

Syllabus

IN THE MATTER OF
SHEFFIELD FARMS CO., INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4647. Complaint, Nov. 26, 1941—Decision, Feb. 27, 1948*

The production and distribution of milk, which is often distributed to the consuming public by means of dealers or distributors, rather than by the milk producers themselves—who generally make their livelihood through the sale of the milk they produce, to distributors and dealers therein—is a primary industry, affecting, in a large measure, the health and welfare of the general public, and it is the policy of the United States Government, and also that of many of the States, including the State of New York, to foster and encourage the formation and functioning of producer-controlled co-operatives composed of milk producers, as exemplified by Federal and State legislation directed to such end.

Where a corporation engaged in the competitive interstate purchase, distribution, and sale of fluid milk and cream, and in the manufacture and sale of milk products; which was one of the largest, if not the largest, distributors of fluid milk and cream in the United States, with an annual business, in 1940, of over \$56,000,000; purchased the milk sold and distributed by it, whether as fluid milk or cream or as other milk products, from dairy farmers in New York, New Jersey, Pennsylvania, Vermont, and Maryland, through some 79 country receiving plants located in said States; processed such milk in its processing plants in New York City, for distribution therefrom to and in a large number of cities and towns in New York, New Jersey, and Connecticut;

During a period beginning in 1922, following a dispute with a producer-bargaining cooperative, with which it had theretofore negotiated for the price of the milk paid to producer members thereof, and ending in 1939, when it no longer controlled membership in the association below described, and which period largely preceded the taking effect of Federal Order No. 27, fixing the price of the great bulk of milk purchased by it from the association—

- (a) Initiated and created an association of producers, composed of all persons who delivered milk to any of its creamery or milk-shipping stations, by arranging through its country plant managers, for selection by producers who delivered milk to the respective plants, of representatives who were to and did at its expense attend a meeting in New York, and to whom it submitted its plan for the organization of such producers;
- (b) Controlled the membership in such association, as exemplified by a procedure and practice under which the mere fact of delivery by a producer to one of its plants automatically made him a member, and cessation of such delivery terminated his membership, the beginning of deliveries was contingent upon consent secured from its plant manager and not the association, and so-called members were notified of their loss of membership by its employee;

- (c) Controlled and attempted to control and dominate the internal management and operation of such association as exemplified by aforesaid control of membership and by the holding of association meetings in its offices; by framing of the constitution and bylaws to provide that the delivery of milk by a producer to one of its country receiving plants constituted him a member without further action on his part; by the unfailing acceptance as a member of anyone so delivering and the invariable dropping as a member of any producer ceasing to deliver; by the continued acceptance of deliveries, following the adoption by the association of a contract—at its suggestion—without awaiting the approval of such contracts by the association's district director; by the language employed in its original constitution and its later certificate of incorporation; and by the activity of its officials and agents in passing on articles for the association's publications, and in preparing wires and letters to third parties, etc., for the signature of its secretary, and in passing upon and helping draft the contracts between the association and its members; and
- (d) Attempted to control selection or election of directors and delegates of the association, as evidenced by successful attempts in 1936 to defeat reelection of two directors; similar activities in 1939 which were a factor in bringing about the defeat of a director; and an active interest by its officials in the election of delegates in said years;

Tendency and capacity of which acts and practices were—

- (1) To prevent members of said association—who produced about 85 percent of the milk handled by said corporation, and for whom it remained substantially the only customer outlet—from receiving the benefits of producer-controlled cooperatives and associations which are not controlled by dealer, handler, or distributor;
- (2) To secure for said corporation an unfair competitive advantage over its competitors who do not engage in or use such acts, etc., in the conduct of their businesses, but are compelled to bargain, and to bargain as to price of the milk purchased by them in the States involved, with cooperative associations which they do not control or dominate, or attempt so to do; and
- (3) Unduly to hinder competition between said corporation and such competitors, and unfairly to divert trade in commerce concerned, from them to it, to their injury and that of the public; and,

Effect of which acts, practices, means, and methods could be to destroy the announced policy of the Federal Government, and of milk-producing States, including New York, of fostering and encouraging the formation and functioning of producer-controlled milk cooperatives:

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

Before *Mr. Andrew B. Duwall*, trial examiner.

