

Complaint

60 F.T.C.

IN THE MATTER OF  
FOREMOST DAIRIES, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

*Docket 6495. Complaint, Jan. 17, 1956—Decision, Apr. 30, 1962\**

Order requiring the fourth largest dairy firm in the country to sell ten industry concerns it acquired in 1952, 1953, and 1955, which acquisitions might substantially lessen competition or tend to create a monopoly, in violation of Sec. 7 of the Clayton Act.

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COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45) and Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint charging as follows:

PARAGRAPH 1. Respondent, Foremost Dairies, Inc., hereinafter referred to as "Foremost", now and at all times relevant herein, is a corporation organized and existing under the laws of the State of New York with its main and principal office located at 2903 College Street, Jacksonville, Fla.

PAR. 2. Foremost is now and at all times relevant herein has been engaged in the purchase, processing and distribution of a diversified line of dairy products. Where used herein the term "dairy products" shall include one or any number of the following products: milk, cream, ice cream, cheese, butter, eggs, canned fresh milk, and evaporated milk. Foremost distributes the various dairy products to retail consumers and to stores, restaurants, hotels and other miscellaneous outlets. Prior to and at the time of the acquisitions herein, Foremost purchased, processed and distributed dairy products in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act, and still does.

PAR. 3. Foremost was initially organized in October 1931 under the laws of the State of Delaware and in 1949 Foremost was merged with

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\*As modified May 15, 1962.

and into Maxson Food System, Inc., a New York corporation, the continuing corporation bearing the name Foremost Dairies, Inc. In the period from 1932 to 1950, inclusive, prior to the time Section 7 of the Clayton Act was amended, Foremost acquired by purchase the stock or assets of 38 separate dairy product concerns with plant locations or equipment located in 47 communities in the States of Florida, Texas, South Carolina, Alabama, Georgia, Tennessee, Louisiana, New York, Pennsylvania, and North Carolina. At the expiration of the first year of operation of Foremost in 1932, said company had gross sales of approximately \$1,000,000 and for the year 1950 Foremost had gross sales of approximately \$52,000,000, with net sales of approximately \$48,000,000.

PAR. 4. In a series of transactions beginning in January 1951, subsequent to the time Section 7 of the Clayton Act was amended, Foremost has acquired the stock or assets of the following-named corporations engaged in the purchase, manufacture or processing and distribution of dairy products. All the acquired corporations at the time of the said acquisitions, in the regular course of business, either purchased, processed or distributed dairy products throughout the various states of the United States or purchased and received shipments of dairy products and related equipment from manufacturers and processors located throughout the United States. All the acquired corporations, prior to and at the time of the acquisitions, purchased, processed or distributed dairy products in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. Such acquisitions include the following:

- (1) In January 1951 Foremost acquired a dairy plant formerly owned by Mrs. Tuckers Foods, Inc., a Delaware corporation, located at Sherman, Tex.;
- (2) In February 1951 Foremost acquired Central Dairies, Inc., a South Carolina corporation, with main office located at Columbia, S.C.;
- (3) In May 1951 Foremost acquired Sunshine Dairy Products, Inc., a Florida corporation, with main office located at Gainesville, Fla.;
- (4) In June 1951 Foremost acquired Royal Dairy Products, a Florida corporation, with main office located at Tampa, Fla.;
- (5) In October 1951 Foremost acquired Lauren's Pasteurizing Plant, Inc., a South Carolina corporation, with main office located at Laurens, S.C.;
- (6) In February 1952 Foremost acquired International Dairy Supply Co., a Nevada corporation, with main office located at Oakland, Calif.;
- (7) In February 1952 Foremost acquired International Dairy Engineering Company, a California corporation, with main office located at Oakland, Calif.;
- (8) In February 1952 Foremost acquired Diamond Dairy, Inc., a Nevada corporation, with main office located at Oakland, Calif.;
- (9) In February 1952 Foremost acquired Campos Dairy Products, Ltd., a Hawaii corporation, with main office located at Lanikai, Hawaii;
- (10) In March 1952 Foremost acquired Gunn Ice Cream Co., a Florida corporation, with main office located at Pensacola, Fla.;

