

Complaint.

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FEDERAL TRADE COMMISSION

v.

CARBO OIL COMPANY.

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

Docket 693—October 29, 1921.

SYLLABUS.

Where a corporation manufactured and sold a high grade automobile lubricant, under its well and favorably known trade name of Gargoyle oil and designated the various grades of its oil by the names Mobiloil "A", Mobiloil "B", etc. and thereafter a concern engaged in the manufacture and sale of a low grade oil, which was not distinguishable by appearance from Mobiloil "A", and which sold for about half its price,

- (a) Called its product Mobile "A" oil, and represented to the public and to purchasers of oil that its product was the Mobiloil "A" of said corporation;
- (b) Represented to customers and prospective customers that such oil was the property of the United States Government, bought by the Government from said corporation and now sold as surplus;
- (c) Sold its product in containers upon which was printed in large type the letters "U. S. A. Mobile 'A' Motor oil"; and
- (d) Had printed on its invoices and other stationery, "Distributor of U. S. A. Oils"; and

Where the general sales agent of said concern falsely represented to the trade that—

- (a) He was in the employ of the Government and more particularly that he represented the Quartermaster Corps Department of one of the camps;
- (b) The oil made, designated and offered as aforesaid was genuine Gargoyle Oil;
- (c) The oil so offered was being sold by the Government as surplus at a greatly reduced price from the camp, the Quartermaster Corps of which he purported to represent; and
- (d) His concern was the Government's sales agent for the sale of such oil;

With the result that many purchased such supposed Gargoyle oil and that purchasers sustained financial loss through their inability to resell the same, through restitution to their vendees, and through loss in reputation as dealers in automobile lubricants:

Held, That such false and misleading representations and such course of conduct, 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 Carbo Oil Company, hereinafter referred to as respondent, has been and is using unfair methods of competition 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 this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the City of Cleveland, in said State.

PAR. 2. That respondent is engaged in the business of compounding and selling motor lubricating oils and other chemical and mineral products, and causes such products to be transported to the purchasers thereof, from the State of Ohio through and into other states of the United States and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That for a number of years there has been refined and sold by the Vacuum Oil Co., of Rochester, N. Y., an automobile lubricant which became well known to the trade as "Gargoyle Mobiloils" of various grades, or "Mobiloil A," "Mobiloil B," etc.; that respondent in the course of its business as described in Paragraph 2 hereof, has compounded a product and attempted to imitate the product of said Vacuum Oil Co., and designated such product as "Mobile A Oil," and has represented and sold to the purchasing public its said product as and for the product of said Vacuum Oil Co.

PAR. 4. That respondent, as a means of furthering the sale of its own product as and for the product of the Vacuum Oil Co., as described in Paragraph 3 hereof, falsely represented to certain customers and prospective customers that the "Mobile A Oil" sold by it was the property of the United States Government, and had been purchased by the Government from the Vacuum Oil Co., and that respondent's facilities were being utilized by the Federal Government as a refilling station in the sale of its surplus stock which had been accumulated during the war emergency, and that Edward W. Meister, a salesman in the employ of respondent, was employed by the Federal Government to sell the oil; to other customers and prospective customers respondent falsely represented that the oil sold by it had been purchased outright from the Federal Government and was the genuine product of the Vacuum Oil Co.; that such representations were calculated to and did mislead and deceive the purchasing public.

PAR. 5. That respondent, as an additional means of furthering the sale of its own product as and for that of the Vacuum Oil Co., as aforesaid, and to create the false impression that its product had been

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purchased from the surplus stock of the Federal Government, had printed on its invoices and other stationery, the false and misleading statement: "Distributor of U. S. A. Oils," and had stenciled on the containers in which it marketed its product, the letters "U. S. A.", whereas the product sold by it had never been the property of the Federal Government.

PAR. 6. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 the respondent, the Carbo Oil Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having entered its appearance by its attorney and having filed its answer herein, hearings were had, and evidence was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission theretofore duly appointed, and the respondent having failed to introduce any testimony in its defense, the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Carbo Oil Company, is a corporation organized and existing under the laws of the State of Ohio and has its principal place of business in the City of Cleveland, State of Ohio.

PAR. 2. That respondent is engaged in the business of compounding and selling motor lubricating oils and other chemical and mineral products, and causes said products to be transported to purchasers thereof from the State of Ohio, through and into other States of the United States, and carries on such business in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That for a number of years prior to the institution of this proceeding, the Vacuum Oil Corporation of Rochester, N. Y., a business concern widely known throughout the United States, has

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been and is now engaged in refining at its plant in said City of Rochester, N. Y., an automobile lubricant, well and favorably known to the trade as "Gargoyle Mobiloil", of various grades, which grades are designated as Mobiloil "A", Mobiloil "B", etc., and likewise the said oils are sold and shipped by the said Vacuum Company throughout the various States of the United States and the District of Columbia.