Mr. Fletcher G. Cohn for the Commission.

Sullivan & Cromwell, of New York City, for respondent.

Complaint

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 Sheffield Farms Co., Inc., hereafter described and referred to as respondent, has violated the provisions of section 5 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, Sheffield Farms Co., Inc., is a corporation which was organized under the laws of the State of New York in 1902 under the name of Sheffield Farms-Slawson-Decker Co., which name was changed to Sheffield Farms Co., Inc., in 1937 by amendment to its original charter. Its office and principal place of business is located at 524 West Fifty-seventh Street, New York, N. Y.

PAR. 2. Respondent is engaged in the purchase, distribution, and sale of fluid milk and cream, and also in the manufacture and sale of milk products. In the year 1940 it did an annual business of \$56,602,564.62, being one of the largest, if not the largest, distributor of fluid milk and cream in the United States.

PAR. 3. The production and distribution of milk is a primary industry affecting, in a large measure, the health and welfare of the general public. Milk usually is not distributed to the consuming public by the milk producers. These milk producers make their livelihood through the sale of their milk to distributors and dealers therein such as the respondent. Various investigations and studies have been made to ascertain the best method whereby the producers could sell their milk and secure the highest possible return; it has been determined that this result 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 also of many States, including the State of New York, to foster and encourage the formation and functioning of such producer-controlled and producer-owned cooperatives and to permit such cooperatives to also join together for their mutual benefit.

PAR. 4. In the regular course and conduct of its business, respondent purchases the milk which it sells and distributes, either as fluid milk and cream or as other milk products, from dairy farmers located in the States of New York, New Jersey, Pennsylvania, Vermont, and Maryland. For the purpose of collecting the milk thus purchased, respondent operates approximately 65 country receiving plants lo-

cated in said States, there being 41 in the State of New York, 15 in Pennsylvania, 6 in Vermont, 2 in New Jersey, and 1 in Maryland. After the milk is collected at these country receiving plants, respondent causes same to be transported therefrom to its processing plants, most, if not all, of which are located in New York City, where same is prepared by respondent for distribution by respondent to and in a great number of various towns and cities located in the States of New York, New Jersey, and Connecticut.

The milk which respondent purchases and collects at its country receiving plants located in States other than in the State of New York is inextricably intermingled as one product at its processing plants in the city of New York with the milk which respondent had collected at its receiving plants in the State of New York, and had transported therefrom to its New York City processing plants.

Respondent has maintained, and still does maintain, a regular course of trade in milk and milk products in commerce between and among the several afore-mentioned States of the United States.

PAR. 5. Respondent, in the course and conduct of its business, as aforesaid, is in direct and substantial competition with other corporations, and with firms, partnerships, and individuals, in trade and commerce between, among, in and with the several aforesaid States of the United States, in making and seeking to make purchases of milk produced in the States of New York, New Jersey, Pennsylvania, Vermont, and Maryland and also in selling and seeking to sell such milk in the States of New York, New Jersey, and Connecticut.

PAR. 6. Prior to about 1922, respondent had bargained with and purchased a substantial part of the milk which it distributed from producer-controlled and producer-owned cooperatives. During the year 1922, in order to prevent the producers from whom respondent purchased milk from joining, or retaining their membership in such cooperatives, respondent organized all of said producers into the "Sheffield Farms Co. Producers Association," hereinafter referred to as the association. The organization of the association was initiated, sponsored, and controlled entirely by representatives and agents of respondent. At the organization meeting of the association, which was held in the offices of respondent, where practically all of the meetings of the board of directors of the association have been held ever since, the delegates of the producers were handed a constitution and bylaws which had been prepared by the respondent. Membership in the association was definitely restricted to those producers who delivered milk to one of respondent's country receiving plants.

PAR. 7. Since its organization, the association, which was incorporated under the laws of the State of New York in 1927 and whose name was changed in 1939 to Eastern Milk Producers Cooperative Association, Inc., has continued, by the methods and acts of respondent set forth in this complaint, and otherwise, to be under the absolute domination and control of the respondent, its officers, representatives, and agents. Respondent still provides that all dairy farmers delivering milk to the country receiving plants of the respondent in the States of New York, Pennsylvania, and Vermont, upon delivery of their milk, shall automatically become members of the association. When a country receiving plant takes on a new milk producer, the respondent's agent gives him a contract of membership in the association, and after he signs same, usually at the request and instance of respondent's plant manager, who likewise signs said contracts as a witness, the association is then notified that it has a new member. The membership in the association is automatically canceled if and when the producer's milk is no longer received at one of respondent's country receiving plants; therefore, when respondent closes, sells, or leases one of these plants, all of the milk producers who had been delivering milk there automatically lose their membership.

The producers who deliver their milk to the respondent's country receiving plants in the States of New Jersey and Maryland are not members of the association.

PAR. 8. All of the barn inspectors, fieldmen, supervisors of weight and testing, and veterinarians, who pass upon the barns, cattle, milk, etc., of the members of the association, are employees of respondent. The producer members of the association, as well as the association itself, have absolutely nothing to say as to whether the farms, barns, cattle, etc., of said members comply with health regulations and other requirements for the sale of their milk in various localities in which respondent distributes said milk.

The payments to the members of the association for the milk which they sell, through and by means of the association, to the respondent are made directly to them by the respondent. All the records as to the amount of milk each member sells, the use to which said milk is put by the respondent and the particular amount of money which each member is to receive for his milk are determined by respondent. The association pays to the respondent certain specified amounts, which are alleged to be for such services which the respondent renders for the supposed benefit of the members of the association.

PAR. 9. As of November 1, 1940, there were 7,166 members of the association delivering milk to respondent's country receiving plants.

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The territory covered by the association is divided into districts, with each district having a member on the board of directors of the association. The producers delivering milk to each of respondent's country receiving plants organize a local association which elects a delegate to the district association and these delegates in turn elect the district's member of the association's board of directors.

PAR. 10. Until August 1937, respondent was the only customer outlet of members of the association, as was required by the original constitution of the association and also by the terms of its certificate of incorporation. Since that date, although some of the milk produced by the members of the association is sold to a wholly owned subsidiary of the National Dairy Products Corp. of which, respondent is likewise a wholly owned subsidiary, respondent remains substantially the only customer outlet of members of the association, purchasing in excess of 1 billion pounds of milk yearly from the association. Approximately 95 percent of the milk handled by the respondent is produced by members of the association.

While the stated and avowed purpose of the association is to act as a means or method whereby its members are to bargain collectively, through the association, with respondent for the sale of the milk produced by said members and thereby secure for the members higher prices for their milk than could otherwise be obtained; as a matter of fact, respondent in many instances, has utilized its domination and control of the association to prevent the accomplishment of that result.

PAR. 11. The Secretary of Agriculture of the United States, under the Agricultural Marketing Agreement Act of 1937, in October 1938, issued Federal Order No. 27, which fixed the prices to be paid by handlers of milk to milk producers for milk produced in the New York milk shed, which is composed of the whole of the State of New York and parts of the States of Vermont, Massachusetts, Connecticut, Pennsylvania, New Jersey, and Maryland, and which milk is distributed in the New York metropolitan milk market which includes the city of New York and certain counties in the State of New York. This order was suspended for a few months during 1939, but since about July 1939 it has been in full operation. The States of New York and New Jersey also have issued orders fixing the prices to be paid to producers in these States for intrastate milk.

On August 30, 1938, the association and the respondent entered into a contract under which the respondent agreed to pay to the association the order prices for all milk delivered to it which was subject to the provisions of the State and Federal orders, and also agreed to pay for

all milk which was not so subject "on the basis of a price to be negotiated between the parties, which shall be the fair market value of such milk under the conditions of its quality, manner of receipt and use, competitive conditions to be taken into account." The respondent, on such out-of-order milk, has not paid the association prices based on the actual use of such milk.

