

Complaint

IN THE MATTER OF

EXPORT PETROLEUM COMPANY OF CALIFORNIA, LTD.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AS EXTENDED BY THE PROVISIONS OF SEC. 4 OF AN ACT OF CONGRESS APPROVED APR. 10, 1918

Docket 1969. Complaint, Sept. 22, 1931—Decision, Nov. 14, 1932

Where a corporation engaged in exportation of gasoline in cases containing two standard-size, 5-gallon capacity cans, generally recognized by trade and purchasing public as having such a capacity and usually so filled for export sale,

Pursued a general policy of filling such cases for export at the rate of 9.6 gallons per case or in less than 10-gallon quantities, and sold said product to wholesalers and retailers, correctly invoiced as to quantity, but in afore-said containers and cases with such marks as "2/5 gallon tins" or "5 U.S. gallons" or words of similar import, or with no indication of quantity, for resale to ultimate consumer by the case or can;

With result of placing in the hands of retailers and ultimate sellers an instrumentality enabling them to defraud consumers or other buyers through selling said cases and cans as and for those holding 10 full gallons, and 5 gallons, respectively, or by causing the consumer or buyer to purchase said containers as and for those filled to standard capacity, and with a tendency to divert export trade to it from competitors who did not follow such practice:

Held, That such practices, under the circumstances set forth, were all to the injury and prejudice of the public and competitors, and constituted unfair methods of competition in export trade, in violation of the provisions of section 5 of the Federal Trade Commission Act, as extended by section 4 of the Export Trade Act.

Mr. Harry D. Michael for the Commission.

Bailie, Turner & Lake, of Los Angeles, Calif., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, as extended by the provisions of section 4 of the Export Trade Act, the Commission charged respondent, a California corporation engaged in the business of exporting gasoline and kerosene, and with principal place of business in Los Angeles, with misrepresenting unit quantities and misbranding or mislabeling, in violation of the provisions of section 5 of said first named act, prohibiting use of unfair methods of competition in interstate commerce, as extended by section 4 of said last named act.

Respondent exporter sells his said product to jobbers, wholesalers and retailers abroad for ultimate resale to the consumers, in unit

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quantities of 9.6 gallons or less, containered in standard two 5-gallon can cases, both with and without such labels on said standard cans or tins, and cases, as "5 U.S. gallons" or "2/5 gallon tins", as the case might be, or words of similar import, and, while indicating liquid content to his original purchasers, quotes and charges by the case, in selling as aforesaid; notwithstanding fact aforesaid standard tins, generally used in export trade, have come to be accepted as having capacity for and as containing 5 full U.S. gallons, and said standard cases similarly as containing 10 full U.S. gallons, containered in two standard 5-gallon tins as aforesaid.

Respondent thereby, as alleged, places in the hands of retailers and others, who resell to ultimate consumers by the can or case in the original package, in accordance with usual custom, an instrumentality enabling and encouraging them to commit a fraud upon the consumers or other buyers through enabling them to sell said cases or tins, as and for those holding 10 or 5 full gallons, as the case may be, or through causing such consumers or buyers to purchase such cases and cans under aforesaid misapprehension and respondent is thereby enabled to undersell competitors who fill their containers to standard capacity, in export trade, in accordance with the general custom.

Complaint alleges that the aforesaid practice of respondent "tends to and does divert export trade to respondent" from its competitors, and "has a tendency to bring American trade into disrepute with the general buying public in foreign countries and affects generally and adversely the reputation and good will enjoyed by such other exporters of and in the United States who compete with respondent in foreign commerce and who fill their containers as aforesaid to standard capacity", and charges "that the above alleged acts and practices of respondent have been and are to the prejudice and injury of the public and of respondent's said competitors and constitute unfair methods of competition in export trade 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, as extended by section 4 of an act of Congress entitled 'An act to promote export trade, and for other purposes', approved April 10, 1918".

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 Commis-

sion, to define its powers and duties, and for other purposes", as extended by section 4 of an act of Congress approved April 10, 1918, entitled "An act to promote export trade and for other purposes", the Federal Trade Commission issued and served its complaint upon respondent, Export Petroleum Co. of California, Ltd., a corporation, charging said respondent with the use of unfair methods in export trade in violation of the provisions of section 5 of said first named act as extended by section 4 of said last named act.

