

Syllabus

IN THE MATTER OF

WHIRLWIND CARBURETOR CO., ALSO TRADING AS
WHIRLWIND MANUFACTURING CO., ELLING O.
WEEKS, INDIVIDUALLY AND AS PRESIDENT AND
TREASURER OF WHIRLWIND CARBURETOR CO., AND
P. C. SORENSON, INDIVIDUALLY AND AS SECRETARY
OF WHIRLWIND MANUFACTURING CO.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 1931. Complaint, Mar. 27, 1931¹—Decision, Nov. 12, 1931

Where a corporation engaged in the manufacture of a so-called "Whirlwind Vaporizer" for automotive use, and in the manufacture, and sale thereof, by mail and through agents; and two individuals, organizers, and president and treasurer, and secretary, thereof; in conducting the business in question through circular letters, leaflets, newspapers, and magazine advertisements,

- (a) Made such statements as "450 miles on a gallon of gas," in large display type, with explanatory matter in much smaller type, to effect that, as claimed, a gallon of gas contained sufficient energy, converted 100 per cent, to run a 4-cylinder car such distance, and that device in question, a "new gas saving invention," which "astonishes car owners," was producing mileage tests "that seem unbelievable," as well as creating more power, giving instant starting, quick pick-up and eliminating carbon; and
- (b) Made such statements as "Over the mountains from Los Angeles 559 miles on 11 gallons of gas. Think of it! * * * imagine more than 50 miles to the gallon. That is what the Whirlwind * * * does * * * Enough of a saving on just one trip to more than pay for the Whirlwind. * * * Saves motorists millions of dollars yearly. Car owners all over the country are saving money every day with the Whirlwind besides having better operating motors * * *," "From nature the Whirlwind secures a scientific principle and with it develops amazing power from ordinary gasoline," "works on an entirely new principle utilizing a portion of the 95 per cent (wasted energy in gasoline)," "vaporizes waste gas," "found by actual tests to increase gasoline mileage from 25 per cent to 50 per cent," "60 miles on a gallon," "smoother running motor," "bus driver saves 50 per cent," "more power in mileage," "cuts gas costs one-third," "starts motor instantly," "power on hills," "four runs like a six," "quick get-away," "more pep and speed," and others of similar tenor, and "salesmen make \$100 a week and over";

Facts being that no way had been found to bring about such conversion as aforesaid referred to, said statement was likely to prove very deceptive to casual reader perusing only the large type, and statements as to mileage were based upon letters received and accepted without corroboration, and that while device might bring about improvement in some respects at expense of general engine performance, it brought about very little improvement in general engine performance, and no such increase as from 25 to 50 per

¹ Amended as to the names only.

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cent in mileage from a given quantity of gasoline, did not prevent accumulation of carbon, could not correct any vaporization evils with manifold and induction system ordinarily used in automobile engines, did not add to speed, power, smoothness, or economy of operation of any automobile motor to anything like extent claimed, and various representations, statements, and claims made were not supported by scientific tests and measurements, and were grossly exaggerated, false and misleading;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of device in question, and a tendency unfairly to divert trade from competitors to it:

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

Mr. PGad B. Morehouse for the Commission.

Mr. John A. Nash, of Chicago, Ill., 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 corporation, engaged in the manufacture and sale of its so-called Whirlwind Vaporizer, for attachment between carburetor and intake manifold of motor, and respondent individuals, officers of respondent corporation, all of Milwaukee, with advertising falsely or misleadingly, as to results and success of product and compensation or awards of agents, 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, make numerous false and misleading representations in circular letters, leaflets, etc., as to the mileage accomplished through use of such device, increased speed and power, freedom from carbon, etc.,¹ and further set forth in their advertising that salesmen and distributors are "wanted to make up to \$100 weekly," facts being claims in question as to extravagant mileage, elimination of repair expenses, etc., are "grossly exaggerated, misleading and false, and are not supported by scientific tests or measurements by experts," and use of device, as directed, "does not add in any appreciable degree to the speed, power or smoothness" of the motor, nor save repair expenses, eliminate or reduce carbon, etc., and "respondents do not pay agents \$100 a week, but instead sell any person in lots of a certain number, the said device at a less price than \$4 each, for the purpose of resale at a

