

Complaint.

FEDERAL TRADE COMMISSION

v.

THE SILVEX CO. AND AIRCRAFT & MOTOR PRODUCTS CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION
5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 535—July 19, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of spark plugs, made the false and misleading claim, in advertising its product, that the same was the first officially approved for the Liberty motor; and

Where a concern dealing in said corporation's spark plug, made the false and misleading claim, in advertising said product, that the same was "the final result of more than a year's hard and conscientious labor on the part of the engineers of the Bureau of Aircraft Production to find a spark plug that was worthy of the wonderful Liberty motor * * *";

With the effect of embarrassing and discrediting competitors and with the intent and capacity to deceive the trade and the general public:

Held, That such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Silvex Co. and Aircraft & Motor Products Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent the Silvex Co. is now, and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of business at South Bethlehem in said State, and is now and for more than two years last past has been engaged in the business of manufacturing spark plugs and then selling them to various customers throughout the different States and Territories of the United States and the District of Columbia and foreign countries, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, co-partnerships, and corporations similarly engaged.

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PAR. 2. That the respondent the Silvex Co., in the conduct of its business, manufactures, moves, and distributes its spark plugs to, from, and among the State of Pennsylvania and other States and Territories of the United States, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in such spark plugs between and among the various States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the respondent Aircraft & Motor Products Co. is now and was at all times hereinafter mentioned a New York corporation, having its principal office and place of business in the city of New York in said State, and is now and for more than two years last past has been engaged among other things in the sale and distribution of Silvex Co.'s spark plugs to various customers throughout the different States of the United States and the District of Columbia, and that at all times herein mentioned respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in such spark plugs between and among the various States of the United States, the District of Columbia, and foreign countries.

PAR. 4. That the respondents and each of them, with the purpose and effect of embarrassing and discrediting competitors within two years last past, have published and circulated in various periodicals, magazines, trade journals, catalogues, and pamphlets certain advertisements wherein it is represented that:

(a) The first plug officially approved for use in Liberty motor was built by the Silvex Co., of Bethlehem.

(b) The Silvex Co.'s plug was adopted by both the Army and Navy.

(c) The spark plug of the Silvex Co. is the result of Government tests for the Liberty motor.

(d) The claim of a competitor that its spark plug was approved as standard by the Government has in fact no basis.

(e) "It uses the celebrated Frenchtown 775 porcelain, which, under Government tests, has proven itself to be stronger mechanically and electrically than any other porcelain either domestic or foreign. This test was made by the Bureau of Standards at Washington"—

and that such representations unfairly tend to discredit competitor's spark plugs and are misleading and calculated and designed to deceive the trade and general public.

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REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon each of the respondents herein, the Silvex Co. and Aircraft & Motor Products Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their several appearances in their own proper persons and having filed their answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondents, before F. C. Baggarly, an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereafter, and upon the 4th day of May, 1921, respondent Aircraft & Motor Products Co., by Elton E. Sullivan, its vice president and treasurer, entered and filed in the above cause its stipulation, waiving further appearance and the privilege of introducing further testimony herein, and waiving the privilege of oral argument before the Commission and of filing written briefs herein, and consenting that further proceedings might be had without notice to or appearance by it, the said respondent, and that the Commission should proceed forthwith upon the complaint and answer of said respondent and the testimony and evidence herein to enter its findings as to the facts and its order disposing of this said cause as regards it, said Aircraft & Motor Products Co.; and thereafter and upon the 9th day of May, 1921, respondent the Silvex Co., by E. H. Schwab, its president, entered and filed in this said cause on behalf of the Silvex Co., a stipulation similar in all respects to the stipulation filed by said Aircraft & Motor Products Co., on May 4, 1921, as aforesaid; all as will more fully appear from the files and records of this cause.

And thereupon this proceeding came on for final hearing and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent the Silvex Co. for upward of five years prior to about September, 1920, was a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business in South Bethlehem, Pa. At said time, to wit, about September, 1920, said corporation, the Silvex Co., was succeeded and taken over by another corporation, the Bethlehem Spark Plug Co. Respondent the Silvex Co. for upward

