

IN THE MATTER OF
GULF COAST OIL COMPANY OF MISSISSIPPI, INC., AND
ANTHONY PACIERA

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

Docket 2860. Complaint, June 30, 1936—Decision, Mar. 3, 1937

Where a corporation, long engaged in sale and distribution of gasoline and motor oils in bulk to retail dealers for resale and to consumers for use in States of Louisiana, Mississippi, and Alabama, had built up, as Gulf Refining Company, a wide reputation and extensive good-will among users of its products, and said products were well and favorably known to public generally, and sign, in form of metal disk colored orange and bearing the one word "Gulf" in large black or dark blue shaded letters, and usually suspended in front of stations selling its products and on its equipment generally, constituted special feature of its advertising, used to great advantage for many years, and prospective customers had long been urged, through various mediums, to buy "At the Sign of The Orange Disk", and printed reproduction thereof was used to identify all its products and was painted upon its tanks, trucks and other equipment in letters of same character and color as those on the disk itself, and where its said products included brands designated by it as "Gulf Supreme Motor Oil" and "Gulf-pride Oil", and said names had long been featured by it in all forms of its advertising, at great expense, and were definitely associated with and formed an important part of general public's conception of it and its products, as similarly had been featured and was associated, etc., name of its "Gulf No-Nox Ethyl," under and by which name it designated "ethyl" gas composed of mixture of gasoline and tetraethyl lead, in common with other competitors who used word "ethyl" as part of their brand names under which they offered their respective "ethyl," 75 octane, or better, premium, and well and favorably known gasolines to consuming public; and thereafter a corporate competitor engaged in sale and distribution of gasoline and motor oils to dealers purchasing in bulk for resale and to consumers for use, and in supplying filling stations which it operated in Louisiana, Mississippi, and Alabama in substantial competition with said first-named corporation and with others similarly engaged, and the president of said corporate competitor, in active charge of its affairs and controller and director of all its policies and business operations, and originator of the various forms of advertising and business methods adopted by such competitor—

(a) Featured in all of said competitor's display advertising and on signs at various of its stations and on gasoline pumps, trucks, and other equipment, word "Gulf," either alone or in printed letters substantially larger than those of other words in connection with which used, and invariably in shaded letters of same type and color, substantially, as those used by said first-named corporation in its printing and use of word "Gulf," and extensively advertised as "Gulf Supreme Gasoline" one brand, and in its advertising thereof on signs posted in and about the various filling stations,

illuminated at night, frequently, featured word "Gulf," with letters thereof twice as large as other two words, and word "Supreme" in "quotations," and, at times, with its own corporate name of "Gulf Coast Oil Company of Mississippi" in letters about one-third size of words "Supreme" and "Gasoline," and word "Gulf" in same type and coloring as those used by said first-named corporation, and advertised said "Gulf Supreme Gasoline" through radio broadcast programs capable, in case of some, of being heard over entire United States, without mention, as a rule, of its own corporate name in course thereof, in which listeners were advised of location of stations at which its said products might be obtained, and designated and advertised extensively in newspapers of interstate circulation and in other ways its so-called "Gulf Ether Gasoline," name of which was featured on gasoline pumps located at its various stations in aforesaid States, and made use of terms "Pride of the People" and "Gulf 'Pride' Motor Oil" in designation and advertisement of certain oils sold by it, notwithstanding fact neither Gulf Refining Company nor Ethyl Gasoline Corporation had given their permission to said competitor and its aforesaid president to use terms "Gulf," "Gulf Supreme Motor Oil," "Gulfpriide Oil," "Gulf No-Nox Ethyl Gasoline" or "Ether" in designating the various gasoline and motor oil products of said corporate competitor and its said president, manager and controller;

With capacity and tendency, by reason of said acts and practices of said corporate competitor and its said president in imitating and simulating products of said first-named corporation and of other distributors selling various types of "Ethyl" gasoline, through such colorable imitations and simulations of aforesaid trade names and brand names for various gasolines and motor oils sold by said first-named corporation over a period of many years, and, in aforesaid use of term "Ether," of registered trade name "Ethyl" of said Ethyl Gasoline Corporation and its various licensees, to confuse and mislead trade and public generally with respect to nature, quality, and origin of various products sold by such corporate competitor, and with result that, under ordinary conditions prevailing in usual course of business in sale of gasolines and motor oils, members of public might be induced, by reason of such simulation and imitation of trade names and trade marks, to buy said corporate competitor's gasoline, motor oil and other products as and for such products distributed and sold by said first-named corporation, its agents and dealers, or as and for gasoline distributed by competitors of it and licensees of said Ethyl Gasoline Corporation; and

