

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, NOVEMBER 1, 1941, TO JUNE 30, 1942

IN THE MATTER OF

MILWAUKEE JEWISH KOSHER DELICATESSEN ASSOCIATION ET AL.

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

Docket 3908. Complaint, Mar. 22, 1940¹—Decision, Nov. 4, 1941

Where a corporate association made up of five individuals who operated the only five delicatessen stores in the city of Milwaukee specializing in kosher products and who had, for a number of years, consistently dealt, as had their predecessors, in the "Wilno" or "Kosher Zion" brands of kosher meat products, or both, for which there had been developed such a demand that the success of a delicatessen store was substantially dependent upon its ability to handle one or both of said brands, purchased by said individuals from the two Chicago producers thereof or from their Milwaukee factory representative or distributor thereof, respectively;

Following the opening by one B of a retail delicatessen store specializing in kosher products, and said B's custom of keeping his store open seven days each week, including Fridays when the other five were closed, and of announcing, through signs, generally lower prices than those of his competitors, to whom such practices were objectionable; said B's failure to accede to suggestions from the aforesaid distributor that he heed complaints about his low prices and remove the signs, and his further refusal to become a member of the Association in question, upon finding that to do so would require his Friday closing and abandonment of his price signs; in pursuance of a common course of action and mutual understanding, with intent of lessening competition in said products and hindering sale thereof, as below set forth—

(a) Took measures to hinder, obstruct and prevent said B from purchasing aforesaid kosher and kosher style meats or allied products from said seller-manufacturers thereof; and

Where said two concerns, manufacturer-sellers of the aforesaid "Wilno" and "Kosher Zion" brand products, and their respective factory representative and distributor in said city, following unsuccessful efforts to persuade him to change his said practices in accordance with the wishes of said five delicatessen store owners—

¹ Amended and supplemental.

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- (b) Refused to accept further orders from B for aforesaid products, essential to the conduct of his business, and further sought to prevent him from securing such products indirectly, through efforts to locate his sources of supply; with the result that B, unable to purchase from either of said concerns products in question through usual direct contacts, eventually abandoned purchase thereof from wagon jobbers in Chicago, as too expensive and otherwise unsatisfactory in choice and quality of products thereby obtainable;

With effect of unduly restraining and restricting interstate commerce in kosher meats and depriving the purchasing public in city aforesaid of the benefits of free and open competition in the distribution of such products:

Held, That such acts, agreements, understandings, and practices constituted unfair methods of competition in commerce.

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

Mr. Lynn C. Paulson for the Commission.

Mr. A. V. Hiken, of Milwaukee, Wis., for Milwaukee Jewish Kosher Delicatessen Ass'n and its members.

Henry J. and *Charles Aaron*, of Chicago, Ill., for Vienna Sausage Manufacturing Co., Wilno Kosher Sausage Co., Jules Ladany, William Ladany and David Kurman.

Mr. David H. Feldman and *Mr. Moe M. Forman*, of Chicago, Ill., for David Berg & Co., Irving Bisk, Philip Bisk, Louis Gross and Kosher-Zion Sausage Co.

McInerney, Epstein & Arvey, of Chicago, Ill., for Sinai Kosher Sausage Factory and Jacob Levin.

Mr. Samuel J. Schrimsky, of Milwaukee, Wis., for Zurkoff Food Products Co.

Mr. Harry E. Samson, of Milwaukee, Wis., for Independent Neighborhood Grocers Alliance and its officers.

AMENDED AND SUPPLEMENTAL COMPLAINT¹

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 the individuals, firms, and corporations named in the caption of this amended and supplemental complaint, 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Vienna Sausage Co., is a corporation (place of incorporation unknown), with its principal office and

¹ By stipulation in the record Kosher Zion Sausage Co. was also included as respondent. See findings at p. 8.

place of business at 1215-17 South Halsted Street, Chicago, Ill. It is engaged in the business of manufacturing and distributing kosher meat products.

Respondent, Wilno Kosher Sausage Co., is a corporation (place of incorporation unknown), subsidiary to and wholly owned by respondent Vienna Sausage Co. It has the same offices and place of business as the respondent Vienna Sausage Co. and it is engaged in the manufacture and distribution of kosher meat products under the brand name of "Wilno."

Respondent, Jules Ladany, an individual, is president of respondents Vienna Sausage Co. and Wilno Kosher Sausage Co.

Respondent, William Ladany, an individual, is manager of respondents Vienna Sausage Co. and Wilno Kosher Sausage Co.

