserves or pure preserves, by describing and designating such products as "Pure Preserves," on such price lists. In addition to such price lists, the respondents also described and designated their products as pure preserves and as preserves on invoices to customers and in representations made by salesmen.

PAR. 7. The Commission finds that the products of the respondents so designated, described, and represented as preserves or as pure preserves, are not preserves or pure preserves within the meaning and popular acceptance of such words.

A preserve as understood by the trade and purchasing public is a product prepared from a mixture of clean sound fruit with sugar in the proportion of at least 45 pounds of fruit to 55 pounds of sugar, cooked to an appropriate consistency. This formula is the commercial adaptation of the ordinary cook book formula of a "cup of fruit to a cup of sugar." There is no difference in the fruit and sugar content of preserves labeled or designated "Pure Preserves" and "Preserves."

The minimum formula used by manufacturers as the standard for "Preserves" and "Pure Preserves" is a fruit content of 45 pounds of fruit to 55 pounds of sugar, cooked to a consistency of approximately 68 percent water soluble solids. A preserve product made from a fruit content of less than 45 pounds of fruit to 55 pounds of sugar is known and designated as "Imitation Preserves."

PAR. 8. The Federal Trade Commission purchased in the open market 7 samples of respondents' products, consisting of 40 2-pound jars which were analyzed by the Food and Drug Administration at Washington, D. C., and, in addition, 35 samples of respondents' products were purchased in the open market and analyzed by an independent firm of chemists. These purchases were made over a period of approximately 18 months. The Commission finds that all the samples so purchased and analyzed, with the exception of one sample labeled "grape preserves," had a fruit content of less than the minimum formula of 45 pounds of fruit to 55 pounds of sugar. The average fruit content of the respective products analyzed was as follows:

Fifteen samples, Strawberry Preserves, average 27 pounds of fruit to 55 pounds of sugar.

Thirteen samples, Raspberry Preserves, average 22 pounds of fruit to 55 pounds of sugar.

Three samples, Peach Preserves, average 24 pounds of fruit to 55 pounds of sugar.

Two samples, Apricot Preserves, average 20 pounds of fruit to 55 pounds of sugar.

Three samples, Pineapple Preserves, average 30 pounds of fruit to 55 pounds of sugar.

One sample, Loganberry Preserves, average 23 pounds of fruit to 55 pounds of sugar.

Four samples, Blackberry Preserves, average 19 pounds of fruit to 55 pounds of sugar.

The Commission further finds that the fruit portions of respondents' products are not composed entirely of the specified fruit represented, but instead said products contain in part a mixture of fruits or products other than that specified by respondents as being in or comprising their products.

In designating or advertising their products, the respondents do not disclose the substitution of fruits or materials other than those specified as being in or comprising their products. A microanalysis of a sample of grape preserves purchased in the open market by the Federal Trade Commission discloses that this product contained approximately 25 percent apple tissue as a component part of the

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fruit content, the product itself being labeled "Pure Grape Preserves."

The Commission further finds in the case of the samples of blackberry and raspberry preserves that the fruit content of these products consisted of fruit pomace which is composed of pulp and seeds after the juice had been extracted or pressed out.

The Commission further finds that the products sold and distributed by the respondents were imitation or substandard preserves and that such products were so made that in appearance they simulated an unadulterated preserve made from the formula of 45 pounds fruit to 55 pounds sugar to the extent that the difference in fruit content between the imitation and the genuine products could not be discerned by visual inspection.

PAR. 9. The Commission finds that in the process of manufacturing or cooking 45 pounds fruit and 55 pounds sugar to a consistency of approximately 68 percent water soluble solids, the evaporation caused by this cooking process reduces the actual yield of a finished preserve to approximately 87½ pounds. When a smaller proportion of fruit is used to 55 pounds of sugar, the percentage of soluble solids would be greater, so that in order to reduce the mixture to a consistency of approximately 68 percent water soluble solids, it would be necessary to add water.

Based upon the standard formula of 45 pounds fruit to 55 pounds sugar, or a total of 100 pounds, the approximate percentage of yield for various formulas of fruit content to 55 pounds sugar would be as follows:

	<i>Percent yield</i>	<i>Pound yield</i>
45 pounds fruit to 55 pounds sugar-----	87½	87½
40 pounds fruit to 55 pounds sugar-----	91	86.8
35 pounds fruit to 55 pounds sugar-----	95	86
30 pounds fruit to 55 pounds sugar-----	100	85
25 pounds fruit to 55 pounds sugar-----	105	84.5
20 pounds fruit to 55 pounds sugar-----	112	83.1

The Commission further finds that the use of a fruit content in the manufacture of preserves of less than the minimum formula of 45 pounds fruit to 55 pounds sugar resulted in a substantial saving in costs to the respondents. As an example, the use by the respondents of a fruit content of 27 pounds strawberry, 19 pounds blackberry, and 22 pounds raspberry to 55 pounds sugar as shown by the average analyses of respondents' products would result in a saving in costs of approximately 50 cents on a case of strawberry preserves consisting of 1 dozen 2-pound jars, 37 cents on a case of blackberry preserves consisting of 1 dozen 2-pound jars, and 50 cents on a case of raspberry preserves consisting of 1 dozen 2-pound jars.

