

Complaint.

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FEDERAL TRADE COMMISSION

v.

PENN LUBRIC OIL COMPANY.

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

Docket 910—May 19, 1923.

SYLLABUS.

Where a corporation engaged in the sale of lubricating oils composed of the so-called Pennsylvania grade of oil mixed with cheaper and inferior oils; in posters, stationery, and other advertising matter represented the same as Pennsylvania oils, and only inadequately advised the purchasing public, through small stickers or circulars which did not reach the attention of any considerable number of persons, that said oils were not composed exclusively of said superior and more expensive stock; with the result that it was thereby enabled to obtain a higher price for its products than it could otherwise have obtained; to the injury both of competitors dealing in pure Pennsylvania oil and of those dealing in a mixture thereof and so advertising and branding the same:

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

COMPLAINT.

Acting in the public interest, pursuant to 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," the Federal Trade Commission charges that the Penn Lubric Oil Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Penn Lubric Oil Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the city of Kansas City, in said State. It was at all times hereinafter mentioned and still is engaged in the business of selling lubricating oils and greases and causing such products, when sold, to be transported from the place of manufacture in the city of Kansas City, aforesaid, to purchasers thereof located in other States of the United States and the territories thereof and

the District of Columbia, and there is now and was at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States and the District of Columbia, and particularly from the city of Kansas City, aforesaid, and therefrom to, into and among the various other States and Territories of the United States and the District of Columbia. In the course of its business respondent was at all times hereinafter mentioned and still is in competition with other corporations, partnerships and individuals engaged in the manufacture and sale of similar products in and among the various States and Territories of the United States and the District of Columbia.

PAR. 2. The greater part of the products sold by the respondent is and has been for more than two years last lubricating oils. Pennsylvania oil, which is a kind and grade of oil found in the State of Pennsylvania, is considered in the trade to be a high-grade lubricating oil and for that reason commands a higher price than do oils which are not so highly regarded; most of the lubricating oils made and sold by the respondent are now and have been for more than two years last past made of a compound of Pennsylvania oil and of inferior and cheaper oils, the percentage of Pennsylvania oil in some of such compounds being as low as 10 per cent, and such compounds are not considered in the trade of as high a quality as is pure Pennsylvania oil and do not for that reason command as high a price as do pure Pennsylvania oils. The respondent now uses and for more than two years last past has used various forms of advertising which have been and are calculated to deceive the buying public into believing that the lubricating oils sold by the respondent and compounded by it as aforesaid are and have been pure Pennsylvania oils.

PAR. 3. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said competitors and constitute unfair methods 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, MODIFIED FINDINGS AS TO THE FACTS, AND MODIFIED 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, Penn Lubric Oil Company, a corporation, charging it with the use of unfair methods of compe-

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tition in interstate commerce, in violation of the provisions of said act.

The respondent having entered its appearance by its attorney, and filed its answer herein, hearings were had before an examiner of the Federal Trade Commission, theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint, which evidence was duly recorded, duly certified and forwarded to the Commission; and the respondent having made, executed and filed an agreed statement of facts, in which it waives the filing of exceptions to the findings herein and admits the truth thereof, and waives the filing of brief and stipulates and agrees that the Federal Trade Commission shall take such agreed statement of facts and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the presentation of argument in support of same, and the Federal Trade Commission having duly considered the record and being 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, Penn Lubric Oil Company, is a corporation, duly organized and doing business, with its principal office and place of business in the city of Kansas City, Missouri.

That it was for six years last past, and is now, engaged in the business of selling lubricating oils and greases, and causing such products, when sold to be transported from Kansas City, Missouri, to purchasers thereof located in other States of the United States, and that there is now, and has been during the six years last past, a constant current of trade and commerce in said products between and among the various States of the United States, and particularly from the City of Kansas City, Missouri to, into, and among the various other States and Territories of the United States;

That the respondent, in the conduct of such business during said six years, was, and still is, in competition with other corporations, partnerships, and individuals engaged in the manufacture and sale of similar products in and among the various States and Territories of the United States.

PAR. 2. Pennsylvania oil, which is a kind and grade of oil produced in the Appalachian field, is a high-grade lubricating oil, and is regarded by the public as a superior grade of oil, by reason of which it commands a higher price than other oils produced in the

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Mid-Continent field and in the California field, and is also regarded as a higher grade and a more desirable oil than any blend or combination of Pennsylvania oil with the oils produced in said other fields, and commands a higher price in the market than such blend with inferior oils.

That the Penn Lubric Oil Company sells its oil under the name of "PLOCO."

That said respondent compounds or mixes a certain quantity of Pennsylvania Bright or Pennsylvania "E" stock with double filtered Mid-Continent neutrals, and the different grades of oils thus produced and sold by respondent are designated as "PLOCO" A, B, C, D, E, F. "PLOCO" G sold by respondent is a 100 per cent Pennsylvania oil.

PAR. 3. That in advertising its products, respondent displays throughout its trade territory, in the garages and other places where its "PLOCO" oil is sold, large cloth posters or banners, 6 feet long by 3 feet wide, which read as follows:

"We sell	(Genuine)
PLOCO	
Pennsylvania	
AUTOMOBILE OIL	— and — GEAR GREASE
TRACTOR OIL	
Manufactured	
by	PENN LUBRIC OIL CO., KANSAS CITY, MO."