Respondent, David Kurman, an individual, is a factory representative of respondent Vienna Sausage Co. and of Wilno Kosher Sausage Co., and has his office and principal place of business at 342 North Water Street, Milwaukee, Wis.

Respondent, David Berg & Co., is a corporation (place of incorporation unknown), with its principal office and place of business at 449 West 37th Street, Chicago, Ill. It is engaged in the manufacture and distribution of kosher meat products under the brand name of "Kosher-Zion."

Respondent, Irving Bisk, an individual, is general manager of respondent David Berg & Co.

Respondent, Philip Bisk, an individual, is president of respondent David Berg & Co.

Respondent, Louis Gross, an individual, is a factory representative for respondent David Berg & Co., and has his office and principal place of business at 1330 West North Avenue, Milwaukee, Wis.

Respondent, Sinai Kosher Sausage Factory is a corporation (place of incorporation unknown), with its principal office and place of business at 3351-59 South Halsted Street, Chicago, Ill. It is engaged in the manufacture and distribution of kosher meat products under the brand name of "Sinai."

Respondent, Jacob Levin, an individual, is president of respondent Sinai Kosher Sausage Factory.

Respondent, M. Zurkoff, an individual, is sole proprietor of Zurkoff Food Products Co. and has his office and principal place of business at 1138 West Walnut Street, Milwaukee, Wis. He is a distributor for respondent Sinai Kosher Sausage Factory.

Respondent, Milwaukee Jewish Kosher Delicatessen Association, sometimes hereinafter referred to as respondent association, is a corporation organized and existing under and by virtue of the laws of

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the State of Wisconsin, with its office and principal place of business at 710 West Walnut Street, in the city of Milwaukee, in said State.

Respondent, Joseph Plotkin, an individual, is proprietor of a delicatessen store and has his office and principal place of business at 2901 North Oakland Street, Milwaukee, Wis. He is engaged in selling kosher meat products at retail. He is president of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, Aaron Guten, an individual, is proprietor of a delicatessen store. He has his office and principal place of business at 4907 West Center Street, Milwaukee, Wis., and is engaged in the sale of kosher meat products at retail. He is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, Carl Guten, an individual, is proprietor of a delicatessen store located at 16th and North Avenue, Milwaukee, Wis. He is engaged in the sale of kosher meat products at retail and is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, R. Cohen, an individual, is proprietor of a delicatessen store located at 17th and North Avenue, Milwaukee, Wis. He is engaged in the sale of kosher meat products at retail and is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, M. Guten, an individual, is proprietor of a delicatessen store located at 712 West Walnut Street, Milwaukee, Wis. He is engaged in the sale of kosher meat products at retail and is a member of respondent Milwaukee Jewish Kosher Delicatessen Association.

Respondent, Independent Neighborhood Grocers Alliance, hereinafter sometimes referred to as respondent Alliance, is an association of grocers doing business in the city of Milwaukee, organized under the laws of the State of Wisconsin. Its officers are respondents J. I. Weiss, president, Louis Zbar, Secretary, and Louis Berson, treasurer. Respondent, J. I. Weiss, has his office and principal place of business at 2400 North Twenty-fourth Street. Respondent Louis Zbar has his office and principal place of business at 1811 North Ninth Street, Milwaukee. Respondent Louis Berson has his office and principal place of business at 4823 West Center Street, Milwaukee, Wis.

PAR. 2. In the course and conduct of their respective businesses, respondents Vienna Sausage Co., Wilno Kosher Sausage Co., David Berg & Co., and Sinai Kosher Sausage Factory, sometimes hereinafter referred to as respondent manufacturers, sell and cause to be sold and ship and cause to be shipped kosher meat products to purchasers located in the State of Wisconsin and to purchasers located in the several States of the United States other than the State of Illinois, in which the said respondent manufacturers have their offices and prin-

cipal places of business, and, in the aforementioned manner, have maintained for more than 1 year last past, and still do maintain, a course of trade in said products in commerce between and among the several States of the United States and in the District of Columbia.

Respondents, David Kurman and Louis Gross, are factory representatives for respondents Wilno Kosher Sausage Co., and David Berg & Co., respectively, and sell to and solicit orders from individuals and purchasers in the State of Wisconsin for products manufactured by their principals in the State of Illinois, and when orders are received transmit them to their principals to be filled and shipped, as aforesaid, and otherwise further the interests of their principals in the State of Wisconsin by servicing orders received and shipments made, by selecting new accounts, by making collections, and by promoting goodwill for the products manufactured by their respective principals.