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Based upon the testimony of manufacturers and chemists, the Commission finds that the respondents by reason of the use of a lesser amount of fruit resulting in both a saving in cost of fruit and a greater percentage of yield, obtained an advantage in competition over competitors who did not resort to such practice. The Commission further finds that this saving is sufficient to force competitors using the standard formula of 45 pounds fruit to 55 pounds sugar to sell below his actual cost in order to meet this saving in cost.

PAR. 10. The use by respondents of the foregoing false and misleading representations to the effect that their products are pure preserves or preserves has a tendency and capacity to, and does, mislead and deceive the trade, including wholesale and retail dealers, and the consuming public into the mistaken and erroneous belief that said products have a fruit content of at least 45 pounds of fruit to each 55 pounds of sugar and that the fruit portion of the completed product is composed entirely of the specific fruit represented. As a direct result of this belief, a number of wholesale and retail dealers and members of the consuming public have purchased respondents' products with the effect that trade has been diverted unfairly to respondents from their competitors, also engaged in the business of distributing and selling fruit preserves in commerce between and among the various States of the United States and in the District of Columbia, who truthfully advertise their respective products. By such acts and practices, respondents have placed directly into the hands of unscrupulous or uninformed dealers, wholesale and retail, a means and instrumentality whereby said dealers have been and are enabled to deceive and mislead members of the purchasing public.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice and injury 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 answer of respondents, testimony, and other evidence taken before Robert S. Hall, 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 Earl J. Kolb, counsel for the Commission, and by Louis Halle, 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 the respondents, Fresh Grown Preserve Corporation, a corporation; Sun Distributing Co., Inc., a corporation; Rite Packing Corporation, a corporation, and their respective officers, agents, and representatives; and Murray Greenberg and Leo Greenberg, individuals, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of preserve products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "preserves" or "pure preserves" on labels, tags, markers, or in advertising material, or in any other manner, to in any way designate, describe, or refer to preserve products which are not prepared from a mixture of clean, sound fruit with sugar in the proportion of at least 45 pounds of fruit to 55 pounds of sugar cooked to an appropriate consistency.

2. Representing, in any manner, whatsoever, that a product which contains a fruit content in a proportion of less than 45 pounds of clean, sound fruit to 55 pounds of sugar is a pure preserve or a preserve, or is anything other than an imitation or substandard preserve.

3. Representing, in any manner whatsoever, that respondent's products are composed of certain specified fruits when in fact, such products contain a mixture of fruits other than those represented.

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 manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

LAWRENCE L. KELLER, TRADING UNDER THE NAME
UNITED SOAP COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4184. Complaint, July 12, 1940—Decision, Sept. 20, 1940*

Where an individual engaged under trade name in manufacture of soap and in sale thereof from city concerned to purchasers in other States and in District of Columbia; in purportedly describing said product and makers and source of origin thereof on boxes or containers in which same was sold and distributed to the purchasing public throughout various States—

(a) Represented that said soap was made by different concerns with offices in different cities including, as the case might be, Los Angeles, New York, San Francisco, Seattle, Cincinnati, and London and Paris, and was imported and consisted of different varieties and qualities, through such statements as "HAWAIIAN ROSE * * * Hawaiian Rose Products, Los Angeles, Calif.," "HOT SPRINGS MINERAL SOAP * * * Union Soap Company, Importers, New York—Los Angeles—San Francisco," "MARVOLA CREME SOAP Made for Union Soap Co., Cincinnati, Seattle, San Francisco," and "CREME BOUQUET * * * Made for Sani Soap Co., Inc., New York, London, Paris," and use of such words and designations as "Vitamized" and "Medicinal," facts being his said product was all made from same formula and sold under different names as above indicated, he had no other place of business than that in aforesaid city, and none of his said soap was vitamized or medicated, with result that ultimate consumer was led to believe that business conducted by him was a large substantial one and that soaps concerned were made at various points as above indicated, and many of consuming public were led to believe that said product had been vitamized or medicated in some manner so as to render same more beneficial than ordinary soaps;

(b) Represented that said soaps were of high quality and had actual retail value and selling price of 75¢ each, through words and figures "Combination Price 75¢," "Price 75¢," and "75¢," on box tops of product in question, with result consumer was led to believe that soap and washing powder, which was sold by peddlers or canvassers who paid approximately 5 cents therefor, for price, usually, of 25 cents to ultimate consumer in house-to-house canvass, was led to believe that he was securing soap and washing powder at a price much less than usual, regular and customary price therefor, which was not 75 cents but much smaller sum;

With effect of deceiving and misleading substantial portion of purchasing public into erroneous and mistaken belief that all of said false and mistaken representations were true and with tendency and capacity so to do and to induce substantial portion of such public to buy said products because of such belief as above set forth: