

IN THE MATTER OF
THE BLANTON COMPANY

Docket 6197. Complaint, Mar. 18, 1954—Order, May 5, 1955

Order reversing initial decision which dismissed the matter as not involving misrepresentation, for the reason that in a proceeding brought under sec. 15 (a) (2)—the Oleomargarine amendment—the prohibitions of sec. 5 are not controlling; and remanding the matter to the hearing examiner for further consideration.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. William L. Pencke and *Mr. Morton Nesmith* for the Commission.

Mr. M. R. Garstang, of Washington, D. C., for National Milk Producers Federation, amicus curiae.

OPINION OF THE COMMISSION

Chairman HOWREY delivered the opinion of the Commission:

This is an appeal from the initial decision of the hearing examiner granting respondent's motion to dismiss made at the close of the case in chief of counsel supporting the complaint.

The complaint charged that certain advertising representations of respondent were misleading in material respects, in violation of section 15 of the Federal Trade Commission Act, as amended, in that, they suggested that respondent's Creamo oleomargarine was a dairy product.

The complaint also challenged, for the same reason, the use of the word "Creamo" as a trade name for respondent's oleomargarine.

Reference is made to the Commission's opinion in the Matter of E. F. Drew & Company, Inc., Docket No. 6126, entered this day, for an analysis and interpretation of the new oleomargarine amendment to the Federal Trade Commission Act.

We agree with counsel in support of the complaint that we are not dealing here with the usual misrepresentation case, that is, with false and misleading advertising which may have the tendency or capacity to deceive in violation of section 5 of the F. T. C. Act,¹ but solely with the question whether or not the respondent has through the use of any "statement, word, grade, designation, design, device, symbol, sound or any combination thereof" suggested that the oleomargarine sold by it "is a dairy product."²

¹ 15 U. S. C. sec. 45.

² 15 U. S. C. sec. 55.

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Opinion

It is clear that the 1950 amendment to section 15 constituted special legislation dealing with the long standing butter-oleomargarine controversy. It was intended, we believe, to reach a form of advertising which, through suggestion, the association of ideas and the use of dairy terms, leads or may lead the consumer to believe that the oleomargarine in question is a dairy product. This is not to say that all dairy terms, as such are precluded. They are prohibited only when they represent or suggest to the reader that the product is a dairy product.

Typical advertisements used by respondent are as follows:

BLANTON
CREAMO
BRAND

HERE'S PROOF
CREAM MAKES
A DIFFERENCE

(Picture of carton of
Creamo Oleomargarine)

CONTAINS 5% LIGHT CREAM
OLEOMARGARINE

Made from choice vegetable oils
blended with fat-free milk, cream,
and enriched with 15,000 units of
Vitamin A.

Millions of women prefer and continue
to buy Blanton Creamo Margarine
regularly, despite a flood of premi-
ums, coupons, and give-aways of-
fered by other brands. We think
this is proof that those women who
have tasted it, PREFER Blanton
Creamo Margarine with CREAM to
ordinary margarines with FREE
GIMMICKS.

Why don't YOU taste the difference
cream makes?"

Every single pound of BLANTON CREAMO MARGARINE puts Eagle Stamps in your Eagle Stamp book. It's the only margarine that's made fresh daily right here in St. Louis * * * the margarine that's better because it's blended with sweet fresh cream. All this and Eagle Stamps too. So remember, for freshness * * * for extra goodness * * * for extra savings—ask for Blanton Creamo Margarine.

The best tasting spread, regardless of price. That's what women write about Blanton Creamo Margarine. Better tasting because it's made better with sweet fresh milk PLUS PURE CREAM. If you haven't yet tasted Creamo, get your proof-pound today. Taste the difference costlier ingredients make.

The record contains a copy of the quantitative formula of Creamo. From this formula it appears that it contains:

1800 lbs. of hydrogenated margarine oil, being a blend of refined
cottonseed oil and soya bean oil
100 lbs. of peanut oil
325 lbs. of skim milk
124 lbs. of U. S. standard cream
75 lbs. of salt

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Based on this formula, which shows that the product contained substantial quantities of skim milk and U. S. standard cream, and the fact that respondent made no effort to conceal the fact that the product was oleomargarine, the hearing examiner concluded that the advertisements did not fall within the prohibitions of the statute.

