

Syllabus

IN THE MATTER OF

WILLIAM H. JOHNSON, AN INDIVIDUAL, DOING BUSINESS UNDER THE NAME AND STYLE OF ETHYLENE SALES COMPANY AND HATHAWAY & HAMILTON—J. MERRELL REDDING, AN INDIVIDUAL, DOING BUSINESS AS ETHYL GAS COMPANY¹—J. H. HATHAWAY, AN INDIVIDUAL, DOING BUSINESS AS THE AMERICAN CHEMICAL COMPANY¹

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1720. Complaint, Nov. 5, 1929—Decision, Mar. 31, 1930

Where a corporation engaged under the name Ethyl Gasoline Corporation of New York in the sale of an antiknock fluid or motor fuel in interstate commerce, and in the use of the term "Ethyl" in connection therewith; and thereafter an individual engaged in the sale of a fluid for treating motor fuel, with no relation to "Ethylene", an anæsthesia gas,

- (a) Described, advertised, branded, and sold his said fuel as "Ethylene Fluid", "Ethylene Fluid—Anti-Knock Gasoline", "New and Super Ethylene Fluid and Hyco", "Nox-It" and "Nox-out-Nox", "Anti-knock Ethylene Gas" (or fluid), and falsely represented the name of the product as registered in the Patent Office through the designation "Reg. U. S. Pat Off.";
- (b) Falsely advertised and represented said product as producing an effective motor fuel with antiknock properties, when mixed with gasoline, and as similar to and giving the same results as Ethyl fluid, product of the aforesaid Ethyl Gasoline Corporation of New York;
- (c) Falsely represented that its manufacturing plant was located at Passaic, N. J., through depiction on letterheads, stationery, and advertising matter of a large manufacturing plant and/or the printed words "Works at Passaic, N. J.";
- (d) Furnished customers with globes for gasoline pumps similar to those used by and furnished to dealers in the product of the aforesaid Ethyl Gasoline Corporation of New York, so as to mislead and deceive the consuming public into believing its product to be that of the aforesaid corporation;
- (e) So colored his product that when mixed with gasoline the resulting mixture was similar in coloring to and undistinguishable from that of the aforesaid Ethyl Gasoline Corporation, with the result of deceiving and misleading the purchasing public into believing its said product to be that of the aforesaid corporation; and
- (f) Simulated advertising information and instruction publications and booklets of competitors, and competitors' phrases and statements;

With the capacity and tendency to cause and with the effect of causing retail distributors and the consuming public to purchase its said product as and for one with antiknock properties when used as a motor fuel, and to confuse said product with that of its several competitors:

¹ Proceedings against respondents Redding and Hathaway dismissed.

Complaint

13 F. T. C.

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

Clark & Clark and *Mr. Frederick A. Jones*, of Dallas, Tex., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent William H. Johnson, doing business under the name of Ethylene Sales Co. and Hathaway & Hamilton, respondent J. Merrell Redding, an individual doing business as Ethyl Gas Co., and respondent J. H. Hathaway, an individual doing business as the American Chemical Co., all engaged at Dallas, Tex., in the sale of a fluid for treating motor fuel, alleged to give such fuel antiknock properties, with misrepresenting qualities and composition of product claiming registration of name thereof falsely, misrepresenting business status, advertising falsely or misleadingly and misbranding or mislabeling in regard thereto, passing off product as and for competitor and simulating advertising of competitors, color of their products and their phrases and statements, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set forth, in the sale of said fluid mixture variously described as "Ethylene Fluid," "Ethylene Fluid Anti-Knock Gasoline," "New and Super Ethylene Fluid—Hycos," "Ethyl Gas," "Ethyl Gas Anti-Knock," "Nox-It," "Nox-It Gasoline" to persons, firms, or corporations located in various States and dealing in motor fuels, falsely and fraudulently represented that said Ethylene fluid, mixed in gasoline, improved the antiknock properties thereof, produced an effective antiknock motor fuel, was similar to Ethyl fluid, sold by the Ethyl Gasoline Corporation of New York, to persons and concerns throughout the several States, that Ethylene gasoline was similar to and gave the same results as Ethyl gasoline, a motor fuel containing said Ethyl fluid, a product of the aforesaid corporation, well known to the purchasing public as containing such Ethyl fluid and having high antiknock properties, that Ethylene gas or fluid, or "Nox-It," or "Nox-out-Nox," as the case might be, was a treater of gasoline and mixed or dissolved therein produced an effective antiknock motor fuel, that the name of their product was registered in the Patent Office, by the false designation,