Respondent having entered its appearance and filed its answer to said complaint, a stipulation as to the facts in lieu of testimony was agreed upon by and between Robert E. Healy, chief counsel for the Federal Trade Commission, and said respondent, subject to the approval of said Commission. Said stipulation as to the facts, having been submitted to said Commission, the same was thereafter duly approved.

Therefore, this proceeding came on for final determination on said complaint and answer, said stipulation as to the facts, statement in writing submitted by respondent and oral statement by counsel for the Commission, as provided for and agreed upon in said stipulation, and the Commission having duly considered the matter and being fully advised in the premises makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its principal place of business located in the city of Los Angeles in said State. Respondent is now and has been for several years last past engaged in the business of exporting gasoline and kerosene from the United States to foreign nations, in competition with other corporations, partnerships, firms and individuals, likewise engaged in the business of exporting gasoline and kerosene from the United States to foreign nations.

PAR. 2. In the course and conduct of its said business, respondent causes and has caused its gasoline product to be packed in cases containing two tins or cans of standard size, each can having a shipping capacity of 5 gallons of gasoline, United States measure, with additional air space to allow for gas expansion, which said tins or cans have been and are recognized by the trade and purchasing public to be of 5 gallons capacity, United States measure. Cans of such size are in general use in the sale and shipment of gasoline in export trade and are generally recognized by the trade and pur-

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chasing public as having a capacity of 5 United States gallons of gasoline.

PAR. 3. During the year 1928 and prior thereto respondent pursued the general policy in the shipment and sale of gasoline in export trade of filling such cases at the rate of 9.6 U.S. gallons per case or in other less quantities than 10 U.S. gallons per case. Such practice was continued generally up to and including the month of July, 1929. Thereafter, 1 shipment of 1,000 cases was so packed and invoiced under date of August 17, 1929, 1 shipment of 5 cases was so packed and invoiced under date of January 2, 1930, and several shipments, made from February 27, 1930, to April 10, 1930, were also packed as aforesaid, which said shipments were included in 11 invoices to the same consignee and involved a total of 12,050 cases. In several instances, prior to April 10, 1930, kerosene and other petroleum products were likewise shipped in such containers packed in less quantities than 10 gallons to the case. In some such shipments as aforesaid in which gasoline was packed by respondent in quantities less than 10 United States gallons to the case, the cases were marked "2/5 gallon tins" or words and figures of similar import, in other instances, the cans or tins were marked "5 U.S. gallons" or words and figures of similar import, while in other instances, the tins and cases were plain with nothing thereon to indicate the quantity of the contents thereof. Respondent sold its said products, packed as aforesaid, to wholesalers and retailers in foreign countries for ultimate resale to members of the purchasing public in such foreign countries. It was the usual practice to sell said products to the ultimate consumer by the case or by the can in the original packages marked or plain as aforesaid as the case might be. Respondent caused its said products to be transported from the United States to the original purchasers thereof in foreign countries. In selling such products to the original purchasers thereof, respondent indicated the liquid contents per case on its quotation blanks and invoices but the prices quoted and listed thereon were not by the gallon but by the case.

PAR. 4. There were among the competitors of respondent in export trade during the times covered by said practices of respondent as above set forth those who filled tins or cans of the kind and description aforesaid to the standard capacity of 5 U.S. gallons when selling and shipping gasoline in export trade and such was and is the general practice of the trade. A few competitors of respondent, during said period, followed the practices of respondent as above stated, but not in sufficient number to establish a general practice in the trade. Shipments of short-filled containers as above described

were those to foreign countries other than to British possessions. In shipments to British possessions of gasoline in case lots, such cases are and were packed at the rate of 8 imperial gallons to the case, the same being the equivalent of 9.6 gallons to the case. However, such sales were and are made on the basis of imperial measure content and such content was and is so indicated on invoices and on cases or cans or both.

