

Syllabus

IN THE MATTER OF
K-W GRAPHITE CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2684. Complaint, Jan. 10, 1936—Decision, June 15, 1936*

Where a corporation engaged in the business of compounding an oil containing an admixture of colloidal graphite and in the sale and distribution thereof for addition to fuels and crank-case oils for combustion engines and machinery—

Represented through advertisements in newspapers and periodicals, in circular letters and otherwise and upon the face of the containers of its said products that it reduced friction as much as 25 to 30 percent, that only one oil change in each 3,000 miles was necessary when it was used, it lowered oil bills 50 percent, enabled a saving of from 8 percent to 12 percent in gasoline and increased motor life and efficiency 40 percent;

Facts being that while said product had merit and was especially valuable in reducing friction and in the building up of a graphoid surface which would stand extreme heat for short periods of time without injury to the metal, aforesaid representations as to the relative value and efficiency of said preparation were grossly exaggerated and misleading and it would not increase motor life and efficiency by any stated percentage or to a substantial percentage nor similarly reduce gas consumption or friction nor enable an automobile to run 3,000 miles or any stated mileage on one oil change, or effect any definite saving on oil bills;

With tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous belief that such statements and representations were true and of inducing members of the public to purchase such product on account of such erroneous belief and with effect of placing in the hands of its dealers and distributors an instrument through which they might mislead and deceive the purchasing public and of unfairly diverting trade to it from competitors, among whom there are manufacturers or compounders and distributors of lubricating oils and similar products who do not misrepresent the same and falsely claim therefor such merits and such capacity to achieve results; to the damage and injury of distributors and the public and to the substantial injury of competition in interstate commerce:

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

Mr. Joseph C. Fehr for the Commission.

Mr. Charles P. Woodbury, of Kansas City, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission,

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to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that K-W Graphite Corporation, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, K-W Graphite Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at Kansas City, in the State of Missouri. It is now and, for more than 1 year last past, has been engaged in the compounding of a lubricating oil containing an admixture of colloidal graphite, and in the sale and distribution of said product, in commerce between and among various States of the United States; causing said product, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located in a State or States of the United States other than the State of Missouri. In the course and conduct of its business, K-W Graphite Corporation is now and has been at all times hereinafter mentioned in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent has advertised and still advertises its said product in newspapers and periodicals, in circular letters and in and by other forms of advertisements and advertising matter in which it has represented and still represents, among other things, as follows:

K-W MOTOR GRAPHITE REDUCES FRICTION AS MUCH AS 25 TO 40%

THREE THOUSAND MILES ON ONE OIL CHANGE is recommended when K-W MOTOR GRAPHITE is used as directed in both oil and gasoline. Reduce oil consumption by using K-W MOTOR GRAPHITE. More Miles per gallon of gasoline.

CHANGE OIL EVERY 3,000 MILES

K-W MOTOR GRAPHITE added to your regular oil seals the pores and produces a breath-like Graphoid film on all friction surfaces such as pistons, cylinder walls and bearings. Frictional heat is reduced and oil life is increased. K-W MOTOR GRAPHITE will enable you to run 3,000 miles on one oil change, lowering your oil bills 50%.

MORE MILES ON GASOLINE

Because K-W MOTOR GRAPHITE reduces the friction drag in your motor, power and gasoline mileage are increased. After 500 to 600 miles, readjust your carburetor. You will find the motor will operate smoother and use 8 to 12% less gasoline.

Increased speed and flexibility is the natural result of using K-W MOTOR GRAPHITE because when friction is reduced, speed and flexibility are increased.

You will find the motor smoother and more flexible and will use 8 to 12% less gasoline.

* * * It actually increases motor life and efficiency 40%.

It is not merely another oil. It is pure colloidal graphite—the finest lubricant known—an element that will withstand 10 times the heat, pressure and grind that destroys even the best oil.

PAR. 3. In truth and in fact, the use of colloidal graphite in lubricants will not increase motor life and efficiency 40 percent; will not reduce gas consumption from 8 to 12 percent; will not reduce friction as much as 25 to 40 percent; and the aforesaid product will not enable a car to run 3,000 miles on one oil change thereby effecting a saving of 50 percent on oil bills.