¹ Various representations or substantially all the various representations, quoted from the respondent's advertising and alleged in the complaint, are set forth *infra*, in the findings, at page 355.

profit, and if such person sells a sufficient number of said devices at such profit he earns that profit regardless of the time period or amount."

Said representations, statements, and claims above set forth are grossly exaggerated, misleading and false and have the "tendency, and operate to mislead and deceive purchasers and prospective purchasers of respondents' device into the erroneous belief that the purchase and use of said device in accordance with directions, will result in a great saving in gasoline expense and add to the speed and power of their automobiles; that it will save repair expense and eliminate, reduce, or clean out carbon deposits, and that it will increase smoothness of operation, and respondents' representations to prospective agents of \$100 a week is calculated, has a tendency, and operates to mislead and deceive prospective agents into the erroneous belief that respondents will pay wages or salary of \$100 a week"; all to the prejudice of the public, and of respondent's competitors.

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 respondents Whirlwind Carburetor Co., a corporation, also trading as Whirlwind Manufacturing Co., Elling O. Weeks individually and as president and treasurer of Whirlwind Carburetor Co., and P. C. Sorenson, individually and as secretary of Whirlwind Manufacturing Co., charging them with the use of unfair methods of competition in violation of the provisions of said act.

Respondents filed their joint and several answers and the case was set down and testimony taken in due course before an examiner of the Commission. Respondents offered no testimony on their behalf and stipulated and agreed that the Commission might thereupon proceed to make its report, state its findings as to the facts, make its conclusion based thereon, and enter its order disposing of the proceeding without presentation of argument or filing of briefs.

Thereupon this proceeding came on for final hearing upon the complaint, answer and record of evidence, and the Commission having duly considered the record, and being fully advised in the premises, makes this its report stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Elling O. Weeks and P. C. Sorenson caused to be organized and for five years last past have directed, managed and carried on the business of Whirlwind Carburetor Co., a corporation existing under the laws of the State of Wisconsin, with principal office and place of business in the city of Milwaukee, State of Wisconsin. Mr. Weeks is president and treasurer of said corporation and P. C. Sorenson is the secretary. One "E. Oliver" was named as respondent, but the evidence developed that this was merely an artificial name used sometimes in the corporate business by Mr. Weeks, whose middle name is Oliver. The said corporation sometimes carries on business also under the name and style of Whirlwind Manufacturing Co. The business in which respondents are, and for more than two years last past have been engaged, is the manufacture of and sale by mail and through agents of a certain mechanical device designated as Whirlwind Vaporizer for attachment between the carburetor and intake manifold of any automobile motor. On said device are four grooved depressions for the induction of air from four different directions into the mixture stream for the purpose of imparting a rotary motion thereto, with the purposes, as claimed by respondents, of increasing the mileage to be obtained with a given quantity of gasoline and generally to improve the performance of the motor to which such device is attached. Respondents, and each of them, cause such devices when sold to be transported to the respective purchasers thereof from Milwaukee in the State of Wisconsin through and into various other States in the United States and to foreign countries, and in the course and conduct of their said business they have been and are now in active competition with various persons, partnerships, and corporations also engaged in the manufacture and sale, or sale and distribution, in interstate commerce of other automotive devices and carburetor attachments designed for similar purposes.

