

Complaint

IN THE MATTER OF

MINNIN SHAPIRO AND JACK WINKLER, TRADING AS
A. S. BUTLER & COMPANY

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

Docket 4192. Complaint, July 18, 1940—Decision, Sept. 27, 1940

Where two individuals engaged in sale and distribution of second-hand fruit jars which they purchased as such second-hand, old, used, and discarded product, from junk dealers, and which they thereafter caused to be cleaned, and to which they caused to be attached new rubber bands and new caps and to be placed in new cardboard cartons with 12 jars in each, and which products, after being cleaned and packed as aforesaid had appearance of new fruit jars never used, and cost of which to them and aforesaid steps was much less than that to manufacturers and wholesalers of manufacturing and packing, or obtaining and packing, new fruit jars, so as to enable them to sell their said product to retailers, and through them to purchasing public, at prices substantially lower than those at which the new product could be sold; and as aforesaid engaged in sale and distribution thereof to purchasers in various other States, in substantial competition with others engaged in sale and distribution in commerce among the various States of fruit jars adapted to and used for same general purposes as their said product—

Sold their said jars, with appearance aforesaid and with no label, marking, or designation on or about them or rubber bands, caps, or cartons, or elsewhere, to indicate that they were in fact old, second-hand, used, and discarded products, to retailers who resold to public without disclosing fact that said jars were used or old, second-hand or discarded;

With effect of misleading and deceiving retailers and members of purchasing public, with both of whom it is common belief and understanding that fruit jars having appearance of being new and unused and bearing no marking indicating that they are not new and unused, are in fact new jars never previously made use of, into erroneous and mistaken belief that said products were new and unused fruit jars, and into purchase of substantial quantities thereof, and of thereby unfairly diverting trade to them from competitors, many of whom do not engage in such practices; to the substantial injury of competition:

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 in commerce and unfair and deceptive acts and practices therein.

Mr. Donovan R. Divet 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 Minnin Shapiro and

Jack Winkler, individually, and trading as A. S. Butler & Co., hereinafter referred to as the 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. The respondents, Minnin Shapiro and Jack Winkler, are individuals trading under the name of A. S. Butler & Co., and having their principal place of business at 667 North Clark Street in the city of Chicago and State of Illinois. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution in commerce between and among the various States of the United States of second-hand fruit jars. Respondents cause and have caused their said products, when sold, to be transported from their aforesaid place of business in the State of Illinois to the purchasers thereof located in various other States of the United States.

PAR. 2. During the time above mentioned other individuals, and firms and corporations, in various States of the United States have been and are now engaged in the sale and distribution, in commerce among and between the various States of the United States, of fruit jars adapted to and used for the same general purposes as respondents' said fruit jars. Respondents have been, during the time aforesaid, and now are, in substantial competition with such other individuals, and with such firms and corporations.

PAR. 3. In the course and conduct of their aforesaid business, respondents buy second-hand, old, used, and discarded fruit jars from junk dealers which said fruit jars they cause to be cleaned and to which they cause to be attached new rubber bands and new caps. After the said second-hand fruit jars have been cleaned and the rubber bands and caps have been so attached as aforesaid, respondents cause said second-hand fruit jars to be placed in new cardboard cartons with 12 jars in each carton.

PAR. 4. The aforesaid second-hand, old, used, and discarded fruit jars, after being cleaned and packed as aforesaid, have the appearance of new fruit jars which have never been used, and are sold by respondents to retail dealers without any label, marking, or designation on or about said jars, rubber bands, caps or cartons, or elsewhere, to indicate that they are in fact old, second-hand, used and discarded fruit jars. Such retail dealers resell said jars to the public without disclosing the fact that said jars are used, old, second-hand, and discarded.

The cost to respondents of obtaining, cleaning, refitting, and packing said second-hand fruit jars is much less than the cost to manufacturers and wholesale dealers of manufacturing and packing or of obtaining and packing new fruit jars, and respondents are thereby able to sell

said second-hand fruit jars to retailers, and through them to the purchasing public, at prices which are substantially lower than the prices at which new jars can be sold.

PAR. 5. It is the common belief and understanding among retail dealers and the purchasing public that fruit jars having the appearance of being new and unused, and bearing no marking indicating that they are not new and unused, are in fact new fruit jars which have never been used previously. Retail dealers and members of the purchasing public, when buying fruit jars having the appearance of being new and unused, and without any marking indicating the contrary, expect to receive, and understand that they are receiving, new and unused fruit jars, and not second-hand, old, used, and discarded fruit jars which have been cleaned and refitted as aforesaid.

PAR. 6. The practice of the respondents in failing to disclose that their said fruit jars have been previously used has the tendency and capacity to, and does, mislead and deceive retail dealers and members of the purchasing public into the erroneous and mistaken belief that such fruit jars are new and unused fruit jars, and into the purchase of substantial quantities of such jars. As a result, trade has been unfairly diverted to respondents from their competitors, many of whom do not engage in the practices herein set forth. In consequence, substantial 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.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged are all 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 the 18th day of July 1940, issued and subsequently served its complaint in this proceeding upon the respondents Minnin Shapiro and Jack Winkler, individually and trading as A. S. Butler & Co., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 28th day of August 1940, each of the respondents filed a separate answer in which answers respondents admitted all the material allegations of fact set forth in said complaint and

Findings

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waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, 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 respondents, Minnin Shapiro and Jack Winkler, are individuals trading under the name of A. S. Butler & Co., and having their principal place of business at 667 North Clark Street in the city of Chicago and State of Illinois. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution in commerce between and among the various States of the United States of second-hand fruit jars. Respondents cause and have caused their said products, when sold, to be transported from their aforesaid place of business in the State of Illinois to the purchasers thereof located in various other States of the United States.