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of five years prior to said time, to wit, about September, 1920, was engaged in the manufacture and sale of spark plugs for gasoline motors under the name of "Bethlehem spark plugs"; and during all of such period caused said spark plugs to be transported to the purchasers thereof in and through the several States and Territories of the United States, the District of Columbia, and foreign countries; and during all of such period was in direct and active competition with other persons, partnerships, and corporations similarly engaged. The Bethlehem Spark Plug Co. aforesaid is now and has been since said time, engaged in the manufacture of said spark plugs under said name, and causes and has caused same to be transported to the purchasers thereof in and through the several States and Territories of the United States, the District of Columbia, and foreign countries, in direct and active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. Respondent Aircraft & Motor Products Co. is and has been since about January 13, 1919, a corporation organized under and by virtue of the laws of the State of New York, with its principal business office in the city of New York in said State. Said corporation was organized for the purpose of manufacturing and selling airplanes and airplane parts and accessories and other commodities. Said corporation, soon after its organization, made a contract with the Silvex Co. aforesaid, whereby the Silvex Co. was to manufacture and sell spark plugs to said Aircraft & Motor Products Co. under the private brand of the latter, to wit, "Aero-Auto." Several thousand spark plugs were manufactured and sold under said brand to said Aircraft & Motor Products Co. by the Silvex Co. aforesaid, in accordance with said contract. A vigorous advertising campaign was started in the early part of 1919 by said Aircraft & Motor Products Co., and several advertisements of said "Aero-Auto" spark plugs were placed by said Aircraft & Motor Products Co. in magazines and other publications, and a large number of circulars, circular letters, folders, and pamphlets were sent out to the trade and general public in several of the United States. The enterprise did not prove to be successful, and all advertising and selling efforts were discontinued by the latter part of 1919, and no advertising or selling of said "Aero-Auto" spark plugs has been done by said Aircraft & Motor Products Co. since that time. Since the latter part of 1919 said company has not engaged in business in any way nor sold, offered for sale, or advertised any goods, wares, or merchandise. Said company, however, has retained its corporate charter and has paid all corporation and license taxes thereon, the intention of its officers being to actively engage in business again if the manufacture and

sale of airplanes or their parts or accessories ever becomes commercially practicable.

PAR. 3. A certain type of aviation motor popularly known as the "Liberty" motor was manufactured in several automobile factories for the aviation service of the United States Army and Navy during the late war against the Central Powers. Other types of aviation motors were bought and used by the United States Government in said aviation service during said war.

No particular make of spark plug was ever officially approved by the United States Government for said Aviation Service or for use in said Liberty motor during said war, except that certain spark plugs of certain manufacturers were officially accepted and purchased by the War and Navy Departments of the United States Government for use in said Liberty motors and other aviation motors. The first several thousand of said Liberty motors were equipped under specific and official instructions from the Bureau of Aircraft Production of the United States War Department, not with the spark plug manufactured by the Silvex Co. aforesaid, but with the spark plug manufactured by another and competing manufacturer.

The spark plugs manufactured by the Silvex Co. aforesaid were, however, officially accepted and purchased by the said War and Navy Departments at divers times during the said war for use in aviation motors (including the Liberty motor) used in the Aviation Service of the United States Army and Navy. The spark plugs manufactured by divers other manufacturers were also officially accepted and purchased by said War and Navy Departments at divers times during the war for said use.

PAR. 4. Respondent the Silvex Co. published and distributed to the jobbing trade and their salesmen, and to its own salesmen, a circular advertisement under the name of "Bethlehem Sparks." This publication was a house organ, and was printed and distributed by said respondent as aforesaid, from time to time. Under date of January 15, 1919, said respondent published and distributed as aforesaid, in the latter part of January, 1919, an issue of said Bethlehem Sparks wherein, in an article entitled "Silvex Co.'s part in war," the following statement appeared:

When the world was thrilled with the dramatic announcement that out of the work of a number of America's foremost engineers had been created the powerful Liberty motor, no mention was made of the fact that the first spark plug officially approved for use in the Liberty motor was built by the Silvex Co., of Bethlehem.

Said article, "Silvex Co.'s part in war," was reprinted from the January 21, 1919, issue of the Bethlehem Globe, a newspaper of general circulation, published in South Bethlehem, Pa. Said article

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in said Bethlehem Globe was the report of an interview with the president of the Silvex Co.

Said statement from said article in said advertisement Bethlehem Sparks was false and misleading because the first spark plug officially approved by the United States Government for use in the Liberty motor, if any were so approved, was not the spark plug manufactured by the Silvex Co., but the spark plug of another and competing manufacturer, as aforesaid. Said false and misleading statement had the tendency and effect of embarrassing and discrediting competitors of the Silvex Co., and unfairly tended to discredit the spark plugs manufactured by such competitors, and said statement was calculated and designed to deceive the trade and the general public.

Said false and misleading statement appeared only in the aforementioned publications, to wit, said Bethlehem Sparks and said Bethlehem Globe, and only in the aforementioned numbers or issues of said publications, and said statement has not been used since in the advertising of said respondent, the Silvex Co.