PAR. 4. That respondent, in the course of its business as above described, has compounded an oil product designated by it as Mobile "A" Oil, an oil indistinguishable in appearance and almost identical in name to that grade of oil manufactured by the said Vacuum Oil Corporation and designated by it as Mobiloil "A", and has represented to the public and especially to purchasers of oil residing and doing business in the States of Ohio, Indiana, Virginia, and in other States as far South as the State of Georgia, that its said product was the Mobiloil "A" of the Vacuum Oil Corporation.

PAR. 5. That respondent, on or about the 15th day of February, 1920, and subsequent thereto, both verbally and in writing represented to its customers and prospective customers throughout the United States; that the Mobile "A" Oil sold by it was the property of the United States Government; that the same was from Camp Holabird, State of Maryland, but was being shipped to purchasers from Cleveland, Ohio, and that the said oil had been purchased from the Vacuum Oil Corporation by the United States Government and represented the surplus stock of said Vacuum Oil not needed by the United States Government since the Armistice was signed.

PAR. 6. That respondent's general sales agent, Edward W. Meister, brother of Eugene B. Meister, president of respondent company, represented himself to the trade as being in the employ of the United States Government, particularly as "representing the Quartermasters Corps Department, Camp Holabird, Maryland." That the said oil of respondent represented a surplus of said oil which the Government was selling at a greatly reduced price since the close of the war and "that positively it was genuine Gargoyle Oil" made by the said Vacuum Oil Corporation; that his said company, the respondent, was being used by the Government as a selling agent for this particular oil and that the same was being taken from tank cars on railroad siding at a camp in Cleveland, Ohio, at which place it had been shipped from the said Camp Holabird in the State of Maryland; whereas, in truth and in fact, the said Edward W. Meister, sales agent of respondent, was not in the employ of the United States Government and had never been connected with the Government in either a civil or military capacity and was not representing the Gov-

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ernment when offering said oil for sale; that said oil was not the "genuine Gargoyle Oil of the Vacuum Oil Corporation" or any other kind of oil of said corporation nor was it any part of any surplus stock of the Vacuum Oil Corporation's manufactured product owned then or at any time by the United States Government; that said respondent had never at any time represented the United States Government in the sale of surplus oils or for any other purpose. That said representations of respondent's sales agent were made in various cities and states of the United States, particularly to purchasers at Staunton, Va.; Hartford, Ind.; and Barnesville, Ohio.

PAR. 7. That the Gargoyle Oil manufactured and compounded by the Vacuum Oil Corporation is a high-grade oil and popular with the oil trade; that it usually sells for about 75 cents per gallon; that respondent was selling its product which it represented to be Vacuum Oil Corporation's product at about 40 or 45 cents per gallon; that said reduced price of respondent's oil and by it represented as genuine Gargoyle or Mobiloil "A" of the Vacuum Oil Corporation, induced many purchasers to buy respondent's oil; that one purchaser bought over \$2,000 worth of same, and later on it was discovered by use and by tests that respondent's oil was not the product of the Vacuum Oil Corporation; that its said product was but little better than common dish water; that purchasers of respondent's product sustained considerable financial loss through their inability to sell said oil and through restitution made to those to whom the oil had been sold, and in addition thereto suffered in reputation as dealers in automobile lubricants.

PAR. 8. That respondent sold its said oil product in containers called "steel drums" and had printed in large type thereon the letters "U. S. A. Mobile 'A' Motor Oil" and around the outer edge of the said drum in very small stencilling the words "Carbo Oil Company, Cleveland," and had printed on its invoices and other stationery the following: "Distributor of U. S. A. Oils."

PAR. 9. That to the public and to the trade especially Gargoyle Oil is known as the product of the Vacuum Oil Corporation and that company only, and likewise the said company's Mobiloils "A," "B," etc., and wherever motor lubricants are spoken of as Mobile Oils the public understands same as referring to the oils of the Vacuum Oil Corporation.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances set forth, unfair methods of competition in violation of the provisions of Section 5 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, the answer of the respondent, the testimony and the evidence, and the Commission having made its findings as to the facts, with its conclusion that the respondent has violated the provisions 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,"

It is ordered, That the respondent, the Carbo Oil Company, its officers, agents, directors, servants and employees, do cease and desist:

1. From representing to purchasers and would-be purchasers that its compound oil product designated as Mobile "A" Oil is that of the Mobiloil "A" of the Vacuum Oil Corporation or any other grade of oil of the Vacuum Oil Corporation;

2. From using the term Mobile "A" Oil in designation of any product of its refining, and selling same with said designation;

3. From representing that its said Mobile "A" Oil or any other grade or kind of oil compounded and sold by it was a part of a surplus stock of Mobile Oils purchased by the United States Government from the Vacuum Oil Corporation;

4. From representing that it or its general sales agent was or had been in the employ of the United States Government or acting as agent of said Government in selling said Mobile Oil of the Vacuum Oil Corporation for the United States Government or for the said Vacuum Oil Corporation.

Respondent is further ordered to file a report in writing with the Commission sixty (60) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

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v.

BECKWITH-CHANDLER COMPANY ET AL.