(b) Represented, in all of their advertising, radio broadcasts, newspaper advertising, and otherwise, that said corporate competitor's "Gulf Ether Gasoline" tested 70 octanes and was equivalent to high test premium gasoline and to "Ethyl" gasoline for which premium is charged, facts being its said product, principal type of gasoline eventually sold by it, was produced by adding small quantities of commercial ether to ordinary gasoline, and that the small and insignificant amount of ether added did not affect gasoline involved to any noticeable extent and was not beneficial thereto and did not increase value, potency or power thereof, make same any more beneficial to automobile motors, or decrease tendency thereof to knock or detonate, and was not comparable in efficiency to gasoline to which tetra-ethyl lead has been added in such quantities as to raise octane rating thereof to 75, but, on contrary, disclosed ratings ranging, at different times and tests, from 66 to 68 or 69;

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With tendency and capacity to mislead a substantial portion of purchasing public into erroneous beliefs that said representations were true and that said "Gulf Ether Gasoline" was comparable in value to and gave equal performance with various types of high test premium gasoline and ethyl gasoline, and with result, as a direct consequence of such mistaken and erroneous beliefs, induced by such acts and representations, that a number of the consuming public purchased a substantial volume of said "Gulf Ether Gasoline" and trade was unfairly diverted to said corporate competitor and its aforesaid president and manager from competitors engaged in business of distributing and selling various types of high test premium and ethyl gasolines, and who truthfully advertise their products, and from competitors engaged in distribution and sale of ordinary grades of gasoline who truthfully advertise, as to both quality and efficiency of performance, their respective products:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.

Mr. J. T. Welch for the Commission.

Titche & Titche, of New Orleans, La., for respondents.

COMPLAINT

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, having reason to believe that Gulf Coast Oil Company of Mississippi, Inc., a corporation, and Anthony Paciera, an individual, hereinafter designated as respondents, are now, and have been, 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 the charges in that respect as follows:

PARAGRAPH 1. Respondent, Gulf Coast Oil Company of Mississippi, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mississippi, with its principal office and place of business at 3331 St. Charles Avenue, in the city of New Orleans, State of Louisiana. Respondent, Anthony Paciera, residing in the city of New Orleans, State of Louisiana, is the president of the respondent corporation and is actively in charge of said corporation and directs and controls all of its policies and operations. He is the originator of the various forms of advertising and business methods which have been adopted and followed by the respondent corporation. Respondents are now, and have been since on or about January 1, 1933, engaged in the business of selling and

distributing gasoline, kerosene, motor oil, and similar products, in bulk to dealers purchasing for resale and to consumers for use.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said gasoline, kerosene, and motor oil, when sold, to be transported from their office and principal place of business, or from their storage tanks located in the State of Louisiana, to purchasers thereof located at various points in other States of the United States. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said gasoline, kerosene and motor oil, so distributed and sold by the respondents, between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other corporations, firms, and individuals, likewise engaged in the business of distributing and selling gasoline, kerosene and motor oil, in bulk to retail dealers for resale and to consumers for use, in commerce among and between the various States of the United States.

PAR. 4. During all the time since the organization and incorporation of respondent corporation, and for many years prior thereto, the Gulf Refining Company, a corporation, maintaining its headquarters in Pittsburgh, State of Pennsylvania, and one of the competitors referred to in paragraph 3 hereof, has been engaged in the distribution and sale of gasoline, kerosene and motor oil, in bulk to retail dealers for resale and to consumers for use, particularly in the States of Louisiana, Mississippi, and Alabama. Since its organization, and for a period of more than thirty years, said Gulf Refining Company has built up a wide reputation and extensive good-will among the users of the products it sells and said products are well known to the public generally.

Early in its business career, the Gulf Refining Company adopted the colors yellow or orange as the colors of its plants and equipment generally, including its filling stations, some of which are owned by it, some of which are merely operated by it, and some of which merely sell its products. The uniform color of its stations and equipment became identified with the company and grew to be an important part of its plan of advertising. A special feature of its advertising that has been used to great advantage is a sign, in the form of a metal disk, colored orange and bearing the one word "GULF" in black or dark blue shaded letters. The sign is usually suspended in front of the stations selling the products of the company and prospective customers have been urged through various mediums, over a period of many years, to buy—"At the

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Sign of the Orange Disk." The printed reproduction of the disk is the trade-mark used to identify all the products of the company and is painted upon its tanks, trucks and other equipment. For a period of at least ten years, all of the storage tanks, gasoline pumps, tank trucks, and the woodwork of the filling stations owned by the company, have been painted a uniform shade of orange, the same as that of the disk above referred to and described. The petroleum products distributed and sold by the Gulf Refining Company are certain brands of gasoline and motor oil designated by it as "Gulf Supreme Motor Oil," "Gulfpride Oil," "Gulf Ethyl Gasoline," and "No-Nox Ethyl Gasoline." These products, and the names by which they are designated, have for a long time past, and are now, featured by the company in all forms of its advertising and are definitely associated with and form an important part of the general public's conception of the Gulf Refining Company and its products.