PAR. 12. In order to gain an unfair competitive advantage, and thereby unduly hinder competition, in the trade and commerce in milk, which trade and commerce has hereinbefore been described, respondent has pursued and promoted, among others, the following methods, acts, and practices:

(1) Organized, created, and perpetuated the association for its own benefit and not for the benefit of the producer members thereof.

(2) Controlled absolutely and entirely the admission to, and retention of, membership in the association.

(3) Employed and used the association for the benefit of the respondent rather than for the benefit of the producer members thereof.

(4) Controlled, dominated, and interfered with the management and operation of the association.

(5) Prevented the members of the association from exercising their free and unimpeded judgment in the selection of delegates of local associations.

(6) Prevented the delegates of local associations from exercising their free and unimpeded judgment in the selection of members of the board of directors of the association.

(7) Prevented the board of directors of the association, in many instances, from acting for the benefit of the members of the association.

(8) Coerced and intimidated, by and through its barn inspectors, fieldmen, supervisors of weight and testing and veterinarians, and by other means and methods, the members of the association for the purpose and with the view of requiring said members to perform or not perform acts for the benefit of the respondent rather than for the benefit of the members themselves.

(9) Deceived, coerced, and intimidated by various means and methods, the members of the association to prevent them from exercising their free and unimpeded judgment regarding proposed legislation effecting milk producers.

(10) Coerced the members of the association, through and by means of its domination and control of the association, to accept prices for out-of-order milk which were not based on the actual use of such milk.

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(11) Coerced the association, through and by means of its domination and control over the board of directors of the association, to submit proposed amendments to the Federal and State orders which would reduce the payments allowed under these orders to collecting or operating cooperative associations, which amendments were inimical to the progress and growth of producer-controlled and producer-owned cooperative associations as a whole.

PAR. 13. There are dealers and distributors of milk in the States in which respondent distributes its milk, who are competitors of respondent in the purchase of milk from producers thereof in some or all of the same States in which respondent purchases milk from the members of the association. Many of said competing dealers and distributors are compelled to bargain, and do bargain, as to the price for some or all of such milk with cooperative associations or producers which said dealers and distributors do not control or dominate or attempt to control or dominate. The affiliation and membership of the producers of milk in such States with cooperative associations which are not dealer, handler, or distributor dominated or controlled, secures for such producers the benefits to be derived from such affiliation and membership, among which benefits is the placing of such producers in a more advantageous position to bargain for the price of the milk which they produce. This often results in producers belonging to producer-controlled and producer-owned cooperatives receiving, and the handlers, dealers, and distributors of milk with whom such cooperatives bargain, paying, higher prices for their milk than those prices which the members of the association receive, and respondent pays, for the milk of the members of the association.

PAR. 14. The aforesaid acts, practices, methods, and means used by the respondent in the course and conduct of its business in said commerce between, among, in, and with the several States of the United States, have the tendency and capacity to, and do, intimidate and prevent the producer members of the association from joining and becoming affiliated with producer-controlled and producer-owned cooperatives; prevent the producers from whom respondent purchases its milk from receiving the benefits to such producers to be derived from membership in such producer-controlled and producer-owned cooperatives; endanger and perhaps destroy the announced policy of the Federal Government and that of many milk-producing States, of fostering, and encouraging, the formation and functioning of producer-controlled and producer-owned milk cooperatives; secure for respondent an unfair competitive advantage over its competitors in

such trade and commerce who do not engage in, or use, such acts, practices, methods, and means in the conduct of their respective businesses; unduly hinder competition between respondent and such competitors; and unfairly divert substantial trade in such commerce from such competitors to respondent, to the injury of these competitors and to the injury of the public.