Respondent, M. Zurkoff, purchases products manufactured by respondent Sinai Kosher Sausage Factory in the State of Illinois and resells them to purchasers in the State of Wisconsin, causing said products to be shipped from the said Sinai Kosher Sausage Factory in Illinois to his place of business in the city of Milwaukee, State of Wisconsin.

Respondents, Joseph Plotkin, Aaron Guten, Carl Guten, R. Cohen, and M. Guten, sometimes hereinafter referred to as respondent delicatessen store operators, purchase a substantial part of the products and supplies necessary and desirable in the conduct of their said businesses from respondent manufacturers and cause said products to be shipped from respondent manufacturers' respective places of business in the State of Illinois to their respective places of business in the city of Milwaukee, Wis.

Respondent Milwaukee Jewish Kosher Delicatessen Association promotes the mutual interests of its members, and respondent Independent Neighborhood Grocers Alliance promotes the mutual interests of its members.

PAR. 3. More than 1 year prior to 1940, respondents entered into an understanding, combination, agreement, and conspiracy, and thereafter have carried out and are continuing to carry out said understanding, combination, agreement, and conspiracy, to suppress, restrain, hinder, and lessen competition in the sale of kosher meat products in commerce between the several States of the United States and the State of Wisconsin; to control the sale and distribution of kosher meat products in the city of Milwaukee, Wis.; to stabilize the price at which kosher meat products are sold at retail in the city of Milwaukee, Wis.; to prevent and hinder individuals, firms, and corporations from operating establishments for the sale of kosher meat

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Respondent Milwaukee Jewish Kosher Delicatessen Association promotes the mutual interests of its members, and respondent Independent Neighborhood Grocers Alliance promotes the mutual interests of its members.

PAR. 3. More than 1 year prior to 1940, respondents entered into an understanding, combination, agreement, and conspiracy, and thereafter have carried out and are continuing to carry out said understanding, combination, agreement, and conspiracy, to suppress, restrain, hinder, and lessen competition in the sale of kosher meat products in commerce between the several States of the United States and the State of Wisconsin; to control the sale and distribution of kosher meat products in the city of Milwaukee, Wis.; to stabilize the price at which kosher meat products are sold at retail in the city of Milwaukee, Wis.; to prevent and hinder individuals, firms, and corporations from operating establishments for the sale of kosher meat

products at retail in competition with the establishments operated for such sale by these respondents; and to suppress, hinder, restrain, and eliminate competition in the retail sale of kosher meat products in said city of Milwaukee, Wis.

Pursuant to this understanding, combination, agreement, and conspiracy, and in furtherance of it, said respondents have performed and done, and are now performing and doing, the following acts and things:

(1) Established and maintained retail prices for kosher meat products in the city of Milwaukee, Wis.; (2) prevented the sale in the city of Milwaukee of kosher meat products manufactured in the State of Illinois and the several States of the United States other than the State of Wisconsin, and prevented distribution and shipment of kosher meat products manufactured in the several States of the United States other than the State of Wisconsin in and into the city of Milwaukee, Wis., in commerce; (3) prevented one or more individuals who operate a place of business for the sale and distribution of kosher meat products at retail in the city of Milwaukee, Wis., from obtaining supplies that are in demand by the purchasing public of the said city of Milwaukee, to wit, "Wilno," "Kosher-Zion," and "Sinai" brands of kosher meats, which said brands of kosher meats are available to respondent delicatessen and grocery store operators; (4) prevented one or more individuals engaged in the retail sale and distribution of kosher meat products in the city of Milwaukee from obtaining certain brands of kosher meat products well-known to the purchasing public of the city of Milwaukee and available to the respondent delicatessen and grocery store operators, and from obtaining said well-known brands of kosher meat products at prices and under conditions at which said well-known brands are available to the respondent retailers; (5) used other diverse methods and practices to fix retail prices for kosher meat products in the city of Milwaukee and to prevent individuals, firms, and corporations other than the respondents from purchasing kosher meat products from manufacturers and distributors thereof located outside the State of Wisconsin, and from selling and distributing kosher meat products in said city of Milwaukee.

PAR. 4. Said understanding, combination, agreement, and conspiracy and the acts done and performed, and being done and performed thereunder and pursuant thereto, as hertofore described, have had and do have the effect of unlawfully restricting and restraining the movement of kosher meat products in commerce between and among the several States of the United States, and