

IN THE MATTER OF

J. MERRELL REDDING, DOING BUSINESS AS
ETHYL GAS COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1778. Complaint, Mar. 31, 1930—Decision, May 6, 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,

- (a) Designated, advertised, and labeled the aforesaid fluid as "Ethyl Gas" and "Ethyl Gas Anti-Knock" and falsely represented the same as an effective antiknock motor fuel, when mixed with gasoline;
- (b) Falsely represented that said Ethyl gas was similar to and gave the same results as the aforesaid Ethyl fluid of said Ethyl Gasoline Corporation of New York and that he was an agent thereof or connected therewith;
- (c) Furnished customers with signs 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 his product to be that of the aforesaid corporation;
- (d) So colored his product that when mixed with gasoline the resulting mixture was similar in coloring to and undistinguishable from the product 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
- (e) Simulated advertising information and instruction publications, and booklets of competitor;

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;

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.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the sale of a fluid for treating motor fuel, alleged to give such motor fuel antiknock properties, with misrepresenting qualities, nature and identity of product, mis-

branding or mislabeling same in said respects, misrepresenting business status or affiliations, and simulating advertisements and products of competitors, and passing off, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged in the sale of a fluid as above set forth, falsely and fraudulently represented and branded his said fluid as "Ethyl Gas" and "Ethyl Gas Anti-Knock," notwithstanding the fact that said fluid was not that product containing Ethyl, well known to the purchasing public for its antiknock properties and sold in interstate commerce by the Ethyl Gasoline Corporation of New York, and was not an antiknock fluid and did not, mixed with gasoline, produce antiknock gasoline, and falsely and fraudulently represented or caused to be represented his said product as (1) a treater of gasoline which, mixed therein, improved the antiknock properties thereof, and produced in effect antiknock motor fuel, (2) similar to the "Ethyl Fluid" of the Ethyl Gasoline Corporation of New York, sold and distributed throughout the several States to improve antiknock properties of motor fuels, and (3) similar to and giving the same results as Ethyl gasoline motor fuel, containing the aforesaid Ethyl fluid, and (4) the Ethyl Gas Co., trade name employed by him, as agent of or connected with aforesaid Ethyl Gasoline Corporation of New York.

Respondent further, in connection with the sale and distribution of his said product has simulated (1) signs of distributors or sellers of motor fuels, and furnished said simulating signs to distributors or sellers for use on their gasoline pumps, (2) coloring of motor fuels known to the public as having antiknock properties, and (3) advertisements, including booklets and other literature prepared and distributed by sellers or distributors of motor fuels, known to the public as having antiknock properties.

Said alleged acts and practices, as charged, have the capacity and tendency to and do cause retail distributors and ultimate purchasers of motor fuels to purchase respondent's said product as and for a product giving motor fuel with which is mixed an antiknock property, and to purchase motor fuels or gasoline containing respondent's said product as and for antiknock motor fuels or gasoline sold by other distributors or sellers; all to the prejudice of the public and of respondent's competitors and distributors, and sellers of motor fuels, and constituting unfair method of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint the Commission made the following

REPORT, FINDINGS 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, J. Merrell Redding, an individual doing business under the name and style of Ethyl Gas Co., 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, in accordance with Rule III (2) of the Commission's Rules of Practice, expressly refraining 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.

Pursuant to the said mentioned rule of the Commission and being fully advised in the premises, the Commission now makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent, J. Merrell Redding, 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 Ethyl Gas Co. 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 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 States of the United States other than the State of Texas. In the course and conduct of his business 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 "Ethyl Gas" and "Ethyl Gas Anti-Knock," 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, J. Merrell Redding, adopted the trade names "Ethyl Gas" and "Ethyl Gas Anti-Knock," the Ethyl Gasoline Corporation of New York was and had 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 product has made numerous statements and representations to the effect:

(a) That Ethyl Gas 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 Ethyl Gas was similar to Ethyl Fluid, a product of the Ethyl Gasoline Corporation of New York.

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

(d) That the Ethyl Gas Co. was an agent of or connected with the Ethyl Gasoline Corporation of New York.

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) Ethyl Gas, when in fact the mixture or compound did not contain Ethyl and was not in fact the product of the Ethyl Gasoline Corporation, which product of the Ethyl Gasoline Corporation was well known to the purchasing public and was being and had been sold in interstate commerce by the Ethyl Gasoline Corporation of New York.

(b) Ethyl Gas Anti-Knock, when in fact the product of the respondent was not an effective antiknock fluid or motor fuel and did not when mixed with gasoline produce an antiknock gasoline.

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 signs to be placed on gasoline pumps similar to the signs 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 a product of the Ethyl Gasoline Corporation of New York.

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(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 the advertising, including booklets and other literature prepared, distributed, and circulated by 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 mixed with gasoline or motor fuels and 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, J. Merrell Redding, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and to respondent'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, J. Merrell Redding, 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, J. Merrell Redding, 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, J. Merrell Redding, individually and doing business as Ethyl Gas 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 "Ethyl Gas" and "Ethyl Gas Anti-Knock" for use in treating motor fuel and gasoline, do cease and desist:

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

(2) From using the word "Anti-Knock" or any other 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 selling, leasing, or otherwise furnishing to dealers, signs for gasoline pumps similar in color, dress or general appearance to the signs for gasoline pumps furnished dealers by distributors or sellers of motor fuel or gasoline.

(4) 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, J. Merrell Redding, individually and doing business as Ethyl Gas 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.

IN THE MATTER OF
TAILOR-MADE SHOE SYSTEM, WILLIAM GINSBURG,
AND SAM GINSBURG

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

Docket 1562. Complaint, Feb. 18, 1929—Decision, May 12, 1930

Where a corporation engaged in the sale of shoes direct to the wearers through advertisements in newspapers, periodicals, and circulation of catalogues, leaflets, and other literature, and through agents supplied with catalogues, and other matter, who solicited orders, took measurements of the customer's foot, and transmitted measurements and orders to said corporation to be by it filled from its stock of ready-made shoes; and under the management of two individuals, president, and secretary and treasurer thereof, respectively, and principal stockholders therein, theretofore engaged in the conduct of a business identical in character and operation;

- (a) Employed the corporate name "Tailor-Made Shoe System", notwithstanding the fact that it neither made the shoes sold by it nor had an interest in any shoe factory, with the tendency and capacity to mislead and deceive the public and prospective customers into believing it to be the owner and operator of a shoe factory, eliminating profits of the middleman and enabling purchasers to obtain a special advantage in price;
- (b) Designated its shoes as "tailor-made shoes" and through such statements as "The scientific tailor-made way of fitting shoes to six actual foot measurements eliminates all possibility of imperfect fit", " * * * we use Ohio patent leather in making the Cadet", " * * * unlike most companies we have put into these (work) shoes careful workmanship and construction so that they will stand up", etc., and through other methods falsely represented itself as manufacturer of the shoes offered by it;
- (c) Depicted a large building upon the covers of its catalogues and a workman cutting leather while looking at an order for "tailor-made shoes"; and
- (d) Represented that it had over 800,000 satisfied customers and was the largest concern of its kind in the world, notwithstanding the fact that many competitors were larger, and in some cases incomparably larger, both in number of customers and volume of sales;

With the capacity and tendency to deceive the purchasing public and induce the purchase of its merchandise in reliance upon the truth of the aforesaid representations and in the belief that they were dealing directly with the manufacturer and thereby obtaining shoes at prices substantially lower than those charged by nonmanufacturing shoe dealers:

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

Mr. Alfred M. Craven for the Commission.

Mr. Maurice M. Loman, of Chicago, Ill., for respondents.