The gasoline sold by the Gulf Refining Company under the names "Gulf Ethyl Gasoline" and "No-Nox Ethyl Gasoline" are composed of a mixture of ordinary gasoline and tetraethyl lead. Tetraethyl lead is added to the ordinary gasoline for the purpose of increasing the efficiency of such ordinary gasoline as a fuel for modern type motors.

Gasoline to which tetraethyl lead has been added is also extensively advertised and sold by other competitors of the respondents and the use of the word "Ethyl" in advertising and designating said gasoline products, to which tetraethyl lead has been added, forms a distinctive and valuable advertising asset. The superior quality of, and the superior performance given by, various types of "Ethyl" gasoline, are well known to, and appreciated by, the consuming public generally.

PAR. 5. Since about January 1, 1933, the respondents have caused the corporate respondent's stations, gasoline pumps, tank trucks, and other equipment, to be painted the same shade of orange color as that used by the Gulf Refining Company over a period of many years, as herein set out in paragraph 4. Respondents have also featured, and continue to feature, in all of the corporate respondent's display advertising, the word "GULF," either alone or in print substantially larger than that of the other words in connection with which it is used. The word is written always in shaded letters of the same type and is printed in black or deep blue colors substantially the same as the letters and colors used, as herein set out, by said Gulf Refining Company. Respondents have also made use of an orange colored disk similar to that described as having been used by the Gulf Refining Company for many years, as part of corporate respondent's

equipment, in their stations and have their trade-mark or insignia painted on their pumps, tank trucks, and other equipment. This disk bears printed thereon in prominent letters the one word "GULF," written in letters similar to those described with reference to the respondents' use of the same word on all of their other equipment. Respondents have also made use of a disk, the upper half of which disk is colored the same shade of orange as that used by the Gulf Refining Company and the lower half colored black.

Respondents have also extensively advertised one brand of the corporate respondent's gasoline products as "Gulf Supreme Gasoline." The name of this brand of gasoline is featured on signs posted in and about the various filling stations and is painted on the gasoline pumps and other equipment. The word "Supreme" on these signs is emphasized generally by enclosing the said word in quotation marks. The advertising of this brand of gasoline has been, and now is, conducted further by means of radio broadcasts from stations of sufficient power to carry the programs emanating therefrom to, into and through States of the United States other than the State of Louisiana, so as to be received and heard by radio listeners residing in said other States. In all or in some of said broadcasts, the corporate respondent's name is not mentioned. The broadcast is devoted entirely to advertising the brand "Gulf Supreme Gasoline" and calling attention to the location of gasoline stations at which it may be obtained. On signs prominently displayed at all of its stations, the corporate respondent has made use of the word "GULF" in letters much larger than all other letters on the sign and has used the words "Supreme Gasoline" in letters also larger than the remaining words on the sign. The respondents' corporate name, Gulf Coast Oil Company of Mississippi, Inc., is displayed on said sign in letters considerably smaller and less prominently displayed than the other words herein referred to.

One of the principal types of gasoline sold by the corporate respondent is designated and advertised extensively as "Gulf Ether Gasoline." The gasoline pumps at the corporate respondent's various stations are painted the uniform orange color similar to that used by the Gulf Refining Company with the following words printed thereon—"Gulf Ether Gasoline." The "Gulf Ether Gasoline" is produced by adding a small quantity of ether to a tank car of approximately 8,000 gallons of ordinary gasoline. The amount of ether added to said gasoline forms a small and insignificant part of the total volume of said gasoline when mixed and is not added in sufficient quantities to materially or substantially affect said gasoline in any beneficial manner.

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Respondents sell the gasoline designated by them as "Gulf Ether Gasoline" as and for "Ethyl Gasoline," though said gasoline does not perform with the same efficiency as gasoline to which tetraethyl lead has been added, as herein set out in paragraph 4, and is inferior in quality and in performance to "Gulf Ethyl Gasoline" and "Gulf No-Nox Ethyl Gasoline." The word "ether" when used in conjunction with the words "Gulf" and "Gasoline" is a colorable imitation and simulation of the term "Ethyl Gasoline" as rightfully used by many of the competitors of the respondents.

The respondents have also made use of the terms "Pride of the People" and "Gulf 'Pride' motor oil" to designate types of motor oil sold by the corporate respondent. Signs and equipment, including oil containers, oil pumps, tank wagons, and other equipment, display the term "Gulf Coast Oil Company—Pride of the People." Certain of the corporate respondent's tank wagons also display, printed in large letters thereon, the words "Gulf Pride Oil Company." Respondents have also advertised certain of their motor oil products as "Gulf 'Pride' motor oil" in newspapers of general circulation throughout the various States of the United States.