PAR. 5. The Silvex Co. aforesaid had not published or circulated in any periodical, magazine, trade journal, catalogue, or pamphlet, or otherwise, any advertisement wherein it is represented that:

The Silvex Co.'s plug was adopted by both the Army and Navy—

or that—

The spark plug of the Silvex Co. is the result of Government tests for the Liberty motor—

or that—

The claim of a competitor that its spark plug was approved as standard by the Government has in fact no basis—

or that it (the spark plug manufactured by the Silvex Co.)—

uses the famous Frenchtown 775 porcelain, which, under Government tests, has proven itself to be stronger mechanically and electrically than any other porcelain, either domestic or foreign. That test was made by the Bureau of Standards at Washington.

The allegations of the complaint in this cause that the Silvex Co. aforesaid published and circulated in various periodicals, magazines, trade journals, and pamphlets said advertisements, are not sustained by the testimony and evidence in this case.

PAR. 6. Said Aircraft & Motor Products Co. has not published or circulated in any periodical, magazine, trade journal, catalogue, or periodical, or otherwise, any advertisement wherein it is represented that:

The first plug officially approved for use in the Liberty motor was built by the Silvex Co. at Bethlehem.

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The allegation of the complaint in this cause, that said Aircraft & Motor Products Co. published and circulated in various periodicals, magazines, trade journals, catalogues, and pamphlets certain advertisements wherein the said representation was made, is not sustained by the testimony and evidence in this case.

PAR. 7. Said Aircraft & Motor Products Co. distributed to certain automobile dealers in various States of the United States certain circular letters under date of January 27, 1919, advertising its said Aero-Auto spark plugs, in which letters appeared, among others, the following statement or representation:

The Silvex Co.'s plug was adopted by both the Army and Navy.

Such statement or representation also appeared in a full-page advertisement of said Aircraft & Motor Products Co. for said Aero-Auto spark plugs in the April 17, 1919, issue of Motor Age, a magazine devoted to automobiles and accessories and of general circulation among the trade and public. Said statement or representation also appeared in a full-page advertisement of said Aircraft & Motor Products Co. for said Aero-Auto spark plugs in the April 2, 1919, issue of Motor World, a magazine also devoted to automobiles and accessories and of general circulation among the trade and public.

As hereinbefore set forth in paragraph 3 hereof, said spark plugs of the Silvex Co. aforesaid were officially accepted and purchased by the War and Navy Departments of the United States Government at divers times during the aforesaid war, and said statement or representation is therefore true. The allegations of the complaint in this cause, that said Aircraft & Motor Products Co. published and circulated said statement is therefore sustained by the testimony and evidence; but the allegation of said complaint that such statement and representation discredited competitors' spark plugs or was misleading and calculated and designed to deceive the trade and general public is not sustained by the testimony and evidence.

PAR. 8. Said Aircraft & Motor Products Co., during the early part of 1919, distributed to certain automobile dealers in various States of the United States a certain folder or circular, advertising its said Aero-Auto spark plug, in which folder appeared among others the following statements or representations:

AERO-AUTO (A-A) SPARK PLUG.

THE RESULT OF THE UNITED STATES GOVERNMENT'S TESTS AND INVESTIGATIONS FOR THE LIBERTY MOTOR.

This circular will introduce to the motoring world the A-A spark plug. This plug is the final result of more than a year's hard and conscientious labor on the part of the engineers of the Bureau of Aircraft Production to find a spark plug that was worthy of the wonderful Liberty motor and upon which our aviators could stake their lives in actual combat work. The success of airplane motors depends almost

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entirely upon spark plugs, and every spark-plug manufacturer was given an opportunity for development work with the idea of finding a perfect spark plug. The most trustworthy spark plugs used by the United States Army and Navy Air Service were furnished the Government by the Silvex Co., of South Bethlehem, Pa. Orders were placed with this company for more than 2,000,000 plugs for use in combat work overseas. The Silvex Co. has assigned to the Aircraft & Motor Production Co. a very appreciable portion of their facilities for the manufacture of the A-A spark plug. Our own engineers and the engineers of the Silvex Co. have adapted this plug to meet the peculiar requirements of the automobile. But it will still retain the basic principles of design and construction that made it the most efficient of all spark plugs used in the war.

The Aero-Auto spark plug was manufactured by the Silvex Co. aforesaid for said Aircraft & Motor Products Co., and said spark plug was a modified design of the spark plug sold by the Silvex Co. aforesaid to the United States Army and Navy Departments for aviation service during the aforesaid war. Said spark plug so sold by the Silvex Co. aforesaid was tested by Government engineers on official Government tests; and some of these tests were performed by certain engineers of the Bureau of Aircraft Production of the United States War Department. The said engineers of the said Bureau of Aircraft Production worked for over a year on a series of tests on spark plugs for aviation motors for the purpose of securing a satisfactory spark plug for aviation motors. The Silvex Co. aforesaid, as well as many other spark-plug manufacturers during the aforesaid war, was constantly working to improve its spark plug, modifying various features of design or materials or workmanship to overcome the faults disclosed by said Government tests. However, said Government engineers did not invent, design, improve, modify, or alter the spark plugs of the Silvex Co. aforesaid in any way at any time; and said spark plugs, properly speaking, were not the result of the labors of the said Government engineers nor of their tests, but instead were the result of the labors of the agents and employees of the Silvex Co. aforesaid.