The statements and representations made by the respondent as set forth in paragraph 2 hereof have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the beliefs that:

(a) Colloidal graphite oil increases motor life and efficiency 40 percent;

(b) Motors in which such oil is used require from 8 to 12 percent less gasoline;

(c) The use of K-W Motor Graphite reduces friction as much as 25 to 40 percent;

(d) Only one oil change in each 3,000 miles is necessary when K-W Motor Graphite is used;

and to purchase respondent's products in such erroneous beliefs.

PAR. 4. There are, among the competitors of the respondent mentioned in paragraph 1 hereof, manufacturers and compounders of lubricating oils containing an admixture of colloidal graphite who truthfully advertise their aforesaid products and who do not represent that:

The use of their products will increase motor life and efficiency 40 percent;

The use of their products will reduce gas consumption from 8 to 12 percent;

The use of their product will reduce friction as much as 25 to 40 percent;

Their products will enable the car to run 3,000 miles on one oil change, thereby effecting a saving of 50 percent on oil bills.

Respondent's said K-W Motor Graphite, or colloidal graphite, is offered for sale and sold to the consuming public by respondent and other dealers in competition with similar products of competitors. Respondent's use of the representations described in relation to its said product, as set forth in paragraph 2 hereof, are false and misleading. As a result of such false and misleading misrepresentations on the part of respondent, the consuming public is being and has been injured, trade is being and has been diverted to respondent from its competitors in interstate commerce, and thereby substantial injury is and has been done by the respondent to substantial competition in interstate commerce and there is and has been placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive and have misled and deceived the purchasing public.

PAR. 5. Said representations of respondent, as contained in newspapers and periodicals, in circular letters and in other forms of advertisements and advertising matter through which the trade and consuming public are reached, have resulted in injury to respondent's competitors and to retail dealers and to the prejudice of the buying public, and constitute unfair methods of competition in commerce 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."

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 the 10th day of January 1936, issued and served its complaint in this proceeding upon the respondent, K-W Graphite Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of said respondent's answer thereto, the respondent, through its president, Robert L. Koehler, filed a motion to withdraw said answer and filed a substituted answer, subject to the approval of the Commission, in which substituted answer the respondent stated that it waived hearing on the charges set forth in the complaint, that it admitted all of the

material allegations of the complaint to be true and that it consented that the Commission may, without trial, without further evidence and without any intervening procedure, make, enter, issue, and serve upon it, the said respondent, its findings as to the facts and conclusion based thereon and an order to cease and desist from the methods of competition alleged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondent, and the Commission having duly considered same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, K-W Graphite Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri. Its principal place of business is at 3246 Holmes St., Kansas City, in the State of Missouri. Respondent is now, and for more than 1 year last past has been, engaged in the business of compounding an oil containing an admixture of colloidal graphite known as K-W Motor Graphite, and in the sale and distribution of said product in commerce between and among various States of the United States and in the District of Columbia, it has caused and still causes said product, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located at various points in States other than the State of Missouri. During the aforesaid times the respondent was and still is in substantial competition with other corporations, individuals, firms, and partnerships also engaged in the sale and distribution in interstate commerce of similar products used for the same and similar purposes.

PAR. 2. Respondent's said product, which is a concentrated solution of oil and graphite, is used for addition to fuels and crank-case oils for combustion engines and machinery. The graphite contained in respondent's product is known as colloidal graphite for the reason that it is so finely ground that it will remain in suspension in a lubricating oil solution. To compound its product, respondent uses a special grade of mineral oil together with a certain amount of colloidal graphite. By way of this admixture respondent produces two grades of its product known to the trade as Grade "A" and Grade "B." Grade "A" is designed for use in the fuel supply of an ordinary automobile either by adding it directly to the gasoline or

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feeding it into the intake manifold through one of the several so-called top oilers. Grade "B" is a crank-case lubricant and is designed for use in the cylinder oil.