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- (11) In March 1952 Foremost acquired Graham's Dairy, Inc., a Florida corporation, with main office located at Pennsuco (Miami), Fla. ;
- (12) In March 1952 Foremost acquired Acme Dairies, Inc., a Florida corporation, with main office located at Tallahassee, Fla. ;
- (13) In June 1952 Foremost acquired Taylors Home Made Ice Cream Co., a Texas corporation, with main office located at Ft. Worth, Tex. ;
- (14) In July 1952 Foremost acquired The Phenix Dairy, a Texas corporation, with main office located at Houston, Tex. ;
- (15) In August 1952 Foremost acquired Ives Dairy Company, Inc., a Florida corporation, with main office located at Miami, Fla. ;
- (16) In September 1952 Foremost acquired Tennessee Dairies, Inc., a Texas corporation, with main office located at Dallas, Tex. ;
- (17) In September 1952 Foremost acquired Southern Maid, Inc., a Virginia corporation, with main office located at Bristol, Va. ;
- (18) In September 1952 Foremost acquired Welch Milk Company, a West Virginia corporation, with main office located at Welch, W. Va. ;
- (19) In October 1952 Foremost acquired Bridgeman-Russell Co., a Minnesota corporation, with main office located at Duluth, Minn. ;
- Foremost also acquired the wholly-owned subsidiaries of Bridgeman-Russell Co. :
- (a) Dairyland Creamery Co., a South Dakota corporation, with main office located at Sioux Falls, S. Dak. ;
- (b) Minot Creamery Co., a North Dakota corporation, with main office located at Minot, N. Dak. ;
- (c) Purity Dairy Co., a North Dakota corporation, with main office located at Mandan, N. Dak. ; and
- (d) United Dairies, Inc., a Minnesota corporation, with main office located at Duluth, Minn. ;
- (20) In December 1952 Foremost acquired R. A. Shuey Creamery, a Nevada corporation, with main office located at Oakland, Calif. ;
- (21) In May 1953 Foremost acquired Dairymen's Milk Co., Ltd., a California corporation, with main office located at San Francisco, Calif. ;
- Foremost also acquired the wholly-owned subsidiary, Dairymaid Creameries, Ltd., a California corporation, with main office located at Hughson, Calif.
- (22) In May 1953 Foremost acquired Banner Dairies, Inc., a Texas corporation, with main office located at Oakland, Calif. ;
- Foremost also acquired five affiliated holding companies which are not engaged in production but merely lease property to Banner.
- (23) In July 1953 Foremost acquired Schneiders Creamery, Inc., a Florida corporation, with main office located at Eustis, Fla. ;
- (24) In October 1953 Foremost acquired Old Hundred, Inc., a Delaware corporation, with main office located at Southberry, Conn. ;
- (25) In February 1954 Foremost acquired Golden States, Ltd., a Delaware corporation, with main office located at Oakland, Calif. ;
- (26) In October 1954 Foremost acquired American Dairies, Inc., a Maryland corporation, with main office located at Kansas City, Mo. ;
- Foremost also acquired the wholly-owned subsidiaries of American Dairies, Inc. :
- (a) Meriden Creamery Company, a Missouri corporation, with main office located at Kansas City, Mo. ;

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- (b) Meriden Creamery Co., Inc., a Kansas Corporation, with main office located at Hutchinson, Kans. ;
- (c) American Butter Company, Inc., a Missouri corporation, with main office located at Kansas City, Mo. ;
- (d) De Coursey Creamery Company, a Kansas corporation, with main office located at Kansas City, Kans. ;
- (e) Patton Creamery Company, a Missouri corporation, with main office located at Springfield, Mo. ;
- (f) Arctic Dairy Products Company, a Missouri corporation, with main office located at Kansas City, Mo. ;
- (g) Carlin Creamery Company, a District of Columbia corporation, with main office located at Washington, D.C. ;
- (h) Wm. F. Huhn & Co., a Delaware corporation, with main office located at Washington, D.C. ;
- (i) The Aines Farm Dairy Company, a Missouri corporation, with main office located at Kansas City, Mo. ;
- (j) Community Dairy Products Company, a Missouri corporation, with main office located at Joplin, Mo. ;
- (k) Community Creamery Company, an Arkansas corporation, with main office located at Ozark, Ark. ;
- (l) Ozark Creamery Co., Inc., an Arkansas corporation, with main office located at Ozark, Ark. ;
- (m) Pratt Dairy Products Co., a Kansas corporation, with main office located at Pratt, Kans. ;
- (n) Tastemark Foods, Inc., a Missouri corporation, with main office located at Kansas City, Mo. ;
- (o) Tastemark Dairy Co., a Maryland corporation, with main office located at Paragould, Ark. ;
- (27) In March 1955 Foremost acquired Blue Moon Foods, Inc., a Delaware corporation, with main office located at Thorp, Wis. ;
- Foremost also acquired the wholly-owned subsidiary, June Dairy Products Company, a New York corporation, with main office located at New York, N.Y. ;
- (28) In August 1955 Foremost acquired Philadelphia Dairy Products Co., Inc., incorporated in the Commonwealth of Pennsylvania, with main office located at Philadelphia, Pa. ;
- Foremost also acquired the wholly-owned subsidiaries of Philadelphia Dairy Products Co., Inc. :
- (a) Janssen Dairy Co., Inc., a New Jersey corporation, with main office located at New York, N.Y. ;
- (b) Woodlawn Farm Company, a Pennsylvania corporation, with main office located at Philadelphia, Pa. ;
- (c) Harrington Dairy Co., a Pennsylvania corporation, with main office located at Philadelphia, Pa. ;
- (d) Richmond Dairy Company, a Virginia corporation, with main office located at Richmond, Va. ;
- (29) In September 1955 Foremost acquired Western Condensing Company, a California corporation, with main office located at Appelton, Wis. ;
- (30) In October 1955 Foremost acquired Florida Dairies Company, a Florida corporation, with main office located at Miami, Fla.