PAR. 6. The Gulf Refining Company has spent large sums of money in painting all of its stations, pumps, tank trucks, and other equipment, a uniform shade of orange and in extensively advertising, through newspapers, advertising booklets, radio broadcasts, and through other advertising media, its products such as "Gulf Supreme Motor Oil," "Gulfpriide Oil," "Gulf Ethyl Gasoline," and "No-Nox Ethyl Gasoline." All of said terms and brand names, and said orange color scheme, are well and favorably known to the purchasing public and are associated with the equipment and products of said Gulf Refining Company by said purchasing public and form assets of great value to it. It has neither given its permission to the respondents for the use of said color scheme in painting stations, pumps, tank trucks, or other equipment, nor has it given its consent to the use of the terms "Gulf Supreme Motor Oil," "Gulfpriide Oil," "Gulf Ethyl Gasoline," and "No-Nox Ethyl Gasoline" in designating the respondent's various gasoline and motor oil products.

The use by the respondents of said orange color scheme in painting their stations, pumps, tank trucks, and other equipment, and the use of the terms or brand names "Gulf," "Gulf Supreme Gasoline," "Gulf Ether Gasoline," "Pride of the People," "Gulf Coast Motor Oil," "Gulf Pride Oil Company," and "Gulf 'Pride' Motor Oil," are such as to be colorable imitation and simulations of the color scheme adopted and used over a period of many years by the Gulf Refining

Company and of the products advertised and sold by the Gulf Refining Company over a like period.

PAR. 7. The acts and practices of the respondents, as hereinabove detailed, are such as to cause the corporate respondent's stations, pumps, tank trucks, and other equipment, to be imitations and simulations, in many particulars, of the stations, pumps, tank trucks, and other equipment, of the Gulf Refining Company and are of such a character as to cause the corporate respondent's products to imitate and simulate the products of the Gulf Refining Company and other competitors of the respondents selling various types of ethyl gasoline. The acts and practices of the respondents, and their imitation of the equipment and products of their competitors, have the capacity and tendency to confuse, deceive and mislead the trade and the public generally, under the ordinary conditions prevailing in the usual course of business, in the sale of gasoline, motor oil and similar products, and as a result thereof members of the trade and of the public may be and they are induced, by reason of such imitation and simulation, to buy the corporate respondent's gasoline, motor oil, and other products, in the belief that they are purchasing gasoline, motor oil, and other products, distributed and sold by the Gulf Refining Company, its agents and vendees, and by other competitors of the respondents. As a result thereof, trade has been unfairly diverted from respondents' competitors and from dealers in the products of respondents' competitors, to the respondents and to the dealers in their products, all to the injury of the public and to the injury of competition, in commerce among and between the various States of the United States.

PAR. 8. Various types of gasoline perform with varying degrees of efficiency. The quality or grade of gasoline, with respect to eliminating knocking or "detonation," is susceptible of measurement and determination. This standard of measurement is expressed in terms of octane value. The gasoline having the highest octane rating is considered by the trade, and the purchasing public, to be the best and commands a higher price or premium accordingly.

Gasolines to which tetraethyl lead is added, and which are sold to the trade and public as ethyl gasoline, have an octane rating of not less than 75.

The respondents, in all of their advertising, radio broadcasts, newspapers, and otherwise, represent that "Gulf Ether Gasoline" tests 70 octane and is equivalent to high-test premium gasoline and to ethyl gasoline for which a premium is charged. In truth and in fact, respondents' "Gulf Ether Gasoline" does not test 70 octane and is not

comparable to either ethyl gasoline or other high-test premium gasolines in performance and in eliminating or reducing knocking and detonation. The amount of ether contained in respondent corporation's "Gulf Ether Gasoline" is so small as to not materially improve either the starting ability or to appreciably affect the detonating tendency of the base gasoline to which the ether is added. The ether added to the respondents' gasoline does not materially contribute in any way so as to increase the efficiency of the performance of such gasoline when used.

PAR. 9. The false and misleading statements and representations made by the respondents, with reference to the quality of the corporate respondent's "Gulf Ether Gasoline" and its effectiveness in use, as hereinabove set out, in offering for sale and selling said "Gulf Ether Gasoline," were, and are, calculated to, and had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true, and that said "Gulf Ether Gasoline" is comparable in value to and gives equal performance with, various types of high-test gasolines and ethyl gasoline. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondents, a number of the consuming public have purchased a substantial volume of corporate respondent's "Gulf Ether Gasoline" with the result that trade has been unfairly diverted to the respondents from competitors engaged in the business of distributing and selling various types of high-test gasolines and ethyl gasolines, and who truthfully advertise their products, and also from competitors engaged in the distribution and sale of ordinary grades of gasoline, who truthfully advertise their respective products, both as to quality and efficiency of performance. As a result thereof, substantial injury has been, and is now being, done by respondents in competition, in commerce among and between the various states.