PAR. 5. Said practice results in placing in the hands of retailers and other sellers of gasoline an instrumentality which enables them to commit a fraud upon the consumers or other buyers by enabling such retailers and other sellers to sell the said cases or cans of gasoline as and for cases or cans of full 10 U.S. gallons or 5 U.S. gallons, respectively, or by causing such consumer or buyer to purchase such cases and cans of gasoline under the misapprehension that they are filled to said standard capacity. The purchasing public in buying gasoline in standard size cans, marked as aforesaid or unmarked as to contents, expect to receive the full measure of 5 U.S. gallons per can or 10 U.S. gallons per case. Said practice of respondent tended to divert export trade to respondent from its said competitors who did not follow such practice, to the injury and prejudice of said competitors.

CONCLUSION

The practice of said respondent, under the conditions and circumstances described in the foregoing findings, are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in export trade 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, as extended by section 4 of an act of Congress entitled "An act to promote export trade, and for other purposes", approved April 10, 1918.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the stipulation as to the facts submitted in lieu of testimony, together with respondent's supplementary statement in writing and oral statement by the attorney for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent has been violating 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

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for other purposes", as extended by section 4 of an act of Congress approved April 10, 1918, entitled "An act to promote export trade and for other purposes",

It is ordered, That respondent, Export Petroleum Co. of California, Ltd., its officers, agents, and employees, in connection with the sale of gasoline in export trade in standard size cans of 5 gallons capacity per can, United States measure, or in cases of two such cans per case, cease and desist from—

1. Marking or labeling such cans "5 U.S. gallons", or with words or figures of similar import, or such cases "2/5 gallon tins", or with words or figures of similar import, unless the gasoline content is, in fact, 5 gallons per can or 10 gallons per case, United States measure.

2. Selling such cans or cases of gasoline when the cans or cases, or both, are so marked as to indicate that they contain such standard capacity, unless such cans are in fact filled to such standard capacity.

3. Selling such cans or cases of gasoline when the cans or cases have nothing thereon to indicate the amount of the liquid contents thereof, unless such cans are in fact filled to such standard capacity.

4. Selling such cans or cases of gasoline when the same contain less than said standard capacity unless both such cans and cases have the exact liquid contents thereof plainly and conspicuously indicated thereon in a reasonably permanent manner.

It is further ordered, That the said respondent shall, within 60 days after the service upon it of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

WILLIAM H. JOHNSEN, INDIVIDUALLY AND TRADING
AS TECHNICAL CHEMICAL COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1978. Complaint, Oct. 14, 1931—Decision, Nov. 14, 1932*

Where an individual engaged in manufacture of a red fluid for mixing with straight gasoline, and in sale thereof under name "Ester" or "Ester Compound" to filling station owners or operators throughout the country in competition with the expensively and extensively advertised Ethyl and the different gasolines blended therewith, "Esso" and other well-known, extensively advertised, and premium-priced antiknock products, and the different straight gasolines,

Represented in circulars distributed to vendees or prospective vendees of his said compound that the same mixed with gasoline reduced "detonation" and "fuel knocks" and produced an antiknock, premium-priced motor fuel of merit, minimizing carbon, neutralizing action of gum, lubricating the combustion cycle and in various ways and in general correcting defects in gasoline and improving engine performance, and supplied vendees with pump globes displaying words, "*Ester* with *Ester* compound *Gasoline*" facts being product in question was of no value to purchasers of gasoline with which it had been mixed;

With result of deceiving its aforesaid vendees and the consuming public with respect to nature and value of product in question, and of furnishing filling station owners and operators throughout the United States with means of deceiving and misleading the consuming public into believing that straight motor fuel mixed with said product was improved thereby, and of thus increasing sales of retailers of the gasoline concerned at the expense of competitors honestly designating their product as straight gasoline or as high test, high compression, or antiknock gasoline, as the case might be, and with tendency so to deceive, to the injury of interstate distributors honestly designating and describing their products:

Held, That such practices, under the condition and circumstances set forth, were to the injury and 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 individual, engaged under his own name and also as Technical Chemical Co. in the sale of a fluid, under the designation "Ester" and "Ester Compound", for mixing with gasoline for