PAR. 15. The aforesaid acts, practices, methods, and means of the respondent as herein alleged are all to the prejudice of the public and of competitors of the respondent and constitute unfair methods of competition in commerce within the intent and meaning of section 5 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 November 26, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Sheffield Farms Co., Inc., a corporation, charging it with the use of unfair methods in competition in commerce in violation of the provisions of said act. After the respondent filed its answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence (all intervening procedure having been waived by stipulation of counsel and the Commission having approved and accepted said stipulation); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sheffield Farms Co., Inc., is a corporation organized and existing under the laws of the State of New York. It was organized and incorporated in the year 1902 under the name of Sheffield Farms-Slawson-Decker Co., and in 1917, by amendment to its original charter, respondent adopted the name of Sheffield Farms Co., Inc. Its office and principal place of business is located at 524 West Fifty-seventh Street, New York, N. Y.

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PAR. 2. Respondent is engaged in the purchase, distribution, and sale of fluid milk and cream, and also in the manufacture and sale of milk products. In the year 1940 it did an annual business of \$56,602,-564.62, being one of the largest, if not the largest, distributors of fluid milk and cream in the United States.

PAR. 3. The production and distribution of milk is a primary industry, affecting, in a large measure, the health and welfare of the general public. Often milk is not distributed to the consuming public by the milk producers themselves but is distributed through and by means of dealers or distributors. The milk producers generally make their livelihood through the sale of the milk they produce to distributors and dealers therein such as the respondent. The Government of the United States and also the governing bodies of certain States, including the State of New York, have passed legislation encouraging the formation and functioning of producer-controlled co-operatives and permitting such co-operatives to join together for their mutual benefit.

The Commission, therefore, finds that it is the policy of the Government of the United States, and also of many States, including the State of New York, to foster and encourage the formation and functioning of producer-controlled co-operatives composed of milk producers.

PAR. 4. In the regular course and conduct of its business, respondent purchases the milk which it sells and distributes, either as fluid milk or cream or as other milk products, from dairy farmers located in the States of New York, New Jersey, Pennsylvania, Vermont, and Maryland. For the purpose of collecting the milk thus purchased, respondent operates approximately 79 country receiving plants located in said States, there being 55 in the State of New York, 15 in Pennsylvania, 6 in Vermont, 2 in New Jersey, and 1 in Maryland. After the milk is collected at these country receiving plants, respondent causes same to be transported therefrom to its processing plants, most, if not all, of which are located in New York City, where the milk is prepared by respondent for distribution by the respondent to and in a great number of various towns and cities located in the States of New York, New Jersey, and Connecticut.

Some of the milk which respondent purchases and collects at its country receiving plants located in States other than New York is inextricably intermingled as one product at its processing plants in the city of New York with some of the milk which respondent collects at its receiving plants in the State of New York and has transported

therefrom to its New York City processing plants. Respondent has maintained, and still does maintain, a regular course of trade in milk and milk products in commerce between and among the several aforementioned States of the United States.

PAR. 5. From September 1, 1938, to February 28, 1941, except for the 5 months of February to June 1939 when Federal Order No. 27 was suspended, the price of the great bulk of milk purchased by the respondent from the association described in paragraph 7 was subject to Federal Order No. 27. During this period, milk purchased by respondent from the association not subject to the provisions of the Federal order, averaged 11.186 percent of the total milk purchased by the respondent from the association. Further, by amendment effective March 1, 1941, to Federal Order No. 27 which broadened the scope of that order, the amount of milk purchased by the respondent from the association which was not subject to the provisions of the order was decreased, so that between March 1 and December 31, 1941, such milk which was not subject to the order averaged 2.37 percent of the total amount of milk purchased by the respondent from the association.

PAR. 6. Respondent, in the course and conduct of its business, as aforesaid, is in direct and substantial competition with other corporations, and with firms, partnerships, and individuals, in trade and commerce between, among, in, and with the several aforesaid States of the United States, in making and seeking to make purchases of milk produced in the States of New York, New Jersey, Pennsylvania, Vermont, and Maryland, and also seeking to sell such milk in the States of New York, New Jersey, and Connecticut.