PAR. 3. Respondent's said product is packed in pint cans and both Grade "A" and Grade "B" sell at retail for 75 cents a pint. Grade "A," the upper cylinder lubricant, is recommended by respondent to be added to one full tank of gasoline every 3,000 miles. Grade "B," the crank case lubricant, is recommended to be added to the regular motor fuel on the basis of 2 ounces to each quart of lubricating oil. Except for large commercial orders, respondent's product is packed only in round pint cans which have printed matter lithographed on them.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has advertised and still advertises its said product in newspapers and periodicals, in circular letters, and in and by other forms of advertisements and advertising matter. On the face of every pint can is lithographed, among other statements, the following representation:

K-W MOTOR GRAPHITE Reduces Friction as much as 25 to 30%.

* * * * *
3,000 MILES ON ONE OIL CHANGE is recommended when K-W GRAPHITE is used as directed in both oil and gasoline.

Reduce Oil Consumption, by using K-W MOTOR GRAPHITE.

Circulars issued by the respondent in interstate commerce carry the following statements:

CHANGE OIL EVERY 3,000 MILES

K-W MOTOR GRAPHITE added to your regular oil seals the pores and produces a breath-like graphoid film on all friction surfaces such as pistons, cylinder walls, and bearings. Frictional heat is reduced and oil life is increased. K-W MOTOR GRAPHITE will enable you to run 3,000 miles on one oil change, lowering your oil bills 50%.

MORE MILES ON GASOLINE

Because K-W MOTOR GRAPHITE reduces the friction drag in your motor, power and gasoline mileage are increased. After 500 to 600 miles, readjust your carburetor. You will find the motor will operate smoother and use 8 to 12% less gasoline.

Increased speed and flexibility is the natural result of using K-W MOTOR GRAPHITE because when friction is reduced, speed and flexibility are increased. Respondent has also advertised and still advertises its product in newspapers having interstate circulation in which, among other things, it makes the following claims:

You will find the motor smoother and more flexible and will use 8 to 12% less gasoline.

* * * It actually increases motor life and efficiency 40%.

* * * It is not merely another oil. It is pure colloidal graphite—the finest lubricant known—an element that will withstand 10 times the heat, pressure, and grind that destroys even the best oil.

PAR. 5. The respondent's product has been found to have merit, its use being especially valuable in reducing friction and in the building up of a graphoid surface which will stand extreme heat for short periods of time without injury to the metal; but the representations made by respondent, as hereinabove set forth, with respect to the relative value and efficiency of its colloidal graphite are grossly exaggerated and misleading. The use of respondent's colloidal graphite in lubricants does not and will not increase its motor life and efficiency by any stated percentage or to a substantial percentage; its use does not and will not reduce gas consumption by any stated percentage or to a substantial percentage; nor does it or will it reduce friction by any stated percentage or to a substantial percentage; nor is it true that colloidal graphite does or will enable an automobile to run 3,000 miles or any stated mileage on one oil change, or that the use of respondent's colloidal graphite effects any definite saving on oil bills.

As a result of such false, misleading, and deceptive misrepresentations on the part of respondent, the consuming public is being and has been injured, trade is being and has been diverted to respondent from its competitors in interstate commerce, and thereby substantial injury is and has been done by the respondent to competition in interstate commerce, and there is and has been placed in the hands of respondent's dealers and distributors an instrument by means of which they may mislead and deceive the purchasing public.

PAR. 6. There are among the competitors of the respondent, manufacturers, compounders, and distributors of lubricating oils and similar products who do not misrepresent their products and who do not falsely claim that said products have the merits and capacity to achieve results such as the respondent herein claims for its product, as above described.

PAR. 7. The use of each and all of the foregoing false and misleading statements and representations by the respondent, as set out in paragraphs 2, 3, and 4 hereof, have had and do have the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous belief that said statements and representations are true, and have induced and do induce members of the public to purchase respondent's said product on account of such erroneous

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belief, to the consequent damage and injury of distributors and to the injury of the general public, and said representations have unfairly diverted trade to respondent from competitors and thereby substantial injury has been done by respondent to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of said respondent under the conditions and circumstances described in the foregoing findings of facts are to the prejudice of the public and of competitors of respondent, and are unfair methods of competition in commerce in violation 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

The respondent herein having filed its answer to the complaint in this proceeding and having subsequently filed with this Commission motion that it be permitted to withdraw its said answer and that it be permitted to file in lieu thereof as a substituted answer, the draft of a proposed substituted answer annexed to the said motion, and the Commission having duly considered the said motion;

It is hereby ordered, That the said motion be and the same is hereby granted; that the answer be and the same is hereby withdrawn; and that the said proposed substituted answer be and the same is filed in lieu of the said answer hereby withdrawn.