PAR. 5. As a direct result of the above listed acquisitions, Foremost is now one of the four largest purchasers, processors and distributors of dairy products in the United States and has increased its gross sales from approximately \$52,500,000 and net sales of approximately \$48,000,000 in 1950 to gross sales of approximately \$375,000,000 and net sales of approximately \$295,000,000 for the year 1954. In 1954 63 percent of Foremost's sales were derived from sales of fluid milk and cream; 20 percent of Foremost's sales resulted from sales of ice cream; and the remaining 17 percent of Foremost's sales represented sales of a wide variety of miscellaneous products. The operations of Foremost are divided into eight divisions at the present time and currently include the purchase, processing and distribution of dairy products in 30 states and Hawaii.

PAR. 6. In addition to Foremost's acquisitions of corporations hereinafore listed, Foremost also acquired nine additional dairy products concerns in 1951 and 1952 located in the State of Florida which were individually owned and were not corporations.

PAR. 7. The constant and systematic elimination of actual and potential competitors by means of the acquisitions described in paragraphs 4 and 6 hereof are all to the prejudice and injury of the public and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 8. Foremost has violated Section 7 of the Clayton Act, as amended, in that the acquisition of the stock or assets of the corporations listed in paragraph 4 hereof either individually or collectively may have the effect of substantially lessening competition or tending to create a monopoly in the following ways, among others:

(a) Actual and potential competition between Foremost and the acquired corporations in the purchase, processing or distribution of dairy products has been or may be eliminated;

(b) Actual and potential competition generally in the purchase, processing or distribution of dairy products may be substantially lessened;

(c) The acquired corporations have been or may be permanently eliminated as an independent competitive factor in the purchase, processing or distribution of dairy products;

(d) The acquisitions by Foremost may enhance Foremost's competitive advantage in the purchase, processing or distribution of dairy products to the detriment of actual or potential competition;

(e) Competitive purchasers, processors or distributors of dairy products may be foreclosed from a substantial segment of the market

in that respondent has eliminated the acquired corporations as potential suppliers or customers;

(f) Industry-wide concentration of the purchase, processing or distribution of dairy products may be increased;

(g) Foremost's competitive advantage over other purchasers, processors or distributors of dairy products may be enhanced to the detriment of actual and potential competition;

(h) The acquisitions by Foremost increased the concentration in the purchase, processing or distribution of dairy products and has eliminated a number of independent small business concerns from the industry.

PAR. 9. The foregoing acquisitions, acts and practices of respondent, as hereinbefore alleged and set forth, constitute a violation of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45) and Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950.

*Mr. Bernard M. Williamson, Mr. Raymond L. Hays, and Mr. Alan R. Lyness* for the Commission.

*Milam, Le Maistre, Ramsay & Martin*, by *Mr. George W. Milam*, of Jacksonville, Fla.; *Mr. Renah F. Camabier* and *Mr. Robert E. Freer*, of Washington, D.C.;

*White & Case*, by *Mr. Edgar E. Barton, Mr. Macdonald Flinn*, and *Mr. Thomas B. Leary*, of New York, N.Y., for respondent.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

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