The word "PLOCO" appears upon said posters in very much larger letters than the balance of the reading matter.

Also, the respondent extensively uses, throughout its trade territory a small poster about 15 inches long by 7 inches wide, which reads as follows:

"PLOCO	
PENN LUBRIC OIL Co.	
Pennsylvania Oils	
Home Office	Branch
and Works	Shipping Stations
KANSAS CITY, Mo.	In Other Cities
The Home of Ploco Motor Oil and Gear Grease "	

Also, the respondent has used in its business an envelope, upon which was printed, in the upper left-hand corner, the following words:

"PLOCO	Automobile Oil	They are Pennsylvania
	Tractor Oil	Products
	Noiseless Gear Grease	HIGH GRADE "

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Also, the respondent has used in its business an envelope, upon which was printed, on the upper left-hand corner, the following words:

"PLOCO	Auto Oil (Carbonless) Liquid Fiber Cement Noiseless Gear Compound	They are Pennsylvania Products HIGH GRADE"
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Also, the respondent in its business used a letterhead, which reads as follows:

"Motor and Tractor Oil	PLOCO	Motor and Tractor Gear Grease
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PENN LUBRIC OIL COMPANY
Kansas City, Mo.
We Sell Pennsylvania Oils"

PAR. 4. That the small circular stickers placed upon the containers in which the oils were conveyed, or the circulars sent out to dealers, and the certificates of guarantee given to dealers, copy of which stickers and certificates follows:

THIS
OIL IS
PRODUCED BY
COMPOUNDING
Heavy-Bodied Pure
PENNSYLVANIA OIL
with
Double Filtered Mid-Continent Oil

PENN LUBRIC OIL Co.
Kansas City,
Mo.

CERTIFICATE OF GUARANTEE
Given by
PENN LUBRIC OIL COMPANY
Kansas City, Mo.

Dated at the General Offices of the Company
Kansas City, Mo.

This Certificate entitles the holder _____ to positively guarantee that every package of PLOCO MOTOR OIL shipped by the PENN LUBRIC OIL COMPANY, contains genuine Pennsylvania Oil and a label to this effect is pasted on every package before leaving our plant. Our oils are produced by compounding heavy bodied pure Pennsylvania Oils with double-filtered Mid-Continent Oils. We

offer a liberal reward for proof of any man offering for sale any inferior oil and representing it to be PLOCO MOTOR OIL.

R. O. BONE,
Pres. and Gen. Mgr.
Certificate No. -----

That the above did not reach the attention of any considerable number of the purchasing public, and had no material effect of counteracting the impression upon the purchasing public made by the general display advertising of respondent as above set forth.

PAR. 5. That the advertisements of the respondent by which it placed its product "PLOCO" before the public as above set forth, are misleading, and had and have the capacity and tendency to mislead and deceive the purchasing public and to induce the said purchasing public to purchase said "PLOCO" oil, of the grades from "A" to "F," inclusive, upon the mistaken belief that all the different grades of oil sold by respondent under the name of "PLOCO" are made from crude oil of the Pennsylvania grade, which oil is generally regarded as the highest grade of oil, and superior to oil produced in the Mid-Continent field and California fields and enables the respondent, by reason of such deception, to obtain a higher price for said "PLOCO" oil than it otherwise could if the purchasing public knew the facts.

PAR. 6. That the advertisement and sale by said respondent of the different grades of "PLOCO" as though made from the superior Pennsylvania grade of oil, when in truth and in fact "PLOCO" oil, with the exception of the "G" grade, is a mixture of Pennsylvania oil with western oil which is generally regarded as inferior to oil of Pennsylvania grade, had and have a capacity and tendency to destroy or lessen the demand upon the part of the purchasing public for genuine Pennsylvania oil, and in that way injure the business and reputation of the competitors of the respondent who are engaged in the sale of pure Pennsylvania oil, and also had and have a capacity and tendency to injure those competitors of respondent who are using a mixture of Pennsylvania oil and western oil the same as respondent, but who are advertising and branding the same as such mixture.

CONCLUSION.

The practices and acts of respondent herein, as hereinbefore set forth, under the conditions and circumstances set forth in the foregoing report upon the facts, are unfair methods of competition in interstate commerce and constitute a violation of Section 5 of the Act of Congress approved September 26, 1914, entitled "An Act to create

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a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED 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 the evidence taken before an examiner of the Commission, and the Commission having made its findings as to the facts with its conclusions that respondent has 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, That the respondent, Penn Lubric Oil Company, its officers, agents, representatives, servants and employees do cease and desist

From using in letters, circulars, posters or other advertising matter in connection with the sale of its oil products which are compounds or mixtures of the products of Pennsylvania crude oil, or of the products of crude oil produced in the Appalachian field and generally known in the trade as "Pennsylvania grade," with the products of any other kind of crude oil whether sold under the name of "PLOCO" or any other name, the word "PENNSYLVANIA" or words "PENNSYLVANIA OILS," without conspicuously disclosing in such advertisements that such blended oils are made by combining the Pennsylvania oil with Mid-Continent or other oils.

It is further ordered, That the respondent within thirty (30) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with and conformed to.

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