PAR. 2. In the course and conduct of their business as aforesaid, by circular letters, leaflets, newspaper, and magazine advertising published and circulated throughout the United States, respondents represent and have represented that said device, when installed and used in accordance with instructions, adds to the speed and power and increases the smoothness of operation of the motor, saves repair expense, clears out carbon, and increases by 25 per cent or more the mileage to be obtained from a gallon of gasoline. Said advertising contains, among others, the following claims and statements:

Over the mountains from Los Angeles 559 miles on 11 gallons of gas. Think of it! 559 miles over rough mountainous country burning only 11 gallons of gasoline. Imagine more than 50 miles to the gallon. That is what the Whirlwind carbureting device does for D. R. Gilbert, enough of a saving on just one trip to more than pay the cost of the Whirlwind. *The Whirlwind saves motorists millions of dollars yearly.* Car owners all over the country are saving money every day with the Whirlwind besides having better operating motors. Salesmen and distributors wanted to make up to \$100 weekly.

450 miles on a gallon of gas. There is enough energy in a gallon of gasoline if converted 100 per cent mechanical energy to run a 4-cylinder car 450 miles. *New gas saving invention astonishes car owners.* * * * Has accomplished wonders in using a portion of this waste energy and is producing mileage tests that seem unbelievable. Not only does it save gasoline but it also creates more power, gives instant starting, quick pick-up and eliminates carbon. *Free sample and \$100 a week.* * * * Write to-day to E. Oliver, president.

From nature the Whirlwind secures a scientific principle and with it develops amazing power from ordinary gasoline.

105 miles on 3 gallons of gas in 1925 Ford.

48 miles on 1 gallon of gas, Chevrolet coupe.

30 miles per gallon with Whirlwind on Dodge.

Increase of 18 to 28 miles per gallon with Whirlwind.

Increase of 15 to 23 miles per gallon with Whirlwind.

25 to 50 per cent increase. The Whirlwind carbureting device is working on an entirely new principle utilizing a portion of the 95 per cent (wasted energy in gasoline), picking up the otherwise wasted particles of gasoline, whirling and churning them into a vaporized fuel that gives from 25 to 50 per cent increase in mileage, quicker pick-up, instant starting, smoother running, and reduces carbon formation.

Has been found by actual tests to increase gasoline mileage from 25 to 50 per cent.

Mileage gain of 48 per cent on 1926 Hudson.

60 miles on a gallon.

Smoother running motor.

Bus driver saves 50 per cent.

More power in mileage.

Cuts gas costs one-third.

Power on hills.

Starts motor instantly.

Doubled mileage.

Four runs like a six.

Quick get-away.

More pep and speed.

The power of Whirlwind stops waste—vaporizes waste gas—25 to 50 per cent saving in gas—price in U. S. A. and in Canada, complete, \$4.

PAR. 3. Respondents have made some recent revisions in the advertisements and advertising matter used by it, but the most noticeable change so made was to change the statement of the amount of money agents selling the device might make. The original claim was that such agents made \$100 a week and over, and as changed, the

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claim reads, Up to \$100 a week. All advertisements which contained statements of mileage obtained by users of the device were based upon letters received from such users. The originals of two such letters were put in evidence. Respondent has never undertaken to verify any of the statements contained in such letters, but has accepted such statements as true without any corroboration.

The device described in paragraph 1 hereof was invented by the respondent, Elling O. Weeks, and application has been made to have such device patented. The inventor testified at length herein concerning his conception of the functions of the device, what it might accomplish, and the manner in which it produced the results claimed for it. Respondent distributes productions of such device through agents, who buy such devices outright from respondent and resell same direct to users of automobiles. In all about 2,000,000 of such devices have been so sold. Sales are made on an agreement to refund the purchase price if the purchaser finds the device to be unsatisfactory within 30 days. Refunds have been made under this agreement to about 7 per cent of the purchasers.