PAR. 7. For a time prior to 1922, respondent bought its milk supply from individual farmers, a number of whom belonged to a producer-bargaining cooperative which operated in the New York milkshed and with which cooperative respondent negotiated for the price of the milk being paid to the members thereof. In May 1922, a dispute arose between said cooperative and said respondent regarding the prices respondent was to pay this cooperative. Respondent contended that the cooperative was seeking preferential prices for its members, which the cooperative denied. As a result, respondent sent telegrams to its country plant managers asking them to request the producers delivering milk at the respective plants of respondent to select someone to attend a meeting in New York. All expenses of the party thus selected were to be paid, and were paid, by respondent. At the meeting of these representatives, a plan was submitted to them by the respondent.

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ent for the organization of Sheffield's producers. The group of Sheffield producers was actually organized on August 30, 1922, and originally was called "Sheffield Farms Co. Producers," herein called the association. The association was composed of "all persons who deliver milk to a Sheffield Farms creamery or milk shipping station."

PAR. 8. Commission finds from the above that the organization of the association was initiated and created by representatives and agents of respondent and that membership in the association was restricted to those producers who delivered milk to one of respondent's country receiving plants.

PAR. 9. After the association of the producers delivering to respondent's country plants was thus initiated by respondent in 1922, it held its meetings in the offices of respondent until 1939, when its headquarters were transferred to Syracuse, N. Y. At meetings of the board of directors of the association, representatives of the respondent were sometimes present during the meetings. In 1927, the association was incorporated as the Sheffield Producers Cooperative Association, Inc. The constitution and bylaws of the association prior to 1934 provided that delivery of milk by a producer to a country receiving plant of Sheffield constituted such a producer a member of the association, without any action whatsoever on his part. Prior to 1939, the association never refused to accept as a member a producer delivering his milk to one of respondent's plants. Nor did it ever retain as a member a producer who had ceased delivering his milk to a country receiving plant of the respondent. Prior to 1939, when the respondent sold or leased a plant, the members of the association who had been delivering their milk to that plant automatically lost their membership in the association. When a producer wanted to start delivering milk to a plant of the respondent, the plant manager secured permission for the receipt of such milk from the respondent and did not secure any consent from the association.

Prior to 1934, the association had no written contract with its members. Then, at the suggestion of the respondent a form of contract, proposed by the respondent, was adopted by the association. After the adoption of the contract, the producers continued delivering milk to the country plants before the district director of the association approved their contracts. When a member of the association lost its membership in the association he was notified of that fact by an employee of the respondent. In December 1939, there was a change in the procedure of procuring and retaining membership in the association.

Whereas, in the period prior to 1939, the plant manager obtained the signature of the new producer to a contract with the association and then forwarded it to the secretary of the association, this procedure after 1939 was changed and has been in effect since that time. It is as follows: First, the inspector of Sheffield inspects the producer's farm and certifies that it and the dairy conditions are satisfactory and meet the requirements of the New York City board of health and of the company; second, this certificate is turned over to the contract officer of the association local; third, the contract officer visits the producer and has him sign an application form for membership in the association; fourth, at this time the contract officer obtains certain pertinent information from the producer such as the number of cows the producer has, whether it is a new dairy or a transfer, and if a transfer, the reason therefor and also the plant to which the milk is to be delivered; all of this is written out on an information sheet; fifth, the contract officer also obtains the signature of the new member to a marketing contract with the association; sixth, the contract officer turns over this information, through the association's director for that district, to the secretary of the association; seventh, the secretary then sends a postal card, with a return form attached thereto, to the local plant manager where the milk will be delivered advising the company that the producer has temporary permission to deliver milk to that plant; and that this particular producer has started delivering to the plant on a particular date; eighth, at the same time, the secretary of the association sends a form entitled, "Permit to Deliver" to the producer advising him he has a permit to deliver milk under the association pending final approval of the contract by the association; ninth, after the contract has been finally approved by the association, the plant manager receives a notification from the association's secretary, enclosing copies of the final contract, for filing at the plant.