The latter contention, as we said in No. 6126, is not controlling. If this proceeding had been brought under section 5 the question of concealment would be important; but inasmuch as we are dealing with section 15, or more particularly with section 15 (a) (2), the prominent use of the term "oleomargarine" and the lack of any concealment that the product was in fact oleomargarine are immaterial.

As to the formula, this might have been controlling if it had been published alongside such statements as "Better tasting because it's made better with sweet fresh milk Plus Pure Cream." However, such statements standing alone without qualification or limitation, or the use of the name "Creamo" by itself, might well lead some people to believe that the product is a dairy product. Under section 15 (a) (1), in determining whether any advertisement is misleading in a material respect, "there shall be taken into account * * * the extent to which the advertisement fails to reveal facts material in the light of such representations * * *"³

Many of respondent's advertisements and radio continuities included the statement "Contains 5% Light Cream." We believe that if all the advertisements under scrutiny which used the name "Creamo" or the terms "milk" and "cream," had clearly and conspicuously stated the percentages of cream and milk contained in the product, then they would have been sufficiently informative and would adequately have negated any suggestion that respondent's "oleomargarine * * *" is a dairy product.

The initial decision of the hearing examiner is reversed and the matter is remanded to the hearing examiner for further consideration in accordance with this opinion and the opinion of the Commission in Docket No. 6126.

ORDER GRANTING APPEAL FROM INITIAL DECISION DISMISSING COMPLAINT,
AND REMANDING PROCEEDING TO HEARING EXAMINER

This matter having come before the Commission upon an appeal of counsel supporting the complaint from an initial decision of the hearing examiner dismissing the complaint for failure of proof at the close of the presentation of the case in support of the complaint; and

³ 15 U. S. C. sec. 55 (a).

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Order

The Commission having fully considered the entire record herein including briefs in support of and in opposition to said appeal and being of the belief, for the reasons stated in its accompanying opinion, that a prima facie case has been made out and that the complaint was erroneously dismissed:

It is ordered, That the appeal of counsel supporting the complaint from the initial decision is hereby granted.

It is further ordered, That the initial decision dismissing the complaint is hereby set aside and this matter is remanded to the hearing examiner for further appropriate proceedings in due course.

IN THE MATTER OF
REDDI-SPRED CORPORATION

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AS AMENDED

Docket 6228. Complaint, June 30, 1954—Decision, May 5, 1955

Order requiring a seller in Philadelphia, Pa., to cease using in advertising representations and suggestions that it "Reddi-spred" oleomargarine was a dairy product.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. William L. Pencke for the Commission.

Duane, Morris & Heckscher, of Philadelphia, Pa., for respondent.

Mr. M. R. Garstang, of Washington, D. C., for National Milk Producers Federation, *amicus curiae*.

DECISION OF THE COMMISSION

STATEMENT OF THE CASE

The Federal Trade Commission on June 30, 1954, issued a complaint alleging that respondent, Reddi-Spred Corporation, has violated the Federal Trade Commission Act by the use of unfair and deceptive acts and practices in commerce in the sale of oleomargarine. Respondent filed an answer denying that its advertisements were in violation of law.

Pursuant to notice, hearings were held in Philadelphia, Pennsylvania, on September 3 and 22, 1954, before Abner E. Lipscomb, a hearing examiner designated by the Commission to hear this proceeding. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded respondent and counsel supporting the complaint. All testimony and other evidence was recorded and filed in the office of the Commission.

After receiving proposed findings of fact, the hearing examiner filed his initial decision dismissing the case for failure of proof on October 29, 1954. Thereafter, counsel supporting the complaint appealed to the Commission from this initial decision. Briefs were filed in support of and in opposition to the appeal, including a brief of the National Milk Producers Federation as *amicus curiae*, and respondent's brief in reply thereto.

Upon consideration of the entire record herein, the Commission, having determined that the hearing examiner erroneously dismissed