Testimony was given by three witnesses who had operated automobiles with respondent's device attached. One testified that the mileage obtained with 1 gallon of gasoline, with the automobile used by him, without the device was 10 to 12 miles, and with the device attached, 12 or 13 miles or more, and that the use of the device otherwise increased the efficiency of the engine. Another testified that with the device attached to the car operated by him he obtained an average mileage of 18.75 miles per gallon of gasoline, and without the device an average of 17.1 miles, but stated that he was unable to detect any improvement in the smoothness with which the engine performed when the device was attached. Another testified that the mileage obtained by him with an automobile to which the device was attached was increased from 16 miles to 18 miles, and that the speed, pick-up, and smoothness of operation was increased by the use of the device and the accumulation of carbon was lessened. David Levine, of Cleveland, Ohio, testified that in the summer of 1930 he obtained two of the devices from the respondent and after a practical test found that the use of such devices resulted in decreased power, mileage, and pick-up of the automobiles to which they were attached, and that such devices were returned to respondent and the purchase price refunded.

In May, 1931, one of the respondent's devices was given to the U. S. Bureau of Standards for the purpose of having same tested. It was installed in a Ford Model I A engine on test blocks connected with an electric dynamometer in the laboratory of the bureau. The

installation was made in accordance with the printed instructions which accompanied the device. Test runs of the engine were made, both with and without the device, and comparisons were made as to the accumulation of carbon, and it was ascertained that while very little difference could be detected, there was a very slight increase of carbon when the device was attached. Other tests were made to ascertain maximum power and for economy in the way of a saving in gasoline consumption. The tests made showed that the power developed with the device attached was slightly less than that developed with the same engine under like conditions without the device and that the use of the device did not result in any saving in gasoline consumption. These differences in the results obtained both with and without the device were so small that they could be considered as being well within experimental error.

PAR. 4. The Commission finds that under certain conditions the device might appear to have some merit, but that generally, when attached to an automobile motor, it brings about very little improvement in the general performance of the engine and in no case results in an increase of from 25 to 50 per cent in the mileage from a given quantity of gasoline; that it does not prevent completely the accumulation of carbon; that with the manifold and induction system generally in use in automobile engines, it is impossible for respondent's device in itself, to correct any vaporization evils. That the theories advanced by respondents concerning the reasons for pick-up, quick starting, and that carbon results from the presence of unburned liquid fuel and oil in the combustion chamber are true; that if the re-mixing and turbulent action of the fuel mixture is accomplished by the device, as claimed, it will undoubtedly result in increased mileage, power, pick-up and quick starting, and to some extent lower the rate of carbon formation, but that the device will only help conditions when the engine is equipped with poorly designed carburetor, or by a chain of fortuitous circumstances; that it might bring about improvement in performance at some points, at the expense of the general engine performance.

The Commission finds that respondents' advertisements which are headed "450 miles on a gallon of gasoline" in large display type, while followed by an explanation in much smaller type to the effect that some person has made the claim that there is enough energy in 1 gallon of gasoline, if converted 100 per cent into mechanical energy, to run a 4-cylinder car 450 miles is likely to prove very deceptive if the casual reader should only read the lines printed in the large type and not take time to read the explanatory matter in smaller type.

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No way has been found to convert gasoline into 100 per cent mechanical energy.

The advertisement headed "Over the mountains from Los Angeles on 11 gallons of gas," is based upon a letter, the truth of the contents of which respondents made no effort to verify.

PAR. 5. The Commission finds that the representations, statements, and claims hereinabove set forth in paragraph 2 hereof are grossly exaggerated, false and misleading; they are not supported by scientific tests or measurements and the installation and use of the said device as directed does not add to the speed, power, or smoothness, or economy of operation of any automobile motor to anything like the extent claimed for it by respondents in their advertising above referred to.

PAR. 6. The foregoing statements, representations, and practices of respondent, and each of them have had and do have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of the aforesaid device and have a tendency unfairly to divert trade from competitors of respondents to respondents.