"Reg. U. S. Pat. Off.", that their manufacturing plant is located at Passaic, N. J., through having on their letterheads, stationery and advertising material picture of a large plant and/or of the printed words "Works at Passaic, N. J.", that they maintain an export department, through having on their advertising matter, etc., the expression "Export Department, 230 Fifth Avenue, New York City," and [they have branches] through having on their advertising material and stationery the expression "Branches: Los Angeles, California; Chicago, Illinois".

Respondents further, as charged, misbranded their products in that they branded the same as antiknock ethylene gas or antiknock ethylene fluid, as the case might be, when in fact the mixture, compound, or product concerned was not an effective antiknock gas motor fuel or fluid for motor fuels, and had no relation to ethylene, a true chemical compound often used in anæsthesia, and as "Reg. U. S. Pat. Off.," meaning thereby that the label or name was registered in the Patent Office, when in fact not so registered.

The respondents further, as charged in the sale and distribution of their products have simulated the advertising of competitors in various States and passed off their products as that of competitors or similar thereto in that they have simulated (1) signs of competitors, furnishing customers with such signs to be placed on pumps, (2) coloring of competitor's motor fuels, known to the public as having antiknock properties, (3) advertising information and/or instruction publications including booklets prepared, distributed and circulated by competitors and (4) phrases and statements of competitors.

Said alleged acts and practices of respondents, as alleged, have the capacity and tendency to and do (1) cause retail distributors and the consuming public to purchase respondents said products in the belief that said products do have antiknock properties, (2) cause retail distributors and the consuming public to confuse respondent's said products with the products of competitors, (3) injure the value of effective antiknock fuels, possessing a utility to the consuming public, in the mind of and to the detriment of said public, through the sale by respondents of their said spurious and noneffective antiknock fluids and/or gasolines, (4) divert business from and otherwise injure and prejudice said competitors, many of whom in nowise represent the composition, nature and character and effect of the products dealt in by them, and (5) deceive the purchasing public, and said acts and practices are all to the prejudice of the public and of

Findings

13 F. T. C.

respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDING AS TO THE FACTS, AND ORDER

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 issued and served a complaint upon the said respondent, William H. Johnson, an individual doing business under the name and style of Ethylene Sales Co. and Hathaway & Hamilton, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The said respondent, having entered his appearance and filed his answer herein, stating that he refrained from contesting said proceedings and consenting that this Commission may make, enter and serve upon him an order to cease and desist from the violations of the law alleged in the complaint;

Thereupon this proceeding came on for decision and the Federal Trade Commission, having duly considered the record and having been fully advised in the premises, now makes this report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent, William H. Johnson, also known as William H. Johnsen, is an individual with his place of business in the city of Dallas, State of Texas. The said respondent for more than two years last past has been doing business under the name and style of Ethylene Sales Co. and also under the name and style of Hathaway & Hamilton. The said respondent during all of said time has been engaged in the sale of a fluid for treating motor fuel alleged to give said motor fuel antiknock properties. The said respondent has caused the said fluid when so sold to be transported in interstate commerce from the city of Dallas in the State of Texas to the purchasers thereof at various points in the States of the United States other than the State of Texas. In the course and conduct of his business the said respondent has been in competition with other individuals, partnerships and corporations engaged in the sale of fluids for treating motor fuel so as to give said motor fuel antiknock properties.

PAR. 2. The said respondent for more than two years last past has been selling in interstate commerce the aforementioned fluid and

variously describing the same as ethylene fluid. Ethylene fluid—Antiknock gasoline, New and super Ethylene fluid and hycos, and advertising the same as a motor fuel having antiknock properties when mixed with gasoline when in fact the said fluid when mixed with gasoline does not produce a motor fuel having antiknock properties.

