

Complaint.

FEDERAL TRADE COMMISSION

v.

CHEMICAL FUEL COMPANY OF AMERICA, INC.

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

Docket 791—March 20, 1922.

SYLLABUS.

Where a corporation competitively engaged in the manufacture and sale of a motor fuel, made the false and misleading claim, in advertising its product, that the same had "been thoroughly tested by the Government Bureau of Mines in Washington, D. C., successfully fulfilling every claim made for it by its inventor as a fuel par excellence not only for automobiles, but for all classes of aircraft, seaplanes, etc., because of its easy and complete vaporization in the rarified and extremely cold and changeable atmospheric conditions met with at high altitudes, * * *"; thereby misleading the purchasing public into believing said product to be of an unusually high grade or character:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Chemical Fuel Co. of America, Inc., hereinafter referred to as respondent, has been and is 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 is a corporation organized under the laws of the State of Delaware, with principal place of business at Louisville, Ky.

PAR. 2. That respondent is engaged in the business of manufacturing and selling a motor fuel which it designates as Tri-oxyalene, causing same to be transported to the purchasers thereof from the State of Kentucky through and into other States of the United States, in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in Paragraph 2 hereof, makes use of advertising matter which con-

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tains certain statements of and concerning Tri-oxyalene, which statements are false and misleading and are calculated to and do mislead and deceive the purchasing public; that among such false and misleading statements are statements to the effect that Tri-oxyalene has been thoroughly tested by the United States Government Bureau of Mines and has fulfilled every claim made for it by its inventor as a fuel par excellence, for all classes of aircraft, seaplanes, etc.; that the inventor has spent many years in the automobile industry and is thoroughly informed as to the necessity of the internal combustion engine and that Tri-oxyalene is the most perfect fuel ever presented to the automobile owner, whereas no official test of Tri-oxyalene had been made by the Bureau of Mines, but chemical engineers in that Bureau who made unofficial tests of said product, did not regard said product as having any commercial merit or being of any scientific interest.

PAR. 4. 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, Chemical Fuel Co. of America, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondent entered its appearance by its attorney, filed its answer herein and made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondent, that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission being now fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Chemical Fuel Co. of America, Inc., is a corporation organized under the laws of the State of Delaware, and is engaged in the business of manufacturing and selling a

motor fuel which it designates as "Tri-Oxylene" with its factory and principal place of business at Louisville, Ky.

PAR. 2. That the respondent sells a motor fuel which it designates as "Tri-Oxylene" and causes same to be transported to purchasers thereof from its factory at Louisville, Ky., through and into certain States of the United States including Ohio, Indiana, Illinois, Missouri and North Carolina, in direct and active competition with other persons, partnerships, and corporations similarly engaged and there has been at all times herein mentioned a continuous current of trade to and from said respondent's factory at Louisville, Ky., in said commodity among and between the several States of the United States.

PAR. 3. That during the year 1920 the respondent in the course of its business as hereinbefore described, caused the following statement to be inserted as advertising matter in a circular which respondent published and caused to be sent through the United States mails from respondent's principal place of business at Louisville, Ky., to customers and prospective customers in the different States of the United States:

"That it has been thoroughly tested by the Government Bureau of Mines in Washington, D. C., successfully fulfilling every claim made for it by its inventor as a fuel par excellence, not only for automobiles, but for all classes of aircraft, sea planes, etc., because of its easy and complete vaporization in the rarefied and extremely cold and changeable atmospheric conditions met with at high altitudes. Those conditions are well known to seriously interfere with the vaporization of gasoline because of its high per cent of carbon, but they are overcome by the use of 'Tri-Oxylene' one of whose principal ingredients is oxygen."

PAR. 4. That respondent's product "Tri-Oxylene" has never been tested by the Government Bureau of Mines in Washington, D. C., nor by any other branch, agency, or department of the United States Government.

PAR. 5. That the purchasing public believes that motor fuel which has been tested and which is approved or recommended by the Government Bureau of Mines at Washington, D. C., is of an unusually high grade and character because of such approval or recommendation.

PAR. 6. That the purchasing public is misled by respondent's advertising as hereinbefore set out, into the belief that such motor fuel "Tri-Oxylene" is of an unusually high grade or character and is approved or recommended by the Government Bureau of Mines at Washington, D. C.

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PAR. 7. That during the year 1920, there were and now are manufacturers selling and shipping in commerce, among the several States of the United States, motor fuel similar to that made and sold by the respondent but [who] did not advertise in the conduct of their business that their products have been tested and have been approved or recommended by the Government Bureau of Mines in Washington, D. C., or words to that effect.

CONCLUSION.

The practices of said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce and constitute a violation 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."

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, and an agreed statement of facts filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated a provision 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 now ordered, That the respondent, Chemical Fuel Co. of America, Inc., its officers, agents, servants and representatives do cease and desist directly or indirectly:

From publishing and circulating or causing to be published and circulated throughout the various States of the United States, the territories thereof, the District of Columbia, and foreign countries, advertisements, circulars, folders, letters or any other printed or written matter whatsoever wherein it is falsely stated, set forth, or held out to the public that respondent's product "Tri-Oxylene" has been tested and has been approved or recommended by the Government Bureau of Mines in Washington, D. C., or words to that effect.

It is further ordered, That the respondent shall within sixty (60) days after service upon it of a copy of this order, file with the Federal Trade Commission a report in writing setting forth the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

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