CONCLUSION

The practices of the said respondents under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondents' competitors, are unfair methods of competition in 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, the answer of the respondents thereto and the testimony taken in due course before an examiner of the Commission and respondents' exceptions, and respondents having waived the filing of briefs and oral argument and the Commission having made its findings as to the facts and its conclusion that the respondents have 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 now ordered, That the respondents, Whirlwind Carburetor Co., a corporation also trading under the name and style "Whirlwind Manufacturing Co.," Elling O. Weeks, individually and as president and treasurer of the Whirlwind Carburetor Co., and P. C.

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Sorenson, individually and as secretary of the Whirlwind Carburetor Co., and each of them as well as their agents and employees, in soliciting the sale of and selling, and advertising their product in interstate commerce, and as a means of securing the services of salesmen or agents to purchase and sell or resell their product known as the Whirlwind Vaporizer, do cease and desist from making the following statements or representations:

1. Over the mountains from Los Angeles 559 miles on 11 gallons of gas. Think of it! 559 miles over rough mountainous country burning only 11 gallons of gasoline. Imagine more than 50 miles to the gallon. That is what the Whirlwind carbureting device does.

2. *The Whirlwind saves motorists millions of dollars yearly.* Car owners all over the country are saving money every day with the Whirlwind besides having better operating motors.

3. *450 miles on a gallon of gas,* unless the explanation to the effect that some person has claimed that there is enough energy in 1 gallon of gasoline if converted 100 per cent into mechanical energy to run a 4-cylinder car 450 miles is printed so as to be equally conspicuous.

4. Is producing mileage tests that seem unbelievable.

5. Eliminates carbon.

6. Salesmen make \$100 a week and over.

7. Develops amazing power from ordinary gasoline.

8. 105 miles on 3 gallons of gas in 1925 Ford.

9. 48 miles on 1 gallon of gas, Chevrolet.

10. 30 miles per gallon with Whirlwind on Dodge.

11. Increase of 18 to 28 miles per gallon with Whirlwind.

12. Increase of 15 to 23 miles per gallon with Whirlwind.

13. Gives from 25 to 50 per cent increase in mileage.

14. Has been found by actual tests to increase gasoline mileage from 25 to 50 per cent.

15. Mileage gain of 48 per cent on 1926 Hudson.

16. 60 miles on a gallon.

17. Bus driver saves 50 per cent.

18. Cuts gas costs one-third.

19. Doubled mileage.

20. Four runs like a Six.

21. *The power of Whirlwind stops waste*—vaporizes waste gas—25 to 50 per cent saving.

It is further ordered, That respondents aforesaid, in soliciting the sale of, selling, and advertising their said product in interstate commerce, do cease and desist from the use of all other like or similar statements and representations of untrue import or effect.

It is further ordered, That the said respondents, within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

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IN THE MATTER OF

ALEXANDER-MARTIN COMPANY, A. H. MARTIN,
AND W. R. ALEXANDERCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1926. Complaint, Mar. 11, 1931—Order, Nov. 14, 1931*

Consent order requiring respondent corporation and respondent individuals to cease and desist from representing, in connection with sale of ready-made clothing dealt in by them, that same is tailor made or specially made to order; and from falsely representing that two suits are offered and sold at or for the price of one, that purchasers will have inspection privilege before paying balance due, when in fact shipments made C. O. D. without such privilege; and that full refund will be made in accordance with guarantee of fit and satisfaction; all as in said order set forth and qualified.

Mr. PGad P. Morehouse for the Commission.

Dilley & Dilley, of Grand Rapids, Mich., for respondents.

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 Alexander-Martin Co., and A. H. Martin and W. R. Alexander, individuals, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Alexander-Martin Co. is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in the city of Grand Rapids in said State. It is engaged in the business of selling ready-made clothing direct to the public through agents or salesmen who canvass the public as hereinafter set forth. It causes its merchandise when thus sold to be transported from its principal place of business in the State of Michigan into and through other States of the United States to the purchasers thereof located in said other States of the United States. In the course and conduct of its said business respondent corporation is in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of men's clothing, both ready-made and custom-made, in