At the time or times the said respondent, William H. Johnson, adopted the trade name Ethylene, Ethylene fluid, Ethylene fluid—Antiknock gasoline, the Ethyl Gasoline Corporation of New York was and has been using the term "Ethyl" in the sale in interstate commerce of an antiknock fluid or motor fuel.

PAR. 3. The said respondent in the sale of his said product has made numerous statements and representations to the effect:

(a) That Ethylene fluid is a treater of gasoline and when mixed with or dissolved in gasoline improved the antiknock properties of the gasoline and produced an effective antiknock motor fuel.

(b) That Ethylene fluid was similar to Ethyl fluid, a product of the Ethyl Gasoline Corporation of New York.

(c) That Ethylene gasoline was similar to and gave the same results as Ethyl gasoline.

(d) That Ethylene gas or fluid was a treater of gasoline and when mixed or dissolved in gasoline produced an effective antiknock motor fuel.

(e) That "Nox-It" was a treater of gasoline and when mixed or dissolved in gasoline produced an effective antiknock motor fuel.

(f) That "Nox-out-Nox" was a treater of gasoline and when mixed or dissolved in gasoline produced an effective antiknock motor fuel.

(g) That the name of said respondent's product was registered in the United States Patent Office by the designation "Reg. U. S. Pat. Off."

(h) That said respondent's manufacturing plant was located at Passaic, N. J., by having on his letterheads and stationery and advertising material a picture of a large manufacturing plant and/or the printed words "Works at Passaic, N. J."

All of the above-mentioned statements and representations were in fact false, deceptive, and untrue.

PAR. 4. Said respondent for more than two years last past has branded his product:

(a) "Anti Knock Ethylene Gas", when in fact the mixture or compound was not an effective antiknock gas or motor fuel.

(b) "Anti Knock Ethylene Fluid", when in fact the product was not an effective antiknock fluid or motor fuel.

Conclusion

13 F. T. C.

(c) "Ethylene Gas" and/or "Ethylene Fluid", when in fact the product had no relation to "Ethylene", an anaesthesia gas.

(d) "Reg. U. S. Pat. Off.", meaning thereby that their label or name was registered in the United States Patent Office, when in fact it was not so registered.

PAR. 5. In the sale and distribution of his product the said respondent has simulated the advertising of his competitors located in the various States of the United States and has sold his product as and for the product of the Ethyl Gasoline Corporation of New York and numerous and various other distributors and dealers located throughout the United States, the particular acts in this connection being:

(a) The furnishing by said respondent to his customers of globes for gasoline pumps similar to the globes used by and furnished to the dealers in the product of the Ethyl Gasoline Corporation of New York so as to mislead and deceive the consuming public into the belief that the said respondent's product was the product of the Ethyl Gasoline Corporation of New York.

(b) Said respondent has so colored his product that when mixed with gasoline the ultimate product is similar in coloring and can not be distinguished from the product of the said Ethyl Gasoline Corporation of New York, thereby deceiving and misleading the purchasing public into the belief that said respondent's product is the product of the Ethyl Gasoline Corporation of New York.

(c) Said respondent has simulated advertising information and instruction publications, including booklets prepared, distributed, and circulated by competitors.

(d) Said respondent has simulated phrases and statements of competitors.

PAR. 6. The acts and practices of the said respondent as set forth above have the capacity and tendency to and do cause retail distributors and the consuming public to purchase respondent's product in the belief that said product has antiknock properties when used as a motor fuel.

The acts and practices of respondent as set forth above have the capacity and tendency to and do cause retail distributors and the consuming public to confuse respondent's said product with the product of respondent's several competitors.

CONCLUSION

The practices of said respondent, William H. Johnson or William H. Johnsen, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent-

ent's competitors and are unfair methods of competition in interstate commerce and constitute a violation 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".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the consent of the respondent, William H. Johnson, that the Commission may make, enter, and serve upon him an order to cease and desist from the violations of law as alleged in said complaint, as fully appears from the record herein; and the Commission having made its findings as to the facts with the conclusion that the respondent, William H. Johnson, 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, William H. Johnson, also known as William H. Johnsen, doing business as the Ethylene Sales Co., his agents, servants, and employees, in connection with the advertising, offering for sale, or sale in interstate commerce of a product variously described and designated as "Ethylene Fluid", "Ethylene Fluid Anti-Knock Gasoline", "New and Super Ethylene Fluid and Hyco" for use in treating motor fuel and gasoline, do cease and desist:

(1) From using the word "Ethylene" alone or in combination or connection with any other word or words.