PAR. 10. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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."

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 Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on June 30, 1936, issued and served its complaint in this proceeding upon the respondents, Gulf Coast Oil Company of Mississippi, Inc., and Anthony Paciera, charging them 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 respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by J. T. Welch, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Bernard Titche, Jr., attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, on February 17, 1937, the respondents filed a motion for permission to withdraw the answer theretofore filed and to substitute therefor an answer admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. The Commission, by order entered herein, granted respondents' motion, and said substitute answer was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, testimony and other evidence and said substitute answer and the Commission having duly considered the 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. Gulf Coast Oil Company of Mississippi, is a corporation organized, existing and doing business under the laws of the State of Mississippi. Its principal office and place of business is located at 3331 St. Charles Avenue, in the city of New Orleans, La. Anthony Paciera is a resident of the city of New Orleans, La., and is president of the corporate respondent. He is actively in charge of its affairs and directs and controls all of its policies and business operations. He is the originator of the various forms of advertising and business methods which have been adopted and followed by the corporate respondent. Since about January 1, 1933, the respondents have been continuously engaged in the business of selling and distributing gasoline and motor oils both to dealers purchasing in bulk for resale and to consumers for use. The present customers of the corporate respondent who purchase these products for resale to the consuming

public are: Hospital Grocery, Gulfport, Miss.; Smith Brothers, Landon, Miss.; and Weider Service Station, Ocean Springs, Miss. The corporate respondent also operates a number of automobile service stations, commonly known as filling stations, in the city of New Orleans, La., and in ten or fifteen other cities or towns in that State. It also operates stations in the cities of Biloxi, St. Louis, Picayune, Poplarville, and Hattiesburg in the State of Mississippi, and in the cities of Mobile and Birmingham in the State of Alabama.

PAR. 2. The corporate respondent causes said gasoline and motor oils, when sold, to be transported from its office and principal place of business, or from its storage tanks located in the State of Louisiana, or from the refinery or other seller from whom it purchases said products, to the purchasers thereof located at various points in States of the United States other than the State of Louisiana or other than the State of origin of said shipment. When dealers, purchasing for resale, order gasoline or motor oils from the corporate respondent, said products are delivered to said purchasers from the corporate respondent's storage tanks located in the State of Louisiana by trucks owned and operated by the corporate respondent. The total business done by the corporate respondent with dealers purchasing for resale amounts to approximately \$1,000 per month. The corporate respondent supplies the filling stations which it operates in the States of Louisiana, Mississippi, and Alabama with gasoline and motor oils, either through tank trucks operated by it which withdraw gasoline from its storage tanks in the State of Louisiana and deliver said products to the respective stations, or through shipments of railroad tank car lots of said products to the respective stations. Whenever a railroad tank car shipment is made to one of said stations, the shipment originates at the refinery in the State of Louisiana and is shipped direct from such seller's place of business to the respective stations, some of which are located in Mississippi and others of which are located in the State of Alabama.

PAR. 3. The respondents are engaged in substantial competition with other corporations, firms, and individuals likewise engaged in the business of distributing and selling gasoline and motor oils in bulk to retail dealers for resale and to consumers for use, in commerce among and between the various States of the United States. The respondents' monthly sale of gasoline amounts to approximately 300,000 gallons.

PAR. 4. Among the respondents' competitors is the Gulf Refining Company, a corporation, which is also engaged in the sale and distribution of gasoline and motor oils in bulk to retail dealers for resale and to consumers for use in the States of Louisiana, Mississippi, and

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Alabama. Since 1905 the Gulf Refining Company has built up a wide reputation and extensive good-will among the users of the products which it sells and said products are well and favorably known to the public generally.

A special feature of its advertising that has been used to a great advantage for a period of many years is a sign in the form of a metal disk, colored orange and bearing the one word "Gulf" in large black or dark blue shaded letters. The sign is usually suspended in front of the stations selling the products of the company and on its equipment generally. Prospective customers have been urged through various mediums, over a period of many years, to buy—"At the Sign of The Orange Disk." The printed reproduction of the disk is the trade mark used to identify all the products of the company and is painted upon its tanks, trucks, and other equipment. For a period of at least ten years all of the storage tanks, gasoline pumps, tank trucks, and equipment of the filling stations owned by the company have had the word "Gulf" printed thereon in letters of the same character and color as those on the disk above referred to and described.