The said respondent in and by its said substituted answer having waived hearings on the charges set forth in the complaint in this proceeding, and having stated in its substituted answer that it does not contest the said proceeding and that it admits all of the material allegations of the complaint to be true, and that it consents that the Commission may, without further evidence and without any intervening procedure, make and enter its findings as to the facts and conclusion thereon, and issue and serve upon said respondent an order to cease and desist from the methods of competition alleged in the complaint; and the Commission having duly considered the record and being now fully advised in the premises;

It is hereby further ordered, That the respondent, K-W Graphite Corporation, a corporation, its officers, agents, servants, representatives, and employees in the sale or offering for sale by it in interstate commerce and in the District of Columbia of lubricating oil and similar products do forthwith cease and desist from:

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Representing, directly or indirectly, through circulars, catalogs, labels, or any other form of printed matter or by radio broadcasting, or in any other manner:

(a) That K-W Motor Graphite increases motor life and efficiency by any stated percentage or to a substantial percentage;

(b) That motors in which K-W Motor Graphite is used require less gasoline than do motors in which K-W Motor Graphite is not used;

(c) That the use of K-W Motor Graphite reduces friction by any stated percentage or that it reduces friction to any substantial percentage;

(d) That only one oil change in each 3,000 miles or any stated mileage is necessary when K-W Graphite is used;

(e) That the use of K-W Motor Graphite effects any definite saving on oil bills;
and from making any other representations of similar tenor or import.

And it is hereby further ordered, That the said respondent shall within 60 days from the date of the service upon it of this order file with this Commission a report, in writing, setting forth the manner and form in which it has complied with this order.

IN THE MATTER OF
EUGENE D. PETRY, DOING BUSINESS AS WARNER
STUDIOS

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

Docket 2749. Complaint, Mar. 21, 1936—Decision, June 20, 1936

Where an individual engaged in operation of a photograph and portrait studio in the city of Washington, D. C., and in many other cities in various States and in soliciting in said city sale of photographs and portraits of various types and kinds to persons sitting as subjects therefor, through house to house canvassers or salesmen—

- (a) Represented through coupons sold prospective purchasers at prices ranging from 50¢ to \$1.50, and through those presented without cost, in case of its so-called "Courtesy Offer," and variously entitling holders thereof to photographs of various types and kinds at said individual's studio upon payment there, in some cases, of an additional amount varying from 50¢ to \$1.00, but, in case of most, without further payment, that said coupons or "certificates" represented and entitled holder to a special favor or price, or "Special Advertising Offer" for the "latest in portraiture," and that regular value represented by such coupons or certificates, for which holder was thus charged amounts ranging from 50¢ to \$2.50, was from \$3.50 to \$7.50, as case might be, and represented in soliciting sale of said photographs or portraits as aforesaid through said salesmen that regular value thereof was far in excess of the usual prevailing prices for similar products in said city and offered same to such purchasers at pretended special prices which were considerably less than their represented regular value, upon the supposed consideration that the prospective purchaser would "advertise" his business to friends and neighbors in the purchaser's particular community;

Facts being such regular values or usual prices were fictitious and misleading, many purchasers of such special offer coupons found upon presentation thereof at his studio that he was reluctant and unwilling to honor same according to terms printed thereon, such supposed special offers were only a part of a continuous scheme of solicitation in the regular, usual course and conduct of his said business, and said photographs or portraits of the supposed regular value of from \$3.50 to \$7.50 each were exactly the same kind, type and quality as regularly and ordinarily sold by popular priced studios operated and conducted by competitors in such District at prices ranging from \$1.00 to \$2.00;

With effect of misleading and deceiving purchasers into the belief that they were obtaining such photographs at prices far below their usual selling prices and below their true or regular value or worth; and

- (b) Set forth upon said certificates or coupons the trade name "Warner Studios" employed by him and such statements and representations as "Operating Exclusively with Movie Lighting Equipment" and "New Motion Picture Film Used," notwithstanding fact he did not use such film nor operate exclusively with such equipment in making his said photographs or