In said statements and representations in said folder or circular, it is stated that the Aero-Auto spark plug was the result of Government tests for the Liberty motor, but immediately thereafter, it is stated that the Aero-Auto spark plug was the product of the Silvex Co.; said statements and representations taken in their entirety were unfairly embarrassing and discrediting to competitors of said Aircraft & Motor Products Co. and tended to discredit the spark plugs manufactured by such competitors; and said statements and representations were misleading and calculated and designed to deceive the trade and general public. As aforesaid, said folder or circular was only distributed during the first part of 1919 and has never been distributed or used in any way by said Aircraft & Motor Products Co. since said time.

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PAR. 9. Said Aircraft & Motor Products Co. in its said circular letter of January 27, 1919, hereinbefore referred to in paragraph 7 hereof, made the following statement or representation:

The claim of a competitor that its spark plug was approved as standard by the Government has no basis.

Said statement or representation was ambiguous in that it did not name the competitor referred to nor otherwise disclose the said competitor's identity. Said competitor's identity was nowhere disclosed in any part of said circular letter nor in any of the other advertising matter whatsoever of said Aircraft & Motor Products Co. It is not shown by the testimony and evidence in this case that any member of the trade or general public who received said circular letters was misled or deceived by said statement or representation or was induced thereby to discredit any competitor of said Aircraft & Motor Products Co. or the spark plugs of any such competitors.

The allegations of said complaint that said Aircraft & Motor Products Co. published and circulated such statement is therefore sustained by the testimony and evidence; but the allegation of said complaint that such representation discredited competitors' spark plugs and was misleading and calculated and designed to deceive the trade and general public is not sustained by the testimony and evidence.

PAR. 10. The Aircraft & Motor Products Co., in its said folder or circular hereinbefore referred to in paragraph eight hereof, made the following statement or representation:

It [The Aero-Auto spark plug] uses the famous Frenchtown 775 porcelain, which, under Government tests, has proven itself to be stronger mechanically and electrically than any other porcelain either domestic or foreign. This test was made by the Bureau of Standards at Washington.

The porcelain used in said Aero-Auto spark plugs was manufactured by the Frenchtown Porcelain Co. under the name "Frenchtown 775." Said Frenchtown 775 porcelain was sold to and used by many different spark-plug manufacturers in many different makes of spark plugs during the aforesaid war and at all times since. It was at all times sold upon the open market to anyone who wanted to buy it and could pay for it. All of these facts were generally known to the trade. During said war said Frenchtown 775 porcelain was tested by the Bureau of Standards at Washington to determine its mechanical and dielectric strength and fitness for use in aviation motors. It is not shown by the testimony and evidence in this case that any member of the trade or general public who received said folder or circular was misled or deceived by said statement or representation or was induced thereby to discredit any competitor of said Aircraft & Motor Products Co. or the spark plugs of any such competitor.

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The allegation of said complaint that said Aircraft & Motor Products Co. published and circulated said statement is therefore sustained by the testimony and evidence; but the allegation of said complaint that such statement or representation discredited competitors' spark plugs, or was misleading and calculated and designed to deceive and mislead the trade and general public, is not sustained by the testimony and evidence.

CONCLUSIONS.

The practices of the said respondent the Silvex Co., under the circumstances and conditions severally described in paragraphs 1, 3, and 4 of the foregoing findings, and the practices of the said respondent, Aircraft & Motor Products Co., under the circumstances and conditions severally described in paragraphs 2, 3, and 8 of the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the respective respondents and the testimony and evidence, and the Commission having made its findings as to the facts with its conclusions that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled: "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered:

(1) As to the respondent the Silvex Co., that respondent the Silvex Co. and its officers, directors, representatives, agents, and servants, cease and desist from directly or indirectly advertising, publishing, circulating or distributing any circular, letter, advertisement, or other printed or written matter whatsoever, in which it is stated or held out that the first spark plug officially approved for use in the Liberty motor was built by the Silvex Co., of Bethlehem.

(2) As to respondent Aircraft & Motor Products Co., that respondent Aircraft & Motor Products Co. and its officers, directors, representatives, agents, and servants cease and desist from directly or indirectly advertising, publishing, circulating, or distributing any circular, letter, advertisement, or other printed or written matter whatsoever in which it is stated or held out that the spark plug of the Silvex Co. is the result of Government tests for the Liberty motor.

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