The petroleum products distributed and sold by the Gulf Refining Company include certain brands of gasoline and motor oils designated by it as "Gulf Supreme Motor Oil," "Gulfpride Oil," and "Gulf No-Nox Ethyl Gasoline." The names by which these products are designated have been for a long time featured by the Gulf Refining Company in all forms of its advertising at great expense and are definitely associated with and form an important part of the general public's conception of the Gulf Refining Company and its products. The gasoline designated as "Gulf No-Nox Ethyl" sold by it is composed of a mixture of ordinary gasoline and tetraethyl lead which is added to the gasoline for the purpose of increasing the efficiency of such gasoline as a fuel for modern type automobile motors. Gasoline to which tetraethyl lead has been added is also extensively advertised and sold by other competitors of the respondents who make use of the word "Ethyl," either alone or in conjunction with their own respective trade or corporate names, in advertising and designating their respective gasoline products. The use of the word "Ethyl" to describe a certain type of gasoline, to wit: ordinary gasoline to which tetraethyl lead has been added in sufficient quantities to raise the rating of said gasoline to a minimum of seventy-five (75) octanes, forms a distinctive and valuable advertising asset as the superior quality of and superior performance given by various types of "Ethyl" gasoline are well known to, and appreciated by, the con-

suming public generally who pay a premium to obtain gasoline of that character.

Many of respondents' competitors who sell gasoline to which tetra-ethyl lead has been added as described herein, make use of the word "Ethyl" as part of the brand name under which their respective gasolines are sold and they display the word "Ethyl," either alone or in conjunction with their respective trade names on the various pumps from which said gasolines are dispensed. The pumps used by the Gulf Refining Company, its agents and dealers generally in dispensing gasoline of this type bear the words "Gulf No-Nox Ethyl Gasoline."

PAR. 5. Since about January 1, 1933, the corporate respondent has featured in all of its display advertising, on signs at various of its stations, on gasoline pumps, trucks and other equipment, the word "GULF," either alone or in printed letters substantially larger than those of the other words in connection with which it is used. The word "GULF" is always printed in shaded letters of the same type and black or deep blue color substantially the same as the letters and colors used by the said Gulf Refining Company in its printing and use of the word "GULF."

Respondents have also extensively advertised one brand of the corporate respondents gasoline products as "Gulf Supreme Gasoline." The name of this brand of gasoline is featured on signs posted in and about the various filling stations. These signs are about two and one-half feet high and eight to ten feet long, and are placed on a standard so that the sign is high enough up to give clearance to cars passing thereunder, and is, at many stations, illuminated by electric lights at night. On these signs the word "GULF" appears in letters twice as large as the words "Supreme" and "Gasoline." The word "Supreme" on these signs is emphasized generally by enclosing said word in quotation marks. The respondents' corporate name, Gulf Coast Oil Company of Mississippi, Inc., sometimes appears on said signs in letters approximately one-third the size of the lettering in the words "Supreme" and "Gasoline." The word Gulf is printed in letters of the same type and with the same coloring as used by the Gulf Refining Company in its printing and use of the word "GULF." The advertising of respondents' "Gulf Supreme Gasoline" has been conducted further by means of radio broadcasts over radio stations WSMB and WWL. Both of these stations are of sufficient power to carry the programs emanating therefrom to, into and through States of the United States other than the State of Louisiana. Station WWL is a powerful station and its program can be heard all over the United States. Respondents'

various broadcasts are devoted entirely to advertising the gasoline designated as "Gulf Supreme Gasoline" and call attention to the location of stations at which it may be obtained. The respondent's corporate name is not generally mentioned in these broadcasts.

The principal type of gasoline now sold by the corporate respondent is designated and advertised extensively in newspapers having an interstate circulation and in other ways as "Gulf Ether Gasoline." Gasoline pumps at the respondents' various filling stations located in the States of Louisiana, Mississippi, and Alabama have printed thereon in large letters the words "Gulf Ether Gasoline." This particular type of gasoline is produced by adding small quantities, approximately eight (8) gallons, of commercial ether to a tank car of approximately 8,000 gallons of ordinary gasoline. The amount of ether added to said gasoline forms a small and insignificant part of the total volume of said gasoline when mixed. The addition of such a small amount of commercial ether fluid, a highly volatile gas, to ordinary gasoline does not affect said gasoline to any noticeable extent and is not beneficial to said gasoline. The addition of ether in such quantities does not increase the value, potency or power of said gasoline. The use of such quantity of commercial ether added to ordinary gasoline does not make said gasoline any more beneficial to automobile motors and does not decrease the tendency of the motor to knock or detonate. Gasoline to which such quantity of ether fluid has been added does not perform with comparable efficiency to gasoline to which tetraethyl lead has been added in such quantities as to raise the octane rating to 75.