PAR. 2. During the time above mentioned other individuals, and firms and corporations, in various States of the United States, have been and are now engaged in the sale and distribution in commerce among and between the various States of the United States, of fruit jars adapted to and used for the same general purposes as respondents' said fruit jars. Respondents have been, during the time aforesaid, and now are, in substantial competition with such other individuals, and with such firms and corporations.

PAR. 3. In the course and conduct of their aforesaid business, respondents buy second-hand, old, used, and discarded fruit jars from junk dealers, which said fruit jars they cause to be cleaned and to which they cause to be attached new rubber bands and new caps. After the said second-hand fruit jars have been cleaned and the rubber bands and caps have been so attached as aforesaid, respondents cause said second-hand fruit jars to be placed in new cardboard cartons with 12 jars in each carton.

PAR. 4. The aforesaid second-hand, old, used, and discarded fruit jars, after being cleaned and packed as aforesaid, have the appearance of new fruit jars which have never been used, and are sold by respondents to retail dealers without any label, marking, or designation on or about said jars, rubber bands, caps, or cartons, or elsewhere, to indicate that they are in fact old, second-hand, used, and discarded

fruit jars. Such retail dealers resell said jars to the public without disclosing the fact that said jars are used, old, second-hand, and discarded.

The cost to respondents of obtaining, cleaning, refitting, and packing said second-hand fruit jars is much less than the cost to manufacturers and wholesale dealers of manufacturing and packing or of obtaining and packing new fruit jars, and respondents are thereby able to sell said second-hand fruit jars to retailers, and through them to the purchasing public, at prices which are substantially lower than the prices at which new jars can be sold.

PAR. 5. It is the common belief and understanding among retail dealers and the purchasing public that fruit jars having the appearance of being new and unused, and bearing no marking indicating that they are not new and unused, are in fact, new fruit jars which have never been used previously. Retail dealers and members of the purchasing public, when buying fruit jars having the appearance of being new and unused, and without any marking indicating the contrary, expect to receive, and understand that they are receiving, new and unused fruit jars, and not second-hand, old, used, and discarded fruit jars which have been cleaned and refitted as aforesaid.

PAR. 6. The practice of the respondents in failing to disclose that their said fruit jars have been previously used has the tendency and capacity to, and does, mislead and deceive retail dealers and members of the purchasing public into the erroneous and mistaken belief that such fruit jars are new and unused fruit jars, and into the purchase of substantial quantities of such jars. As a result, trade has been unfairly diverted to respondents from their competitors, many of whom do not engage in the practices herein set forth. In consequence, substantial 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.

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 and 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 respondents, in which answers respondents admit all the material

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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 said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Minnin Shapiro and Jack Winkler, individually, and trading as A. S. Butler & Company, or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of second-hand or used fruit jars in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Selling or distributing used or second-hand fruit jars, unless there is firmly attached to each of such jars, and to each carton or container in which such jars are packed, a conspicuous label or other marking clearly disclosing that such jars are used or second-hand jars.

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

BADGER-BRODHEAD CHEESE COMPANY, KRAFT-PHENIX CHEESE CORPORATION, NATIONAL DAIRY PRODUCTS CORPORATION, THE BORDEN COMPANY, J. S. HOFFMAN AND COMPANY, AND TRIANGLE CHEESE COMPANY

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

Docket 4071. Complaint, Mar. 23, 1940—Decision, Oct. 1, 1940

Where three corporations which were engaged in purchase, as sole source of supply for the controlling and parent corporations, of Swiss and Limburger cheese in the Monroe area of the State of Wisconsin, source of substantially more than half of all such cheese produced in the United States, and in transporting, grading, inspecting, sorting, curing, selling, and distributing such products, and which, as dealer-purchasers of the output of some 200 of the 250 chiefly farmer-owned cheese factories in said area, constituted, along with such other relatively small dealer-purchasers in market in question, sole marketing mediums or outlets through which such factories could offer and dispose of their said product, and, prior to and but for acts and practices below set forth, in competition with one another in purchase in said area of said product for processing, packing, inspection, grading, sorting, and curing for subsequent sale to and through their principals, without State largely, and sale and distribution by latter in competition with one another, except as hindered by acts and practices herein;

Acting in response to situation first arising out of low price prevailing for cheeses in question and producers' dissatisfaction therewith, and intervention of State Department of Agriculture and suggestion for periodical meetings of dealer-purchasers and producers in area in question, and directed to securing for latter fair price for their said product—

Entered into and thereafter carried out an understanding, agreement, and combination with intent and effect of restricting and restraining competition in purchase of Swiss and Limburger cheese made and produced by such factories in said area, and, through such restricted and restrained competition, of suppressing and eliminating competition in sale of such cheese in trade and commerce between and among the several States and in the District of Columbia; and in pursuance of said agreement, etc., and acting for and in behalf of themselves and their said respective principals and parent companies—

(1) Agreed to and did hold monthly meetings sponsored by and under the supervision of the Department of Agriculture of said State, and over which representative of said department presided, to afford, in response to conferences called by said department and attended by its representatives and those of producers and dealers, and resulting interchange and discussion, opportunity for attempt to reach agreement as to fair prices to be paid by the dealers for cheese produced and made in factories in question, and