PAR. 10. The Commission finds from the above that prior to 1939, the securing of membership in the association of producers delivering milk to Sheffield, and the retention of such membership, was controlled by the respondent. However, the Commission also finds that since 1939 this condition has been altered and that such control no longer exists.

PAR. 11. The constitution of the association, when it was known as the Sheffield Farms Co. Producers, provided in its preamble, "We, the producers supplying liquid milk to the Sheffield Farms Co., Inc., of New York City, believing it to be to our mutual interests to hereby organize the Sheffield Farms Co. Producers * * *." This constitution remained in effect from a period extending from 1922 to 1927.

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In 1927, the certificate of incorporation of the association, when it became known as the Sheffield Producers Cooperative Association, Inc., provided "The purpose for which the proposed corporation is formed is to engage in the marketing and selling of dairy products of its members to the Sheffield Farms Co., Inc." This remained as the purpose of the association until 1937 when the charter was amended to allow the association to sell to dealers other than the respondent. However, respondent remains substantially the only customer outlet of members of the association, and approximately 85 percent of the milk handled by the respondent is produced by members of the association. In December 1939, the name of the association was changed, by amendment to its charter of incorporation, to Eastern Milk Producers Cooperative Association, Inc.

PAR. 12. Prior to 1934, articles which appeared in the publications of the association were submitted to the respondent for approval before their publication. Officials or agents of the respondent prepared wires and letters to third parties and to directors of the association for the signature of the secretary of the association. The officials of the association passed upon and helped draft the contracts which existed between the association and its members.

PAR. 13. From the facts stated in paragraphs 7, 8, 9, 10, 11, and 12, the Commission finds that at the times mentioned therein, prior to 1939 the respondent, through its officials, agents, and employees, did control, or attempt to control and dominate the internal management and operation of the association.

PAR. 14. In 1936, officials and agents of the respondent actively engaged in attempts to bring about the defeat or re-election of two directors of the association and such activities were a substantial factor in causing their defeat. In 1939, similar activities were a factor in bringing about the defeat of one of the directors of the association who had served as secretary of the association from 1936 to 1939, had been vice president of the association from 1930 to 1936, and had been a member of the association since its inception in 1922. With reference to the aforesaid elections of directors in 1936 and 1939, the respondent's officials also took an active interest in the election of delegates of the association.

PAR. 15. The Commission finds that the respondent did attempt to control the selection or election of directors and delegates of the association on the dates mentioned in the preceding paragraph.

PAR. 16. As aforefound, there are dealers and distributors of milk in the States in which respondent distributes its milk who are com-

petitors of the respondent in the purchase of milk from producers thereof in some or all of the States in which respondent purchases milk from the members of the association. Many of said competing dealers and distributors are compelled to bargain, and to bargain as to price of some or all of said milk with cooperative associations which said dealers or distributors do not control or dominate, or attempt to control or dominate. The affiliation and membership of the producers of milk in such States with cooperative associations which are not dealer, handler, or distributor dominated or controlled, secures for such producers the benefits to be derived from such affiliation and membership, which benefits usually are not available to the members of an association of milk producers which are dominated or controlled by the dealers, handlers, or distributors to whom the associations sell the milk produced by their members.

PAR. 17. The aforesaid acts, practices, methods, and means which the Commission has found that the respondent used at the times hereinbefore mentioned in the course and conduct of its business in said commerce between and among, and with the several States of the United States, have the tendency and capacity to prevent the producer members of the association, from whom the respondent purchases its milk, from receiving the benefits to be derived from membership in producer-controlled cooperatives; such acts, practices, methods, and means used by the respondent could destroy the announced policy of the Federal Government and of milk producing States, such as New York, of fostering and encouraging the formation and functioning of producer-controlled milk cooperatives; such acts, practices, methods, and means have the tendency and capacity to secure for the respondent an unfair competitive advantage over its competitors in such trade and commerce who do not engage in, or use, such acts, practices, methods, and means in the conduct of their businesses; such acts, practices, methods, and means have the tendency and capacity unduly to hinder competition between respondent and such competitors, and unfairly to divert trade in such commerce from such competitors to the respondent, to the injury of these competitors and the public.