The word "Ether" when used in connection with the word "Gulf" and "Gasoline" is a colorable imitation and simulation of the term "Gulf No-Nox Ethyl Gasoline" and of the term "Ethyl Gasoline" as rightfully used by the Gulf Refining Company and many of the competitors of the respondents.

The respondents have also made use of the terms "Pride of the People" and "Gulf 'Pride' Motor Oil" to designate certain types of motor oil sold by the corporate respondent. Certain of the corporate respondent's signs and equipment, including oil containers and oil pumps display the term "Pride of the People."

The respondents have widely advertised the corporate respondent's "Gulf Ether Gasoline" and its "Pride of the People" and "Gulf 'Pride'" lubricating oils in newspapers of general circulation throughout the States of Louisiana, Mississippi, and Alabama.

PAR. 6. Neither the Gulf Refining Company nor the Ethyl Gasoline Corporation have given their permission to the respondents to use, in the manner herein set out, or in any other manner, the terms

"GULF," "Gulf Supreme Motor Oil," "Gulfpride Oil," "Gulf No-Nox Ethyl Gasoline," or "ETHYL" in designating the respondents' various gasoline and motor oil products.

The use by the respondents in the manner described herein of the brand name "GULF" and of the terms "Gulf Supreme Gasoline," "Gulf Ether Gasoline," and "Pride of the People," and "Gulf 'Pride' Motor Oil" is such as to be colorable imitations and simulations of the aforesaid trade name of the Gulf Refining Company and its brand names for various gasolines and motor oils sold by it over a period of many years and the use of the term "Ether" in describing corporate respondent's gasoline is such as to be a colorable imitation and simulation of the registered trade name "ETHYL" as used by the Ethyl Gasoline Corporation and its various licensees.

PAR. 7. The acts and practices of the respondents, as detailed hereinabove, in imitating and simulating the products of the Gulf Refining Company and of other distributors selling various types of "ETHYL" gasoline has the capacity and tendency to confuse and mislead the trade and the public generally with respect to the nature, quality, and origin of the various products sold by the corporate respondent. Under the ordinary conditions prevailing in the usual course of business in the sale of gasolines and motor oils the acts and practices of the respondents are such that members of the public may be induced, by reason of such simulation and imitation of trade-marks and trade names as herein set out, to buy the corporate respondent's gasoline, motor oil, and other products in the belief that they are purchasing gasoline, motor oil, and other products distributed and sold by the Gulf Refining Company, its agents and dealers or gasoline distributed by other competitors of the respondents who are licensees of the Ethyl Gasoline Corporation.

PAR. 8. Various types of gasoline perform with varying degrees of efficiency. The quality or grade of gasoline, with respect to eliminating motor knock or decreasing the tendency of the motor to detonate, is susceptible of measurement and determination. This standard of measurement is expressed in terms of octane value. The gasoline having the highest octane rating is considered by the trade, and the purchasing public, to be the best and commands a higher price or premium accordingly. Gasolines to which tetraethyl lead is added, and which are sold to the trade and public as "ETHYL" gasoline have an octane rating of not less than 75 octanes.

The respondents, in all of their advertising, radio broadcasts, newspaper advertising, and otherwise, represent that the corporate respondent's "Gulf Ether Gasoline" tests 70 octanes and is equivalent

to high test premium gasoline and to "ETHYL" gasoline for which a premium is charged. The gasoline sold by the corporate respondent at the time the hearings were conducted in August, 1936, and prior thereto, did not always have the same octane rating. Different lots of gasoline purchased by the corporate respondents for resale varied in octane value from 66 octanes up to 68 or 69 octanes. The greater percentage of the purchases made were of 66 to 68 octane gasoline. Gasoline having an octane rating of 70 or less is not comparable to either "ETHYL" or to other high test premium gasoline in performance or in elimination or reduction of motor knocks and detonation. The amount of ether added to respondents' 66 to 68 octane gasoline is sufficient to raise the octane rating as much as one point.

PAR. 9. The statements and representations made by the respondents with respect to the quality of the corporate respondent's "Gulf Ether Gasoline" and its effectiveness in use, in offering for sale and selling said "Gulf Ether Gasoline" were calculated to, and had and now have, the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous beliefs that said representations are true and that said "Gulf Ether Gasoline" is comparable in value to, and gives equal performance with, various types of high test premium gasoline and "Ethyl" gasoline.

As a direct consequence of the mistaken and erroneous beliefs induced by the aforesaid acts and representations of the respondents, a number of the consuming public have purchased a substantial volume of corporate respondent's "Gulf Ether Gasoline" with the result that trade has been unfairly diverted to the respondents from competitors engaged in the business of distributing and selling various types of high test premium gasolines and "ETHYL" gasolines and who truthfully advertise their products and also from competitors engaged in the distribution and sale of ordinary grades of gasoline, who truthfully advertise their respective products, both as to quality and efficiency of performance.

