

Interlocutory Order

91 F.T.C.

IN THE MATTER OF
SUNKIST GROWERS, INC.

Docket 9100. Interlocutory Order, May 15, 1978

Application for review of ALJ order denied for failure to raise an issue having substantial ground for difference of opinion.

ORDER DENYING APPLICATION FOR REVIEW

Respondent, Sunkist Growers Inc. ("Sunkist"), has filed an Application for Review of Order Denying Respondent's Motion to Dismiss for Lack of Jurisdiction pursuant to Rule 3.23(b). Because Sunkist has failed to raise an issue as to which there is substantial ground for difference of opinion, the Application for Review is denied. While further elaboration is unnecessary, a brief explanation of the reasons for our decision seems warranted.

Sunkist argues that the Commission lacks jurisdiction over the subject matter of this proceeding by reason of the Capper-Volstead Act, 7 U.S.C. 291, 292. Alternatively, Sunkist argues that primary jurisdiction of this matter rests with the Secretary of Agriculture.

It is well settled that the Capper-Volstead Act does not vest exclusive jurisdiction of antitrust claims against agricultural cooperatives in the Secretary of Agriculture. *Maryland & Virginia Milk Producers Ass'n, Inc. v. United States*, 362 U.S. 458, 462-64 (1960); *United States v. Borden Co.*, 308 U.S. 188, 205-06 (1939); *Central California Lettuce Producers Cooperative*, Dkt. 8970, slip opinion at 4-5 (July 25, 1977) [90 F.T.C. at 53,54], Cf. *Washington Crab Ass'n*, 66 F.T.C. 45 (1964). While conceding that federal courts have jurisdiction over monopolization suits initiated by the Department of Justice, Sunkist argues that the Commission lacks similar jurisdiction with respect to complaints issued under the Federal Trade Commission Act. Respondent, however, cites no authority in support of this anomalous position. The complaint alleges that Sunkist is a corporation within the meaning of Section 4 of the Federal Trade Commission Act which has engaged in unfair methods of competition. It thus appears that the complaint states a cause of action under Section 5 against a respondent which is subject to the Commission's jurisdiction.

Respondent's alternative argument is that "primary jurisdiction rests with the Secretary of Agriculture." As we explained in *Perpetual Federal Savings & Loan Ass'n*, Dkt. 9083 (December 6, 1977) [90 F.T.C. 608], it is not wholly clear that the doctrine of

its jurisdiction until an administrative agency has determined a particular question, applies as between agencies. *Id.*, slip opinion at 24 n. 28 [90 F.T.C. at 662]. Assuming, *arguendo*, the applicability of the doctrine, it appears that the tests of *Ricci v. Chicago Mercantile Exchange*, 409 U.S. 289 (1973), are not met. The cases cited above indicate that the provisions of the Capper-Volstead Act are not incompatible with the maintenance of this action. Moreover, the Capper-Volstead Act gives the Secretary of Agriculture authority to adjudicate whether a cooperative association "monopolizes or restrains trade . . . to such an extent that the price of any agricultural product is unduly enhanced thereby." On the other hand, a monopolization complaint¹ under Section 2 of the Sherman Act or Section 5 of the Federal Trade Commission Act involves only an inquiry into whether monopoly power exists, and whether that monopoly power has been willfully acquired or maintained, *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966), without any necessary showing of price enhancement. For this reason, it does not appear that facets of this dispute are necessarily within the jurisdiction of the Secretary of Agriculture, nor that adjudication by the Secretary would be of material aid in resolving the issues posed by the complaint. With respect to the latter point, it is clear that an adjudication by the Secretary that respondent had not unduly enhanced prices would in no way dispose of, or shed much significant light on, the issues in this case. Thus, it does not appear that the doctrine of primary jurisdiction requires us to defer to the Secretary of Agriculture. Accordingly,

It is ordered, That Respondent's Application for Review be, and the same hereby is, denied.

¹ We note that while the gravamen of the complaint is monopolization, other charges, including violations of Section 7 of the Clayton Act, are encompassed within the complaint.

Complaint

91 F.T.C.

IN THE MATTER OF

VERRAZZANO TRADING CORPORATION, ET AL.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION, WOOL PRODUCTS LABELING
AND TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket 9038. Complaint, June 24, 1975 — Final Order, May 15, 1978

This order, among other things, requires a New York City importer and distributor of wool and textile fiber products, and four affiliated companies, to cease misrepresenting or failing to properly disclose the fiber content of wool and textile fiber products, and the residual shrinkage of such products. Additionally, the firms must file bond with the Secretary of the Treasury before participating in the importation of wool and textile fiber fabrics; and provide purchasers of mislabeled merchandise with a copy of the order.

Appearances

For the Commission: *Ellen Zweibel and Judith K. Braun.*

For the respondents: *David A. Botwinik, Pavia & Harcourt, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Verrazzano Trading Corporation, a corporation, Francisco Datini Inc., a corporation, Lanificio Tuscania Inc., a corporation, Lima Textiles Inc., a corporation, and Walter Banci, individually and as an agent for said corporations and as an officer of Lanificio Tuscania Inc. and Lima Textiles Inc. and as a partner trading and doing business as Lanificio Walter Banci s.a.s., hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated [2] under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it now appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Verrazzano Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its main office and principal place of business at 2 Penn Plaza New York New York