CONCLUSION

The acts and practices of respondent as herein found are all to the prejudice of the public and of the respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 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 the respondent, testimony, and other evidence taken before a trial examiner of the Commission theretofore duly designated by it (all intervening procedure having been waived by stipulation of counsel and the Commission having approved and accepted said stipulation); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Sheffield Farms Company, Inc., its successors or assigns, officers, representatives, agents, and employees, in connection with the purchase, receipt, sale, or distribution of milk, in any amount and in any form, in commerce, between and among the various and several States of the United States and in the District of Columbia, do forthwith cease and desist from directly or indirectly:

1. Organizing or creating, or attempting to organize or create, by any means or method whatsoever, any association or group of milk producers, the purpose of the association or group being to sell the milk produced by its members to the respondent, in any form or in any amount.

2. Controlling or attempting to control, by any means or method whatsoever, the admission to, or retention of, membership by any milk producer in any association or group of milk producers, the purpose of the association or group being to sell the milk produced by its members to the respondent, in any form or in any amount.

3. Controlling, dominating, or attempting to control or dominate, by any manner or method whatsoever, the management or operation of any association or group of milk producers, the purpose of the association or group being to sell the milk produced by its members to the respondent, in any form or in any amount.

4. Controlling, attempting to control, by any manner or by any method whatsoever, or campaigning in relation to, or in connection with, the selection or election of any officials, representatives, delegates, directors, officers, or agents by the members of any association or group of milk producers, the purpose of the association or group being to sell the milk produced by its members to the respondent, in any form or in any amount.

5. Dominating, controlling, or attempting to dominate or control, by any means, manner, or method whatsoever, any association or group

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Order

of milk producers, the purpose of the association or group being to sell the milk produced by its members to the respondent, in any form or in any amount, for the purpose, or with the effect, of causing such association or group, or the officials thereof, to act solely in the interest of, or for the benefit of, the respondent and to the detriment of the association or group.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
WILLYS-OVERLAND MOTORS, INC. 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 4959. Complaint, May 6, 1943—Decision, Feb. 27, 1948

The Jeep—name apparently applied for the first time to the vehicle so known, by some soldier or noncommissioned officer, while the earlier models were being tested by the Army, on the basis of the newspaper comic strip character—was not the product of any one manufacturer either acting alone or in collaboration with the Army, but represented, rather, the result of the combined efforts of the Army and the several manufacturers who participated in the project.

As respects the efforts which culminated in the Jeep, the famous vehicle known to engineers as the quarter-ton 4 x 4 (four-wheel drive) truck, great credit is due the Army for originating the product and for its tireless efforts toward developing and perfecting the vehicle, and credit is due, also, to different manufacturers for outstanding and substantial contributions in connection with assistance rendered by them in different stages of the project and with respect to various aspects connected with the successful completion thereof.

Where a corporation engaged in the manufacture of automotive vehicles and in the competitive interstate sale and distribution thereof, including the vehicle commonly known and referred to as the "Jeep"; its corporate advertising agency; and certain officers thereof; in numerous advertisements disseminated throughout the United States in magazines, newspapers, and other advertising media—

Represented, directly and by implication, that said manufacturer, in cooperation and collaboration with the quartermaster corps of the United States Army, created and designed the automotive vehicle commonly known as the "Jeep", and used by them for military purposes;

The facts being that the Jeep was not the product of any one manufacturer, either acting alone or in collaboration with the Army, and said manufacturer was not entitled, along with the Army, to the entire credit for said vehicle; and while it participated in and contributed to the developing and perfecting thereof, it did not participate in creating or designing it;

With tendency and capacity to enhance the prestige and promote good will for said manufacturer and its products, and thereby induce a substantial portion of the public to purchase said products in preference to those of its competitors; whereby substantial trade had been and was being diverted unfairly to it from them:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and its competitors and constituted unfair and deceptive acts and practices in commerce.