CONCLUSION

The aforesaid acts and practices of the respondents, Gulf Coast Oil Company of Mississippi, Inc., and Anthony Paciera, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning 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

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken in support thereof and upon the answer filed herein on February 17, 1937, by the respondents, Gulf Coast Oil Company of Mississippi, Inc., and Anthony Paciera, admitting all the material allegations of the complaint to be true and waiving the taking of further testimony and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusions that said 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 ordered, That the respondents, Gulf Coast Oil Company of Mississippi, a corporation, its officers, and Anthony Paciera, an individual, and their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of gasoline, motor oils, and other petroleum products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, in their advertising or in any other manner, by use of the trade name "ETHYL," or by use of the word "Ether," or any other word or words closely simulating the trade name "ETHYL," either alone or in conjunction with any other word or words, or by use of any other means or device, that the gasoline sold by respondents contains tetraethyl lead or "ETHYL" fluid or that the respondents are licensees of the Ethyl Gasoline Corporation;

2. Representing, through use of the words or brand names "GULF," "Gulfpride," "Gulf 'Pride'," "Gulf Supreme" and "Pride of the People," or any other words closely simulating the aforesaid trade or brand names, either alone or in conjunction with any other word or words, or through the use of any symbol, term, or device, that respondents gasoline and motor oil products are those of the Gulf Refining Company;

3. Representing, directly or indirectly, through any means or device that respondents' gasoline products have an octane rating higher than they actually possess;

4. Representing, directly or by implication, through any means or device, that respondents' gasoline products are the equal in elimination or reduction of motor knocks, detonation, or performance to

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Order

"premium" gasolines having octane ratings of 75 or more, or to gasoline products which in fact have a higher octane rating than respondents' gasoline and from comparing respondents' gasoline to "premium" gasolines having a higher octane rating than respondents' gasoline without specifically stating the respective ratings of each gasoline;

5. Using the word "Gulf" alone or in conjunction with any other word or words as a brand or trade name for their gasoline or motor oil products, or in advertising, or in any other manner, unless the word "Gulf" shall have the word "Coast" placed in close proximity thereto in letters of the same type and size and of equal prominence.

Provided, however, That the respondents are not hereby prohibited from using their entire corporate name or from using any trade or brand name which includes the words "Gulf Coast," in any manner so long as the use thereof does not conflict with section 5 hereof, or from using a yellow or orange color scheme on their stations, gasoline pumps, and other equipment.

It is further ordered, That the respondents shall, within 60 days of the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF
PLANTATION CHOCOLATE COMPANY, INC.

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

Docket 2777. Complaint, Apr. 21, 1936—Decision, Mar. 4, 1937

Where a corporation, engaged in manufacture and sale of "straight" goods candy and of so-called "break-and-take" assortments, principal trade demand for which comes from the small retailers, with stores in many instances near schools and patronized by school children, and sale and distribution of which candy, affording with sale thereof to public opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, principal consumers or purchasers of such type of candy and largest class by far thereof, who buy same in preference to so-called "straight" candy when displayed side by side by reason of lottery or gambling feature connected with former, and selling of which in the market of the other, i. e., the "straight" goods has been followed by marked decrease in sales of such "straight" candy due principally to gambling or lottery feature connected with so-called "break-and-take" merchandise—

Sold to wholesale and retail dealers its so-called "Here-Tiz" assortments, composed of a number of small penny pieces of chocolate-covered candy of uniform size and shape, the color of the concealed centers of a small number of which differed from that of the majority thereof, together with a number of larger pieces of candy to be given as prizes to those procuring one of said pieces, colored center of which differed, as aforesaid, from majority thereof, and also together with a still larger piece, to which purchaser of last piece of aforesaid chocolate-covered candies was entitled without charge; so assembled and packed that such assortments might be, and were, displayed and sold to consuming public by numerous retail dealers purchasers thereof in accordance with above-described plan, and with knowledge and intent that such assortments could and would thus be resold to public by retail dealers by lot or chance without alteration, addition, or rearrangement, as above set forth, in violation of public policy, and in competition with many who regard such methods of sale and distribution as morally bad and as encouraging gambling, especially among children, as injurious to the industry through resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with the means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;

With result that some competitors began sale and distribution of candy for resale to public as above set forth, to meet competition of those manufacturers who thus sold and distributed their candy, for which product as thus sold there is demand; sales of "straight" candy of aforesaid refusing competitors who can compete on even terms only by giving same or similar devices to retailers, showed a continued decrease; public and competitors were prejudiced and injured, and trade was diverted from latter to it, and