(2) From using the words "Anti-Knock" or the words "Nox It" or the words "Nox Out Nox" or any word or words or representation of like import unless and until respondent's said product actually contains properties which when mixed with motor fuel or gasoline give to said motor fuel or gasoline antiknock properties.

(3) From using the designation "Reg. U. S. Pat. Off." or words of like import unless and until a trade-mark for said product has been registered in the United States Patent Office.

(4) From using or displaying the words "Works at Passaic, New Jersey" and from using or displaying a pictorial representation indicating a manufacturing plant at Passaic, N. J., unless and until respondent actually owns or operates a manufacturing plant at Passaic, N. J., in which said product sold by him is made.

(5) From selling, leasing, or otherwise furnishing to dealers, globes for gasoline pumps similar in color, dress, or general appearance to the globes for gasoline pumps furnished dealers by distributors or sellers of motor fuel or gasoline.

Order

13 F. T. C.

(6) From simulating, copying, or imitating in dress or general appearance the signs, placards, circulars, booklets, or other advertising or literature of distributors or sellers of motor fuel or gasoline.

It is further ordered, That the respondent, William H. Johnson, also known as William H. Johnsen, doing business as Ethylene Sales Co., shall within 60 days after the service upon him of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

ORDER OF DISMISSAL AS TO CERTAIN RESPONDENTS

This matter coming on for consideration before the Commission and the Commission having duly considered the matter and being fully advised in the premises,

It is ordered, That the complaint in this case be, and the same is hereby, dismissed without prejudice as to the respondents J. Merrell Redding, doing business as Ethyl Gas Co., and J. H. Hathaway, doing business as the American Chemical Co.

Syllabus

IN THE MATTER OF
UNITED REMEDIES, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1593. Complaint, Apr. 12, 1929—Decision, Apr. 7, 1930

Where a corporation engaged in the sale of a hair preparation named "Kolor-Bak", which (1) neither restored nor promoted recovery of the original color except possibly, in some instances, accidentally through action as a dye, to be then preserved, if at all, only by repeated applications, (2) possessed no value as a general hair tonic or as a cleanser or remover of dandruff, (3) ordinarily stained the hands and scalp, and (4) contained acetate of lead, an unsafe ingredient for the scalp and an injurious one, in some cases,

(a) Falsely represented through labels, cartons, containers, wrappers, advertising and printed matter that said preparation restored and brought back the original color of gray hair, always got the same perfect result, was neither a dye nor harmful, was valuable as a remedy for dandruff, falling hair, etc., and as general hair tonic, stained neither scalp nor hands, and was free from nitrate of silver, para and mercury and composed of beneficial ingredients;

With capacity and tendency to mislead the purchasing public or a substantial portion thereof into believing that use of said preparation caused gray hair through normal processes to recover its former natural color and to induce its purchase in reliance on such belief and also on the erroneous belief that said preparation had the merits and qualities otherwise attributed to it as above set forth; and, following discontinuance of said false representations, theretofore made by itself, and its predecessors in the sale of said preparation.

(b) Described and designated its said dye as "Kolor-Bak", without qualification, and represented that the same imparted color to gray hair, and that through use thereof such hair might be colored its original shade;

With capacity and tendency to mislead and deceive the public or a substantial portion thereof, by reason of the phonetic significance, meaning, and effect of the name, into purchasing the preparation in reliance on the erroneous belief that it restored the original natural color of gray hair instead of imparting an artificial color or shade thereto, and with the material and probable effect of so misleading and deceiving:

Held, That such practices, under the circumstances set forth, were to the injury and prejudice of the public and competitors and constituted unfair methods of competition in commerce.

Mr. James M. Brinson for the Commission.

Mr. Stephen A. Day, of Chicago, Ill., and *Mr. Eugene L. Culver*, of Washington, D. C., for respondent.