

Complaint

IN THE MATTER OF

J. MERRELL REDDING INDIVIDUALLY AND TRADING
AS THE NIX-NOX COMPANY

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

Docket 1983. Complaint, Feb. 6, 1932¹—Decision, Apr. 25, 1932

Where an individual engaged in sale of its so-called "Nix-Nox Fluid" for automotive use, falsely represented and advertised that said product mixed with gasoline in proportion of one part to a thousand would increase power, permit operation on a leaner mixture, and increase mileage considerably; with result of misleading and deceiving dealer purchasers and consuming public to whom such representations were repeated by said dealer purchasers, into believing same to be true, inducing purchase of product in question in reliance on such belief, and diverting trade from and otherwise injuring competitors of said individual, and with capacity and tendency so to mislead, deceive and divert:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice and injury of the public and competitors and to the detriment and restraint of fair and legitimate competition in industry concerned, and constituted unfair methods of competition.

Mr. Henry C. Lank for the Commission.

SYNOPSIS OF COMPLAINT ¹

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged under his own name and also as aforesaid, in sale of a fluid for mixing with gasoline for automotive use, and with principal place of business in Dallas, Tex., with misrepresenting results of product and advertising falsely or misleadingly in said respect, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce; in that respondent falsely represented that his said product, mixed with gasoline in certain proportions for automotive use will increase power and permit operation on a leaner mixture, and increase mileage considerably if the carburetor is cut down, and printed and distributed advertisements containing such false representations and statements; with effect of misleading and deceiving dealer purchasers into believing said representations to be true, inducing their purchases in reliance upon such erroneous belief, and diverting trade from and otherwise injuring competitors, and of also misleading

¹ Amended.

Findings

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and deceiving consuming public into believing representations of similar tenor repeated to them by dealer purchasers thus misled, to be true, and thereby inducing purchase of mixture containing product in question, and with capacity and tendency so to mislead and deceive dealer purchasers of said product, and the consuming public and so to divert trade; to the prejudice and injury of the public and competitors, from whom trade is thus unfairly diverted, and to the restraint and detriment of free, fair, and legitimate competition in the motor fuel industry concerned.

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 on October 28, 1931, issued its complaint and thereupon served the same as required by law upon J. Merrell Redding, individually and trading under the name and style, The Nix-Nox Co., and on February 6, 1932, issued its amended complaint and thereupon served the same as required by law upon J. Merrell Redding, individually and trading under the name and style, The Nix-Nox Co., in which amended complaint it was charged that the respondent was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act. By notice contained in said amended complaint respondent was notified and required within thirty days from the day of service, unless said time be extended by order of the Commission, to file with the Commission an answer to said amended complaint; and in said notice respondent was further notified of the provisions of the Commission's rules of practice with respect to answer and failure to answer said provision being set forth in haec verba in said notice and providing in part as follows (Rule III, sub. div. 3):

(3) Failure of the respondent to appear or to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

Respondent has not at any time caused his appearance to be entered in this proceeding nor has he during the said thirty-day period specified in said notice, or at any time, made or filed answer to said amended complaint. He has at no time required that the time within which he may file answer be extended, nor has the commission granted any such extension of time.

Thereupon this proceeding came on for final hearing; and the Federal Trade Commission, acting pursuant to said act of Congress and its aforesaid rules of practice, having duly considered the record and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The said respondent, J. Merrell Redding, is an individual and has maintained a place of business in the city of Dallas, State of Texas. The said respondent for more than one year last past has been engaged in the sale in interstate commerce among the several States of the United States under his own name and under the trade name and style, The Nix-Nox Co., of a fluid for mixing with gasoline when the gasoline is to be used as a motor fuel, which fluid respondent has sold under the name Nix-Nox Fluid. Respondent has sold and distributed his said product to persons, firms, and corporations located in various States of the United States dealing in motor fuels and gasoline and the said dealer purchasers in turn have resold the said product after mixing it with gasoline to the consuming public. The said respondent has caused his said product when sold by him to be transported in interstate commerce from the city of Dallas in the State of Texas to the purchasers thereof located at various points in States of the United States other than the State of Texas. In the course and conduct of his said business said respondent has been in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of fluids for treating gasoline when the gasoline is to be used as a motor fuel so as to increase the power and allow the motor to operate on a leaner mixture. And respondent has also been in competition with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of motor fuels which increase the power and allow the motor to operate on a leaner mixture than is possible with untreated gasoline.

PAR. 2. The said respondent in connection with the sale of his product in interstate commerce has made numerous statements and representations that his said product Nix-Nox Fluid is to be mixed with gasoline, and that when one part of his said product Nix-Nox Fluid is mixed to 1,000 parts of gasoline and used as a motor fuel that Nix-Nox Fluid increases the power and allows the motor to operate on a leaner mixture, and if the carbureter is cut down the mileage is increased considerably. These statements and representations are false and said fluid when mixed with gasoline and used

Conclusion

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as a motor fuel does not increase the power and does not allow the motor to operate on a leaner mixture and the carburetor can not be cut down so as to furnish a leaner mixture by reason of the addition of Nix-Nox Fluid to the gasoline and the mileage is not thereby increased considerably.

PAR. 3. The said respondent has had printed advertisements containing all of the above representations and statements and for more than one year last past has caused said printed advertisements to be distributed to purchasers and prospective purchasers of his said product located in various States of the United States. The above stated representations and statements of respondent by means of which he has offered for sale and sold his said product are false and have had the capacity and tendency to mislead and deceive and have misled and deceived the dealers purchasing his product into the belief that the said representations were true and have the tendency to induce and have induced the purchasers of respondent's product to purchase the same in reliance upon such erroneous belief and have tended to divert trade from and have diverted trade from and otherwise injured competitors of respondent.

PAR. 4. The dealers who have purchased respondent's product Nix-Nox Fluid have mixed the same with gasoline in accordance with the directions of respondent and have sold the resulting mixture to the consuming public as a motor fuel. The said dealers in reliance upon the above mentioned representations and by means of the printed advertisements have sold the said resulting mixture to the consuming public under the false representations and statements made to them by the respondent that the said resulting mixture increases power and allows the motor to operate on a leaner mixture and if the carburetor is cut down the mileage is increased considerably. The above false representations and statements have had and have the capacity and tendency to mislead and deceive and have misled and deceived the consuming public into the belief that the said representations and statements were true and have the tendency to induce and have induced the purchase of the said resulting mixture containing respondent's product in reliance upon such erroneous belief.

CONCLUSION

The practices of said respondent, J. Merrell Redding, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon and a detriment to the freedom of fair and legiti-

mate competition in the motor fuel industry 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 record, and the Commission having made its report in which it stated its findings as to the facts and conclusion that respondent, J. Merrell Redding, individually and trading as The Nix-Nox Co. has 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 respondent, J. Merrell Redding, his agents, servants, and employees in connection with the advertising, offering for sale or sale in interstate commerce of his product, which respondent describes and designates Nix-Nox Fluid, do cease and desist:

From representing or causing to be represented that his said product when mixed with gasoline and used as a motor fuel increases the power of the motor and allows the motor to operate on a leaner mixture and from representing or causing to be represented that the carbureter can be cut down by reason of the addition of respondent's product and the mileage is thereby increased considerably, or from making any such representations, either directly or indirectly, by any other word or words or statements of like import, unless and until respondent's said product actually contains properties which when mixed with gasoline and used as a motor fuel increases the power of the motor and allows the motor to operate on a leaner mixture and enables the carbureter mixture to be made leaner by reason of the addition of respondent's said product and thereby increasing the mileage.

It is further ordered, That the respondent, J. Merrell Redding shall, within 60 days after the service upon him of a copy of this order, file with the Federal Trade 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 herein above set forth.

IN THE MATTER OF
CRESCENT CREAMERY COMPANY

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

Docket 1984. Complaint, Oct. 29, 1931—Order, Apr. 25, 1932

Consent order requiring respondent corporation, its agents, etc., to cease and desist, in aid or furtherance of production, sale, and distribution of butter in interstate commerce, from representing, publishing, etc. (a) any false and defamatory statements purporting to describe manufacture, sale, or composition of oleomargarine; (b) matter or information stating said product, or cocoanut oil contained therein, is foul, insanitary, etc., or unfit for human consumption, or (c) that sale of said product is a rich man's graft, or false information concerning cost of materials used in manufacture thereof; all as in said order more specifically set forth.

Mr. PGad B. Morehouse for the Commission.

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 Crescent Creamery Co., a corporation, hereinafter referred to as respondent, has been and is now 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. The respondent, Crescent Creamery Co., is a corporation organized and existing under the laws of the State of South Dakota and has its office and principal place of business at 801 North Main Street, in the city of Sioux Falls, State of South Dakota. Said corporation is now, and for more than two years last past, has been engaged in the manufacture, sale, and distribution of butter, which when manufactured or produced is shipped and transported from its principal place of business in the State of South Dakota in, into, and through the States of Iowa, Minnesota, and various other States of the United States to retailers, produce dealers and other customers located therein for delivery and resale to the ultimate consumer. In the course and conduct of the corporate business as aforesaid respondent is and has been in competition over a coextensive area with other individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce of oleomar-